



Llywodraeth Cymru
Welsh Government

DRAFT TERTIARY EDUCATION AND RESEARCH (WALES) BILL

Explanatory Memorandum incorporating the Regulatory
Impact Assessment and Explanatory Notes

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This Explanatory Memorandum was prepared in anticipation of the introduction of the Tertiary Education and Research (Wales) Bill. However, in light of the COVID-19 pandemic, the Bill will not be introduced in the Senedd's current term.

Instead, the Bill has been published as a Draft Bill. The Explanatory Memorandum is as originally drafted except in its reference to a Draft Bill. It has been published to provide background information and as an aid to stakeholders' understanding.

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The Draft Tertiary Education and Research (Wales) Bill (“the Draft Bill”), will establish the Commission for Tertiary Education and Research (“the Commission”), as the independent regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales, tertiary education will encompass post-16 education including further and higher education, apprenticeships and mainstream sixth forms.
- 1.2 The establishment of the Commission will be a critical step towards realising the goals set out in the Welsh Government’s economic action plan, *Prosperity for All*, and in particular, our aim for an ambitious and learning Wales. It follows through on the joint commitment made by the First Minister and Minister for Education in their 2018 progressive agreement.
- 1.3 The Commission will be established to meet the national challenges of the future: scientific breakthroughs and technological disruption, demand for new skills, an aging population, the changing aspirations of young and adult learners, and the need to build united and connected communities. It will ensure that our tertiary education and research sector is organised to meet the needs of learners, the economy, and the entire Welsh nation.
- 1.4 The Commission will be responsible for protecting the interests of learners, ensuring that vocational and academic routes are equally valued and helping to impart the skills needed to succeed in an increasingly competitive economy. The Commission will be responsible for aligning tertiary education and training more closely with the needs of employers in Wales, helping to build a stronger future economy, including the need to support and develop learners’ Welsh language skills for use socially and in the work place.
- 1.5 The Commission will monitor performance, governance and financial practice across the system ensuring accountability for the public funding allocated to the sector at the same time as protecting the academic freedom of institutions in Wales.
- 1.6 The Commission will have a duty to monitor and promote improvement in the quality of education and training across registered and funded tertiary education providers, including a power to issue advice and guidance to any funded or registered provider regarding quality and quality improvement, including in relation to learning and development of the tertiary education workforce.

- 1.7 The Commission will take a whole system approach to research and innovation funding across the tertiary education sector, with an ability to provide research and innovation funding to a wide range of institutions, such as HE and FE institutions and organisations working in collaboration with a provider registered with the Commission. This will allow the Commission to have oversight of funding to ensure value for money as well as for better coordination of research and innovation in Wales. This will be delivered and coordinated by the Research and Innovation Wales (“RIW”) Committee.
- 1.8 The Commission will have a role in encouraging institutions to reach beyond the campus to engage in a sense of civic mission whereby institutions help promote the economic, social, environmental and cultural well-being of the communities that they serve.
- 1.9 The Commission will be subject to the Welsh language standards as provided for in the Welsh Language (Wales) Measure 2011. In addition, the Commission will be required to increase, generally, the availability of Welsh medium tertiary education and research and innovation in Wales, including increasing the number of higher education and further education courses and apprenticeships. This will allow the Commission to widen access to learners and broaden the choice of learners to study through their chosen language.
- 1.10 In relation to Welsh medium provision, the Commission will be able to:
- allocate funding to providers to deliver Welsh-medium provision, which could include Welsh-medium premiums intended to offset the costs of providing learning activities through the medium of Welsh;
 - allocate funding to providers to develop their Welsh-medium provision which could include supporting practitioner training, promotion of learning opportunities to prospective learners, developing and sharing learning resources and coordination of learning opportunities across providers; and
 - provide funding to providers and other third parties to undertake research and innovation

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Description by Part

- 1.11 Part 1 of the Draft Bill makes provision to establish the Commission for Tertiary Education and Research and sets out the general duties of the Commission.
- 1.12 Part 2 makes provision for the registration and regulation by the Commission of tertiary education providers.
- 1.13 Part 3 makes provision for power for the Welsh Ministers to fund the Commission and for the Commission's functions in respect of securing and funding of tertiary education and research.
- 1.14 Part 4 makes provision about apprenticeships.
- 1.15 Part 5 makes provision about learner protection, complaints procedures and learner engagement.
- 1.16 Part 6 makes provision about information, advice and guidance from and to the Commission and the Welsh Ministers.
- 1.17 Part 7 makes miscellaneous provision in respect of higher education corporations in Wales and general provisions.

2. Legislative Competence

- 2.1 The Senedd Cymru ('the Senedd') has the legislative competence to make the provisions in the Draft Tertiary Education and Research (Wales) Bill ("the Draft Bill") pursuant to Part 4 of the Government of Wales Act 2006 ("GoWA 2006") as amended by the Wales Act 2017.

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3. Purpose and intended effect of the legislation

Overview

- 3.1 The Welsh Ministers' primary policy objective in relation to this Draft Bill is to provide a clear and strong governance framework in Wales that will support the oversight, strategic direction and leadership of tertiary education and research in Wales. The Draft Bill will establish a corporate body, the Commission for Tertiary Education and Research ("the Commission"), with legal responsibility for the funding, oversight and regulation of tertiary education in Wales. The Commission will take on the functions previously performed by the Higher Education Funding Council for Wales ("HEFCW") and functions of the Welsh Ministers.
- 3.2 The Commission will also have a power to fund and promote the carrying out of research and innovation in Wales.
- 3.3 As a result of the functions conferred on the Commission by the Bill, the Commission will have responsibilities to learners and it will be able to shape tertiary education in Wales so that it meets the needs of learners and employers in Wales, helping to build a stronger future economy. The Commission will become the primary public funder and regulator for tertiary education in Wales. This will include post-16 education including further and higher education, apprenticeships and mainstream sixth forms.
- 3.4 The Commission will be established in order to address the challenges facing the Welsh tertiary education sector identified in the 2016 Hazelkorn Review and in subsequent consultations. These include duplication, unnecessary complexity and a lack of joining up between different levels and providers in education for persons over the age of 16. The Commission will ensure greater cohesion across the tertiary education sector, as well as between compulsory and post-compulsory education within schools. It will be tasked with need ensuring more coherent learning and career pathways for all ages and talents, strengthen collaboration to boost quality and efficiency, and provide more appropriate oversight structures to lead, support, monitor and evaluate the tertiary education sector against national, regional and local objectives.
- 3.5 The Commission will be an independent Welsh Government sponsored body and the Draft Bill places duties on the Welsh Ministers to set the strategic priorities and funding framework
- 3.6 The Draft Bill makes provision for the dissolution of HEFCW.

3.7 The Draft Bill makes provision for the transfer of staff, property, rights and liabilities of HEFCW and where relevant the functions of the Welsh Ministers, including the transfer of staff, property, rights and liabilities of the Welsh Government associated with those functions.

The Commission for Tertiary Education and Research

Overview

3.8 The Commission will be a Welsh Government sponsored body, operating at arms-length from government. The Welsh Ministers will provide the Commission with a statement of priorities and the Commission will establish a strategic planning and funding framework.

3.9 The Higher Education Funding Council for Wales will be dissolved.

3.10 The Commission will be established in 2023 and will be the body responsible for allocating funding for mainstream school sixth forms, further education, higher education, apprenticeships and adult learning

3.11 The Commission will also be responsible for funding for research and innovation in Wales. This will be in addition to the Welsh Ministers' powers to directly fund research and innovation, for example the Welsh Ministers may fund research and innovation to promote or assist the establishment, growth, modernisation or development of businesses in Wales, or a particular business or particular businesses. The intention is to enable a 'whole systems' approach to post-16 education in Wales, meeting the needs of learners and of the Welsh economy but without detracting from the Welsh Ministers' powers to build a more prosperous Wales.

3.12 The assurance and improvement of quality in tertiary education in Wales, for the benefit of learners, the economy and society will be at the heart of the Commission's functions. Arrangements would be put in place to protect joint working, cooperation and the sharing of information between the Commission and others, with whom it needs to work in order to discharge its statutory functions.

General Duties

3.13 One of the principal aims in establishing the Commission is to create a body which is able to deal with the strategic planning and funding across the whole of the tertiary education sector and research and innovation sector in relation to Wales. Given the breadth of these policy areas and the policy intent for the Commission to be able to deal with these areas as a single

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(albeit wide ranging) sector, the Draft Bill sets out the general duties under which the Commission is required to exercise its functions.

3.14 The general duties are:

- a. the need to ensure coherence in the provision of tertiary education and the alignment of such provision with research and innovation priorities;
- b. the reasonable requirements of industry, commerce, finance, the professions and other employers regarding tertiary education and research and innovation;
- c. the reasonable requirements of persons who may wish to undertake tertiary education or carry out research or innovation;
- d. the need to ensure continuous improvement in the quality of tertiary education;
- e. the need to ensure continuous improvement in research and innovation;
- f. the need to ensure good value in relation to financial resources provided out of public funds; and
- g. the importance of protecting the academic freedom of institutions in Wales that provide higher education

Statement of Priorities

3.15 The Welsh Ministers will be required to prepare and publish a statement which sets out the Government's strategic priorities for tertiary education and research and innovation in relation to Wales. The purpose of the statement is to set the long-term overarching policy direction for tertiary education and research and innovation in relation to Wales. This will be based on a five year programme of government and reflects the Welsh Government's move to term of government business planning. It is proposed that the priorities contained within the statement will guide the way in which the Commission will exercise its functions and therefore guide its allocation of funding. However, the Welsh Ministers are able to publish a revised statement at any time.

Strategic Plan

3.16 The Commission will be required to produce a strategic plan for the approval of the Welsh Ministers and subsequently publish the plan. The statement of priorities will provide the basis for the Commission's strategic plan and the Commission must have regard to the statement of strategic priorities in preparing its strategic plan and must consult appropriate persons in preparing the strategic plan.

3.17 The strategic plan must include:

- a. the objectives that the Commission intends to achieve;
- b. how the objectives will contribute to the achievement of the strategic priorities as set out in the Welsh Ministers' statement of strategic priorities; and
- c. how the commission intends to exercise its functions in order to achieve those objectives

3.18 The Commission must take into account the strategic plan in the exercise of its functions.

3.19 The Commission must submit a copy of the strategic plan to the Welsh Ministers for approval and the Welsh Ministers may approve the plan or subject to consultation with the Commission, approve the plan with modification. Once approved, the Commission must publish its strategic plan. In addition, the Commission may also publish a statement about how the Commission will meet its obligations under the Well-being of Future Generations (Wales) Act.

3.20 This new approach to strategic planning will enable the Commission to take a longer term approach to strategic planning and reflects the responses to the technical consultation.

Relationship with the Welsh Ministers

3.21 The Commission will be a Welsh Government sponsored body, operating at arms-length from government but within a strategic planning and funding framework established by Welsh Ministers. This framework will reflect the Welsh Government Sponsored Body ("WGSB") standard framework document.

3.22 The Commission's relationship with the Welsh Government will be managed through sponsorship arrangements, with a team defined to provide support. This will take into account the outcomes from the Delivering Together Review and includes proposals to strengthen the role of the Public Bodies Unit, providing some core functions and delivering greater support to the new Commission's leaders, enabling policy officials to concentrate on the Commission's strategic direction and delivery of outcomes.

3.23 The Commission will be accountable to Welsh Ministers in the exercise of most of its functions. Some of its functions, for example, the 'Prevent Duty', will require the Commission to return a report to the UK Government. Some stakeholders called for the Commission to be accountable to the Senedd. However, the First Minister has allocated responsibility for the oversight of

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sponsored bodies to portfolio Ministers. The Minister will be responsible for the policy framework and will in turn be accountable to the Senedd.

- 3.24 In accordance with the social partnership model, the Commission is required to formally recognise trade union representation. Its board will include a number of advisory associate members that will represent the tertiary education workforce and the Commission's staff. One of the eligibility criteria is that candidates are members of a recognised trade union by the Commission in relation to staff membership.

The Commission

- 3.25 The Commission will have a Board and an Executive.
- 3.26 The Commission will consist of a maximum of 17 members, including a Chair, Deputy Chair, (who will be Chair of the research and Innovation Wales Committee "RIW2) Chief Executive and up to 14 'ordinary' members. This is an increase in Board size compared to the proposal contained within the technical consultation, where a Board of 9-15 members was outlined. Stakeholders expressed concerns that the Board size may not be sufficient for the broad remit of the Commission. There will be no fewer than 7 members, including the Chair, Deputy Chair, Chief Executive and 4 'ordinary' members. Membership will be based upon skills and experience across the full range of the Commission's proposed functions, and drawn from industry, employers, post-16 education, adult learning, apprenticeships, the third sector, research and innovation and the needs of learners. The Welsh Ministers will be responsible for appointing the Chair, Deputy Chair, and ordinary Board members and the first appointment of the Chief Executive. Subsequent appointments to the Chief Executive role will be made by the Commission, with the approval of the Welsh Ministers.
- 3.27 Also the Board will include a number of associate members, who will be advisory to it. This should include a minimum of two tertiary education workforce representatives, one to represent the academic workforce, and one to present the non-academic workforce, both appointed by Welsh Ministers; one Commission staff member; and at least one person appointed by Welsh Ministers to represent learners in tertiary education.
- 3.28 The Chief Executive Officer will also be the Accounting Officer.
- 3.29 The Board will have responsibility for setting the strategic plan for the organisation, the delivery of the strategic plan and statutory functions, for the achievement of corporate objectives, for financial stewardship and performance management of the CEO and of the organisation as a whole.
- 3.30 The Chair and ordinary members will hold and vacate office in accordance with their terms and conditions of appointment, such terms and conditions,

are to be determined by the Welsh Ministers. The Commission, with the Welsh Ministers' approval, may make provision for remuneration, allowances and pension.

3.31 In appointing the chair and ordinary members of the Board, the Welsh Ministers must have regard to the desirability of the Commission's members, between them, having experience of, and showing capability in:

- the provision of education and training;
- the conduct or administration of research;
- industrial, commercial or financial matters or the practice of any profession; and
- promoting the needs of learners in tertiary education.

3.32 The Chair, Deputy Chair and 'ordinary' members will be appointed through a public appointments exercise. Appointments will be regulated by the Commissioner for Public Appointments and follow the Code of Governance on Public Appointments. Board members will be on a fixed term appointment of up to five years, with the option to be reappointed. The Board members will be accountable to the Chair.

3.33 The Welsh Ministers will have the power to suspend and/or remove the Chair, Deputy Chair or ordinary members from the Commission if they are satisfied that the person is unable or unfit to carry out the functions of office, or is failing to do so.

Committees

3.34 The technical consultation proposed 8 statutory committees. However, stakeholders had concerns that this would mean the Commission would be inflexible, without scope to determine how best to structure itself and deliver its remit. In light of the consultation responses, the proposed structure for the Commission will include only three committees: Research and Innovation Wales; the Quality Committee; and the Staff Member Appointment Committee.

3.35 The Commission will be required to create a statutory committee to be called Research and Innovation Wales Committee ("RIW"), that will allocate funding for research and innovation and act as a champion for Wales at the UK and global level. The creation of RIW will ensure that our research and innovation system remains competitive and is sufficiently strategic and agile to deliver national capability for the future that drives discovery and growth, thus fostering a mix of curiosity-driven research and challenge-led research and innovation. The Chair of RIW will be the Deputy Chair of the Commission. RIW will be made up of at least 8 and no more than 12

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'ordinary RIW' members. The Chair of RIW and the ordinary RIW members will hold and vacate office in accordance with their terms and conditions of appointment, such terms and conditions are to be determined by the Welsh Ministers. The Commission, with the Welsh Ministers' approval, may make provision for remuneration, allowances and pension.

- 3.36 The Welsh Ministers will have the power to suspend and/or remove the Chair of RIW or ordinary RIW members from the Commission if they are satisfied that the person is unable or unfit to carry out the functions of office or is failing to do so.
- 3.37 The Commission will be required to create a statutory committee to be called the Quality Committee. The Quality Committee will oversee the Commission's functions in relation to quality assurance, assessment and improvement, which are covered in Part 2, Chapter 3 of the Draft Bill. It will also consider matters of policy related to those functions. One of the ordinary members of the Commission must be appointed as the Chair of the Quality Committee. The size and membership is up to the determination of the Commission.
- 3.38 The Commission will be required to create a Staff Member Appointment Committee for the purpose of appointing a staff member to become the Associate Commission staff member. The committee will invite each trade union recognised by the Commission to nominate an eligible candidate for appointment.
- 3.39 The Commission will have the ability to establish other committees, joint committees and sub-committees in order to give it the flexibility it needs to deliver its remit. The Commission may dissolve any committee or subcommittee it establishes. The purpose of a joint committee will allow the Commission to establish joint committees with other bodies in connection with joint functions, such as inspection powers with Estyn.
- 3.40 The Commission will be able to pay remuneration and allowances to any person who is a member of a committee or sub-committee if they are not a member of the Commission or a member of staff.
- 3.41 The establishment of committees and sub-committees, and the ability to allow for remuneration will allow the Commission to work effectively across the whole of its remit and address the concern expressed during the consultation that the Commission may not be able to achieve this within a fixed membership and without flexibility designed in.

Audit and accounts

- 3.42 The Commission must keep proper accounts and prepare an annual statement of accounts to be submitted to the Auditor General for Wales and the Welsh Ministers. The Auditor General for Wales must examine, certify

and report on the statement of Accounts and lay the certified statement and accounts before the Senedd.

Annual Report

- 3.43 The Commission will be required to prepare an annual report at the end of each financial year. The annual report will provide an opportunity for the Commission to report on: how it has exercised its functions during the year; its progress towards its objectives as set out in the strategic plan; the extent to which tertiary education has been provided through the medium of Welsh; the extent to which Welsh was taught to persons above compulsory school age in Wales; the promotion of civic mission; financial health and sustainability; funding for research and innovation; an assessment of quality; details of how a designated body has performed; an assessment of learner protection plans; and the effectiveness of the learner engagement code.
- 3.44 The Commission must send a copy of the report to the Welsh Minister and the Welsh Ministers must lay a copy before the Senedd.

Delegation of functions

- 3.45 The Commission will be able to delegate any of its functions as it decides. The Commission will be able to delegate to:
- the Chair, Deputy Chair or members;
 - the CEO;
 - members of its staff; and
 - a committee, sub-committee or joint committee, with the exception of the Staff Member Appointment Committee.
- 3.46 It is expected that the Commission will prepare a scheme of delegation and will maintain a list of non-delegated functions.

Registration and Regulation of tertiary education providers – Aims of registration and regulation under the Commission.

- 3.47 The Hazelkorn Review identified a need to “establish appropriate governance structures, with the breadth of expertise, which can lead, support, monitor and evaluate post-secondary [education] actions and outcomes against objectives”, within the context of a new Commission assuming responsibility for funding and oversight of the tertiary education sector.

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- 3.48 An effective and future proof system of regulating tertiary education providers in Wales will need to ensure the following:
- a. Proportionate accountability and transparency for PCET providers in receipt of Welsh Government student support and/or grant funding, particularly in regards to educational quality, financial assurance, and governance of providers.
 - b. Regulatory requirements are adjustable to changing circumstances in funding, provider structure, and public need.
 - c. Continued and appropriate autonomy for education providers, whilst also ensuring the delivery of Welsh Government strategic objectives.
 - d. To ensure the taxpayer receives value for money and assurance about the use of public funds

The register of tertiary education providers

- 3.49 In order to achieve the above aims, the Commission will be required to operate a register of tertiary education providers. The register will be a legal mechanism by which appropriate and proportionate regulation and oversight is applied to registered tertiary education providers in receipt of public funds, including grant funding from the Commission and Welsh Government student support.
- 3.50 The register will equip the Commission with sufficient legal means to effect regulation of providers whilst also respecting and protecting tertiary education institutions' autonomy and independence.
- 3.51 Providers will be required to demonstrate satisfaction of initial baseline regulatory requirements and as a condition of registration their subsequent compliance with ongoing regulatory requirements.

Registration categories and eligibility for public funds

- 3.52 Providers which meet appropriate regulatory requirements will be eligible for appropriate forms of public funds. Registration categories will lead to different levels of financial eligibility and there will be scope for variations in regulatory requirements for different types of providers. Section 11 of the Draft Bill requires the Welsh Ministers to determine these categories of registration, whilst powers in Part 3 enable the Welsh Ministers to specify the categories of registration which will be eligible for respective forms of funding from the Commission.
- 3.53 However, the Welsh Ministers will be able to make regulations to specify particular higher education courses which may be funded by the

Commission and the institution providing the course need not be registered. This will allow for the Welsh Ministers to specify that certain provision should be funded, where for example there is a specific skills shortage or a course of national importance would not otherwise be available in Wales and which would not otherwise be eligible for funding.

3.54 The below table outlines the intended policy for the categories and benefits of registration to be specified in secondary legislation following passage of the Bill.

| | | Unregistered providers | Registered – Higher Education (Basic) | Registered – Higher Education (Advanced) |
|---|--|------------------------------------|--|---|
| Welsh Government Student support | Higher fee support for qualifying courses (currently £9000 p/a) | No | No | Yes |
| | Lower fee support for qualifying courses (currently £6165 p/a) | No* | Yes | Yes |
| | Student maintenance support | No* | Yes | Yes |
| Grant funding | Higher education grant funding | No* | No | Yes (subject to outcome agreement) |
| | Research and innovation grant funding | No [†] | No | Yes (subject to outcome agreement) |
| | 16-19 and 19+ further education grant funding | Yes (subject to outcome agreement) | Yes (subject to outcome agreement) | Yes (subject to outcome agreement) |

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*There may be exceptions to this under the student support regulations (fee and maintenance support) or regulations made under section 81 (higher education grant funding).

† A collaborating body, which is not a registered body, may receive funding through a registered body under section 96.

3.55 The Welsh Ministers will be able to amend the categories of registration through an affirmative statutory instrument. This will enable the regulatory system to adjust to changes in the structure and funding of the tertiary education sector, and ensure that appropriate regulation can continue. Any regulations which establish, modify or remove categories of registration will be subject to affirmative procedure.

Outcome Agreements

3.56 It is the policy intention that all providers which are grant funded by the Commission, whether registered or un-registered, will be expected to enter into an Outcome Agreement.

3.57 Outcome Agreements will be an agreement between the Commission and providers in receipt of grant funding under section 79 of the Draft Bill. Outcome Agreements will be expected to set out the ways in which a provider in receipt of funding will contribute to the Commission's strategic goals as set out in the strategic plan, which in turn follows from the statement of priorities published by the Welsh Ministers under section 3. The Commission will have operational autonomy to determine the manner in which Outcome Agreements should be designed, agreed and evaluated, following consultation with providers and taking into account any guidance published by the Welsh Ministers. It is expected that the details of Outcome Agreements will be negotiated and discussed on an ongoing basis by both providers and the Commission.

3.58 More information on Outcome Agreements can be found in paragraph 3.145 of this chapter.

Eligibility for registration

3.59 All providers that wish to access the benefits of registration must register with the Commission. A provider is eligible to register if:

- a. It is an institution in Wales.
- b. It provides, or has provided on its behalf, the kind of tertiary education that relates to the category in which it is seeking to register.

- c. It satisfies, in the view of the Commission, the initial registration conditions applicable to it in respect of the category of registration sought.

3.60 Providers which are providing tertiary education on behalf of another institution in Wales will not normally need to register with the Commission unless they are providing their own courses in respect of which they are seeking automatic designation for student support purposes or direct funding from the Commission. In franchising or sub-contracting arrangements, responsibility for registration will reside with the 'lead' provider, rather than the delivery provider. Lead providers which franchise or subcontract all or part of a course to an external or collaborating provider will retain responsibility for the students on these courses, for ensuring that regulatory requirements are met, and for ensuring appropriate use of public funds.

Conditions of registration

3.61 Section 13 of the Draft Bill outlines the mandatory initial conditions of registration that must apply to all categories of registration in addition to the criteria for registration listed above. These are:

- a. the quality condition;
- b. a condition relating to financial sustainability of the applicant institution; and
- c. a condition relating to the effectiveness of the governance and management of the applicant institution.

3.62 Section 13 also allows for the Welsh Ministers to prescribe additional initial conditions of registration by way of regulations. The policy intent is to introduce two further conditions of registration to apply to some though not all categories.

- a. A condition that all providers registered in the Higher Education (Advanced) category hold charitable status. This would continue current policy under the regulatory framework established by the 2015 Act.
- b. Providers would be expected to demonstrate they have given due regard to compliance with consumer protection law, and to the Competition and Markets Authority's guidance on the application of consumer law in higher education.

3.63 Section 17 outlines the mandatory ongoing conditions of registration that must apply to all categories. These are:

- - a. the quality condition;
 - b. a condition relating to the financial sustainability of the registered institution;
 - c. a condition relating to the effectiveness of the governance and management of the registered institution;
 - d. a learner protection plan condition (see para 3.228 for further detail);
 - e. a learner engagement code condition (see para 3.249 for further detail); and
 - f. administrative conditions requiring providers to notify the Commission of any changes in information relevant to registration, to provide the Commission with information as required for the Commission to exercise its functions, and to have regard to relevant advice or guidance provided by the Commission.

3.64 Section 20 allows for the Welsh Ministers to prescribe additional mandatory ongoing conditions of registration applicable to all or any one of the categories of registration.

3.65 Section 18 allows for the Welsh Ministers to specify the registration category (or categories) to which a fee limit condition and an access and opportunity plan condition should apply. It is the intention that these conditions should apply to any category which enables access to the higher levels of Welsh Government tuition fee support for higher education, and therefore these conditions will apply to the Higher Education (Advanced) category, save that the fee limit condition will only apply where the institution is providing 'qualifying courses' (courses which attract the fee limit). This largely reflects the regulatory measures established by the Higher Education (Wales) 2015 Act.

3.66 Any registered providers which are not subject to an access and opportunity plan condition will be required to have an approved widening access statement.

3.67 It will be for the Commission to determine the precise requirements of each of these conditions in a manner which balances the public interest with the need to avoid excessive regulation of providers.

3.68 A number of the conditions of registration, including those in regards to quality, financial sustainability, governance and management, and access to information, are expected to be consistent with current regulatory practice by both HEFCW and Welsh Government in respect of terms and conditions of

funding and other assurance mechanisms provided for by existing legislation.

3.69 Conditions in regards to learner protection and learner engagement are new additions to the regulatory framework for higher education institutions. The focus on learner protection and learner engagement were widely welcomed by stakeholders during the consultation, along with the benefits of establishing a common set of principles to allow for consistency and easier transfer and progression across the whole tertiary education sector. There was also a strong message that any framework for achieving this should be co-produced through close consultation with providers and learner representatives. The below table summarises the proposed regulatory framework and the registration conditions which would apply to each category of registration.

| | | Higher Education (Basic) | Higher Education (Advanced) |
|--|---|--|--|
| Initial registration Conditions | Mandatory conditions (primary legislation) | <ul style="list-style-type: none"> • Quality • Financial sustainability • Effective governance and management | <ul style="list-style-type: none"> • Quality • Financial sustainability • Effective governance and management |
| | Other conditions (secondary legislation) | <ul style="list-style-type: none"> <input type="checkbox"/> Consumer law compliance <input type="checkbox"/> | <ul style="list-style-type: none"> • Charitable status condition • Consumer law compliance |

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|--|-------------------------------|---|---|
| Ongoing registration conditions | Mandatory conditions | <input type="checkbox"/> Quality <input type="checkbox"/> Financial sustainability <input type="checkbox"/> Effective governance and management <input type="checkbox"/> Learner Protection Plan <input type="checkbox"/> Learner Engagement Code <input type="checkbox"/> Notify CTER of changes in relevant information <input type="checkbox"/> Provide CTER with information as appropriate Have regard to relevant <input type="checkbox"/> CTER guidance | <input type="checkbox"/> Quality <input type="checkbox"/> Financial sustainability <input type="checkbox"/> Effective governance and management <input type="checkbox"/> Learner Protection Plan <input type="checkbox"/> Learner Engagement Code <input type="checkbox"/> Notify CTER of changes in relevant information <input type="checkbox"/> Provide CTER with information as appropriate Have regard to relevant <input type="checkbox"/> CTER guidance |
| | Fee limit condition | <input type="checkbox"/> None | <input type="checkbox"/> Yes (if qualifying courses are provided) |
| | Access and opportunity | <input type="checkbox"/> Widening Access Statement | <input type="checkbox"/> Access and Opportunity Plan |

Operation of the register, compliance and intervention

- 3.70 The Commission will be able to determine the manner in which information required for registration must be presented and submitted. Information contained in the register and information previously contained in the register will be publicly available.
- 3.71 The Commission will be required to monitor providers' compliance with regulatory requirements relevant to their category of registration.
- 3.72 The Commission will be able to take appropriate enforcement action if providers fail to comply with or are likely to breach the ongoing conditions of registration. It is the intention that the Commission will take proportionate and appropriate intervention steps, for example the Commission may choose to offer advice and assistance to secure compliance ahead of enforcement actions.

- 3.73 The Commission will have recourse to a range of interventions in order to deal with situations where providers are either at risk of failing to comply or have failed to comply with the ongoing conditions of their registration. The purpose of such intervention is to protect the interests of students, taxpayers and the Welsh Ministers as well as the reputation of the Welsh tertiary education sector.
- 3.74 Interventions are not intended to be punitive. As a regulator, the Commission should act in a way which provides confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. As a good regulator, the Commission should promote the efficient achievement of policy objectives and public confidence in the operations of institutions it regulates. To achieve this effectively, it is important that the Commission's first course of action should be to investigate the reasons contributing to failure to comply or likely failure to comply. The Commission will be enabled to work with institutions to ensure compliance and better regulation to achieve improved outcomes and better value for money. However, the Commission will also be able to take appropriate action depending on the circumstances of the particular regulatory failures, including the institution involved.
- 3.75 Underpinning all the Commission's regulatory intervention will be the need to take timely, appropriate and proportionate action in the event of noncompliance with ongoing regulatory requirements.

Advice and assistance

- 3.76 The Commission will seek to support providers to be compliant with registration conditions, and offer supportive interventions to providers in cases where compliance may be incomplete or non-compliance is having a limited impact on learners or in regards to the proper use of public funds.
- 3.77 The Commission will have the power to provide advice and guidance to institutions in order to ensure compliance with ongoing registration conditions. Institutions will be required to have regards to any such advice or guidance given.
- 3.78 Examples where supportive interventions will be most appropriate include low level issues around the quality of education being provided by the institution or on its behalf, or minor issues around governance such as out of date or inadequate policies being in place relating to staffing or students, but which are not causing any adverse impacts.

Investigation and enhanced monitoring

- 3.79 The Commission will be able to carry out a review of any matters that it considers relevant to compliance. In addition, the Commission will be

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expected to ensure it has access to a thorough and detailed evidence-base before taking more rigorous regulatory action. These reviews may be general in nature, or for a particular purpose. The Commission may use the outcome of an investigation to inform general activities it undertakes, or may form part of a regulatory action it decides to take.

- 3.80 Examples of such an intervention might include the Commission instigating a supplementary quality assessment review to focus on matters identified in an external review, or investigating concerns identified through routine monitoring or in response to concerns raised by stakeholders, including learners.

Directions and specific conditions of registration

- 3.81 The Commission will be enabled to apply specific conditions to individual registered institutions. The purpose of such conditions will be twofold. Firstly to ensure that the provider in question addresses any shortcomings the Commission may identify when processing the provider's registration application, which although not sufficiently serious to prevent registration, need to be addressed by the provider. Secondly, to ensure that a registered provider addresses matters the Commission identifies during the course of monitoring the provider's compliance with its general ongoing conditions of registration.
- 3.82 The Commission will also have a power to issue direction to providers where they have failed, or are likely to fail to comply with, an ongoing registration condition.
- 3.83 The Draft Bill sets out various limitations and safeguards for the use of the powers to issue directions and impose a specific condition of registration, including the need to issue a warning notice and to consider representations made by the institution in question.
- 3.84 It is expected that these powers would be used in more serious breaches of registration, such as instances of widespread inadequate quality in a provider, clearly identifiable cases of reckless management or weak governance, mismanagement of public funds, or failure to deliver on commitments to students made in an access and opportunity plan.

De-registration

- 3.85 Removal of an institution from the register of providers will in most cases be considered an absolute last-resort regulatory measure for the Commission, and only enforced when necessary to safeguard learners' interests or to protect public monies. It is expected that the Commission will only remove a

provider from the register when there is significant and repeated breaches of registration conditions, when all other intervention measures have been exhausted, or when an institution requests that it does so.

- 3.86 It is expected that de-registration of a provider would take place in the context of substantial institutional turmoil and disruption for staff, students and local stakeholders. The Welsh Ministers will therefore be able to make transitional and savings arrangements through regulations, in such circumstances. This may include regulations enabling the Commission to treat a de-registered provider as a registered provider for certain purposes in order to protect students or public funds (for example, in regards to ensuring a provider honours its commitments in a learner protection plan).
- 3.87 Procedural requirements for the Commission to follow in the event of a deregistration decision are set out in the legislation.
- 3.88 The Commission must maintain a list of institutions removed from categories of the register by de-registration, list any regulations relating to that deregistration and make this list publicly available.
- 3.89 If a provider is to be removed from the register because of a failure to meet ongoing registration conditions relevant to its category of registration, but the provider satisfies the conditions of another category on the register, the Commission may register the provider in the new category of registration subject to the consent of the provider. For example, a provider which ceases to meet the registration conditions of the Higher Education (Advanced) category might be transferred to the Higher Education (Basic) category if it satisfies the regulatory conditions of the latter.
- 3.90 Welsh Ministers will have a duty to appoint a person or a panel of persons to review decisions by the Commission under Part 2 of Draft Bill in respect of registration, directions in respect of failure to comply with ongoing registration conditions and access and opportunity plans. The Draft Bill allows for regulations to set out the details of the process under which a review should be conducted, and the steps to be taken by the Commission and the Welsh Government in the event of a review. Providers shall have a right to have decisions made by the Commission reviewed, subject to these regulations.
- 3.91 The below tables summarises the expected regulatory and funding relationship that is expected to operate between providers and the Commission.

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| | Expected regulatory relationship with the Commission on launch | Access to public funds | Headline regulatory requirements |
|--|---|---|---|
| Universities in Wales | Registered in Higher Education (Advanced) category | <ul style="list-style-type: none"> • WG student support (higher level) • Higher education grant funding • Research and innovation grant funding • 16-19 and 19+ grant funding • Apprenticeship grant funding | <ul style="list-style-type: none"> • Mandatory initial and ongoing registration conditions • Fee limit • Access and Opportunity Plan • Charitable status • Outcome agreement |
| Other ‘regulated’ HEPs in Wales (inc. FEPs delivering higher education) | Registered in Higher Education (Advanced) category | <ul style="list-style-type: none"> • WG student support (higher level) • Higher education grant funding • Research and innovation grant funding • 16-19 and 19+ grant funding • Apprenticeship contracts/grant funding | <ul style="list-style-type: none"> • Mandatory initial and ongoing registration conditions • Fee limit • Access and Opportunity Plan • Charitable status • Outcome agreement |
| Other higher education providers in Wales | Registered in Higher Education (Basic) category | <ul style="list-style-type: none"> □ WG student support (lower level) | <ul style="list-style-type: none"> • Mandatory initial and ongoing registration conditions • Widening access statement |

| | | | |
|--|------------|---|---|
| FEPs in Wales (not delivering higher education) | Funded | <ul style="list-style-type: none"> • 16-19 and 19+ grant funding • Apprenticeship contracts/grant funding | <input type="checkbox"/> Outcome agreement |
| Local authorities in Wales | Funded | <input type="checkbox"/> 16-19 and 19+ grant funding | <input type="checkbox"/> Outcome agreement |
| Apprenticeship and training providers | Contracted | <input type="checkbox"/> Apprenticeship contracts | <input type="checkbox"/> Conditions of contract |

Access and opportunity plans

Background

3.92 The Welsh Government has considered feedback from HEFCW, institutions, Members of the Senedd, and other stakeholders regarding the current operation of fee and access plans and how the regulatory framework can be improved in respect of widening access to higher education. In particular, the Welsh Government has identified the following shortcomings in the current system:

- a. An insufficiently strategic focus for plans, brought on by a short planning cycle and lack of space for evaluation.
- b. A focus on expenditure and inputs, in the context of fee-income, rather than outcomes and impact.
- c. Excessive bureaucracy and administration.

3.93 The Draft Bill presents an opportunity to ensure that tertiary education providers take a strategic, effective, and outcome-focused approach to widening access and opportunity in connection with higher education in Wales.

3.94 Although there is evidence that progress has been made in recent years in widening and equalising access to higher education in Wales, there are still significant gaps in access, retention and attainment between more advantaged and less advantaged socio-economic and demographic groups. As higher education institutions in Wales continue to attract significant amounts of income via higher-level tuition fee support from the Welsh Government, there remains a need to ensure that steps are being taken by institutions to widen access, opportunity and participation in higher education, in line with the Government's commitment to a fairer Wales.

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- 3.95 The Draft Bill will require that registered tertiary education providers, in specified categories of registration, hold an access and opportunity plan approved by the Commission. It is intended that access and opportunity plans will be required of all providers registered in the Higher Education (Advanced) category. As explained earlier in this chapter, students undertaking undergraduate higher education courses at these providers will be eligible for the higher amount of Welsh Government tuition fee support.
- 3.96 An access and opportunity plan will be expected to specify the activity and expenditure that an institution intends to undertake relating to the promotion of equality of opportunity and access to relevant tertiary education and the promotion of such education. More specifically, it is proposed that plans will outline how institutions will address the following:
- a. Increasing the quantity of applications from prospective students from under-represented groups.
 - b. Improving retention of students from under-represented groups.
 - c. Reducing disparities in attainment and education outcomes between different demographic and socio-economic groups.
 - d. Providing additional financial support and assistance to students who require it, and making information about this financial support available to prospective students.
- 3.97 Providers registered in the relevant category will be required to specify a fee limit for qualifying courses¹ in their access and opportunity plan. This fee limit will be subject to a maximum amount set by the Welsh Ministers in regulations, as is currently the case under the Higher Education (Wales) Act 2015. Providers who do not offer qualifying courses (and who do not have such courses provided on their behalf) will be exempt from the requirement to specify a fee limit in their access and opportunity plan.
- 3.98 Access and opportunity plans will build upon and operate on a similar basis to fee and access plans, currently agreed between HEFCW and regulated higher education providers. Providers will be required to submit access and opportunity plans to the Commission as part of the process of registration in connection with the Higher Education (Advanced) category. The Commission will have discretion to approve or reject plans, which will in turn affect the institution's overall application for registration in respect of that category. The Commission will be under a duty to monitor the effectiveness of access and opportunity plans in promoting equality of opportunity and outcomes in those providers with a plan.

¹ Section 34 (3)(b) provides for "qualifying courses" to be specified in regulations to be made by the Welsh Ministers.

3.99 However, access and opportunity plans will differ from fee and access plans in the following ways:

- a. Access and opportunity plans will apply for a maximum length of five years, instead of the current one year cycle, subject to consultation and passage of secondary legislation. This should ensure that plans are more strategic and give institutions more space to develop programmes of work related to improving equality of opportunity over the medium-to-long term.
- b. Although plans will be required to specify a fee limit in respect of qualifying courses, they will no longer necessarily be required to estimate the costs of activity in respect of total qualifying fee income.² Work by institutions to widen access and opportunity will no longer be only a quid-pro-quo for higher tuition fee support levels, and instead an integral part of the civic mission of Welsh tertiary education providers. The appropriate level of monetary investment by providers in access and opportunity activities would instead be determined by the Commission, in negotiation with providers, with the overriding aim of ensuring effective and efficient investments which improve outcomes.
- c. Access and opportunity plans will be a condition of registration for providers seeking grant funding from the commission. All providers seeking to be entitled to such funding will be required to have an approved plan, including those which do not provide qualifying courses. It will be expected that access and opportunity plans are not limited only to widening access to full-time undergraduate provision, but also to improving equality of opportunity in part-time and postgraduate higher education provision.
- d. Regulations specifying what is required in access and opportunity plans will be able to refer to particular subject areas or courses where a greater focus on fair access and equality of opportunity for underrepresented groups is required. For example, provisions might require providers to demonstrate action for widening access to subjects which allow access to professional and well-paid careers, such as medicine, law and accountancy.

² Section 6 of the Higher Education (Wales) Act 2015 explains that “qualifying fee income” is the income from fees in relation to which a fee limit applies that is specified in or determined by reference to the institution’s fee and access plan.

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- 3.100 The Welsh Government intends for access and opportunity plans to be more strategic and outcome focused than the current fee and access plans, and to more clearly hold institutions accountable for delivering clear improvements in widening access and opportunity. The introduction of the registration system will ensure that the Commission, as a regulator, has a sufficient range of intervention powers, including issuing advice and assistance, conducting in-depth reviews, and issuing directions, to ensure that providers comply with the terms of the access and opportunity plans.
- 3.101 Where an institution is also required to hold an outcome agreement with the Commission as a condition of grant funding, the Commission will be expected to combine an outcome agreement and an access and opportunity plan into a single regulatory agreement with providers, in order to minimise administrative overhead.
- 3.102 Higher education providers registered with the Commission which are not required to have access and opportunity plan (e.g. providers in the Higher Education (Basic) category), will be required to produce an equality of opportunity statement, setting out the steps the provider will take to promote participation in higher education by people from under-represented groups.
- 3.103 Providers which are not registered with the Commission, including the majority of further education providers, will still be expected to take steps to widen access and opportunity in tertiary education and to ensure equality of opportunities. It is the policy intention to allow the Commission to monitor and assess access to education across the whole tertiary education sector, including in further education, and the Commission may decide that an institution should be required, through its terms and conditions of funding, to provide an Outcome Agreement demonstrating how it will improve outcomes in this area.

Quality Assurance and Improving Quality

General functions: assuring and promoting improvement in quality

- 3.104 The Commission will provide a consistent approach to quality across the tertiary education sector based on shared principles. Quality assessment arrangements will continue to be tailored to reflect sector context, building on the strengths of existing arrangements, but will also bring these together in a more coherent way.
- 3.105 The Commission will have a duty to monitor and promote improvement in the quality of education and training across registered and funded tertiary education providers. In carrying out this function, the Commission is

expected to be guided by its strategic plan, which is in turn guided by the statement of priorities published by Welsh Ministers.

- 3.106 The Commission will have a power to produce and publish a quality assurance framework. The framework will set out the Commission's policy in regards to quality and quality assessment. The Commission will be required to consult with tertiary education providers, Estyn, and other stakeholders as the Commission sees fit.
- 3.107 It is intended that the development of a quality framework will identify common principles for understanding, assessing and improving quality in provision across the tertiary education sector in Wales. It is intended that any quality framework which applies to higher education will enable continued alignment with sector-recognised UK-wide standards and the requirements of the European Higher Education Area.
- 3.108 Estyn and the designated body for quality assessments in higher education will be required to take account of any quality framework published by the Commission when conducting inspections and assessments.
- 3.109 The Commission will have the power to issue advice and guidance to any funded or registered provider regarding quality and quality improvement. In particular, the Commission will be expected to provide advice and guidance to providers in instances where the quality of education is at risk of becoming inadequate.

Inspection in FE and training – Estyn

- 3.110 The Commission will be under a duty to monitor the quality of education or training in providers the Commission funds or secures. Where these providers are subject to either (or both) higher education quality assessments or Estyn inspections, the Commission will be expected to have regard to the reports produced by these. This will not preclude the Commission utilising any other relevant information in monitoring quality.
- 3.111 Estyn will retain its duty to inspect education (other than higher education) or training for persons aged 16 or over where the provider is given financial support by the Commission, by a local authority in Wales (which is in turn funded by the Commission), or by the Welsh Ministers. Estyn's right of entry to providers which it inspects will remain unchanged.
- 3.112 Continuing from current legislation, Estyn will be required to report on the quality of education inspected, the standards achieved by those receiving the education, and whether financial resources made available to the provider of the education are managed efficiently and used in a way which providers value for money.
- 3.113 All providers which are the subject of any report of an assessment conducted by Estyn will be required to prepare a written statement of the

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action they propose to take in light of a report. This statement will be published.

- 3.114 When asked to do so by the Commission, Estyn will inspect education (other than higher education) or training for persons aged 16 or over where the provider is given financial support by the Commission, or by a local authority in Wales (which is in turn funded by the Commission).
- 3.115 Estyn will be required to have regard to any framework for the quality of tertiary education published by the Commission. In producing any such framework, the Commission will be required to have regard to the views of Estyn.
- 3.116 Estyn will be required to keep the Commission informed about the quality of education and training which is inspected by it. Estyn shall also be required to provide the Commission with advice on such matters as the Commission may specify in relation to education and training which is inspected by Estyn and funded or regulated by the Commission, or by a local authority in Wales (which is in turn funded by the Commission).
- 3.117 Estyn will maintain its duties to inspect and provide information to the Welsh Ministers in respect of any post-16 education which will continue to be funded by the Welsh Ministers. This includes youth and community worker training, careers services, independent specialist colleges, traineeships and employability programmes, Welsh for Adults and the National Centre for Learning Welsh.

Relationship between Estyn and CTER: changes to funding

- 3.118 Whilst Estyn will retain its current independence in terms of the activities it undertakes and reports it produces in relation to post-compulsory education and training, it will be under a duty to have regard to the advice and guidance of the Commission (including strategic priorities for quality improvement and assurance) in exercising its functions.
- 3.119 The Commission will be able to require Estyn to provide it with information and advice in respect of the quality of further education and training funded or secured by the Commission which it inspects, as well as to conduct inspections of such class or types of further education and training funded or secured by the Commission as the Commission shall specify.
- 3.120 The Draft Bill therefore requires that the Commission and Estyn agree an annual plan of inspections for the providers of further education and training that is funded or secured by the Commission, as well as more general activity to be undertaken by Estyn in respect of the post-16 sector, to be outlined in a remit letter or similar statement.

- 3.121 Funding for Estyn's activities in respect of further education funded or secured by the Commission, will be the responsibility of the Commission. This will represent a change from the current arrangements under section 104(4) of the Government of Wales Act 1998, under which the Welsh Ministers are responsible for funding Estyn's activities. The Welsh Ministers will continue to be responsible for funding Estyn's inspection and other activities in respect of education and training that is not funded or secured by the Commission. The Commission will provide Estyn with such funding as it considers appropriate in respect of Estyn's inspections and other activities in relation to provision funded or secured by the Commission, and have regards to what it considers Estyn will need to spend in discharging its duties.
- 3.122 Despite this separation of budgets and formal accountabilities, the intention is that Estyn will maintain a joined-up approach to its work across pre- and post-16 education. It is expected that the Welsh Ministers, Estyn, and the Commission will discuss and collaborate in respect of planning and funding for Estyn's activities across the sectors it inspects, and more generally in respect of ensuring continued improvement in quality across pre- and post-16 education

Assessing quality in higher education

- 3.123 The Commission will have a duty to assess, or make arrangements to assess, the quality of higher education provided in Wales by each registered higher education provider, and provided on behalf of institutions registered with the Commission (for example in cases of franchised or sub-contracted arrangements).
- 3.124 The Commission will publish the reports of these assessments. All providers which are the subject of any report of an assessment will be required to prepare a written statement of the action they propose to take in light of a report.
- 3.125 The Commission may recommend to the Welsh Ministers that a body be designated to conduct the quality assessments.
- 3.126 It is anticipated that this designated body will be on the European Association for Quality Assurance in Higher Education (ENQA) register of approved agencies. At present there is only one such body operating UK-wide in publicly-funded higher education: the Quality Assurance Agency for Higher Education (QAA).
- 3.127 Before making a recommendation regarding designation, the Commission will consult with registered higher education providers and other stakeholders it deems appropriate regarding the requirements and qualities of the body to be appointed.

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3.128 The functions of the designated quality assessment body will be as follows:

- a. to conduct assessments of the quality of higher education provided in Wales by registered institutions, at intervals as prescribed in regulations;
- b. to conduct assessments of the quality of any non-registered higher education providers in Wales who request an assessment (for example, providers seeking to be registered with the Commission); and
- c. to provide the Commission with information as required regarding the quality of higher education provided in Wales by registered institutions.

3.129 The Commission is expected to promote collaborative working between the designated body and Estyn in respect of quality assessments in providers where there is both higher and further education provision. It is intended that the relationship between the Commission, Estyn, and the designated HE assessment body will enable substantial improvements in coordination of quality assessments in institutions where both higher and further education is provided, with the Commission able to play a coordinating and facilitating role between the two assessment/inspection bodies.

3.130 In order to perform its quality assessment functions, the designated body will have the power to charge higher education providers fees. The fees charged will be calculated by reference to the costs incurred in performing such functions, and should not exceed these costs. The designated body will be required to publish a statement of the fees which it charges and the basis on which such fees are calculated. It is intended that this arrangement should replace the current fees paid by higher education providers for external quality assessments.

Enforcement

3.131 As outlined in consultations, it is expected that the Commission will focus on driving forward quality enhancement by coordinating activities across the two assessment and inspection bodies, supporting collaboration, disseminating good practice, and determining strategic priorities for quality improvement.

3.132 However, the Commission is also required to hold enforcement powers in instances where quality fails to meet the standards expected. The Commission will be expected to uphold rigorous standards of quality across the PCET sectors which it funds and regulates, and will be empowered by the Draft Bill to take action in instances of inadequate quality.

- 3.133 For registered providers, the Commission will uphold minimum standards through the mandatory registration condition related to quality. Following any quality assessment or inspection, providers will be required to publish the actions they intend to take and in light of what is reported the Commission will be able to take a range of regulatory steps, including issuance of advice and guidance, enhanced monitoring and review of quality in a provider, and directions to registered providers in more serious cases.
- 3.134 Ultimately, a registered provider which persistently fails to meet minimum standards in quality will be liable for deregistration and subsequent loss of access to public funding. However, it is intended that this power would only be exercised by the Commission as a matter of last resort.
- 3.135 For unregistered providers, the Commission will be able to mandate requirements in respect of ensuring minimum quality standards as part of its terms and conditions of funding, which will take on the form of an Outcome Agreement. In respect of further education colleges, the Welsh Ministers will have the power to intervene where they are satisfied that there are grounds upon which to intervene as outlined in section 62. The powers to intervene are based on the pre-existing intervention powers (under section 57 of the 1992 Further and Higher Education Act), which have been brought within the provisions of the Draft Bill. The grounds of intervention are:
- a. mismanagement;
 - b. failure to comply with a legislative duty;
 - c. acting, or proposing to act, unreasonably;
 - d. significant underperformance; or
 - e. failure, or likely failure, to provide an acceptable standard of education.
- 3.136 The Commission is under a duty to notify the Welsh Ministers if the Commission is of the view that any of the grounds for intervention have been met by a further education institution. It is the intention that the Commission will be able to advise the Welsh Ministers in respect of the use of intervention powers.
- 3.137 The Welsh Ministers are under a duty to take into account the views of the Commission and may intervene by issuing a direction to the institution's governing body. However, the Welsh Ministers will be required to consult with the Commission before issuing a direction.

Securing and Funding Tertiary Education and Research

Background and current position

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3.138 The current arrangements for planning and funding tertiary education and research are split between the functions of the Welsh Ministers and those of HEFCW.

3.139 Post-16 education and training other than higher education has been directly funded by the Welsh Government since 2006. The Welsh Government currently allocates funding to FE institutions via recurrent grants, it contracts with a variety of education and training providers to deliver apprenticeships below degree level, awards funding to local authorities in support of school sixth form education and also funds a range of community-based adult learning.

Purpose and intended effect of Draft Bill

3.140 Abolishing HEFCW and establishing the Commission will necessitate revised arrangements for the planning and funding of tertiary education. Certain funding functions currently operated by the Welsh Ministers and HEFCW will need to be conferred on the Commission. The general policy intention is for the Commission to be able to fund tertiary education and research in Wales in relation to those who are ordinarily resident in Wales. The overall approach is to provide for the funding structures to be set out in one place on the face of the Draft Bill, the provisions are structured around previous legislative mechanisms where these meet current policy intent together with some adaptations to align the Commission's funding functions with the new registration system.

The Welsh Ministers' Powers Background and current position

3.141 The Welsh Ministers provide funding to HEFCW for higher education, including degree level apprenticeships and HEFCW in turn allocates funding to eligible institutions. The Welsh Ministers may make grants to HEFCW for the purpose of supporting the provision of higher education under section 68 of the Further and Higher Education Act 1992 and for supporting the provision of teacher training under section 88 of the Education Act 2005. They may attach terms and conditions to such funding within the parameters of those sections and are permitted, if they so wish, to hypothecate their grants to HEFCW. Currently, the funding the Welsh Ministers provide to HEFCW for the purpose of supporting higher education is un-hypothecated and it is for HEFCW to determine the allocation of those resources, taking account of the Welsh Government's priorities. The Welsh Ministers issue non-statutory guidance to HEFCW to communicate their policy priorities in the form of an annual remit letter, and impose terms and conditions in the

form of a “Framework Document” that accompanies the funding provided to HEFCW.

3.142 The Welsh Ministers may also rely on their powers under section 68 of the Further and Higher Education Act 1992 to provide grants to HEFCW for the purpose of supporting research undertaken by higher education institutions in Wales. HEFCW does not have a remit to fund research and innovation activities other than those undertaken by higher education institutions. HEFCW funds research capacity and infrastructure through un-hypothecated Quality-related Research (QR) funding. This is distributed on the basis of performance in the Research Excellence Framework (REF) which is based heavily on academic research excellence measures.

3.143 The Welsh Ministers are also able to fund certain research and innovation activities directly. For example, under section 5 of the Science and Technology Act 1965 they are able to fund science and technology research including its dissemination and the furthering of research results. Additionally, under section 10 of the Higher Education Act 2004 the Welsh Ministers may carry out or support research in the arts and humanities, disseminate the results of such research to further the practical application of research into arts and humanities. The Welsh Ministers will retain their powers under these Acts.

Purpose and intended effect of Draft Bill

3.144 The Draft Bill makes provision for the Welsh Ministers to fund the Commission and provides for the Commission to be able to fund tertiary education and research. The Welsh Ministers will be empowered to set the terms and conditions of that grant subject to certain limitations that provide protections in respect of institutional autonomy and academic freedom of HE institutions.

3.145 The Welsh Ministers must provide the Commission with a statement of strategic priorities and the Commission will be required to prepare a strategic plan. The strategic plan must include: the objectives that the Commission intends to achieve; how the objectives will contribute to the achievement of the strategic priorities as set out in the Welsh Ministers’ statement of strategic priorities; and how the Commission intends to exercise its functions in order to achieve those objectives. Additionally, the Welsh Ministers are to be able, by way of terms and conditions, to require the Commission to enter into Outcome Agreements with funded bodies. This will be the mechanism by which the Commission ensures that providers of tertiary education and research contribute to the objectives specified in the Commission’s approved strategic plan. The intention is that Outcome Agreements will be the product of coproduction through negotiation between the Commission and funded bodies. Although the agreements will be ‘negotiated’, this is informal in a legal context. Outcome Agreements will be

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the responsibility of the Commission and are intended to form the basis of “performance commitments” attached to funding. This approach will provide a line of sight from the Welsh Ministers’ statement of strategic priorities through the Commission’s strategic plan to the activities of providers of tertiary education and research. The intention is that in having one organisation responsible for oversight of tertiary education and research will allow for more efficient and effective strategic planning across the tertiary education and research sector in Wales.

3.146 The Technical Consultation proposed a single tertiary education planning, funding and regulatory system based on Regulation and Outcome Agreements (ROAs). Following consultation feedback and further consideration of how the system might operate in practice the initial proposals have been revised. It is now intended that the regulatory relationship between the Commission and higher education providers whose courses are designated for student support, and whose activities are mainly conducted in Wales, should be achieved through a system of voluntary registration. For other tertiary education providers it is proposed for the time being to retain the mechanism by which they are currently regulated, that is through the application of terms and conditions of funding or contract. In respect of funding however a common overall approach is envisaged based on Outcome Agreements.

3.147 The rationale for the change in approach is twofold:

- Firstly, for the time being the Commission will need a reasonable degree of certainty about the providers to be funded to ensure the ongoing availability of proper and reasonable facilities for post-16 education and training, other than higher education (see below). An approach based on applications to the Commission for approval of ROAs could result in uncertainty about the providers who are eligible to receive funding from the Commission. In contrast for higher education there are no requirements to secure the provision of proper and reasonable facilities and the majority of HE courses are currently supported by income derived from student fees as opposed to funding received from HEFCW.
- Secondly, consultation responses demonstrated a mixed response to the proposal to base the Commission’s planning, funding and regulatory functions on ROAs. There was some significant opposition to the ROA model although the proposed focus on outcomes was welcomed. Additionally, the responses suggested: that the Commission should recognise there is no ‘one size fits all’ solution when planning and funding post-16 provision and it was proposed that the Commission should continue to operate flexible planning and funding systems across the tertiary education sector,

at least in the first instance, while seeking to align and consolidate systems over time. In light of this feedback it is intended that the operational detail of Outcome Agreements will be for the Commission to determine.

- 3.148 The Draft Bill provides that the Welsh Ministers may attach terms and conditions to their funding to the Commission. To protect institutional autonomy and academic freedom the Draft Bill provides for certain limitations on the terms and conditions that may be applied by the Welsh Ministers on their funding to the Commission.
- 3.149 Firstly, the Welsh Ministers will be able to apply terms and conditions in respect of categories of tertiary education providers, but not to the activities of individual tertiary education providers.
- 3.150 Secondly, the Draft Bill prohibits the Welsh Ministers from applying terms and conditions that relate to the criteria for the selection, appointment or dismissal of academic staff, or to the admission of students.
- 3.151 Thirdly, although the Welsh Ministers may apply terms and conditions relating to areas of research or innovation specified in the Commission's strategic plan and to individual courses of higher education the Draft Bill requires that those terms and conditions must not specify:
- particular parts of courses;
 - particular programmes of research or innovation projects;
 - the content of courses of study or programmes of research or innovation projects; or
 - the manner in which such courses, programmes or projects are taught, supervised or assessed, with the exception of study through the medium of Welsh.
- 3.152 The Welsh Ministers may wish to ring fence certain amounts of their funding allocations to the Commission to be used for particular purposes or special projects. The Draft Bill will enable the Welsh Ministers to give funding to the Commission for particular courses of study where the Commission agrees that it will fund them. However, they will not be able to oblige the Commission to do anything that means the Commission must require the provision of such courses.
- 3.153 The Technical Consultation proposed that the Welsh Ministers should be able to directly fund all post-16 education and training including higher education where there is a strong economic or social reason for doing so. The rationale being that circumstances may arise when the Welsh Ministers consider that allocating funding to the Commission would not solve urgent and or persistent market failures. Responses to the Technical Consultation did not in general favour this proposal and there was strong opposition in relation to higher education. In light of the consultation feedback, the

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approach adopted in the Draft Bill is to enable the Welsh Ministers to fund only a limited range of courses of higher education directly and to continue to be able to fund further education and training. These provisions largely replicate the Welsh Ministers' current functions under the Learning and Skills Act 2000 and are necessary to ensure that extant Welsh Government funded initiatives such as Working Wales, which is not anticipated to transfer to the Commission, can continue to be funded in the short to medium term. The Welsh Ministers will not have a new power to directly fund higher education in general.

Funding of Higher Education Background and current position

3.154 It is HEFCW's responsibility to determine how the grant funding received from the Welsh Ministers is allocated to individual institutions. HEFCW may attach terms and conditions to financial support provided to institutions as HEFCW think fit. The amount of funding allocated by HEFCW to institutions for the purpose of supporting higher education has significantly decreased as a consequence of the tuition fee and student support system introduced from the 2012/13 academic year. The principal source of funding for higher education in Wales has now become tuition fee income as opposed to annual grant funding from HEFCW.

Purpose and intended effect of Draft Bill

3.155 The Draft Bill makes provision for the Commission to allocate funding to registered institutions, registered in a category specified in regulations, providing higher education. The purpose of such funding is to support the provision of higher education by or on behalf of registered institutions and the provision of facilities and other activities connected to higher education that the registered institution considers desirable. The allocation of funding to eligible institutions for eligible activities will be a matter for the Commission to determine.

3.156 The Welsh Ministers will specify in regulations the category of registration required in order for an institution to be eligible to receive funding from the Commission. The table at paragraph 3.69 outlines the policy intent for the categories and benefits of registration to be specified in secondary legislation following passage of the Draft Bill. In respect of higher education, the intention is that institutions registered in the advanced category will be eligible for receipt of funding from the Commission.

3.157 Institutions who receive higher education funding from the Commission will be able, subject to the consent of the Commission, to pass funding to a collaborating body. The intention is to allow for the funding of collaborative activities where an institution registered in the advanced category, and is

working in partnership with another registered institution or organisation which is not a registered institution, to deliver courses or activities which the Commission considers should benefit from public funds. The intention is that the Commission will maintain regulatory oversight of the passage of such funds and that registered institutions will be responsible for accounting for the use of public monies and compliance with such terms and conditions as may be applied by the Commission.

3.158 In addition to funding higher education and associated activities provided by or on behalf of advanced category registered institutions, the Commission will be able to fund specified higher education courses outside the registration system. The rationale is that certain providers of higher education may not be able to register with the Commission in the advanced category and or only deliver a very limited amount of higher education wholly or mainly in Wales or to students ordinarily resident in Wales. The Welsh Ministers will, in regulations, be able to specify the description of courses eligible for funding by the Commission by reference to:

- the requirements to be met by a course;
- the types of providers; and
- the qualifications to which the courses lead.

3.159 In respect of initial teacher education (ITE) for the school workforce the intention is that only ITE programmes leading to qualified teacher status accredited by the Education Workforce Council (EWC) should be eligible for funding by the Commission. The Draft Bill provides for the Welsh Ministers to make provision about this matter by way of regulations. In addition the Welsh Ministers will retain their current functions under the Education Act 2002 to enable them to fund ITE.

3.160 As is currently the case with HEFCW the Commission will be able to apply such terms and conditions to its funding as it considers appropriate (subject to certain limitations) and will be required to consult on its proposed terms and conditions before applying them.

Funding of Further Education and training (including sixth form provision)

Background and current position

3.161 The Learning and Skills Act 2000 provides that the Welsh Ministers must:

- secure the provision of proper facilities for education and training (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19; and

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- the provision of reasonable facilities for education and training (other than higher education) suitable to the requirements of persons aged 19 and above.

3.162 The effect of these two duties is that the Welsh Ministers will give priority to meeting the learning and skills needs of young people up to the age of 19. The Welsh Ministers are also under a duty to promote participation in post-16 education and training and to encourage employers to become involved in its support and delivery.

3.163 The Welsh Ministers may secure the provision of financial resources to (amongst others) persons providing or intending to provide post-16 education or training, persons providing goods or services in connection with the provision by others of post-16 education or training and persons undertaking research relating to education or training, as well as those receiving or proposing to receive post-16 education and training. As well as funding of the provision of post-16 education and training financial resources may include providing financial support to those receiving or proposing to receive further education and training; for example awards to students distributed by institutions.

3.164 The Learning and Skills (Wales) Measure 2009 (by making amendments to the Learning and Skills Act 2000) provides for learners aged 16-19³ in Wales to elect to follow courses of study from a local area curriculum. The Measure amended the Welsh Ministers' duty to secure proper facilities for the education and training of young people over the age of 16, but who have not reached the age of 19 such that facilities are proper if they satisfy students' local curriculum entitlements under section 33F of the Learning and Skills Act 2000. At present, the Welsh Ministers are subject to a duty to form the local curriculum for learners aged 16 to 19. Local authorities, the governing bodies and head teachers of maintained schools and the governing bodies and principals of FE institutions must assist the Welsh Ministers in planning the local curricula. The local curriculum consists of a minimum number of courses of study to be included within a local curriculum and local area curricula should contain a wide range of courses of study both academic and vocational in nature. Planning the local curricula means the process by which the Welsh Ministers, in consultation with partners, decide which courses of study to include in the local curricula.

3.165 The Welsh Ministers are able to impose conditions to the funding they allocate, such as allowing access to documents and accounts, as well as requiring a person to whom financial support is provided to give the Welsh Ministers such information as they may request. The Welsh Ministers may also require providers of post-16 education and training to charge fees,

³ That is those aged 14 up to (but not including) 19th birthday

make awards and recover sums of money against specified criteria. The Welsh Ministers currently issue a financial memorandum to funded institutions which together with an annual grant letter, set out the conditions imposed on the provision of grants or grant in aid to institutions providing further education.

- 3.166 In respect of school sixth form provision the Welsh Ministers may make grants to local authorities on the condition that such grants are to be applied as part of the authority's schools budget with a view to the grant being used for the purposes of, or for purposes in connection with the provision by schools of education suitable to the requirements of persons above compulsory school age. Such allocations support school sixth form provision.
- 3.167 In addition to the above functions under the Learning and Skills Act 2000 the Welsh Ministers also have functions under the Education Act 2002 relevant to funding. Section 14 of the 2002 Act provides a general power for the Welsh Ministers to give financial assistance to any person in connection with a variety of purposes in respect of education. This enables the Welsh Ministers to give or make arrangements for the giving of financial assistance, for example, under the Educational Maintenance Allowance (EMA) and the Welsh Government Learning Grant FE (WGLG) schemes. The intention is for these functions to remain with the Welsh Ministers.

Purpose and intended effect of Draft Bill

- 3.168 The Commission will be placed under duties to secure the provision of proper facilities in Wales for the education and training (other than higher education) for young people aged 16 up to the age of 19, and reasonable facilities for adults aged 19 and over. This includes vocational, social, physical and recreational training and includes a wide range of organised activities offering opportunities for non-formal types of learning. "Proper facilities" means facilities of a sufficient quantity and of an adequate quality to meet the reasonable needs of individuals. The effect is that in the exercise of these duties the Commission will need to give priority to meeting the learning and skills needs of the younger age group. This is a continuation of current policy. The Commission will be required to take account of matters including: the places where facilities are provided, the character of facilities and the different abilities and aptitudes of different persons.
- 3.169 The above proposals have implications for the way in which the provisions of the Learning and Skills Act 2000 will work in future. The Draft Bill provides for amendments to ensure that post-16 learners' entitlements continue to be delivered and that enforcement action can be taken if necessary. The intention is to retain the current entitlements for learners aged 16-19 and the Commission should be responsible for ensuring the formation of local curricula, in line with its responsibilities to plan and fund post-16 education

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and training and to ensure proper facilities for learners aged 16-19. The Draft Bill will also enable the Welsh Ministers to continue to support future development and design of local curricula for learners aged 16-19. Currently the Welsh Ministers have the powers to amend the learning domains that form the basis for the 16-19 local curriculum and also to direct whether a course should be included within a particular learning domain. These powers will be retained by the Welsh Ministers and in exercising those powers the Draft Bill will require the Welsh Ministers to consult the Commission.

- 3.170 The Commission will be required to make the best use of its resources, and in particular, avoid provision that might give rise to disproportionate expenditure. Disproportionate expenditure is that which, although not necessarily wasteful, is too much or too little in view of the Commission's overall functions and expenditure. However provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.
- 3.171 The Commission will also be required to encourage individuals to participate in further education and encourage employers in Wales to participate in its delivery. The intention is that the Commission will take on the current responsibilities of the Welsh Ministers in this regard. Further education and training includes education provided for pupils over compulsory school age but under the age of 19 in secondary schools.
- 3.172 To enable the Commission to discharge its duties in respect of further education and training it will have the power to fund persons who provide or are proposing to provide post-16 education and training. This will include FE colleges and private training providers. Additionally the Commission will be able to fund the supply of services by organisations who may not be providers themselves, but who support the delivery of post-16 education and training by providers by the provision of goods and services. The Commission will also be able to make financial support available to FE students and prospective FE students. This could include for example, awards to students which are distributed by institutions.
- 3.173 The Commission will be able to make grants to local authorities on the condition that such grants are applied as part of the authority's schools budget with a view to the grant being used for the purposes of, or purposes in connection with the provision by schools of education suitable to the requirements of persons above compulsory school age. No new primary legislation is required to facilitate the implementation of the new mechanisms for the distribution of recurrent funding from local authorities to maintained schools with sixth forms; the School Standards and Framework Act 1998 includes the necessary provisions and regulations made under that Act. This builds on the arrangements currently operated by the Welsh Ministers.

- 3.174 The Commission will be able to impose such terms and conditions as considered appropriate to financial resources allocated for the purpose of further education and training. This will allow the Commission to impose regulatory requirements relating to financial assurance and the quality of education and training. Where the Commission funds further education or training in Wales, where the provider is not a registered institution and to whom the Commission has given notice, then the terms and conditions must require the provider to have a learner protection plan, to comply with the requirements of the proposed Learner Engagement Code and to have regard to guidance given by the Commission. Additionally the Commission is to be required to impose terms and conditions to its funding for further education and training which prohibit the charging of fees to learners aged 16-19 i.e. individuals above compulsory school age who have not attained the age of 19.
- 3.175 In discharging its duties to secure proper and reasonable facilities and certain of its funding functions in respect of further education and training, the Commission will be required to have regard to the needs of persons with additional learning needs and to the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018. The intention is that the Commission will secure general, proper and reasonable facilities for learners with additional learning needs and that local authorities will, under the 2018 Act, be responsible for funding and securing specialist provision on an individual basis, including any necessary board and lodging.

School sixth form organisation

- 3.176 The process for opening, altering or closing a school maintained by a local authority and the decision to establish or close a school sixth form is detailed in the School Standards and Organisation (Wales) Act 2013. These are subject to consultation and any disputes are resolved in the majority of cases locally by the local authority unless the authority itself is for or against the decision. In such cases the decisions are taken by the Welsh Ministers.
- 3.177 Currently the Welsh Ministers have the power to propose new sixth form schools or to add a sixth form to a school or close existing sixth forms. This is in order to assist them, if necessary, to meet their duty to secure the provision of proper facilities for the education and training of 16-19 year olds.
- 3.178 In light of the Commission taking on the strategic responsibility to secure proper facilities for the education and training of 16-19 year olds, the Commission is to be enabled, in certain circumstances, should the need arise, to propose the opening of a sixth form school or the opening or closure of school sixth forms.

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3.179 The Commission will be enabled to ask for a proposal for the organisation of school sixth form to be referred to the Welsh Ministers. The Commission will also have a power to direct a local authority or governing body of a foundation or voluntary school sixth form to bring forward proposals. Local authorities and governing bodies will retain their ability to bring forward their own proposals, but the Welsh Ministers will cease to have a general proposals role to restructure or reorganise school sixth form provision.

Funding of other activities connected to tertiary education

3.180 The Welsh Ministers may currently fund facilities designed to form links between employers, providers of education and training and students or prospective students. Additionally the Welsh Ministers may fund the provision of information, advice or guidance about education, training or connected matters including employment. The Welsh Ministers may disburse funding themselves or arrange for others to do so. Financial resources can either be provided by the Welsh Ministers, or by making arrangements for someone else to deliver resources or by making arrangements for the provision to be delivered jointly.

3.181 The Commission will be able to fund facilities designed to form links between tertiary education and employers as well as information, advice and guidance to people on learning opportunities and related issues, including employment. For example the Commission could elect to fund work experience for post-16 learners and could work in partnership with other bodies to ensure the provision of information, advice and guidance about learning opportunities and progression routes to employment. In paying for anything that it is empowered to do the Commission will be able to use its own financial resources, for example the grant provided by the Welsh Ministers, to assist in the transfer of financial resources from one person to another, and do either of these things jointly with other persons.

Funding of Apprenticeships Background and current position

3.182 Apprenticeships are funded by the Welsh Ministers by means of a fully procured tender exercise that includes FE institutions, independent training providers, local authorities and third sector organisations. Providers of apprenticeships are required to adhere to contractual obligations detailed within the framework agreement and programme specification. Following a robust and open tender, frameworks are awarded for the period of the tender. Programme commissions (or contracts) are generally awarded to providers on an annual basis. Apprenticeships below degree level are currently funded via a contract between the Welsh Ministers and apprenticeship providers, with the provider network procured through a

competitive tender exercise every few years. Delivery of degree apprenticeships commenced in September 2018 and are being funded via a grant through HEFCW.

Purpose and intended effect of Draft Bill

- 3.183 The Draft Bill provides for the Commission to fund the preparation of Welsh apprenticeship frameworks and the provision of approved Welsh apprenticeships.
- 3.184 See paragraph 3.194 – 3.223 for further detail in relation to apprenticeships.

Research and Innovation

- 3.185 The Commission will undertake the activities of HEFCW as regards research, but with a broader scope so that funding includes innovation. Research and innovation funding can be provided to a wider range of institutions, such as FE institutions registered with the Commission and organisations working in collaboration with a registered provider. This will allow the Commission to take a ‘whole systems’ view of research and innovation for tertiary education and to plan and fund provision accordingly.
- 3.186 The intention is that funding will only be passed on and used in this way where the Commission is satisfied that the registered institution will take appropriate steps to ensure that public money is protected and the funding is first passed to the registered institution for onward distribution to the person or body it is collaborating with. There will be no limit on the number of persons or bodies an institution can work with in this way providing the Commission is satisfied appropriate steps to ensure the protection of public money will be taken.
- 3.187 The Commission will have powers to fund such activities and to impose terms and conditions on such funding. Those terms and conditions may relate to their strategic plan, written in response to Welsh Ministers’ statement of strategic priorities.
- 3.188 The Draft Bill enables the Welsh Ministers to provide grants to the Commission for the purpose of supporting research and innovation activities and to apply terms and conditions to such grants. This power will enable the Welsh Ministers to provide funding and to specify the broad research area that is eligible to receive that funding, for example ‘social science’ or ‘nuclear research’ but that the detail of the kind of research, i.e. a ‘programme of research’ will be a matter for the Research and Innovation Wales Committee (“RIW”) as will the administration of those funds.
- 3.189 There is no intention of influencing academics’ and institutions’ freedom to pursue any particular programme of research or innovation.

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3.190 The Commission will be able to impose such terms and conditions as it thinks appropriate including:

- requiring the repayment in whole or in part of any sums paid by the Commission in the event that any terms and conditions upon which the funding is advanced; and
- to require the payment of interest in respect of any period during which a sum is due to the Commission and remains unpaid.

Promotion of Welsh research and innovation

3.191 The Commission will have a duty to promote the results of research and innovation carried out in Wales to ensure it reaches a wide audience in Wales and beyond and to promote actively the exploitation of research and innovation knowledge.

3.192 The Commission will also have a duty to promote the carrying out of research and innovation in Wales.

Engagement with relevant bodies

3.193 It is envisaged that the Commission will engage with relevant bodies as it sees fit. It will engage with other bodies operating in this area such as UKRI, Research England, Research Councils and so forth and therefore be able to engage where appropriate with similar, common UK activities such as Research Excellence Framework (REF), and the new Knowledge Exchange Framework (KEF). The Commission will have the right to engage in an appropriate manner with any organisation or framework necessary in fulfilment of its duties.

Apprenticeships

Background

3.194 The challenges identified by the Hazelkorn report, which relate to apprenticeship development in Wales are:

- Wales lacks coherent learning frameworks and educational opportunities for learners, of all ages, gender and talent, from school, into/through further and higher education;
- there needs to be a better balance between supply-led and demand-led education and research provision shifting away from a market-demand driven system to a mix of regulation and competition-based funding.

- 3.195 The White paper and technical consultation both set out the intent for the Commission to have responsibility for apprenticeships in Wales. This approach was widely supported.
- 3.196 Demand for apprenticeships is changing as employers demand skills at higher levels and young people are looking towards work-based training and apprenticeships as an alternative to traditional full-time undergraduate provision. In Wales we want an apprenticeship system that is responsive to the needs of learners, the economy and employers in Wales. We need a made in Wales approach to deliver a prosperous Wales for this and future generations.
- 3.197 Apprenticeships are reaching into the professions which offer an opportunity to enhance the esteem of the programme for a new generation. At the same time, traditional training programmes funded by employers are being rebadged as ‘apprenticeships’ driven by demand from levy paying employers. Apprenticeships are being increasingly aligned to broader workforce skills programmes where flexible training routes are being developed to meet sector needs.
- 3.198 The underpinning legislative framework contained in Apprenticeships, Skills, Children and Learning (ASCL) Act of 2009 was not designed with Wales in mind and does not support the Welsh Government’s current policy goals. The legislative framework is:
- unclear and not capable of delivering the system needed in Wales;
 - arrangements are too heavily dependent on a system put in place by the UK Government which does not cater to the distinct needs of the Welsh economy and Welsh society;
 - the Specification of Apprenticeship Standards in Wales (SASW) is inflexible and unresponsive to the changing needs of industry; changes cannot be implemented with the speed needed in a rapidly-changing skills environment.
- 3.199 To address these concerns, Wales needs a permanent and sustainable vehicle for articulating employer demand, which will enable alignment of planning and development of apprenticeships, post-16 technical education and workforce training. The system should prompt providers to deliver the type of apprenticeships that employers want and encourage more technical higher level apprenticeships. Arrangements need to be centred on the needs of Welsh employers and be flexible enough to meet those needs whilst ensuring portability across the UK.
- 3.200 Against this backdrop we need to create a responsive and streamlined system that can adapt to differing economic and social stimulus and be calibrated to meet skills challenges, for example, the decision to leave the European Union. This is an opportunity to design a Welsh solution.

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- 3.201 The current arrangement for apprenticeship development inadvertently constrains innovative training and flexible design. Apprenticeship frameworks are unduly complex and long; they can include many qualifications, which can be brought together in a number of combinations to 'design' an apprenticeship training programme.
- 3.202 Apprenticeships need to be able to respond flexibly to changing technology and market needs. If they don't remain relevant, employers will no longer value them. Employers, further education colleges and apprenticeship providers increasingly want to influence the content of apprenticeships; this is particularly the case for apprenticeship levy paying employers in highly technical and creative industries, who want more influence over what is delivered under the apprenticeship. The apprenticeship system has to be able to respond to these pressures.
- 3.203 A new legislative framework should not restrict the rapid inclusion of new techniques or procedures into content and qualifications. Introducing frameworks that are modular and flexible, would allow employers to be better able to choose options that suit their business needs.
- 3.204 The process for employers and providers to influence apprenticeship frameworks is not working effectively. Measures are being put in place to address this deficit, such as establishing the Wales Apprenticeship Advisory Board (WAAB) to improve the scope and impact of the apprenticeship offer in Wales informed by input from Regional Skills Partnerships. Qualifications Wales is also a part of the mechanism for improving the quality and reach of the programme, ensuring that qualifications contained in apprenticeships meet employer and apprentice needs; sectoral reviews are already better concentrating stakeholders on delivering quality outcomes.
- 3.205 A policy objective of the Draft Bill is for the Welsh Ministers to be required to specify occupational sectors for the purpose of apprenticeship frameworks and to be able to determine the arrangements for the development of apprenticeships in Wales, including the requirements such as standards, qualifications and duration and for the Commission to be able to issue apprenticeship certificates. The Draft Bill also provides that the Welsh Ministers must consult the Commission and other appropriate persons in relation to the specification of requirements in connection to approved Welsh Apprenticeships, their withdrawal, and the specification of occupational groups.
- 3.206 The Draft Bill provides that the Commission will be able to prepare, or make secure the preparation of, apprenticeship frameworks. The Commission may delegate some or all of its functions in relation to the publication of apprenticeship frameworks and issuing of apprenticeship certificates.

3.207 Some changes to the current apprenticeship system will need to be made prior to the establishment of the Commission. In particular, issues relating to the sustainability of issuing authorities and current certification arrangements.

Welsh Apprenticeship

3.208 The Draft Bill provides for the meaning of an approved Welsh apprenticeship. An approved Welsh apprenticeship is a job with training to an industry standard; it is not a qualification in itself but a programme of learning that includes on and off the job training and a qualification. The Welsh Ministers may specify conditions to be attached to an approved Welsh apprenticeship in regulations.

3.209 As is currently the case under the ASCL (sections 33), the Draft Bill provides adequate safeguards for apprentices so that an employer must notify the apprentice in writing if they change the apprenticeship agreement so that it does not comply with the approved Welsh apprenticeship agreement. This would in effect mean the apprentice is no longer completing an approved Welsh Apprenticeship.

3.210 The Draft Bill also provides for approved Welsh apprenticeship agreements. Which is an agreement for an apprentice to undertake an apprenticeship on an apprenticeship framework and for the apprentice to receive training to enable them to complete the requirements of the apprenticeship framework; an “approved Welsh apprenticeship agreement”. Any conditions of an approved Welsh apprenticeship and an approved Welsh apprenticeship agreement may be specified in regulations made by the Welsh Ministers.

3.211 The Draft Bill also provides that the Welsh Ministers can make regulations so that a person who is not an employee may undertake an “alternative Welsh apprenticeship”. This replicates the current arrangements where, for example a self-employed person or a volunteer may undertake an apprenticeship but also maintains the concept of an approved Welsh apprenticeship as established in the Draft Bill.

3.212 The Draft Bill provides for a new strategic driver to develop and maintain the integrity of apprenticeships in Wales, through providing control over the issuing of apprenticeship frameworks in Wales and ensuring they meet industry requirements.

3.213 The Draft Bill provides that the Commission may fund the preparation of apprenticeship frameworks and that the Commission may attach terms and conditions to those payments.

Apprenticeship Frameworks

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- 3.214 Apprenticeship frameworks are designed to equip learners with transferable skills relevant to the wider industry, as well as the specific skills associated with each framework. The definition of an industry standard is a set of criteria within an industry relating to the standard functioning and carrying out of operations in their respective field or sector. Currently apprenticeship frameworks are complex and can lead to confusion and lack of clarity for learners, providers and employers. Apprenticeship frameworks should only be developed where demand exists and where the occupation/job role for the apprenticeship meets current or emerging skills needs. This ensures that the apprenticeship has credibility and is well regarded across the industry or sector, as well as giving it longer-term value.
- 3.215 The WAAB was established in April 2018 and is an independent enterprise led Board, with representatives from business, trade unions, further education bodies and the Welsh Government. WAAB serves to provide the Wales Employment and Skills Board (WESB) with advice and recommendations on matters relating to the content of apprenticeship frameworks and priorities in relation to their development in Wales.
- 3.216 The process for employers and providers to influence apprenticeship frameworks is not working effectively. Measures are being put in place to address this deficit, such as establishing the WAAB to improve the scope and impact of the apprenticeship offer in Wales informed by input from Regional Skills Partnerships. Qualifications Wales is also a part of the mechanism for improving the quality and reach of the programme, ensuring that qualifications contained in apprenticeships meet employer and apprentice needs; sectoral reviews are already better concentrating stakeholders on delivering quality outcomes.
- 3.217 The Welsh Ministers are introducing new arrangements to develop and issue frameworks to meet individual and employer needs. These provisions will provide a new strategic driver into the system and maintain the integrity of the apprenticeships, through providing control over the issuing of apprenticeship frameworks in Wales, ensuring they meet industry requirements. An internal Welsh Government review is ongoing on the quality of qualifications included in the frameworks. As part of this process, the Welsh Government has consulted on changes to framework structures ahead of the introduction of the Commission⁴. Further, the Welsh Government has consulted on the Welsh Ministers no longer designating the issuing function to sector bodies due to their reduction in capacity⁵. The intention is for the Welsh Ministers to undertake this function in respect of

⁴ <https://gov.wales/structure-welsh-apprenticeship-frameworks>

⁵ <https://gov.wales/role-issuing-authority-apprenticeship-frameworks>

each of the apprenticeship sectors, commencing in April 2020. Powers in the Deregulation Act 2015 enable the Welsh Ministers to issue apprenticeship frameworks.

- 3.218 The Draft Bill makes provisions in relation to new apprenticeship frameworks and specifies that these must comply with the core requirements specified in the Welsh Apprenticeship Specification (WAS). Subject to this, the Commission will have the ability to include occupational groupings, other qualifications, or industry standards that are regarded as necessary to demonstrate competency at the relevant level in a particular occupation. The Commission will also be able to determine requirements common to all frameworks such as requirements for essential skills or other qualifications.
- 3.219 The Draft Bill provides that the Commission has primary responsibility for publishing all apprenticeship frameworks, and that the Commission has the power to:
- a. initiate internally, or via external contract, the development of apprenticeship frameworks; and
 - b. delegate its power to publish frameworks to other bodies, subject to it retaining appropriate oversight.
- 3.220 The Commission will be able to enter into contractual arrangements to enable the development of apprenticeship frameworks, but will retain all responsibility for the apprenticeship frameworks. The policy intention is for the Commission to be responsible for the quality, integrity and robustness of apprenticeship frameworks and approved Welsh apprenticeships. The Commission should ensure the development of apprenticeship frameworks includes engagement with employers and stakeholder at a local, regional and national level with appropriate partners such as Regional Skills Partnerships and WAAB.
- 3.221 The Commission will be responsible for keeping the apprenticeship frameworks under review to ensure that they remain relevant and up to date and the Commission will be able to withdraw and modify apprenticeship frameworks as it determines to be necessary. The Commission must publish an apprenticeship framework or revised apprenticeship framework and this must include a coming into force date.
- 3.222 The Commission will be required to keep a register of apprenticeship frameworks and revised apprenticeship frameworks, which will be made available publically. The register must include:
- a. the coming into force date;
 - b. a general description of a revised apprenticeship framework and how this applies; and

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- c. where an apprenticeship framework has been withdrawn, the details of when the withdrawal comes into force and a general description of how the withdrawal applies.

3.223 The Welsh Ministers may also make regulations in respect of information that the register must include. It is the policy intention that this will include information in relation to funding and providers and quality assurances.

Learner Protection arrangements

Background and current position

3.224 The policy objective is to ensure consistent arrangements in place across the tertiary education sector to protect the interests of a learner in the event of a course or campus closure, a provider failure or a learner choosing to transfer to another course or provider. The main focus of the provision is to minimise the impact of these events on the learning of individuals and reduce the risk of that individual dropping out of learning.

3.225 There are pockets of good practice across the tertiary education sector in respect of protecting the interests of learners if the progress of their learning is disrupted by an event such as a course or campus closure or a provider failure. However, there is a need for a consistent and comprehensive approach across the tertiary education sector.

Purpose and intended effect

3.226 The Draft Bill provides that learner protection arrangements will be set out in learner protection plans. A learner protection plan is defined in the Draft Bill as a document setting out the tertiary education provider's arrangements for:

- a. protecting the interests of persons undertaking a relevant course in the event of the course ceasing to be provided for any reason; and
- b. supporting a person who is undertaking a relevant course of tertiary education provided by or on behalf 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).

3.227 Provision has been included to enable the Commission to give notice to a tertiary education provider asking it to submit a learner protection plan to the Commission on or before the date specified in the notice. For the purpose of this a "relevant course" is defined as any course provided by or on behalf of a registered institution or where the provider is not a registered institution, a course of tertiary education (higher education, further education and training or apprenticeship) provided by it or on its behalf which is funded by the Commission. A "tertiary education provider" is defined as registered

institution or a person other than a registered institution in receipt of financial resources provided or secured by the Commission in respect of further education and training or apprenticeships. Discretion is provided to the Commission to determine which of these providers will be required to submit a learner protection plan to reduce the possibility of providers being required to develop a plan where it is not appropriate or proportionate for them to do so.

- 3.228 The Commission will not be able to provide notice to a local authority to submit a learner protection plan in relation to school sixth form provision. Arrangements are in place to ensure the transfer of data about pupils when they move from one school to another, whether due to a school or course closure, a change in personal circumstances or pupil preference. Although the learner protection provisions do not apply to local authorities in relation to school sixth forms, as they have their own arrangements, it would be helpful for the Commission to consult with them when the guidance is developed so that they can be involved in sharing good practice.
- 3.229 The requirement to have approved learner protection plan in place, following notice from the Commission, will be a registration condition, a mandatory contractual term or condition of funding depending on the provider's relationship with the Commission
- 3.230 Provision has been included in the Draft Bill to enable the Commission to establish arrangements for the development and approval of learner protection plans. The Commission will be required to issue guidance on the preparation and revision of learner protection plans. In preparing the guidance the Commission must consult with such persons as the Commission considers appropriate. This would include consulting with local authorities and school sixth forms.
- 3.231 It is intended that a proportionate approach is adopted in the development of learner protection plans, which does not result in additional unnecessary burden for providers. Learner protection plans would be in a format appropriate to the provider and its structures, and could be incorporated into other documents where appropriate.
- 3.232 The Commission may approve a learner protection plan with or without modifications. Where a tertiary education provider wishes to amend its approved learner protection plan, they must send a revised plan to the Commission, and the Commission may approve a revised learner protection plan with or without modifications.
- 3.233 Provision is included in the Draft Bill to require the Commission to monitor the effectiveness of learner protection plans and include in its annual report of learner protection plans during the financial year to which the report relates.

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Arrangements for addressing student complaints

Background and current position

3.234 The policy objective is to ensure that providers have clear policies and procedures in place to enable a learner to make a complaint regarding their learning experience and that these are communicated effectively to an independent body. Currently only higher education students are able to refer their unresolved complaint to an independent body. The Higher Education Act 2004 allows for the designation of a body to operate a student complaints scheme. The Office of the Independent Adjudicator (OIA) is the designated body for handling unresolved student complaints in higher education in England and Wales. The OIA's role currently extends to 'qualifying institutions' defined under the 2004 Act.

Purpose and intended effect

3.235 A duty has been placed on the Commission to take such steps as appear to it appropriate to ensure that a tertiary education provider has in place a procedure for investigating complaints about an act or omission of the provider, made by persons who are undertaking or have undertaken relevant courses and takes reasonable steps to make the procedure known to persons undertaking relevant courses.

3.236 For the purpose of these provisions, a "relevant course" is defined as any course provided by or on behalf of a registered institution or where the provider is not a registered institution, a course of tertiary education (higher education, further education and training or apprenticeship) provided by it or on its behalf which is funded by the Commission. A tertiary education provider is defined as a registered institution or a person other than a registered institution in receipt of financial resources provided or secured by the Commission in respect of higher education, further education and training or apprenticeships. The definition does not include school sixth forms as robust well-established learner complaint arrangements already in place underpinned by legislation for schools. However, it would be beneficial to broaden consultation with local authorities and school sixth forms in relation to learners aged 16 or above, to encourage these learners to take more of an active participation in the quality of their learning experience (rather than their parents, who are, in most cases, the complainant in raising complaints in sixth forms).

3.237 Provision has been included that enables Welsh Ministers to specify by regulations a registered institution or institution in Wales, other than a registered institution in receipt of financial resources from the Commission, as a qualifying institution for the purposes of the student complaint scheme.

Welsh Ministers will not be able to specify local authorities in relation to school sixth form provision. This will enable providers to be brought into the scheme gradually, allowing time for the OIA and individual providers build their capacity.

Learner engagement

Overall Policy objective

3.238 To ensure that the Commission established stronger mechanisms for learner representation and engagement within the tertiary education sector.

Background

3.239 The Hazelkorn report identified that the post compulsory education and training (PCET) system was not sufficiently learner focussed. Subsequent consultations and policy development supported the need to strengthen the provision for learner voice than is currently available and ensure a more joined up approach to learner engagement.

Scale and who/what will be effected

3.240 Proposals to address this area will affect Post 16 learners and tertiary education providers. Again, a tertiary education provider is defined as a provider that is registered with the Commission or in receipt of funding from the Commission in relation to higher education, further education and training of apprentices.

Objectives

3.241 To bring all post-16 educational providers together under one body to improve learner representation across the sector, ensuring learners have an equal voice in how they learn, how they are taught and they receive value for money.

3.242 The legislation is intended to influence the Commission to promote collaboration between institutions and strengthen links with others. This should result in enhanced support for learners, including clearer learning pathways and better information on the options available

Implementation and Delivery

3.243 The Draft Bill provides for there to be learner representation on the board of the Commission (set out in more detail in the corporate governance section

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at paragraph 3.25-3.41). It is intended that this will mean learner views from across the student population within Wales are represented.

Learner Engagement Code

3.244 The Commission will have a duty to develop, consult and publish a Learner Engagement Code which will ensure the interests of learners are effectively represented in making decisions made by the provider about matters that may be of interest to learners. The Code should allow learners the opportunity to participate and have the opportunity to give their views to the provider about the education and training they receive. In carrying out these function the policy intention is that:

- a. There will need to be a transition period (to be determined), to allow the Commission to develop the code and to allow time before the requirement for learning providers to sign up commences.
- b. The Code may make a different provision for different purposes and institutions, although each institution will need to maintain the same level of learner engagement.
- c. The Code will need to allow for a degree of proportionality. For example, it would not be expected that providers delivering one day courses would need to provide the same extent and evidence of engagement with learners as those providing longer term courses.
- d. The Commission will ensure that all tertiary education providers as defined in the Draft Bill, with the exception of sixth forms, sign up and adhere to the Learner Engagement Code. While sixth forms within local authorities will not be required to adhere to the Learner Engagement Code, it would be helpful for the Commission to consult with them when the Code is developed so that they can be involved in sharing good practice from other learner engagement activities, such as work with school or youth councils.
- e. The Learner Engagement Code will be mandatory, ongoing registration condition or part of terms and condition of funding (depending on the provider's relationship with the Commission).
- f. Provision is included in the Draft Bill to require the Commission to monitor the effectiveness of Learner Engagement Codes and include in its annual report any conclusions of Learner Engagement Codes during the financial year to which the report relates.

Information, Advice and Guidance

Background

- 3.245 In April 2018, Professor Harvey Weingarten's report, *'Maximising the Contribution of the Post-Compulsory Education and Training System to the Achievement of Welsh National Goals'*, was published. In the report he outlines the current monitoring system lacks a process for tying together the various pieces of information already collected, in order to understand the performance of the PCET system as a whole and the contribution of individual institutions to meeting strategic objectives and targets.
- 3.246 The white paper, consultation and technical consultation explored whether the new Commission should take ownership of datasets currently owned by the Welsh Government and other agencies, such as HEFCW and whether a duty should be placed upon learning providers/examining bodies to share data about learners' characteristics and attainment, and if there were any further powers, duties or other matters that should be considered in developing proposals for these functions further.
- 3.247 The majority of respondents across all the existing sectors agreed that the new Commission should take ownership of all datasets. They felt that this would provide an opportunity to review the existing provision, ensuring there is robust evidence on which to base decision making and it was also seen as an opportunity to review the collection of this data as a whole to ensure that the quality of the data and the comparability of data across all sectors.
- 3.248 There was general agreement in all sectors that a duty should be placed on providers to monitor and share this data with the Commission, however, it was noted that this duty should avoid increasing providers' workload.

Information sharing

- 3.249 In order for the Commission to carry out its role in relation to the tertiary education sector in Wales, to oversee its work and performance, to set and monitor its strategic and operational priorities, and to distribute funds in accordance with its statutory responsibilities, the Commission will need to collect and use information from across the tertiary education sector. In addition, the Commission will have a strategic role in influencing learning providers' data, statistics and research responsibilities.
- 3.250 In order to achieve these policy objectives, the Draft Bill provides for the Commission to be able to efficiently collect, process, link, analyse and report on data surrounding:
- providers, their outcome agreements, finances and activities (including Mainstream sixth forms);

- - learners, their courses, activities, achievements and other outcomes;
 - educational and other organisations involved in research, their activities and outcomes; and
 - employers.

3.251 The Draft Bill also provides for the Commission to share information it collects and the outcomes of its analysis with the Welsh Ministers and other administrative/public bodies as well as research bodies (conducting research on behalf of Welsh Government or the Commission).

3.252 The Commission will also be enabled, in the same way as the Welsh Government and HEFCW currently do, to link with the Longitude Education Outcome (LEO) study in order to match data to HMRC and DWP data (particularly in relation to Apprenticeships).

3.253 In relation to information sharing, the Draft Bill ensures the Commission is compliant with the Data Protection Act 2018, as well as the General Data Protection Regulation and ensures that any data requested, held, used, shared etc. is in relation to the carrying out of the Commissions functions. This will include formal data sharing agreements, confidentiality agreements, confirmation of satisfactory information security procedures and appropriate retention and destruction of copies of the information when it is no longer needed. Contracts that ensure information is only used for specified reasons and nothing else and that all information transfers are recorded.

3.254 The Welsh Ministers or the Commission will be able to carry out research in relation to education and training in Wales, any matter connected to education and training, which would include employment and any other matter relevant to the Commission's functions. This information may then be published as long as no individual can be identified from the publication.

3.255 The Draft Bill also provides for the Welsh Ministers to be able to request information from organisations, such as UCAS, who provide services to Welsh Higher Education providers, for qualifying research purposes. The Welsh Ministers can request the information be shared with the Welsh Ministers the Commission or an approved person. The information that can be shared relates to applications for admission on to higher education course, including predicted grades, offers and rejections and acceptance of such offers. The Draft Bill allows for this information to be used to inform "qualifying research", which means research in relation to:

- choices available in HE in Wales;
- consideration of offers;
- equality of opportunity; and

- other topics approved by the Welsh Ministers.

3.256 This will allow for the analysis of the information and will also help inform the strategic priorities of the Commission, and future policy.

3.257 To protect this information, the approved person must not pass the information on to any other person including another approved person or body. An approved person is a person or body approved by the Welsh Ministers to receive this information for research purposes. The Welsh Ministers must publish guidance as to the factors that will be taken into account when determining whether to approve a person or body for the purposes of receiving this information.

3.258 The Welsh Ministers, the Commission and an approved person may publish the data received, provided that:

- publication is for the purpose of providing statistical information;
- no individual may be identified; and
- no information that may be regarded as commercially sensitive is published.

3.259 The Draft Bill also requires the Commission to promote good practice in relation to data sharing among the persons and bodies it funds or regulates: for example by issuing guidance dealing with IT systems and information security. The Commission will be able to review and update or replace its guidance as and when it considers necessary.

3.260 The Draft Bill also provides for the Commission to be an official statistical body and the Draft Bill provides powers to the Commission for the publication of its own official statistics and research outputs.

Civic Mission

Background

3.261 A key recommendation within the Hazelkorn report was the need for civic engagement to be embedded as a core mission and become an institution wide-commitment for all post-compulsory education institutions.

3.262 The White paper set out the challenge for academic institutions to recapture a sense of civic mission and highlighted that it is critical for them to reach beyond the classroom and campus and work with their host communities - promoting knowledge, learning and skills across society. The paper recognised that to support this activity, and to ensure a strengthened mutual relationship between citizens, communities, researchers and providers, the framework for our post-compulsory education system itself needs greater clarity.

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- 3.263 Alongside this, and since financial year 2017-18 some level of expectation with regard to civic mission has been placed on the Higher Education Council for Wales (HEFCW) by means of their annual Ministerial remit letter.
- 3.264 The 2019-20 remit letter to HEFCW outlined four key themes in regard to civic mission: leading place; links with schools; active citizenship; and social enterprise and innovation, and asked HEFCW to use this as a basis for setting strategic direction for civic mission. To date the requirements for civic mission have been applied to higher education institutions in Wales, and it is recognised that many institutions have embraced the concept and are actively engaged in developing their civic mission to connect their campuses to their community and the world.
- 3.265 It is envisaged that going forward, civic mission should be applicable across the tertiary education sector as a whole.

The concept of civic mission in the Draft Bill

- 3.266 The Draft Bill creates a duty for the Commission to promote the pursuit of a civic mission by institutions in Wales within the higher education and further education sectors (as defined in section 128(2) and (4) of the Draft Bill). The Commission will be able to comply with this duty in the exercise of its other functions created by the Draft Bill. The Commission may also seek to promote the pursuit of a civic mission by other persons that it funds under the Draft Bill, such as in respect of research and innovation. In order to comply with the duty to promote a civic mission, we would expect the Commission to work collaboratively with stakeholders in setting out how this may be achieved.
- 3.267 Civic Mission is defined in the Draft Bill as “action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales”.
- 3.268 The Commission, as a public body, will be subject to the duties set out in the Well-being and Future Generations (Wales) Act 2015 (“WFGA”). The civic mission duty created by the Draft Bill is an additional duty to promote the civic mission of HE and FE institutions and will complement the aims of the WFGA, which includes the duty for public bodies (including the Commission) to carry out sustainable development including taking action in accordance with the principles of sustainable development aimed at achieving the well-being goals.
- 3.269 The Welsh Ministers will have the power, through publication of the statement of priorities under section 3, to set out their priorities for the Commission for the promotion of civic mission. This might, for example, include an expectation for the Commission to collect and publish evidence on how HE and FE institutions ensure they are engaged with their local communities, and to share and promote effective practice in doing so. The

Commission may also set aside funding for projects by HE and FE institutions which promote and develop their civic mission, continuing work begun by HEFCW in this area.⁶ The Commission will be expected to evaluate its progress in relation to this policy within its annual reporting, and consider how the promotion of civic mission can be most effectively incorporated into its wider functions.

Financial Sustainability Duty to monitor and report on financial sustainability

Background

- 3.270 The Draft Bill places the Commission under a duty to monitor and report on the financial sustainability of particular tertiary education providers. This requirement will ensure that the Welsh Ministers are informed of the current and future financial position of those sectors or groups of providers to which the duty relates. This information will also provide an opportunity for the Commission to identify and advise on emerging trends or issues that might impact on the future financial sustainability of post 16 education in Wales.
- 3.271 Whilst this duty will formalise these requirements in legislation, we do not consider it to be a significant step change from current practice. HEFCW currently prepares and publishes an annual circular on the financial position of higher education institutions in Wales.

Purpose and effect of legislation

- 3.272 The Draft Bill requires the Commission to monitor the financial sustainability of certain providers. Initially, this will include registered providers and institutions in Wales in the further education sector that are not registered but are funded by the Commission. However, the Draft Bill enables the Welsh Ministers, via regulations, to extend this duty to other tertiary education providers or to make exceptions in its application.
- 3.273 The Commission will be required to include a summary of the current financial position of providers monitored under the duty within the annual report that it submits to the Welsh Ministers each year. This summary will be for the financial year to which the annual report relates and could include comparative data for previous years.
- 3.274 The Draft Bill also requires the Commission to submit a separate report to the Welsh Ministers which summarises the financial outlook of providers that it monitors under this duty. This report will provide a summary of conclusions drawn by the Commission from its monitoring activity on emerging trends, patterns or other matters that the Commission considers it appropriate to bring to the attention of the Welsh Ministers. The Commission are required

⁶ See HEFCW circular W18/07HE, June 2018.

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to submit the financial outlook report to the Welsh Ministers at the same time as the annual report.

- 3.275 It is anticipated that the Commission will be able to use information that it gathers from providers to demonstrate compliance with conditions of registration or terms and conditions of funding as a means to monitor and report on financial sustainability.

HE Governance

The Welsh Ministers powers to amend or repeal the statutory requirements placed on the governing documents of a Higher Education Corporation in Wales (HEC)

Background

- 3.276 Section 124A of the Education Reform Act 1988 (ERA 1988) requires a HEC to have in place an instrument of government, made by the Privy Council, which provides for the constitution of the corporation. Instruments of government must comply with Schedule 7A to ERA 1988. Schedule 7A sets out statutory requirements for the instruments of government of HECs made by the Privy Council and amongst other things, includes provision relating to the membership of the corporation, the number of members, and the appointment of members to the corporation
- 3.277 In addition, section 125 of ERA 1988 requires a HEC to have articles of government relating to the conduct of the institution. Broadly the articles determine the distribution of functions between the board of governors, the Principal and the Academic Board and regulate the constitution and functions of committees of the corporation. They may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution. Section 125(2) to (4) of ERA 1988 make provision relating to the content of a HEC's articles of government.
- 3.278 Currently, section 124A(9) of ERA 1988 enables the Welsh Ministers to amend or repeal paragraphs 3 to 5 and paragraph 11 of Schedule 7A. These paragraphs relate to the size, composition and appointment of members of the corporation.

The amendment of governing documents for higher education institutions in Wales

- 3.279 Higher education institutions are conducted in accordance with their governing documents. For HECs incorporated under ERA 1988, governance arrangements are set out in their instrument and articles of government,

whilst for chartered bodies this is their charters and statutes. Under current arrangements, amendments to charters and statutes and instrument and articles of government must be approved by the Privy Council. Alongside the instrument and articles of government and the charters and statutes, most higher education institutions will also have supporting governing documents in the form of rules and bye laws for HECs, and regulation and ordinances for chartered institutions, which can be amended for the most part without referral to the Privy Council.

- 3.280 As noted above, ERA 1988 places a number of statutory requirements on HECs in respect of their constitution and the content of their governing documents. Universities established under Royal Charter are not subject to these provisions and therefore have greater freedom to amend their governing documents than HECs incorporated under ERA 1988 as the statutory requirements do not apply.
- 3.281 In February 2006, the then Minister for Education and Lifelong Learning wrote to all higher education institutions in Wales⁷ regarding the simplification of their governance arrangements and providing an opportunity for institutions to consider amendments to their governing documents so as to remove the requirement for Privy Council approval for certain matters. At the same time, the guidance recognised that there is a significant public interest in the governance arrangements of higher education institutions and included a list of those matters for which Privy Council oversight and control should be retained. This approach relied upon the reallocation of provisions amongst an institution's governing documents so that only amendments to certain matters that were deemed to be in the public interest required the approval of the Privy Council. Other provisions could be reallocated to lower level governing documents so that an institution could subsequently change these without referral to the Privy Council. The approach set out in the 2006 guidance letter was voluntary. The guidance noted the autonomy of institutions and made clear that it was for individual institutions to bring forward proposals to amend their governance arrangements if they chose to do so.
- 3.282 The Law Commission also considered matters of higher education governance as part of its Charity Law: Selected Issues project. In July 2015, the Law Commission issued a consultation paper on Technical Issues in Charity Law⁸ which included proposals relating to the way higher education institutions and charities more widely amend their governing documents. The Law Commission's final report was published in September 2017^{9,10} and

⁷ "Deregulating Higher Education Institutions' governance arrangements" issued in February 2006

⁸ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage11jsxou24uy7q/uploads/2015/06/cp220_charities_technical.pdf

⁹ [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/09/6.3781_LC_HC304_Technical-Issues-in-Charity-Law_FINAL_080917_WEB.pdf)

¹⁰ [11jsxou24uy7q/uploads/2017/09/6.3781_LC_HC304_Technical-Issues-in-Charity-Law_FINAL_080917_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/09/6.3781_LC_HC304_Technical-Issues-in-Charity-Law_FINAL_080917_WEB.pdf)

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made specific recommendations in respect of the amendment of governing documents for higher education institutions in Wales. The report supported an extension of the 2006 reallocation approach described above and also recommended that the statutory requirements placed on the content of HEC governing documents be removed to enable these bodies to simplify their governing documents in accordance with guidance issued in 2006.

Technical consultation

- 3.283 In order to fully extend the reallocation approach set out in the 2006 guidance to all institutions regardless of their constitutional arrangements, the technical consultation proposed that the existing legislative framework be amended to remove the current statutory requirements that apply to HECs.
- 3.284 Whilst the majority of stakeholders supported the removal of existing statutory prescriptions some favoured their retention. Those stakeholders that supported their removal pointed to the need for parity of approach across all institutions regardless of the constitutional arrangements under which they operate and felt that removal of these prescriptions would allow HECs similar flexibility to amend their governing documents as that afforded to chartered institutions. Of those that favoured their retention, the key concern related to timing with many being of the view that changes such as this should be considered after the wider PCET reforms had taken place so as not to weaken the existing oversight of governance arrangements at Welsh HEIs

Purpose and intended effect of Draft Bill

- 3.285 The Draft Bill makes provision for the Welsh Ministers' existing order making powers under section 124A(9) to be extended to cover the whole of Schedule 7A with the exception of paragraph 1. Schedule 7A sets out statutory requirements for the content of instruments of government of HECs made by the Privy Council. Under Section 124A(9) of ERA 1988, the Welsh Ministers¹¹ are able to amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A by order. These paragraphs relate to membership of the HEC and in particular, the size, constitution and appointment of members of the

¹¹ The function was originally vested in the Secretary of State but by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) that function was transferred in relation to Wales to the National Assembly for Wales (established under the Government of Wales Act 1998). By virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 functions of the National Assembly for Wales were transferred to the Welsh Ministers.

corporation. Paragraph 1 enables a HEC's instrument of government to empower the corporation to change its name with the consent of the Privy Council.

- 3.286 The Draft Bill will also introduce a new power that will enable the Welsh Ministers, by order, to amend or repeal section 125(2) to (4) of the 1988 Act which relate to the content of articles of government of HECs.
- 3.287 The Draft Bill places the Welsh Ministers under a duty to consult with the Commission and any other persons they think appropriate before exercising these order making powers. This will ensure that the Commission, the HE sector and other stakeholders are consulted before any changes are made.
- 3.288 Together, these provisions will allow current statutory prescriptions placed on the governing documents of HECs to be reviewed, and if necessary amended or repealed, at a time when the PCET reforms are fully embedded and when fuller details of the Commission's regulatory requirements in relation to the governance of HEIs are known. This will allow time for the Commission's regulatory framework to be developed and ensure that the existing oversight of governance arrangements at HEIs is not weakened. It will also ensure that the interests of learners and other stakeholders are protected.
- 3.289 It would also allow the current approach to the simplification of HEI governing documents, which is based on guidance issued in 2006, to be extended to all HEIs regardless of their constitutional underpinnings. The 2006 guidance was heavily focused on the arrangements of chartered universities who are not subject to equivalent statutory requirements on their governing documents.

Procedural arrangements for the provision of advice to the Privy Council

Background

- 3.290 The Further and Higher Education Act 1992 (FHEA 1992) provides the legislative basis for the granting of degree awarding powers (DAPs) and university title (UT) in Wales. The power to grant these awards rests with the Privy Council.
- 3.291 Under section 76 of the FHEA 1992, the Privy Council may grant powers to award three categories of degrees: foundation degree awarding powers (FDAPs); taught degree awarding powers (TDAPs) and research degree awarding powers (RDAPs).

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- 3.292 Section 76 enables the Privy Council to grant TDAPs and RDAPs to any institution which provides higher education. The Privy Council is also able to grant FDAPs to institutions within the further education sector in Wales.
- 3.293 Section 77 of FHEA 1992 makes provision for the award of university title whereby an institution in the higher education sector is able to use the word “*university*” in its name with the consent of the Privy Council. Section 77 also makes provision for the award of university college title for those higher education institutions that do not fully meet the criteria for the award of university title or who do not wish to use it. Section 39 of the Teaching and Higher Education Act 1998 (THEA 1998) makes provision in respect of the unauthorised use of university title.
- 3.294 Applications to secure these awards are made in accordance with criteria and guidance published by the Welsh Ministers on behalf of the Privy Council
- 3.295 In terms of the governing documents of HEIs in Wales, amendments to charters and statutes of chartered universities and the instrument and articles of government for HECs must be approved by the Privy Council.
- 3.296 The current procedural arrangements for considering amendments to HEIs governing documents and applications for DAPs and UT are not set out in legislation. Under current arrangements, the governing body of the institution must make an application to the Privy Council in respect of DAPs and UT or to amend their instruments and articles of government or charters and statutes. The Privy Council refers these applications to the Welsh Ministers for advice.
- 3.297 In providing advice on DAPs and UT applications, the Welsh Ministers commission a detailed assessment by the Quality Assessment Agency (QAA) against criteria set out in published guidance. They may also seek advice from HEFCW on the financial sustainability and governance arrangements of the applicant institution.
- 3.298 For amendments to governing documents the Welsh Ministers assess the application against the public interest principles set out in the 2006 guidance before providing advice to the Privy Council

Technical consultation

- 3.299 The technical consultation proposed that the procedures relating to the provision of advice to the Privy Council on the amendment of HEI governing documents and on applications from Welsh institutions for DAPs and UT be formalised in legislation via the Draft Bill. This included an enhanced role for the Commission in these processes and provision to enable the Commission to advise to the Welsh Ministers on these matters. It was also intended that the Draft Bill would make provision for the Commission to be able to review

existing DAPs and UT criteria, the public interest matters against which amendments to governing documents are considered and the statutory requirements placed on HECs instruments and articles of government under ERA 1988. This type of role would align with the Commission's wider regulatory functions in respect of quality and the assurance of the governance arrangements at Welsh HEIs.

Purpose and intended effect

- 3.300 Since the technical consultation, it has been decided that the intended policy will continue to operate in reliance of the Welsh Ministers' powers under the Government of Wales Act 2006 (GOWA 2006) in broadly the same way that it does now. This means that express provision will not be required in the Draft Bill. Whilst this will mean that the mechanics of how the policy is delivered will have changed from the position set out in the technical consultation, the policy intention and the effect for stakeholders will be the same. This approach will deliver the intended policy and ensure that these procedures continue to operate effectively in much the same way as they do now. It will also provide a means for the Commission to play a more significant role in relation to these matters than HEFCW currently do and one which aligns closely with its wider regulatory functions under the Draft Bill.
- 3.301 The reliance on GOWA 2006 powers would require the establishment of an agreement between the Welsh Ministers and the Commission in order to deliver parts of the policy. Such an agreement will need to be drawn up and agreed by both the Welsh Ministers and the Commission. It may also be necessary for the Welsh Ministers, under their existing GOWA 2006 powers, to enter into an agreement with an appropriate body to assess and provide advice on applications for DAPs and UT in Wales.

Welsh Ministers' powers to dissolve a HEC in Wales

- 3.302 Currently, section 128 of the ERA 1988 enables the Welsh Ministers, by order, to dissolve a HEC and transfer its property, rights and liabilities to any person appearing to the Welsh Ministers to be wholly or mainly engaged in the provision of educational facilities or services of any description; any body corporate established for purposes which include the provision of such facilities or services; the Higher Education Funding Council for Wales (HEFCW); or the Welsh Ministers. There are no equivalent powers for the Welsh Ministers to dissolve a university in Wales established under Royal Charter. In Wales, a university's Royal Charter may be revoked by exercise of Her Majesty's prerogative where the charter is surrendered to the Crown or by primary legislation where the charter is revoked and the corporation dissolved.

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Technical Consultation

3.303 The technical consultation sought stakeholder views on the potential amendment of the Welsh Ministers' current power to dissolve a HEC in Wales under section 128 of ERA 1988 and set out a range of options for consideration. These included making similar arrangements to those in place for FECs in Wales or making similar changes to those introduced in England under the Higher Education and Research Act 2017 (HERA 2017).

Purpose and intended effect

3.304 Whilst we recognise that certain options presented in the technical consultation would have the effect of placing HECs in Wales on a more even footing with chartered universities, equivalent institutions elsewhere in the UK or with FECs in Wales, we are of the view that any amendment to these powers must be balanced against wider considerations.

3.305 Currently, if it is necessary to dissolve a HEC for any reason, the existing powers under section 128 of the 1988 Act would enable the Welsh Ministers by order to dissolve the institution and transfer its property, rights and liabilities to one of the persons or bodies listed in that section whether or not a request is made by the institution.

3.306 However, should the power to dissolve only be exercisable at the request of the institution as is now the case in England, there is a risk that in certain circumstances no such request would be made by the HEC. In such a scenario, the Welsh Ministers would not be able to dissolve the institution or transfer its assets and liabilities. This would mean the statutory corporation would remain on the statute book and would require an Act of Parliament or of the Senedd to remove it. We do not consider this to be a desirable position.

3.307 To mitigate against this risk, we consider it necessary to retain, in some form, the Welsh Ministers' power to dissolve a HEC in circumstances where a request has not been made by the institution itself. We are, therefore, not proposing to make significant changes to the existing provisions under section 128 of the 1988 Act, in the Draft Bill. In this regard, it is important to note that the exercise of this power is subject to the strictures of public law. The decision by the Welsh Ministers to use the powers must be reasonable, take into account all relevant factors and ignore irrelevant factors and not be exercised for an ulterior purpose.

Intervention in the conduct of further education institutions

Background

3.308 Under the current legislative framework, section 57 of the Further and Higher Education Act 1992 (the 1992 Act) enables the Welsh Ministers to intervene in the conduct of an institution in Wales within the further education sector if they are satisfied that one or more of the following conditions are met. These conditions are that:

- The institution's affairs have been or are being mismanaged by its governing body;
- The institution's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act or any Measures of the Senedd;
- The institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act or any Measure of the Senedd;
- The institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

3.309 Subject to the satisfaction of one or more of the above conditions the Welsh Ministers may, by order, intervene in the following ways:

- Removing all or any of the members of the institution's governing body;
- Appointing new members to the governing body, if there are vacancies (however arising);
- Directing a governing body as to the exercise of their powers and performance of their duties including:
 - i. A direction to exercise powers under section 5(2)(b) to (f) and (h) of the Education (Wales) Measure 2011 to collaborate with other persons or bodies such as another FE institution or a school; and
 - ii. a governing body of a further education corporation to resolve to dissolve the institution.

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Purpose and effect of legislation

- 3.310 The Draft Bill makes provision for the repeal of section 57 of the 1992 Act and for the re-enactment of these intervention functions. This would place the Welsh Ministers' powers in Welsh legislation and would make provisions clearer and more accessible.
- 3.311 The Draft Bill largely retains the grounds for intervention and the form that intervention may take if any of the grounds are met, except that the Welsh Ministers may now intervene by way of direction rather than by order. Other minor modifications are made to bring the provisions up to date and ensure they align with terminology used elsewhere in the Draft Bill.
- 3.312 Under the provisions in the Draft Bill, the intervention functions are retained by the Welsh Ministers as they extend beyond the regulatory regime established by the Commission through registration and terms and conditions of funding. However, as the Welsh Ministers' current funding and regulatory relationship with institutions in the further education sector will largely transfer to the Commission, the Draft Bill makes provision for the Commission to play a central role in the exercise of these intervention powers. In particular, the Draft Bill places the Commission under a duty to notify the Welsh Ministers if it becomes aware that any of the conditions for intervention are met. Alongside this, the Welsh Ministers are required to consult with the Commission before the intervention powers are exercised. We consider that this role aligns with the Commission's funding and regulatory functions in respect of further education institutions. Furthermore, the involvement of the Commission in the exercise of these functions will provide a check and balance on their use and provide an additional level of protection for institutions. Advice from the Commission will also ensure that the Welsh Ministers take into account all relevant factors in deciding whether or not to intervene in the specific circumstances of each case.
- 3.313 The Draft Bill also requires the Welsh Ministers to publish a statement of intervention policy setting out how these intervention powers will be exercised. The intervention functions serve an important role in effecting the policy to protect the provision of further education in Wales. However, it is intended that in most cases the functions will be used only when the Commission has exhausted its intervention functions or where the issue is so serious that more urgent action is required. It is intended that the statement of intervention functions will set out matters such as how and when notice of a proposed direction will be given by the Welsh Ministers, how a governing body may respond to such a notice, and how and when the Welsh Ministers should give reasons for any decisions they take.

Welsh Language

Background and current position

3.314 The Welsh Government outlined its vision to achieve a million Welsh speakers by 2050 in its strategy, *Cymraeg 2050: A million Welsh speakers*. To achieve this target, transformational change is required across the educational sector. The Commission will have a critical role to play in the context of the following key aims within the strategy:

Aim 4: Post compulsory education:

3.315 To develop post-compulsory education provision which increases rates of progression and supports everyone, whatever their command of the language, to develop Welsh language skills for use socially and in the workplace.

Aim 5: The education workforce, resources and qualifications:

3.316 Plan in order to increase and improve substantially

- i. The education and training workforce which can teach Welsh and teach through the medium of Welsh;
- ii. The resources and qualifications needed to support increased provision.

3.317 The purpose of aim 4 is to ensure that all Welsh speakers who continue in tertiary education, whether in schools, further education colleges or in work based learning and who go on to higher education, continue to develop their Welsh language skills in order to create a bilingual workforce and society.

3.318 Funding is currently provided by the Welsh Ministers to support both the development and delivery of Welsh-medium tertiary provision. The Welsh Ministers provide funding either directly to tertiary education providers or via intermediary organisations including HEFCW and National Centre for Learning Welsh (the National Centre) to support the provision of tertiary education through the medium of Welsh and the teaching of Welsh. The Welsh Ministers also provide funding to organisations including the Coleg Cymraeg Cenedlaethol (the Coleg) to support the development of Welsh medium tertiary education through activities such as academic planning and promoting and incentivising Welsh medium education.

Purpose and intended effect of Draft Bill

3.319 Provision has been included in the Draft Bill so that the Commission is within Schedule 6 to the Welsh Language (Wales) Measure 2011 so that it can be required to comply with Welsh language standards. This will help

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ensure that the Commission considers the Welsh language in all of its activities and can be required to provide Welsh language services.

3.320 The Draft Bill places duties on the Commission in relation to Welsh-medium tertiary education. The Commission will be required to —

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

3.321 The policy objective is to broaden the choice for learners to study through the medium of Welsh. It will be a matter for the Commission to determine how it discharges its duties. However, some examples of how it is envisaged this requirement may be implemented and appropriately monitored by Commission include to:

- a. plan strategically to positively promote and increase Welsh-medium tertiary education,
- b. encourage providers to deliver, develop and increase their Welsh-medium tertiary education, which could be, if appropriate, by way of Outcome agreements;
- c. encourage providers to plan progression routes so that Welsh speakers can continue their learning post 16 and develop their Welsh language skills and to offer opportunities to use the Welsh language in order to create a bilingual workforce;
- d. monitor availability and take up of Welsh-medium learning opportunities, and any subjects where the demand for Welsh-medium learning cannot be met currently ;
- e. work effectively with the Coleg to achieve the above.

The Welsh Ministers' funding powers

3.322 The Welsh Ministers will continue to be able to allocate financial resources to support both the development and delivery of Welsh-medium tertiary

provision. For example, it is envisaged that Welsh Ministers will continue to provide funding directly to the National Centre and Coleg in the short to medium term following the establishment of the Commission.

3.323 The Welsh Ministers will be able to allocate financial resources to the Commission in respect of all categories of tertiary education. The Welsh Ministers will be able to attach terms and conditions to this funding. Provision has been included in the Draft Bill to enable the Welsh Ministers to apply terms and conditions of funding with reference to a course being provided and assessed through the medium of Welsh. It is possible that the Welsh Ministers may also wish to apply conditions that relate to a particular subject area. For example, they may wish to 'ring fence' funding to support courses leading to professions where there is a shortage of individuals being able to undertake their role through the medium of Welsh such as in the care or education sectors. The Commission would be able to determine how to distribute those funds (provided it is in accordance with the conditions) and providers would be free to decide whether to apply for grant awards for the specified purpose.

The Commission's funding powers

3.324 The Draft Bill enables the Commission to allocate funding to providers to deliver Welsh-medium tertiary education. For example, the Commission could provide funding for Welsh-medium premiums to offset the costs of providing learning activities through the medium of Welsh. The Draft Bill also enables the Commission to allocate funding to providers to teach Welsh.

3.325 The Commission will also be able to allocate funding to persons for purposes connected to the provision of tertiary education through the medium of Welsh and the provision of Welsh language acquisition courses. This could include activities to support the development of provision such as practitioner training, promotion of learning opportunities to prospective learners, developing and sharing learning resources and coordination of learning opportunities across providers. This could also include funding to carry out research in relation to Welsh-medium education and training in Wales.

Reporting requirements

3.326 The Commission will be required to include in its annual report to the Welsh Ministers information on the extent of Welsh-medium tertiary education provided and the extent Welsh was taught to persons above compulsory school age in a given year and compare with that provided in previous years.

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4. Consultation

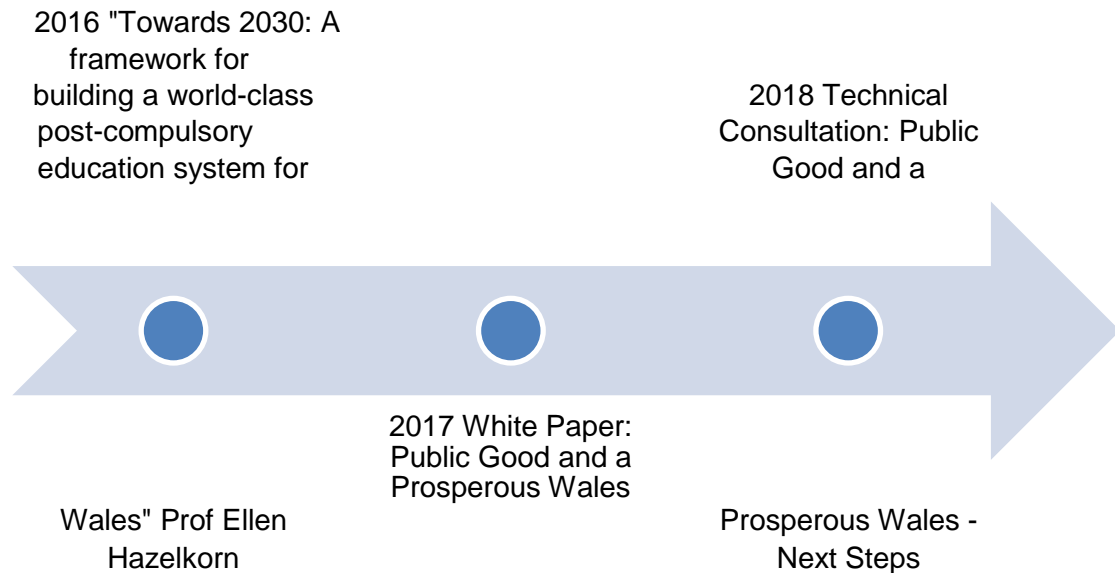


Figure 1: Consultation timeline

- 4.1 In 2016, Professor Hazelkorn published her review "[Towards 2030: A framework for building a world-class post-compulsory education system for Wales](#)" which examined the oversight of post-compulsory education and training in Wales. There were two primary recommendations in the review:
- the Welsh Government should develop an overarching vision for the post-compulsory education and training (PCET) sector; and
 - the Welsh Government should establish a new arm's length body responsible for the oversight, strategic direction and leadership of the sector.
- 4.2 Following these recommendations, the Welsh Government launched a White Paper - "[Public Good and a Prosperous Wales – Building a Reformed PCET](#)"

[system](#)”, in June 2017 setting out high-level proposals for reform of the post compulsory education and training (“PCET”) sector in Wales. This included the establishment of a Tertiary Education and Research Commission for Wales, (“the Commission”), which would be responsible for higher and further education, work-based learning and adult learning. The decision as to whether sixth forms would fall under the remit of the Commission was still to be decided.

- 4.3 In addition to the written consultation, the Welsh Government hosted three roadshows around Wales where key stakeholders fed in their views and issues in a workshop format. The learner voice was considered at special sessions and also within two Skills Cymru events, with some young people under 16 also taking part and offering their views in response to key questions.
- 4.4 The written consultation received 92 responses, with the stakeholder events accommodating a total of 214 delegates with circa 165 learners from across the various PCET sectors.
- 4.5 A specific consultation aimed at young people and protected groups was also commissioned. This consisted of 13 interactive workshops across Wales, gathering views from almost 200 learners.
- 4.6 Overall, the responses suggested that learning providers, institutions and learners broadly supported the proposals for reform.
- 4.7 In April 2018 the Welsh Government published “Public Good and a Prosperous Wales - the next steps” to consult on a set of detailed proposals for the reform of the PCET system in Wales, including technical proposals for the shape and operation of the new Commission. In addition, the consultation set out the way in which the Welsh Government’s expenditure on research and innovation should/could be overseen and coordinated.

<https://gov.wales/sites/default/files/consultations/2018-04/180423-tertiary-education-and-research-commission-for-wales-consultation-document.pdf>

- 4.8 One of the key concepts of the consultation was the need for the future direction, vision and aspirations for the sector to be flexible, future proof and shaped by the new Commission.
- 4.9 The consultation consisted of a written consultation and 19 thematic interactive workshops with individuals and organisations from across Wales. A total of 422 written responses were received.
- 4.10 The responses to the technical consultation remained broadly supportive of the principles for reform including
 - the need for consistency across the sector and the need for all providers to be subject to similar regulatory arrangements;

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- a clear need for the Commission to monitor and improve quality across the sector and a need to align provision across the sector;
- an alignment of the inspection regime with the regulatory functions of the Commission to ensure appropriate monitoring and avoid duplication;
- a need for wider engagement with staff and student stakeholders;
- the introduction of the learner protection and learner complaints procedures;
- a need for stronger regulatory function for the Commission with a range of proportionate intervention options;
- the need for the Commission to only use dissolution as a route of last resort and that a full consideration of the impact on learners, staff and the wider economy should be considered;
- for there to be longer planning cycles of five years and for planning and funding powers to rest with the Commission;
- the need to publish full data relating to providers and their performance against targets with an alignment to existing public data;
- a direct transfer of funding to the Commission which replicates the current funding system but with an opportunity to ensure a simplified funding system which worked across the sector, allows a light touch approach to terms and conditions and a direct link to outcome agreements and planning;
- a planning and funding system with greater emphasis on employability outcomes and demand-led provision; and
- the Commission should be under a specific duty in relation to the Welsh language.

4.11 A number of areas of thinking included:

- a need for the Draft Bill to allow for a degree of flexibility and future proofing to allow the Commission freedom to operate without being closely aligned to the Welsh Government;
- a need to carefully construct the relationship between the Welsh Government and the Commission, with a focus on strategic priorities and the ability for the Commission to set its own direction with the need for a balanced approach to retaining academic freedom;

- a need for Welsh Ministers to have intervention powers but for these to be carefully considered and proportionate;
- for the Commission to have greater power to provide adequate protection and best serve the interests of wider stakeholders such as students and staff, with adequate representation of all sectors, staff and learners on the Commission and its board;
- consideration for a complete single registration and regulation scheme across the sector;
- Welsh language should be embedded across all activities given the importance of the Welsh Education Strategic Plan and given the recommendations of the Weingarten review;
- further consideration of the funding model and independence of the Coleg Cymraeg Cenedlaethol;
- in relation to school sixth forms, responses were mixed, but there was a general consensus that there should be consistency across the post-16 education landscape with a clear role for the Commission but for the Welsh Ministers to have a role in ensuring a coherent approach to pre and post 16 education provision and planning in a local area;
- a need for the Commission to have a role in funding ITE provision;
- a need to design the research and innovation funding mechanisms separate to the funding of education and to use terms and conditions of grant or contracts to allow a broad and varied funding mechanism for research and innovation in Wales;
- a need to ensure the funding arrangements do not adversely affect additional learning need provision and funding arrangements;
- if necessary, the need for direct funding for requirements in the national interest, should be administered by the Commission rather than direct from the Welsh Ministers; and
- general support for apprenticeship funding provision to be brought within the remit of the Commission, but for this to be future proof.

4.12 Given the technical nature of the Bill and its limited appeal to the wider public, it was not felt appropriate to undertake an open consultation on a Draft Bill. The policy objectives of the Bill were discussed in some detail with stakeholders and drafts of the Bill have been shared with the following stakeholders: HEFCW;

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Universities Wales; ColegauCymru; National Union of Students; QAA; Estyn; Open University; the 16-19 OCET Reform Advisory Group; the Education Workforce Group and the PCEET Change Board. This provided an opportunity for officials to explain to key interested parties the scope of the Bill, why legislation was necessary and what the Welsh Government was seeking to achieve through the different sections of the Bill.

4.13 A full summary of all consultation responses are published:

- White Paper Consultation – summary of responses: Public Good and a Prosperous Wales
https://gov.wales/sites/default/files/consultations/2018-02/171204summary-of-responses-en_0.pdf
- Young learner events:
<https://gov.wales/reformed-post-compulsory-education-andtraining-system>
- Technical Consultation:
- https://gov.wales/tertiary-education-and-research-commission-wales?_ga=2.139518704.258782010.1574247979.1550504246.1573461695
- Technical consultation thematic workshops:
<https://gov.wales/sites/default/files/consultations/2018-10/tertiaryeducation-research-commission-wales-summary-of-responsesnotes-from-thematic-workshops.pdf>

5 Power to make subordinate legislation

5.1 The Draft Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions, codes and guidance) set out in relation to these:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power;
- (iv). the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Draft Tertiary Education and Research (Wales) Bill

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|---|
| 11(3) | The Welsh Ministers | Regulations | <p>Requires the Welsh Ministers to specify categories of registration for which provision must be made in the register of tertiary education providers.</p> <p>This needs to be a flexible legal mechanism for proportionate and accountable regulation of the tertiary education sector in Wales. In particular, the register will provide for appropriate regulation for tertiary education providers whose courses are designated for the purposes of Welsh Government student support.</p> | Affirmative | The regulations amend primary legislation by adding categories of registration therefore, the affirmative procedure is appropriate. |
| 11(6) | The Welsh Ministers | Regulations | <p>This allows the Welsh Ministers to prohibit the registration of a provider in one category of the register at the same time that it is registered in one or more of the other categories.</p> <p>The Register of Tertiary Education Providers will be a flexible legal</p> | Negative | The subject matter of the regulations prescribe technical and administrative matters, which may be updated from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-----------|---|
| | | | <p>mechanism for proportionate and accountable regulation of the tertiary education sector in Wales. In particular, the register will ensure appropriate regulation for tertiary education providers whose courses are designated for the purposes of Welsh Government student support.</p> <p>This system needs to be flexible as different criteria may be appropriate for inclusion on the register in the future. To achieve that flexibility subordinate legislation is a more appropriate approach.</p> | | |
| 11(9) | The Welsh Ministers | Regulations | <p>Power to make provision about the information which must be contained in an institution's entry in the register. This system needs to be flexible as different information may be appropriate for inclusion on the register in the future. To achieve that flexibility subordinate legislation is a more appropriate approach.</p> | Negative | <p>Prescribes technical and administrative matters, which may be updated from time to time.</p> |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-------------|---|
| 13(3) | The Welsh Ministers | Regulations | Power to provide for further initial conditions of registration for any category of registration. This system needs to be flexible as different criteria may be appropriate for inclusion on the register in the future. | Affirmative | The power enables the Welsh Ministers to add to the initial conditions of registration set out in the primary legislation so the affirmative procedure is deemed to be appropriate. |
| 18(1) | The Welsh Ministers | Regulations | <p>Power to specify categories of registration in relation to which the Commission may impose on institutions an ongoing condition of registration in respect of having (and complying with) an access and opportunity plan.</p> <p>In short, the effect of the regulations is that certain institutions will be subject to an access and opportunity plan condition. The Commission is under a duty (s.18(2)) to impose a fee limit condition on those same institutions where they provide (or have provided on their behalf) qualifying courses.</p> | Affirmative | The power enables the Welsh Ministers to add to the mandatory ongoing registration conditions on access and opportunity plans and fee limits set out in the primary legislation, the affirmative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|---|
| 18(6) | The Welsh Ministers | Regulations | <p>Power to specify what a qualifying course is.</p> <p>This kind of detail is likely to demand updates to reflect policy needs from time to time and so is likely to need updating regularly</p> | Negative | The subject matter of the regulations is relatively minor and technical and are likely to necessitate regular updating, therefore the negative procedure is deemed appropriate. |
| 18(10)(b) | The Welsh Ministers | Regulations | <p>Power to specify qualifying persons for the purposes of paying regulated course fees.</p> <p>This kind of detail is likely to demand updates to reflect policy needs from time to time and so is likely to need updating regularly.</p> | Negative | This power enables the Welsh Ministers to prescribe classes of persons which may require modification. Prescribes technical and administrative matters, which may be updated from time to time, therefore the negative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|-------------|---|
| 18(12) | The Welsh Ministers | Regulations | <p>Power to set out when fees payable to a provider in respect of a course it provides on behalf of a registered institution are to be treated as payable to the registered institution for the purposes of fee limits.</p> <p>Delegated powers are suitable because regulations provide the flexibility to make changes to circumstances where a fee may be payable to a qualifying person in connection with them undertaking a course. This regulation is part of current procedures.</p> | Negative | The power enables Welsh Ministers to change circumstances where a fee may be payable to accommodate changes in the future. Prescribes technical and administrative matters, which may be updated from time to time, therefore the negative procedure is deemed appropriate. |
| 20 | The Welsh Ministers | Regulations | <p>Power to provide for further mandatory ongoing registration conditions.</p> <p>The regulatory system needs to be flexible as different mandatory conditions may be appropriate for inclusion on the register in the future.</p> | Affirmative | The power will enable the Welsh Ministers to add mandatory registration conditions to those already set out in the primary legislation therefore the affirmative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|---|
| 27(2) | The Welsh Ministers | Regulations | Power to set out further circumstances where the Commission must remove an institution from a category in the register or all categories of the register. The regulatory system needs to be flexible as different criteria for removal from the register may be appropriate in the future. | Affirmative | The power enables Welsh Ministers to make changes to de-registration criteria, the affirmative procedure is deemed appropriate. |
| 27(6) | The Welsh Ministers | Regulations | Power to make transitional or saving provisions in connection with the removal of an institution from a category of the register. This kind of detail is likely to demand updates to reflect policy needs from time to time and may need updating regularly. | Negative | The power enables the Welsh Ministers to make consequential changes which relate to technical and administrative matters, which may be updated from time to time, therefore the negative procedure is deemed appropriate. |
| 29(13) | The Welsh Ministers | Regulations | Power to make transitional or saving provisions in connection with the voluntary or consensual removal of an institution from a category of the | Negative | The power enables the Welsh Ministers to make consequential changes which relate to technical |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|--|---|
| | | | register. This kind of detail is likely to demand updates to reflect policy needs from time to time and may need updating regularly. | | and administrative matters, which may be updated from time to time, therefore the negative procedure is deemed appropriate. |
| 33(2) | The Welsh Ministers | Regulations | <p>Power to specify the maximum period in respect of which an access and opportunity plan is to have effect.</p> <p>This kind of detail is likely to demand updates to reflect policy needs from time to time.</p> | <p>Negative</p> <p>(Welsh Ministers are under a duty to consult the Commission, registered institutions and any other persons they consider appropriate before making regulations)</p> | The power enables the Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time therefore the negative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-------------|--|
| 34(4) | The Welsh Ministers | Regulations | <p>Power to set the maximum fee which can be charged in relation to courses provided by registered institutions.</p> <p>This kind of detail is likely to demand updates to reflect policy needs from time to time.</p> | Affirmative | The Draft Bill amends an existing power. The procedure is currently affirmative. |
| 35(1) | The Welsh Ministers | Regulations | Power to specify required contents of access and opportunity plans regarding to promotion of equality of opportunity or the promotion of tertiary education. This affirmative regulation exists currently and would be a continuation of current procedure. | Affirmative | The Draft Bill amends an existing power. The procedure is currently affirmative. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-------------|---|
| 36(4) | The Welsh Ministers | Regulations | <p>Power to make provision about matters which the Commission will have to take into account when making decisions regarding the approval, rejection or variation of an access and opportunity plan. The contents of the access and opportunity plans may require modification in the future to take account of the changing needs of the sector, to adapt to different types of providers, and to reflect any changes to the types of the Welsh Government's support for tertiary education.</p> | Affirmative | The Draft Bill amends an existing power. The procedure is currently affirmative which allows for future flexibility regarding access and opportunity plans. |
| | | | <p>It may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. This affirmative regulation exists currently and would be a continuation of current procedure.</p> | | |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-----------|--|
| 40(7) | The Welsh Ministers | Regulations | <p>Power to make regulations about the period (specified in a refusal to approve notice) before the end of which the Commission will not approve a new access and opportunity plan; the matters which the Commission must take into account in deciding whether to give or withdraw a notice that it will not approve a plan; and procedures to be followed. The period specified may require modification in the future to take account of the changing needs of the sector, to adapt to different types of providers, and to reflect any changes to the types of the Welsh Government's support for tertiary education.</p> | Negative | <p>The Draft Bill amends an existing power. The procedure is currently negative. The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time</p> |
| | | | <p>It may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. This is a continuation of current practice.</p> | | |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|-----------|---|
| 46(5) | The Welsh Ministers | Regulations | <p>Power to make regulations to require assessments and reports at intervals. The contents of the access and opportunity plans may require modification in the future to take account of the changing needs of the sector, to adapt to different types of providers, and to reflect any changes to the types of the Welsh Government's support for tertiary education.</p> | Negative | <p>The Draft Bill amends an existing power. The procedure is currently negative. The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time.</p> |
| | | | <p>It may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. This is a continuation of current practice.</p> | | |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|---|------------------|--|
| 46(8) | The Welsh Ministers | Regulations | Power to make provision about the circumstances in which a person is to be treated as responsible for providing a course. It may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. This is a continuation of current practice. | Negative | The Draft Bill amends an existing power. The procedure is currently negative. The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |
| 49(1)(f) | The Welsh Ministers | Regulations | Power to specify education and training which the Chief Inspector of Education and Training must inspect (in addition to education and training set out on the face of the Draft Bill). The main functions for the Inspector are set out on the face of the Draft Bill. However other functions required cannot be foreseen and it may be appropriate to amend functions in the future. | Negative | The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|---|------------------|--|
| 49(4) | The Welsh Ministers | Regulations | Power to make provision about inspection and report interval periods. Before making such regulations, the Welsh Ministers must consult the Commission and Estyn. | Negative | The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |
| 53(1) | The Welsh Ministers | Regulations | Power to confer further functions on the Chief Inspector in connection with the education and training described in section 49(1). | Negative | The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |
| 55(9) | The Welsh Ministers | Regulations | Power to make further provision in relation to the obligations to provide the Chief Inspector with information in connection with an inspection; and to require inspection reports to be published before the end of a certain period. The main functions are set out on the face of the Draft Bill and it is anticipated the reports will be published in a timely manner. However other information and functions required cannot be foreseen and it may be appropriate | Negative | The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------|---------------------|-------------|---|-----------|--|
| | | | to amend functions in the future or to impose timing for the publication of reports in the future. | | |
| 71(3) | The Welsh Ministers | Regulations | A duty on the Welsh Ministers to make provision in connection with decision reviews. For example, details regarding the role of the decision reviewer and procedure to be followed (see sub-section (4)). This is a continuation of current practice. | Negative | The Draft Bill amends an existing power. The procedure is currently negative. The power enables Welsh Ministers to prescribe technical and administrative matters, which may be updated from time to time. |
| 72(1)(c) | The Welsh Ministers | Regulations | Power to specify education providers (in addition to those set out on the face of the Draft Bill) in respect of which the Commission must monitor financial sustainability. The requirements of monitoring and reporting cannot be foreseen and it | Negative | These will be largely technical and administrative matters, and will only be used where necessary for the purposes of ensuring the effectiveness of |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|-----------|---|
| | | | may be appropriate to amend functions from time to time as the nature of institutions change in the future. | | procedures which may be modified from time to time. |
| 72(2) | The Welsh Ministers | Regulations | Power to provide for exceptions to the duty to monitor the financial sustainability of registered institutions and institutions within the FE sector funded by the Commission. | Negative | These will be largely technical and administrative matters, and will only be used where necessary for the purposes of ensuring the effectiveness of procedures which may be modified from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|---|
| 76(4) | The Welsh Ministers | Regulations | Power to make provision about the designation of providers which would not be regarded as an institution for the purposes of the Draft Bill. This includes provision about applications for designation, the making of designations, withdrawal of a designation and the effect of withdrawals. This affirmative regulation exists currently and would be a continuation of current procedure. | Affirmative | The Draft Bill amends an existing power. The procedure is currently affirmative. |
| 77 | The Welsh Ministers | Regulations | Definition of fees | Negative | The Draft Bill amends an existing power under the Higher Education (Wales) Act 2015, section 5. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|--|
| 80(3) | The Welsh Ministers | Regulations | Power to specify categories of registered institution to which the Commission may provide financial support in respect of expenditure incurred for the purposes of provision of HE and facilities or activities connected with the provision of HE. To achieve the flexibility for Welsh Ministers to make decisions on the categories of registered institution to which the Commission may provide financial support, subordinate legislation is appropriate. | Affirmative | The power will enable the Welsh Ministers to modify those institutions who can be categorised as a specified institution and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate. |
| 80(4) | The Welsh Ministers | Regulations | Power to specify the detail in relation to the requirements to be met by a course of initial teacher training before the Commission can provide an institution with financial support in respect of the provision of that course. To achieve the flexibility for Welsh Ministers to make decisions on course eligibility subordinate legislation is more appropriate. | Negative | These will be largely technical and administrative matters, and will only be used where necessary for the purposes of ensuring the effectiveness of procedures which may be modified from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-------------|---|
| 81(1) | The Welsh Ministers | Regulations | Power to specify a particular course of HE or description of course of HE in respect of which the Commission can provide financial resources. Delegated powers are suitable because they will allow the flexibility to amend those courses of higher education or description of course of higher education receiving financial support directly from the Commission from time to time in the future. | Negative | The power enables the Welsh Ministers to specify course requirements which satisfy funding eligibility, the negative procedure is deemed appropriate. |
| 88(5) | The Welsh Ministers | Regulations | Power to provide that financial support for further education and training can only be secured to institutions registered in specified categories. The regulatory system needs to be flexible as different criteria for financial support for FE institutions may be appropriate in the future and it may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. | Affirmative | The power will enable the Welsh Ministers to modify those FE institutions able to receive funding from the Commission, the affirmative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|-------------|--|
| 89(5) | The Welsh Ministers | Regulations | Power to provide exceptions to the duty of the Commission to impose a condition of funding prohibiting the charging of fees by providers to persons under the age of 19 in respect of the provision of FE and training. This will enable the Welsh Ministers to set out the circumstances in which an FE provider may be able to charge a fee for learners age 16-19 in the future. This is to be flexible to future changes in funding for FE. | Affirmative | The power will enable the Welsh Ministers to make changes to funding arrangements for 16-19 year olds in FE and therefore the affirmative procedure is deemed appropriate. |
| 94(3) | The Welsh Ministers | Regulations | Power to provide that the Commission can only provide financial resources in respect of expenditure incurred in connection with the provision of an approved Welsh apprenticeship to institutions registered in categories specified in the regulations. The register is intended to be flexible to take account of the changing needs of the sector, to adapt to different types of providers, and to reflect any changes to the types and amounts of the | Affirmative | The power will enable the Welsh Ministers to modify those institutions who are eligible to receive funding from the Commission for the provision of an approved Welsh apprenticeship, the affirmative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-------------|---|
| | | | <p>Welsh Government's support for tertiary education.</p> <p>It may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate.</p> | | |
| 95(4) | The Welsh Ministers | Regulations | <p>Power to specify categories of registration which an institution must be registered in before the Commission can provide financial resource to the institution in respect of expenditure for the purpose of (or in connection with) research or innovation. Delegated powers are suitable because they will allow the flexibility to amend those institutions carrying out research and innovation activity that may receive financial support directly from the Commission from time to time in the future.</p> | Affirmative | <p>The power will enable the Welsh Ministers to modify those institutions who can be categorised as a specified institution and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate.</p> |
| 98(4) | The Welsh Ministers | Regulations | <p>Power of the Welsh Ministers to specify the conditions that an apprenticeship must satisfy to be an approved Welsh apprenticeship. The regulatory system needs to be</p> | Affirmative | <p>The power will enable the Welsh Ministers to specify and amend the conditions that institutions can be</p> |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------|---------------------|-------------|--|-------------|--|
| | | | flexible as different criteria which meet conditions for apprenticeship may be appropriate in the future and it may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. | | categorised as an approved Welsh apprenticeship and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate. |
| 99(1)(c) | The Welsh Ministers | Regulations | Power of the Welsh Ministers to specify further conditions that an apprenticeship agreement must satisfy to be an approved Welsh apprenticeship agreement. The regulatory system needs to be flexible as different criteria which meet conditions for apprenticeship may be appropriate in the future and it may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. | Affirmative | The power will enable the Welsh Ministers to specify and amend the conditions that institutions can be categorised as an approved Welsh apprenticeship and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|----------------|---------------------------|-------------|--|------------------|---|
| 100(1) | The Welsh Ministers | Regulations | Power of the Welsh Ministers to specify the description of what is categorised as an alternative Welsh apprenticeship. The regulatory system needs to be flexible as different criteria which meet conditions for apprenticeship may be appropriate in the future and it may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. | Affirmative | The power will enable the Welsh Ministers to specify and amend the description of an alternative Welsh apprenticeship and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate. |
| 106(6) | The Welsh Ministers | Regulations | Power of the Welsh Ministers to require the Commission to include other information in the register of apprenticeship frameworks. Delegated powers are suitable because they will allow the flexibility to amend the information requirements of the register from time to time in the future. | Negative | The power will enable the Welsh Ministers to add new information requirements onto the register, the power is relatively minor and the negative procedure is appropriate. |
| 107(3) | The Welsh Ministers | Regulations | Power for the Welsh Ministers to authorise the Commission to charge a fee for issuing an apprenticeship certificate if required in the future. | Negative | These will be largely technical and administrative matters, and will only be used |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|--|-----------|--|
| | | | | | where necessary for the purposes of ensuring the effectiveness of procedures which may modified from time to time. |
| 112(5) | The Welsh Ministers | Regulations | Power to make provision applying any provision of Part 4 (apprenticeships) with modifications to an apprenticeship agreement where a person undertakes Crown employment or to a person working (or proposing to work) under such an agreement. The regulatory system needs to be flexible as different criteria which meet conditions for apprenticeship may be appropriate in the future and it may be necessary for the changes to be transitional. To achieve that flexibility subordinate legislation is more appropriate. | Negative | These will be largely technical and administrative matters, and will only be used where necessary for the purposes of ensuring the effectiveness of procedures which may modified from time to time. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|-----------|---------------------|-------------|--|-----------|---|
| 116(2) | The Welsh Ministers | Regulations | Power to specify institutions other than those set out on the face of the Higher Education Act 2004 in respect of which complaints can be made by students and former students and considered under the student complaints scheme under that Act. Such institutions must comply with any obligations imposed by the student complaints scheme. This is a continuation of current practice. | Negative | This power extends an existing power. |
| 120(1)(i) | The Welsh Ministers | Regulations | Power to specify persons other than those set out on the face of the Draft Bill as persons who are able to share information with the Commission. Delegated powers are suitable because they will allow the flexibility for the Welsh Ministers to modify the categories of persons who can share information with the Commission. | Negative | The Power enables the Welsh Ministers to modify categories of persons to share information as may be required. The power is relatively minor in that it does not affect the data being shared, only the ability to add to the list of those who can share it. |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------------|---|-----------------------------|---|
| 131 | The Welsh Ministers | Regulations | Power to provide for the Open University to be treated as an institution in Wales. | Affirmative | The power will enable the Welsh Ministers to specify conditions that the Open University must comply with in order to be categorised as an institution in Wales and entitled to receive funding from the Commission, the affirmative procedure is deemed appropriate. |
| 132 | The Welsh Ministers | Regulations | Power to make consequential or transitional provision. Appropriate for regulations to ensure that where amendments to other legislation are found to be necessary, to give full effect to this Draft Bill, further primary legislation is not required. | Affirmative Negative | Where regulations amend, repeal or otherwise modify primary legislation, and the changes may substantially affect that legislation, affirmative procedure is deemed appropriate. Where regulations are not amending primary |

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|---------|---------------------|-------|--|--------------|---|
| | | | | | legislation, negative procedure is appropriate |
| 134 | The Welsh Ministers | Order | Power to bring into force provisions which are not brought into force by the Draft Bill. Suitable for commencement by order as coming into force needs to be timed to ensure delivery arrangements are in place. | No procedure | This is a commencement order to set a coming into force date for provisions already agreed in the Draft Bill. |

Table 5.2: Summary of powers to make directions and to issue guidance in the provisions of the Draft Tertiary Education and Research (Wales) Bill

| Section | Power conferred on | Form | Appropriateness of delegated power | Procedure | Reason for procedure |
|------------------|--|----------|--|--------------|--|
| 2(2) 2(3) | The Welsh Ministers | Guidance | The Welsh Ministers can give guidance to the Commission in respect of the Commission's functions but in doing so must have regard to the importance of protecting the academic freedom of institutions in Wales that provide higher education. | No procedure | This is a power of the Welsh Ministers to give guidance to the Commission in respect of its functions. The Commission must have regard to guidance given to it by the Welsh Ministers. |
| 21 | Commission for Tertiary Education and Research | Guidance | Requires the Commission to publish guidance for registered institutions about ongoing registration conditions. | No procedure | Guidance is considered appropriate as it is intended to facilitate the application of the registration process conducted by the Commission. |

| | | | | | |
|--------|--|------------|--|---|---|
| 25 (1) | Commission for Tertiary Education and Research | Directions | The Commission may give a direction to the governing body of an institution if it is satisfied that the governing body has failed (or is likely to fail) to comply with an ongoing registration condition. | A copy of the direction must be given to the Welsh Ministers and published | Powers of direction are considered appropriate and proportionate to the provider and related provision. Publication of the direction makes it open and transparent to those involved. |
| 26 | Commission for Tertiary Education and Research | Guidance | Enables the Commission to issue guidance about directions under s.25; “failure to comply with ongoing registration conditions”. | The Commission is under a duty to consult governing bodies before issuing such guidance. | It is considered appropriate for the Commission to consult on any guidance that may assist those subject to the direction. |
| 42 | Commission for Tertiary Education and Research | Guidance | The Commission can publish “quality assurance frameworks”. These set out guidance and information in relation to assessing the quality of tertiary education. | Before, the Commission must consult specified persons and persons it considers appropriate. | Guidance is considered appropriate as this needs to be flexible and proportionate to the provider, the workforce and related provision. |

| | | | | | |
|----|--|-----------|---|--|--|
| 57 | The Commission for Tertiary Education and Research | Direction | The Commission may give a direction to the Chief Inspector requiring an inspection in relation to Wales or an area in Wales in relation to policy for tertiary education provision and comparable provision outside Wales. | No procedure. | This relates to policy review and therefore no procedure is proportionate and appropriate. |
| 63 | The Welsh Ministers | Direction | The Welsh Ministers may issue a direction to the governing body of an FE institution in Wales if the Welsh Ministers are satisfied that there are grounds to intervene. The Welsh Ministers may not direct a governing body to dismiss a member of staff. | Before issuing a direction the Welsh Ministers must consult the Commission | The direction power enables the Welsh Ministers to issue a direction to intervene in the powers of a governing body of an FE institution but the Welsh Ministers must be satisfied that there are grounds for intervention. As the Commission is responsible for the oversight and funding of FE institutions it is necessary for the Welsh Ministers to consult with the Commission before issuing a direction. |

| | | | | | |
|--------|--|-------------------------|--|--|--|
| 66 | The Commission for Tertiary Education and Research | Direction | The Commission may issue a direction to the governing body of an FE institution where that body has failed to comply with the duty to cooperate with the Commission, or persons carrying out functions on behalf of the Commission, in relation to monitoring and enforcement and quality assurance. | No procedure | Powers of direction are considered appropriate and proportionate to the provider and related provision and need to be flexible to the circumstances. |
| 109 | Commission for Tertiary Education and Research | Guidance and directions | The Commission may direct or give guidance to a person designated to exercise its functions in respect of the publication of apprenticeship frameworks and the issuing of apprenticeship certificates. | No procedure | Guidance and directions are considered appropriate to ensure administrative functions are delivered effectively where the responsibility for a delegated function remains with the Commission. |
| 115(6) | Commission for Tertiary Education and Research | Guidance | The Commission must issue guidance on the preparation and revision of learner protection plans. | Before issuing guidance under this section the Commission must consult such persons as | Guidance is considered appropriate as this needs to be flexible and proportionate to the provider and related provision. |

| | | | | | |
|---------|--|----------|---|---|--|
| | | | | it considers appropriate. | |
| 118(1) | Commission for Tertiary Education and Research | Code | The Commission must prepare and publish a Learner Engagement Code about the involvement of learners in the making of decisions by the tertiary education provider. | In preparing the Code (or revised Code) the Commission must consult such persons as it considers appropriate. | The Commission will develop the Code with tertiary education providers and learners which will be flexible and proportionate to the provider and related provision. |
| 123(5) | Welsh Ministers | Guidance | The Welsh Ministers must publish guidance regarding factors that will be taken into account in deciding whether to approve a body or individual for the purpose of publication of the product of research conducted using information obtained under section 122 of the Draft Bill. | No procedure | Guidance is considered appropriate as it is intended to facilitate the application of primary legislation as part of the information, advice and guidance provisions. In particular the use of the data for research purposes. |
| 124 (1) | Commission for Tertiary Education and Research | Guidance | The Commission may issue guidance to any person about the provision of tertiary education or any matter connected with the Commission's functions. | The Commission must publish the guidance it issues. | Guidance is considered appropriate as this needs to be flexible and proportionate to the provider and related provision. |

| | | | | | |
|--------------------|---------------------|------|---|--|--|
| | | | The Commission must issue guidance to registered institutions or persons (who are not a registered institution) who provide tertiary education funded or secured by the Commission. | | |
| Schedule 1, para 5 | The Welsh Ministers | List | The Welsh Ministers must publish a list of trade unions representing the academic and non-academic tertiary education workforce for the purpose of seeking nominations for associate board members to represent the tertiary education workforce. | The Welsh Ministers must consult the Commission and appropriate persons. | A published list is considered appropriate to make the process open and transparent to those involved. |
| Schedule 1, para 7 | The Welsh Ministers | List | The Welsh Ministers must publish a list of bodies representing the interests of learners undertaking tertiary education in Wales for the purpose of seeking nominations for an associate board member to represent the needs of learners. | The Welsh Ministers must consult the Commission and appropriate persons. | A published list is considered appropriate to make the process open and transparent to those involved. |

| | | | | | |
|---------------------|--|-----------|---|--------------|---|
| Schedule 3, para 9 | Commission for Tertiary Education and Research | Direction | The Commission may direct a person designated to exercise its functions in respect of the assessment of the quality of higher education about the performance of those functions. | No procedure | Directions are considered appropriate to ensure the appropriate delivery of delegated functions, where the responsibility for a delegated function remains with the Commission. |
| Schedule 4, para 18 | The Commission for Tertiary Education and Research | Direction | The Commission may, in accordance with the school organisation code, give a direction to a local authority or the governing body of a foundation or voluntary school, to bring forward proposals in relation to school sixth forms. | Direction | A direction is considered appropriate to allow for the Commission to require proposals to be made in relation to school sixth forms by the local authority or governing body of a foundation or voluntary school. |

Part 2 – Regulatory Impact Assessment

Caveat:

The costs set out in the Regulatory Impact Assessment (sections 6, 8 and Annex 6), of this Explanatory Memorandum, were developed to accompany the introduction of the Tertiary Education and Research (Wales) Bill in 2020. As a result of Covid-19 the introduction of the Bill has been delayed and a draft Bill published for consultation. Sections 6, [8](#) and [Annex 6](#) therefore reflect the anticipated costs as they were estimated for introduction from 2020 onwards.

6 Regulatory Impact Assessment (RIA) summary

6.1 A Regulatory Impact Assessment has been completed for the Draft Bill and it follows below.

6.2 There are no specific provisions in the Draft Bill which charge expenditure on the Welsh Consolidated Fund.

Overview

- 6.1 All current costs for management and monitoring of the PCET sector fall ultimately to the Welsh Ministers; as the direct delivery agent and funder. This includes the duty to fund HEFCW.
- 6.2 The Draft Bill proposes that the Welsh Ministers have a duty to fund the Commission. This cost responsibility will include the costs associated with the creation of the Commission and the Welsh Government sponsorship and policy teams.
- 6.3 Ultimately, the Commission will be responsible and accountable for the exercise of their budget, including running costs, audit and accounts in the same way as any other sponsor body. These are set out in Schedule 1 to the Draft Bill.

Cost summary

| Running costs | Year | Cost |
|------------------------------|-------------|-------------|
| One-off administrative costs | 2020-21 | £70,000 |
| | 2021-22 | £274,000 |
| | 2022-23 | £4,398,000 |
| | 2023-24 | £3,026,000 |

| | | |
|--|------------------|--------------------|
| Total one-off transitional costs | 2019-24 | £7,768,000 |
| Per annum running costs for the Commission | 2023-24 | £20,076,000 |
| Less BAU | 2023-24 | £15,269,000 |
| Total one-off running costs | 2023-24 | £4,807,000 |
| Per annum running costs | 2024-31 | £20,145,000 |
| Less per annum BAU | 2024-31 | £15,269,000 |
| Recurrent additional running costs | 2024-31 | £34,132,000 |
| Total additional costs | 2019-2031 | £46,707,000 |

- 6.4 The creation of the Commission will cost an additional £46.7m in running costs over the appraisal period (2020-2031). More detail is provided in Chapter 8 costs and benefits.
- 6.5 One-off transitional costs include staff costs, board costs, redundancy costs, non-payroll staff costs (which include HR functions, legal fees, accreditation and membership fees etc.), IT capital costs, location costs, (including lease, charges such as connection costs), relocation costs and programme costs, which include the staff in the Commission and the Welsh Government.
- 6.6 These additional costs relate to the costs associated with creation of the Commission. They include the expected cost of public appointments and staff recruitment, redundancy costs, location costs, office furniture and fittings and IT equipment.

Indirect costs

- 6.7 These costs and benefits are unknown at present.
- 6.8 However, while they have not been quantified, information about the indirect impacts and consequences is set out in the Chapter 8 of the RIA for Costs and Benefits and in the Alma Economics Report at Annex 5.
- 6.9 Indirect costs (or cost to other bodies) including, but not limited to, the following: Higher Education Institutions in Wales; Further Education Institutions in Wales; Local Authorities; Open University; NUS Wales; work based learning providers; Quality Assurance Association (QAA; Estyn; Education Workforce Council; and the Independent Adjudicators Office.

6.10 These bodies and organisations may be affected by the provisions in the Draft Bill and hence, may also incur additional costs or cost savings. Further evidence and research is being carried out to determine additional indirect costs.

Covid-19 Pandemic

6.11 While the cost estimates set out in the RIA assume early introduction of key roles towards the end of 2020 and establishment of the new Commission from 2023, it is recognised that actual implementation will depend on the impact and duration of the Covid-19 pandemic. At the time of writing, it is unclear how long the current restrictions will remain in place.

Table A

6.12 The following table presents a summary of the costs and benefits for the Draft Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

| Draft Tertiary Education and Research (Wales) Bill | | |
|--|---|--|
| Preferred option: HEFCW would be dissolved and the new Commission established, with responsibility for oversight of learning and research across the PCET sector (see Chapter 7 for options appraisal and further details on each options). | | |
| Stage: Introduction | Appraisal period: 2020/21 - 2030/31 | Price base year: 2019/20 |
| Total Cost Total: £46,707,000 Present value: £38,396,000 | Total Benefits Total: £- Present value: £- | Net Present Value (NPV): -£38,396,000 |

Administrative cost

Costs: The total cost of £46.7m is the difference between business as usual costs of £167.2m and the costs with the creation of the new Commission of £213.9m, as demonstrated in the **cost summary** above. The costs have been calculated over a 10 year period. The bulk of the transitional cost consists of IT costs of £3.7m, (48.2%) which are likely to be capitalised. Other transitional costs include redundancy of £2m, a worst case scenario figure from KPMG’s work; £1m on location; £0.5m on early recruitment and salaries of key staff (CEO and Board Chair); and £0.5m other costs to include insurance, translation, legal costs and subscription fees. A large proportion of the costs can be offset against current expenditure for HEFCW and Welsh Government staff. On an annual recurrent basis, staff costs will total £12.5m, approximately 218 people, including 51 within the Welsh Government’s sponsorship team; IT costs, including continual system development, are forecast at £5.1m; location costs at £1m; Board costs at £0.4m; non-payroll staff costs of £0.5m and

other costs of £0.6m to include insurance, translation, legal costs and subscription fees. No non-cash costs have been included.

The cost impact of the provisions on other institutions is unknown.

| | | | |
|---|--|-------------------------------|-------------------------|
| Transitional: £7,768,000 | Recurrent: £206,148,000 £20,145,000pa | Total: £213,916,000 | PV: £179,927,000 |
| <p>Cost-savings: The creation of the new Commission will not deliver any cost savings. The creation of a new body will result in additional running costs necessary to support a new stand-alone organisation and the sponsoring team within the Welsh Government. The costs below represent the running costs of the 'do nothing' option with the Net administrative cost figure below representing the incremental cost of the new organisation.</p> <p>In summary, the Commission will cost an extra £46,707,000 (over the 10 year forecast period) to create and will have increased recurrent costs of £4,876,000pa over current arrangements.</p> | | | |
| Transitional: £0 | Recurrent: £167,209,000 £15,269,000pa | Total: £167,209,000 | PV: £141,530,000 |
| Net administrative cost: £46,707,000 | | | |

Compliance costs

Compliance costs are unknown.

| | | | |
|-------------------------|----------------------|------------------|----------------|
| Transitional: £- | Recurrent: £- | Total: £- | PV: £-- |
|-------------------------|----------------------|------------------|----------------|

Other costs

Other costs are unknown.

| | | | |
|-------------------------|----------------------|------------------|---------------|
| Transitional: £- | Recurrent: £- | Total: £- | PV: £- |
|-------------------------|----------------------|------------------|---------------|

Unquantified costs and disbenefits

Unquantified costs and disbenefits are unknown.

Benefits

There are a number of benefits associated with introducing the Bill. The cost benefits are unknown. The benefits outlined below are most likely to be realised in the medium and longer term.

- Consistency of approach to the regulation of institutions across the PCET sector through a common purpose.
- Increase in learner participation rates and more post-16 learners progressing to higher learning [vocational and academic] and/or well-paid employment.
- Reduction in attainment and outcomes gaps (employability and onward progression) between learners from poorest backgrounds¹² and other potentially marginalised groups¹³ and their peers.
- Integrated and improved evidence base – providing better quality, comparable PCET-wide data and information to inform policy development, and decision making at all levels [Welsh Government, providers, employers and learners].
- A more coherent and consistent funding model across the PCET sector.
- Improvement in the financial health of PCET institutions in Wales.
- Better alignment between funding and the cost of the same provision delivered across PCET system.

Total: £-

PV: £-

Key evidence, assumptions and uncertainties

A key cost driver is the location strategy to be adopted by the new organisation. This could have a significant impact on the number of staff who transfer across to the new organisation, as well as the locations costs themselves.

- No inflationary factors or NPV has been applied to our forecast figures
- There is considerable uncertainty around the total cost of creating bespoke data collection software for the Commission, currently £500,000 has been included, but this may be incorrect by a factor of 10.
- Given the number of uncertainties around the creation and operation of the Commission, a variance rate of around 30% on the forecast figures should be considered.
- Detailed assumptions can be found in Annex 6.

¹² Currently Welsh Index of Multiple Deprivation WIMD - Fourth and Fifth Quintiles. This is subject to change - future measure of deprivation is being developed.

¹³ (E.g. BME; young carers; care leavers, learners with additional learning need and mental health issues).

7. Options

Part 1: Key objectives for reform

- 7.1 This first section of chapter 7 sets out a structured appraisal of the long list of options for approaching reform (see chapter 3 for a detailed rationale for reform) to the post compulsory education and training (PCET) sector in Wales that were considered by Welsh Government Ministers in December 2016 and were presented for consideration by stakeholders during two consultations exercise¹⁴. An initial options appraisal against a set of nine key objectives for reform was undertaken in September 2016 by senior Welsh Government officials.
- 7.2 Following an extensive exercise to refine the vision, mission and goals for the Commission and the development of a benefits realisation plan (BRP) the nine key objectives were updated to reflect this process and new and significant challenges facing the PCET sector which were not in play at the time of the original options appraisal.
- 7.3 There are five high level goals and 11 high level objectives with associated benefits. These benefits will be discussed in detail in Chapter 8.
- 7.4 The goals for the Commission are consistent with the Welsh Government's priorities for post compulsory education and training. They will deliver a system that is cognisant of the six performance domains recommended in 'Maximising the Contribution of the Post-Compulsory Education and Training System to the Achievement of Welsh National Goals'¹⁵, and contribute directly to the goals set out in the Wellbeing of Future Generations Act¹⁶. The high level goals are for:
- A PCET system that strengthens Wales' economic wellbeing and foundations, encourages enterprise, responds to employer needs and enables a relevant and growing research base;
 - A system that enables learning, assessment and progression through the medium of Welsh;
 - A learner focused system that promotes lifelong learning and delivers effective choice and guidance, and equitable access to appropriate learning pathways and opportunities;

¹⁴ The Welsh Government launched a White Paper – 'Public Good and a Prosperous Wales – Building a Reformed PCET system - in June 2017 setting out high-level proposals for reform of the PCET sector. This was followed by the technical consultation– 'Public Good and a Prosperous Wales – the next steps' which ran from May to July 2018.

¹⁵ A review of systems for monitoring and improving the effectiveness of post-compulsory education in Wales 2018 Report Professor Harvey P. Weingarten : <https://gov.wales/review-systems-monitoring-and-improving-effectiveness-post-compulsoryeducation-and-training-pcet>

¹⁶ Wellbeing Goals <https://gwedhill.gov.wales/topics/peopleand-communities/people/future-generations-act/?lang=en>

- A high resilience, integrated, sustainable and responsive system that promotes collaboration, excellence; and regulates with autonomy; and
- A system supported by collaborative and engaged PCET providers that enhance the communities they serve.

7.5 The high level objectives for the Commission, are for the PCET system:

- To be responsive to employer needs and address skills gaps
- To improve research institutions ranking¹⁷, reputation and research funding.
- To improve apprenticeship opportunities.
- To raise standards for all; improving learner participation, progression, performance and outcomes.
- To improve the curriculum offer.
- To improve the learner experience and capture the learner voice.
- To improve PCET reputation, agility and direction.
- To introduce an improved, compliant and effective PCET wide data collection, analysis and dissemination system that ensures timely, accessible and relevant information about PCET in Wales is available for all who need it.
- To reduce unnecessary course duplication and competition across PCET.
- To improve the coherence and consistency of financial and performance monitoring, and quality assurance.
- To improve community use of PCET facilities and greater connectivity.

Structured approach to options appraisal

7.6 An options appraisal workshop and a series of meetings with key senior Welsh Government officials from Higher and Further Education Divisions, Education Directorate, the Chief Scientific Advisors Office and Legal Services Department, and the Minister for Education's Special Advisor, were undertaken in September 2019 to inform the Regulatory Impact Assessment (RIA) of the Draft TER Bill. The process for re-appraising selected options for reform is outlined below.

7.7 The options appraised (from the 'Business as Usual' (BAU) option and the preferred option (resulting in the bringing forward of the Draft Bill) were:

Option 1: Business as usual.

Option 2: Consolidation across the sector, and use of existing powers to modify the duties and responsibilities of HEFCW.

¹⁷ Currently defined by REF (Research Excellence Framework) ranking.

Option 3: Adopting the approach developed in England.

Option 4: Centralisation:

- **4a:** Retaining all FE/Apprenticeship/maintained sixth form functions within the Welsh Government and transferring all HEFCW functions to the Welsh Government.
- **4b:** As Option 4a, but with a separate body responsible for research, namely, Research and Innovation Wales (RIW).

Option 5: Establishing a small scale Tertiary Education Authority (TEA) to absorb most of HEFCW's functions and take on responsibility for certain other functions.

- **5a:** Welsh Government would retain responsibility for FE/Apprenticeships/maintained sixth form policy, planning funding and contracting. The TEA would be established to absorb most of HEFCW's functions and take on responsibility for regulation and governance of FE, Apprenticeships, some aspects of maintained sixth form delivery and HE. It would also be responsible for securing external inspection for all of the post16 sectors, supporting leadership development and continuing professional development (CPD), dealing with student complaints/appeals, monitoring financial health and research funding.
- **5b:** As Option 5a, but also giving the TEA responsibility for:
 - Developing labour market intelligence (LMI) and Regional Skills Partnership (RSP) functions;
 - advising the Welsh Government on the future strategy for PCET.
- **5c:** As Option 5b, but with a separate body, Research and Innovation Wales, to oversee research.

Option 6: Establishing a large scale Tertiary Education Authority (the Commission) to take on all of HEFCW's functions and other functions across the PCET sector.

Options Appraisal and Evaluation Process

7.8 All options were cross referenced and evaluated against the following agreed set of high level objectives outlined above (see paragraph 7.5). **Scoring Criteria**

7.9 Each option was evaluated and scored in accordance with the following scale:

| Score | Criteria |
|-------|--|
| -1 | Option would result in a worsening / weaker position |
| 0 | Option would not achieve the objective / i.e. unlikely to improve upon existing arrangements. |
| 1 | Option would partially achieve the objective / i.e. likely to improve upon existing arrangements but significant shortcomings and/or concerns remain. |
| 2 | Option would achieve the objective for the most part / i.e. likely to improve upon existing arrangements and only minor shortcomings and/or concerns remain. |

7.10 All scores were recorded and following the workshop average scores were produce. A summary table is presented at the end of this section (see table 7.1).

Benchmarking and Impact

7.11 In order to normalise the scores and to measure the potential impact of each option, the 'do nothing' option (which preserves Business as Usual) is used as the benchmark position. As such the do nothing option is scored as zero on all counts.

Classification

7.12 Upon completion of the appraisal / scoring process each option was classified as follows:

Discounted, Preferred, or Possible

7.13 The classification of each option is underpinned by supporting rationale, drawing on a detailed analysis of the potential advantages and disadvantages of each option discussed at length and reviewed in each workshop. A comparison of the anticipated benefits of option 6 (establishing the Commission) with the potential benefits arising from other options was also presented and discussed. A detailed discussion of the benefits arising from the establishment of the Commission is provided in chapter 8 of the RIA.

7.14 The outcomes for appraisal purposes identified

- The extent to which the options support the achievement of the Welsh Government's high level objectives for the Commission: and consider
- Whether the options accord with/ promote the Well-being of Future Generations (Wales) Act 2015 - Key Goals; and the performance

domains recommended in 'Maximising the Contribution of the Post Compulsory Education and Training System to the Achievement of Welsh National Goals'- Weingarten Report, (Annex B).

- 7.15 Following the completion of the options appraisal process options 2, 3 and 5 and their sub-options were discounted due to a variety of factors alone or in combination. These were: scoring low against the high level objectives, not providing benefits across the whole PCET sector or being undeliverable i.e. there would be no political and/or stakeholder support.
- 7.16 Therefore, three options for approaching reform to the PCET sector in Wales are outlined below; business as usual, centralisation and the setting up of the Commission, the advantages and disadvantages of each are presented.

Option 1: Business as usual (Discounted)

- 7.17 This would involve retaining all current structures and functions as they are.

Description of the key elements of this option

- 7.18 Oversight of PCET in Wales is the responsibility of the Welsh Government and a Welsh Government Sponsored Body (WGSB) called the Higher Education Funding Council for Wales (HEFCW). The PCET sector includes sixth forms, further education (FE), higher education (HE), work-based learning (WBL) and adult community learning (ACL).
- 7.19 In recent years there has been a change in the PCET policy landscape. There has been a significant increase in the number of students, providers and programmes in Wales and an emphasis on mergers, to improve strategic management, increase efficiency and enhance quality.
- 7.20 A range of organisations, some Welsh-based and others operating within the English or UK post-compulsory sector, oversee and monitor governance, regulation, quality assurance and performance review. The organisations with key responsibilities are the Welsh Government, HEFCW, Estyn and the Quality Assurance Agency (QAA). Local authorities also have a role with regard to sixth form education. Thus, they may make proposals to establish or remove sixth forms, which are subject to approval by the Welsh Ministers.
- 7.21 The Welsh Government has responsibility for policy, strategy and funding of post-compulsory education, including sponsorship of HEFCW. FE has been directly governed and funded by the Welsh Government since 2006.
- 7.22 Although broad HE policy is set by the Welsh Government, it is delivered through HEFCW. HEFCW is a WGSB established under the Further and Higher Education Act 1992. It is responsible for funding higher education in Wales and for administering funds made available by the Welsh Government to support education and research at universities and teaching by the Open University in Wales. It also funds higher education courses at FEIs. With effect from 1 August 2015, HEFCW became responsible for certain aspects of the new regulatory system for higher education, established by the Higher

Education (Wales) Act 2015. Full implementation took place from 1 September 2017.

- 7.23 A framework document between the Welsh Government and HEFCW sets the context within which HEFCW operates and the terms and conditions under which it receives funds from the Welsh Government. The annual Ministerial remit letter sets the high level strategic priorities for the Council each year. Restrictions contained within HEFCW's founding legislation limit the ability of Welsh Ministers to direct the Council except in the limited circumstances specified in the Higher Education (Wales) Act 2015. The remit letter is therefore the Welsh Government's request to the Council to focus on specific policy aims. The letter is merely advisory, in strict statutory terms, the Council is not bound to comply.
- 7.24 Outside its statutory regulatory role, HEFCW relies on terms and conditions of funding to influence institutional behaviour. This funding amounts to approximately 11% of the total annual budget of Welsh HEIs. However, changes in the HE funding regime have reduced the level of direct funding over which HEFCW has responsibility. As more funding is paid directly to institutions in the form of tuition fees, HEFCW's influence has diminished. This has been partly addressed in relation to widening access, quality assurance and financial sustainability, through implementing the Higher Education Wales Act. However, it will require a strong partnership approach if the Welsh Government is to achieve its broader policy aims. While the statutory duty for quality assessment of higher education in Wales lies with HEFCW, changes are being made that may impact on delivery.

Quality Assurance

- 7.25 Estyn, the Inspectorate for Education and Training in Wales, is responsible for inspecting quality and standards in education and training providers, including schools, further education institutions (FEIs), WBL and ACL providers. Sixth form provision is inspected by Estyn as part of whole school inspection. As they are not inspected independently, specific judgements on the quality of sixth forms are not available separately to the overall judgements on schools.
- 7.26 The Quality Assurance Agency (QAA), operating under a service level agreement (SLA) with HEFCW, has oversight of HE programmes delivered in FEIs, as well as within universities. HE delivered by FEIs is subject to QAA Review. This means that some institutions fall within the remit of both Estyn and the QAA.
- 7.27 The Welsh Government is responsible for planning policy and funding Further Education, Sixth forms, Apprenticeships and employability programmes and Adult Learning. Estyn inspects quality and standards (in the case of sixth form, it does this as part of whole school inspection).
- 7.28 Local authorities are responsible for planning sixth forms, improving standards and taking action in the case of underperformance.

Research

7.29 Currently, research operates under a dual funding system. Research Councils provide hypothecated, competitively awarded funding, on a UK-wide basis, for individual projects. Funding is also provided by an un-hypothecated block grant (Quality Related, QR) which is allocated to Universities to support research staff and infrastructure. This is allocated on the basis of performance in the Research Excellence Framework (REF¹⁸) conducted every 6-7 years. QR funding is effectively devolved and is currently administered by HEFCW.

7.30 HEFCW receives funds from the Welsh Government for research, innovation and engagement, the bulk of which is used to fund QR. HEFCW funds only 3* and 4* research, as measured by REF. HEFCE distributes QR funding according to a similar, though not identical, QR-based formula.

Key advantages of Option 1

7.31 The Hazelkorn¹⁹ report found that:

- Wales has a functioning PCET system, and a commitment to strengthening its role and contribution to society and the economy, enhancing quality and participation;
- the current system broadly meets student and societal needs with the current approach working to some extent in that learning is being delivered in the PCET sector and the overall quality of performance is good;
- coherence between 6th forms, FE and HE has improved; and
- there are examples of good to excellent relationships between HEIs, FEIs, WBL and ACL providers around specific initiatives – although this could be described as episodic.

7.32 HEFCW's role as an intermediate body is acknowledged by some stakeholders as beneficial. This option is understood by providers and intermediaries and certain sectors may prefer to maintain the status quo. Maintained sixth forms are well integrated within compulsory education.

7.33 This is a low cost option - there are no additional upfront reform costs. This would be subject to the current system being able to mitigate any financial impacts that may result from emerging operational challenges. (See paragraphs 7.46 to 7.65 below and chapter 3 of the Explanatory Memorandum for more detail).

7.34 An approach is already in place to drive forward quality within the schools sector, which is expected to continue. With the ongoing developments in the

¹⁸ Research Excellence Framework see <https://www.ref.ac.uk/about/what-is-the-ref/>

¹⁹ Hazelkorn, E. 2016. [Towards 2030: A framework for building a world-class post-compulsory education system for Wales](#)

curriculum, the outputs of Successful Futures²⁰ will be taken forward into the key stage 4 and key stage 5 curriculum and teaching practice.

Key Disadvantages of Option 1

7.35 The purpose and intended effect of the Draft Bill are explained in chapter 3 on the policy objectives and specific disadvantages of not reforming PCET are explained in relation to intended policy effect of the Draft Bill. However, the key risks are outlined here:

Complexity and fragmentation

7.36 Overall, the PCET sector is too complex, with overlapping organisations and duplication of resources and programming including complex governance, regulation, quality assurance and performance arrangements.

7.37 There is a lack of collaboration between different parts of the PCET sector to meet learner needs. FEIs and HEIs are often focused on their own agendas, with limited evidence of genuine working relationships between them²¹. There is a risk that failure to reform will not address the lack of joined-up planning between sixth forms and FE.

7.38 Consequently resources could be wasted on regulation, quality assurance and performance management systems which, across the sector, are diverse and complex and ultimately prevent improvements in quality of provision and the learner offer. With no single organisation with an overview and/or responsibility for the entirety of the map of PCET provision there could be gaps in provision at geographic and subject level.

7.39 Maintaining the status quo would perpetuate the long-standing fragmentation of the post-compulsory education and training system, making it significantly more difficult to implement Prosperity For All and the Economic Action Plan for Wales.

7.40 There is unhelpful competition between sectors seeking to attract the maximum number of learners onto their courses regardless, in some cases, of whether they are in the learners' best interests. This leads to duplication and/or gaps in provision. If steps are not taken to reduce unhelpful competition between providers, wasteful duplication may persist, preventing efficient use of public money and preventing resources being targeted towards provision that is needed/priority areas.

²⁰ Curriculum for Wales 2022 seeks to allow for a broadening of learning, supporting settings and schools to be more flexible in their approaches, and provides education leaders and practitioners with greater agency, enabling them to be innovative and creative. At the heart of this are the four purposes of the curriculum, setting out the aspirations for all children and young people by the age of 16, enabling them to be successful learners, who play an active part in their community and wider society, and who are prepared to thrive in an increasingly complex world. For more information see <https://hwb.gov.wales/draft-curriculum-for-wales-2022/a-guide-to-curriculum-for-wales-2022/>

²¹ Hazelkorn

- 7.41 There is insufficient connectivity between provision and the identification of skills gaps for future Welsh societal, cultural and economic development needs. Without reform to the way skills gaps are identified and provided for, there is a risk that the burden upon employers of unfilled vacancies and suboptimal productivity resulting from an inadequate labour pool, stands to worsen^{22,23} This will create negative consequences for prosperity and secure employment within our communities.
- 7.42 There is disconnect and discontinuity between pre and post-16 (16-19) curriculum planning in schools and wider. Current arrangements are not effective and not sufficient to meet community and post 16 needs. Although curriculum reform is happening, without consolidation of the PCET sector it may not deliver the required improvements in the 16-19 sphere – ergo overall quality of provision will not improve.
- 7.43 There is an inconsistent approach to assessment, evaluation and performance measures across the PCET sector, which causes confusion within schools (see consultation document). Inconsistency is also apparent in terms of practitioner standards (i.e. Qualified Teacher Status).
- 7.44 Issue of sub optimal course provision in both sixth forms and FEIs may continue to remain largely ignored.

Levers to influence

- 7.45 HEFCW levers are regarded as insufficient to influence universities. In recent years, changes in funding arrangements for HE have reduced HEFCW's ability to encourage HEIs to deliver Welsh Government priorities because more funding is now paid directly to institutions, in the form of tuition fees. The new regulatory system set up under the Higher Education (Wales) Act 2015 has helped to mitigate the situation, at least with widening access, quality and financial sustainability. Despite this, there have been real challenges for the Welsh Government in forging an effective partnership with HEFCW and the HE sector in driving forward its priorities and ensuring accountability for the funding it provides.

A strategic approach

- 7.46 The sector may not be well placed to reflect strategic Welsh Government objectives aimed at prosperity for all, or to respond to challenges arising from developments in England and elsewhere.

²² City & Guilds (June 2018), People Power: Does the UK have the skilled people it needs for the future? City & Guilds, London: <https://www.cityandguildsgroup.com/research/people-power-does-the-uk-economy-have-the-skilled-people-it-needs-for-the-future>

²³ OECD (2017), Getting Skills Right: United Kingdom, Getting Skills Right, OECD Publishing, Paris, <https://doi.org/10.1787/9789264280489-en>.

7.47 At the time of writing, the sector is facing significant challenges, particularly in the context of: **Augar**²⁴; **Brexit**, increased **competition** between providers for students due to the removal of the cap on student recruitment in England, **Defined Benefit Pension** charge increases in HE, **Employability** - a growing emphasis by parents, employers and devolved tax authorities on the employment prospects of college and university graduates and the state of university **finances**.

7.48 The combined and cumulative effect of these challenges has given rise to concerns about the current and future financial health of PCET institutions in Wales. The Commission, when established, will have improved systems for monitoring overseeing the PCET system, and system-wide planning and funding levers at its disposal which will mean it is better placed to identify emerging issues and to respond in order to help mitigate the risks of institutional failure and consequent financial risks for students, sponsors, and Welsh Government.

Augar Review

7.49 The UK Government's review of Post-18 education and funding, published on 30 May 2019, is likely to have a significant impact on the financing arrangements for tertiary education in Wales for years to come. The review proposed a reduction in the full-time undergraduate tuition fee, with top-up grant funding to institutions for economically important subjects (broadly interpreted as STEM – Science, Technology, Engineering and Mathematics). Other key recommendations were:

- extending the student loan repayment period from 30 years to 40 years
- reducing the interest charged on student loans while students are studying
- capping the overall amount of repayments on student loans to 1.2 times their loan
- reducing the income threshold for student loan repayments from £25,000 to £23,000
- reintroducing maintenance grants of £3,000 for disadvantaged students
- introducing maintenance support for level 4 and 5 qualifications □ a first free full level 2 and 3 qualification for all learners

7.50 The UK Government's response to Augar has been postponed several times throughout 2019, mainly due to Brexit and the General Election. A response was most recently anticipated alongside the budget in March 2020, but has again been postponed until the spending review later in the year.

²⁴ Augar Report 'Post-18 Review of Education and Funding' published 30 May
<https://www.gov.uk/government/publications/post-18-review-of-education-and-funding-independent-panel-report>

- 7.51 Welsh Government would not necessarily have to operate the same fee regime and delivery model as England, but policies operated by the UK Government determine the policy parameters eligible for student loan cover from HM Treasury. A top-up teaching grant funding regime for institutions and maintenance grants for students would be expected to result in a Barnett formula consequential for Welsh Government. The implementation of these recommendations would have a differential impact across the HE sector in Wales, reflecting variation in subject mix and the extent of provision at a foundation level. Most institutions could stand to receive a modest financial benefit under the proposed tuition fee regime, but one or two could be exposed by their low levels of STEM provision and high numbers of full-time enrolments at foundation level. The key risk for all institutions is the extent to which any cut in tuition fees is accompanied by the recommended grant funding.
- 7.52 The provisional analysis of the implications is based on several assumptions relating to unknown details of the proposals. It is unlikely any policy change could be implemented before academic year 2021/22. Assurances have been given by UK Government that a full consultation process is planned (Green Paper and White Paper), followed by a process of managed change. In addition, the capacity for Student Loans Company to implement policy changes not already confirmed is severely limited. In the broader context, the likely timing of any changes would coincide with the start of an upturn in the 18-year-old demographic trend, which may provide opportunities for institutions to increase their full-time undergraduate recruitment. In addition, increases in postgraduate and part-time undergraduate provision are anticipated, following student finance reform, which are also making more Welsh Government funding available to the HE sector.

Brexit

- 7.53 There are concerns and uncertainties about how Brexit might affect the finances of universities, colleges and schools. European Structural funds provide close to £65m per annum for higher education institutions each year in Wales and more than £50m for apprenticeships and college based courses. This is not to mention the sums achieved from Horizon 2020, EU student recruitment and loan finance through the EIB.
- 7.54 The implications of Brexit for student recruitment and tuition fee income are dependent on several factors. Research on the determinants of international demand for UK higher education²⁵ has provided an appropriate Elasticity of Demand²⁶ when considering the implications of Brexit for tuition fee income to universities in Wales. The research calculated its Elasticity of Demand on HESA data for 2014/15; there has been no repeat of the research for more

²⁵ London Economics: <https://londoneconomics.co.uk/blog/publication/determinants-internationaldemand-uk-higher-education-january-2017>

²⁶ Elasticity of Demand is how much demand from EU students would decrease if they were supported less and/or asked to pay more (charged full international fees)

recent HESA data. (That research also considered Sterling depreciation as a consequence of Brexit, which they recognised would increase demand from international students. It is likely that those effects are now in the past - if anything Sterling appreciation might now be more likely).

- 7.55 Using 2017/18 data, let us consider outcomes in the absence of any special status for EU students after the transition phase (but assume current EU students are allowed to complete on current terms). 'Softer' outcomes are possible with a 'softer' future relationship with the EU.
- 7.56 When considering tuition fee income alone, the assumptions indicate a positive outcome for three of the universities in Wales but a negative outcome for the other five: 0.1% of total expenditure at Trinity Saint David, 1.8% at Aberystwyth with Bangor, Cardiff and University of South Wales in between. The shortfall is likely to come in over a number of years (mainly 3 years) which will make mitigation easier. Tuition fee income could be sustained by the recruitment of EU students at closer to the pre-Brexit rate, growth in recruitment of non-EU international students, more home students as indicated by demography, more postgraduate provision as indicated by recent trends or reforms changing Welsh Government funding available to the sector.
- 7.57 For universities other than Glyndwr, but for Bangor, Aberystwyth and Swansea in particular, it is important that research funding is pre-identified to replace EU research funding as it dries up, plus it would be particularly helpful for those institutions if an exchange programme similar to Erasmus could be pre-identified to replace Erasmus.

Competition

- 7.58 The removal of the cap on student recruitment in England and the reduction in the overall number of school leavers in recent years has increased the competition for students between providers of higher education, further education and apprenticeships. Several universities in Wales have done well in this new environment, where their courses are offered in areas of growing attraction to students, including biological sciences, engineering and technology, social studies and subjects allied to medicine. For some institutions, increased competition has created recruitment challenges.
- 7.59 There has been a general downward trend in the number of 18-year-olds in Wales since 2012 (with the exception of 2015). Over the same period, the number of new entrants into full-time higher education has generally been increasing. The annual growth in new full-time entrants has slowed in the last couple of years but 2018/19 figures showed the increase continued. New entrant numbers could decline by between 2% and 4% annually over the next few years, until the 18-year-old population begins to increase from 2021/22.
- 7.60 The demographic upturn will begin to filter in to the wider tertiary education cohort (starting with 16-year-olds) population from 2019/20. By the time it begins to influence higher education intake, it could coincide with the implementation of any reforms arising from the UK Governments post-18

education review and/or the potential end of any Brexit transition or withdrawal arrangements.

Employability

- 7.61 Probably the most important for most students, parents and sponsors of tertiary education in Wales, is the employment prospects of graduates. Here there are lots of challenges for the future. Artificial intelligence and digitisation, de-carbonisation and an ageing society are going to mean the need for new skills, new combinations of skills, education throughout peoples' lives and a greater focus on provision being available close to home and at work. The current pattern of demand for jobs from employers places a premium on engineering, data analysis and ICT, construction and professional health care. Unfortunately, these are not areas where universities, colleges and apprenticeship providers across the UK have been expanding their provision quickly enough to meet these employer demands.
- 7.62 The proportion of first degree graduates from universities in Wales in work or further study, six months after qualifying in 2016/17, ranged between 90% and 99% at an institutional level. This range is consistent with those for other UK nations. At a UK level, employment rates are known to vary according to other variables, particularly the subject of study. However, not all graduates are employed in jobs requiring degree level qualifications and employers report unmet demand for certain skills and qualifications within the labour market.
- 7.63 Without reform to the way skills gaps are identified and provided for, there is a risk that the burden upon employers of unfilled vacancies and sub-optimal productivity resulting from an inadequate labour pool, stands to worsen. This will create negative consequences for prosperity and secure employment within our communities.

State of university finances

- 7.64 The financial position of the HE sector in Wales has improved significantly in cash terms since 2012, and has been relatively stable in real terms. Although income from funding body grants decreased by around £250m between 2010/11 and 2017/18, income from full-time tuition fees increased by around £450m. Overall, income to the sector has increased by around £325m over that period, and is projected to continue to increase into the future under current funding arrangements. Income to the HE sector in Wales was £1.57bn in 2017/18, an increase of 5% on the previous year. Expenditure by the HE sector has, however, also been increasing and has slightly exceeded income in the most recent two academic years (2016/17 and 2017/18).
- 7.65 Institutions continue to face pressures arising from uncertainties over future income levels and increasing expenditure. The UK Government's ongoing policy of austerity continues to impact Welsh Government budgets, while more direct concerns over recruitment levels, EU funding, uncertainty around the future of the University Superannuation Scheme and the potential impact of

our reforms to the PCET sector all combine to create pressure within the sector. Welsh Government has given assurances that the funding provided to the HE sector, via HEFCW, will continue to increase in each year of this government term, as the reforms to higher education funding and student support are phased in.

Learner pathways

- 7.66 The present system is insufficiently learner focused – with a lack of clear learning and career pathways across the PCET sector for learners/students of all ages into and through PCET.
- 7.67 Learners do not have the information and advice they need to make the best learning and career choices. The accessibility of the information and advice available is also not reflective of the expectations of a digital age. Significant changes have been implemented and improvements made in recent years, although there is still more work to be done.
- 7.68 Without improvements to learner pathways, particularly between vocational, technical and academic routes, some learners will be prevented from achieving their potential and the much-needed increase in the proportion of workers qualified to a high level will not be realised.

Research and Innovation (R&I)

- 7.69 In Wales, R&I activity is relatively small scale; whilst research performance has improved, capacity for improvement remains limited. Coordination mechanisms and capacity building have taken place and are evolving, but there is more work to do. Current arrangements do little to facilitate R&I becoming a more integral part of PCET provision – particularly at the teaching level because of the disparate nature of the delivery structures.
- 7.70 Without the powers or structures in place to develop a strategic approach for coordination of research funding in Wales it will be more difficult to engage and collaborate effectively with the new UKRI body on behalf of Wales. Within government, coordination is taking place but a structural change could help to create clear responsibility for channelling and steering government efforts and communication with UKG. UKG invests less in Welsh R&I than in the rest of the UK. The EU has filled a gap in capacity-building but this is now under threat. Wales is engaging strongly with the emerging place based agenda in the UK and is establishing a common understanding of R&I strengths in order to communicate better externally.
- 7.71 Wales already has research capacity (numbers of researchers and quantity of research funding awarded annually) which is proportionately much lower than in England and there is an opportunity for a more strategic approach to be developed which will help avoid losing potential research funding coming to Wales at a time when there is well-corroborated evidence that our capacity is already too low.

7.72 Additionally, the level and pace of R&I decision making under current arrangements is potentially less responsive to changing world needs than if a new external body over which greater powers are exercisable by Welsh Government, thus facilitating greater coordination and alignment between Government and the new body on R&I matters. The recent Reid report: 'Review of Government funded research and innovation in Wales' highlights the need for greater coordination and alignment between the disparate structures that support R&I in Wales.

Data collection and knowledge sharing

7.73 The June 2018 Weingarten Review of Systems for Monitoring and Improving the Effectiveness of Post-compulsory Education in Wales²⁷ found that: *'The most critical and serious deficiency in the current system..., is its inability to provide government with what it most needs to know – specifically, a clear holistic picture of the contribution of each institution towards the achievement of the most important Welsh priorities and how the PCET system, overall as a system, is performing and how well it is advancing the country towards its desired objectives. Without this information, neither the government nor the institutions can make informed or evidence-driven decisions about the effectiveness of their policies or programs'*.

7.74 The current absence of an effective PCET wide data collection, analysis and dissemination system will lead to a sub-optimal evidence base to inform policy development and decision making at all levels and lead to missed opportunities to improve quality and focus on learner destinations.

Summary

7.75 The advantages of this option are outweighed by disadvantages. The sector is facing significant challenges, particularly those outlined under a strategic approach, and, as noted by Professor Hazelkorn, *'a step change is needed'* and difficulties may arise in explaining why Wales is maintaining the status quo when England has made substantial changes.

7.76 Maintaining the status quo would perpetuate challenges for the Welsh Government in forging a partnership with HEFCW and the HE sector to drive forward its priorities and ensure accountability for its funding. The need for an independent regulator for Wales has strong support, as evidenced by the technical consultation response, therefore business as usual is not an acceptable option.

7.77 Business as usual will perpetuate fragmentation, complexity and lack of joined up strategic planning and will not provide a clear line of sight across the whole PCET

²⁷ Weingarten, H.P. 2018. A review of systems for monitoring and improving the effectiveness of post-compulsory education and training (PCET).

sector. Coherence and consistency of approach is essential for improvement. This option has been discounted and is therefore presented only as a counterfactual to the two options discussed below.

Option 4. Centralisation, retaining all FE and sixth form functions within Welsh Government and transferring all HEFCW functions to Welsh Government (possible)

Description of the key elements of this option

- 7.78 This would result in no change for PCET sectors dealing with FE, Apprenticeship and maintained sixth form provision. It would result in significant changes for the HE sector as it would transfer HEFCW's current responsibilities for regulation, funding, and quality assurance etc. to Welsh Government.
- 7.79 As Welsh Government would have direct control over strategy, planning and funding, it would strengthen Welsh Government leverage over the PCET sector (and HE sector in particular) as a whole.
- 7.80 This option has two variants:
- 4a:** Retaining all FE/WBL/sixth form functions within the Welsh Government and transferring all HEFCW functions to the Welsh Government.
 - 4b:** As Option 4a, but with a separate body responsible for research, namely, Research and Innovation Wales.

Key advantages of Option 4a and 4b

- 7.81 There would be increased Welsh Government control over strategic direction, with Welsh Government more able to drive collaboration across the sector and ensure a more coherent and consistent approach in the interests of learners, could lead to improved learner pathways, more seamless transitions and better information, advice and guidance. It could also help eliminate needless differences throughout the PCET sector through greater simplicity and the removal of layers of bureaucracy.
- 7.82 Centralisation would bring PCET planning and funding together in the same organisation – thus creating (as with option 6) a single line of sight, albeit within Welsh Government as opposed to being at arm's length. As such, if delivery arrangements for this option were designed along similar lines to the Commission, similar benefits could potentially be realised (see chapter 8).
- 7.83 This approach would allow greater Welsh Government protection of institutions against the potential challenges of the more market driven approach in other parts of the UK.
- 7.84 There would be the potential to manage all research funding centrally, through a co-ordinating body that is able to defend Welsh interests at the UK level, under a strong, clear and well-formulated national research strategy. The strategy would link the research needs of the economy, society and government with the research capacity within the HE and the industrial research base. There could be economic benefits of R&I being a part for everything that happens – including at a teaching level.

Key disadvantages of Options 4a and 4b

- 7.85 The key risk is in relation to institutions' Office for National Statistics (ONS) classification. All institutional units within an economy are classified by the ONS, against a number of indicators, to one of six sectors. Currently, FEIs and HEIs are classified as NPISH (Non-profit Institutions Serving Households) which places them within the private sector. Any changes that increase the level of control exerted by the Welsh Government over these bodies could create a significant risk that the ONS would look to reclassify them, for National Accounts purposes, as public sector organisations. **Such a move would have significant consequences for the Welsh Government and for institutions. In particular, surpluses and losses would become Welsh Government funds and would have to be managed within Welsh Government education budgets.**
- 7.86 Centralisation / ONS classification may also have implications for the treatment of capital – adversely impacting the Welsh Government capital budget, and could significantly affect monies allocated to Welsh Government from UK government
- 7.87 The extent to which the ONS risk applies to this option is likely to depend on how much control Welsh Government would have over HEIs.
- 7.88 Primary legislation would be needed to dissolve HEFCW, transfer its functions and set up a new research body, or give relevant powers to an existing body.
- 7.89 A centralisation arrangement such as this is likely to be less flexible and responsive than an arm's length body due to the historic restraints of the machinery of government. This option also has the potential to draw the Welsh Government into the minutiae of institutions' day to day operations. It would not be an efficient use of a Minister's time to be drawn into day-to-day operations of the HE sector.
- 7.90 If option 4a (full centralisation) were adopted the level and pace of decision making in R&I would potentially be less responsive to changing world needs than an external body. This would lead to greater insularity due in part to the lack of external strategic level challenge and machinery of government limitations – reducing the government's ability to be sufficiently agile and responsive to the needs of industry. It would also reduce the ability to position R&I as a distinctive face to engage with UK Research and Innovation. The Chief Scientific Adviser for Wales (CSAW) is of the view that research funding should be routed through a body that is independent of government, but has close engagement with the Welsh Government at a strategic level (so option 4b).
- 7.91 Ultimately a Bill to progress this options is unlikely to pass due to strong opposition and lobbying on behalf of the HE sector. There would be strong opposition by the HE sector to the removal of an 'arm's length' body, particularly because of concerns about institutional autonomy and the Haldane principle. (The UKRI says that "Central to public funding of research in the UK

is the 'Haldane Principle'. It ensures that decisions about which research projects to fund are made by experts in the field. However, as government answers to the tax-paying electorate, it is government that sets the overall strategic direction that research should take. The intention is that excellence is the main criterion for investment in research and that it is conducted in the best interests of the country” those aims could, however, be maintained with an independent committee reporting to the Minister, with a well-respected Chair – or an independent advisory board set up via legislation).

Summary

7.92 The advantages of this option are outweighed by the disadvantages. Whilst Centralisation could potentially realise similar benefits to the creation of the Commission, ultimately the potential risks related to ONS reclassification and resistance from the HE sector mean that this option has been discounted.

Option 6. Establishing a large scale Tertiary Education Authority, to take on all of HEFCW’s functions and other functions across the PCET sector.

Option 6 has the following main characteristics

- 7.93 This option involves the transfer of powers and agreed functions of Welsh Government Ministers and all Higher Education Funding Council Wales (HEFCW) functions to the Commission.
- 7.94 In terms of levers, the Welsh Government will set out its requirements in the founding legislation and in the control framework. The legislation will specify the functions, powers and duties of the Commission. The control framework will determine the degree of control and influence the Welsh Government would have over the Commission itself and, ultimately, over the sector as a whole.
- 7.95 It is proposed that the following PCET sectors will come together - further education, school sixth forms, higher education, apprenticeships, and adult community-based learning.
- 7.96 All functions currently carried out by the Welsh Government in relation to Further Education and Apprenticeships would transfer to a new, arms-length, Welsh Government Sponsored Body. These functions would include planning, funding, contracting, ensuring quality, financial monitoring and audit.
- 7.97 All functions carried out by HEFCW would also transfer to the new body. The entire PCET sector would thereby be brought together under one regulatory body.
- 7.98 The Commission would be granted powers to: fund research, innovation and the exploitation of these, in line with the strategic plan agreed between the

Commission and the Welsh Ministers. The current powers of HEFCW in relation to distribution of quality-related research funding QR will be transferred to the Commission. A Research and Innovation Wales committee will be established.

- 7.99 The laying of the Tertiary Education and Research (TER) Bill and delivery of associated schemes will transfer the powers and agreed functions of Welsh Government Ministers and Higher Education Funding Council Wales (HEFCW) to the Commission for Tertiary Education and Research (the Commission).
- 7.100 The Commission will be responsible for post compulsory education, training, research and innovation as follows:
- i. the provision, planning, funding and regulation of further education, including further education forming part of an apprenticeship in relation to Wales and including the funding of adult (age 19+) learning provided by county borough councils in Wales and part-time courses offered by other providers of further education;
 - ii. funding and regulation of the provision of higher education, including higher education forming part of an apprenticeship in relation to Wales;
 - iii. the funding of research and innovation capacity in relation to Wales and certain research and innovation projects relating to Wales;
 - iv. the development, issue and review of Welsh apprenticeship frameworks and the issuing of Welsh apprenticeship certificates;
 - v. the funding and delivery of mainstream sixth form provision via local authorities and elements of post 16 schools based provision; and
 - vi. oversight and regulation of the quality and standards of education and training in the tertiary education, training and research sector, provided by, or on behalf of, those institutions within its quality assurance remit, whose activities are wholly or principally carried on in Wales.

Key advantages of Option 6

- 7.101 The Welsh Government would have the power to ensure that the approach of the whole sector reflects its strategic objectives and thereby serves the people of Wales. The proposed Commission would provide greater alignment, long term, between the priorities of the Welsh Government and the activities / outcomes of tertiary education. In particular, the Commission will deliver, or play a key role in delivering the following objectives set out in Prosperity for All:

- introducing a new strategic planning system for post 16 education, which plans the provision across the sector and responds to the economic needs of Wales;
- delivering coherent progression through and between the different post 16 education systems, so that the individual's learning pathway meets their needs and aspirations and is not defined by artificial boundaries between academic and vocational routes;
- bringing together the majority of research funding and ensure that funding decisions reflect Welsh priorities, including the needs of the national and regional economic sectors;
- ensuring closer working between industry, schools, universities and colleges to raise ambition and increase investment in research, developing the jobs and technologies of the future;
- working with the Regional Skills Partnerships to anticipate future skills needs, focusing on priority growth sectors identified within regions and aligning our programmes to those needs.

7.102 There would be a single line of sight with one arm's length body to oversee the whole of PCET, which will improve strategic planning and help to prevent duplication and gaps in provision. The Commission will promote collaboration between institutions / PCET providers and strengthen links with others, including schools and businesses. This will lead to reduced complexity and stronger and more secure national and regional planning. It would strengthen the link between research and education, and the delivery of a PCET system that is better placed to respond to macro-changes; to plot paths for learners; and to bring the sector together in a way that provides for genuine life-long learning and skills development.

7.103 The Commission would also promote more effective synergies as the body would fund both FE and HE.

7.104 There would be a more joined up and collaborative PCET system that provides clear progression routes / learning pathways and would be easier for learners to navigate. The Commission would provide high quality information, advice and guidance on the learning routes available across the sector.

7.105 There would be enhanced support for learners, including clearer and better information on the options available.

7.106 The Commission would possess sufficient levers to influence universities as appropriate, this would address the current issues faced by HEFCW as outlined in paragraph 7.24 above.

7.107 Establishing the Commission would address issues around poor data collection and lack of PCET wide intelligence by developing a consistent and effective data collection system across the whole sector.

- 7.108 Establishing the Commission would provide the opportunity to ensure a consistent approach across the sector regarding investigating complaints and managing appeals, thus demonstrating a commitment to meeting the needs of learners.
- 7.109 With one organisation working to identify skills gaps in the labour force, to create learning opportunities to fill them, and to facilitate access and progression to them for learners, the energy of the whole sector will be focused on optimising outcomes for learners and the economy.
- 7.110 Bringing research funding into the Commission will allow it to effectively monitor the extent to which research is supporting economic growth and opportunities for learners, and to ensure that no funding is provided for research that does not support these outcomes.
- 7.111 Establishing the Commission would bring the sector together in a way that would allow coherent and comparable quality assurance processes to be implemented. It would enable the collection of data for administration and performance monitoring to become streamlined and comparable, and ensure a consistent approach to investigating complaints and managing appeals, across the sector.
- 7.112 The creation of the Commission would provide an opportunity to align professional standards and qualifications to practice (teaching at PCET level) across Post 16 provision.
- 7.113 This option would also allow for alignment of policy intentions with the new ALN (Additional Learning Needs) Bill for post 16 learners.
- 7.114 Establishing the Commission may also provide an opportunity to address the inconsistent approach to assessment, evaluation and performance improvement across the sector

Research and Innovation Wales

- 7.115 A more co-ordinated and coherent approach to R&I would provide the opportunity to bring disparate pots of funding/approaches together. RIW would be recognised as a strategic, independent body, encompassing in one place the key mechanisms for addressing economic and wellbeing challenges.
- 7.116 An independent body would encourage and improve the level of strategic thinking and challenge in relation to R&I.
- 7.117 The pace of decision making with regard to R&I would be less constrained by machinery of government, and is likely to be more strategic, agile and responsive to changing regional, national and world needs.
- 7.118 The proposed arrangements would maintain academic freedom and institutional autonomy in the Welsh higher education sector. There would be an

improved match between education training and research – with R&I becoming a more integral part of PCET provision – particularly at teaching level.

Key disadvantages of Option 6

- 7.119 The scale of change could, potentially, be disruptive for the PCET sector; transition would need to be carefully managed.
- 7.120 An arm's length body may be insufficiently accountable. Careful consideration would therefore need to be given to the relevant statutory provisions and the nature of the relationship between the Welsh Government and the Commission.
- 7.121 If the statutory provisions within which the new body will operate, and its relationship with the Welsh Government are not sufficiently robust, it may be difficult to ensure its strategic approach reflects Government priorities and that it has the power and authority to deliver everything that is required.
- 7.122 Some stakeholders (FE, Apprenticeship Providers, and Maintained Sixth Forms) would be moved further from Ministers.
- 7.123 There could be concerns about the possible lack of accountability of such a large tertiary education authority. The Commission would be a powerful new arm's-length body with wide-ranging powers and a significant budget (in excess of £500 million per annum based on current spend in relevant areas). It could prove difficult to ensure that such a powerful body remains sufficiently accountable to the Welsh Ministers over time. The proposals to strengthen legal requirements relating to strategic planning, creating effective synergies as a result of the Commission's responsibilities for funding the whole sector would be designed to mitigate this. However, much will still depend on board level and senior staff appointments to ensure relationships between the Commission, Ministers and officials are positive but robust.
- 7.124 The sheer breadth of the Commission's functions may make it more challenging for government to steer and challenge its activities appropriately. Its functions will be highly complex. To properly hold such an organisation to account will require that Welsh Government retain sufficient capability within the Welsh Government civil service to help shape policy and provide effective scrutiny across the full range of the Commission's activities. That in turn may raise questions about the efficacy and value for money of moving many of these functions outside of government.
- 7.125 The Commission may not achieve the culture shift required to achieve the desired reforms if the new body consisted predominantly of the staff currently responsible for broadly similar functions. This could be addressed primarily by effective, strong and innovative leadership in the setting up of a new organisational culture.
- 7.126 At this stage it cannot be ruled out that the costs of operating any new system could be more than the cost of current arrangements. As these costs are currently unknown, we cannot compare the costs of operating a new system with the current arrangements. However it is anticipated that a large number of benefits would be realised through the establishment of the Commission (see

chapter 8). Whilst it is difficult to compare the costs and benefits in an objective way a judgement has to be based on whether the additional costs are justified by the benefits.

7.127 There is a potential for R&I to become the 'poor relation' of education by becoming a funding mechanism for institutions if it is subsumed into the HE funding route but this will be mitigated by the creation of the RIW and the appointment of the RIW Chair.

Summary

7.128 Ministers have directed officials to take forward option 6a, the creation of a single body to fund and regulate the whole of the PCET sector as they felt this was the only option with the potential to address all of Professor Hazelkorn's recommendations. Responses to the White Paper consultation also indicated strong support for option 6.

7.129 Maintaining business as usual would perpetuate challenges for the Welsh Government. Issues of fragmentation, complexity and lack of joined up strategic planning would not be sufficiently addressed and it would not be possible to provide a clear line of sight across the whole PCET sector.

7.130 Whilst option 4 may be able to deliver a number of the benefits attributed to the preferred option, it would not be able to realise the whole range of beneficial outcomes attributable to the preferred option. Option 6 fully delivers the key objectives of reform to the PCET sector and is therefore the Welsh Government's preferred option.

TABLE 7.1: PCET REFORM OPTIONS EVALUATION MODERATED SCORE SHEET

| | | | Option 1 | Option 2 | Option 3 | Option 4a | Option 4b | Option 5a | Option 5b | Option 5c | Option 6 |
|--|---|-------------|------------------------------|--|--|---|--|---|---|---|--|
| High Level objectives | | | Do Nothing Business as Usual | Consolidation across the sector, and use of existing powers to modify the duties and responsibilities of HEFCW | Adopting the approach developed in England | Centralisation Retaining all FE/Apprenticeship/ maintained sixth form functions within the Welsh Government and transferring all HEFCW functions to the Welsh Government. | Centralisation As Option 4a, but with a separate body responsible for research, namely, Research and Innovation Wales. | Establishing a small scale (TEA): to absorb most of HEFCW's functions and take on responsibility for, among other things, regulation and oversight across PCET. | As Option 5a, but also giving TEA responsibility for: • Developing (LMI) and (RSP) functions; • advising the Welsh Government on the future strategy for PCET. | As Option 5b, but with a separate body to oversee research. | Establishing the Commission - to take on all of HEFCW's functions and other functions across the PCET sector |
| EXTENT TO WHICH OPTIONS RESPOND TO WELSH GOVERNMENT HIGH LEVEL GOALS AND OBJECTIVES FOR THE REFORM | <input type="checkbox"/> To be responsive to employer needs and address skills gaps | Weighting % | 0 | 0 | -1 | 1 | 1 | 1 | 1 | 1 | 2 |
| | | | | | | | | | | | |

| | | | | | | | | | | | |
|--|---|-------------|---|---|---|---|---|---|---|---|---|
| | To improve research institutions ranking, (currently defined by the Research Excellence Framework), reputation and research funding | Weighting % | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 2 | 2 |
| | To improve apprenticeship opportunities. | Weighting % | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 2 |

| | | | | | | | | | | | |
|--|--|-------------|---|---|---|---|---|---|---|---|---|
| | <input type="checkbox"/> To raise standards for all; improving learner participation, progression, performance and outcomes. | Weighting % | 0 | 1 | 0 | 1 | 1 | 2 | 2 | 2 | 2 |
| | <input type="checkbox"/> To improve the curriculum offer. | Weighting % | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 1 | 2 |
| | <input type="checkbox"/> To improve the learner experience and capture the learner voice. | Weighting % | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 0 | 2 |

| | | | | | | | | | | | |
|--|---|--------------------|---|---|---|---|---|---|---|---|---|
| | <input type="checkbox"/> To introduce an improved, compliant and effective PCET wide data collection, analysis and dissemination system that ensures timely, and relevant information about PCET in Wales is available for all who need it. | Weighting % | 0 | 1 | 0 | 2 | 2 | 1 | 1 | 1 | 2 |
| | <input type="checkbox"/> To improve PCET reputation, agility and direction. | Weighting % | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 1 | 2 |

| | | | | | | | | | | | |
|--|---|--------------------|---|---|----|---|---|---|---|---|---|
| | <input type="checkbox"/> To reduce unnecessary course duplication and competition across PCET. | Weighting % | 0 | 1 | -1 | 1 | 0 | 1 | 1 | 1 | 2 |
| | <input type="checkbox"/> To improve the coherence and consistency of financial and performance monitoring, and quality assurance. | Weighting % | 0 | 0 | -1 | 1 | 1 | 1 | 1 | 1 | 2 |
| | <input type="checkbox"/> To improve community use of PCET facilities and greater connectivity. | Weighting % | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 1 |

| | | | | | | | | | | |
|--|--|------------|-----------------|------------|----------|------------|------------|------------|------------|-----------------|
| | TOTAL MODERATED SCORE | 0 | 3 | -3 | 12 | 10 | 10 | 10 | 11 | 21 |
| | RANGE OF INDIVIDUAL SCORES | N/A | 2 -6 | (-11) - 1 | 0-15 | 0-15 | 0-14 | 0-18 | 1-15 | 18-21 |
| | RANKING | 8th | 7 th | 9th | 2nd | =4th | =4th | =4th | 3rd | 1 st |
| | OPTIONS APPRAISAL WORKSHOP CLASSIFICATION (Discounted; Preferred; Possible) | Discounted | Discounted | Discounted | Possible | Discounted | Discounted | Discounted | Discounted | Preferred |

Part 2: Detailed options for reform

1 Governance of the Commission

Current arrangements and the case for change

HEFCW

7.131 The Higher Education Funding Council for Wales (HEFCW) is a Welsh Government sponsored body established under 62(1)(b) of the Further and Higher Education Act 1992 (“the 1992 Act”).

7.132 It is the body responsible for the regulation of higher education in Wales, under powers contained in the Higher Education (Wales) Act 2015, and for administering funds made available by the Welsh Ministers for the purpose of providing financial support to providers of HE in Wales for activities relating to the provision of higher education, research and associated activities. In 2019-20 HEFCW will manage a budget in excess of £152m.

7.133 As the statutory regulator of HE in Wales it has specific statutory duties and powers in relation to:

- Approving and monitoring compliance with fee and access plans and monitoring fee limits;
- assessing the quality of higher education
- developing a Financial Management Code and monitoring HE providers’ compliance with the Code

7.134 It also provides information, advice and guidance to the sector and acts as the intermediary body between the Welsh Ministers and the HE sector, reporting to the Welsh Ministers on the delivery of the Welsh Government’s priorities for HE in Wales.

Sponsor Team

7.135 The Sponsor Team is the main contact point between HEFCW and the Welsh Government. It is responsible for the oversight and performance management of HEFCW in line with Welsh Government’s arrangements for the oversight of its sponsored bodies. The Sponsor Team fulfils the following principle functions:

- Setting and agreeing HEFCW’s annual grant in aid budget.
- Confirming the Minister for Education’s policy priorities for the HE sector through the annual remit letter.

- Monitoring HEFCW’s operational and financial performance against business and financial plans and delivery of remit letter activities.
- Overseeing arrangements for the appointment of the chair and members of HEFCW.
- Agreeing and monitoring compliance with the Welsh Government’s oversight, governance and accountability framework for Welsh Government Sponsored Bodies.
- Acting as a conduit between HEFCW and Welsh Ministers on HE delivery.

Public Bodies Unit

7.136 Public Bodies Unit was established as a result of the 2017 review ‘Delivering Together – Strengthening the Welsh Government’s Sponsorship of Arm’s-length Bodies’. In addition to implementing the 37 recommendations of the review, it is responsible for undertaking a range of functions to improve consistency in the arrangements for sponsoring public bodies across Welsh Government. Its remit covers the following categories of public body:

- Welsh Government Sponsored Bodies
- Welsh Government owned companies
- Commissioners
- Executive Agencies
- Non-ministerial Departments
- Estyn and Education Workforce Council

7.137 Supporting the sponsor teams within policy Divisions, PBU undertakes centralised functions in the following areas:

- Public appointments²⁸;
- Pay and Remuneration
- Governance & policy²⁹

²⁸ The Public Bodies Unit (PBU) is responsible for providing advice and guidance on the establishment, classification, governance and funding arrangements for all public bodies set up by the Welsh Government including:

- Welsh Government Sponsored Bodies and Welsh Government-owned companies
- advisory panels
- Ministerial Advisory Groups
- task and finish groups; and other partnership arrangements.
- Honours

²⁹ A public body’s work may be overseen by a board whose members are usually appointed by Welsh Ministers. This degree of independence and autonomy coupled with the fact that public bodies are very often funded from public money, mean that sponsoring departments should exercise a certain degree of control and supervision over them, particularly in relation to their performance and their use of, and accountability for, public funds. Different types of public body will require varying degrees of oversight and control, for example an advisory body set up to advise Welsh Ministers on a particular topic or area of policy will require a very different governance regime from an executive body established to exercise functions in its own right using public money.

7.138 HEFCW currently has a Quality Assessment Committee constituted under section 25 of the Higher Education Act 2015. Its terms of reference indicate a membership of up to 10 members. As of September 2019, its membership consists of 9 members (including 3 from HEFCW); 2 observers and 2 HEFCW officers in attendance. HEFCW also has established a non-statutory Research, Innovation and Engagement (RIE) Committee to advise Council on its RIE strategies, make recommendations, engage with stakeholders and consider any matters referred to it by the Council. The Committee's terms of reference indicate a membership of **up to 17** members, to include at least one member of Council. The Committee is chaired by a Council member. As of September 2019, the Committee has 10 members (of which 2 are from HEFCW); 5 observers and 5 HEFCW officers in attendance.

7.139 The Draft Bill proposes that HEFCW be dissolved, and that the new commission is created with the powers and duties it will require to act as the major regulator and funder for post compulsory education, training and research. As well as the funding and oversight of learning providers across the sector, the Commission needs to be able to respond positively to the changes introduced at UK level, by creating a vehicle to engage and collaborate with UKRI on behalf of Wales, to take responsibility for the strategic and dynamic use of public funds for research and innovation.

Options considered and preferred approach

7.140 The first part of chapter 7 sets out an appraisal of approaches to tackling the issues facing the post-16 education and research sector. Given that the preferred option, the creation of the CTER, has been agreed, the governance arrangements for the new organisation must change in order to reflect the new body's changed powers and duties.

7.141 A number of different approaches to composing the governance structure of the Commission were considered.

Business as Usual

7.142 A no-change (Business as Usual) scenario would only apply if the reform to create the CTER were not taken forward, as the dissolution of HEFCW and the establishment of the new body require a new governance structure to be put in place.

Key advantages of Business as Usual

7.143 There would be no disruption to current arrangements

Key risks of Business as Usual

7.144 There are no risks specific to the current governance arrangements.

Option 2 - A moderately-sized governance board with statutory Research and Innovation and Quality Committees.

The preferred approach

- 7.145 HEFCW would be dissolved and the new Commission established, with responsibility for oversight of learning and research across the PCET sector. The Draft Bill proposes that the Welsh Government establish a governing board of between seven and seventeen members, to include the Chief Executive, for the new organisation. The Draft Bill will also require the Commission to establish the Research and Innovation Wales (RIW) Committee (with a membership, including the chair, of between nine and thirteen members) and a Quality Committee whose membership will be determined by the Commission.
- 7.146 The Chair of the RIW Committee will be the deputy chair of the Commission.
- 7.147 The Commission will have the ability to create its own additional committees as it considers appropriate to carry out its functions.
- 7.148 All committees would be accountable to the Commission's board.
- 7.149 The Commission relationship with the Welsh Government would be overseen by a Welsh Government sponsorship team.
- 7.150 Members of the Commission and the RIW Committee would be appointed via a public appointments process.
- 7.151 The Commission's board would be recruited and selected based upon their skills, knowledge and experience, rather than to represent a particular sector. One ordinary board member would need to have experience of and capability in representing the needs of learners in tertiary education. In addition, a number of advisory board members would be included on the board, via a nominations process. The advisory members would represent a staff member trade union representative; at least one member representing learners in tertiary education and at least 2 representative members of the wider tertiary education workforce trade unions to represent academic and non-academic staff. The technical consultation proposed for 2 learner representatives to be part of the board. Stakeholder responses to the proposals, indicated a preference for learner representatives to act as observers (see option 3 below) to allow the Commission flexibility, and for the inclusion of workforce representation. However

subsequently, the NUS raised concerns in relation to the role of learners in only an observer role. The preferred approach includes representation from the workforce and also provides for learners as both full board and advisory members to ensure there are adequate representatives on the board to represent key stakeholders.

Key advantages of the preferred approach

- 7.152 Constituting the governance of the Commission in this way would ensure that the board would be composed of individuals with the skill and motivation to improve the whole sector. It would also provide a sound basis for representation of key stakeholders.
- 7.153 A statutory basis for the RIW Committee would give this area greater prominence, and would provide a vehicle to engage and collaborate with the new UK Research and Innovation body on behalf of Wales.
- 7.154 It would allow the allocation of research funding to be managed in a more strategic and dynamic way than at present. There would be enhanced alignment and cross working between education, training, research and innovation, in part through the pivotal role of the Chair of RIW.

Key risks associated with the preferred approach

- 7.155 The Commission's remit would be very broad. A Board membership of up to 17 members to help deal with the variety of business may be challenging for the Chair to manage and obtain involvement and engagement from each member.

Option 3 – a larger Governance Board and a suite of statutory committees.

- 7.156 A third option was set out in the Technical Consultation, which was made the subject of wide consultation during the spring of 2018.
- 7.157 This approach suggested legislating for the establishment of a Governance Board of nine to fifteen members, including the Chair, CEO and at least 2 learner representatives, and a Research and Innovation Committee of six to nine members.
- 7.158 It proposed the setting in legislation of the establishment of a further seven committees to look at key areas across PCETR ('protection of learners needs'; 'addressing the needs of employers, businesses and apprenticeships'; Audit and Compliance; Remuneration; Quality; Widening Participation; Welsh Language).

Key advantages of Option 3

- 7.159 Including learner representatives as members of the Board would demonstrate the commitment being made to learners and the Commission's focus on learner needs. Learner representation features within the preferred Option.
- 7.160 Similarly, the creation of eight statutory committees gave each of the areas proposed, additional weight and influence within the Commission.

Key risks of Option 3

- 7.161 In response to the consultation³⁰, stakeholders expressed the view that including learner representatives as appointees to the Board introduced a risk to the independence of their involvement, and suggested that they should instead attend as observers.
- 7.162 There was also a concern that in option 3, workforce representatives were not included and the Board would therefore not reflect their perspective.
- 7.163 Finally, stakeholders felt that there was a risk that stipulating this large number of statutory committees would create a risk that the Commission would not be able to flexibly adapt to address emerging priorities in future. There would also be a risk that a large amount of resources would be required to facilitate such a high number of statutory committees.

2 The relationship between the Welsh Government and the Commission

Current arrangements and the case for change

- 7.164 This section relates to the proposed relationship between the Welsh Ministers and the Commission and how it will be managed by means of the Welsh Ministers' Statement of Priorities and the Commission's Strategic Plan.
- 7.165 The proposed way of managing the relationship between the arms-length body and Welsh Ministers is a novel one, and is distinct from the approach currently used to manage HEFCW. There will necessarily be some similarities within the sponsorship arrangements; i.e. a framework agreement and a sponsor team to support and challenge the Commission, but the high level mechanism for holding them to account and set out in the legislation will be different.
- 7.166 One of the principal policy aims of the Draft Bill in establishing the Commission is to create a body which is able to deal with planning and funding aspects of post-

³⁰ Tertiary Education and Research Commission for Wales – Consultation <https://gov.wales/tertiary-educationand-research-commission-wales>

compulsory education and training and research and innovation in relation to Wales.

7.167 Currently HEFCW's remit is higher education and research only but the proposal is for the new Commission to be responsible for post compulsory education and training (see chapter 3 of the Explanatory Memorandum).

7.168 New legislative provision is required to achieve the desired policy outcomes. The proposal is that a new statutory duty be imposed on the Welsh Ministers to prepare and publish a Statement of Priorities and that related duties are to be imposed on the Commission; that is the preparation of the Strategic Plan, taking into account the Statement of Priorities. They will be required to submit a strategic plan in response to the statement within 6 months, and have consulted on the draft before submission.

7.169 In addition to the statement of priorities, the Commission will have specific strategic objectives set out in the legislation. These are:

- The duty to promote the pursuit of a civic mission by institutions in Wales within the HE and FE sector.
- Duties in relation to Welsh medium tertiary education.

Options considered and preferred approach

Business as usual

7.170 Currently, as a sponsored body, the Higher Education Funding Council for Wales (HEFCW) undertakes some of these functions and activities. HEFCW is a statutory corporation established under Part 2 of the Further and Higher Education Act 1992 for the funding and regulation of higher education courses and for the research funding in higher education. They receive an annual remit letter from the Welsh Government setting out priorities for the following year to be delivered through the funding they are allocated. HEFCW issues a Corporate Plan in response to the Welsh Minister's Annual Remit Letter and also prepares an operational plan which sets out day to day priorities.

7.171 In Welsh Government there is small team, part of whose role is to manage the HEFCW sponsorship role. The Higher Education Division holds the budget to fund HEFCW through a single budget line. HEFCW are responsible for managing their own running costs, in addition to allocating funding.

7.172 The existing functions relate to the sponsorship of an arms-length body, including the preparation of the annual Remit letter, and attendance at quarterly monitoring meetings of the operational plan and funding.

Key advantages of Business as Usual

7.173 There would be no disruption to current arrangements. HEFCW would continue to fund HE provision, research and related activities and funding allocated to HEFCW would continue to be managed via the Welsh Government sponsor team. HEFCW staff would not be subject to any change or disruption and would

continue to fund eligible providers. Welsh Government teams would continue to plan and fund post-16 provision (other than HE) and staff currently supporting these areas would not be subject to any change or disruption.

Key risks of Business as Usual

- 7.174 The current system could fail to take advantage of the opportunity to adopt a more strategic approach to planning and funding the sector as a whole. There is also a risk that the Welsh Government's priorities would not be reflected in the planning and funding of the sector in a coherent and collaborative way.
- 7.175 Currently the mechanism of the annual remit letter doesn't always facilitate long term planning and there is a risk that the business as usual approach would mean this would continue.
- 7.176 There would be a lost opportunity to encourage the entire PCET sector to provide sustainability, coherence and effectiveness across sixth forms, FE, HE and apprenticeships providers.

Option 2 – The preferred approach

- 7.177 The objectives for the Draft Bill involve the dissolution of HEFCW (and the creation of a new Welsh Government sponsored body, the Commission for Education, Training and Research, referred to as the Commission. Whilst the Commission will replace HEFCW, it is proposed that the Commission's functions will extend beyond those currently conferred upon HEFCW.
- 7.178 The Welsh Ministers are a Devolved Welsh Authority (Schedule 9A, Government of Wales Act 2006 refers). In general terms the Senedd will be able, subject to section 108A of that Act, to legislate in relation to Devolved Welsh Authorities (paragraphs 8(3) and 10 of Schedule 7B to the 2006 Act refer). As such, the Bill will, in general terms, be able to confer / impose functions on the Welsh Ministers without the need for Minister of the Crown ("MoC") consent.
- 7.179 As a result, the Draft Bill will impose a duty on the Welsh Ministers to prepare and publish a Statement of Priorities; the Welsh Ministers will be able to make revisions to the Statement and to publish revised versions of the Statement. The Draft Bill will also confer powers on the Welsh Ministers to approve, or approve with modifications, the draft (or draft revised) Strategic Plan as submitted to it by the Commission. The Welsh Ministers will also have to give notice and consult the Commission where modifications are proposed to the draft/revised plan.
- 7.180 The Statement is intended to guide the Commission's investment in PCET&R and the discharge of the full range of its functions in support of the priorities set out in the Statement. The proposal is to place the WMs under a general, ongoing, duty to prepare, publish and maintain the Statement, with the ability to amend or revise the Statement from time to time following future elections or future reshuffles / coalitions. There will be flexibility for it to be amended but the revisions are not expected to be radical in nature, unless there is a change in government resulting in a change in direction.

7.181 It is envisaged that over time the Commission will develop the expertise and the knowledge to suggest possible future PCET priorities for Welsh Ministers to consider.

Key advantages of the preferred approach

- By providing the Commission with a Statement of Priorities and expecting it to base its strategic plan on those priorities a mechanism is being created by which the body can be held directly accountable for working towards the policy aims of the elected representatives of the people of Wales.
- The statement will be published meaning that providers will have a full understanding of what Welsh Ministers consider to be priorities and can plan accordingly.
- The fact that the Statement is expected to be valid for the term of a government will enable the Commission to plan more effectively for that period and to provide increased stability for their providers.
- Since the Commission will be required to consult stakeholders on the strategic plan, drawn up in response to the statement of priorities, there will be an opportunity for those affected to contribute to the planning process and raise any concerns they may have.
- There will be a clear and public 'line of sight' between the Government's priorities and how the Commission envisages providers contributing towards them. This should also make reporting on the delivery of those objectives clearer.
- By including specific objectives around civic mission and Welsh medium tertiary education these matters will be required to be considered across the Commission's relevant functions.

Key risks associated with the preferred approach

- If the Welsh Ministers' priorities change significantly during the lifetime of a government and therefore during the period over which the statement was envisaged to extend, the potential benefit of the longer planning cycle could be lost.
- If the funding for the priorities becomes subject to cuts during the lifetime of the statement then the potential benefits could be significantly reduced.

3 Registration and regulation

Current arrangements and the case for change

- 7.182 The registration and regulatory functions of the Commission for Tertiary Education and Research will encompass the regulatory relationship between the Commission and providers of tertiary education. The policy area aligns closely with the Commission's powers in relation to Planning and Funding (see section 4 on planning and funding). In particular, it covers the Commission's powers to regulate tertiary education providers which are designated for Welsh Government student support, the accountability of these providers for access to both student support and also grant funding, and providers' obligations in regards to widening access. Many of these functions are currently held by HEFCW under the provisions of the Higher Education (Wales) Act 2015 (the 2015 Act).
- 7.183 The regulatory framework introduced by the 2015 Act provides for regulatory controls to be applied to institutions in Wales which benefit from their courses being automatically designated for the purpose of Welsh Government student support at the higher level of fee support. The 2015 Act enables HEFCW to ensure that regulated institutions comply with fee limits and fair access commitments; make provision for the assessment of their quality of education delivered by and on behalf of regulated institutions; and provide oversight of the financial management of regulated institutions.
- 7.184 A separate administrative system (specific course designation) is currently operated to deal with HEPs whose courses are designated on a case-by-case basis at the lower rate of support. Providers subject to specific course designation are not regulated institutions under the 2015 Act, for the most part they do not receive funding from HEFCW (unless they provide part-time HE courses) and they may not be charities. These providers are designated by Welsh Ministers under the case-by-case designation policy, which is now administered by HEFCW.
- 7.185 The 2015 Act was introduced in Wales as a response to the changing balance of funding of higher education. The principal source of funding for HE in Wales is now tuition fee income as opposed to annual grant funding from HEFCW. The changes in the way higher education is funded have led to changes in HEFCW's responsibilities, with more emphasis being placed on the Council's regulatory role under the Higher Education (Wales) Act 2015. This includes determining applications for approval of Fee and Access plans, which gives an institution access to higher tuition fee income supported by the statutory student finance system. Tuition fee loans and/or grants are paid direct to institutions via the Student Loans Company and on behalf of learners, under regulations made by the Welsh Ministers.
- 7.186 At present, further education providers continue to be primarily funded and regulated through Welsh Government grant funding and the terms and conditions attached to this funding. However, a number of further education providers are included within the higher education regulatory system operated by HEFCW for the purposes of their own higher education provision.

7.187 The proposal to establish the Commission as the body responsible for the planning, funding and regulatory oversight of post-16 education and training in Wales means that changes are required to the current statutory functions of both the Welsh Ministers and HEFCW in this area, in order to confer new functions on the Commission. The regulatory framework created by the 2015 Act will need to be re-outlined in legislation following the planned closure of HEFCW.

7.188 Beyond the immediate need to replicate the regulatory provisions of the 2015 Act, the establishment of the Commission offers an opportunity to build upon recent experience and learning to develop a cohesive, consistent, and future-proof regulatory system for the entirety of tertiary education. This framework will need to account for the diversity of provision and mission within the PCET sector, as well as the diversity of funding streams and historic ways of working with both Welsh Government and HEFCW.

Options considered and preferred approach

Business as usual

7.189 A no-change (Business as Usual) scenario would only apply if the reform to create the Commission were not taken forward, as the dissolution of HEFCW and the establishment of the new body require a new registration system to be put in place.

Key advantages of Business as usual

7.190 There would be no disruption to current arrangements. HEFCW would continue to fund HE provision, research and related activities and funding allocated to HEFCW would continue to be managed via the Welsh Government's sponsor team. HEFCW staff would not be subject to any change or disruption and would continue to fund eligible providers. Welsh Government teams would continue to plan and fund post16 provision (other than HE) and staff currently supporting these areas would not be subject to any change or disruption.

7.191 The regulatory provisions of the 2015 Act would continue to operate, including Fee and Access Plans, provisions on quality, and oversight of financial management and institutional governance.

Key risks of Business as usual

7.192 As outlined in the Hazelkorn report, there are a number of risks continuing business as usual in the oversight of post compulsory education and training sector in Wales. In regards to regulation and oversight providers, the following risks are worth highlighting from that report:

- Accelerating competition within the UK and internationally, alongside changes in HE governance in England, pose challenges but also present opportunities for Wales;
- Insufficient strategic thinking by government or by the institutions, at all levels, leading to insufficient collaboration, lack of critical mass, and too much competition for limited resources with little benefit for Wales.

- An absence of an overall vision for the post-compulsory system aligned to the social, cultural and economic needs of Wales, regionally and nationally, now and in the future.
- Confusion around the overlapping roles, and duplication of resources, between and across different institutions, between further and higher education, and between different agencies.

7.193 The introduction of the Draft TER Bill has also presented an opportunity for policy to be revised in light of post-legislative scrutiny of the 2015 Act and stakeholders' feedback on the effects of its implementation. The Government has considered the recommendations of the Children, Young People and Education Committee's report on the implementation of that Act, and has agreed to implement many of its recommendations.

7.194 Any changes to funding arrangements for higher and further education providers, whether initiated in Wales or necessitated in Wales as a result of changes in England, might also require further changes to the regulatory framework. There is a risk that current regulatory arrangements are too inflexible to adapt to future public needs and the future challenges for skills and education in Wales highlighted in the Hazelkorn report.

Option 2 – The preferred approach

7.195 The following summarises the major points of the determined policy approach for regulating tertiary education providers:

- The Commission will be required to establish a register of tertiary education providers.
- Welsh Ministers, (through regulations), will be able to specify the categories of registration which must be made. These categories will relate to the categories of tertiary education provider for which a regulatory register is deemed necessary.
- Welsh Ministers (through regulations), will specify which registration categories will be subject to formal regulation including fee-limits, access and opportunity plans, and eligibility for grant funding from the Commission. The Commission will also be able to determine conditions of registration in addition to those listed above, which are also outlined in the Draft Bill.
- All registered providers will be subject to mandatory conditions of registration related to quality, governance and financial viability.
- Registered providers of a specified category (through regulations) will be required to hold an approved 'Access and Opportunity Plan'. These will replace current Fee and Access Plans, and have a wider and more strategic focus.

Key advantages of the preferred approach The merits of registration

- 7.196 It is essential that the Commission is empowered to appropriately regulate tertiary education providers who might be funded through a range of different mechanisms, including higher and further education grant funding, Welsh Government student fee support, research and innovation funding, and work directly contracted by the Commission.
- 7.197 Welsh Government has concluded that a registration system will be the most effective and flexible legal means by which to ensure appropriate regulation across a diverse tertiary education sector. In particular, a registration model has been determined as the most effective way by which Welsh Ministers and the Commission can regulate access to Welsh Government student support, which has become the dominant model of funding in the Welsh higher education system following recent funding reforms, as well as grant funding allocated by the Commission.
- 7.198 An effective and future proof system of regulating tertiary education providers in Wales will need to ensure the following:
- a) Proportionate accountability and transparency for PCET providers in Wales in receipt of Welsh Government funded tuition fee support and/or direct grant funding from the Commission, particularly in regards to educational quality, financial assurance, and provider governance.
 - b) Regulatory requirements are adjustable to changing circumstances in funding, provider structure, and public need.
 - c) Continued and appropriate autonomy for education providers, whilst also ensuring the delivery of Welsh Government strategic objectives.
 - d) To ensure the taxpayer receives value for money and assurance about the use of public funds.

Future proofing

- 7.199 It is important that regulation of the tertiary education sector is able to align appropriately with changing funding arrangements. For example, primary legislation was required in both Wales (2015) and England (2017) to adjust to the changes in higher education funding introduced in 2012. Whilst it is not possible to eliminate the possibility of needing further primary legislation, it is prudent to design a regulatory system that can adapt to possible future policy and funding changes. This is why it is essential that Welsh Ministers can specify, through regulations approved by the Senedd, the categories of registration and the levels of student support to which each of these categories will entitle providers.
- 7.200 Furthermore, a registration system can enable changes to conditions of registration to be made in order to respond to changing regulatory priorities. With some

exceptions specified in the Draft Bill (the 'mandatory' initial and ongoing registration conditions), it will be possible for conditions of registration to be added or removed from the register by the Commission following consultation.

Assurance and value-for-money

- 7.201 The register will enable the Commission to require that providers meet initial, ongoing, and sometimes specific conditions of registration in order to continue to be eligible to be designated for the purposes of Welsh Government student support, as well as to receive discretionary forms of grant funding available from the Commission. The registration system will establish a clear link between the benefits arising from access to this funding, and the need to ensure that tertiary education providers are publically accountable and can contribute to the Commission's strategic priorities.
- 7.202 The introduction of multiple registration categories will also enable more transparent regulation of providers who are currently designated on a case-by-case basis for the lower levels of Welsh Government higher education fee-support. This will mean that case-by-case designation is only required on a truly exceptional basis, and most providers currently so designated are expected to register with the Commission. It is intended that this should reduce annual administration for both providers and the Commission by removing the need for annual re-designation of courses.

Continuity

- 7.203 It is intended that the registration system initially be applied to those providers seeking designation of courses for Welsh Government student support - courses which the Commission will not be under a duty to secure proper/and or reasonable facilities for under its funding duties and powers. Under current arrangements, the providers primarily expected to register would be higher education providers. Conditions of registration will predominantly be comparable to current regulatory requirements overseen by HEFCW, several of which are outlined in the 2015 Act. These include conditions in respect of quality, financial management, governance, fee-limits for qualifying courses, and access and opportunity plans, but there will also be clarification of requirements in respect of learner protections, learner complaints, and learner voice and representation (see sections 5 and 6). Together with the outcome agreements tied to discretionary grant funding, these will form the basis of the Commission's regulatory powers in respect of providers designated for Welsh Government student support.
- 7.204 Providers predominantly in receipt of non-discretionary grant funding from the Commission will primarily be regulated through the means of an outcome agreement (i.e. terms and conditions of funding). However, the register has been designed to enable registration of these providers in the future if this is deemed necessary for the purposes of regulation and determining access to public monies.

Key risks associated with the preferred approach Proportionate regulation

- 7.205 It will be essential for the Commission to ensure that conditions of registration are proportionate to both the regulatory risks identified by the Commission and the benefits to which an institution becomes entitled (i.e. public monies) as a result of registering.
- 7.206 It will be important that the Commission's administration of the register is not overly bureaucratic or burdensome on providers, and so distracting providers from delivery of their core business. The Commission will be required by the legislation to ensure that its administration of the register is proportionate to the regulatory risk, and to keep its ongoing registration conditions under review at all times.

Confusion with Office for students register

- 7.207 It was noted in consultation that the introduction of a register of providers may cause confusion with the English register of higher education providers maintained by the Office for Students. It is intended that the Commission will make clear the distinction between the two registers as a function of devolved administration, and further that the register will be primarily a legal means of regulation as much as a form of public information, although information regarding the register will be mandated by legislation to be published.

Option 3 – establish a register of higher education providers only

- 7.208 The Commission would be required to establish a register of higher education providers only, with categories, conditions and benefits of registration fully outlined in primary legislation.

Key advantages of option 3

- 7.209 A register with full details outlined in primary legislation would give full security and surety to providers regarding their long-term regulatory requirements. It would reduce the quantity of secondary legislation required prior to establishment of the Commission and its register.

Key risks associated with option 3 Inflexibility

- 7.210 A regulatory framework fully outlined in primary legislation would risk being too rigid to meet future policy needs or to adapt to any future reform. It would be unable to introduce new regulatory conditions if required by changing circumstances, or withdraw regulatory conditions if they became redundant.

Higher education exclusivity

7.211 The form and shape of tertiary education providers is changing, and clear distinctions between higher and further education providers are increasingly becoming less clear. It would therefore be inappropriate to design a regulatory system built around maintaining distinctions between tertiary education providers, when a key aim of the Draft Bill is to create greater coherence in regulation and direction across the sector.

Risk of need for further primary legislation

7.212 Any changes to a regulatory system fully detailed in primary legislation would risk a need for future primary legislation in the event that regulatory risks evolve or change. This would risk either using up valuable and limited Senedd and Welsh Government time to produce and scrutinise such legislation, or risk regulatory failure within the sector were new primary legislation to be undeliverable.

4 Strengthening the link between planning and funding

Current arrangements and the cases for change

7.213 The current arrangements for planning and funding PCET provision are split between the functions of the Welsh Ministers and those of HEFCW. Post-16 education and training other than higher education (HE) has been directly funded by the Welsh Government since 2006. The Welsh Government currently allocates funding to further education (FE) institutions via recurrent grants. It contracts with a variety of education and training providers to deliver apprenticeships and traineeships below degree level, awards funding to local authorities in support of school sixth form education and also funds a range of adult continuing education. The Welsh Government provides funding to HEFCW for higher education including degree level apprenticeships and HEFCW in turn allocates funding to eligible institutions.

Higher education

7.214 The planning and funding of HE is mediated through HEFCW. The Welsh Ministers may provide funding to HEFCW for the purpose of supporting HE and for teacher training provision. They may attach terms and conditions to such funding within the parameters of the relevant legislation.

7.215 The funding the Welsh Ministers provide to HEFCW is un-hypothecated and it is a matter for HEFCW to determine the allocation of those resources, taking account of Welsh Government's priorities. Currently the Welsh Ministers issue non-statutory guidance to HEFCW to communicate their policy priorities in the form of an annual remit letter, and impose terms and conditions in the form of a "Framework Document" that accompanies the funding provided to HEFCW.

7.216 The activities supported by HEFCW's funding predominantly relate to the provision of HE, teacher training and other activities of HE institutions in Wales but also

include the provision of certain HE courses by FE institutions in Wales. HEFCW may attach terms and conditions to financial support provided to institutions as it thinks fit. It is HEFCW's responsibility to determine how the grant funding received from the Welsh Government is to be allocated to individual institutions. In carrying out its funding activities under the Further and Higher Education Act 1992 HEFCW must consult institutions about its proposed application of conditions of funding, and have regard to specified factors, including the denominational or other distinctive characteristics of institutions.

7.217 The amount of funding allocated by HEFCW to institutions for the purpose of supporting higher education has significantly decreased as a consequence of the tuition fee and student support system introduced from the 2012/13 academic year. The principal source of funding for HE in Wales has now become tuition fee income as opposed to annual grant funding from HEFCW although it is envisaged that increased amounts of grant funding may be available in future years as a consequence of changes to the student support regime introduced following implementation of the Diamond Review. The changes in the way higher education is funded have led to changes in HEFCW's responsibilities, with more emphasis being placed on the Council's regulatory role under the Higher Education (Wales) Act 2015. This includes determining applications for approval of Fee and Access plans, which gives an institution access to higher tuition fee income supported by the statutory student finance system. Tuition fee loans and/or grants are paid direct to institutions via the Student Loans Company and on behalf of learners, under regulations made by the Welsh Ministers.

Post-16 (non HE) Funding

7.218 Currently, under the Learning and Skills Act 2000, the Welsh Ministers must secure the provision of proper facilities for education and training (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19 and the provision of reasonable facilities for education and training (other than higher education) suitable to the requirements of persons aged 19 and above. The effect of these two duties is that the Welsh Ministers will give priority to meeting the learning and skills needs of young people up to the age of 19. In performing their duties in respect of both age groups the Welsh Ministers must take into account a number of factors, including the education and training required in different sectors of employment. They must also bear in mind that other bodies, both statutory and private, provide education and training and therefore they might reasonably expect education and training to be secured by other bodies without drawing on their resources. In practice the Welsh Ministers will secure the provision of education and training from a range of providers.

7.219 The Welsh Ministers are also under a duty to promote participation in post-16 education and training and to encourage employers to become involved in its support and delivery. Examples of activity supported under this function include funding the Learning and Work Institute to undertake research and deliver marketing campaigns for Adult Learners Week; World Skills and Skills Competition Wales; promotion of apprenticeships as well as a range of post-16 social media activity.

- 7.220 Welsh Ministers may secure the provision of financial resources to (amongst others) persons providing or intending to provide post-16 education or training, persons providing goods or services in connection with the provision by others of post-16 education or training and persons undertaking research relating to education or training as well as those receiving or proposing to receive post-16 education and training. As well as funding of the provision of post-16 education and training, financial resources may include money intended for awards to students which is distributed by institutions e.g. financial contingency funds.
- 7.221 The Welsh Ministers are able to impose conditions to the funding they allocate, such as access to documents and accounts, as well as requiring a person in receipt of financial support to give the Welsh Ministers such information as they may request. The Welsh Ministers may also require providers of post-16 education and training to charge fees, make awards and recover sums of money against specified criteria. The Welsh Government currently issues a financial memorandum to funded institutions which together with an annual grant letter, set out the conditions imposed on the provision of grants or grant in aid to institutions providing further education.
- 7.222 In addition, the Welsh Ministers may make grants to local authorities on the condition that such grants are to be applied as part of the authority's schools budget for the purposes of, or in connection with, the provision by schools of education suitable to the requirements of persons above compulsory school age. Such allocations support school sixth form provision.
- 7.223 The Welsh Ministers are empowered to develop schemes for the assessment of the performance of persons providing post-16 education and training. These functions allow the Welsh Ministers to make arrangements for the assessment of the quality of the provision funded, and to take judgements about quality into account in deciding which providers they continue to fund. The intention is that the Welsh Ministers secure value for money, and that learners receive provision of a high quality.
- 7.224 The Welsh Ministers must establish systems for collecting information which ensure that their decisions with regard to education and training are made on a sound basis. Additionally, the Welsh Ministers may secure facilities for providing information, advice or guidance about education and training and connected matters, including employment. These functions are relied on principally in connection to evidence gathering and work that contributes to the Welsh Ministers' evidence base for taking decisions about education and training.
- 7.225 In addition to their functions under the 2000 Act the Welsh Ministers also have functions with the Secretary of State for making appropriate arrangements for the purpose of assisting persons to select, train for, obtain and retain suitable employment.
- 7.226 The Welsh Ministers also have functions under the Education Act 2002 relevant to funding and are able to give financial assistance to any person in connection with a variety of purposes in respect of education and may give or make arrangements for the giving of financial assistance e.g. the Educational Maintenance Allowance (EMA) and the Welsh Government Learning Grant FE (WGLG) schemes.

7.227 Although there is no specific statutory power dealing with planning, requirements for planning (and funding) related activity for FE institutions, adult learning and sixth form provision are administered via annual terms and conditions of funding. A Post-16 Planning and Funding Framework was introduced in 2014 which operationalised and brought consistency and alignment to the planning and funding of FE institution mainstream provision and local authority sixth form provision. In addition, the Welsh Ministers write annually to principals and chief executives of funded FE institutions notifying them of their policy priorities and also to local authority chief education officers. Currently the Welsh Government imposes terms and conditions of funding by way of annual grant award letters issued to FE institutions and local authorities. Terms and conditions of contract are applied to providers of apprenticeships. Regional Skills Partnerships (RSPs) recommendations are communicated annually to FE institutions and WBL providers via separate mechanisms. Responses are monitored and impact assessed via the relevant Welsh Government funding teams.

Need for change

7.228 Establishing the Commission will necessitate revised arrangements for the planning and funding of tertiary education. Certain funding functions currently operated by the Welsh Ministers will need to be amended and new functions will need to be conferred on the Commission. However, the Welsh Ministers will need to be able to continue to fund certain education and training in connection with the delivery of employability interventions.

7.229 Additionally, the proposed relationship between the Welsh Ministers and the new Commission (to be mediated through a statement of priorities and the production of a strategic plan) requires a reconfiguration of the current relationships between the Welsh Government and providers of post-16 education and training. Establishing the Commission and abolishing HEFCW means that new arrangements will need to be made for the relationship between the Commission and providers of post-16 education and training. Establishing of a line of sight between the strategic priorities of the Welsh Government through the Commission's strategic plan to the activities of funded learning providers has acted as a driver for establishing a planning and funding system based on Outcome Agreements.

Options considered and preferred approach Business as usual

7.230 A no-change (Business as Usual) scenario would only apply if the reform to create the Commission were not taken forward, as it is the dissolution of HEFCW and the establishment of the new body that requires a new planning and funding structure to be put in place.

Key advantages of Business as usual

7.231 There would be no disruption to current arrangements. HEFCW would continue to fund HE provision, research and related activities and funding allocated to HEFCW would continue to be managed via the Welsh Government sponsor team. HEFCW staff would not be subject to any change or disruption and would continue to fund eligible providers. Welsh Government teams would continue to plan and fund post16 provision (other than HE) and staff currently supporting these areas would not be subject to any change or disruption. Providers would not experience any significant change to the existing planning and funding arrangements put in place by the Welsh Government or HEFCW as appropriate, other than routine operational changes that may already be in train.

Key risks of Business as usual

7.232 The different types of providers of PCET provision would continue to be separately funded without the oversight of a single body responsible for the planning and funding of provision. This could mean a lack of coherence of provision for learners, or a centrally managed system to identify gaps and unnecessary duplication. It would be difficult to: achieve seamless and well planned pathways for learners across all sectors; ensure a continuous and consistent focus on quality of provision and enable value for money, without central oversight of the whole system.

Option 2 – The preferred approach

7.233 The proposals are for the Welsh Ministers to be enabled to:

- Fund the Commission and attach terms and conditions to their funding taking account of academic freedom and institutional autonomy;
- require the Commission to enter into an outcome agreement with persons whom it proposes to fund; and
- continue to fund further education and training and certain courses of higher education as they may currently do under the Learning and Skills Act 2000.

7.234 The Welsh Ministers current duties and functions in relation to securing proper and reasonable facilities for post-16 education and training (other than HE) or functions very similar to them, would in future be vested in the Commission. In addition the proposal is for the Commission to be enabled to:

- Fund tertiary education (HE, FE, apprenticeships, adult community based education and school sixth form education) as well as research and innovation, in line with the objectives in the Commission's approved Strategic Plan;
- apply terms and conditions to their funding;

- determine funding allocations to providers and local authorities on the basis of negotiated funding and outcome agreements and /or contracts; and
- utilise performance and monitoring information, labour market intelligence and research to inform its funding allocations.

7.235 Currently, the planning and funding of PCET provision is achieved through a variety of mechanisms, depending on the type of provision, the category of provider and the aim of the programme or course. The intention is that the Commission's planning and funding relationships with PCET providers and local authorities will, for the most part, be achieved through the negotiation of outcome agreements other than where provision and services are secured by means of contracts. It is intended that outcome agreements will be "performance contracts" to be negotiated between the Commission and PCET providers in receipt of recurrent funds and between the Commission and local authorities in respect of funding allocated for school sixth form provision.

7.236 The proposal is that outcome agreements should be the mechanism by which the Commission will seek alignment of the activities of recurrently funded learning providers with the Welsh Government's strategic priorities. The Commission will need to take into account the Welsh Government's strategic priorities and its response to them as set out in its approved Strategic Plan and translate that plan into action. It is envisaged that this will be achieved, in part, through the decisions the Commission takes when allocating funding to PCET providers and local authorities. In addition to recurrent funds, ad hoc funding allocated by the Commission to providers and other organisations will be subject to terms and conditions of funding. The expectation is that the Commission will ensure such funding is aligned with the priorities in Commission's approved Strategic Plan.

Key advantages of the preferred approach

7.237 The primary difference between the current arrangements and how the proposed Commission would work is an ability for it to take a 'whole systems' view and to plan and fund accordingly – the aim is that the Commission will promote coherence across the PCET sector as whole. The proposal to introduce a planning and funding system based on outcome agreements should ensure a line of sight between the Welsh Government's priorities for post-compulsory education, training and research, the Commission's strategic plan and the activities undertaken by funded providers.

Key risks associated with the preferred approach

7.238 The introduction of a planning and funding system based outcome agreements would inevitably mean some changes to the current arrangements operated by the Welsh Government and HEFCW.

7.239 An approach based on outcome agreements may be more resource intensive than current arrangements for both the Commission, providers and local authorities, at least when they are initially introduced.

Option 3 – Regulation and Outcome Agreement Model

7.240 The technical consultation proposed a system of regulation and outcome agreements (ROAs). The proposal was that for learning providers and those delivering HE provision to receive funding, they would need to:

- Deliver PCET and/or be engaged in or undertake research/innovation activities;
- Operate wholly or principally in Wales - Possibly be a charitable institution.

7.241 ROAs could be drawn up for approval by the Commission to make them eligible for funding or ensure their course provision attracted Welsh Government student support from Welsh Government. WBL providers would not be required to draw up an ROA as this must be fulfilled via their contractual obligations, inclusive of issues covered in a ROA. It was proposed that ROAs would be used as an enforcement mechanism in the event of a regulatory breach by the provider.

7.242 The proposal was that ROAs would come in two parts: Part I: regulatory requirements, and Part 11: agreed outcomes

Key advantages of option 3

7.243 The ROA model would combine regulatory oversight with eligibility to receive funding from the Commission

7.244 This option sought to introduce a single PCET planning, funding and regulatory system based on Regulation and Outcome Agreements, building upon a mix of the strengths identified from the models proposed within the White Paper. The ROA model aimed to provide consistency of approach to regulation and accountability.

Key risks associated with option 3

7.245 Having considered how the model could operate, there were concerns about how the Commission could, for the time being, have a sufficient degree of certainty about providers to be funded to ensure the ongoing availability of proper and reasonable facilities for post-16 education and training (other than higher education). An approach based on applications to the Commission for approval of ROAs could result in uncertainty about the providers who are eligible to receive funding from the Commission. In contrast, for higher education there are no requirements to secure the provision of proper and reasonable facilities and the majority of HE courses are currently supported by income derived from student fees as opposed to funding received from HEFCW.

7.246 The consultation feedback demonstrated a mixed response to the proposal to base the Commission's planning, funding and regulatory functions on ROAs. There was some significant opposition to the ROA model, even though a focus on outcomes was welcomed. Additionally, responses suggested that the Commission should recognise there is no 'one size fits all' solution when planning and funding post-16 provision and it was proposed that the Commission should continue to operate flexible planning and funding systems across the post-compulsory sector, at least in the first instance, while seeking to align and consolidate systems over time.

5 Protecting the interests of learners

Current arrangements and the case for change

7.247 This function relates to arrangements for learners wishing to transfer to another provider, transition arrangements for learners in the event of course or provider closure or failure (learner protection) and arrangements for learner complaint resolution. The White Paper recognised that different parts of the tertiary education system have different arrangements to support learners' to continue their learning in these circumstances.

HEIs

7.248 The UK quality code for Higher Education establishes the expectation that, from admission through to completion, all students are provided with the support that they need to succeed in and benefit from higher education. HEFCW would normally request a student protection statement from a regulated HEI they believe to be at risk of failure.

7.249 Arrangements are also in place for all students to continue to receive student finance if they transfer course or provider.

FEIs

7.250 The Technical and Further Education Insolvency Act 2017 makes provision for a special administration regime to operate alongside ordinary insolvency to ensure that learners are protected in the event that a FE college or designated institution becomes insolvent. In addition the Welsh Government has powers to intervene if necessary to protect the interests of learners and safeguard the education of existing learners if there are serious problems.

Apprenticeships

7.251 Apprenticeships are delivered through contracts between the Welsh Government and approved providers. The contractual requirements include that providers must find an alternative employer for apprentices that have been made redundant to ensure they can continue their qualification. In this case financial support is also available for a set period of time from Welsh Government whilst alternative employment is sought. Providers are also required to recruit learners displaced as a result of the WBL tendering exercise.

School sixth forms

7.252 Arrangements are in place ensure the transfer of data about pupils when they move from one school to another. Under the Pupil Information (Wales) Regulations 2011 (“the 2011 Regulations”), whenever a pupil joins a school from another school within England or Wales, the pupil’s Common Transfer File (CTF) must accompany him/her. When a pupil leaves a school for a new school a CTF must be sent to the new school. These arrangements do not cover transfers between schools and other types of learning provider. However, the 2011 Regulations do require that when a learner is under consideration for admission to another school, institution for further education, or any other place of education or training, the head teacher must transfer the pupil’s educational record to the responsible person should they request this; although this does not include the results of any assessment of the pupil’s achievements.

Complaints handling and resolution

HEIs

7.253 HE providers are required to adhere to the QAA’s Quality Code for Higher Education which sets out principles for addressing academic appeals and complaints about the quality of learning opportunities by learners in higher education. The Code requires that HE providers have procedures in place to handle academic appeals and learner complaints about the quality of learning opportunities.

7.254 If learners are not satisfied with the result of the complaints procedure then they can refer their unresolved complaint to the Office of the Independent Adjudicator (OIA). The Higher Education Act 2004 allows for the designation of a body to operate a student complaints scheme. The OIA has been designated as the operator for handling unresolved student complaints in higher education in England and Wales. The OIA’s role currently extends to ‘qualifying institutions’ defined under the 2004 Act. Providers of HE are required to pay a subscription fee to the OIA.

7.255 In addition, HEFCW may consider complaints against a HE provider in areas which it has funding or regulatory powers such as financial or quality procedures.

FEIs

7.256 FEIs and apprenticeships have their own complaints procedures. In 2017, the Welsh Government issued guidance to these providers on handling complaints. FE and apprenticeship learners are currently unable to refer their unresolved complaints to an independent body. The Welsh Government has no legal power to investigate unresolved complaints from individual learners and they do not come within the remit of the OIA unless the learner is undertaking a higher education qualification.

7.257 It should be noted that FEIs who deliver HE provision are required to subscribe to OIA and that students learning HE at FEIs have access to the OIA for complaints resolution.

School sixth forms

- 7.258 Section 9 of the Education Act 2002 requires the governing bodies of all maintained schools in Wales, including nursery schools, to establish and publish procedures for dealing with complaints from parents, pupils, members of staff, governors, members of the local community and others. When establishing complaints procedures, governing bodies must have regard to any guidance issued by the Welsh Ministers, with the current guidance contained in the Welsh Government circular 'Complaints Procedures for School Governing Bodies in Wales 2012'. This provides governing bodies with guidance in relation to establishing such procedures and includes a recommended model complaints procedure. It also outlines the local authority's role in relation to complaints, where appropriate.
- 7.259 Although the statutory responsibility for dealing with complaints remains with the governing body, local authorities should satisfy themselves that schools have adequate complaints procedures, and can provide advice and assistance to governing bodies on handling complaints. A local authority should also consider any evidence that suggests that a governing body does not have a complaints procedure, has an inadequate procedure, has not followed its procedure or has a procedure that is inoperable because persons who are subjects of the complaint investigate it or make decisions about it.

Learner protection Arrangements

- 7.260 There is a risk that if adequate learner protection arrangements are not in place to support a learner if their course, campus, or provider closes, or if their personal circumstances change that they could not complete their studies. Officials consider that putting clear, coherent and easily accessible learner protection arrangements in place will help to prevent this occurring.
- 7.261 Responses to the White Paper suggest that current arrangements are inconsistent and not transparent for the learner. The responses to the White Paper consultation indicated there is scope to strengthen the arrangements to protect learners studying at tertiary education providers in Wales.
- 7.262 Difference and complexities mean that learners, even within the same provider, do not necessarily receive the same level of protection. The current arrangements vary in their scope and focus, rather than a comprehensive, formalised approach that includes both practical arrangements and support for learners' progress and well-being.

Complaints handling and resolution

- 7.263 Research carried out by NUS in 2011³¹ highlighted the issues surrounding the complaints processes within the FE sector, with inconsistency and transparency key issues amongst providers.

³¹ See NUS, 2011, 'Unresolved: The state of student complaints in further education'
<https://www.nus.org.uk/Global/Campaigns/Unresolved%20Complaints%20in%20Further%20Education.pdf>

7.264 Based on the feedback from the White Paper consultation, it is considered that all tertiary education providers should have clear policies and procedures in place to enable a learner to make a complaint regarding their learning experience. It is proposed that the Commission should be responsible for ensuring that tertiary education providers have appropriate complaints procedures in place and communicate these effectively to learners.

7.265 Although there are arrangements in Scotland and England for learners to take unresolved complaints to an independent body currently there is no equivalent for FE and apprenticeships in Wales. In order to drive a more integrated and improved approach, bringing FE and apprenticeships on a par with HE, it is vital that this is addressed.

Options considered and preferred approach Business as usual

7.266 In this case a no-change (Business as usual) scenario would involve existing arrangements being taken forward largely unchanged into the new regulatory and funding environment for tertiary education

Key advantages of Business as usual

7.267 The main key advantages of 'business as usual' are:

- No disruption to current arrangements
- Although the standard of provision varies amongst providers there are learner protection and complaints arrangements in place.
- Providers would not experience any change or disruption.
- No additional costs for FE and apprenticeship providers in requiring subscription to the OIA.

Key risks of Business as usual

7.268 At present time there are inconsistencies of provision across providers with variable arrangements for learners depending on where and at what level they are studying. There are also differences depending on the part of the sector you are studying in with, for instance, learners studying (non HE courses) at FEIs or apprentices unable to address their unresolved complaints to an independent body.

7.269 There is a risk that by staying with business as usual some learners will not experience the same level of provision for learner protection and complaints than others and to ensure a level playing field a more standardised approach needs to be introduced.

Option 2 – The preferred approach

Learner Protection Plans

7.270 It is proposed that a learner protection plan will set out the tertiary education provider's arrangements for:

- Protecting the interests of persons undertaking a course of tertiary education provided by or on behalf of the tertiary education provider in the event of the course ceasing to be provided for any reason, and
- supporting a person who is undertaking a course of tertiary education provided by or on behalf of the tertiary education provider 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).

- 7.271 The Commission will be able to require a tertiary education provider that is registered with the Commission or in receipt of funding from the Commission to submit a learner protection plan to the Commission for approval. Discretion will be provided to the Commission to determine which of these providers will be required to submit a learner protection plan to reduce the possibility of providers being required to develop a plan where it is not appropriate or proportionate for them to do so.
- 7.272 The Commission will not be able to require a local authority to submit a learner protection plan in relation to school sixth form provision. School sixth forms will be omitted because well-established arrangements are in place for pupil transfers through the CTF. This seeks to avoid introducing additional administrative burden for schools in managing different arrangements for pupils, pre-16 and post-16; and to avoid potential confusion for learners and parents that may result from different arrangements for pupils pre-16 and post-16.
- 7.273 The Commission will establish arrangements for the development and approval of learner protection plans. The Commission will be required to issue guidance on the preparation and revision of learner protection plans. It is proposed that the Commission will be required to consult with stakeholders in preparing this guidance.
- 7.274 It is intended that a proportionate approach is adopted in the development of learner protection plans, which does not result in additional unnecessary burden for providers. Learner protection plans would be in a format appropriate to the provider and its structures, and could be incorporated into other documents where appropriate.
- 7.275 The Commission will be required to monitor the effectiveness of learner protection plans and include in its annual report the conclusions it reaches from that monitoring as to the effectiveness of learner protection plans during the financial year to which the report relates.
- 7.276 The Commission will be required to monitor the effectiveness of learner protection plans and include in its annual report the conclusions it reaches from that monitoring as to the effectiveness of learner protection plans during the financial year to which the report relates.

Learner complaints arrangements

- 7.277 A duty will be placed on the Commission to ensure that a tertiary education provider has in place a procedure for investigating complaints about an act or omission of the provider made by persons who are receiving, or have received

tertiary education provided by, or on behalf of, the provider. The Commission will also be required to ensure that providers also take reasonable steps to make the procedure known to persons receiving tertiary education provided by, or on behalf of, the provider

- 7.278 Welsh Ministers will be able to specify by regulations a registered institution or other person in receipt of funding under the Draft Bill as a qualifying institution for the purposes of the student complaint scheme. Welsh Ministers will not be able to specify local authorities in relation to school sixth form provision. This will enable providers to be brought into the scheme gradually, allowing time for the OIA and individual providers build their capacity.
- 7.279 However, it is not proposed that school sixth forms be included in these proposals because there are well-established arrangements in place for complaints about schools which must align with the Welsh Government. This seeks to avoid additional administrative burden for schools in managing different arrangements for pupils, pre-16 and post-16; and avoid potential confusion for learners and parents that may result from different arrangements for pupils pre-16 and post-16.

Key advantages of the preferred approach Learner protection arrangements

- 7.280 Although learning providers currently have learner protection arrangements in place, these differ depending on the provider and the level of study undertaken (see current arrangements). The proposed reforms will help to achieve a degree of consistency and will help learners continue their studies in a range of circumstances. The proposals will enable the Commission to determine how best to protect learners' interests across different providers in consultation with providers and learners. The Commission will be required to monitor the effectiveness of learner protection plans and include in its annual report the conclusions it reaches from that monitoring. This will allow for good practice to be shared across the sector.

Complaints Handling and Resolution

- 7.281 The proposal for the Commission to oversee the responsibility on tertiary education providers to have complaints procedures in place and communicated effectively to learners will address issues of inconsistency of complaint management and processes and provider greater transparency and clarity for learners. This will help to drive an integrated and improved approach to handling complaints across the tertiary education sector.
- 7.282 The proposals will extend the scope of the independent complaints resolution scheme to individuals studying further education courses and apprentices.

Key risks associated with the preferred approach Learner Protection Arrangements

- 7.283 There may be resource costs to providers of developing learner protection plans. However this should be minimal as it is intended that a proportionate approach is

adopted in the development of learner protection plans, which does not result in additional unnecessary burden for providers. These costs are unknown at this stage and are likely to remain undetermined until the implementation phase, as the new Commission will need to develop guidance on the plans.

Complaints Handling and Resolution

- 7.284 Extending the independent complaints scheme will place additional burden on the OIA and providers that have not been required to be members of the scheme in the past. New members to the scheme will be required to pay a subscription fee to the OIA and existing providers may see their subscription fee increase as new learners are brought within the scope of the scheme.

6 Strengthening the learner voice and representation

Current arrangements and the case for change

- 7.285 This section relates to the existing learner representation and engagement arrangements across PCET.
- 7.286 At the moment there are different arrangements across the PCET sector to ensure learner representation and engagement depending on the provider, with no standardised way as to how this is delivered. The reforms will establish a new system across the sector to help ensure a level of consistency for learners.

Current Arrangements

- 7.287 HEIs in the partnership with HEFCW and NUSW have embedded student partnership within their institutions with students' unions required to produce an annual quality report and every HE provider to have a student charter in place.
- 7.288 FEIs are encouraged to develop their own learner involvement strategy with the help of the Welsh Government's Learner Involvement Strategies Guidance. The Further and Higher Education (Governance and Information) (Wales) Act 2014 requires that all FEIs have student representatives on their governing bodies. There is currently a budget of £25k which sits with the FE team to deliver a joint research project with HEFCW for the next financial year. Previously a larger budget of £150k was set aside per financial year for the Learner Voice Wales learner satisfaction survey that ran between 2013 and 2015. This covered learners in FE, work-based learning, adult community learning and Welsh for Adults. In the past the FE team contributed grant funding to NUS Wales and later the Wise Wales student partnership.
- 7.289 FEIs are encouraged to develop collaboration facilitated by NUS Wales, to help embed the learner voice strategies guidance in FE. This was in the region of £25k per financial year and was for FE only.
- 7.290 Schools, including sixth forms, are required by law to have a school council to ensure that pupil voice is represented in the development of school policies and

procedures and any other matters of concern. Apprentices are represented by the National Society of Apprentices Wales alongside a requirement for a formal learner involvement strategy (as noted above for FE) included within the contracts between the Welsh Government and apprenticeship learning providers. Apprentices were included in the Learner Voice survey (as above) between 2013 and 2015. Currently each contracted provider is expected to operate its own learner survey and officials can ask to see evidence of these and how the provider is responding to the results. This is monitored through the annual self-assessment report which providers are required to submit. There is no corresponding budget or additional Welsh Government resource set aside for this.

- 7.291 The responses to the White paper consultation emphasised the need to ensure that learner voice is considered throughout the development of the proposals, with suggestions for stronger more formal structures for learner representation across the sector. It was suggested that this could be more learner-centred, with opportunities for learners to influence the delivery of provision and that arrangements should be in the interests of the learner, meeting each learner's personal circumstances, goals and aspirations with a focus on continuity of education.
- 7.292 The majority of the respondents to the Technical consultation agreed that consistent principles and values should be developed for learner voice and representation and that learning providers should be required to adhere to them. They agreed that learner representatives should be involved with developing outcome agreements and that a new national framework for learner voice and representation should be established.
- 7.293 Feedback from stakeholders from both Welsh Government consultations suggests that although there is guidance and good practice already in place there is room to strengthen the provision that is currently available. The establishment of the Commission, with its oversight of the entire PCET sector, presents an ideal opportunity for a more joined up, learner-centred approach with high level standards and codes of practice for institutions being introduced.

Options considered and the preferred approach Business as Usual

- 7.294 A no-change (Business as Usual) scenario would only apply if the reform to create the Commission were not taken forward, as the dissolution of HEFCW and the establishment of the new body require a new governance structure to be put in place and for the strengthening of learner representation and voice arrangements to be included in this.

Key advantages of Business as Usual

- 7.295 The main key advantage of 'Business as Usual' is that the system is already understood. Although the standard of representation may vary amongst providers, there is some learner representation and engagement across the various parts of the sector.

Key risks of Business as Usual

- 7.296 At the moment representation amongst the sector varies depending upon the provider, with some providers providing a higher level of support than others. There are also differences depending on the part of the sector you are studying in.
- 7.297 There is a risk that by staying with business as usual some learners could experience less representation and engagement than others and stakeholders held the view that a more standardised approach or standardised principles to apply across different types of provision would address these inequities.

Option 2 – The preferred approach

- 7.298 At the moment only the requirement for school councils is contained in legislation. The introduction of guidance and standards across other parts of the sector will require new duties and powers to be created.
- 7.299 The proposals include the development of a Learner Engagement Code, which all registered providers will be required to adhere to. As part of this there will be a requirement for learning providers to set out how learners have been represented.
- 7.300 The Commission will be under a duty to consult PCET providers, learner representative bodies and other relevant stakeholders during the preparation of the Learner Engagement Code. The Commission will be required to monitor and report on the effectiveness of the Learner Engagement Code as part of the annual reporting process. Learning providers are expected to submit a monitoring report evidencing learner engagement to the Commission via their annual report processes.
- 7.301 The Commission will be required to keep the Learner Engagement Code under review and if they think it is appropriate, prepare and publish a revised code.
- 7.302 Welsh Ministers will be expected to issue guidance on the high level requirements for the Learner Engagement Code and a duty will be placed on the Commission to pay regard to this guidance.
- 7.303 It is envisaged that guidance from WMs will stipulate this will consist of two parts:
- a) A statement of high level principles to help learning providers establish effective representation for their learners
 - b) Practical steps as to how effective engagement and involvement of learners can be achieved

Key advantages of the preferred approach

- 7.304 The preferred approach will introduce a standardised system across the whole of PCET for learner representation and engagement which learning providers will be expected to adhere to. It is intended that this will ensure that all learners across the

sector receive the same opportunity and level of engagement and representation no matter which method of post compulsory education they chose to study through.

7.305 This should produce a more learner-centred system, ensuring that engagement with learners is treated as seriously across the sector as other regulatory requirements.

Key risks associated with the preferred approach

7.306 The main risk that respondents to the consultations could foresee would be in relation to the ability of the different sectors to engage in a standardised way with learners given the diversity of the learning arrangements and methods of learning between individual providers.

7.307 It should be noted however, that it is expected that the Learner Engagement Code will be flexible enough to ensure that learners will be able to be represented through many different mechanisms. The most important part is ensuring that the same level, standard and commitment to engagement is shown across all sectors no matter which method of engagement is chosen.

Option 3 – Option 3 mirrors option 2 except for the proposals to:

- Have a learner representatives on the Board of the Commission (see section 1– Governance of the Commission for further detail).
- An expectation that learner representatives (learners) are involved in developing the access and opportunity plans and outcome agreements.
- Exempt Apprenticeship providers from the outcome agreement requirements as they already fulfil robust contractual obligations that include the types of issues covered by the outcome agreements. Original proposals suggested that the requirement for learner involvement would be included in the contract between the Commission and the learning provider.
- Only a National Framework would be developed to bring consistency across the PCET sector (part one of the Learner Engagement Code detailed in option 2). This would only provide for high level principles for learner representative bodies and no further detail.

Key advantages of Option 3

7.308 Learners would be represented on the Board membership of the Commission and thus able to have a say in the running of the Commission.

7.309 By involving learner representatives in the development of the opportunity and outcome agreements, providers will have to ensure that the needs of learners are being taken into account whilst developing and agreeing their outcome measures.

7.310 It makes sense to exempt apprenticeship providers from the outcome agreement requirements as they are already adhering to robust contractual obligations and this will remove a layer of unnecessary bureaucracy.

7.311 A national framework would bring more consistency to the principles for learner representation across the different sectors.

Key risks associated with option 3

7.312 Originally, and in response to the technical consultation, stakeholders felt that tying up two Board places to learners was not the best way forward as they would not be able to represent all learners from across the PCET. Instead it was suggested that learner representatives could become observers on the board, with the ability to influence.

7.313 Recent stakeholder engagement events have highlighted that this thinking has now reversed and the NUS (in particular) now prefer two learner representatives to have full board membership status. (See section 1 – Governance of the Commission for further detail on learner board representation.

7.314 The Policy has now moved away from the Fee and Access plan model. There will now be an option but not a requirement for learners to be involved in the development of access and opportunity plans and outcome agreements.

7 Quality assurance and enhancement

Current arrangements and the case for change

7.315 This relates to the quality assurance of provision delivered by Welsh providers across the PCET sector that fall within the remit of the Commission.

7.316 Learning providers in all PCET sectors have their own quality systems. There are arrangements for external quality assessment or inspection in each part of the system, which validate providers' own quality assurance processes and provide independent accountability for public funding. Various different bodies are responsible for these.

7.317 HEFCW has developed a quality Assessment Framework in line with its statutory remit for the quality of regulated HE providers under the HE (Wales) Act 2015 ("the 2015 act"). Under this framework, regulated HE providers are able to commission any agency on the European Quality Assurance Register (EQAR) to undertake external quality reviews of their provision but currently have chosen to contract the QAA (Quality Assurance Agency) as a sector through the HE representative body, Universities Wales. It is understood by Welsh Government that there is a framework agreement between the UW and the QAA, plus individual contracts between the QAA and each provider.

7.318 FE, WBL and adult learning providers are inspected by Estyn under its own statutory powers under Section 75 of the Learning and Skills Act 2000 ("the 2000 Act"). Sixth forms are inspected by Estyn as part of secondary school inspections but currently, Estyn does not make specific judgements on the quality of sixth form provision, or publish separate reports on sixth forms³². In consultation with stakeholders, Estyn has developed a common inspection framework for all sectors

³² Estyn has recently consulted (December 2019) on changes to inspection arrangements for 2021 onwards, including how Estyn reports on sixth form provision in core inspections.

of education and training that it inspects. Estyn, as a Crown Body, is currently funded by, and reports to, Welsh Government.

7.319 The Hazelkorn report recognised that the current quality assurance landscape is particularly complex, with different inspection regimes and different sets of responsibilities. For example, Estyn has responsibility for inspecting schools, FE, WBL and providers of post-16 education and training other than higher education: while the QAA, operating under a service-level agreement with UW, has oversight of HE programmes delivered in FEIs as well as within universities.

7.320 There is a need for an approach which allows the Commission to evaluate the effectiveness of the PCET system as a whole in meeting strategic goals and priorities; its capacity to meet current and future economic and societal needs; and the progress and outcomes of learners of all levels of ability.

Options considered and the preferred approach Business as Usual

7.321 A no-change (Business as Usual) scenario would maintain the current legislative and operational basis for quality assurance in higher and further education.

Key advantages of Business as Usual

- Least financial impact
- providers are familiar with the system and existing bodies involved;
- continuity of quality assurance of PCET provision;
- the current systems appear effective and well regarded, and relationships between QAA, Estyn and providers are well established.

7.322 In responses to the White paper there was considerable overlap in what respondents valued in the current arrangements, and what they thought any new system should include. This included building on and adapting best practice from existing models, rather than 'reinventing the wheel'. Some respondents, particularly HEIs, highlighted what they saw as the strengths of current approaches. The peer-led aspect of QAA reviews was particularly valued. Additionally the QAA's focus on enhancement was endorsed as something that could be built on in order to achieve system-wide consistency and clarity of purpose.

7.323 There was a consensus at the stakeholder focus group for the Technical Consultation that the Commission should be able to engage different organisations (implicitly QAA and Estyn) to do the quality assurance work, but to require them to work together in order to deliver a more coherent whole. It was argued that this would achieve the spirit of what is sought, without moving to a single agency model. This was echoed in the written feedback to the Technical Consultation; there was an appetite from some respondents to retain the current Estyn and QAA arrangements, and in some cases to work towards greater alignment and cohesion between the two.

Key risks of Business as Usual

7.324 If the creation of the Commission went ahead without corresponding legislative powers for quality assessment, HEFCW would cease to exist and no one body or organisation would have a statutory responsibility for the quality of higher education. The inconsistencies in the responsibilities and powers for different sectors across the PCET would remain. Hazelkorn indicated that there was a broad view that the overall quality and performance of both the FE and HE sectors is good, and that they broadly meet student and societal needs. However, many challenges were noted including:

- FEIs and HEIs being too focused on their own agendas, with little evidence of genuine working relationships and too little discussion about the needs of learners, their pathways and transitions across the system;
- the system as a whole being too focused on the short to medium terms, rather than a longer term vision for learners;
- criticisms made by different parts of the system about the quality of education and the level of preparedness for learners progressing;
- stakeholder identification of the need for better coordination and collaboration across the system, and for more positive relationships between sectors;
- having strict boundaries is no longer desirable given the diversity of the PCET sector and its institutions; and
- while a lot of data is being gathered, it's not necessarily being thought about in a coherent cross-governmental way.

7.325 Therefore perpetuating these inconsistencies would cause difficulties for the Commission to have a holistic view of the quality and standards across the PCET system and result in some of the challenges noted by Hazelkorn remaining unaddressed.

Option 2 – The preferred approach

7.326 The Commission will have a duty to monitor, and promote improvement in the quality of tertiary education across Wales. In carrying out this function, the Commission will be expected to be guided by its strategy, which is in turn guided by the statement of priorities published by Welsh Ministers.

7.327 The Commission will have a power to produce and publish a quality assurance framework. The framework will set out the Commission's policy in regards to quality, quality assessment, inspection and quality improvement, and will be subject to prior consultation with tertiary education providers, Estyn, and other stakeholders as the Commission sees fit.

- 7.328 ESTYN and the designated body for quality assessments in higher education (see below) will be required to take account of any quality framework published by the Commission when conducting inspections and assessments respectively.
- 7.329 In higher education, the Commission will have a duty to assess, or make arrangements to assess, the quality of higher education provided in Wales by each tertiary education provider registered, or seeking to be registered, by the Commission ('registered HE providers'), and education provided on behalf of each institution registered with the Commission ('external HE providers').
- 7.330 The Commission will be able to recommend to Welsh Ministers that a body be designated to conduct quality assessments of higher education providers. It is expected that this designated body will be on the European Association for Quality Assurance in Higher Education (ENQA) register of approved agencies. The functions of the designated quality body will be as follows:
- a. To conduct assessments of the quality of higher education provided in Wales by registered institutions, at intervals as prescribed in regulations.
 - b. To conduct assessments of the quality of higher education provided in Wales by institutions seeking to be registered by the Commission.
 - c. To provide the Commission with information and advice as required regarding the quality of higher education provided in Wales by registered institutions.
- 7.331 In order to perform its quality assessment functions, the designated body will have the power to charge higher education providers fees, as is the current arrangement between higher education providers and the Quality Assurance Agency for Higher Education (QAA).
- 7.332 In further education, Estyn will retain its duty to inspect education (other than higher education) or training for persons aged 16 or over where the provider is given financial support by the Commission, or by a local authority in Wales which is in turn funded by the Commission. Estyn's right of entry into providers which it inspects will remain unchanged.
- 7.333 As set out in current legislation, Estyn will be required on the quality of education or training inspected, the standards achieved by those receiving the education or training, and whether financial resources made available to the provider of the education or training are managed efficiently and used in a way which providers value for money.
- 7.334 Whilst Estyn will retain its current independence in terms of the activities it undertakes and reports it produces in relation to post-compulsory education and training, it will be under a duty to have regard to the advice and guidance of the CTER (including strategic priorities for quality improvement and assurance) in exercising its functions.
- 7.335 The Commission will be made jointly responsible with Welsh Ministers for the funding for Estyn. This will represent a change from the current arrangements under section 104(4) of the Government of Wales Act 1998, under which the Welsh

Ministers fund Estyn exclusively. The Commission will provide Estyn with funding as it considers appropriate in respect of post-16 inspections, and have regards to what Estyn considers appropriate in discharging its inspection duties.

7.336 Officials intend that the overall funding made available for Estyn's activities will be maintained, but that a proportion of Estyn's current budget would have to be rerouted through the Commission upon its establishment in 2023, and would become contingent on a new annual plan and remit letter. Estyn's advice will be sought on an appropriate estimate of the cost of post-16 activities which should be made the responsibility of the Commission. The Commission would have discretion to make additional resources available to Estyn from within its own budget for additional inspections and for further advice and information that Estyn might be able to provide on matters of quality assurance and improvement.

Key advantages of the preferred approach

7.337 The advantages of the preferred approach are as follows:

- It will provide continuity of quality assurance and address stakeholders' desire for quality systems to build on the existing arrangements
- It reflects consultation feedback that quality assurance requirements may need to apply differently to learning at different levels and in different contexts, and reflect the different context, mission and role of each institution and sector, avoiding a 'one size fits all' approach:
- It ensures that the Commission should have autonomy to develop its own quality framework and drive forward priorities in quality improvement policy across the PCET sectors, informed by the Weingarten Review.
- Carries a relatively limited financial impact for Estyn and PCET providers.

Key risks associated with the preferred approach

- In agreeing a plan of inspections and funding for its activities in post-16 education and training with the Commission, Estyn will need to ensure that its independence as an inspectorate continues to be protected. The Commission, in delivering its commitment to securing education and training for persons aged 16-19 and 19+ of sufficient quality, will need to ensure that Estyn continues to conduct and report on inspections without fear or favour, in order to ensure continued improvement in the quality of education on offer.
- An effective working partnership between the Commission, Welsh Ministers, Estyn, and the designated body for higher education quality assessments will be essential to ensuring fair, efficient and effective quality assurance and assessment continues across all PCET sectors.

- By taking an evolutionary rather than revolutionary approach, there will likely continue to be differences in approach to quality assurance and assessment across the PCET sectors, particularly between higher and further education, at least in the early years of the Commission's existence. It will take time for the distinct cultures of quality assurance to complement each other and to enable the Commission to build a truly comprehensive picture of quality across the PCET system.

Option 3 – single designated body to assess quality

7.338 The Technical Consultation consulted on using a single designated body to assess the quality of all provision across the PCET sectors. This would involve wholesale reform of Estyn's inspection duties in further education, and the creation of a new designation process to find a body capable of conducting quality assessment and improvement work across a diverse range of further education, higher education and apprenticeship providers. The designated body would be funded through a mix of Commission funding and provider subscriptions, and report directly to the Commission.

Key advantages of option 3

7.339 Designation of a single quality assessment body would provide a fully 'clean break' from current arrangements and begin a process of bringing full coherence in quality assessment and improvement across further and higher education. This could lead to more holistic assessments of the value and effectiveness of diverse parts of the PCET sector in Wales and enable more focused and evidence-based allocations of public funds. It would also require significantly more collaboration between the further and higher education sectors in terms of pedagogy, curriculum, professional development, and general assurance functions.

Key risks associated with option

- It is not clear that there is an organisation within Wales with the required knowledge, experience or expertise to assess and assure quality across higher education, further education, and apprenticeships.
- Creation of a new body would likely carry additional costs, and be disruptive to existing ways of working with providers, which stakeholders have indicated largely operate well.
- A single body operating across higher and further education may fail to meet the requirements of the European Association for Quality Assurance in Higher Education (ENQA) register of approved agencies. This might jeopardise the critical UK-wide and international comparability of Welsh higher education quality assurance

8 Supporting and developing apprenticeships in Wales

Current arrangements and the case for change

- 7.340 This section relates to the existing apprenticeship function and apprenticeship development in Wales.
- 7.341 Currently the apprenticeship programme is delivered via contracted work based learning providers (allocated through a full procurement exercise). The Welsh Government's Further Education and Apprenticeship Division (FEAD) are responsible for developing apprenticeship policy, managing programme delivery and quality assurance. The Welsh Government holds the apprenticeship budget.
- 7.342 The teams involved in monitoring, development and delivery of apprenticeships are within FEAD (Post 16, Quality and Data, Learner Provision branches). These branches do not work solely on apprenticeships.
- 7.343 There is also an independent PAGS (Provider Assurance Governance Service) auditor based within Welsh Government who audit apprenticeship providers, from their learner plans to wage slips. This is outside of FEAD and part of the team who provide assurance, compliance and governance advice across ESNR. The teams work on ESF and ERDF European funded projects. PAGS provide risk-based monitoring reviews of ESF funded external training providers based all across Wales who are contracted to deliver Work Based Learning programmes on behalf of the Welsh Government.
- 7.344 The apprenticeship system in Wales is underpinned by the Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 and therefore any changes to the system contained within this Act will require legislation.
- 7.345 The Act makes provision for Welsh Ministers to publish and amend the Specification of Apprenticeship Standards for Wales (SASW), which sets out the minimum requirements of apprenticeship frameworks. Frameworks are regularly reviewed to ensure they continue to remain relevant. The ASCL Act also sets out how and on what basis apprenticeships certificates can be issued, as well as providing for apprenticeship agreements.
- 7.346 The Act has numerous regulation making powers that the Welsh Ministers can exercise, these include:
- Completing an apprenticeship - the standard Welsh completion conditions or the alternative Welsh completion conditions, including requirement for an apprenticeship agreement;
 - apprenticeship certificates - provision about the issue of apprenticeship certificates in Wales: duty to issue; power to issue; issue by the Welsh certifying authority; and the Welsh certifying authority;
 - contents of an apprenticeship certificate, including framework notification and publication; submission of draft framework for issue; and the Specification of apprenticeship standards for Wales;
 - apprenticeship frameworks – including Welsh issuing authority arrangements;
 - specification of apprenticeship standards for Wales (SASW); and □ apprenticeship agreements.

- 7.347 Apprentices must sign an Apprenticeship Agreement with their employer before the apprenticeship begins. The Apprenticeship Agreement is a document stipulating the framework being followed and the skill, trade or occupation the apprentice is working in. ASCL Act 2009 Section 32 and the regulations made under it provides that an apprenticeship agreement means an agreement in relation to which each of the conditions in section 32(2) is satisfied. Without this agreement, an apprenticeship completion certificate cannot be issued.
- 7.348 The specification of Apprenticeships Standards for Wales (SASW) sets out the minimum requirements of apprenticeship frameworks. It outlines the type and level of qualifications required for apprenticeship frameworks at each level, the Essential Skills requirements, the personal learning and thinking skills needed, and the level of on or off-the-job training, and planned guided learning hours associated with completion of the framework.
- 7.349 Section 18 of the Apprenticeship, skills, Children and learning Act 2009 (“ASCLA 2009”) provides that the Welsh Ministers may designate a body to issue apprenticeship frameworks in Wales for a particular apprenticeship sector. The Welsh Ministers may designate only one body to issue Welsh Apprenticeship frameworks for a particular sector. A body designated by the Welsh Ministers will be known as a ‘Welsh Issuing Authority’. The Issuing Authorities function entails certifying that a new or revised framework meets sector requirements and the minimum standards set out in SASW, subject to these requirements being satisfied, the framework is issued. A Welsh Issuing Authority is accountable to the Welsh Ministers and will comply with directions and have regard to guidance given by them.
- 7.350 Section 38 of ASCL Act provides Welsh Ministers must by order specify particular sectors to which apprenticeship frameworks must relate. At any one time only one person can be designated as an issuing authority for any one sector (section 18(2) of ASCL), and an apprenticeship framework must relate to a particular sector.
- The underpinning legislative framework contained in ASCLA 2009 was not designed with Wales in mind and does not cater to the distinct needs of the Welsh economy and Welsh society.
 - In some cases provisions within the Act are unclear and not capable of delivering the system needed in Wales.
 - The Specification of Apprenticeship Standards for Wales (SASW) is inflexible and unresponsive to the changing needs of industry; changes cannot be implemented with the speed needed in a rapidly changing skills environment.
 - The ability of Sector Skills Councils and sector bodies to fill their role has diminished under UK Government apprenticeship reform, weakening their remit to give employers a voice and create high quality occupational routes.

- Demand for apprenticeships is changing as employers demand skills at higher levels and young people are looking towards apprenticeships as an alternative to traditional full-time undergraduate provision.
- The planning, funding and management of apprenticeships would be better aligned with the skills needs of Wales, and with other provision for learners, if it were to fall within the remit of the CTER. To effect this, legislation is required to transfer powers and duties that currently rest with Welsh Ministers, to the new body.

Options considered and the preferred approach Business as Usual

7.351 A no-change (Business as Usual) scenario would only apply if the reform to create the CTER were not taken forward, the dissolution of HEFCW and the establishment of the new body requires an apprenticeships system that improves the way apprenticeships are commissioned and delivered in Wales to improve, the quality of apprenticeships and a full system change required to become responsive to meet the skills needs of the Welsh economy and the potential impact of the changes to apprenticeship standards in England.

Key advantages of Business as Usual

7.352 The main advantage of 'Business as Usual' is that the system is already understood and in place. Although this may not be the most effective system, learners and employers are able to access apprenticeship provision and the system has achieved results.

7.353 There is also the advantage that retaining the current system will mitigate any risks attached to staff changes and consequent loss of knowledge and expertise in relation to apprenticeships that could potentially be caused by transfer to a new body.

7.354 The apprenticeship system is currently undergoing reform, which will change the way apprenticeships are commissioned and delivered in Wales to improve the quality of apprenticeships. However, the existing legislative restrictions will not allow the full system change required to become responsive to meet the skills needs of the Welsh economy and the potential impact of the changes to apprenticeship standards in England.

Key risks of Business as Usual

7.355 As mentioned in the key drivers for reform, although the current system is able to deliver apprenticeships in Wales the underpinning legislation was not designed with Wales in mind, therefore not flexible or responsive enough to meet employer's needs, especially to meet the unknown impact of potential Brexit. Legislative changes must take place to ensure apprenticeship programmes are flexible enough to meet the changing needs of the economy.

7.356 If apprenticeship provision is retained within Welsh Government and therefore managed separately from the rest of the PCET sector, there might be important gaps in provision available, duplication between providers, and a failure to create clear learning pathways along which learners can progress without repetition.

7.357 There is also a risk that if higher education delivery is managed separately to further education and apprenticeship delivery, this is unlikely to ensure that provision is valued equally across the PCET sector.

Option 2 – The preferred approach

7.358 The preferred approach involves creating new arrangements that would lead to a more flexible apprenticeship system which to help meet the varying needs of learners and industry in Wales whilst ensuring portability across the UK. The approach would ensure apprenticeship frameworks are developed and delivered to meet the skill needs/level of the economy. The current legislation underpinning apprenticeship development and delivery, as outlined above, is no longer flexible enough to cater for the rapidly changing skills needs of employers and learners. Therefore, we could not stay with the 'status quo' and a new way of delivering and developing apprenticeships in Wales was needed.

Apprenticeship Frameworks

- Sections 18-21 in ASCLA will be repealed and new sections will provide that the Commission should be able to contract with external bodies for the development of apprenticeship frameworks or be able to develop in house.
- It is proposed that all frameworks will be issued by the Commission or its delegated representative.
- The frameworks will now be able to include industry recognised standards alongside the traditional qualifications
- The Commission (or its representatives) should be able to withdraw or modify apprenticeship frameworks
- The Commission will be required to consult WMs prior to issuing any novel contentious frameworks.
- The Commission will be under a duty to keep all frameworks under review.
- The Commission will be required to keep and publish a register of issued Welsh apprenticeship frameworks.

Welsh Apprenticeship Specification (WAS)

- Section 28 – 31 ASCLA will be repealed
- The specification of Apprenticeship standards for Wales (SASW) will be replaced by a new flexible WAS which is broader in scope with clearer requirements for the development of apprenticeship frameworks. WMs will be placed under a duty to prepare and issue the WAS.
- The Commission and anyone acting on its behalf will be required to comply with the WAS.

Apprenticeship Sectors

- Section 38 ASCLA stating that in order for an apprenticeship framework to be recognised it must relate to a sector will be repealed. This will be replaced with a requirement that the Commission ensures that apprenticeship frameworks are relevant to occupational groups (as specified by WMs within WAS).

Apprenticeship Certification

- Sections 7 – 11 ASCLA will be partly repealed and replaced and partly modified.
- The Commission (or its representative) **will be given the power to issue apprenticeship certificates. The power to charge a fee for this will be maintained at the same level.**
- Sections 7 and 6 will be repealed to allow the contents of an apprenticeship to be prescribed within the WAS.

Apprenticeship Agreements

- Section 32 of ASCLA in relation to those repealed.

Key advantages of the preferred approach

- 7.359 The proposed changes should lead to a new apprenticeship system which is more flexible to help meet the varying needs of learners and industry in Wales whilst ensuring portability across the UK. The system should ensure apprenticeship frameworks are developed and delivered to meet skill needs/level of the economy.
- 7.360 The introduction of WAS and the ability therefore to implement changes without lengthy legislation processes will help to ensure a more flexible system, responsive to the needs of industry.
- 7.361 The Commission, with its oversight of the whole PCET sector will be able to help ensure a coherent system with clear pathways for learners to progress. It will help to remove duplication and ensure equal value between vocational and academic studies with higher level apprenticeships available as an alternative to traditional full-time undergraduate provision. As the rest of the PCET sector will be managed by the Commission it makes sense that apprenticeship provision would also be included within its remit otherwise there is the risk that vocational and academic studies will not have equal value and coherence across the sector.
- 7.362 Option 3 was proposed in the technical consultation however, comments from stakeholders and legal services suggested that this option needed refinement in order to work. Option 2 is the preferred option as it takes into account these comments and proposes changes to mitigate the risks.

Key risks associated with the preferred approach

- 7.363 Respondents to the technical consultation suggested that there may be a risk that the Commission would not have the expertise to manage the full scope of the apprenticeship system and that elements should be retained by sector experts.

However, these concerns have been taken on board and the legislation will stipulate that the Commission will be able to delegate its responsibilities to another body whilst retaining oversight.

Option 3 – This option mirrors the proposals in option 2 except for:

- Apprenticeship Frameworks are replaced with new Apprenticeship Pathways.
- The Commission, rather than the WMs, has the power to specify additional matters to be included in the contents of apprenticeship certificates.
- Learning providers delivering apprenticeships up to level five will not be initially required to draw up Regulatory Outcome Agreements (ROAs) as the necessary accountability requirements will be covered in their existing contractual obligations.
- The technical consultation suggested that degree apprenticeships, at level six, will be funded via a grant to the Commission and therefore subject to the ROA process.

Key advantages of the preferred approach

- 7.364 As the proposals include a new process for apprenticeship provision and development it was felt that new terminology would be advantageous and that these new frameworks would be renamed as pathways.
- 7.365 The proposals to give the Commission rather than WMs the power to specify additional matters to be included in the contents of apprenticeship certificates would give the Commission the flexibility to amend certificate contents where necessary without the laborious process involved in amending legislation.
- 7.366 The Management of the relationship between providers and the Commission through the ROA process (as originally proposed within the technical consultation) would ensure that apprenticeship provision is managed in a similar way to other provision within PCET.

Key risks associated with the preferred approach

- 7.367 The proposal to redefine Apprenticeship Frameworks as Pathways raised concerns amongst stakeholders. As Pathways are currently used to refer to sub-specialisms in Apprenticeship Frameworks it was felt that this could lead to confusion in the sector.
- 7.368 As the contents of apprenticeship certificates will remain defined within legislation there is a risk that if the Commission is given the power to specify additional matters in relation to these certificates then it will be given powers akin to making regulations.

7.369 During the development of the operating system it has been decided to move away from the proposals of an ROA process to manage the relationship between the Commission and providers. Therefore the proposals contained within the technical consultation for apprenticeships to be managed through this process have now been revisited. If the proposals outlined in option 3 were retained then there would be a risk that the relationship between apprenticeship providers and the Commission would be managed differently to the rest of PCET provision.

9 Research and Innovation

Current arrangements and the case for change

- 7.370 This section relates to the distribution of Welsh Government funds via HEFCW to support research in HEIs. HEFCW distributes Quality-related Research funding (QR provided by Welsh Government to HEIs. In line with the protection of academic freedom Welsh Government does not stipulate how these funds are distributed beyond giving HEFCW a broad steer on the areas Ministers would like to prioritise via their annual remit letter.
- 7.371 There is currently a dual-system of funding research in HEIs composed of competitively awarded funding, which is managed by the UK Research Councils, and core, or block grant, Quality-related Research (QR) hypothecated funding that is distributed by the Higher Education Funding Councils (HEFCW in Wales) according to institutions' performance in the Research Excellence Framework (REF)
- 7.372 Other public sector bodies have potential to benefit from research and innovation, but generally do not receive regular funding. In Wales, unlike in England, funds are not provided by the government to institutions for knowledge exchange, although this is likely to change with the implementation of the Diamond Reforms.
- 7.373 Within Welsh Government a small team of officials (the Science Programme Delivery branch of the Welsh Government Office for Science) develop programmes in relation to funding for research and mechanisms for its distribution (Sêr Cymru programmes).
- 7.374 By the time the PCET reforms take effect, in response to the Reid Review³³, a Welsh Government Research and Innovation London Office (WRILO) will have been created, and HEFCW will have been dissolved.
- 7.375 As well as HEIs and the bodies that are currently funded, other public sector bodies when working with HE institutions have potential to benefit from research and innovation where they are collaborating with advanced category providers, but generally do not receive regular funding.
- 7.376 We do not currently have the structures in place to develop a strategic approach for coordination of research funding in Wales. Setting up the Commission will provide the strategic oversight to engage with the UKRI and enable one body to bid for UK funding on behalf of Welsh institutions. We already have research capacity (numbers of researchers and quantity of research funding awarded annually) which

³³ <https://gov.wales/review-government-funded-research-and-innovation-reid-review>

is proportionately much lower than in England and the absence of a strategic approach creates a risk that potential research funding will be lost to Wales at a time when there is well-corroborated evidence that our capacity is already too low. Recent evidence suggests that Welsh researchers operate at a high level but that there are too few researchers in key areas. The recent reports by Halligan & Bright³⁴, Elsevier³⁵ and REF 2014³⁶ highlight the quality of research in Welsh HEIs, but also illustrate the smaller research capacity in Wales currently, relative to the rest of the UK.

- 7.377 Recent structural changes to the research funding system include the establishment of UK Research and Innovation, a new body that is the strategic centre of the UK's research and innovation funding system. HEFCE has been disbanded and its powers to distribute research and innovation funding to HEIs in England have passed to a new Council within UKRI, Research England.
- 7.378 It is proposed that the Commission, acting as an arms-length body accountable to the Welsh Ministers, would be given responsibility for coordinating QR and post graduate research capacity funding in a more strategic and dynamic way and for ensuring alignment with other, competitively-awarded research capacity funding (e.g. Sêr Cymru) according to a national strategy.
- 7.379 We propose that legislation to establish the Commission should also provide for a committee of the Commission to be known as **Research & Innovation Wales (RIW)**. Its purpose would be to oversee and coordinate Welsh Government research and innovation expenditure provided to the Commission with the aim of creating a more dynamic and responsive-to-need research, innovation and knowledge translation environment in Wales. RIW would be a committee of the Commission, comprising experts in the fields of research and innovation and including some members of the Commission. Its specific functions would be set out in the legislation. RIW would be accountable to Welsh Ministers through the Council of the Commission, but would be required to publish a separate strategy, setting out its plans for strengthening research excellence and innovation in Wales and to report annually to the council of the Commission on its performance against agreed outcome targets.
- 7.380 The Council of the Commission would have overall responsibility for ensuring that its activities across the PCET sector and those of RIW are fully aligned with national strategic goals. It should maintain close engagement and collaboration with other Welsh Government research and innovation funding providers not routed through the Commission, such as UK Research & Innovation (UKRI) and engage with Research England on common activities such as REF.

Options considered and the preferred approach Business as Usual

³⁴ The Case for Growing STEM Research Capacity in Wales', Prof Peter Halligan; Dr Louise Bright published by Leadership Foundation for Higher Education, May 2015.

³⁵ International Comparative Performance of the Welsh Research Base 2013 (A report prepared by Elsevier for the Higher Education Funding Council for Wales and the Welsh Government February 2014 and updated 2016) See <https://www.elsevier.com/research-intelligence/research-initiatives/international-comparativeperformance-of-the-welsh-research-base-2016>

³⁶ REF Research Excellence Framework 2014 published in late 2014 see <https://www.ref.ac.uk/2014/media/ref/content/pub/REF%2001%202014%20-%20full%20document.pdf>

7.381 A no-change (Business as Usual) scenario would only apply if the reform to create the CTER were not taken forward, the dissolution of HEFCW and the establishment of the new body requires the powers to focus on promoting and engaging Welsh research and innovation

Key advantages of Business as Usual

7.382 No disruption to current arrangements - HEFCW staff would not be subject to change or disruption, Welsh Government staff would not be subject to change or disruption. Providers would not experience any change or disruption.

Key risks of Business as Usual

7.383 The lack of strategic oversight of research and innovation means that the proportion of financial support that is currently being allocated to different research areas, to different levels of technology readiness, to different types of organisations, and to collaboration, knowledge sharing and innovation activities is sub-optimal. It does not support the development of technology, priority research areas, range of organisations and learning to the extent that it could. A continuation of this position creates a serious risk that Wales will fall further behind the rest of the UK in technology and research and its potential to support economic growth will not be fulfilled.

7.384 Without an organisation that can focus on promoting and engaging Welsh research and innovation, the changes that have taken place in England and in relation to the UK Research Councils are likely to put research organisations in England in a better position to compete for UK Government and Research Council funding than organisation in Wales. There is a serious risk that the share of UK research funding arriving in Wales will reduce.

Option 2 – The preferred approach

7.385 Welsh Ministers will be granted powers to provide research and innovation funds to the Commission and to specify the general research areas eligible to receive this funding. Welsh Ministers will not be able to specify exact R&I projects that the funding should be directed to and this will not impact on institutions academic freedom.

7.386 The Commission will be granted powers to:

- Fund research, innovation and the exploitation of these, in line with the strategic plan agreed between the Commission and the Welsh Ministers. This may include match-funded, industry-led research initiatives involving advanced category registered institutions.

7.387 The current powers of HEFCW in relation to distribution of non-hypothecated quality-related research funding QR should be transferred to the Commission.

7.388 The Commission will be placed under a duty to:

- Monitor the performance of its funding programmes;

- promote the results of R&I and exploitation of the knowledge associated with it to a wide audience;
- pay due regard to strategic guidance from Welsh Ministers; and
- to engage with relevant bodies, to be agreed with Welsh Ministers on an annual basis.

Key advantages of the preferred approach

- The Commission for Tertiary Education and Research Wales (CTERW) would be the national strategic delivery mechanism for R&I funding in Wales.
- CTERW would be the ‘face of R&I’ in Wales, especially for national and international promotion and engagement on R&I activities.
- CTERW would be the ‘go-to’ body for R&I support in Wales.
- It would allow alignment and coordinated focus of R&I with the development of skills, education and apprenticeships provision against specific strategic areas, e.g. compound semiconductors, dementia and mental health, nuclear, agri-tech, low carbon buildings, etc.
- Allows easy prioritisation of all the above towards national priorities determined by Welsh Government.

Key risks associated with the preferred approach

- There is always a concern that by creating a separate body from Government that Welsh Ministers could lose control of the policy, and funding decisions could be made which are not aligned to the strategic plan. This could lead to potential disengagement from Government policy.
- Frustration by Government at poor or unaligned delivery against Government priorities.
- Potential for TERCW to be seen to be too close to HE and other delivery bodies.
- Potential for lack of coordination with R&I funding delivery retained by Government.
- Potential for recipients of traditional R&I funding to feel ‘left out’ should a more radical approach to R&I funding be adopted.

Option 3 – Separate arms-length body for R&I

7.389 A consideration was given to the research and innovation activities being removed entirely from the PCET body and that these be placed in a separate, arms-length body as is the case in the UK, or as was the case when R&I funding was provide by the Welsh Development Agency. Although there was no suggestion of recreating the WDA, there was a suggestion that a R&I specific body be created in a manner not unlike the research councils in the UK. This suggestion was rejected because of the potential conflict with the creation of the Research Councils (now UKRI) and the decision to include research in the PCET body (thus creating the Commission for Tertiary Education and Research).

Key advantages of option 3

- 7.390 There would have been advantages to this separate body in that it would have a very specific focus and remit on R&I specialising in R&I for Wales and able to engage directly with UKRI

Key risks associated with option 3

- 7.391 The risk of this option were that it would be too far removed from the educational aspects of PCET, especially in HE and consequently the synergies, alignment and coordination of R&I with education, training and skill development would be missed, especially given the very small scale compared to structures adopted by the UK in the creation of the separate bodies UKRI and Office for Students. Hence, the advantages of bringing these together in Wales outweigh the disadvantages

10 HE Governance

Current arrangements and the case for change

1. The Welsh Ministers' Order-making powers under section 124(9) of the Education Reform Act 1988 (ERA 1988)

- 7.392 The ERA 1988 requires a higher education corporation in Wales (HEC) to have in place an instrument and articles of government relating to the constitution and conduct of the institution. Section 124A of ERA 1988 requires a HEC to have in place an instrument of government, made by the Privy Council, which provides for the constitution of the corporation. Instruments of government must comply with Schedule 7A to ERA 1988. Schedule 7A sets out statutory requirements for the instruments of government of HECs made by the Privy Council and amongst other things, includes provision relating to the membership of the corporation, the number of members, and the appointment of members to the corporation.
- 7.393 In addition, section 125(2) to (4) of ERA 1988 makes provision relating to the content of a HEC's articles of government. Broadly the articles determine the distribution of functions between the board of governors, the Principal and the Academic Board and regulate the constitution and functions of committees of the corporation. They may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution.
- 7.394 These statutory requirements for governing documents do not apply to institutions established under different constitutional arrangements such as Royal Charters.
- 7.395 Currently, section 124A(9) of ERA 1988 enables the Welsh Ministers to amend or repeal paragraphs 3 to 5 and paragraph 11 of Schedule 7A. Schedule 7A sets out statutory requirements for the instruments of government of Welsh HECs made by the Privy Council. These provisions relate to the size, composition and appointment of members of the corporation.

- 7.396 The Draft Bill makes provision for the Welsh Ministers' existing order making powers under section 124A(9) to be extended to cover the whole of Schedule 7A with the exception of paragraph 1. Paragraph 1 enables a HEC's instrument of government to empower the corporation to change its name with the consent of the Privy Council.
- 7.397 The Draft Bill will also introduce a new power that will enable the Welsh Ministers, by order, to amend or repeal section 125(2) to (4) of ERA 1988 which relate to the content of articles of government of HECs in Wales.
- 7.398 The Draft Bill places the Welsh Ministers under a duty to consult with the Commission and any other persons they think appropriate before exercising these order making powers.
- 7.399 Together, these provisions will allow current statutory prescriptions placed on the governing documents of HECs to be reviewed, and if necessary amended or repealed, at a time when the PCET reforms are fully embedded and when fuller details of the Commission's regulatory requirements in relation to the governance of HEIs are known rather than making changes now which could have unforeseen consequences as the Commission's regulatory framework develops
- 7.400 It would also allow the current approach to the simplification of HEI governing documents, which is based on guidance issued in 2006, to be extended to all HEIs regardless of their constitutional underpinnings. The 2006 guidance was heavily focused on the arrangements of chartered universities who are not subject to equivalent statutory requirements on their governing documents.
- 7.401 There is no funding or budget associated with this legislative provision.

Options considered and preferred approach

2. The Welsh Ministers' order-making powers under section 124(9) of ERA 1988

Business as Usual

- 7.402 The status quo would mean that the Welsh Ministers' order making powers under section 124(9) would be retained as they are now and the Welsh Ministers would not be able to amend or repeal provisions in sections 125(2) to (4) of ERA 1988.

Key advantages of Business as Usual

- 7.403 This option:
- Would not require legislative change: and
 - Would ensure that existing safeguards in respect of the governance of HECs in Wales are not lessened.

Key risks of Business as Usual

- 7.404 This option:

- Would retain the existing limitations for the Welsh Ministers' to be able to make future changes to the statutory requirements placed on HEC governing documents. It would mean that any changes outside of the currently permitted provisions that might be considered necessary in future would require primary legislation;
- would retain existing inconsistencies with arrangements at chartered universities; and
- would not provide a clear role for the Commission in the review or amendment of provisions under the existing powers.

Option 2 – The preferred approach

7.405 The preferred option is to:

- a) **Amend** section 124(9) of ERA 1988 so that the Welsh Ministers' existing order-making powers to amend or repeal certain paragraphs of Schedule 7A are extended to include the whole of Schedule 7A with the exception of paragraph 1;
- b) **Introduce** a new power for the Welsh Ministers to amend or repeal sections 125(2) to (4) of ERA 1988 that relate to the content of articles of government of HECs in Wales; and
- c) Require the Welsh Ministers to consult with the Commission and any other persons they think appropriate before making an order under these powers.

Key advantages of the preferred option

7.406 This option:

- Would allow the current statutory requirements placed on HEC governing documents to be reviewed and if necessary, amended or repealed, at a time when the PCET reforms are fully embedded and fuller details of the Commission's regulatory requirements in relation to the governance of HEIs are known;
- would allow time for these matters to be properly considered and ensure that there are no unforeseen consequences arising from any changes or that existing safeguards in respect of the governance of institutions are not lessened;
- would provide a means to increase the level of parity between HECs and chartered universities;
- would help facilitate the extension of the current approach to the simplification of HEI governing documents to all institutions regardless of their constitutional underpinning. The current guidance was issued in 2006 and is heavily focused on the arrangements of chartered

institutions who are not subject to equivalent statutory requirements on their governing documents; and

- would ensure that the Commission and any other appropriate persons are consulted before any changes can be made.

Key risks of the preferred option

7.407 This option:

- Would retain existing statutory requirements for HEC governing documents in the short term but would allow them to be reviewed and if necessary amended or repealed at a later date; □ would require legislative change.

Option 3

7.408 This option would repeal relevant provisions in Schedule 7A and section 125 of ERA 1988 thus removing all existing statutory requirements placed on the governing documents of HECs in Wales

Key advantages of option 3

7.409 This option:

- Would remove existing statutory requirements placed on the governing documents of HECs in Wales and create a greater degree of parity with chartered universities that are not subject to equivalent requirements; and
- remove the need for future orders to be brought forward by the Welsh Ministers in order to amend or repeal the relevant provisions.

Key risks of option 3

7.410 This option:

- Would result in current statutory requirements being removed before details of the Commission's governance assurance arrangements have been developed and could lessen safeguards for students and other stakeholders; and would require legislative change.

11 Data, statistics and research

Current arrangements and the case for change PLASC, the Post-16 Data Collection and LLWR

- 7.411 Currently, the pupil level Annual School Census (PLASC) and Post-16 data is collected by the Welsh Government from local authorities, who collect it from schools.
- 7.412 PLASC is a statutory data collection collected every January and captures the personal details of all pupils attending a school at that point in time, but does not include information about their qualifications. The PLASC collection is managed by the school statistics team in Knowledge and Analytical Services. The data is submitted by schools and local authorities to the Welsh Government using a secure data exchange website provided specifically for that purpose by Welsh Ministers, as required in legislation.
- 7.413 The Post-16 data is a retrospective collection that is collected shortly after the start of the academic year. The collection includes details of the learning activities, programmes and qualifications that were undertaken during the previous academic year by learners in sixth forms of maintained secondary, middle and special schools. This is then used to inform the Welsh Ministers' sixth form funding decisions. The collection includes pupils in the national curriculum Year 12 or above at any time in the previous academic year and as it's a statutory data collection, all maintained establishments must submit a post-16 collection return.
- 7.414 Local Authorities also provide statutory data returns on learners who are "Educated Other Than At School" (EOTAS). This covers children who are, for example, educated at home or in hospital, as well as those in pupil referral units (PRUs). The majority of the data relates to children of compulsory school age, but a small number of post-16 learners are included
- 7.415 The pupil data for the Post-16 census is held by schools within their management information system (MIS) software, which is purchased and contracted from commercial software suppliers by schools and/or local authorities. Maintained schools must provide statutory data to the local authorities that maintain them. The data for the EOTAS return is held by local authorities within their software. The data is submitted by schools and local authorities to the Welsh Government using a secure data exchange website provided specifically for that purpose by Welsh Ministers, as required in legislation. This legislative requirement is currently satisfied through a contact the Welsh Government has, working with a software partner to develop statutory data collections' requirements and the data exchange website.
- 7.416 The Lifelong Learning Wales Record (LLWR) collects learning provision data for Post 16 education (non-higher education (HE) learners in Wales across the Further Education (FE), Work Based Learning (WBL), and Adult Community learning sectors. LLWR data is submitted to the Welsh Government by the relevant education institutions. The LLWR Data Management Team manage the collection. Post 16 learning providers are required to submit data on learners in Wales via the Lifelong Learning Wales Record.
- 7.417 Since 2017 LLWR only collects data from training providers seeking full or partial funding for their learners. Learner data will be processed through the relevant funding models to ensure funding terms and conditions are met.

7.418 Data can be submitted to the LLWR database at any time. Each month a snap-shot (Freeze) of the data is undertaken to allow for funding calculations/payments and monitoring to a specific point in time.

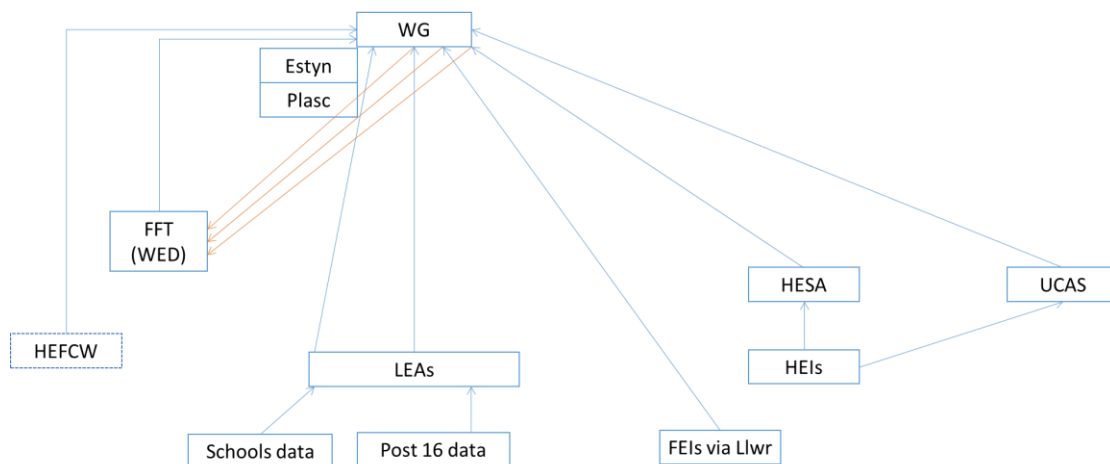
7.419 The LLWR collection underpins many aspects of Welsh Government's work, including the planning, funding, monitoring, quality assurance and policy development of post-16 provision. The data also provide the official source of statistics on post-16.

7.420 Reports are made available to providers through a separate system called LLWR Inform.

Higher education data collection

7.421 HEFCW collects data from higher education institutions via the Higher Education Statistics Agency (HESA). It is funded by subscriptions from the institutions from which it collects data. HESA processes and publishes data about higher education in the UK. The relationship between HEFCW and HESA is contractual and governed by a data sharing agreement which has been in force since 2010.

Current data flows



Welsh Government

7.422 There are three teams within the Welsh Government supporting relevant policy development:

- Developing quality and effectiveness framework for post-16 learning: including further education, work-based learning and community learning. Development of performance measures for learning providers. Working with Estyn on issues relating to post-16 learning. Overseeing the collection of LLWR data for post-16 learning, and ensuring its effective use to inform policy and performance monitoring.

- Cross cutting education and skills including: qualifications of working age adults, participation of young people in education and the labour market (including NEET), pupil destination data, youth service data. Further Education statistics, development of consistent performance measures.
- The Data Collections Team within the School Information and Improvement Branch is responsible for data collection policy and the maintenance of DEWi³⁷, producing software specifications for educational data collections that enable software suppliers to develop their systems and for providing schools and local authorities with Technical Completion Notes to aid users in completing data returns. The data collections team are also responsible for developing the PLASC, EOTAS, Post-16, School Workforce Annual Census (SWAC), National Data Collection (NDC), Welsh National Tests (WNT), Primary and Secondary attendance and the Welsh Examinations Database (WED).

7.423 The key driver for reform is to enable the transfer functions and powers to CTER to enable the new commission to be able to collect and store its own data in order to:

- Determine funding allocations
- Set and monitor strategic and operational priorities
- Monitor performance and quality of sector
- Monitor and learners' progress and destinations
- To inform future policies
- Determine funding of research in alignment with commissions priorities
- Monitor delivery of research activity with provider

7.424 Enabling the new Commission to be able to collect and store its own data supports the CTER objectives to improve the PCET-wide data and information system that ensures timely, useful, accessible and relevant information about PCET in Wales is available to all who need it and enables the use of data to inform strategic planning funding decisions, increasing responsiveness to emerging issues and effective pathways for long term learner outcomes.

7.425 Responses to the consultation document indicated that the majority of respondents across all the existing sectors agreed that the new Commission should take ownership of all datasets. They felt that this would provide an opportunity to review the existing provision, ensuring there is robust evidence on which to base decision making and it was also seen as an opportunity to review the collection of this data as a whole to ensure the quality of the data and the comparability of data across all sectors.

7.426 There was a general agreement t in all sectors that a duty should be placed on providers to monitor and share this data with the Commission, however, it was noted that this duty should avoid increasing providers' workload.

³⁷ The secure transfer site for data in Wales. For the transfer of statutory returns to the LAs and the Welsh Government. DEWi is used for collecting EOTAs, PLASC and post-16 collection.

7.427 The HE and FE sectors believed that a smooth transition of data is paramount for the learners' best interests and to have the ability to track learner progress and understand capabilities of students would be a real benefit.

Options considered and preferred approach Business as Usual

7.428 Under the Business as Usual option, there would be no disruption to current arrangements in relation to research and statistics. LLWR, PLASC and post 16 data collection data would remain within Welsh Government's remit. HESA would collect higher education data that would then be shared with Welsh Government.

Key advantages of Business as Usual

7.429 There would be no **disruption** to current arrangements. HEFCW and Welsh Government staff wouldn't be subject to change or disruption. Providers would not experience any change or disruption.

Key risks of Business as Usual

7.430 There would be no PCET-wide data collection, analysis and storage and dissemination system. The data collections would continue to be separately managed with no coherence of provision for learners.

7.431 The lack of a centrally managed system hinders any assessment of value for money, makes identifying gaps and duplications difficult and doesn't enable the provision of timely and relevant information to those who need it. Without central oversight of the whole system, it is also difficult to achieve seamless and well planned pathways for learners across all sectors and ensure a continuous and consistent focus on quality of provision. The current arrangements put Welsh Government at risk as the Welsh Ministers cannot use the data available to effectively inform strategic planning funding decisions or increase their responsiveness to emerging issues and effective pathways for long term learner outcomes.

Option 2 – The preferred approach

7.432 The Commission will have the ability to track the progress of each individual learner from the point they leave compulsory education and enter further education, apprenticeships or higher education as the case may be. The Commission will gather this information and carry out research and statistical analysis into the progress of learners generally and comparing those in particular categories. It will use this information both to inform the exercise of its own functions and to aid policy development by the Welsh Ministers. This will involve processing large amounts of personal data in compliance with the lawful processing requirements of the General Data Processing Regulations (GDPR). Thus, the Commission will have defined powers allowing it to receive, process and share learners' data at each

stage. The Commission will need access to WED and Longitudinal Education Outcomes Study (LEOS) in order to do this, however there are multiple options around how these data flows will work in practice that are yet to be worked through in detail.

- 7.433 The Welsh Ministers will continue to receive the PLASC and EOTAS data from local authorities, who will continue to be responsible for collecting the initial data from schools and learners. The Welsh Government will then process the data to separate those parts of it that relate to further education rather than compulsory education, and pass the further education data to the Commission. The Welsh Ministers will continue to rely on their existing powers to require, collect and process the data and will be provided with sufficient powers to share information with the Commission.
- 7.434 The Commission will be responsible for existing data gathered before it comes into existence, because it will be receiving all the data currently held by HEFCW as well as a significant amount from the Welsh Ministers. It will be able to process and combine different data sets: for example, linking the LLWR and Post-16 data with that received from HESA to analyse the progress of learners moving from further to higher education. The Commission will also be able to enter into arrangements with third parties to collect and process data on its behalf. The Commission may maintain the existing data collection arrangements or make changes if and when it wishes.
- 7.435 The Commission may publish research derived from its analysis of data, including statistical information, subject to a requirement that all personal information is anonymised so that nothing capable of identifying an individual is published. It may also contract third parties to undertake such publication, subject to the same restriction on identifying individuals.
- 7.436 The Commission will be under a duty to promote good practice in relation to data sharing among the persons and bodies it funds or regulates: for example by issuing guidance dealing with IT systems and information security. It should review and update or replace its guidance as and when it considers necessary.

Key advantages of the preferred approach

- 7.437 The Commission will be in a position to take a broad view of the effectiveness of the tertiary education sector as a whole.
- 7.438 The benefits of this approach would be that it will be for the Commission to have overall responsibility for LLWR/Post-16 PLASC data and therefore control over data quality and assurance. This will in turn result in better understanding of FE and 6th form data overall, which will also improve any supporting research and statistical activity (e.g. reporting of data, identifying gaps/duplications etc.). Such an improvement would also result in an improved relationship with FE and LEA data suppliers.
- 7.439 A distinct beneficial outcome would be the acquisition of not only more coherent, but also more timely data as the Commission will have the flexibility to request new data/amend current data requests from FE providers and post-16 directly.

Key risks associated with the preferred approach

7.440 The risks posed by this option are:

- Reliance on a third party for HE data. Local Education Authorities (LEA) will continue to be responsible for collecting the initial data from schools and learners and LEAs and FEIs would submit data to CTER instead of Welsh Government. However, CTER would still be reliant on HESA for HE data.
- Increased security risk posed by the processing of personal data. There would be a need to implement/develop a more robust ICT solution for the purposes of collecting and quality assuring post-16 PLASC data and LLWR data. This would also require staff to be trained appropriately to handle these processes effectively.

12 Welsh Ministers Provision (Welsh Medium)

Current arrangements and the case for change

7.441 Funding is currently provided by the Welsh Ministers to support both the development and delivery of Welsh-medium tertiary education. The Welsh Ministers provide funding either directly to tertiary education providers or via intermediary organisations including HEFCW and the National Centre for Learning Welsh (the National Centre) to support the provision of tertiary education through the medium of Welsh and the teaching of Welsh. HEFCW is currently subject to Welsh language standards as specified by the Welsh Language Standards (No 6) Regulations 2017.

7.442 The Welsh Ministers also provide funding to organisations including the Coleg Cymraeg Cenedlaethol (the Coleg) to support the development of Welsh-medium tertiary education through activities such as academic planning and promoting and incentivising Welsh medium education.

7.443 The Welsh Government outlined its vision to achieve a million Welsh speakers by 2050 in its strategy, *Cymraeg 2050: A million Welsh speakers*. To achieve this target, transformational change is required across the educational sector. The Commission will have a critical role to play in the context of the following key aims within the strategy:

Aim 4: Post Compulsory Education

7.444 To develop post-compulsory education provision which increases rates of progression and supports everyone, whatever their command of the language, to develop Welsh language skills for use socially and in the workplace.

Aim 5: The education workforce, resources and qualifications

7.445 Plan in order to increase and improve substantially:

- The education and training workforce which can teach Welsh and teach through the medium of Welsh;
- The resources and qualifications needed to support increased provision.

7.446 The majority of respondents to the White Paper consultation considered that the Commission should be responsible for Welsh-medium learning in the tertiary education sector. Numerous responses also closely linked the Commission with the Cymraeg 2050 Strategy. The responses to the White Paper consultation reiterated a requirement for the Commission to take a proactive and strategic role in developing Welsh-medium provision. This view was reinforced in responses to the subsequent technical consultation

Options considered and preferred approach Business as Usual

7.447 A no-change (Business as Usual) scenario would only apply if the proposal to create the Commission were not taken forward, as it is the dissolution of HEFCW and the establishment of the new body requires a new approach to supporting the development and delivery of Welsh-medium tertiary provision.

Key advantages of Business as Usual

7.448 There would be no disruption to current arrangements. Welsh Ministers would continue to support both the development and delivery of Welsh-medium tertiary provision either by providing funding directly to tertiary education providers or via intermediary organisations such as HEFCW, the Coleg and the National Centre. Staff working in these organisations would not be subject to any change or disruption. Providers would not experience any significant change to the existing arrangements for funding Welsh-medium tertiary education put in place by the Welsh Government.

Key risks of Business as Usual

7.449 The current system could fail to take advantage of the opportunity to adopt a more strategic approach to the planning and funding of Welsh-medium education across the tertiary education sector as a whole

Option 2 – The preferred approach

7.450 It is proposed that the Draft Bill will place duties on the Commission in relation to Welsh medium tertiary education. It is proposed that these duties will focus on encouraging individuals to participate in tertiary education through the medium of Welsh; ensuring that there is sufficient tertiary education provided through the

medium of Welsh to meet reasonable demand; and encouraging the provision of tertiary education through the medium of Welsh.

7.451 It will be a matter for the Commission to determine how it discharges its duties. However, some examples of how it is envisaged this requirement may be implemented and appropriately monitored by Commission include to:

- a) Plan strategically to positively promote and increase Welsh-medium tertiary education,
- b) encourage providers to deliver, develop and increase their Welsh-medium tertiary education, which could be, if appropriate, by way of Outcome agreements;
- c) encourage providers to plan progression routes so that Welsh speakers can continue their learning post 16 and develop their Welsh language skills and to offer opportunities to use the Welsh language in order to create a bilingual workforce;
- d) monitor availability and take up of Welsh-medium learning opportunities, and any subjects where the demand for Welsh-medium learning cannot be met currently.

7.452 It is also proposed that provision would be included in the Draft Bill so that the Commission will be within Schedule 6 to the Welsh Language (Wales) Measure 2011 so that it can be required to comply with Welsh language standards.

7.453 The Welsh Ministers will continue to be able to allocate financial resources to support both the development and delivery of Welsh-medium tertiary provision. For example, it is envisaged that Welsh Ministers will continue to provide funding directly to the National Centre and Coleg in the short to medium term following the establishment of the Commission.

7.454 The Welsh Ministers will be able to allocate financial resources to the Commission in respect of all categories of tertiary education. The Commission will be able to allocate funding to providers to deliver Welsh-medium tertiary education. For example, the Commission could provide funding for Welsh-medium premiums to offset the costs of providing learning activities through the medium of Welsh. The Draft Bill also enables the Commission to allocate funding to providers to teach Welsh.

7.455 The Commission will also be able to allocate funding to persons for purposes connected to the provision of tertiary education through the medium of Welsh and the provision of Welsh language acquisition courses. This could include activities to support the development of provision such as practitioner training, promotion of learning opportunities to prospective learners, developing and sharing learning resources and coordination of learning opportunities across providers. This could also include funding to carry out research in relation to Welsh-medium education and training in Wales.

7.456 The Commission will be required to include in its annual report to the Welsh Ministers information on the extent of Welsh-medium tertiary education provided and the extent Welsh was taught to persons above compulsory school age in a given year and compare the provision with that provided in previous years.

Key advantages of the preferred approach

7.457 Placing duties on the Commission related to Welsh-medium education will require the Commission to adopt a strategic approach to the planning and funding of Welsh-medium education across the tertiary education sector. The policy aim is to increase the availability of Welsh-medium courses and to encourage individuals to study through the medium of Welsh.

7.458 Requiring the Commission to comply with the Welsh Language standards would ensure that it considers the Welsh Language in all of its activities, promotes the Welsh language, ensure that Welsh has an active role in the organisation's internal administration, and that the language is accessible to the public.

7.459 Welsh Ministers will continue to provide funding directly to the National Centre and Coleg in the short to medium term following the establishment of the Commission. The Coleg expanded its remit during 2018 to include further education and work based learning sectors which will involve a period of change and development. The activities of the National Centre are distinct and specific in response to the demand by individuals to learn Welsh and to the aims of the Welsh Government in response to Cymraeg 2050. Policy officials consider that if the funding for the Coleg and National Centre is allocated to the Commission there is a significant risk that the progress made by these organisations in term of developing capacity of providers to deliver Welsh-medium tertiary education would be lost.

Key risks associated with the preferred approach

7.460 There is a risk that Welsh Ministers continuing to providing funding the Coleg and the National Centre may lead to duplication of work and the inefficient use of resources.

7.461 The Commission would be expected to work closely with the Coleg and the National Centre to avoid duplication of effort and maximise the impact of interventions. This collaborative working will be reinforced by sponsorship arrangements.

8. Costs and benefits

Please note the [caveat](#) contained in Part 2 – Regulatory Impact Assessment.

Cost Benefit Analysis

Introduction

- 8.1 The assessment of costs and benefits is centred on the 10 year period 2020-21 to 2030-31. If passed the Bill is expected to receive Royal Assent in spring 2021 and, consequently, it will be during 2020-21 that initial costs are expected to be incurred. The Commission is expected to become fully operational by 2023-24. This appraisal period has been chosen because, while the costs of the Commission are expected to reach a steady state within a short period of time, the anticipated benefits are most likely to be realised in the medium to long-term.
- 8.2 The Regulator Impact Assessment (“RIA”) presents a best estimate of the costs and benefits of the Bill based upon the available evidence. The analysis has been informed by engagement with key stakeholders and the following pieces of work:
- a Welsh Government-commissioned high-level costing exercise performed by KPMG;
 - the Commission programme assumptions at the point in time of producing the RIA; and
 - costs from comparator organisations such as Qualifications Wales
- 8.3 A report commissioned from Alma Economics - Cost benefits analysis of education reforms: A Rapid Evidence Assessment (REA) (Annex 5). Nevertheless, it has been necessary to make a series of assumptions in order to complete the calculations. Any assumptions made are explained in the narrative and/or assumptions annex (Annex 6). In light of the uncertainty surrounding some of the evidence and assumptions, all cost estimates have been rounded to the nearest £1,000.
- 8.4 The cost estimates have been discounted using HM Treasury’s central discount rate of 3.5%.
- 8.5 A further due diligence exercise will be carried out in April 2022 which will provide more up to date figures than is included in this report.

Benefits Realisation Plan

- 8.6 The purpose of the benefits realisation plan is to;

- Provide details of the benefits emanating from the programme;
- Identify those responsible for realising the benefits;
- State baselines from which benefits will be measured;
- Form the basis of post programme reviews to determine whether the planned benefits have been realised.

8.7 The benefits identified in the plan support and are aligned with the programme goals and objectives.

8.8 The Benefits Realisation Plan forms part of a suite of programme management documents. Programme benefits will also be reflected in this RIA. To ensure consistency each document will inform the other and they will be treated as companion pieces for future review and evaluation purposes.

Alma Economics cost benefits analysis of education reforms: A Rapid Evidence Assessment (REA)

8.9 Welsh Government commissioned Alma Economics to conduct a Rapid Evidence Assessment of the national and international evidence base on conducting cost-benefit analysis (CBA) of post compulsory education and training (PCET) policy. This has been broadened out to also consider evidence on wider education reforms and to also provide some coverage of other Impact Assessment (IA) practices, specifically in Wales. Both academic literature and public sector publications have been considered.

Option 1 – do nothing

Costs

8.10 Technically, as a 'do nothing' option, there should be no additional costs associated with this option.

8.11 Table 1 below shows the estimated costs of maintaining HEFCW and the Further Education Division within Welsh Government for the next ten years (baselined at budgets for 2019/20), the costs of which fall to Welsh Government. The cost of the Do Nothing options is estimated to be £167.2m over the appraisal period or £141.5m in present value terms.

Benefits

8.12 The benefits for option 1 can be found in detail in chapter 7.

Table 1

| PCET - Option 1: Do Nothing | | | | | | | | | | | | |
|-----------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| | 2020-2021 | 2021-2022 | 2022-2023 | 2023-2024 | 2024-2025 | 2025-2026 | 2026-2027 | 2027-2028 | 2028-2029 | 2029-2030 | 2030-2031 | TOTAL |
| | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ |
| HEFCW Running Costs | | | | | | | | | | | | |
| Staff Costs | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 2,813,000 | 30,943,000 |
| Board Costs | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 119,000 | 1,309,000 |
| Redundancy | - | - | - | - | - | - | - | - | - | - | - | - |
| Non-payroll staff costs | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 1,100,000 |
| IT Costs | 293,000 | 293,000 | 293,000 | 543,000 | 543,000 | 543,000 | 543,000 | 543,000 | 543,000 | 543,000 | 543,000 | 5,223,000 |
| Other Corporate Costs | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 187,000 | 2,057,000 |
| Location Costs | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 142,000 | 1,562,000 |
| Programme Costs | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | 3,654,000 | 3,654,000 | 3,654,000 | 3,904,000 | 3,904,000 | 3,904,000 | 3,904,000 | 3,904,000 | 3,904,000 | 3,904,000 | 3,904,000 | 42,194,000 |
| Welsh Government | | | | | | | | | | | | |
| Staff costs | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 8,357,000 | 91,927,000 |
| IT Costs | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 2,840,000 | 31,240,000 |
| Non-payroll staff costs | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 168,000 | 1,848,000 |
| Total | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 11,365,000 | 125,015,000 |
| Total | 15,019,000 | 15,019,000 | 15,019,000 | 15,269,000 | 15,269,000 | 15,269,000 | 15,269,000 | 15,269,000 | 15,269,000 | 15,269,000 | 15,269,000 | 167,209,000 |

Option 6

Preferred option: Establish the Commission for Tertiary Education and Research

Costs to Welsh Government and the Commission

- 8.13 Due to the unavailability of key decisions, we have made several significant assumptions (detailed within the assumptions annex) around staffing, IT costs and location which could have a large impact on the forecast figures. Therefore assumptions have been used, it is important to note that a change to these assumptions could have a significant impact on the costings.
- 8.14 A key cost driver is the location strategy to be adopted by the new organisation. This could have a significant impact on the number of staff who transfer across to the new organisation, as well as the locations costs themselves.
- 8.15 Because of the uncertainty of the assumptions the estimates for this option need to be taken into account with a +/- 30 per cent range. This range will get smaller closer to establishment as decisions are made and assumptions are finalised.
- 8.16 For option 6, we have assumed that the Commission will have a total compliment of 165 staff, comprising 50 from HEFCW. The staffing costs will fall ultimately on the Welsh Government as the funder of the Commission, however, staffing will be covered in both the Welsh Government and the Commission budgets (once established), as the staffing costs include the policy and sponsorship teams in Welsh Government who will manage the relationship with the new Commission. There are significant costs associated with this option compared with option 1. These costs are presented in table 2 below, and explained further in the assumptions annex. The total cost of this option is estimated to be £213.9m over the appraisal period (£179.9m in present value terms). This represents an additional cost of £46.7m compared to the Do Nothing option (£38.4m in present value terms).

Comparator costs

- 8.17 In determining the costings for option 6, we have drawn heavily on Qualifications Wales and Welsh Government costs for elements of the ICT costings, set up costs etc. Further information on the assumptions used is included in Annex 6.

Costs to stakeholders / impact on public sector bodies

- 8.18 The potential costs to wider stakeholders across the sector are unknown.
- 8.19 The process of stakeholder engagement has been on-going as the Bill has been developed. Once introduced, further discussions with stakeholders as to any estimated costs will take place to inform the impacts on wider stakeholders.

- 8.20 The list of anticipated benefits below reflects the workings from a series of workshops held in November 2018 and March 2019, aimed at identifying anticipated benefits that will result from establishing the Commission. This list has also been informed by a review of earlier work conducted by the TER Bill team and by Education and Skills Research staff during the preparation of this RIA.
- 8.21 Responses obtained from external stakeholders during the [technical consultation focus group activity](#) have also been taken into account.

Benefits

- 8.22 Further benefits for option 6 can be found in detail in chapter 7.

Transitional and running costs for establishment of the Commission Table

2

| PCET - Option 6: Go Ahead | | | | | | | | | | | | |
|----------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| | 2020-2021 | 2021-2022 | 2022-2023 | 2023-2024 | 2024-2025 | 2025-2026 | 2026-2027 | 2027-2028 | 2028-2029 | 2029-2030 | 2030-2031 | TOTAL |
| | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ |
| Transitional/Set-up Costs | | | | | | | | | | | | |
| Staff Costs | - | 230,000 | 281,000 | - | - | - | - | - | - | - | - | 511,000 |
| Board Costs | 50,000 | 34,000 | 178,000 | - | - | - | - | - | - | - | - | 262,000 |
| Redundancy | - | - | - | 2,031,000 | - | - | - | - | - | - | - | 2,031,000 |
| Non-payroll staff costs | 20,000 | 10,000 | 102,000 | 126,000 | - | - | - | - | - | - | - | 258,000 |
| IT Costs - Capital | - | - | 2,878,000 | 869,000 | - | - | - | - | - | - | - | 3,747,000 |
| Other Corporate Costs | - | - | - | - | - | - | - | - | - | - | - | - |
| Location Costs - Capital | - | - | 959,000 | - | - | - | - | - | - | - | - | 959,000 |
| Programme Costs | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | 70,000 | 274,000 | 4,398,000 | 3,026,000 | - | - | - | - | - | - | - | 7,768,000 |
| Running Costs | | | | | | | | | | | | |
| Staff Costs | - | - | - | 12,535,000 | 12,535,000 | 12,535,000 | 12,535,000 | 12,535,000 | 12,535,000 | 12,535,000 | 12,535,000 | 100,280,000 |
| Board Costs | - | - | - | 433,000 | 425,000 | 425,000 | 425,000 | 425,000 | 425,000 | 425,000 | 425,000 | 3,408,000 |
| Redundancy | - | - | - | - | - | - | - | - | - | - | - | - |
| Non-payroll staff costs | - | - | - | 496,000 | 496,000 | 496,000 | 496,000 | 496,000 | 496,000 | 496,000 | 496,000 | 3,968,000 |
| IT Costs | - | - | - | 5,185,000 | 5,262,000 | 5,262,000 | 5,262,000 | 5,262,000 | 5,262,000 | 5,262,000 | 5,262,000 | 42,019,000 |
| Other Corporate Costs | - | - | - | 638,000 | 638,000 | 638,000 | 638,000 | 638,000 | 638,000 | 638,000 | 638,000 | 5,104,000 |
| Location Costs (inc Lease) | - | - | - | 789,000 | 789,000 | 789,000 | 789,000 | 789,000 | 789,000 | 789,000 | 789,000 | 6,312,000 |
| Programme Costs | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | - | - | - | 20,076,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 161,091,000 |
| Business as Usual | | | | | | | | | | | | |
| Total | 15,019,000 | 15,019,000 | 15,019,000 | - | - | - | - | - | - | - | - | 45,057,000 |
| Total | 15,089,000 | 15,293,000 | 19,417,000 | 23,102,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 20,145,000 | 213,916,000 |

Option 4a – Centralisation Costs

- 8.23 Table 3 below shows the estimated costs of centralising HEFCW and the Further Education Division within Welsh Government for the next ten years (baselined at budgets for 2019/20), the costs of which fall to Welsh Government. The assumptions for costing this option are included in the assumption annex.
- 8.24 The total cost of this option is estimated to be £182.1m over the appraisal period (£154.2m in present value terms). This represents an additional cost of £14.9m compared to the Do Nothing option (£12.7m in present value terms).

Benefits

- 8.25 The benefits for option 4a can be found in detail in chapter 7.

Table 3

| PCET - Option 4a: Merge into Welsh Government | | | | | | | | | | | | |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| | 2020-2021 | 2021-2022 | 2022-2023 | 2023-2024 | 2024-2025 | 2025-2026 | 2026-2027 | 2027-2028 | 2028-2029 | 2029-2030 | 2030-2031 | TOTAL |
| | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ | £ |
| HEFCW Costs | | | | | | | | | | | | |
| Staff Costs | 2,957,000 | 2,957,000 | 2,957,000 | - | - | - | - | - | - | - | - | 8,871,000 |
| Board Costs | 119,000 | 119,000 | 119,000 | - | - | - | - | - | - | - | - | 357,000 |
| Redundancy | - | - | - | 2,031,000 | - | - | - | - | - | - | - | 2,031,000 |
| Non-payroll staff costs | 100,000 | 100,000 | 100,000 | - | - | - | - | - | - | - | - | 300,000 |
| IT Costs | 293,000 | 293,000 | 293,000 | - | - | - | - | - | - | - | - | 879,000 |
| Other Corporate Costs | 187,000 | 187,000 | 187,000 | - | - | - | - | - | - | - | - | 561,000 |
| Location Costs | 142,000 | 142,000 | 142,000 | - | - | - | - | - | - | - | - | 426,000 |
| Programme Costs | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | 3,798,000 | 3,798,000 | 3,798,000 | 2,031,000 | - | - | - | - | - | - | - | 13,425,000 |
| Welsh Government | | | | | | | | | | | | |
| Staff costs | 8,357,000 | 8,357,000 | 8,357,000 | 11,313,000 | 11,313,000 | 11,313,000 | 11,313,000 | 11,313,000 | 11,313,000 | 11,313,000 | 11,313,000 | 115,575,000 |
| Non-payroll staff costs | 168,000 | 168,000 | 168,000 | 453,000 | 340,000 | 340,000 | 340,000 | 340,000 | 340,000 | 340,000 | 340,000 | 3,337,000 |
| IT Costs | 2,840,000 | 2,840,000 | 5,618,000 | 5,499,000 | 4,707,000 | 4,707,000 | 4,707,000 | 4,707,000 | 4,707,000 | 4,707,000 | 4,707,000 | 49,746,000 |
| Total | 11,365,000 | 11,365,000 | 14,143,000 | 17,265,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 168,658,000 |
| Total | 15,163,000 | 15,163,000 | 17,941,000 | 19,296,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 16,360,000 | 182,083,000 |

Benefits

- 8.26 The list of anticipated benefits in this section reflects the workings from a series of workshops held with officials in November 2018 and March 2019, aimed at identifying anticipated benefits that will result from establishing the Commission. This list has also been informed by a review of earlier work conducted by Welsh Government staff during the preparation of this RIA.
- 8.27 Responses obtained from external stakeholders during the technical consultation focus group activity have also been taken into account.
- 8.28 The work undertaken to identify benefits associated with reform and to inform the RIA included a Benefits Realisation Plan and a report undertaken by Alma Economics, whose findings are summarised in this section (see Annex 5 for full report). In June 2019 the Welsh Government social researchers commissioned Alma Economics to conduct a Rapid Evidence Assessment of the evidence base on conducting cost-benefit analysis (CBA) of post compulsory education and training (PCET) policy. This was broadened to also consider evidence on wider education reforms and provide some coverage of other Impact Assessment (IA) practices, specifically in Wales. Both academic literature and public sector publications were considered.
- 8.29 The nature of the benefits identified in this RIA means that they do not lend themselves well to quantification, thus benefits will be described throughout this section. One of the key findings of the review of the evidence for the Alma Economics report supports this:

“There are very few studies that provide quantitative evaluations of the benefits of educational reforms. This is a feature of both academic research and publications from the public sector. Within the literature, there is some criticism of the suitability of quantified CBA as a technique on the basis that it may be an intractable task to produce robust quantitative estimates for many policy reforms. Where the impacts of PCET are quantified in the literature, e.g. an assessment of the graduate premium, it is not clear how these would be applied to cost benefit analysis.”

- 8.30 The establishment of the Commission will enable stronger and more secure national and regional planning, strengthen the link between research and education, and deliver a tertiary education system that is better placed to respond to macro-changes; to plot paths for learners; and to bring the sector together in a way that provides for genuine life-long learning and skills development.
- 8.31 As noted above, these high-level benefits were arrived at through a process of internal and external consultation and reviewed by an independent consultant during the Rapid Evidence Assessment. The report found that there is evidence supporting many of the benefits identified for current proposals for reform in Wales (as outlined in the draft benefit realisation plan). Evidence has not been identified for all the benefits listed in the benefit realisation plan, although this does not inevitably mean these benefits will not be realised in

practice. Some features of the current proposed reforms are likely to be under-researched in the previous evidence base or relatively novel and so lacking historical precedents. Some additional benefits that are not included in the benefits realisation plan were also identified.

High-Level benefits of creation of the Commission

8.32 The benefits realisation work identified a number of benefits arising from the **high level objectives of the Commission** (see also chapter 7 part 1). The majority of anticipated benefits for learners, businesses, communities, tertiary education and training providers and the Welsh Government will, in the main, be derived from how the Commission delivers on Welsh Government priorities, develops and implements its own policy, its relationship with providers and other organisations with an interest and role in sector in Wales, and those providers' and organisations' response and adaptation to these changes. Benefits are most likely to be realised in the medium and longer term. Increased public confidence in the PCET system in Wales is the benefit most likely to be attributable to the establishment of the Commission. This will depend on the realisation of all other anticipated benefits listed below. Similar to the Welsh Government, all the impacts reviewed by Alma Economics expect a relevant intermediate benefit that would effectively increase public confidence in the sector.

Consistency of approach to the regulation of institutions across the sector through a common purpose.

- 8.33 Simplification of the regulatory landscape and more coherent regulation will discharge providers from the compliance burden of dealing with multiple overseeing bodies (DIISRTE, 2012, see Annex 6). Standards of compliance will be clear and to all providers will be overseen by a single body, reducing any confusion currently caused by overlapping roles across the sector between the different agencies.
- Increase in learner participation rates and more post-16 learners progressing to higher learning [vocational and academic] and/or well-paid employment.
 - Reduction in attainment and outcomes gaps (employability and onward progression) between learners from poorest backgrounds³⁸ and other potentially marginalised groups³⁹ and their peers.

³⁸ Currently Welsh Index of Multiple Deprivation WIMD - Fourth and Fifth Quintiles. This is subject to change - future measure of deprivation is being developed.

³⁹ (E.g. BME; young carers; care leavers, learners with additional learning need and mental health issues).

8.34 The Alma Economics research highlights the importance of continuing to prioritise funding in education and its positive effects on social mobility. Cash transfers and other demand-side financing schemes aiming to increase participation amongst people from disadvantaged backgrounds have immediate short-term impacts on the distribution of access to education, as well as dynamic long-run impacts on intergenerational employment opportunities and poverty reduction (Tiongson, 2005). The Commission could allocate funds to more efficiently target people who leave education too early because of financial constraints, and we expect significant distributional impacts to result. Participation rates and post-16 retention rates could increase if financial support is better able to target people who cannot afford post-compulsory education. In this way, the Commission can effectively succeed in meeting two of its objectives; increasing participation and retention rates, as well as reducing the attainment and outcome gaps between learners from poorer and other disadvantaged background and their other more well-off peers.

- Integrated and improved evidence base – providing better quality, comparable sector-wide data and information to inform policy development, and decision making at all levels (Welsh Government, providers, employers and learners).
- One of the roles of the new Commission will be to introduce an improved, compliant and effective sector wide data collection, analysis and dissemination system that ensures timely, accessible and relevant information about the sector in Wales, and which is available for all who need it (see also chapter 7 part 2). Specifically, more detailed, centralised and publicly available information reduces information asymmetries and improves social mobility. Students will make better decisions from improved information and improved comparability among providers. With improved collection of and access to data, the Commission and Welsh Government will be more effective in setting the direction and detail of PCET policy.
- A more coherent and consistent funding model across the sector.

8.35 A single regulator will enable a comparable and consistent approach to quality assurance and assessment across the sector. The Commission will be able to bring together and oversee agencies that supervise and quality assure the sector under the current system. The Commission will be able to pursue a common national PCET approach aligned with the Welsh Government's strategic objective of prosperity for all.

- Improvement in the financial health of PCET institutions in Wales.

8.36 A clearer, more efficient, and more flexible regulatory system should ensure that the regulatory burden ensures appropriate accountability and

transparency for PCET providers in receipt of public funds, particularly in regards to educational quality, financial assurance, and provider governance.

- Better alignment between funding and the cost of the same provision delivered across PCET system.

8.37 The Alma Economics report identifies expectations for cost efficiencies, in the forms of savings from the removal of duplicate work after the merging of government bodies. Nonetheless, the actual reduction in administration costs, and the achieved amount of efficiency savings, will be determined by the final size and structure of the Commission as with the cases of the Office for Students and UKRI and are therefore unknown at this time.

8.38 The list of benefits below was also identified through the Welsh Government's benefit realisation and consultation work.

- Enhanced problem detection and prevention capability, including the ability to respond to macro changes, and to mitigate disruption through changes in learner and employer demand.
- Improvements in the overall learner satisfaction.
- Improved matching between available training and research opportunities (supply side), and employer and learners' requests (demand side).
- Increased number of, and income generated by, collaborative RI projects.
- Increases in recognition of the value of both academic and vocational qualifications.
- The creation of a coherent route map for learners, employers and providers.
- Reductions in the number of duplicated courses across the PCET sector that are uneconomic to deliver
- Improved planning and delivery of the skills set required in a particular locality and/or region.
- Increase in the joint use of facilities (shared service agreement).

8.39 Research by Alma Economics did not return any specific evidence in the literature concerning how the introduction of the Commission in the PCET sector could result in these benefits. As noted earlier this does not imply that these benefits cannot be realised but that some features of the current proposed reforms are likely to be under-researched in the previous evidence base or relatively novel and so lacking historical precedents.

8.40 This research also found evidence for additional benefits, not originally identified by Welsh Government, which may be realised through the creation of the Commission (see Annex 5 for further detail).

- A boost to private sector productivity may result from lower administration costs and more room for strategic leadership in the funding of research.

- Other less easily quantified benefits (non-market benefits) include improved health and wellbeing, better development of public policy and delivery of public services, and cost avoidance through resilience to shocks (UK Government, 2016b).

8.41 The table below (table a) is taken from the Alma economics report and shows the benefits evidenced in the literature of the creation of the Commission for Welsh Government and external stakeholders. The table summarises the benefits found in the review grouped by the benefits categories, as those specified in the benefits realisation plan, and the groups for which these benefits are expected to accrue. “Direct” are those benefits that accrue to Welsh Government. Indirect benefits include the benefits for providers, and wider benefits are those that will accrue to different groups of society (i.e. taxpayers, employers, learners).

8.42 The assumptions in the table a are based on the expectation of the UK Government that it would save 10% of its operating cost by introducing the Office for Students and UKRI and it follows that it is reasonable to assume that the Welsh Government will see some reduction in its administrative costs, resulting from the removal of duplicate work and greater coordination of functions across the sector. However, these costs are currently unknown. As costs are currently unknown, we cannot confirm the specific costs for the groups noted in Table a, however it should be noted that these activities may not necessarily result in an increase in cost.

Table a. Summary of benefits (Cost Benefit Analysis of Education Reforms - Rapid Evidence Assessment, Alma Economics, page 28)

| Benefit Categories | Affected Group | Type of Benefit |
|--------------------|------------------|---|
| Direct | Welsh Government | <ul style="list-style-type: none"> • Stronger and more secure national planning (UK Government, 2016a) • More consistency across the sector (DIISRTE, 2012) • Improved oversight and faster intervention when needed. (DIISRTE, 2012) • More flexibility responding to changes in qualification system in the UK. (Welsh Government, 2014). • More effective policy, targeting disadvantaged groups through the use of centralised and highly detailed data (UK Government, 2016c). • Cost efficiencies as a result of administration cost savings (UK Government, 2016a; 2016b). • Increased tax revenue as a result of productivity boost and increased return on earnings (UK Government, 2016c). |
| Indirect | PCET providers | <ul style="list-style-type: none"> • More coherent regulation to comply with (UK Government, 2016b; DIISRTE, 2012). • Less regulatory burden (for low risk PCET providers) (UK Government, 2016a). • More consistency and improved quality across providers (UK Government, 2016a). • Productivity gains for providers from reduced administrative tasks (UK Government, 2016b) |

| | | |
|-------|--------------------------|---|
| Wider | Learners | <ul style="list-style-type: none"> • Reduced confusion regarding paths and their transition to labour markets (DIISRTE, 2012). • Reduced information asymmetry – better informed decisions (UK Government, 2016c; IA of Information Sharing and Data Transparency Duties; DIISRTE, 2012). |
| | | <ul style="list-style-type: none"> • Increased participation (to the extent that the Commission will allocate funds more efficiently towards disadvantaged groups) (UK Government, 2016c; DIISRTE, 2012). • Improved social mobility (UK Government, 2016c). • Productivity gains (UK Government, 2016c; DIISRTE, 2012). |
| Wider | Businesses/ Employers | <ul style="list-style-type: none"> • Greater confidence on the quality and skills of graduates (DIISRTE, 2012). • Private sector productivity boost (UK Government, 2016b, 2016c). |
| Wider | Taxpayers | <ul style="list-style-type: none"> • Better value for taxpayers' money (UK Government, 2016c). • Better loan repayment rates through increased productivity (UK Government, 2016c). |

Summary

8.43 As the cost benefits are unknown, it is not possible to quantify the cost benefits associated with reform it is difficult to compare the costs and benefits in an objective way. In such a situation, a judgement has to be based on whether the additional costs are outweighed by the benefits.

8.44 However, the following impacts have been considered in relation to the provisions in the Bill as the preferred option:

- **Statement of priorities**

This approach to strategic planning is in line with Welsh Government's revised model for managing relationships with arms-length bodies. It has been designed to give the sector aims and objectives which extend over a term of government and thereby present an opportunity for strategic planning and funding over a longer time frame.

- **Civic Mission**

The duty the Commission will have to promote the pursuit of a civic mission may be discharged in the exercise of its other functions. The Commission will need to determine how it expects HE and FE institutions to comply with the requirements, however, the concept is already familiar to the HE and FE sectors, and as defined in this Bill, is an extension of their obligations under the Well-being and Future Generations Act (Wales) 2015 meaning some of the necessary infrastructure and frameworks are already in place. It is envisaged that the initial impacts will be minimal.

- **Learner Engagement Code**

The Code is part of mandatory, on-going registration conditions, however, most providers have existing arrangements to ensure learner representation is in place. Any new guidance will be developed by the Commission in consultation with stakeholders. This guidance will include key principles to learner engagement and practical steps to assist consistent implementation across the post-16 sector (excluding sixth forms).

- **Registration**

Upon commencement of the registration provisions under the Bill and the enactment of relevant secondary legislation, there may be some impact on higher education providers in Wales in undergoing initial registration with the Commission. The majority of registration conditions will cover matters which are already regulated or assured by HEFCW, but the change in regulator and the means by which regulation is conducted may lead to some transitional administrative impact. Welsh Government will seek to ensure when consulting on the relevant secondary legislation to ensure that this impact is minimised in the transition to the regulatory framework.

- **Quality**

It is not expected that there will be any major immediate impact on providers upon commencement of the quality provisions, as

assessment and inspection arrangements in both the higher and further education sectors will remain largely unchanged by the legislation. This assumes that the QAA is the body designated by Welsh Government to conduct higher education quality assessments, on the recommendation of the Commission.

The Commission will take on responsibility for agreeing and funding Estyn's work in the post-16 sector. There may be some minor transitional impact on Estyn as a result, and Welsh Government will work closely with Estyn to smooth this transition as it commences its close working relationship with the Commission.

- **Planning and Funding**

The main difference between the Commission's planning and funding functions and the current arrangements is the policy intention that the majority of providers which are to be grant funded by the Commission, whether registered or un-registered, will be expected to enter into an Outcome Agreement. Outcome Agreements will be the responsibility of the Commission and are intended to form the basis of "performance commitments" attached to funding. This approach will provide a line of sight from the Welsh Ministers' statement of strategic priorities through the Commission's strategic plan to the activities of providers of tertiary education and research. This will be the mechanism by which the Commission ensures that providers of tertiary education and research contribute to the objectives specified in the Commission's approved strategic plan. The intention is that Outcome Agreements will be the product of co-production through negotiation between the Commission and funded bodies.

This is will be dependent on the T&Cs applied by the WMs to their funding to the Commission. Currently, it is envisaged that the recipients of funding which are likely to be required to enter into an outcome agreement with the Commission would include:

- **local authorities** (in respect of mainstream school sixth form funding and potentially adult community-based learning);
- **HE providers** registered in the proposed Advanced registration category (this could include HEIs, FEIs and other bodies who are eligible to register and elect to do so funding is likely to encompass both HE and R&I funds);

- **FE &T providers** – who at least for the short-term may not be required to register (this would include FEIs and possibly other training providers depending on the scope of the T&Cs)

- **Governance**

It is not anticipated that HE governance provisions, the Welsh Ministers intervention functions in respect of FEIs or the provisions for the Commission's duty to monitor and report on financial sustainability will create additional burdens for stakeholders from day one.

The HE governance provisions extend the current Welsh Ministers' order making powers to amend or repeal Schedule 7A of the Education Reform Act 1988 and introduce new order making powers for the Welsh Ministers to amend or repeal sections 125(2) to (4) of the 1988 Act. In making an order the Welsh Ministers must consult with the Commission and any other persons considered appropriate. The HE Governance provisions also make minor amendments to the Welsh Ministers' powers to dissolve a HEC in Wales.

The provisions for the Welsh Ministers' powers to intervene in the conduct of an FEI in Wales largely carry forward existing provisions in section 57 of the Further and Higher Education Act 1992. The Welsh Ministers' will only consider intervention if one or more of the grounds for intervention set out in the provisions are met as is the case now.

The Bill places the Commission under a duty to monitor and report on the financial sustainability of certain tertiary education providers. Under these provisions the Commission must include a report on the current financial position of monitored providers within its annual report submitted to the Welsh Ministers. At the same time as submitting its annual report the Commission must also submit a separate report on the financial outlook of monitored providers. In discharging its monitoring duty, it is anticipated that the Commission will, wherever possible, utilise information gathered from providers to monitor compliance with conditions of registration or terms and conditions of funding. However, the information requirements will become clearer once the Commission's regulatory arrangements have been developed.

8.45 Option 1 offers the lowest cost, however this option perpetuates fragmentation and fails to address the need for joined up planning. It fails to meet the policy requirement, and is not felt to be a suitable option to pursue.

8.46 The advantages of centralisation option are outweighed by the disadvantages. Whilst Centralisation could potentially realise similar benefits to the creation of the Commission and have lower costs, ultimately the potential risks related to ONS reclassification and resistance from stakeholders mean that this option has been discounted (see Chapter 7 for more detail).

9. Impact Assessments

Competition Assessment

The organisations that will be affected by the legislation include:

9.1 Sector 1: Organisations funding and regulating post-16 education and training, and research.

- The Higher Education Funding Council Wales
- The Welsh Government
- The UK research councils
- Voluntary and commercial funders of research
- Quality Assurance Agency for Higher Education (QAA)
- Estyn
- Local Authorities in their role to maintain schools with mainstream sixth forms and as funders of Adult and Community Learning

9.2 Sector 2: Organisations delivering post 16 training and education (providers)

- Higher Education Institutions in carrying out their various functions (including teaching, student support, student experience, research, civic engagement, functions)
- Further Education Institutions
- Schools with mainstream sixth forms
- Local Authorities in their role as providers of Adult and Community Learning

9.3 Sector 3: Commercial and charitable organisations carrying out and participating in (part-) publicly-funded research.

9.4 Sector 4: Suppliers of goods and services to the above organisations.

- Examining boards and other qualifications providers

- Business, premises and catering services
- Educational services and equipment suppliers

9.5 Currently the only places in which competition exists amongst the organisations above are:

- between the organisations in Sector 2, (which seek to offer training and education which is competitively priced and provides value for money). In some communities, there might exist unnecessary duplication of courses on offer by different providers. This competition can be destructive (for example it can result in two competing institutions both being unable to attract sufficient students to make either course viable, with an outcome of failing the needs of learners, where rationalising to one course would allow learners needs to be met)
- Between the organisations in Sector 3, who seek to be preferred research partners.
- Between the organisations in Sector 4, who compete to supply the desired goods at competitive prices.

Risks of the legislation upon competition

9.6 It is anticipated that the new Commission will influence the training and teaching offer that institutions in Sector 2 will make. It may, positively, support the creation of new courses that are required to meet Welsh Government objectives to improve learner opportunities. It may, negatively, become aware of provision which is regarded as sub-standard, or duplicative, and may accordingly approach a provider with a request to modify its offer. It may ultimately refuse some of the funding provided to support delivery of a particular course.

9.7 The Commission may provide or support the provision of funds for research to the organisations in Sector 3.

9.8 However, the functions of regulation and quality assurance within the Sector concerned already sit within the powers of the Welsh Government, HEFCW and the UK Research Councils, and their sponsored bodies, and the Draft TER (Wales) Bill will not create any different or additional impact upon the competition opportunities that currently exist within the Sectors set out above.

Justice Impact Assessment

9.9 The potential impacts on the justice system of the proposals have been considered, including on:

- a. courts (criminal and civil);

- b. non-devolved tribunals;
- c. devolved tribunals;
- d. legal aid;
- e. the judiciary;
- f. prosecuting bodies; and
- g. prisons, youth justice and probation services.

9.10 The Draft Bill contains powers for the Welsh Ministers or the Commission to apply to the courts for an injunction creates an offence. The Higher Education (Wales) Act 2015 includes similar provisions and the Welsh Government is not aware of any applications having been made, or prosecutions having taken place, under that Act. Therefore, it is considered unlikely that these provisions will result in anything other than a negligible increase to the burden on the courts.

9.11 The Draft Bill imposes certain duties on the tertiary education sector. Non-compliance with some of those duties may involve the courts. More specifically:

- The duty of a governing body to comply with a direction;
- Requirement by notice for persons to provide information to the Commission; Compliance with a notice or direction above is enforceable by injunction;
- The Draft Bill also provides for an offence for wilfully obstructing the Her Majesty's Chief Inspector of Education and Training in Wales in the exercise of functions in relation to an inspection by them under the Draft Bill.

9.12 In conclusion, the likely impact on the justice system of the proposals in the Draft Tertiary Education Research (Wales) Bill is likely to be minimal or nil.

9.13 A copy of the Justice Impact Identification ("JSII") form is available and a link with be provided on introduction.

RIA Guidance competition filter test

| Question | Funders and regulators | Learning providers | Researchers | Suppliers of goods and services |
|---|------------------------|---|--|---------------------------------|
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No – not firms | Yes - Cardiff University students amount to 25% ⁴⁰ of the total FEI and HEI learners in Wales. | Possibly – some HEIs and businesses may be attracting more than 10% of the share of research funding in Wales. | Yes – examining bodies |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | No – not firms | No | Possibly – some HEIs and businesses may be attracting more than 20% of the share of research funding in Wales. | Yes |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | No – not firms | No | Possibly – there may be three HEIs and businesses which attracting more than 50% | Yes |

⁴⁰ Source: StatsWales 2017/18 see: Stats Wales: Student enrolments in Wales by institution and year

| Question | Funders and regulators | Learning providers | Researchers | Suppliers of goods and services |
|--|------------------------|---|--|---------------------------------|
| | | | of the share of research funding in Wales. | |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | No – not firms | No | No | No |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation? | Yes | No. Under current rules, this is possible | No. Under current rules, this is possible | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | No – not suppliers | No | No | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No – not suppliers | No | No | No |
| Q8: Is the sector characterised by rapid technological change? | No | No | Yes | No |

| | | | | |
|--|--------------------|----|----|----|
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? | No – not suppliers | No | No | No |
| Total number of positive scores | 1 | 1 | 4 | 3 |

10. Post-implementation Review

The Policy within the Draft Bill

- 10.1 The Draft Bill establishes the Commission for Tertiary Education and Research (CTER) as a Welsh Government Sponsored Body with responsibilities in relation to post compulsory education, training and research (PCETR) in Wales.
- 10.2 The Commission has the following principal mission: ‘To ensure that the people of Wales have the knowledge, skills and support, which leads to individual and national success and prosperity. The Commission will invest in equitable, excellent and entrepreneurial PCET provision and research capacity: enhancing civic engagement, economic well-being and social progress’.

Reviewing the implementation of the policy

- 10.3 Review and evaluation of the policy contained in the Draft Bill will focus on the implementation of the following:
- The Commission’s statutory functions: The Commission R will have functions in relation to the PCETR function in Wales. Similar functions are currently exercised by the Welsh Ministers and HEFCW.
 - The Commission’s responsibility for reviewing the effectiveness of the PCETR system in Wales, including its own position in that system.
 - The measurement of levels of public confidence in the organisation as the independent Commission for Tertiary Education and Research in Wales, and in the PCETR system before and after the establishment of the Commission; and
 - Review of the benefits, actual costs and impacts of the establishment of the Commission.

The exercise of the Commission statutory functions:

- 10.4 The provision, planning, funding and regulation of further education, higher education, adult learning and mainstream sixth form (via local authorities): funding of research and innovation capacity in relation to Wales; issue and review of Welsh apprenticeship frameworks and the issuing of Welsh apprenticeship certificates; and oversight and regulation of the quality and standards of education and training in the tertiary education, training and research sector within its remit
- 10.5 The Commission will be required to produce an annual report to the Welsh Ministers on (amongst other issues) the performance of its functions, and progress made during the year towards achieving the objectives set out in its strategic plan, and progress towards meeting Welsh Ministers’ strategic priorities.
- 10.6 Welsh Ministers will lay a copy of the annual report before the Senedd.

Review Methodology

- 10.7 The method for producing this annual report will be the responsibility of the Commission to design and perform. Reporting arrangements will be agreed with the Welsh Government's Sponsorship Unit. The first Annual Report will be prepared in 2024.
- 10.8 In producing the report, the Commission will be required to report on, amongst other matters, the performance of its functions, with reference to its overarching aims and high level goals. It will also, for example, be expected to report on how the Commission will engage with stakeholders in delivering its functions.
- 10.9 The Commission will be held to account by the Senedd either in full session or by Senedd Committee and the Senedd will receive a copy of the Annual report laid by Welsh Ministers. The Public Accounts Committee will also be able to scrutinise the Commission's finances.

Reviewing the PCETR system in Wales

- 10.10 In support of the high level objective of ensuring the effectiveness of the Welsh PCETR system and to raise standards for all; improving learner participation, progression, performance and outcomes, the Commission will review the inter-relationships between different bodies, including its own relationship with those it funds and regulates. This will, for example enable the Commission to be in a position to advise Welsh Ministers on the development of the PCETR system in Wales in the long term.

Review Methodology

- 10.11 The Welsh Ministers will lay the Commission's Annual report and this will be made available to the Senedd. Part of its reporting on an annual basis may include a general analysis of the PCETR system in Wales.
- 10.12 The Commission will have powers to require any person that receives funding from it, or that it is responsible for regulating, to provide any information it needs for the exercise of its functions, including monitoring and evaluation.
- 10.13 A significant argument for setting up the Commission is the desire to have a body that can take a broad view of the effectiveness of the PCET system as a whole and has the ability to track the progress of each individual learner from the point they leave compulsory education and enter further education, apprenticeships or higher education as the case may be. The Commission will gather this information and carry out research and statistical analysis into the progress of learners generally and comparing those in particular categories.

Public confidence in Wales' PCET system

- 10.14 Alongside the development of the RIA a benefits Realisation plan (BRP) has been developed as part of the Commission's Implementation Programme. To ensure

consistency each document informs the other and will be treated as companion pieces for future post implementation review and evaluation purposes.

- 10.15 A significant argument for the establishment of the Commission, and this has been identified as an overarching benefit that is most likely to be attributable, is 'increased public confidence in the PCET system in Wales'.
- 10.16 While initial review plans are laid out below, the Commission will need to determine how it will best monitor public confidence on an on-going basis in the longer term

Review Methodology

- 10.17 It is proposed that two baseline years will be used for future evaluation and data collection purposes, including the measurement of public confidence:

Academic year 2022/23: the year immediately prior to the establishment of the Commission will be used as the default baseline for measuring the impact and/or realisation by the Commission of identified programme benefits, including public confidence (other data may be used when this is not available).

Academic year 2017/18: will also be used. This coincides with the consultation on the White Paper 'Public Good and a Prosperous Wales' in 2017⁴¹, and precedes the technical consultation 'Public Good and a Prosperous Wales – the next steps' which ran from April to July 2018 – a document which has the potential to influence behaviours in anticipation of the establishment of the Commission.

- 10.18 Measurement of public confidence may also be informed through existing surveys currently undertaken by the Welsh Government and other partners. The new body should be able to utilise these or commission new ones.

Review of the benefits and impacts of the establishment of the Commission

- 10.19 The magnitude of benefits and other outcomes emanating from this programme is expected to be significant – they will not, however, be realised until several years after the Commission has been established and associated reforms begin. This will as noted above a BRP has been prepared. This plan:
- Provides details of the benefits emanating from the establishment of the Commission;
 - identifies those responsible for realising the benefits;
 - states baselines from which benefits will be measured; and will
 - form the basis of post programme evaluation and reviews to determine whether the planned benefits have been realised.

⁴¹ The consultation on the White Paper ran from June 2017 to October 2017.

- 10.20 The benefits identified in this plan support and are aligned with the programme goals and objectives.
- 10.21 An analytical plan will be prepared, which will set out the statistical and research work required to address any identified gaps in the available data and to monitor and evaluate the impact of the proposed reforms
- 10.22 From July 2023, the Commission will take ownership of the BRP and associated analytical plan. The Commission will be responsible for carrying out future benefit reviews and reporting the findings to the Welsh Government. Reporting arrangements will be agreed with the Sponsorship Unit. It is anticipated the Commission will also review annually, and improvements will be measured against the targets and baseline data established by the Commission Implementation Programme. A final evaluation report will be produced by the Commission to reflect related and available data for 2033/34.
- 10.23 It is intended that the new body will work closely with Welsh Government and adopt Government Social Research and Government Statistical Services protocols⁴². It is intended that the Commission will be able to produce official statistics and access some existing research and evaluation mechanisms as well as commission new ones.
- 10.24 The multi-faceted approach outlined above will focus on the extent to which the legislation has contributed to delivering change across the range of outcomes where it would be expected to make a difference. This will include, as recommended by the Finance Committee in their 2017 'Inquiry into the financial estimates accompanying legislation⁴³,' consideration of the accuracy of the estimated costs included in the RIA.
- 10.25 An analytical plan will also be prepared, which will set out the statistical and research work required to address any identified gaps in the available data and to monitor and evaluate the impact of the proposed reforms.
- 10.26 It is essential that ownership of the programme benefits is maintained through to realisation. From July 2023, the Commission will take ownership of the BRP. The Commission will be responsible for carrying out future benefit reviews and reporting the findings to the Welsh Government. Reporting arrangements will be agreed with the Sponsorship Unit.
- 10.27 The timing and details of activity associated with post programme and the BRP. It is likely that the main activity in this regard will be post-2023. Consideration is also being given to the requirement for interim programme evaluation and a possible Welsh Audit Office report and value for money evaluation. Evaluation will be informed by the work undertaken in relation to the RIA

⁴² The Government Social Research profession supports the development, implementation, review and evaluation of government policy <https://www.gov.uk/government/organisations/civil-servicegovernment-social-research-profession>. The Government Statistical Service works to provide advice, analysis and a statistical evidence base to help people make better decisions <https://gss.civilservice.gov.uk/>.

⁴³ <http://senedd.assembly.wales/documents/s70559/Welsh%20Government%20response.pdf>

ANNEX 1

DRAFT TERTIARY EDUCATION AND RESEARCH (WALES) BILL 2020

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Draft Tertiary Education and Research (Wales) Bill 2020 (“the Draft Bill”) as introduced to Senedd Cymru on xx.
2. They have been prepared by the Skills, Higher Education and Lifelong Learning Directorate of the Welsh Government in order to assist the reader of the Draft Bill and to help inform debate on it. They do not form part of the Draft Bill and have not been endorsed by the Senedd.
3. The Explanatory Notes should be read in conjunction with the Draft Bill. They are not meant to be a comprehensive description of the Draft Bill. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.

SUMMARY AND BACKGROUND

4. In summary the Draft Bill makes provision for the establishment of the Commission for Tertiary Education and Research (“the Commission”). The Draft Bill requires the Welsh Ministers to fund the Commission and provides for the Commission’s functions in respect of securing and funding of tertiary education and research. The Commission will also exercise regulatory functions in relation to tertiary education and research in Wales. Tertiary education means further education and training and higher education. It encompasses apprenticeships and education provided by mainstream school sixth forms.
5. The Commission will be responsible for monitoring performance, governance and financial practice across the sector, ensuring accountability for the public funding allocated to the sector at the same time as protecting the academic freedom of institutions in Wales. Some of these functions are similar to those currently exercised by the Welsh Ministers and the Higher Education Funding Council for Wales (HEFCW). The Draft Bill makes provision for the registration and regulation by the Commission of tertiary education providers.
6. The Draft Bill dissolves the Higher Education Funding Council for Wales.

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

7. The Draft Bill sets out that the Commission will have a Research and Innovation Committee (“RIW”), which will advise the Commission on its research and innovation functions.
8. The Draft Bill makes provision for “Approved Welsh Apprenticeships” and establishes the regime for the approval of apprenticeship frameworks, including powers for the Commission for Tertiary Education and Research to issue apprenticeship certificates.

GENERAL OVERVIEW OF THE DRAFT BILL

9. The Draft Bill comprises one hundred and thirty five sections and four Schedules. The Draft Bill is divided into seven Parts as follows:

PART 1 – STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH

This Part establishes the Commission for Tertiary Education and Research, sets out general duties of the Commission and dissolves HEFCW.

This part introduces Schedule 1 which sets out the status of the Commission; makes provision about membership of the Commission including some terms and conditions; establishes the Research and Innovation Wales Committee; imposes a duty on the Commission to establish a Quality Committee and an associate Commission staff member appointment committee and enables it to establish other committees including joint committees; makes provisions about memberships of the Commission (including workforce and learner representation), the accounting officer, audit and accounts, annual reporting requirements as well as other operational requirements such as delegations, proceedings, register of interests and the exercise of functions.

This Part also introduces Schedule 2 which makes provision about the transfer of property and staff to the Commission.

PART 2 – REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

This Part makes provisions for the registration and regulation by the Commission of tertiary education providers.

This Part introduces Schedule 3 which makes provision about the designation of a body to carry out the Commission’s functions in respect of assessing the quality of higher education.

PART 3 – SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

This Part imposes a duty on the Welsh Ministers to fund the Commission and provides for the Commission's functions in respect of securing and funding tertiary education and research.

PART 4 - APPRENTICESHIPS

This Part makes provisions about apprenticeships.

PART 5 - LEARNER PROTECTION, COMPLAINTS PROCEDURES AND LEARNER ENGAGEMENT

This Part makes provision about learner protection, complaints procedures and learner engagement.

PART 6 - INFORMATION, ADVICE AND GUIDANCE

This Part makes provision about information, advice and guidance from and to the Commission and the Welsh Ministers.

PART 7 MISCELLANEOUS AND GENERAL

This Part makes provision in respect instruments and articles of government of higher education corporations in Wales and the dissolution of such corporations; contains provisions on subordinate legislation procedures; provides powers for the Welsh Ministers to make transitional, consequential etc. provisions; and makes provision in respect of commencement, interpretation, coming into force etc.

This Part introduces Schedule 4 which sets out minor and consequential amendments to primary legislation affected by the Draft Bill's provisions.

COMMENTARY ON SECTIONS

PART 1

STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH

The Commission

Section 1: Establishment of the Commission for Tertiary Education and Research

10. This section provides for the establishment of the Commission. The Commission will be a body corporate with its own legal personality and specific powers and duties. This section introduces Schedule 1, which makes further provision about the Commission.

Section 2: General Duties of the Commission

11. This section sets out the general duties to which the Commission must have regard in carrying out its functions, including a duty to have regard to any guidance issued by the Welsh Ministers. In giving guidance to the Commission, the Welsh Ministers must have regard to the importance of protecting the academic freedom of institutions in Wales that provide higher education.
12. This section defines “academic freedom” and “members of the tertiary education workforce”.

Strategy for tertiary education and research

Section 3: Statement of strategic priorities

13. This section places the Welsh Ministers under a duty to publish a statement setting out their strategic priorities for tertiary education and research and innovation. The statement may be amended or replaced by the Welsh Ministers. Any amendments must be published.

Section 4: Strategic plan for the Commission

14. The Commission is under a duty to prepare a strategic plan, and in doing so must have regard to the strategic priorities published by the Welsh Ministers and must consult such persons it considers appropriate.
15. This section sets out further requirements for the content of the Commission’s strategic plan.

Section 5: Approval, publication and implementation of strategic plan

16. A strategic plan prepared under section 4 must be sent to the Welsh Ministers for approval within six months of the publication of the Welsh Ministers’ statement of priorities under section 3.
17. The Welsh Ministers have the power to approve the plan with or without modifications, but have a duty to consult the Commission in the event of making modifications to the plan.

18. This section places duties on the Commission to publish and take all reasonable steps to implement the strategic plan, and also provides for the strategic plan to include the Commission's statement on well-being objectives required by section 7 of the Wellbeing of Future Generations (Wales) Act 2015.

Section 6: Review of strategic plan

19. This section outlines the process to be followed by the Commission in reviewing and revising its strategic plan.
20. The Commission must review its strategic plan if the Welsh Ministers publish amendments to its statement of strategic priorities under section 3.
21. The Commission also has the power to review its strategic plan at any other time.
22. A review of the strategic plan may lead to the plan being revised. Section 4 applies to any revised plan.
23. A revised strategic plan must be sent to the Welsh Ministers for approval within six months where the revision is in consequence of the Welsh Ministers publishing amendments to their statement under section 3(2); or where the revision is in consequence of the Commission reviewing its strategic plan, as soon as reasonably practicable. Section 5(2) to (6) apply to a revised plan.

Specific strategic objectives

Section 7: Civic mission

24. This section places a duty on the Commission to promote the pursuit of a civic mission by institutions in Wales within the further education sector and higher education sector. The Commission may discharge this duty through any of its functions under this Draft Bill. The Commission also has the power to promote the pursuit of a civic mission by other persons who are funded by the Commission (other than institutions in Wales within the further education sector and higher education sector). This section also defines "Civic mission".

Section 8: Duties in relation to Welsh medium tertiary education

25. This section imposes general duties on the Commission in respect of Welsh medium tertiary education.

Dissolution of Higher Education Funding Council for Wales

Section 9: Dissolution of the Higher Education and Funding Council for Wales

26. This section dissolves the Higher Education Funding Council for Wales ("HEFCW"), to allow for the creation, by this Draft Bill of the Commission.

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

Section 10: Transfer Scheme

27. This section introduces Schedule 2 which makes provision about schemes for the transfer of staff, property, rights and liabilities as a result of establishing the Commission and dissolving HEFCW.

PART 2
REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

CHAPTER 1
REGISTRATION OF TERTIARY EDUCATION PROVIDERS

The register and registration procedure Section

11: The register

28. This section requires the Commission to set up and maintain a register of institutions providing tertiary education. The Commission must register those institutions that apply to be registered and which satisfy the conditions for registration in this section. The register, through the use of registration conditions (see sections 13 to 21), provides a means of regulating such institutions. In combination with revised student support regulations laid under the Teaching and Higher Education Act 1998 (“the 1998 Act”), registration will also determine a providers’ eligibility for automatic designation for Welsh Government student support.
29. The register is to be divided into different categories of registration specified in regulations made by the Welsh Ministers. It is intended that the categories of registration will allow appropriate variance in the conditions of registration required for different types of registered institutions in receipt of different forms of public funding. Regulations may prohibit a provider from registering in one category whilst it is registered in one or more other categories.
30. Institutions, once registered, must meet the general and any specific ongoing registration conditions applicable to them in the relevant category of registration. Provision for these conditions, and the process for determining them, is set out in sections 14, 15, 17, 18 and 19.
31. The procedure for and form of applications for registration is a matter for the Commission to determine. Information contained in the register must be published, and the Welsh Ministers may specify in regulations the information that is to be contained in a registered institution’s entry in the register.

Section 12: Registration procedure

32. This section sets out the procedure to be followed in the event that the Commission intends to refuse an application for registration, or where the Commission intends to refuse an application from a registered institution to change categories.
33. The Commission must notify the governing body of the institution where it intends to refuse the institution’s application. In doing so, the Commission must specify its reasons. Subsection (2) provides for a period within which an institution may make representations to the Commission about the Commission’s proposal.

34. The Commission may, at the conclusion of the specified notice period, either decide to register the institution in the category to which it has applied, or refuse to do so.
35. A notice of refusal to register an institution must set out information as to the right of review of the Commission's decision.

Registration conditions

Section 13: Initial registration conditions

36. An institution applying to register with the Commission must satisfy initial registration conditions. This section sets out two mandatory initial registration conditions. These apply to all registration categories.
 - (a) The Commission must be satisfied that the quality of education provided at an institution, or provided on its behalf, is sufficient.
 - (b) The Commission must be satisfied that an institution is financially sustainable.
37. For further information regarding the Commission's functions in respect of quality assessment and assurance, see Chapter 3 of this Part.
38. The standard required for institutions to satisfy initial registration conditions, and the information required to demonstrate this, will be determined by the Commission. The Commission is required to publish guidance on the requirements for satisfying such conditions.
39. The Welsh Ministers may, by regulation, specify further initial registration conditions and different conditions may be specified for different categories of registration. The list provided in subsection (4)(b) indicates the kind of conditions that may be specified in these regulations, but not all of these categories may be appropriate initial conditions of registration for all categories of the register.

Section 14: General ongoing registration conditions

40. As stated in section 11, a registered institution must continue to satisfy ongoing registration conditions in order to maintain its registration. A general ongoing registration condition is a condition determined by the Commission, which applies to one or more categories of registration.
41. The Commission must publish the general ongoing conditions and any revisions to those conditions. Before determining or revising the general ongoing conditions, the Commission is under a duty, if it appears appropriate to do so, to consult concerned persons, for example those registered institutions which will be subject to the registration conditions.

42. The Commission may determine different conditions for different categories or descriptions of registered institution. Under section 14(9), the Commission may decide that a general ongoing registration condition is not applicable to a particular registered institution. In such instances, the Commission may dis-apply the condition in relation to that institution and must inform the institution of its decision.

Section 15: Specific ongoing registration conditions

43. This section sets out when the Commission can impose, vary, or remove a specific ongoing registration condition that applies to a registered institution.
44. Before imposing, varying or removing a specific ongoing registration condition, the Commission must notify the governing body of the institution affected. The notice must inform the institution of the Commission's reasons for proposing the specific ongoing registration condition and of the institution's right to make representations about the proposal within a specific period.
45. The Commission must have regard to any representations made by the governing body of the institution in deciding whether to impose, vary, or remove the specific ongoing registration condition, and must notify the institution of its decision.
46. A notice relating to the imposition or variation of a specific ongoing registration condition must be accompanied with information as to the right of review. The new specific ongoing registration condition cannot have effect until the period of review has passed, which must not be less than 28 days. In addition, the new specific ongoing registration condition cannot have effect while an application for review has been made and, until any review conducted is concluded. The Commission must subsequently determine a date on which the specific ongoing registration condition will take effect.
47. For provisions relating to the conduct of reviews, see sections 68 to 70.

Section 16: Proportionate conditions etc.

48. This section requires the Commission to ensure that its ongoing registration conditions, and the guidance published regarding satisfaction of initial registration conditions (see section 13) are proportionate to its assessment of any risks posed. These may include, for example, risks to safeguarding of public funds, students' interests, and any other risks related to the Commission's functions in respect of institutions providing tertiary education.
49. In order that registration conditions and requirements continue to be proportionate, the Commission is required to keep its ongoing registration conditions under review.

Section 17: Mandatory ongoing registration conditions for each registered institution

50. In addition to any other general ongoing registration conditions determined by the Commission under section 14, the Commission must ensure that all institutions

registered in each category of the register are subject to the conditions listed in this section. These may be imposed as part of the general ongoing registration conditions or by way of a specific ongoing registration condition.

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

51. This section requires the Commission to ensure that each institution registered in a category specified by the Welsh Ministers in regulations is subject to a condition requiring the governing body of the institution to have an approved access and opportunity plan in place and to comply with the plan's general requirements. More detail on the content and approval of access and opportunity plans is outlined in chapter 2 of this Part. More information on fee limit is outlined at section 34.
52. A "qualifying course" is a course described in regulations made by the Welsh Ministers. Any institution which provides qualifying courses or has qualifying courses provided on its behalf and is subject to an access and opportunity plan condition must also be subject to a fee limit condition. A fee limit condition is a condition that requires the governing body of a registered institution to ensure that its "regulated course fees" do not exceed those specified in the institution's access and opportunity plan. "Regulated course fees" are fees payable by a qualifying person to an institution in order to undertake a qualifying course (subsection (7) and (9)). A "qualifying person" is a person described in regulations made by the Welsh Ministers and is not an international student within the meaning of subsection (11).
53. This section also allows the Welsh Ministers to make regulations specifying when fees paid for a course at an external provider (i.e. on behalf of a registered institution) are to be treated as regulated course fees and therefore subject to a fee limit.

Section 19: Mandatory ongoing registration condition on equality of opportunity statement

54. Registered institutions who provide higher education and are not subject to an access and opportunity plan condition under section 18 must be subject to an ongoing registration condition that requires them to prepare and publish an access and opportunity statement. Access and opportunity statements must set out the steps that institutions propose to take to promote participation by people from underrepresented groups in higher education in Wales, and also reduce gaps in attainment in higher education in Wales between different demographic and socio-economic groups.

Section 20: Power to provide for further mandatory ongoing registration conditions

55. In addition to the ongoing registration conditions provided for in sections 17, 18 and 19 as well as any determined by the Commission under section 14, the Welsh Ministers may specify in regulations further mandatory ongoing registration conditions that the Commission must apply to one or more categories of registration.

Section 21: Commission duty to give guidance about ongoing registration conditions

56. The standard required for institutions to satisfy ongoing registration conditions, and the information required to demonstrate this, are determined by the Commission. This section requires the Commission to publish guidance concerning the ongoing registration conditions.

Monitoring and enforcement of registration conditions

Section 22: Commission duty to monitor compliance with ongoing registration conditions

57. This section requires the Commission to monitor each registered institution's compliance with their ongoing registration conditions.

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

58. The Commission may provide advice and assistance to registered institutions in order to aid compliance with registration conditions.

Section 24: Reviews relevant to compliance with ongoing registration conditions

59. The Commission may, if it deems appropriate, carry out a review of matters relevant to compliance with registration conditions. The Commission may also arrange for such a review to be carried out by another appropriate body; for example, by Her Majesty's Chief Inspector or the Designated Quality Body (see Chapter 3) for matters in respect of the mandatory ongoing registration condition concerning quality.

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

60. Where the Commission is satisfied that an institution has failed (or is likely to fail) to comply with an ongoing registration condition, this section allows the Commission to direct the institution to take certain actions to comply with the condition. This might follow on from previous steps taken by the Commission to ensure compliance with registration conditions, such as advice and assistance (section 23) and reviews (section 24).
61. In respect of an access and opportunity plan condition, the Commission may not issue a direction if an institution has demonstrated that it has taken all reasonable steps to comply with the requirements of the plan.
62. In respect of a failure to comply with a fee limit condition, the Commission may also direct an institution to repay to students any fee monies which have exceeded the fee limit ("excess fees"), and the manner in which it must do so.
63. Any directions issued to institutions by the Commission must be published and a copy provided to the Welsh Ministers.

Section 26: Supplementary provision about directions under section 25

64. The Commission must comply with the procedures set out in sections 68 to 71 when giving directions under section 25.

65. The Commission may issue guidance about how institutions should comply with any directions issued under section 25, and must first consult registered institutions and other appropriate institutions regarding the content of this guidance.

Section 27: De-registration

66. The Commission has both a power and a duty to remove an institution from the register or from a category of the register in circumstances provided for in this section.
67. If a registered institution is no longer an 'institution in Wales', or ceases to provide the type of tertiary education that is relevant to its category of registration (for example higher education, or further education), the Commission must remove that institution from either that particular category of the register, or from the register entirely. This is because the institution would no longer satisfy the conditions set out in section 11.
68. The Welsh Ministers may make regulations to specify other circumstances in which the Commission must remove institutions from either a particular category of the register, or from the register entirely.
69. The Commission may remove an institution from the register or a category of the register in the following circumstances :
- (i) It appears to the Commission that the institution has breached one of its ongoing registration conditions and the Commission has previously issued a direction to that institution in relation to any breach of an ongoing registration condition.
 - (ii) It appears to the Commission that the institution has breached one of its ongoing registration conditions, and the Commission considers that issuing a direction under section 25 would be insufficient to deal with the breach.
70. Under subsections (6) and (7), the Welsh Ministers may make regulations establishing transitional arrangements where an institution is to be removed from the register or from a category of the register. This might involve temporarily treating the institution as a registered institution in a particular category, for example, in order to enable existing students at the institution to continue to receive student support.
71. The Commission must publish a list of any institution removed from the register or a category of the register, including reference to any regulations made under subsection (6).

Section 28: De-registration: procedure

72. This section establishes the process the Commission must follow when removing an institution from the register or a category of the register under section 27.
73. The Commission must notify the governing body of a registered institution of its intention to de-register the institution and its reasons for doing so. Institutions will have a specified period to make representations to the Commission about the proposal.

The Commission must have regard to any representations made during the specified period before deciding whether or not to remove the institution from the register or from a category of the register.

74. If the Commission decides to proceed with the de-registration decision, then the governing body of the institution may request a review (see section 31) of that decision by the decision reviewer (see section 72). Any notice of a decision by the Commission to de-register an institution must be accompanied with information as to the right of review.
75. A de-registration under section 27 cannot take effect while a review of the decision could be requested or is being undertaken, unless the institution notifies the Commission that it does not intend to apply for a review.

Section 29: Voluntary de-registration and de-registration with consent

76. Registered institutions may apply, in a form determined by the Commission, to be removed from the register or a category of the register or may give consent to a proposal from the Commission to remove the institution from the register or a category of the register.
77. If an institution applies for de-registration in accordance with subsection (6), the Commission is obliged to accept the application and must specify a date for removal from the register or category of the register. The governing body of the institution is able to apply for a review by the decision reviewer of the decision regarding the date for removal (see section 31).
78. Where an institution applies to be removed from a category of the register, it may specify in its application that it is, at the same time, applying for registration in a different category. Where such an application to change categories is made, the effect of subsections (2) to (4) is that the Commission is not obliged to remove the institution from its existing category unless it is also able to register it in the new category.
79. As in section 27, the Welsh Ministers may make regulations establishing transitional arrangements. This might involve temporarily treating the institution as a registered institution, for example, to enable existing students at the institution to continue to receive student support.
80. The Commission must publish a list of any institutions removed from the register or a category of the register and of any regulations made under subsection (13).

Section 30: Change of registration category without application

81. Where an institution is removed from a category of the register under section 27 or 29(5), the Commission may register the institution in another category of the register provided: the governing body consents; and registration is not prohibited under section 11(6).

Registration decision reviews

Section 31: Registration decision reviews

82. Whenever the Commission notifies an institution of a decision to:
- (a) refuse registration in a category;
 - (b) impose or vary a specific condition of registration;
 - (c) remove an institution from a category of the register under section 27 ; or
 - (d) determine the date upon which any de-registration will take effect.

the institution in question may request a review of that decision.

83. Decision reviews will be carried out by the person or panel appointed by the Welsh Ministers under section 71 and in accordance with the review process established by that section.

CHAPTER 2

ACCESS AND OPPORTUNITY PLANS

Section 32: Application by institution for Commission's approval of access and opportunity plan

84. Chapter 2 provides for the content, form and application process for an access and opportunity plan.
85. The governing body of an institution in Wales may apply to the Commission to have an access and opportunity plan approved. The purpose of this will be to satisfy an ongoing registration condition imposed under section 18.

Section 33: Period to which plan relates

86. Access and opportunity plans must specify the period of time for which they are to have effect. This period must not exceed the maximum period specified in regulations made by the Welsh Ministers. Before making such regulations, the Welsh Ministers must consult with the Commission, the governing bodies of each registered institution and any other persons it considers appropriate.

Section 34: Fee limit

87. When a registered institution is subject to a fee limit condition under section 18, the institution's access and opportunity plan must specify the fee limit, or provide for the determination of the fee limit, in relation to each qualifying course. This fee limit must not exceed the "maximum amount".
88. The "maximum amount" is the amount specified by the Welsh Ministers that a fee limit for a qualifying course may not exceed in any academic year.

89. Fee limits for different courses may vary, and may also vary from year to year, and are to be specified in an access and opportunity plan. Where there is a process or formula for determining a fee limit, this must be specified in an access and opportunity plan.

Section 35: Promotions of equality of opportunity and tertiary education

90. This section requires an access and opportunity plan to include such provision relating to the promotion of equality of opportunity in connection with access to relevant tertiary education for people in Wales or the promotion of relevant tertiary education provided in Wales as is specified in regulations made by the Welsh Ministers. Tertiary education is relevant if it relates to the category of registration for which an access and opportunity plan is an ongoing registration condition (see section 18(1)) and in connection with which an institution has applied for approval of a plan.
91. Regulations may, for instance, require access and opportunity plans to seek to address inequalities between different student groups in applications and access student retention and student attainment, as well as institutions' policies in respect of financial assistance for students and information availability for prospective students.
92. Regulations may also make provision requiring access and opportunity plans to set out the objectives of a plan, the expenditure that will be made in regards to those objectives, and the manner in which a governing body will monitor compliance with and success of a plan.
93. Subsection (5) prohibits the regulations that may be made under subsection (1) from specifying requirements that a plan include provision referring to the manner in which higher education courses are taught, assessed or supervised, and the criteria for admission of higher education students.
94. The activities set out in an institution's approved access and opportunity plan are the 'general requirements' of the plan and require the governing body of an institution to do, or not to do, those things. The Commission is under a duty to monitor compliance with these general requirements (see section 39).

Section 36: Approval of access and opportunity plan

95. Where the governing body of an institution applies to the Commission under section 32 for approval of an access and opportunity plan, the Commission may approve or reject the plan and must give notice of that decision. In making this decision, the Commission must take into account matters prescribed in regulations made by the Welsh Ministers under subsection (4).
96. Subsequent to approval, a governing body of an institution may apply to the Commission to vary an approved plan. The Commission may approve or reject the application for variation and must give notice of that decision.

97. Once a plan is approved, it is in force, and will remain so until the day on which the period to which it relates (the period in respect of which it has effect) expires.
98. The Commission may not approve an access and opportunity plan if a notice under section 40(5) is in force.
99. If the Commission decides to reject an access and opportunity plan or an application for variation, it must follow the process outlined in sections 68 to 70.

Section 37: Publication of approved plan

100. An access and opportunity plan or varied plan approved by the Commission must be published by the institution in a manner that is accessible to students and prospective students.

Section 38: Validity of contracts

101. This section applies where a contract between an institution and a qualifying person in respect of that person undertaking a qualifying course provides for the payment of fees by the person which exceed the applicable fee limit (see section 18).
102. Subsection (2) provides that such a contract is to be treated as providing for the payment of fees which are equivalent to the applicable fee limit. So where a student refuses to pay any excess fees specified in a contract the institution will not be able to recover the excess fees. But the contract will remain otherwise enforceable, in terms of the institution's duty to provide education to the student, despite the contract providing for the payment of fees which exceed the applicable fee limit (subsection(3)).

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

103. The Commission must monitor whether institutions are in compliance with the general requirements of their access and opportunity plans, as well as evaluate whether access and opportunity plans (both individually and in aggregate) are operating effectively.
104. The effectiveness of access and opportunity plans is assessed in terms of how they promote equality of opportunity in connection with access to relevant tertiary education and how they promote relevant tertiary education. "Relevant tertiary education" has the same meaning as in section 35.

Section 40: Notice of refusal to approve new access and opportunity plan

105. If a registered institution fails to comply with a fee limit condition, an access and opportunity plan condition (see section 18), or a direction given by the Commission to secure compliance with either of these conditions, then the Commission may notify the institution that it will not approve any new applications for approval of an access and opportunity plan within a specified time period.
106. However, if the Commission is satisfied that the institution has taken all reasonable steps to comply with its access and opportunity plan condition, then it may not issue

such a notice to the institution in respect of a failure to comply with the access and opportunity plan condition.

107. If notice is given to an institution under subsection (1), the Commission must not approve any new access and opportunity plan relating to that institution within the specified period to which the notice applies, unless the Commission withdraws the notice (subsection (6)).
108. This Section also allows the Welsh Ministers to make regulations about the period which may be specified in such notices, matters for the Commission to take into account in issuing or withdrawing a notice, and the process by which a notice may be withdrawn. If the Commission issues a notice under this section, it must give a copy of the notice to the Welsh Ministers and publish the notice. The procedure for issuing a notice is set out in sections 68 to 70.
109. The Commission may also issue directions under section 25, or de-register an institution under section 27, if the institution fails to comply with a fee limit condition or an access and opportunity plan condition.

Section 41: Duty to withdraw approval

110. The Commission must give notice to the governing body of an institution that approval off the access and opportunity plan is withdrawn where an institution is no longer registered in the category of registration to which the access and opportunity plan applied

CHAPTER 3

CHAPTER 3 - QUALITY ASSURANCE AND IMPROVING QUALITY

Section 42: Quality assurance frameworks

111. The Commission will have a power to produce and publish a quality assurance framework or frameworks. A framework will set out information and guidance on policy and practice relating to the criteria and arrangements for assessing or inspecting the quality of tertiary education and training. It will outline the roles and responsibilities of Estyn and the designated quality assessment body in conducting quality assurance, as well as the roles and responsibilities of tertiary education providers and others regarding the quality of tertiary education.
112. Frameworks will also set out guidance and information regarding the professional development of the tertiary education workforce and provide information and guidance on any other relevant matters related to quality assurance.
113. The Commission will be required to consult with registered tertiary education providers, Estyn and any other stakeholders as the Commission sees fit before publishing, revising or withdrawing a quality assurance framework document.

114. Estyn, the designated quality assurance body and the Commission will be required to take account of the quality assurance framework in their work.

115. The Commission will have other powers to issue guidance.

Section 43: Duty to monitor and promote improvement in the quality of tertiary education

116. The Commission has the duty to monitor and promote improvement in the quality of education and training across registered and funded tertiary education providers.

Section 44: Advice and assistance in respect of quality of tertiary education

117. The Commission will have the power to issue advice and guidance to any funded or registered provider to support quality improvement of the education, course or training provided. In particular, the Commission may provide advice and guidance to tertiary education providers to improve the quality of the education provided or, to prevent the quality of the education, course or training from becoming inadequate. This would be the case where the quality of the education, course or training does not meet the reasonable needs of the learners.

Section 45: Reviews relevant to quality of tertiary education

118. The Commission will have the power to carry out a review of any matter relevant to the quality of tertiary education and training. The Commission may arrange for these reviews to be carried out on its behalf.

Assessment of quality in higher education

Section 46: Assessment of quality of higher education

119. The Commission must assess, or make arrangements to assess, the quality of higher education provided by each registered tertiary education provider and by those providers offering higher education provision on behalf of providers registered with the Commission. In addition, the Commission may assess, or make arrangements to assess, the quality of higher education provided by any institution.

120. The Commission must publish the reports of these assessments.

121. The Welsh Ministers may by regulations require assessments to be carried out at specified intervals and to publish the reports of these assessments within a specified period. The Welsh Ministers must consult with the Commission before making such regulations.

122. In this Part of the Draft Bill, references to an external provider relate to those providers who are responsible for providing all or part of a course of higher education on behalf of registered institutions, but who are not registered institutions in their own right. The Welsh Minister may make regulations about who should be treated as an external provider.

Section 47: Action plans following assessments under section 46

123. Following a quality assessment and published report, the registered institution providing the higher education, or the registered institution on behalf of which the higher education is provided must prepare a written statement of its planned actions to respond to the report and the timescales to address these planned actions. The provider must send the action plan statement to the Commission and to the designated body (if the designated body carried out the assessment). The institution must also publish the action plan statement.
124. Compliance in writing and publishing the action plan statement is to be treated as an on-going registration condition for registered providers. Please refer to section 25 and section 27 in the event of failure to comply with this condition

Section 48: Performance of higher education assessment functions by a designated body

125. This section introduces Schedule 3. There are further details in Schedule 3 about the designated body who will conduct the assessment functions on behalf of the Commission under section 45, and the provision for this body to charge fees. The Commission will have oversight for this body. The Commission will not normally be expected to conduct the assessment function if it has designated a body to conduct these assessment on its behalf, but will retain the power to do so.

Inspection of further education or training etc.

Section 49: Duty of the Chief Inspector to inspect and report

126. This section provides details about the scope of the education or training within the remit of the Chief Inspector of education and training in Wales, also known as Estyn and their inspection duties. Estyn must inspect:
- (a) further education or training funded or secured by the Commission. This would include further education in colleges and apprenticeship training;
 - (b) further education or training funded or secured by the Welsh Ministers.
 - (c) further education or training funded by a local authority in Wales. This would include mainstream sixth form provision in maintained schools and community-based adult learning partnership provision;
 - (d) further education or training where the Commission or a local authority in Wales is contemplating giving funding to the provider of the further education or training;
 - (e) education or training for compulsory school age learners in a further education or higher education provider in Wales;
 - (f) any education or training provided in Wales that is specified by the Welsh Ministers in regulations.
127. Inspections under subsection (1) do not apply to any inspections conducted in schools under Part 1 of the Education Act 2005, or to further education or training funding which is given for a specific purpose where support is not directed.

128. Estyn must publish a report for each inspection to include, but not limited to, views on:
- (a) the quality of the education or training inspected;
 - (b) the standards achieved by the learners receiving the education and training
 - (c) whether the financial resources given to the provider are managed efficiently and used in a way which provides value for money.
129. The Welsh Ministers may, by regulations, require inspections to be carried out at specified intervals and require reports to be completed within a specified period. Before making such regulations, the Welsh Ministers must consult the Commission and Estyn.

Section 50: Power of the Chief Inspector to inspect and report

130. Estyn has the power to inspect and report on any education and training described in section 49(1). If it does undertake such an inspection, it must publish a report. Estyn has the power to inspect and report on any education or training which is not described in section 49(1), but the provision would be if it was funded by the Commission or the Welsh Ministers, if the provider asks Estyn to do so. In the latter case, Estyn may charge the provider for the cost of the inspection and may publish the report.

Section 51: Duty to provide information and guidance to the Commission

131. Estyn must keep the Commission informed about inspections and reports carried out under section 49(1) in relation to provision funded or secured by the Commission. When asked to do so by the Commission, Estyn must give the Commission advice on matters relating to education or training under section 49, inspect such provision and report on the result of inspections conducted under this section.

Section 52: Duty to provide information and guidance to the Welsh Ministers

132. Estyn must keep the Welsh Ministers informed about inspections and reports carried out under section 49(1) in relation to provision that is not funded or otherwise secured by the Commission. When asked to do so by the Welsh Ministers, Estyn must give the Welsh Ministers advice on matters relating to education or training under section 49, inspect such provision and report on the result of inspections conducted under this section.

Section 53: Additional functions of the Chief Inspector

133. Through regulations, the Welsh Ministers may specify that Estyn shall have additional functions in relation to the education or training described in section 49(1). These may include inspection functions related to training for teachers, lecturers, trainers or others providing such education or training.

Section 54: Action plans following inspections by the Chief Inspector

134. Following the publication of an inspection report, the provider must prepare a written statement of the planned actions it will take in response to the report and the timescales to address those planned actions. The provider must publish the action plan statement.

This section does not apply to those inspections conducted as a result of a request under section 50(1) or an area inspection under section 55.

135. Compliance with the duty to prepare an action plan statement is a requirement of the terms and conditions of funding by the Commission or the Welsh Ministers under this Draft Bill.
136. Compliance with the duty to prepare and publish an action plan statement is to be treated as an on-going registration condition for registered providers who provide education or training described in section 49(1). Sections 25 and 27 make provision about what the consequences may be in the event of failing to comply with this condition

Section 55: Area inspections

137. Estyn must carry out an area inspection if requested to do so by the Commission or the Welsh Ministers and publish a report for each area inspection. It may also conduct such an inspection without being asked.
138. An area inspection is an inspection of:
 - (a) the quality and availability of an aspect of education or training in a specified area of Wales for learners aged 15 or over;
 - (b) the standards achieved by the learners receiving the education or training;
 - (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.
139. The aspect of education or training to be inspected through an area inspection is any education or training described in section 49 or within Estyn's remit as provided for in any other legislation.
140. The power to require Estyn to carry out an area inspection may only be used by the Commission with regard to any education or training it funds or secures. The Welsh Ministers may require Estyn to carry out an area inspection in regards to any other provision which meets the definitions set out in this section.
141. The focus of an area inspection may extend to the manner in which financial resources have been allocated to the education or training being inspected by Estyn, and whether this provides value for money, if funding has been applied by the Commission or a Local Authority in Wales.
142. Information related to the area inspection must be provided to Estyn by any provider of education or training who is subject to the area inspection, any local authority in Wales within the area that is the focus of the area inspection, the Commission, and the Welsh Ministers.

143. The Welsh Ministers may, by regulations, make further provision in regard to the requirement to provide information and the time scales in which the reports of area inspections must be published.

Section 56: Rights of entry and offences

144. When conducting inspections, Estyn has a right of entry at all reasonable times to premises on which the education or training being inspected is provided; and to premises of a provider of education and training used in connection with the provision.
145. Estyn also has a right to inspect and take copies of any records and documents containing information relating to education or training, which the inspector requires for the purposes of the inspection.
146. The right of entry for Estyn to premises for education or training provided by an employer in the workplace may only be used if the employer has been given reasonable notice in writing.
147. The right to inspect and take copies, includes having access to computers and any other device used to access records or documents, and assistance as reasonably required from those who use or have charge of the equipment.
148. It is a criminal offence to wilfully obstruct Estyn when conducting inspections, and anyone found guilty of this offence is liable to be fined up to level 4 on the standard scale.

Section 57: Surveys and studies

149. The Commission may direct Estyn to carry out a survey related to further education or training policy for Wales or for a specified area of Wales. The Commission may also direct Estyn to carry out a comparative study of education or training outside of Wales. Estyn may also carry out such surveys or studies itself, without being directed to do so.

Section 58: Annual reports

150. The Education Act 2005 (section 21(1)(a)) requires Estyn to produce an annual report. The Draft Bill requires that the annual report must also include details of the exercise by Estyn of its functions under Chapter 3. Section 21 of the Education Act 2005 also includes a power for Estyn to produce other reports, and that power shall extend in respect of matters relating to the education or training described in section 49(1) of this Draft Bill.

Section 59: Annual plan of the Chief Inspector

151. Estyn must prepare an annual plan for each financial year setting out estimates of income and expenditure necessary to carry out its work effectively. The plan must

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

include proposals for managing funds provided to Estyn from the Commission (under section 60) and from the Welsh Ministers (under section 104(4) of the Government of Wales Act 1998).

152. Estyn must submit the plan to the Commission and the Welsh Ministers for consultation and approval, by such date before the beginning of the financial year as the Commission and the Welsh Ministers shall direct. Estyn may publish the plan after it has been approved by the Commission and the Welsh Ministers.

Section 60: Funding of inspections and reports on education and training etc.

153. The Commission must provide such funding to Estyn as the Commission considers appropriate so that Estyn is able to carry out its work in relation to the education or training that is funded by the Commission. In determining how much funding is appropriate for Estyn, the Commission must have regard to what the Commission considers Estyn needs to spend to exercise its functions. The Commission must consult with Estyn before the beginning of each financial year in relation to the funding it is going to provide for that year.

154. The Commission must approve the parts of Estyn's annual plan which relate to Estyn's work in respect of education or training funded by the Commission and determine the amount of funding it will provide according to the activities outlined in the annual plan. The Commission may ask Estyn to modify the annual plan before it is approved.

155. Section 104 of the Government of Wales Act 1998 is amended to provide that the Welsh Ministers are not responsible for the provision of funding to Estyn for education or training funded or secured by the Commission. Subsection 4A is also amended so that the Welsh Ministers are only responsible for approving such parts of Estyn's annual plan as relate to functions in respect of which the Welsh Ministers provide funding.

CHAPTER 4

FURTHER ENFORCEMENT AND PROCEDURAL PROVISIONS

Intervention in the conduct of further education institutions

Section 61: Grounds for intervention and Section 62: Powers to intervene

156. Section 61 and section 62 replace the provisions previously set out in section 57 of the Further and Higher Education Act 1992 relating to the Welsh Ministers powers of intervention for institutions in the further education sector in Wales.
157. Section 61 specifies the grounds that must be met in order for the Welsh Ministers to intervene in the conduct of an institution in Wales within the further education sector in Wales. See section 130 for an interpretation of these terms.

158. Section 62 makes provision for the way that the Welsh Ministers may intervene if one or more of the grounds for intervention set out in section 61 are met. This section requires the Welsh Ministers to consult with the Commission before exercising its intervention powers under section 62. This section allows the Welsh Ministers to issue directions that are enforceable by injunction under section 74.

Section 63: Notification by the Commission of the grounds for intervention

159. This section places the Commission under a duty to notify the Welsh Ministers if it is of the view that any of the grounds for intervention specified in section 61 have been met. The Welsh Ministers must have regard to the Commission's view in deciding whether or not to exercise any of its intervention powers under section 62.

Section 64: Welsh Ministers' statement on intervention powers

160. This section requires the Welsh Ministers to publish and keep under review a statement on how they propose to exercise their intervention functions under section 62. This section also sets out the consultation requirements that the Welsh Ministers must follow before publishing the statement.

Access to information and facilities

Section 65: Duty to co-operate

161. This section requires governing bodies of registered institutions, external providers (see section 46) and unregistered providers in Wales that provide further education and are funded under section 88, to co-operate with persons exercising certain functions under Chapters 1 to 3 of Part 2.
162. The duty to co-operate requires such governing bodies to ensure the provision of information, assistance and access to facilities, systems or equipment that might be required by the person for the purposes of those functions. Examples of persons that might act on the Commission's behalf in respect of these functions include Estyn and a body designated to conduct higher education assessments under Schedule 3.
163. The duty imposed on governing bodies to co-operate under section 65 also applies in respect of powers of entry and inspection under section 66.
164. Subsection (1) imposes a duty to co-operate on the governing body of an external provider (see section 46) for the purposes of the following functions:
- (a) Monitoring and promoting improvement in the quality of tertiary education (section 43);
 - (b) conducting reviews relevant to the quality of tertiary education (section 45);
 - or (c) assessing the quality of higher education (section 46(1)).
165. Subsection (2) imposes a duty to co-operate, including for the purpose of entry and inspection under section 66, on the governing body of an unregistered institution in

Wales that provides further education and training funded by the Commission under section 88 for the purposes of the following functions:

- (a) Monitoring and promoting improvement in the quality of tertiary education (section 43); or
- (b) conducting reviews relevant to the quality of tertiary education (section 45).

166. The Commission may give a direction to a governing body if the Commission is satisfied that the body has failed to comply with its duty to co-operate. The direction may require a governing body to take or not take steps to secure the provision of information, assistance or access to facilities, systems or equipment.

Section 66: Powers of entry and inspection

167. This section provides for a right of entry and inspection for a person authorised in writing by the Commission, an “authorised person”.

168. Subsection (1) states an authorised person may enter the premises of a registered institution and inspect, copy and take documents found on the premises of registered institutions for the purposes of the following functions:

- (a) Monitoring compliance with ongoing registration conditions (section 22);
- (b) reviews relevant to compliance with ongoing registration conditions (section 24);
- (c) monitoring compliance with and evaluating effectiveness of access and opportunity plans (section 39);
- (d) monitoring and promoting improvement in the quality of tertiary education (section 43);
- (e) conducting reviews relevant to the quality of tertiary education (section 45); or (f) assessing the quality of higher education (section 46(1)).

169. Subsection (2) states an authorised person may enter premises and inspect, copy and take documents found on the premises of external providers for the purposes of the following functions:

- (a) Monitoring and promoting improvement in the quality of tertiary education (section 43);
- (b) conducting reviews regarding the quality of tertiary education (section 45); or (c) assessing the quality of higher education (section 46(1)).

170. The term documents in this section includes information in any form and documents stored on or accessible by computers on the premises.

171. The power to inspect, copy or take away documents includes the power to require a person to provide documents, and to require the documents be provided in a certain

form or format, and to inspect any electronic storage systems where documents have been created or stored.

172. Before exercising a power under this section, reasonable notice must be given to the governing body of the registered institution or external provider in relation to whose premises the powers will be exercised, and the registered institution on whose behalf the institution or external provider provides education to which the exercise of the entry and inspection functions relate. However, notice does not need to be given if the power needs to be exercised urgently, or if giving notice would defeat the purpose of exercising the power.
173. If required to do so, an authorised person must, before exercising a power under this section, produce a copy of the written authorisation from the Commission.
174. The powers conferred by this section must be exercised at reasonable times and not so that anyone has to do anything other than at a reasonable time. They do not constitute a power to enter a residential dwelling without the agreement of the occupier.

Warning and review procedure

Section 67: Application of sections 68 to 70

175. Sections 68 to 70 set out the process which the Commission must follow when issuing a direction or notice. The notices and directions to which those sections apply are listed in subsection (1).
176. The Commission is not required to follow the process set out in sections 68 to 70 if they issue a direction which solely revokes a previous direction.

Section 68: Proposed notices and directions: requirement to give warning notice

177. Before giving a governing body a notice or direction listed in section 67(1), this section requires the Commission to give the governing body a warning notice. The warning notice must set out the proposed notice or direction, the reasons for giving it, the means by which the governing body may make representations regarding the notice or direction, and the period during which such representations can be made.
178. The Commission must have regard to any representations made by the governing body in the specified period in deciding whether to give the notice or direction and must then notify the governing body of its decision.

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

179. When giving a governing body a notice or direction listed in section 67(1), the Commission must include a date on which the notice or direction will take effect. At the same time, the Commission must also give the governing body a statement setting out the reasons for the notice or direction being given, information regarding the right to review (see sections 70 and 71) and the period within which an application for review may be made.

180. A notice or direction to which this section applies may not come into effect while a review process is ongoing nor during the period within which the governing body affected could apply for a review under section 70, unless the governing body concerned notifies the enforcing body that it does not intend to apply for a review (subsection (4)). As a result, the notice or direction may be unable to come into effect on the date specified by the Commission under subsection (1). In this case, subject to the outcome of any review, the Commission must determine a new date on which the notice or direction will take effect (subsections (5) and (6)).

Section 70: Review of notices and directions

181. This section provides that a governing body given a notice or direction listed in section 67(1) has the right to apply for a review of the notice or direction by the decision reviewer.

Section 71: Decision reviewer

182. The Welsh Ministers must appoint a person or panel to be the “decision reviewer” and may pay remuneration and allowances to that person or panel. The decision reviewer is responsible for the review of decisions under this Part.
183. The Welsh Ministers must make regulations in relation to decision reviews , the regulations may including, but are not limited to:
- (a) grounds for review;
 - (b) recommendations to be made by the decision reviewer;
 - (c) the period within which a request for a review may be made, and the form in which the request must be made;
 - (d) the procedures and steps to be taken; and
 - (e) steps to be taken by the Commission or the Welsh Ministers following a review.

Miscellaneous duties

Section 72: Duty to monitor and report on financial sustainability

184. This section requires the Commission to monitor and report on the financial sustainability of certain providers. Under subsection (1) the Commission must monitor the financial sustainability of registered institutions and institutions in Wales in the further education sector that are not registered but are funded by the Commission.
185. Subsection (2) allows the Welsh Ministers to make regulations to make exceptions in the application of the monitoring duty under subsection (1) for institutions or types of institutions in these categories. Subsection (1) also allows the Welsh Ministers, via regulations, to extend the monitoring duty to other kinds of tertiary education provider.

186. Subsection (3) requires the Commission to provide information in respect of the financial position of the persons it monitors under this subsection (1) in the annual report that it submits (see Schedule 1, Paragraph 16), to the Welsh Ministers each year.
187. This section also sets out that the Commission must, at the same time it submits its annual report, submit a separate report to the Welsh Ministers which summarises the financial outlook of persons that it monitors under subsection (1). This report will provide a summary of conclusions drawn by the Commission from its monitoring activity on relevant emerging trends, patterns or other matters that the Commission consider it appropriate to bring to the attention of the Welsh Ministers. This report will relate to the financial years following the financial year to which the annual report relates.

Section 73: Commission's statement on intervention functions

188. This section provides that the Commission must publish and keep under review a statement setting out its approach to exercising the functions listed in subsection (4). Before publishing or revising the statement, the Commission, must consult the governing bodies of each registered institution and any other persons it considers appropriate.

Directions

Section 74: Effect and enforcement of directions

189. The governing body of an institution must comply with any direction given to them by the Commission or the Welsh Ministers under this Part. Subsection (2) gives the Commission and the Welsh Ministers a power to apply to the court for an injunction to enforce a direction that they have given. When requested to do so by the governing body concerned, the person who gave the direction must notify the governing body whether they are satisfied that a direction or a particular requirement of a direction has been complied with.
190. Subsection (4) provides that directions given under this part must be given in writing.

CHAPTER 5

GENERAL

Section 75: Compatibility with charity law and governing documents of institutions

191. The effect of this section is that any requirements that the Commission may impose on the governing bodies of institutions under this Draft Bill (e.g. registration conditions or directions) cannot require those governing bodies to act in breach of their obligations as charity trustees, nor require governing bodies to act in a manner incompatible with their governing documents.

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

192. For these purposes, the governing documents of an institution are defined in subsection (2) in relation to institutions established by Royal Charter, institutions conducted by higher education corporations or further education corporations, institutions designated under section 129 of the Education Reform Act 1988 or section 28 of the Further and Higher Education Act 1992 and other institutions conducted by companies.

Section 76: Designation of other providers of tertiary education

193. This section enables the Welsh Ministers to designate a provider of tertiary education who would not otherwise be regarded as an institution for the purposes of this Part to be treated as such. The designation will be made on the application of the provider concerned. An institution designated under this section may be treated as an 'institution' for the purposes of registration, quality assurance and quality assessment functions under this Part but will still need to meet all other criteria in section 11(5) to be able to register with the Commission.
194. Subsection (4) allows the Welsh Ministers to make regulations providing for the manner in which applications for designation under this section are made and the making of designation decisions, including criteria for confirming and withdrawing designation and the effect of withdrawal of a designation.

Section 77: Interpretation of Part 2

195. This section provides the definitions of certain terms which are used in Part 2 of this Draft Bill.

PART 3

SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH

Funding the Commission

Section 78: Powers of the Welsh Ministers to fund the Commission

196. This section allows the Welsh Ministers to provide funding to the Commission. It allows the Welsh Ministers to attach terms and conditions to such funding as they consider appropriate (including in relation to repayment of sums and payment of interest) subject to the limitations specified in section 80.
197. Terms and conditions applied to funding by the Welsh Ministers may require the Commission to enter into an “outcome agreement” with persons whom it proposes to fund. An outcome agreement is defined by this section. Outcome agreements are a means by which the Commission, through its funding decisions, will contribute to the achievement of the Welsh Ministers’ strategic priorities for tertiary education and research. The Commission’s strategic plan, prepared in response to the Welsh Ministers’ statement of priorities published under section 3, will set out its objectives, how those objectives will contribute to the Welsh Ministers’ priorities and how the Commission intends to achieve them. Outcome agreements will set out the activities that a provider agrees it will carry out in return for funding which will contribute to the objectives in the Commission’s approved strategic plan.
198. The Welsh Ministers may impose terms and conditions requiring the Commission to enter into outcome agreements in all cases where it provides funding. Alternatively the Welsh Ministers may require the Commission to enter into an outcome agreement where the Commission proposes to fund particular activities, types of provider or specified amounts of financial support. For example, the Welsh Ministers may require that outcome agreements apply to all courses of higher and further education, or only to certain specified courses or where the volume of provision is small and funding falls below a specified amount.

Section 79: Funding of the Commission: limitations on terms and conditions

199. This section includes a number of requirements and restrictions in relation to the terms and conditions that may be imposed by the Welsh Ministers. The purpose of the requirements and restrictions is to protect the institutional autonomy of tertiary education and research providers, the academic freedom of higher education providers and the ability of the Commission to determine funding allocations.
200. In particular, this section provides that the terms and conditions imposed by the Welsh Ministers in relation to funding for higher education, further education and training, and research and innovation must not relate to activities carried on by individual providers (unless they apply to all providers or those falling within a particular class or description), and are not a pre-conditions of funding.

201. This section also provides that terms and conditions must not be framed by reference to criteria for the appointment, dismissal or selection of academic staff or criteria for the admission of students. This provision protects providers' freedom to select staff and admit students as they see fit.
202. Further, this section provides that terms and conditions relating to funding for research and innovation may be framed by reference to an area of research or innovation that is included in the Commission's approved strategic plan. However, they may not refer to particular programmes of research or innovation projects.
203. In addition, the terms and conditions for higher education may apply to particular courses but must not apply to particular parts of courses nor must they require the Commission to either provide or prohibit the provision of particular courses. These provisions enable the Welsh Ministers to ring-fence funding to support particular courses of higher education and to require the Commission to have regard to the desirability of funding them. By way of example the Welsh Ministers may give funding to the Commission to support the provision of a particular course(s) leaving it to the Commission to determine how the funding is to be used. The Welsh Ministers can require the funding to be repaid if not used for the specified course(s). This provision protects providers' freedom to elect to offer particular higher education courses.
204. Additionally this section provides that terms and conditions in respect of higher education or research and innovation must not apply to the content of courses or programmes of research and innovation nor how they are taught, supervised or assessed. This provision protects providers' freedom to teach and admit students as they see fit.
205. Subsection (7) dis-applies the limitations of subsections (5) and (6) for courses or parts of courses being provided and assessed through the medium of Welsh. This provision enables the Welsh Ministers to allocate funding to the Commission to support the provision or assessment of higher education courses or part of such courses through the medium of Welsh.

Funding of higher education

Section 80: Financial support to specified institutions for higher education

206. This section allows the Commission to fund certain categories of institutions who are registered with the Commission under Part 2, for the purpose of supporting higher education provided by or on behalf of such institutions. This section enables the Welsh Ministers, by regulations to specify the categories of registered institutions ("specified institution") eligible to receive funding from the Commission under this section.

207. A registered institution receiving funding under this section may, subject to the consent of the Commission, pass funds to a collaborating body. The passage of funds will allow the funded institution to work collaboratively with a range of partner organisations, including those outside Wales, engaged in the provision of higher education.
208. The Welsh Ministers are enabled to make regulations about the circumstances in which funding must not be provided in respect of courses of initial teacher training. Such regulations could, for example, require that such courses must not be funded by the Commission unless they are accredited by a specified body.

Section 81: Financial support for higher education courses specified in regulations

209. This section makes provision about courses of higher education which may be funded by the Commission in addition to higher education supported by the Commission under section 80. The Welsh Ministers may make regulations to specify particular courses or descriptions of courses which may be funded by the Commission; “eligible courses”. The regulations may specify courses by way of reference to, amongst other matters, the requirements to be met by the course; the description of the person providing the course; and the qualification to which the course leads. The ability for the Commission to fund eligible courses would permit gaps in provision for particular subjects or locations to be addressed. Gaps in provision may arise due to a lack of specified institutions (as defined in 80(1)) being able to fulfil an identified need. For example, a need for a specialist course to be delivered in Wales or to be undertaken by small numbers of students ordinarily resident in Wales, which may not be cost effective for specified institutions to deliver.
210. This section also provides that the Commission is able to fund providers to deliver eligible courses wholly or mainly in Wales and courses provided to students who are ordinarily resident in Wales. A provider receiving funding under this section may, subject to consent of the Commission, pass some or all of those funds to a collaborating body including institutions outside Wales. For example, funding to support an eligible course where the majority of the course is provided by an institution in Wales but particular modules are delivered by an institution in England, where the institution in England is working in partnership with the institution in Wales.

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

211. This section provides that the Commission may impose such terms and conditions as it considers appropriate to funding it allocates for the purpose of supporting higher education. In particular, such terms and conditions may require the repayment of funds (including with interest) if the purposes for which the funding is allocated are not complied with. However the Commission may not impose conditions that relate to funding derived from other sources. For example income generated from institutions’ own activities including tuition fees, funds from industry or donations from benefactors.

212. Where the Commission allocates funding to providers for higher education courses specified in regulations under section 81(3)(a), who are not included in the register (i.e. unregistered providers) then the Commission must impose terms and conditions that require such providers to:
- (a) have a learner protection plan approved by the Commission in place, subject to the Commission having given notice of this requirement, and to give effect to the plan;
 - (b) comply with the requirements of the extant Learner Engagement Code published by the Commission under section 117 if they are an institution in Wales; and
 - (c) have regard to advice or guidance given by the Commission to the provider.

Section 83: Financial support under sections 80 and 81: supplementary

213. This section places the Commission under a duty, in the exercise of its higher education funding functions, to have regard to the desirability not to do anything which would discourage providers from seeking or maintaining funding from other sources (for example from industry, commerce, benefactors, alumni, or other eligible funding sources).
214. The Commission is also required, in exercising its higher education funding functions, to have regard to the desirability of maintaining any distinctive characteristics of any institution to which it provides financial support. It is a matter for the Commission to determine what it considers to be an appropriate balance of support in light of any other relevant considerations. Such characteristics may include, for example, the religious character of an institution or the specialist nature of its provision.

Section 84: Financial support by Welsh Ministers for certain higher education courses

215. This section enables the Welsh Ministers to fund a limited range of “relevant higher education courses” directly. Such courses must fall within the definition of paragraph 1(g) or 1(h) to the Education Reform Act 1988. Courses which may be funded include those in preparation for professional examinations, for example, courses which are not degrees and lead to qualifications accredited by professional bodies.

Further education and training

Section 85: Education and training for persons aged 16 to 19 and 86 Education and training for persons over 19

216. Sections 85 and 86 sets out the Commission’s main duty to secure facilities for education and training for those above the compulsory school age. Both sections are similar to the duties in sections 31 and 32 of the Learning and Skills Act 2000.
217. Section 85 requires the Commission to secure the provision of ‘proper’ facilities in Wales for the education and training of people from 16 until they reach the age of 19. Facilities are ‘proper’ if they are of sufficient quantity and adequate quality to meet the

reasonable needs of young people. Additionally such facilities must satisfy students' entitlements to follow courses of study within the local curriculum formed under section 33A of the Learning and Skills Act 2000.

218. Amendments are made to sections 33A - 33E, 33G, 33I - 33-K, 33N - 33Q of the Learning and Skills Act 2000 (see Schedule 4). These confer functions on the Commission which include, amongst other things a responsibility to form the local curriculum, the planning and delivery of local curriculum entitlements for learners (including Welsh language provision), and the arrangements for joint working. Other minor and consequential amendments include placing a duty on the Welsh Ministers to consult the Commission when exercising their power to amend the local curricula learning domains and the making of regulations and issuing of guidance.
219. Section 86 sets out the duty of the Commission to secure the provision of 'reasonable' facilities in Wales for the education and training of people 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the Commission can reasonably be expected to provide taking account of the resources available to it.
220. In exercising the functions under sections 85 and 86, the Commission will give priority to meeting the education and training needs of the younger age group. This continues the distinction made in the Learning and Skills Act 2000.
221. In performing the duties in respect of both age groups the Commission must take into account a number of factors, including the education and training required in different sectors of employment and the need to provide additional learning provision and assessment of additional learning needs through the medium of Welsh.
222. The Commission must also bear in mind circumstances where it might reasonably expect education and training to be secured by other bodies without drawing on its own resources, for example, additional learning needs provision secured by local education authorities under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
223. The facilities to be secured for education and training include both full-time and part-time further education and training as well as vocational, social, physical and recreational training. This includes organised activities offering opportunities for non-formal learning which may not lead to a qualification. For example, adult learning opportunities in community settings including education engagement activities.
224. The Commission must make best use of its resources and in particular avoid provision which might give rise to disproportionate expenditure. Provision is not to be considered as giving rise to disproportionate expenditure solely because it is more expensive than comparable provision, for example, special provision for people with additional learning needs.

225. The Commission's duties under section 86 and section 87 do not extend to higher education (see paragraphs 209 to 215 for an explanation of the Commission's functions to fund higher education).

Section 87: Encouragement of education and training

226. This section sets out the Commission's duty to promote participation, of individuals ordinarily resident in Wales, in post-16 education and training and to encourage employers to become involved in its support and delivery. Activities that the Commission may undertake in pursuit of this duty include the marketing and advertising of learning opportunities. Other functions of the Commission may support the discharge of this duty, for example, funding of information, advice and guidance in connection with tertiary education opportunities (section 93), and its undertaking of research into the benefits of learning and the dissemination of the results of that research (section 124).

Section 88: Financial support for further education or training

227. This section sets out powers for the Welsh Ministers and the Commission to fund further education or training. Section 130(2) defines further education and section 130(4) defines training.
228. The Commission and the Welsh Ministers are able to fund any person to provide further education or training wholly or mainly in Wales and further education or training to learners ordinarily resident in Wales. Additionally they may fund any person to provide goods or services in connection with such further education or training.
229. The Welsh Ministers and the Commission are also able to provide financial support directly to learners and prospective learners who are ordinarily resident in Wales or who are undertaking or proposing to undertake further education or training in Wales. For example, such support could be to assist with transport or childcare costs or to provide incentives to address skills shortages in particular employment sectors in Wales.
230. The Welsh Ministers and Commission may make financial support available from their resources or arrange for others to do so.
231. Providers of further education who are in receipt of funding from the Commission or the Welsh Ministers may pass funds to a collaborating body, subject to the consent of the Commission or the Welsh Ministers as appropriate. For example, a provider funded by the Commission who is collaborating with another organisation to deliver a particular further education course(s) would need the consent of the Commission to pass funds to the collaborating organisation. The Commission would not have a direct relationship with the collaborating organisation and therefore, the institution funded

by the Commission remains responsible for the funding. The same applies to funding from the Welsh Ministers under this section. This could include funding for provision outside Wales. For example, funding to support further education or training where the learner is ordinarily resident in Wales but elements of their further education or training are delivered by a collaborating organisation in England.

232. The Welsh Ministers and the Commission may provide financial resources by reference to fees or charges payable by the person participating in the further education or training, or by reference to other matters connected with the provision of that further education or training (such as transport or childcare costs).
233. The Welsh Ministers may, by regulations, require that providers are an institution registered in a specified category on the register established under section 11 in order to be eligible for funding for the purpose of providing further education or training.
234. Those regulations may make exceptions for certain courses or courses of a description by way of reference to, for example but not limited to, the requirements to be met by the course; the description of the person providing the course; and the qualification to which the course leads. These arrangements would permit gaps in provision for particular subjects or locations to be addressed which may arise due to a lack of registered providers able to fulfil an identified need. For example, a need for a specialist course to be delivered in Wales or to be undertaken by small numbers of students ordinarily resident in Wales, which may not cost effective for registered providers to deliver.

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

235. Where the Welsh Ministers or the Commission provide funding, this section allows them to impose terms and conditions as they consider appropriate. The Welsh Ministers or the Commission are able to require providers of further education or training to charge fees, make awards, and to recover sums of money against specified criteria. However, learners between the ages of 16 to 19 must not be charged a fee for further education or training unless set out as an exception in regulations.
236. Where funding is allocated by the Commission to institutions that are not on the register for the purpose of providing further education or training in Wales, the terms and conditions must (where the Commission has given the appropriate notice) require that the provider has an approved learner protection plan in place; complies with the learner engagement code (if it is an institution in Wales); and has regard to advice and guidance issued by the Commission.

Section 90: Means tests

237. Section 88(1)(g) allows the Commission or the Welsh Ministers to fund the cost of means tests. Section 90 allows the Commission or the Welsh Ministers to carry out

such tests themselves or arrange for others to do so on their behalf. The Commission or the Welsh Ministers are able to take into account the outcomes of such tests when allocating financial support under section 88(1)(d) or (e) for persons who are ordinarily resident in Wales and persons who are receiving or proposing to receive further education or training in Wales.

Section 91: Funding of school sixth-forms

238. This section provides the Commission with the power to fund education provided by mainstream school sixth forms maintained by local authorities and impose appropriate terms and conditions similar to those permissible under section 89. Funding under this section is to be made to local authorities and must be applied as part of the authority's schools budget.

Section 92: Persons with additional learning needs

239. This section requires the Commission to have regard to people with additional learning needs and the provision of facilities that may aid the requirements under the Additional Learning Needs and Education Tribunal (Wales) Act 2018, when discharging certain functions. The Commission must take these matters into account when securing facilities for further education or training in Wales. Additionally, this duty applies when the Commission provides financial support:

- (a) for further education or training in Wales or for learners who are ordinarily resident in Wales (section 88(1)(a) and (b));
- (b) to learners and prospective learners who are ordinarily resident in Wales or who are undertaking or proposing to undertake further education or training in Wales (section 88(1)(d) and (e));
- (c) for the provision of goods or services in connection with the provision by others of further education or training wholly or mainly in Wales (section 88(1)(c));
- (d) for the provision of information, advice and guidance about education or training (section 93(1)(a));
- (e) to form links with employers (section 93(1)(b)); and
- (f) for the provision of further education or training through the medium of Welsh or for the purpose of learning Welsh (section 93(2)).

240. If the Commission funds the provision of information, advice and guidance about education or training, it will need to take into account additional learning needs. It could, for example, require the inclusion of information about additional learning needs assessments and how learners may obtain support, as well as making information, advice and guidance accessible to those with additional learning needs. If the Commission provides financial support to learners, for example, to assist with transport costs to access particular courses leading to professions where there is a skills shortage, then it must take into account additional learning needs when doing so. For

example, this could mean considering the transport costs of those with additional learning needs.

241. A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
242. Schedule 4 makes amendments to the Additional Learning Needs and Education Tribunal Act 2018. The Welsh Ministers and the Commission will be required, when exercising functions under Part 2 of the 2018 Act, to have regard to any guidance that may be contained in the Additional Learning Needs Code. Additionally, the Welsh Ministers must consult the Commission before issuing or revising the Additional Learning Needs Code. Both the Welsh Ministers and the Commission are to be required to exercise their functions so as to provide information and other help to a local authority if it requests such assistance.

Financial support for other activities connected to tertiary education

Section 93: Financial support for other activities connected to tertiary education

243. This section allows the Commission or Welsh Ministers to fund information, advice or guidance about education or training as well as facilities that are designed to forge links between providers of education or training and employers. The Welsh Ministers or the Commission may disburse the funding or arrange for others to do so, for example through collaborative arrangements. The Commission or the Welsh Ministers are able to impose appropriate terms and conditions to the funding and recover sums of money where specified criteria is not met.
244. This section also enables the Commission to fund tertiary education through the medium of Welsh and provision for learning Welsh, for learners over the age of 16. The Commission may disburse the funding itself or arrange for others to do so, for example through collaborative arrangements. The Commission is able to impose terms and conditions to the funding as it considers appropriate and recover sums of money where specified criteria is not met.

Financial support for apprenticeships

Section 94: Financial support for apprenticeships

245. The Commission may provide funding to providers of an approved Welsh apprenticeship and may also provide funding for the preparation of an apprenticeship framework.
246. The Welsh Ministers may make regulations to specify the registered providers who may receive funding for approved Welsh apprenticeships. This section allows the Commission to impose terms and conditions as they consider appropriate and may

enable the Commission to recover sums of money against specified terms and conditions and require payment of interest against such unpaid sums of money. Where funding is allocated by the Commission to institutions that are not on the register as specified in regulations made under subsection (3), the Commission must require that the provider has an approved learner protection plan in place; complies with the learner engagement code if it is an institution in Wales; and has regard to advice and guidance issued by the Commission.

Research and innovation

Section 95: Financial support for research and innovation

247. This section allows the Commission to provide funding to registered institutions, specified in regulations, to carry out research and innovation. It is envisaged that the registered institutions may be higher education institutions, FE institutions or other providers.
248. A registered institution receiving funding will be able to pass the funding to collaborating bodies in connection with the research and innovation with the Commission's consent. This will allow the institution to work collaboratively with a broad range of partners that may be engaged in research and innovation. The registered institution will be accountable to the Commission for the expenditure of public funding and for accounting for funding which is passed on to a collaborating body.
249. The Commission can also make grants, loans or other payments to a person who is providing services for or in connection with research or innovation by a specified institution.
250. The Commission must when providing financial support, have regard to ensuring that it does not do anything which would discourage institutions from seeking or maintaining funding from other sources (for example from industry, commerce, benefactors, alumni, UKRI, Horizon Europe or other eligible funding sources).

Section 96: Financial support for research and innovation: terms and conditions

251. This section enables the Commission to impose terms and conditions on funding to a registered provider as it considers appropriate. If the funding is passed onto a collaborating body, the Commission could, for instance, as a condition of funding, in turn require the recipient institution to impose conditions on any funding it passes to a collaborating body.
252. The Commission cannot impose terms and conditions on funding received by a provider which comes from other sources.

253. This section makes provision for how funding decisions under section 96 should be made by the Commission. Whilst the Haldane principle is not expressly mentioned in the Draft Bill, the concept should apply to all funding decisions made by the Commission. Therefore the provision allows that the general direction on funding should be led by the Commission, but also expect decisions regarding the research to be made by experts in the field, outside of the Commission, for example, the research proposals benefitting from competitive tendering exercises. There is no intention that academic freedom will be compromised during the process.

Section 97: The Commission's other functions in relation to research and innovation

254. This section sets out the Commission's duty to promote the awareness and understanding of research and innovation carried out in Wales, to ensure it reaches a wide audience in Wales and to disseminate the results of research and innovation.
255. The Commission will have a duty to promote the carrying out of research and innovation in Wales.
256. The Commission is required to monitor the performance of its funding programmes to ensure maximum success, effectiveness of delivery and value for money. This information must be included in the annual report as required by Paragraph 16 of Schedule 1.

PART 4
APPRENTICESHIPS

Introductory

Section 98: Meaning of “approved Welsh apprenticeship”

257. This section defines an “approved Welsh apprenticeship” and allows the Welsh Ministers to make regulations setting out the conditions to be satisfied by an approved Welsh apprenticeship.
258. An approved Welsh apprenticeship takes place either:
- (a) under an approved Welsh apprenticeship agreement; or
 - (b) under an alternative Welsh apprenticeship.
259. An approved Welsh apprenticeship requires the work to take place wholly or mainly in Wales.

Section 99: Meaning of “approved Welsh apprenticeship agreement”

260. This section outlines the meaning of an “approved Welsh apprenticeship agreement”.
261. The agreement allows the “apprentice” to work for payment in an occupation which has an apprenticeship framework and for the apprentice to receive training to allow the apprentice to meet the requirements of the apprenticeship framework.
262. The apprenticeship agreement is a document stipulating the framework being followed and the skill or occupation the apprentice is working in. Without this agreement, an apprenticeship completion certificate cannot be issued.
263. The Welsh Ministers may also make regulations specifying the conditions of an approved Welsh apprenticeship agreement.

Section 100: Meaning of “alternative Welsh apprenticeship”

264. This section allows the Welsh Ministers to make regulations defining the conditions of an “alternative Welsh apprenticeship”.
265. These regulations may set out circumstances where a person who is not working under an apprenticeship agreement and would otherwise be deemed to have completed a Welsh apprenticeship. Examples of alternative working arrangements could include, but are not limited to:
- (a) where a person works as a self-employed person while following a recognised Welsh apprenticeship framework; or

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

- (b) where the apprentice was working under an apprenticeship agreement has been made redundant during the course of the apprenticeship and satisfies the conditions set out in the regulations.

Welsh apprenticeship specifications

Section 101: Specification of occupational sectors

- 266. This section requires the Welsh Ministers to specify occupational sectors for Welsh apprenticeship frameworks. The specification of occupational sectors (including revisions and replacements) must be published and state a commencement date.

Section 102: Specification of requirements in relation to approved Welsh apprenticeships

- 267. This section gives the Welsh Ministers a power to specify requirements in relation to approved Welsh apprenticeships and the development of apprenticeship frameworks.
- 268. Requirements might include the content of apprenticeship frameworks, the preparation, revision, withdrawal or publication of an apprenticeship framework, the certification of an approved Welsh apprenticeship, approved Welsh apprenticeships generally or approved Welsh apprenticeships in one or more occupations.
- 269. A specified requirement may include, but is not limited to, the standards of attainment required, the qualification needed and the type and amount of time needed to complete an approved Welsh apprenticeship. This section also allows the Welsh Ministers to specify requirements in relation to the certification of an approved Welsh apprenticeship, including but not limited to, the way in which an application for a certificate must be made, the contents of the certificate and the supply of duplicate copies of a certificate.
- 270. Requirements may be specified across the full range of occupations and each broad occupational sector and the requirements may be general to all approved Welsh apprenticeships or specific to an occupation, sector or group of occupations.
- 271. The Welsh Ministers must publish specified requirements and may revise or withdraw a requirement by issuing a replacement specification requirement or issue a notice of withdrawal. The published requirements and notices must state the date on which the specification requirement, or withdrawal notice, come into force.

Section 103: Consultation by Welsh Ministers about specifications

- 272. This section requires that the Welsh Ministers must first consult the Commission and any other persons they think appropriate before undertaking any work in relation to preparing the specification of occupational groups and the specification requirements, including their revision or removal.

Apprenticeship frameworks and certificates

Section 104: Meaning of “apprenticeship framework”

273. This section defines the meaning of an “apprenticeship framework”. An apprenticeship framework is the document which contains the specification requirements needed to complete an approved Welsh apprenticeship. An apprenticeship framework may include, but is not limited to, requirements relating to the standard of attainment, the qualification and the amount and type of training needed to complete an approved Welsh apprenticeship.

Section 105: Preparation and publication of apprenticeship frameworks

274. This section allows the Commission to prepare apprenticeship frameworks where they relate to an occupational sector of occupations under section 101. The Commission may also secure a third party to prepare apprenticeship frameworks.

275. The Commission may publish apprenticeship frameworks that meet the specification requirements under section 101, even where the apprenticeship framework was not prepared by the Commission or secured by the Commission. For example an apprenticeship framework which has been prepared by an occupational sector body. An apprenticeship framework may specify requirements for different levels under the same occupation or group of occupations, such as intermediate (level 2)⁴⁴, advanced (level 3), higher (level 4 - 5) or degree (level 6-7).

276. The Commission must keep apprenticeship frameworks under review and must determine whether the framework should be revised or withdrawn.

277. A published apprenticeship framework must state the coming into force date of the framework or revised framework.

Section 106: Register of apprenticeship frameworks

278. The Commission must keep and publish a register of apprenticeship frameworks published under section 105. The register must include the coming into force date of each apprenticeship framework or revised framework and a description of any revised apprenticeship framework and its application. Where an apprenticeship framework is withdrawn, the register must include information on the date of withdrawal and a description of the application of the withdrawal. The Welsh Ministers may make regulations to require the Commission to include other information in the register.

Section 107: Power to issue apprenticeship certificates

279. This section allows the Commission to issue “an apprenticeship certificate” or a copy of an apprenticeship certificate to an apprentice who has completed an approved

⁴⁴ Qualification levels under the Credit and Qualifications Framework for Wales (CQFW).
<https://gov.wales/sites/default/files/publications/2019-01/cqfw-brochure.pdf>

Welsh apprenticeship. The Commission may also issue an apprenticeship certificate or copy of an apprenticeship certificate for the apprentice, to the employer where this is specified in a requirement under section 102(4). The Commission may charge a fee for issuing an apprenticeship certificate or copy of a certificate only if the regulations made by the Welsh Ministers allow for a fee. An apprenticeship certificate must comply with the requirements in section 102(4).

Exercise of functions

Section 108: Delegation of Commission functions

280. The Commission may, delegate some or all of its functions in relation to the publication of apprenticeship frameworks and/or the issuing of apprenticeship certificates to another body. The designated body must comply with directions given by the Commission and must have regard to any guidance issued by the Commission. The Commission may continue to exercise any functions it has delegated to another body.
281. The Commission remains responsible for the exercise of functions carried out by the designated body.
282. The Commission may make payment to the designated body in relation to the exercise of the delegated functions.

Supplementary provisions about apprenticeship agreements

Section 109: Ineffective provisions of approved Welsh apprenticeship agreements

283. This section requires that where an employer makes changes to the apprenticeship agreement which would mean the apprenticeship agreement no longer complies with the apprenticeship framework or requirements of an approved Welsh apprenticeship, the employer must notify the apprentice in writing of the variation and explain that the variation will mean the apprentice is no longer on an approved Welsh apprenticeship, if this is not done the variation will have no effect.

Section 110: Status of approved Welsh apprenticeship agreements

284. This section provides that an approved Welsh apprenticeship agreement is not to be treated, for common law or statutory purposes, as being a contract of apprenticeship (as recognised at common law) but is instead to be treated as being a contract of service.

Section 111: Transfer of copyright in apprenticeship frameworks

285. This section makes provision for the transfer of copyright to the Commission where an apprenticeship framework is prepared by another person and published with the agreement of that person by the Commission.

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Section 112: Crown servants

286. This section provides that a person who is employed as a Crown servant may undertake an approved Welsh apprenticeship agreement. The Welsh Ministers may make regulations in relation to an approved Welsh apprenticeship agreement and Crown servants.

Section 113: Interpretation of Part

287. This section provides the definitions of certain terms which are used in this Part by reference to the relevant sections in this Part.

PART 5

LEARNER PROTECTION, COMPLAINTS PROCEDURES AND LEARNER ENGAGEMENT

Section 114: Learner protection plans

288. This section enables the Commission to give notice to a tertiary education provider asking it to submit a learner protection plan to the Commission on or before the date specified in the notice.
289. A learner protection plan is defined by subsection (2).
290. This section also enables the Commission to approve the learner protection plan with or without modifications. It also requires that a tertiary education provider, that wishes to amend its approved learner protection plan, must send a revised plan to the Commission and allows the Commission to approve the revised learner protection plan with or without modifications.
291. The Commission is required to issue guidance on the preparation and revision of learner protection plans and is required to consult with such persons as it considers appropriate before issuing this guidance.
292. The Commission is required to monitor the effectiveness of learner protection plans and must include in its conclusion in its annual report (prepared under paragraph 16 of Schedule 1).
293. Subsection (10) defines a “relevant course” and a “tertiary education provider” for the purposes of sections 114 and 115.

Section 115: Complaints procedures

294. This section requires the Commission to take such steps as appear to it appropriate to ensure that a tertiary education provider (as defined) has in place a procedure for investigating complaints about an act or omission of the provider, made by persons who are undertaking or have undertaken relevant courses (as defined) and to take reasonable steps to make the procedure known to persons undertaking relevant courses.

Section 116: Qualifying institutions for student complaints scheme

295. This section makes amendments to the Higher Education Act 2004 in relation to the student complaints scheme.
296. It amends and inserts new text into section 11 (qualifying institutions) of the 2004 Act. The existing text in the 2004 Act is retained and becomes Section 11(1) and section 11(2) and 12A are inserted, which allows the Welsh Ministers, by regulations, to specify a qualifying institution for the purposes of the student complaints scheme and extends the definition of qualifying complaints respectively.

Section 117: Learner Engagement Code

297. This section requires the Commission to prepare and publish “the Learner Engagement Code” about the engagement of learners in the making of decisions. “Relevant decision”, and, “relevant institution” are defined in subsection (9). An illustrative list of what the Learner Engagement Code may include provisions about is found at subsection (2).
298. The Commission must keep the Learner Engagement Code under review and if appropriate must prepare and publish a revised code. The Learner Engagement Code may take the form of a requirement or guidance. The Commission must consult with any persons they think appropriate when preparing the Learner Engagement Code or revised code.
299. The Learner Engagement Code may make different provisions for different purposes.
300. The Commission must monitor compliance with the Learner Engagement Code and include conclusions as to how effective the Learner Engagement Code has been, as part of its annual report.

PART 6

INFORMATION, ADVICE AND GUIDANCE

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

301. This section requires the Commission to provide the Welsh Ministers with such information and advice on matters related to its functions as the Welsh Ministers may request in the format and manner requested. The Commission may also give the Welsh Ministers any information or advice it considers appropriate.
302. This section also allows the Welsh Ministers to provide the Commission with any information relating to the exercise of its functions.

Section 119: Persons required to provide information to the Commission

303. This section allows the Commission, to issue a notice, to request information for the purposes of the exercise of the Commission's functions from those that it funds and/or regulates, such as Higher Education and Further Education Institutions.
304. This section places restrictions on the information the Commission can require, to ensure the information requested by the Commission can only be information that is relevant to the Commission's functions.
305. This section sets out the information the Commission may specify in the notice, including, but not limited to, the time within which the person must provide the information. Further, the Commission may enforce a request for such information by application for an injunction.
306. The Commission may also give information to those listed in this section, and any other person it considers appropriate, about any matter related to its functions.

Section 120: Powers to share information

307. This section list the other government departments, bodies and organisations that may share information, acquired by them, to the Commission, for the purposes of the exercise of any of the Commission's functions. For example, the Commission may wish to receive information on qualifications awarded in Wales.
308. The Commission may also give information, about any matter in relation to its functions, to those listed in this section and any other person it considers appropriate. For instance, the Commission may wish to share information with education bodies in England, such as the Office for Students.
309. The Welsh Ministers may by regulations specify other bodies or organisations that are allowed to share information with the Commission under this section. These could include any newly created public bodies or organisations.

Section 121: Power to require application-to-acceptance information

310. This section makes provision for the Welsh Ministers to require, by notice, “application-to-acceptance information” from bodies providing admissions services to Welsh higher education providers for use for “qualifying research”. The Welsh Ministers may direct this information is to be provided either to themselves or to the Commission. This section also defines “application-to-acceptance” information and “qualifying research”.
311. This section sets out the information the Welsh Ministers may specify in the notice, including, but not limited to, the time within which the person must provide the information. Further, the Welsh Ministers may enforce a request for such information by application for an injunction.

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

312. This section makes provision for how the Welsh Ministers may use the information obtained under section 121 and with whom the information may be shared.
313. This section also makes provision for the circumstances in which a product of research using information obtained under section 121 may be published.
314. The Welsh Ministers must publish guidance setting out the factors that will be taken into account when approving a body or individual with whom the information may be shared.
315. This section also defines what is meant by an “approved person”.

Section 123: Other information, advice and guidance

316. This section allows the Commission to give advice or issue guidance, as the Commission considers appropriate, to any persons, so long as it relates to provision of tertiary education or any matter connected with its functions. The Commission is required to identify good practice, give advice and issue guidance in relation to the sharing of information among those that it funds or regulates; for example by issuing guidance dealing with IT systems and information security.
317. The Commission must publish all guidance issued under this section and it is envisaged that the Commission should review and update or replace its guidance as and when it considers necessary.
318. The Commission must establish systems to collect information to inform its decisions on tertiary education and training.

Section 124: Research by the Commission or the Welsh Ministers

319. This section allows the Welsh Ministers or the Commission to carry out research or secure the provision of financial resources to undertake research, and outlines the subject matters into which this research can be undertaken. Any outcomes may then be published, provided that no individual can be identified from the publication.
320. This section outlines the circumstances in which the Welsh Ministers or the Commission may secure the provision of financial resources under this section.
321. This section provides that the Commission may impose such terms and conditions as it considers appropriate to funding it allocates under this section. In particular, such terms and conditions may require the repayment of funds (including with interest) if the purposes for which the funding is allocated are not complied with.

PART 7

MISCELLANEOUS AND GENERAL

Miscellaneous

Section 125: Instruments of government of higher education corporations in Wales and

Section 126: Articles of government of higher education corporations in Wales

322. Section 125 and 126 amend sections 124A and 125 respectively of the Education Reform Act (ERA 1988). Among other things section 124A of ERA 1988 requires a higher education corporation in Wales (HEC) to have in place an instrument of government which provides for the constitution of the corporation (and such other provision as is required under section 124A). The Privy Council has certain functions, under section 124A(2) and (3) of that Act to prescribe, make or modify the instruments of government of HECs. Instruments of government must comply (among other things) with Schedule 7A to the ERA 1988. Schedule 7A sets out statutory requirements for the content of instruments of government of HECs made by the Privy Council. Under Section 124A(9) of ERA 1988, the Welsh Ministers⁴⁵ are able to amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A by order. These paragraphs relate to membership of the HEC and in particular, the size, constitution and appointment of members of the corporation.
323. Section 125 of ERA 1988 requires an institution conducted by a HEC to have articles of government, approved by the Privy Council, relating to the conduct of the institution. Section 126 also makes provision relating to the content of the articles of government together with its amendment and revocation.
324. The Draft Bill makes provision for the Welsh Ministers' existing order making powers under section 124A(9) of ERA 1988 to be extended. The extended power allows the Welsh Ministers to amend or repeal the whole of Schedule 7A to the 1988 Act with the exception of paragraph 1. Paragraph 1 enables a HEC's instrument of government to empower the corporation to change its name with the consent of the Privy Council. The additional paragraphs of Schedule 7A covered by the extended power relate to tenure of office for members, officers and committees of the corporation, allowances paid to the members and the seal of the corporation.
325. In addition, the Draft Bill inserts a new subsection (9A) into section 124A of ERA 1988 which requires the Welsh Ministers to consult with the Commission and any other persons they think appropriate before exercising the extended order making powers. It

⁴⁵ The function was originally vested in the Secretary of State but by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) that function was transferred in relation to Wales to the National Assembly for Wales (established under the Government of Wales Act 1998). By virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 functions of the National Assembly for Wales were transferred to the Welsh Ministers.

also inserts a new subsection (9B) which makes provision for such an order made by the Welsh Ministers to make consequential amendments or repeals to certain specified provisions in ERA 1988 if those are necessary as a result of any amendments or repeals made under the order-making power to Schedule 7A.

326. The Draft Bill inserts a new subsections (8) and (9) into section 125 of the ERA 1988 which enables the Welsh Ministers, by order, to amend or repeal section 125(2) to (4) of the ERA 1988 which relate to certain content of articles of government of HECs. Among other things, section 125(2) to (4) of the 1988 Act make provision for the articles to determine the distribution of functions between the board of governors, the Principal of the institution and the Academic Board and regulate the constitution and functions of committees of the corporation. Those provisions also require the articles to make provision in respect of the procedures for meetings of the board of governors, Academic Board and the corporation's committees and for the appointment of members of the corporation. In addition, they enable the articles to make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution. The new subsection (9) will place the Welsh Ministers under a duty to consult with the Commission and any other persons they think appropriate before exercising the new order making powers.
327. Section 126 also amends section 232 of ERA 1988. The amendment to section 232(1) of ERA 1988 is to ensure that subsection (1) catches the new powers of the Welsh Ministers to make statutory instruments conferred by sections 125 and 126 of the Draft Bill. Subsections (4ZA), (4ZB) and (4ZC), that will be inserted into section 232 of the ERA 1988 by section 127(3)(b) of the Draft Bill, make provision relating to the Senedd procedure attached to the order and regulation making powers of the Welsh Ministers under that Act as inserted by this Draft Bill.

Section 127: Dissolution of higher education corporations in Wales

328. This section amends section 128 of ERA 1988 which relates to the dissolution of HECs.

General

Section 128: Publication of reports and provision of copies

329. Throughout this Draft Bill, wherever there is a duty to publish a report or plan, these must be published electronically, on the provider or organisation's website and be accessible free of charge. The provider or organisation under the duty to publish, may also chose to publish in any way they consider appropriate. Copies of the reports or plans published may be supplied free of charge, or on payment of a fee which does not exceed the cost of making the copy.

Section 129: Regulations

330. This section sets out the procedures that apply to the exercise of the various regulation making powers conferred by the Draft Bill.

Section 130: Interpretation

331. This section defines specific terms used in this Draft Bill and is self-explanatory.

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

332. This section allows the Welsh Ministers to make regulations to apply the provisions under this Draft Bill to the Open University. This will allow the Welsh Ministers to treat the Open University as an institution in Wales. This may be to apply the registration conditions, learner protection plans and other provisions to the Open University in order to ensure funding and protection for learners in Wales undertaking courses of study with the Open University.

333. The Welsh Ministers must consult the Open University before making such regulations.

Section 132: Power to make consequential and transitional provision etc.

334. This section provides that the Welsh Ministers may, by regulations, make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Draft Bill, including in relation to the provisions contained in this Draft Bill.

Section 133: Minor and consequential amendments

335. This section introduces Schedule 4 which makes minor amendments and consequential amendments to the following Acts and Measures:

- i Further and Higher Education Act 1992
- ii Education Act 1996
- iii Teaching and Higher Education Act 1998
- iv School Standards and Framework Act 1998
- v Learning and Skills Act 2000
- vi Education Act 2002
- vii Higher Education Act 2004
- viii Education Act 2005
- ix Commissioner for Older People (Wales) Act 2006
- x Government of Wales Act 2006
- xi Education and Skills Act 2008
- xii Apprenticeships, Skills, Children and Learning Act 2009
- xiii Learning and Skills (Wales) Measure 2009
- xiv Children and Families (Wales) Measure 2010

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- xv Welsh Language (Wales) Measure 2011
- xvi School Standards and Organisation (Wales) Act 2013
- xvii Well-being of Future Generations (Wales) Act 2015
- xviii Higher Education (Wales) Act 2015
- xix Deregulation Act 2015
- xx Environment (Wales) Act 2016
- xxi Public Health (Wales) Act 2017
- xxii Higher Education and Research Act 2017
- xxiii Additional Learning Needs and Education Tribunal (Wales) Act 2018
- xxiv Public Services Ombudsman (Wales) Act 2019

Section 134: Coming into force

336. This section provides for certain provisions within the Draft Bill to come into force on Royal Assent. The remaining provisions of the Draft Bill come into force on the date specified by the Welsh Ministers in commencement order(s) to be made under this section.

Section 135: Short title

337. This section is self-explanatory.

SCHEDULE 1
(Introduced by section 1)

COMMISSION FOR TERTIARY EDUCATION AND RESEARCH

Status

338. Paragraph 1 states that the Commission is separate and distinct from, and is not working on behalf of, the Crown.

Membership

339. Paragraph 2(1) provides for the Welsh Ministers to appoint members of the Commission, including the chief executive, chair, deputy chair and between four and fourteen ordinary members. The deputy chair will be chair of the Research and Innovation Wales Committee (“RIW”) as established by paragraph 11.

340. Paragraph 2(2) sets out a duty for the Welsh Ministers, in appointing the chair, deputy chair and ordinary members of the Commission, to have regard to the need for a desire for a collective balance of capability, experience and knowledge in specified areas.

The chair and ordinary members

341. Paragraph 3 sets out the disqualifying offices that would disqualify a person from being appointed as chair and ordinary member of the Commission. It also sets out the term of appointment for the chair and ordinary members, which is for a period of up to five years, with the option for re-appointment; that the terms and conditions of appointment are set by the Welsh Ministers; and provides for the Welsh Ministers to appoint, re-appoint, suspend and remove the chair, deputy chair and ordinary members of the Commission. The chair and ordinary members may resign by giving notice to the Welsh Ministers. If the deputy chair is suspended or removed from office, they will also be suspended as or cease to be the chair of RIW.

Associate membership

342. Paragraph 4 provides for the associate members of the Commission. The associate members include at least two “associate workforce members”, an “associate Commission staff member” and an “associate learner member”.

343. The associate workforce members will be appointed by the Welsh Ministers to represent the tertiary education workforce.

344. At least one person is to be appointed to represent the academic tertiary education/teaching workforce, and at least one person is appointed to represent the non-academic / non-teaching tertiary education workforce.

345. The associate Commission staff member will be appointed by the staff member appointment committee as established by paragraph 12(3).

346. The associate learner member will be appointed by the Welsh Ministers to represent learners in tertiary education in Wales.

Appointment of associate workforce members

347. Paragraph 5 sets out the appointments process for the associate workforce members. Prior to appointing associate workforce members, the Welsh Ministers must publish a list of trade unions to represent the academic tertiary education workforce and a list of trade unions to represent the non-academic tertiary education workforce, consult the Commission and other appropriate persons before publishing the lists,. If there is no person holding the position of associate workforce member for the academic or (as the case may be) the non-academic tertiary education workforce then the trade unions on the respective published academic list or on the published non-academic list must be invited by the Welsh Ministers to nominate an eligible candidate as associate workforce member in respect of the respective vacant position. A person is an eligible candidate to represent the academic tertiary education workforce if they are employed by a person who provides tertiary education in Wales, and is a member of a trade union on the most recently published relevant list. The position is the same in respect of eligible candidates to represent the non-academic tertiary education workforce. It is expected that the consultation process for compiling the list of eligible trade unions will lead to a position where the trade unions listed will be recognised by the tertiary education providers.

Appointment of associate Commission staff member

348. Paragraph 6 sets out the process for the appointment of an associate Commission staff member and eligibility of candidates for appointment. This includes the role of the staff member appointment committee, to be established under paragraph 12(3), which must invite all trade unions recognised by the Commission to nominate an eligible candidate. The staff appointment committee must specify the period within which a nomination is to be made, and must appoint a person from amongst those nominated. An eligible candidate for appointment must be employed by the Commission and be a member of a trade union recognised by the Commission.

Appointment of associate learner member

349. Paragraph 7 sets out the appointment process for the associate learner member including eligibility of candidates for appointment. Prior to appointing an associate learner member, the Welsh Ministers must publish a list of one or more bodies (corporate or unincorporated) appearing to the Welsh Ministers to represent the interests of learners undertaking tertiary education in Wales. Before publishing the list (or replacement list) the Welsh Ministers must consult the Commission and other persons as they consider appropriate. It is anticipated this list will include the Student Union in Wales but could also include other representative bodies. If no-one holds the position of associate learner member, the Welsh Ministers must specify the period within which nominations are to be made by those on the most recently published list, and must appoint a person from amongst those nominated during the specified period, as the associate learner member. An eligible candidate for appointment must

have been enrolled as a student at an institution in Wales within the further or higher education sectors at any time during the 3 year period prior to the day of the appointment, as either a full time or part time student, and must hold an office or membership of a body on the published list.

Terms of associate membership etc.

350. Paragraph 8 sets out the terms of associate membership.
351. Associate members are not eligible to vote in the proceedings of the Commission. Associate workforce and associate learner members hold office on terms and conditions specified by the Welsh Ministers (subject to paragraph 8(4) and (5) and 9 of the Schedule) , and may resign from office by giving written notice to the Welsh Ministers and the chair.
352. The associate Commission staff member holds office on terms and conditions as may be specified by the staff member appointment committee (subject to paragraph 8(4) and (5) and 9 of the Schedule) and may resign from office by giving written notice to the staff member appointment committee.
353. Associate member's terms of appointment may not exceed four years, reappointment is possible and sub-paragraph (4) applies.

Removal of associate member from office

354. Paragraph 9 sets out the suspension and removal from office of associate members, by the "relevant person" (i.e. either the Welsh Ministers or the staff member appointment committee (as the case may be)). Removal is by written notice where the relevant person is satisfied that the associate member is unfit to continue as an associate member, is unable or unwilling to exercise the functions of an associate member. Suspension is also by written notice by the relevant person where it appears to that person that there may be grounds to exercise the power of removal. An associate member also ceases to hold office if the member ceases to be an eligible candidate for the type of associate membership for which they were appointed.

Chief executive and other staff

355. Paragraph 10 provides for the appointment of a chief executive of the Commission who is responsible for the efficient and effective running of the Commission. It sets out disqualifying offices that would disqualify a person from being appointed as chief executive. The Welsh Ministers will appoint the first chief executive for a period of up to 4 years, with future appointments made by the Commission, subject to approval of the Welsh Ministers.
356. Paragraph 10 also provides for the Commission to appoint other members of staff who will be employees of the Commission and not civil servants. The terms and conditions of the Commission staff, including pay, remuneration and pensions will be determined by the Commission with the approval of the Welsh Ministers.

Research and Innovation Wales Committee

357. Paragraph 11 places a duty on the Commission to establish the Research and Innovation Wales Committee (“RIW”) for the purpose of advising the on the exercise of its research and innovation functions. It provides that the RIW committee will have a chair and between eight and twelve ordinary RIW members, who will be appointed by the Welsh Ministers under terms and conditions of appointment set by the Welsh Ministers. It provides for the Welsh Ministers to appoint, re-appoint and remove the chair and ordinary members of RIW. It also sets out the disqualifying offices that would disqualify a person from being appointed as chair of RIW. The chair of RIW and ordinary RIW members may resign by giving written notice to the Welsh Ministers. If a person no longer holds the role of chair of RIW, they will also cease to be the deputy chair of the Commission.
358. Paragraph 11 also allows the RIW Committee to establish and dissolve sub-committees and provides for the Commission to dissolve any sub-committee established by RIW.

Quality Committee and other committees

359. Paragraph 12 places a duty on the Commission to establish the Quality Committee for the purpose of advising the Commission on the quality of all tertiary education funded or secured by the Commission. The Commission must appoint an ordinary member as the chair of the Quality Committee.
360. Paragraph 12 also places a duty on the Commission to establish a committee to be the staff member appointment committee, this committee is to be made up of the chair and ordinary members.
361. The Commission may also establish other committees as it considers necessary to carry out its functions. The committees will be advisory to the Commission.
362. Paragraph 12 also makes provision for the Quality Committee and other committees under paragraph 12(4), which does not include the staff member appointment committee, to establish and dissolve sub-committees and provides for the Commission to dissolve any sub-committees created by the Quality Committee or any other committees established under paragraph 12(4). The members of the Quality Committee or any other committee or sub-committee established under paragraph 12(4) and (5), may include persons who are not members of the Commission. Where a person is not an ordinary member of the Commission, an associate member or is not a member of the Commission’s staff and who is a member of the Quality Committee or other committee or sub-committee, the Commission may pay those persons remuneration and allowances.

Joint committees

363. Paragraph 13 enables the Commission to establish joint committees with any person, in connection with the exercise of its functions. Where such person is not an ordinary member of the Commission, an associate member or is not a member of the

Commission's staff and who is a member of a joint committee, the Commission may pay those persons remuneration and allowances.

Accounting officer

364. Paragraph 14 sets out the role and responsibilities of the chief executive as the accounting officer. The Welsh Ministers will specify in a direction the accounting officer's responsibilities and this paragraph provides examples of what those responsibilities might be.

Accounts and audit

365. Paragraph 15 requires the Commission to keep proper accounts and prepare a statement of accounts in respect of each financial year. It also requires the Commission to adhere with any directions given by the Welsh Ministers in relation to how the accounts must be prepared. The Welsh Ministers may direct the Commission on the information to be contained in the accounts, their presentation, the methods and principles used to prepare the accounts and any other additional information deemed necessary.

366. Paragraph 15 also requires the Commission to submit a copy of its annual statement of accounts to the Auditor General for Wales and to the Welsh Ministers no later than 31 August that follows the financial year to which the statement relates. The Auditor General for Wales is required to examine the Commission's statement of accounts, to certify and report on it. The report and certified statement must then be laid before the Senedd, within 4 months of the statement having been submitted.

Annual reports

367. Paragraph 16 sets out arrangements for annual reporting, including specific information that the Commission is required to provide in the annual report and an option for the Commission to include any other information it thinks appropriate. The Commission must send a copy of the annual report to the Welsh Ministers as soon as possible after the report is completed. As soon as possible after receiving the annual report, the Welsh Ministers must lay a copy of the annual report before the Senedd.

Meaning of "financial year" and "academic year"

368. Paragraph 17 defines the meanings of "financial year" and "academic year".

Delegation by the Commission

369. Paragraph 18 enables the Commission to delegate any of its functions to subcommittees established under paragraph 11, 12(1), 12(4) and 12(5), (so excluding the Commission staff member appointment committee). A delegation of functions does not affect the Commission's ability to exercise the functions or its responsibility for the exercise of the functions.

Delegation by committees

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

370. Paragraph 19 enables committees established under paragraph 12(1), 12(4) and 12(5), (so excluding the Commission staff member appointment committee) to delegate functions to a sub-committee it creates, and as the delegating committee determines.

Proceedings

371. Paragraph 20 enables the Commission to determine its own procedures and the procedures of its committees. This paragraph also clarifies that a person, whilst suspended from office under this Schedule, cannot take part in the proceedings of the Commission, its committees, sub-committees or joint committees.

Register of interests

372. Paragraph 21 requires the Commission to establish and maintain a system for, and a register to capture, its members' interests.

Supplementary powers

373. Paragraph 22 relates to the supplementary powers of the Commission, including but not limited to the acquisition of assets or contractual arrangements.

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

SCHEDULE 2
(Introduced by section 10)
TRANSFER SCHEMES

374. This Schedule gives the Welsh Ministers powers to make property and staff transfer schemes in connection with the establishment of the Commission. HEFCW will cease to exist by the virtue of this Draft Bill. Permitted transferees under transfer schemes would be the Commission. Permitted transferors would be Welsh Ministers and HEFCW.
375. Staff transfer schemes may make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations).

SCHEDULE 3
(Introduced by section 48)
ASSESSING HIGHER EDUCATION: DESIGNATED BODY

PART 1
DESIGNATION

Recommendation

376. Paragraph 1 provides for the Commission to recommend to the Welsh Ministers that another body be designated to conduct the assessment functions under section 46 on the Commission's behalf.
377. Paragraph 1(2) requires the Commission to consult registered providers of higher education, as well as any other appropriate persons, before making such a recommendation to the Welsh Ministers.

Designation

378. If the Commission recommends that a body "the recommended body", be designated to perform the assessment functions, then the Welsh Ministers may designate the body if they consider that the body is suitable to perform the assessment functions, and that in so designating, the effective assessment of the quality of higher education would be ensured.
379. A decision to designate must be accompanied by a published notice which states the name of the body designated and the date on which designation becomes effective.
380. If the Welsh Ministers refuse to designate the recommended body, then the Welsh Ministers must publish the reasons for this decision.

Bodies suitable to perform assessment functions

381. Paragraph 3 outlines the criteria a body must meet to be considered suitable to perform the assessment functions. These are:
- (a) The body can perform the assessment functions effectively;
 - (b) the body's governing or strategic oversight is determined by people representing a broad range of registered higher education providers;
 - (c) the body can command general confidence from a broad range of registered higher education providers;
 - (d) the body is independent of any particular higher education provider; and
 - (e) the body consents to being designated.

Removal of the designation

382. Paragraph 4 allow the Welsh Ministers to remove a designation. In order to remove a designation, the Welsh Ministers must issue a notice specifying the date on which the designation will conclude and the reasons for withdrawing the designation.
383. A designation may be removed if the Welsh Ministers consider that doing so would ensure effective assessment of quality in higher education in Wales, or if the designated body consents or requests to have its designation removed.
384. Removal of a designation must be preceded by consultation with the Commission, registered higher education providers, and other appropriate persons; in particular, the Welsh Ministers must have regard to any relevant information provided by the Commission

**PART 2
OVERSIGHT BY THE COMMISSION**

Application

385. Paragraph 5 states that this Part applies once a body has been designated under this schedule.

Power to provide funding and oversight arrangements

386. Paragraph 6 and 7 are self-explanatory. The Commission may make payments to the designated body in order to enable it to carry out its assessment functions.

Annual Report by the designated body

387. Paragraph 8 requires the designated body to prepare an annual report on the performance of its assessment functions and send it to the Commission.

Power of the Commission to give directions

388. Paragraph 9 provides for the Commission to give directions to the designated body regarding performance of the assessment functions. The designated body must comply with any directions from the Commission. This may be done, for example, to ensure that certain aspects of a Commission quality assurance framework (see section 42) are given due regard in respect of higher education assessments, or where the Commission has more general concerns regarding the designated body's conduct of its assessment functions.
389. When giving a direction to the designated body the Commission must nonetheless have regard to the designated body's own expertise and its ability to ensure effective and impartial assessment of quality in higher education.
390. A direction given by the Commission can only relate to registered higher education providers in Wales, or a subsection of these providers.

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

391. As designation of a quality assessment body remains the power of the Welsh Ministers, Paragraph 10 requires the Commission to inform the Welsh Ministers if it has concerns regarding the designated body's performance and its suitability for carrying out its statutory functions.

Power to Charge Fees

392. Paragraph 11 allows the designated body to charge fees to registered higher education providers in respect of the costs it will incur when performing its assessment functions. When doing so, it must publish a scheme setting out the fees it will charge and the basis upon which these are calculated, which must be approved by the Commission. The scheme can be revised and re-approved by the Commission.
393. Paragraphs 11(3) to (5) allow for the fees paid by providers to cover general costs incurred by the designated body in performance of assessments across all registered higher education providers, but prevents the total fees paid by all providers from exceeding the total costs incurred by the designated body once any funding provided by the Commission under paragraph 6 is taken into account.

Interpretation

394. Paragraph 12 defines certain terms used in this Schedule.

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

SCHEDULE 4
(Introduced by section 133)
MINOR AND CONSEQUENTIAL AMENDMENTS

395. This Schedule sets out the minor and consequential amendments to the following primary legislation as affected by the Draft Bill. Where a description as to the effect of the amendment is considered helpful it is included. Where an amendment has been described elsewhere in these explanatory notes, it is not described here; similarly minor amendments such as changes in existing legislation from “the Higher Education Funding Council for Wales” to “the Commission for Tertiary Education” are not described:

Further and Higher Education Act 1992

Education Act 1996

Teaching and Higher Education Act 1998

School Standards and Framework Act 1998

Government of Wales Act 1998

Learning and Skills Act 2000

396. Paragraph 6 of Schedule 4 repeals sections 31 – 33 of the Learning and Skills Act 2000, which are the main duties on the Welsh Ministers in relation to post-16 education and training. It also amends sections 33A– 33E, 33G, and 33I – 33Q of that Act to give responsibility for the formation of local curricula for students aged 16 – 19 to the Commission instead of the Welsh Ministers and makes related amendments in consequence of this. The Welsh Ministers’ regulation and order making powers and most of their guidance and direction powers related to local curricula are retained, but the amendments subject the exercise of those powers, other than the direction ones, to a requirement to consult the Commission. These amendments are as a consequence of the Commission’s responsibility for securing the provision of proper facilities for education and training for these students (see section 86).

Education Act 2002

Higher Education Act 2004

Education Act 2005

Commissioner for Older People (Wales) Act 2006

Government of Wales Act 2006

Education and Skills Act 2008

Apprenticeships, Skills, Children and Learning Act 2009

Learning and Skills (Wales) Measure 2009

397. Section 43 of the Measure is amended such that the Welsh Ministers are required to consult the Commission before giving guidance to head teachers of maintained schools and principals of further education institutions about the exercise of their functions in respect of the provision of a learning pathways document to relevant students.

Children and Families (Wales) Measure 2010

Welsh Language (Wales) Measure 2011

School Standards and Organisation (Wales) Act 2013

398. Paragraph 16 makes amendments to provisions of the School Standards and Organisation (Wales) Act 2013 concerned with school reorganisations.
399. These amendments include the Commission as a body whom the Welsh Ministers must consult on the draft of the Code (or revised Code) on school organisation and places a duty on the Commission, when exercising functions under Part 3 of that Act (school organisation) to act in accordance with any relevant requirements in the Code and have regard to any relevant guidelines in it.
400. The amendments remove the automatic requirement for approval by the Welsh Ministers of school organisation proposals affecting mainstream sixth form education, but instead where a local authority has determined to approve, reject or implement such proposals and there was an objection to those proposals, the Commission will have the power to refer the proposals to the Welsh Ministers, who must then decide them.
401. The amendments also take away the Welsh Ministers' powers to make proposals to restructure mainstream sixth form education, instead giving the Commission powers to rationalise mainstream sixth form education (new Chapter 3A of Part 3 on school organisation).
402. Those powers involve the Commission being able to direct, in accordance with the Code, a local authority or a governing body of a foundation or voluntary school to bring forward proposals about mainstream sixth form education. The Commission will have power to make its own proposals following a direction by it if the time for the local authority or governing body to make proposals has expired or they have published proposals. In the event of objections to proposals from the Commission, the

These notes refer to the XXXX Bill which was introduced into the Senedd Cymru on DD MMM YYYY

matter has to be decided by the Welsh Ministers. Otherwise the Commission must determine whether they should be implemented.

403. These amendments are as a consequence of the Commission's responsibility for securing the provision of proper facilities for education and training for students aged 16 - 19 (see section 86).

Well-being of Future Generations (Wales) Act 2015

Higher Education (Wales) Act 2015

Environment (Wales) Act 2016

Public Health (Wales) Act 2017

Higher Education and Research Act 2017

Additional Learning Needs and Education Tribunal (Wales) Act 2018

Public Services Ombudsman (Wales) Act 2019

*These notes refer to the XXXX Bill which was introduced into
the Senedd Cymru on DD MMM YYYY*

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ANNEX 2

Index of Standing Order requirements

| Standing order | | Section | pages/ paragraphs |
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| 26.6(i) | Statement the provisions of the Draft Bill would be within the legislative competence of the Senedd | Member's declaration | 1 |
| 26.6(ii) | Set out the policy objectives of the Draft Bill | Chapter 3 - Purpose and intended effect of the legislation | 7 – 72 |
| 26.6(iii) | Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Draft Bill was adopted | Part 2 – Regulatory Impact Assessment | 110 - 227 |
| 26.6(iv) | Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Draft Bill and the ways of meeting them; (b) the detail of the Draft Bill, and (c) a Draft Bill, either in full or in part (and if in part, which parts) | Chapter 4 – Consultation | 73 -77 |
| 26.6(v) | Set out a summary of the outcome of that consultation, including how and why any Draft Bill has been amended | Chapter 3 – Purpose and Intended Effect of the legislation and Chapter 4 – Consultation | 7-72 73-77 |
| 26.6(vi) | If the Draft Bill, or part of the Draft Bill, was not previously published as a draft, state the reasons for that decision | Chapter 4 – Consultation | Paragraph 4.12 / page 76 |

| | | | |
|-----------|--|-----------------------------|-----------|
| 26.6(vii) | Summarise objectively what each of the provisions of the Draft Bill is intended to do (to the extent that it requires explanation or comment) and give | Annex 1 – Explanatory Notes | 233 – 300 |
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| Standing order | Section | pages/ paragraphs |
|-----------------------|---|---|
| | other information necessary to explain the effect of the Draft Bill | |
| 26.6(viii) | Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Draft Bill would give rise; (b) the administrative savings arising from the Draft Bill; (c) net administrative costs of the Draft Bill’s provisions (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall | Part 2 – Regulatory Impact Assessment 110 – 227 |
| 26.6(ix) | Any environmental and social benefits and dis-benefits arising from the Draft Bill that cannot be quantified financially | Part 2 – Regulatory Impact Assessment 110-227 |
| 26.6(x) | Where the Draft Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and | Chapter 5 - Power to make subordinate legislation 78 – 109 |

| | Standing order | Section | pages/ paragraphs |
|-----------|---|--|--------------------------|
| | (c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); | | |
| 26.6(xi) | Where the Draft Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate | Chapter 6 – Regulatory Impact Assessment summary | 110-112 |
| 26.6(xii) | Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Draft Bill (a “justice impact assessment”), in accordance with section 110A of the Act. | Chapter 9 – Impact Assessments | paragraph 9.9 / page 225 |
| 26.6B | 328 Where provisions of the Draft Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Draft Bill relates to the existing legal framework. | Annex 3 –Table of Derivations | 305 – 311 |

| | | | |
|-------|---|--|-----------|
| 26.6C | Where the Draft Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Draft Bill, and setting out clearly how that wording is amended by the Draft Bill. | Annex 4 – Schedule of Amendments | 312 - 509 |
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ANNEX 3

DRAFT TERTIARY EDUCATION AND RESEARCH (WALES) BILL

Table of Derivations

The table below is intended to provide information on the derivation of the provisions of the Draft Tertiary Education and Research (Wales) Bill. The table does not provide definitive or exhaustive guidance and should be read in conjunction with the Draft Bill and with the explanatory notes on the Draft Bill.

ABBREVIATIONS:

| | |
|----------------|--|
| FHEA: | Further and Higher Education Act 1992 |
| LSA: | Learning and Skills Act 2000 |
| ASCLA: | Apprenticeships, Skills, Children and Learning Act 2009 |
| HE(W)A: | Higher Education (Wales) Act 2015 |

| TABLE OF DERIVATIONS | | |
|---|--|----------------------------|
| PART 1 STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH | | |
| SECTION | Corresponding reference in existing legislation | Substantive change? |
| 1 | New | N/A |
| 2 | New | N/A |
| 3 | New | N/A |
| 4 | New | N/A |

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| | | |
|---|-----|-----|
| 5 | New | N/A |
| 6 | New | N/A |
| 7 | New | N/A |

| | | |
|----|-----|-----|
| 8 | New | N/A |
| 9 | New | N/A |
| 10 | New | N/A |

PART 2 REGISTRATION AND REGULATION OF TERTIARY EDUCATION

| SECTION | Corresponding reference in existing legislation | Substantive change? |
|----------------|---|---------------------|
| 11 | New | N/A |
| 12 | New | N/A |
| 13 | New | N/A |
| 14 | New | N/A |
| 15 | New | N/A |
| 16 | New | N/A |
| 17 | New | N/A |
| 18 | New | N/A |
| 19 | New | N/A |
| 20 | New | N/A |
| 21 | New | N/A |
| 22 | New | N/A |
| 23 | New | N/A |
| 24 | New | N/A |

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| | | |
|----|------------------|-----|
| 25 | New | N/A |
| 26 | New | N/A |
| 27 | New | N/A |
| 28 | New | N/A |
| 29 | New | N/A |
| 30 | New | N/A |
| 31 | New | N/A |
| 32 | Section 2 HE(W)A | Yes |
| 33 | Section 4 HE(W)A | Yes |

| | | |
|----|---------------------------------|-----|
| 34 | Section 5 HE(W)A | Yes |
| 35 | Section 6 HE(W)A | Yes |
| 36 | Section 7 HE(W)A | Yes |
| 37 | Section 8 HE(W)A | Yes |
| 38 | Section 14 HE(W)A | No |
| 39 | Section 15 HE(W)A | Yes |
| 40 | Section 37 HE(W)A | Yes |
| 41 | Section 38 HE(W)A | Yes |
| 42 | New | N/A |
| 43 | New | N/A |
| 44 | Sections 18(2) and 20(1) HE(W)A | Yes |
| 45 | Section 20(2) HE(W)A | Yes |
| 46 | Section 17 HE(W)A | Yes |
| 47 | New | N/A |

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| | | |
|----|------------------------|-----|
| 48 | New | N/A |
| 49 | Sections 75 and 77 LSA | Yes |
| 50 | Section 78 LSA | No |
| 51 | Section 76 LSA | Yes |
| 52 | Section 76 LSA | Yes |
| 53 | Section 76 LSA | No |
| 54 | Section 80 LSA | Yes |
| 55 | Section 83 LSA | Yes |
| 56 | Section 79 LSA | No |
| 57 | Section 85 LSA | Yes |
| 58 | Section 86 LSA | No |
| 59 | Section 87 LSA | Yes |
| 60 | New | N/A |
| 61 | Section 57 FHEA | Yes |
| 62 | Section 57 FHEA | Yes |

| | | |
|----|---------------------------|-----|
| 63 | New | N/A |
| 64 | New | N/A |
| 65 | Sections 21 and 35 HE(W)A | Yes |
| 66 | Sections 22 and 36 HE(W)A | Yes |
| 67 | Section 41 HE(W)A | Yes |
| 68 | Section 42 HE(W)A | Yes |
| 69 | Section 43 HE(W)A | Yes |
| 70 | Section 44 HE(W)A | Yes |

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| | | |
|--|--|----------------------------|
| 71 | Section 44 HE(W)A | Yes |
| 72 | New | N/A |
| 73 | Section 52 HE(W)A | Yes |
| 74 | Section 45 HE(W)A | Yes |
| 75 | Section 47 HE(W)A | No |
| 76 | Section 3 HE(W)A | Yes |
| 77 | New | N/A |
| PART 3 SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH | | |
| SECTION | Corresponding reference in existing legislation | Substantive change? |
| 78 | Section 68(1) and (4) FHEA | Yes |
| 79 | Section 68(2) and (3) FHEA | Yes |
| 80 | Section 65(1) FHEA | Yes |
| 81 | Section 65(2) FHEA | N/A |
| 82 | Sections 65(4) and 66(1) FHEA | Yes |
| 83 | Section 65(2) and (3) FHEA | Yes |
| 84 | Sections 34(1)(d) and 35(1) (5) LSA | N/A |
| 85 | Section 31 LSA | Yes |
| 86 | Section 32 LSA | Yes |
| 87 | Section 33 LSA | Yes |
| 88 | Section 34 LSA | Yes |
| 89 | Section 35 LSA | Yes |
| 90 | Section 37 LSA | Yes |
| 91 | Section 36 LSA | Yes |

Please note: this document has been prepared solely to assist people in understanding the Draft Tertiary Education and Research (Wales) Bill. It should not be relied on for any other purpose.

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| 92 | Section 41 LSA | Yes |
| 93 | Sections 34(1)(g), (i), 35(1), (5) and 40(6) LSA | Yes |
| 94 | New | N/A |
| 95 | Sections 65 and 66 FHEA | Yes |
| 96 | Section 65 FHEA | Yes |
| 97 | New | N/A |
| PART 4 APPRENTICESHIPS | | |
| SECTION | Corresponding reference in existing legislation | Substantive change? |
| 98 | Section 2 ASCLA | Yes |
| 99 | Section 32 ASCLA | Yes |
| 100 | Section 2 ASCLA | Yes |
| 101 | New | N/A |
| 102 | New | N/A |
| 103 | New | N/A |
| 104 | New | N/A |
| 105 | New | N/A |
| 106 | New | N/A |
| 107 | Section 8 ASCLA | Yes |
| 108 | New | N/A |
| 109 | Section 33 and 34 ASCLA | Yes |
| 110 | Section 35 ASCLA | Yes |
| 111 | New | N/A |
| 112 | Section 36 | Yes |

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| 113 | New | N/A |
| PART 5 LEARNER PROTECTION, COMPLAINTS PROCEDURES AND LEARNER ENGAGEMENT | | |

| SECTION | Corresponding reference in existing legislation | Substantive change? |
|----------------|---|---------------------|
| 114 | New | N/A |
| 115 | New | N/A |
| 116 | New | N/A |
| 117 | New | N/A |

PART 6 INFORMATION, ADVICE AND GUIDANCE

| SECTION | Corresponding reference in existing legislation | Substantive change? |
|----------------|---|---------------------|
| 118 | Section 69 FHEA | Yes |
| 119 | New | N/A |
| 120 | New | N/A |
| 121 | New | N/A |
| 122 | Section 40(5) LSA | Yes |
| 123 | New | N/A |
| 124 | New | N/A |

PART 7 GENERAL PROVISIONS

| SECTION | Corresponding reference in existing legislation | Substantive change? |
|----------------|---|---------------------|
| 125 | New | N/A |
| 126 | New | N/A |
| 127 | New | N/A |

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| 128 | New | N/A |
| 129 | New | N/A |
| 130 | New | N/A |
| 131 | New | N/A |
| 132 | New | N/A |
| 133 | New | N/A |
| 134 | New | N/A |
| 135 | New | N/A |
| SCHEDULE 1 COMMISSION FOR TERTIARY EDUCATION | | |
| | Corresponding reference in existing legislation | Substantive change? |
| Whole Schedule | New | N/A |
| SCHEDULE 2 TRANSFERS OF PROPERTY AND STAFF TO THE COMMISSION | | |
| | Corresponding reference in existing legislation | Substantive change? |
| Whole Schedule | New | N/A |
| SCHEDULE 3 ASSESSING HIGHER EDUCATION: DESIGNATED BODY | | |
| | Corresponding reference in existing legislation | Substantive change? |
| Whole Schedule | New | N/A |
| SCHEDULE 4 MINOR AND CONSEQUENTIAL AMENDMENTS | | |
| | Corresponding reference in existing legislation | Substantive change? |

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| Whole Schedule | New | N/A |
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ANNEX 4

Schedule of Amendments

This document is intended to show how the provisions of various Acts and Measures as they applied in relation to Wales on 14 February 2020 would look as amended by the Tertiary Education and Research (Wales) Bill if enacted as introduced on 20 April 2020.

Material to be deleted is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Tertiary Education and Research (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page. Related provisions from each Act or Measure, although not being amended, are included to aid understanding of the proposed amendments.

This text has been prepared by officials of the Department for Skills, Higher Education and Lifelong Learning of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or Measure, or the Bill. It has been produced solely to aid understanding of the effect of the Draft Tertiary Education and Research (Wales) Bill. It is not intended for use in any other context.

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| Education Reform Act 1988 | 321 |
| Further and Higher Education Act 1992 | 327 |
| Education Act 1996 | 343 |
| Teaching and Higher Education Act 1998 | 348 |
| School Standards and Framework Act 1998 | 349 |
| Government of Wales 1998 | 358 |
| Learning and Skills Act 2000 | 359 |
| Education Act 2002 | 382 |
| Higher Education Act 2004 | 383 |
| Education Act 2005 | 386 |
| Commissioner for Older People 2006 | 396 |
| Government of Wales Act 2006 | 397 |
| Education and Skills Act 2008 | 399 |
| Apprenticeships, Skills, Children and Learning Act 2009 | 400 |

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| Learning and Skills (Wales) Measure 2009 | 413 |
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| Deregulation Act 2015 | 479 |
| Environment (Wales) Act 2016 | 482 |
| Public Health (Wales) Act 2017 | 483 |
| Higher Education and Research Act 2017 | 485 |
| Additional Learning Needs Act 2018 | 492 |
| Public Services Ombudsman (Wales) Act 2019 | 498 |

Education Reform Act 1988

124A Constitution and conduct of higher education corporations in Wales

- (1) For each higher education corporation in Wales established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation in Wales established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—
 - (a) make an instrument of government of any higher education corporation in Wales with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in Wales in place of the instrument prescribed under subsection (2) above; or
 - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation in Wales—
 - (a) shall comply with the requirements of Schedule 7A to this Act; and
 - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation in Wales for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation in Wales for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

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| <p>(8) In relation to a higher education corporation in Wales for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.</p> <p>(9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and <u>2</u> to 11 of Schedule 7A to this Act.</p> <p><u>(9A) Before making an order under subsection (9) the Welsh Ministers must consult—</u> <u>(a) the Commission, and</u> <u>(b) any other persons they think appropriate.”</u></p> <p><u>(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—</u> <u>(a) subsection 122A(3);</u> <u>(b) in subsection (4) of this section, the words “any provision authorised to be made by that Schedule and”;</u> <u>(c) in section 124C—</u> <u>(i) in subsection (1), the words beginning with “and, in determining” to the end;</u> <u>(ii) subsection (2).</u></p> <p>(10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.</p> | <p><i>Section 125 (2)</i></p> <p><i>Section 125 (3)</i></p> |
| <p>125 Articles of government: higher education corporations in Wales</p> <p>(1) Any institution conducted by a higher education corporation in Wales shall be conducted in accordance with articles of government, to be made by the corporation with the approval of the Privy Council.</p> <p>(2) The articles of government— (a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the academic board of the institution; and (b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.</p> <p>(3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the</p> | <p><i>Section 126 (2)</i></p> |

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| <p>corporation (including in either case quorum and proxies), and may make provision with respect to—</p> <ul style="list-style-type: none"> (a) procedures for the appointment, promotion, suspension and dismissal of staff; (b) procedures for the admission, suspension and expulsion of students; and (c) the appointment and functions of a clerk to the board of governors. <p>(4)The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—</p> <ul style="list-style-type: none"> (a) the conduct of students and staff or either of them; and (b) any such procedures as are mentioned in subsection (3)(a) or (b) above. <p>(5)Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of the Privy Council.</p> <p>(6)The Privy Council may by a direction under this section require higher education corporations in Wales, any class of such corporations specified in the direction or any particular higher education corporation in Wales so specified—</p> <ul style="list-style-type: none"> (a) to amend their articles of government; or (b) to secure that any rules or bye-laws made in pursuance of their articles of government are amended by the board of governors; <p>in any manner so specified.</p> <p>(7)Before giving a direction under this section, the Privy Council shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.</p> <p><u>(8)The Welsh Ministers may by order amend or repeal any of subsections (2) to (4) of this section.</u></p> <p><u>(9)Before making an order under subsection (8) the Welsh Ministers must consult—</u></p> <ul style="list-style-type: none"> <u>(a) the Commission, and</u> <u>(b) any other persons they think appropriate.</u> | |
| <p>232 Orders and regulations</p> <p>(1)Any power of the Secretary of State <u>or the Welsh Ministers</u> to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument.</p> <p>(2)For the purposes of subsection (1) above the excepted provisions are [section 157], paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.</p> | <p><i>Section 126(3)(a)</i></p> |

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| <p>(3)[repealed]</p> <p>(4)A statutory instrument containing—</p> <p>(a) an Order in Council made under section 207 of this Act which amends or repeals any provision of an Act; or</p> <p>(b) any order or regulations made by the Secretary of State under this Act, other than an order under section, 214, 216,or 236;</p> <p>shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p><u>(4ZA)A statutory instrument containing any order or regulations made by the Welsh Ministers under this Act, other than an order under section 125, 214 or 216, shall be subject to annulment in pursuance of a resolution of Senedd Cymru.</u></p> <p><u>(4ZB)A statutory instrument containing an order made by the Welsh Ministers under section 125 of this Act may not be made unless a draft of the instrument has been laid before, and approved by resolution of Senedd Cymru.</u></p> <p><u>(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.</u></p> <p>(4A) The power of the Office for Students to make an order under section 214 or 216 is exercisable by statutory instrument; and the Statutory Instruments Act 1946 is to apply to such an instrument as if the order had been made by a Minister of the Crown.</p> <p>(5)Orders or regulations under this Act may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks <u>or the Welsh Ministers think</u> fit or, in the case of orders under section 214 or 216 made by the Office for Students, the Office for Students thinks fit.</p> <p>(6)Without prejudice to subsection (5) above, orders under this Act, and regulations under any provision of this Act may make in relation to Wales provision different from that made in relation to England.</p> | <p><i>Section 126(3)(b)</i></p> <p><i>Section 126(3)(c)</i></p> |
| <p>128 Dissolution of higher education corporations in Wales</p> <p>(1)Subject to the following provisions of this section, the Secretary of State may by order provide for—</p> <p>(a) the dissolution of any higher education corporation in Wales; and</p> | |

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| <p>(b) the transfer of property, rights and liabilities of the corporation to—</p> <ul style="list-style-type: none"> (i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description; (ii) any body corporate established for purposes which include the provision of such facilities or services; (ia) [repealed] (iib) [repealed] (iii) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>; or (v) the National Assembly for Wales. | <p><i>Section 127(2)</i></p> |
| <p><u>(1A) An order under subsection (1)(b)—</u></p> <ul style="list-style-type: none"> <u>(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);</u> <u>(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.</u> | <p><i>Section 127(3)</i></p> |
| <p>(2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation in Wales to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.</p> | |
| <p>(3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.</p> | |
| <p>(4) Before making an order under this section in respect of a higher education corporation in Wales the Secretary of State shall consult—</p> <ul style="list-style-type: none"> (a) the corporation; and (b) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>. | <p><i>Section 127(4)</i></p> |
| <p>(5) In this section “charitable purposes” has the meaning given by section 11 of the Charities Act 2011.</p> | <p><i>Section 127(5)</i></p> |
| <p><u>(5) In this section—</u> <u>“charitable purposes” has the meaning given by section 11 of the Charities Act 2011(c. 25);</u></p> | |

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| <p><u>“right of return” means any right under a provision for the return or reversion of property in specified circumstances.</u></p> <p>(6) An order under this section may apply section 127 of this Act with such modifications as the Secretary of State may consider necessary or desirable.</p> | |
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| Further and Education Act 1992 | |
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| <p>49B Destinations</p> <p>(1) The Secretary of State may provide destination information to the governing body of an institution in England within the further education sector.</p> <p>(2) The Welsh Ministers <u>The Commission for Tertiary Education and Research</u> may provide destination information to the governing body of an institution in Wales within the further education sector.</p> <p>(3) In this section “destination information”, in relation to an institution, means information which—</p> <p>(a) relates to a former student of the institution, and</p> <p>(b) includes information as to prescribed activities of the former student after leaving the institution.</p> <p>(4) Regulations under subsection (3)(b) which prescribe activities as to which the Welsh Ministers <u>the Commission for Tertiary Education and Research</u> may provide information are to be made by the Welsh Ministers.</p> <p>(5) Subject to subsection (6)(a), information received under this section is not to be published in any form which identifies the individual to whom it relates.</p> <p>(6) This section—</p> <p>(a) does not affect any power to provide or publish information which exists apart from this section, and</p> <p>(b) is subject to any express restriction on the provision of information imposed by another enactment.</p> | <p><i>Schedule 4, paragraph 1(2)(a)</i></p> <p><i>Schedule 4, paragraph 1(2)(b)</i></p> |
| <p>57 Intervention: Wales</p> <p>(1) This section applies if one or more of the conditions listed in subsection (2) is satisfied regarding an institution in Wales within the further education sector; and it is immaterial whether or not a complaint is made by any person.</p> <p>(2) These are the conditions—</p> <p>(a) the Welsh Ministers are is satisfied that the institution's affairs have been or are being mismanaged by its governing body;</p> <p>(b) they are satisfied that the institution's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act or any Measure of the National Assembly for Wales;</p> <p>(c) they are satisfied that the institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the</p> | <p><i>Schedule 4, paragraph 1(3)(a)</i></p> |

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| <p>performance of any duty imposed by or under any Act or any Measure of the National Assembly for Wales;</p> <p>(d) they are satisfied that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.</p> <p>(3) [repealed]</p> <p>(4) If this section applies the Welsh Ministers may by order—</p> <p>(a) declare which of the conditions is (or are) satisfied, and</p> <p>(b) do one or more of the things listed in subsection (5).</p> <p>(5) They may—</p> <p>(a) remove all or any of the members of the institution's governing body;</p> <p>(b) appoint new members of that body if there are vacancies (however arising);</p> <p>(c) give to that body such directions as they think expedient as to the exercise of their powers and performance of their duties.</p> <p>(5A) The directions that may be given to a governing body under this section include—</p> <p>(a) a direction requiring a governing body to exercise powers under section 5(2)(b) to (f) and (h) of the Education (Wales) Measure 2011 to collaborate with such persons and on such terms as may be specified in the direction, and</p> <p>(b) a direction requiring a governing body to make a resolution under section 27A(1) for the body to be dissolved on a date specified in the direction.</p> <p>(5B) A governing body to which a direction such as is mentioned in subsection (5A)(b) is given is to be taken for the purposes of section 27A(1) to have complied with section 27 before making the resolution required by the direction.</p> <p>(6) Directions may be given to a body under this section despite any enactment making the exercise of a power or performance of a duty contingent on the body's opinion.</p> <p>(6A) The Welsh Ministers may not direct a governing body under subsection (5)(c) to dismiss a member of staff.</p> <p>(6B) But subsection (6A) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body have power under their institution's articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.</p> | |
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| <p>(7) A governing body must comply with any directions given to them under this section.</p> <p>(8) An appointment of a member of a governing body under this section shall have effect as if made in accordance with the instrument of government and articles of government of the institution concerned.</p> <p>(9) [repealed]</p> | |
| <p>62 The Higher Education Funding Council for Wales</p> <p>(1) There shall be established—</p> <p>(a) [repealed]</p> <p>(b) a body corporate to be known as the Higher Education Funding Council for Wales to exercise in relation to Wales the functions conferred on them (referred to in this Act as “the HEFCW”).</p> <p>(2) [repealed]</p> <p>(3) The Higher Education Funding Council for Wales shall consist of not less than eight nor more than twelve members appointed by the Secretary of State, of whom one shall be so appointed as chairman.</p> <p>(4) In appointing the members of the HEFCW the Secretary of State—</p> <p>(a) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, the provision of higher education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of higher education and, in appointing such persons, he shall have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision, and</p> <p>(b) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.</p> <p>(5) [repealed]</p> <p>(6) [repealed]</p> <p>(7) In this Part of this Act references to institutions in Wales—</p> <p>(a) are to institutions whose activities are carried on, or principally carried on, in Wales, but</p> <p>(b) include the Open University.</p> <p>(7A) In exercising their functions, the HEFCW shall have regard to the requirements of disabled persons.</p> <p>(7B) In subsection (7A) “disabled persons” means persons who are</p> | <p><i>Schedule 4, paragraph 1(3)(b)</i></p> |

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| <p>disabled persons for the purposes of the Equality Act 2010.</p> <p>(8) Any dispute as to whether any functions are exercisable by the HEFCW or the Office for Students shall be determined by the Secretary of State.</p> <p>(9) Schedule 1 to this Act has effect with respect to the HEFCW.</p> | |
| <p>65 Administration of funds by the HEFCW</p> <p>(1) The HEFCW shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the HEFCW by the Secretary of State and others for the purposes of providing financial support for activities eligible for funding under this section.</p> <p>(2) The activities eligible for funding under this section are—</p> <ul style="list-style-type: none"> (a) the provision of education and the undertaking of research by higher education institutions in the HEFCW's area, (b) the provision of any facilities, and the carrying on of any other activities, by higher education institutions in their area which the governing bodies of those institutions consider it necessary or desirable to provide or carry on for the purpose of or in connection with education or research, (c) the provision— <ul style="list-style-type: none"> (i) by institutions in their area maintained or assisted by local authorities, or (ii) by such institutions in their area as are within the further education sector, of prescribed courses of higher education, and (d) the provision by any person of services for the purposes of, or in connection with, the provision of education or the undertaking of research by institutions within the higher education sector. <p>(3) The HEFCW may—</p> <ul style="list-style-type: none"> (a) make grants, loans or other payments to the governing body of any higher education institution in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (2)(a) or (b) above, and (b) make grants, loans or other payments to any persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in subsection (2)(c) above of prescribed courses of higher education or the provision of services as mentioned in subsection (2)(d) above, <p>subject in each case to such terms and conditions as the HEFCW think fit.</p> <p>(3A) In the application of subsection (3) above to any grants, loans or other payments by the HEFCW, the reference to expenditure</p> | <p><i>Schedule 4, paragraph 1(3)(c)</i></p> |

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| <p>incurred or to be incurred by the governing body of a higher education institution as mentioned in paragraph (a) of that subsection includes a reference to expenditure incurred or to be incurred by any connected institution to which the governing body propose, with the consent of the HEFCW, to pay the whole or part of any such grants, loans or other payments.</p> <p>(3B) In subsection (3A) “connected institution”, in relation to a higher education institution, means any college, school, hall or other institution which the HEFCW are satisfied has a sufficient connection with that institution for the purposes of that subsection.</p> <p>(4) The terms and conditions on which the HEFCW may make any grants, loans or other payments under this section may in particular—</p> <p>(a) enable the HEFCW to require the repayment, in whole or in part, of sums paid by the HEFCW if any of the terms and conditions subject to which the sums were paid is not complied with, and</p> <p>(b) require the payment of interest in respect of any period during which a sum due to the HEFCW in accordance with any of the terms and conditions remains unpaid,</p> <p>but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the HEFCW.</p> <p>(4A) [repealed]</p> <p>(4B) [repealed]</p> <p>(5) In this section and section 66 of this Act “higher education institution” means a university, an institution conducted by a higher education corporation or a designated institution.</p> | |
| <p>66 Administration of funds: supplementary</p> <p>(1) Before exercising their discretion under section 65(3)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, the HEFCW shall consult such of the following bodies as appear to the HEFCW to be appropriate to consult in the circumstances—</p> <p>(a) such bodies representing the interests of higher education institutions as appear to the HEFCW to be concerned, and</p> <p>(b) the governing body of any particular higher education institution which appears to the HEFCW to be concerned.</p> <p>(2) In exercising their functions in relation to the provision of financial support for activities eligible for funding under section 65 of this Act the HEFCW shall have regard to the desirability of not discouraging any institution for whose activities financial support is provided under that section from maintaining or</p> | <p><i>Schedule 4, paragraph 1(3)(d)</i></p> |

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| <p>developing its funding from other sources.</p> <p>(3) In exercising those functions the HEFCW shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining—</p> <p>(a) what appears to them to be an appropriate balance in the support given by them as between institutions which are of a denominational character and other institutions, and</p> <p>(b) any distinctive characteristics of any institution within the higher education sector for whose activities financial support is provided under that section.</p> <p>(4) For the purposes of subsection (3) above an institution is an institution of a denominational character if it appears to the HEFCW that either—</p> <p>(a) at least one quarter of the members of the governing body of the institution are persons appointed to represent the interests of a religion or religious denomination,</p> <p>(b) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination, or</p> <p>(c) any of the property held for the purposes of the institution is held on trust for or in connection with—</p> <p>(i) the provision of education, or</p> <p>(ii) the conduct of an educational institution, in accordance with the tenets of a religion or religious denomination.</p> | |
| <p>68 Grants to the HEFCW</p> <p>(1) The Secretary of State may make grants to the HEFCW of such amounts and subject to such terms and conditions as he may determine.</p> <p>(2) The terms and conditions subject to which grants are made by the Secretary of State to the HEFCW—</p> <p>(a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the HEFCW in respect of activities carried on by the institution, but</p> <p>(b) shall not otherwise relate to the provision of financial support by the HEFCW in respect of activities carried on by any particular institution or institutions.</p> <p>(3) Such terms and conditions may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the</p> | <p><i>Schedule 4, paragraph 1(3)(e)</i></p> |

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| <p>manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students.</p> <p>(4) Such terms and conditions may in particular—</p> <p>(a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with, and</p> <p>(b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.</p> | |
| <p>69 Supplementary functions</p> <p>(1) The HEFCW—</p> <p>(a) shall provide the Secretary of State with such information or advice relating to the provision for their area of higher education as he may from time to time require, and</p> <p>(b) may provide the Secretary of State with such information or advice relating to such provision as they think fit,</p> <p>and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.</p> <p>(1A) [repealed]</p> <p>(1B) [repealed]</p> <p>(2) The HEFCW shall keep under review activities eligible for funding under section 65 of this Act.</p> <p>(3) The HEFCW may provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the department's functions relating to higher education in Northern Ireland.</p> <p>(4) Where—</p> <p>(a) any land or other property is or was used or held for the purposes of an institution in Wales, and</p> <p>(b) the Secretary of State is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event,</p> <p>then, if the institution is within the higher education sector, the Secretary of State may direct that all or any of his functions in respect of the property shall be exercisable on his behalf by the HEFCW, and the functions shall be so exercised in accordance with such directions as he may give from time to time.</p> <p>(5) The Secretary of State may by order confer or impose on the</p> | <p><i>Schedule 4, paragraph 1(3)(f)</i></p> |

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| <p>HEFCW such supplementary functions relating to the provision of education as he thinks fit.</p> <p>(6) For the purposes of subsection (5) above a function is a supplementary function in relation to the HEFCW if it is exercisable for the purposes of—</p> <p style="padding-left: 2em;">(a) the exercise by the Secretary of State of functions of his under any enactment, or</p> <p style="padding-left: 2em;">(b) the doing by the Secretary of State of anything he has power to do apart from any enactment,</p> <p>and it relates to, or to the activities of, any institution mentioned in subsection (7) below.</p> <p>(7) Those institutions are—</p> <p style="padding-left: 2em;">(a) institutions within the higher education sector, or</p> <p style="padding-left: 2em;">(b) institutions within the further education sector, or maintained or assisted by local authorities, at which prescribed courses of higher education are currently provided.</p> | |
| <p>79 Duty to give information to the HEFCW</p> <p>(1) Each of the following shall give the HEFCW such information as they may require for the purposes of the exercise of any of their functions under the Education Acts—</p> <p style="padding-left: 2em;">(a) a local authority,</p> <p style="padding-left: 2em;">(b) the governing body of any institution within the higher education sector, and</p> <p style="padding-left: 2em;">(c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided.</p> | <p><i>Schedule 4, paragraph 1(3)(g)</i></p> |
| <p>81 Directions.</p> <p>(1) In exercising their functions under this Part of this Act, the HEFCW shall comply with any directions under this section, and such directions shall be contained in an order made by the Secretary of State.</p> <p>(2) The Secretary of State may give general directions to [the HEFCW about the exercise of their functions.</p> <p>(3) If it appears to the Secretary of State that the financial affairs of any institution within the higher education sector have been or are being mismanaged he may, after consulting the HEFCW and the institution, give such directions to the HEFCW about the provision of financial support in respect of the activities carried on by the institution as he considers are necessary or expedient by reason of the mismanagement.</p> | <p><i>Schedule 4, paragraph 1(3)(h)</i></p> |

| <p>83 Efficiency studies</p> <p>(1) A person listed in an entry in column 1 of the table in subsection (1B) may arrange for efficiency studies to be promoted or carried out by any person in respect of an institution listed in the corresponding entry in column 2 of that table.</p> <p>(1A) “Efficiency studies” are studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution.</p> <p>(1B) The table referred to in subsection (1) is—</p> <table border="1" data-bbox="231 571 1141 1321"> <thead> <tr> <th><i>Person</i></th> <th><i>Institution</i></th> </tr> </thead> <tbody> <tr> <td>The Welsh Ministers</td> <td>An institution in Wales within the further education sector.</td> </tr> <tr> <td>The Secretary of State</td> <td>An institution in England within the further education sector, other than a sixth form college</td> </tr> <tr> <td>The Secretary of State</td> <td>A sixth form college</td> </tr> <tr> <td>The HEFCW</td> <td>An institution within the higher education sector <u>A regulated institution for the purposes of the Higher Education (Wales) Act 2015 (including a provider designated under section 3 of that Act which is treated as being a regulated institution for the purposes of that Act).</u></td> </tr> </tbody> </table> <p>(2) A person promoting or carrying out efficiency studies at the request of a person listed in an entry in column 1 of the table in subsection (1B) may require the governing body of the institution concerned—</p> <ol style="list-style-type: none"> (a) to furnish the person, or any person authorised by him, with such information, and (b) to make available to him, or any person so authorised, for inspection their accounts and such other documents, <p>as the person may reasonably require for that purpose.</p> | <i>Person</i> | <i>Institution</i> | The Welsh Ministers | An institution in Wales within the further education sector. | The Secretary of State | An institution in England within the further education sector, other than a sixth form college | The Secretary of State | A sixth form college | The HEFCW | An institution within the higher education sector <u>A regulated institution for the purposes of the Higher Education (Wales) Act 2015 (including a provider designated under section 3 of that Act which is treated as being a regulated institution for the purposes of that Act).</u> | <p><i>Schedule 4, paragraph 1(4)</i></p> |
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| <i>Person</i> | <i>Institution</i> | | | | | | | | | | |
| The Welsh Ministers | An institution in Wales within the further education sector. | | | | | | | | | | |
| The Secretary of State | An institution in England within the further education sector, other than a sixth form college | | | | | | | | | | |
| The Secretary of State | A sixth form college | | | | | | | | | | |
| The HEFCW | An institution within the higher education sector <u>A regulated institution for the purposes of the Higher Education (Wales) Act 2015 (including a provider designated under section 3 of that Act which is treated as being a regulated institution for the purposes of that Act).</u> | | | | | | | | | | |
| <p>91 Interpretation of Education Acts</p> <p>(1) This section applies for the interpretation of the Education Acts.</p> <p>(2) [repealed]</p> <p>(3) References to institutions within the further education sector are to—</p> <ol style="list-style-type: none"> (a) institutions conducted by further education corporations, and | <p><i>Schedule 4, paragraph 1(5)</i></p> | | | | | | | | | | |

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| <p>(b) designated institutions for the purposes of Part I of this Act (defined in section 28(4) of this Act), and</p> <p>(c) sixth form colleges,</p> <p>and references to institutions outside the further education sector are to be read accordingly.</p> <p>(3A) References to sixth form colleges are to institutions conducted by sixth form college corporations.</p> <p>(4) References to a higher education funding council are to the Higher Education Funding Council for Wales.</p> <p>(5) References to institutions within the higher education sector are to—</p> <p>(za) registered higher education providers of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017,</p> <p>(a) universities receiving financial support under section 65 of this Act,</p> <p>(aa) universities that are regulated institutions,</p> <p>(b) institutions in Wales conducted by higher education corporations, and</p> <p>(c) designated institutions for the purposes of Part II of this Act (defined in section 72(3) of this Act),</p> <p>and references to institutions outside the higher education sector are to be read accordingly.</p> <p>(5ZA) For the purposes of subsection (5)(b), the reference to institutions in Wales is to be read in accordance with section 62(7).</p> <p>(5A) For the purposes of subsection (5)(aa), a regulated institution is an institution to which an approved plan, within the meaning given in section 7 of the Higher Education (Wales) Act 2015, relates.</p> <p>(6) References, in relation to a further education corporation or higher education corporation, to the institution—</p> <p>(a) in relation to any time before the operative date for the purposes of Part I of this Act (defined in section 17 of this Act) or, as the case may be, the transfer date for the purposes of the Education Reform Act 1988 (defined in section 123 of that Act), are to the institution the corporation is established to conduct, and</p> <p>(b) in relation to any later time or to any corporation which is a further education corporation by virtue of section 47 of this Act or a higher education corporation by virtue of section 122ZA or 122A of that Act, are to any institution for the time being conducted by the corporation in the exercise of their powers under this or that Act.</p> | |
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| 92 Index | | <i>Schedule 4, paragraph 1(6)</i> |
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| The expressions listed in the left-hand column below are respectively defined by or (as the case may be) are to be interpreted in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions. | | |
| <i>Expression</i> | <i>Relevant provision</i> | |
| appropriate further education funding council | section 1(6) | |
| contract of employment, etc | section 90(1) | |
| council (in Part I), or learning and skills council | sections 61A(1) and 90(2A) | |
| designated institution (in Part I) | section 28(4) | |
| designated institution (in Part II) | section 72(3) | |
| the Education Acts | section 90(1) | |
| functions | section 61(1) | |
| further education | section 90(1) | |
| further education corporation | section 17(1) | |
| further education corporation in England | section 90(1) | |
| further education corporation in Wales | section 90(1) | |
| governing body | section 90(1) and (2) | |
| the HEFCW | section 62(1) | |
| higher education | section 90(1) | |
| higher education corporation | section 90(1) | |
| institution in Wales (in relation to the HEFCW) | section 62(7) | |
| institutions within or outside the further education sector | section 91(3) | |
| institutions within or outside the higher education sector | sections 61(3)(a) and 91(5) | |
| institutions within the PCFC funding sector | section 90(4) | |
| interest in land | section 90(1) | |
| land | section 90(1) | |
| liability | section 90(1) | |
| local authority | section 90(1) | |
| modification | section 61(1) | |
| operative date | sections 17 and 33(4) | |
| regulations | section 61(1) | |
| relevant sixth form college | section 90(1) | |

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| sixth form college | section 91(3A) | |
| sixth form college corporation | section 90(1) | |
| transfer of rights or liabilities | section 61(2) | |
| university | section 90(3) | |
| <p>SCHEDULE 1 The Further and Higher Education Funding Councils Sections 1, 9, 62, 70</p> <p><i>1—Supplementary powers</i></p> <p>(1) Subject to sub-paragraph (2) below, the council may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular—</p> <p>(a) acquiring and disposing of land and other property,</p> <p>(b) entering into contracts,</p> <p>(c) investing sums not immediately required for the purpose of the discharge of their functions, and</p> <p>(d) accepting gifts of money, land or other property.</p> <p>(2) The council shall not borrow money.</p> <p><i>2—Chief officer</i></p> <p>(1) One of the members of the council shall be the chief officer.</p> <p>(2) The first chief officer shall be appointed as such by the Secretary of State and shall hold and vacate office in accordance with the terms of his appointment.</p> <p>(3) Each subsequent chief officer shall be appointed by the council with the approval of the Secretary of State on such terms and conditions (including terms with respect to tenure and vacation of office) as the council may with the approval of the Secretary of State determine.</p> <p>(4) On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the council and the terms and conditions of his appointment, the Secretary of State shall—</p> <p>(a) if that person is not already a member of the council, appoint him as a member for the same term as the term of his appointment as chief officer, or</p> <p>(b) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer ends, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer.</p> <p><i>3—Tenure of members of councils</i></p> <p>(1) A person shall hold and vacate office as a member or as</p> | | <p><i>Schedule 4, paragraph 1(7)</i></p> |

~~chairman or chief officer of the council in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.~~

~~(2) A person may at any time by notice in writing to the Secretary of State resign his office as a member or as chairman of the council.~~

~~4~~

~~If the Secretary of State is satisfied that a member of the council—~~

~~(a) has been absent from meetings of the council for a period longer than six consecutive months without the permission of the council, or~~

~~(b) is unable or unfit to discharge the functions of a member,~~

~~the Secretary of State may by notice in writing to that member remove him from office and thereupon the office shall become vacant.~~

~~5—Salaries, allowances and pensions~~

~~(1) The council—~~

~~(a) shall pay to their members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine, and~~

~~(b) shall, as regards any member in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.~~

~~(2) If a person ceases to be a member of the council and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the council to make to that person a payment of such amount as the Secretary of State may determine.~~

~~(3) The council shall pay to the members of any of their committees who are not members of the council such travelling, subsistence and other allowances as the Secretary of State may determine.~~

~~(4) A determination or direction of the Secretary of State under this paragraph requires the approval of the Treasury.~~

~~6—House of Commons disqualification~~

~~[repealed]~~

~~7—Staff~~

~~(1) The council may appoint such employees as they think fit.~~

~~(2) The council shall pay to their employees such remuneration and~~

~~allowances as the council may determine.~~

- ~~(3) The employees shall be appointed on such other terms and conditions as the council may determine.~~
- ~~(4) A determination under sub-paragraph (2) or (3) above requires the approval of the Secretary of State given with the consent of the Treasury.~~
- ~~(5) Employment with the council shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply,~~
- ~~(6) The council shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to sub-paragraph (5) above in the sums payable out of money provided by Parliament under that Act.~~
- ~~(7) Where an employee of the council is, by reference to that employment, a participant in a scheme under section 1 of that Act and is also a member of the council, the Treasury may determine that his service as such a member shall be treated for the purposes of the scheme as service as an employee of the council (whether or not any benefits are payable to or in respect of him by virtue of paragraph 5 above).~~

~~8~~ *Committees*

- ~~(1) The council may establish a committee for any purpose.~~
- ~~(2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the council.~~
- ~~(3) Such a committee may include persons who are not members of the council.~~
- ~~(4) The council shall keep under review the structure of committees established under this paragraph and the scope of each committee's activities.~~

~~[repealed]~~

~~9~~

~~[repealed]~~

~~10~~ *Delegation of Functions*

~~The council may authorise the chairman, the chief officer or any committee established under paragraph 8 above to exercise such of their functions as they may determine.~~

~~11~~ *Proceedings*

~~Without prejudice to any other rights the Secretary of State may~~

~~require to be accorded to him as a condition of any grants made to the council under this Act—~~

- ~~(a) a representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the council or of any committee of the council, and~~
- ~~(b) the council shall provide the Secretary of State with such copies of any documents distributed to members of the council or of any such committee as he may require.~~

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~~The validity of any proceedings of the council or of any committee of the council shall not be affected by a vacancy among the members or by any defect in the appointment of a member.~~

~~13~~

~~Subject to the preceding provisions of this Schedule, the council may regulate their own procedure and that of any of their committees.~~

~~14—Application of seal and proof of instruments~~

~~The application of the seal of the council shall be authenticated by the signature—~~

- ~~(a) of the chairman or of some other person authorised either generally or specially by the council to act for that purpose, and~~
- ~~(b) of one other member.~~

~~15~~

~~Every document purporting to be an instrument made or issued by or on behalf of the council and to be duly executed under the seal of the council, or to be signed or executed by a person authorised by the council to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.~~

~~16—Accounts~~

~~(1) It shall be the duty of the council—~~

- ~~(a) to keep proper accounts and proper records in relation to the accounts,~~
- ~~(b) to prepare in respect of each financial year of the council a statement of accounts, and~~
- ~~(c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.~~

~~(2) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the~~

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| <p>Treasury as to—</p> <p>(a) the information to be contained in it,</p> <p>(b) the manner in which the information contained in it is to be presented, or</p> <p>(c) the methods and principles according to which the statement is to be prepared,</p> <p>and shall contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament.</p> <p>(3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.</p> <p>(4) In this paragraph “financial year” means the period beginning with the date on which the council is established and ending with the second 31st March following that date, and each successive period of twelve months.</p> <p>17 <i>Status of council</i></p> <p>The council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the council shall not be regarded as property of, or property held on behalf of, the Crown.</p> | |
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| Education Act 1996 | |
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| <p>578 Meaning of “the Education Acts”</p> <p>(1) In this Act “the Education Acts” means this Act together with the following Acts—</p> <ul style="list-style-type: none"> the Education Act 1973; the Education Act 1980; the Education (Fees and Awards) Act 1983; the Further Education Act 1985 (except sections 4 and 5); the Education Act 1986; the Education (No 2) Act 1986; the Education Reform Act 1988; the Further and Higher Education Act 1992; the Education Act 1994; the Education Act 1997; the Education (Schools) Act 1997 the Teaching and Higher Education Act 1998 the School Standards and Framework Act 1998 the Education Act 2002 the Higher Education Act 2004 the Education Act 2005 the Education and Inspections Act 2006 the Education and Skills Act 2008 the Learner Travel (Wales) Measure 2008 the Apprenticeships, Skills, Children and Learning Act 2009 the Healthy Eating in Schools (Wales) Measure 2009 the Children, Schools and Families Act 2010 the Academies Act 2010 the Education Act 2011 the Education (Wales) Measure 2011 the School Standards and Organisation (Wales) Act 2013 the Children and Families Act 2014, ss 19–83 (Part 3), 100; the Education (Wales) Act 2014 <u>the Tertiary Education and Research (Wales) Act 2021.</u> | <p><i>Section</i></p> <p><i>135(2)</i></p> |
| <p>530 Compulsory purchase of land</p> <p>(1) The Secretary of State may authorise a local authority to purchase compulsorily any land (whether within or outside their area) which—</p> <ul style="list-style-type: none"> (a) is required for the purposes of any school or institution which is, or is to be, maintained by them or which they have power to assist, or (b) is otherwise required for the purposes of their functions under this Act, or (c) is required for the purposes of an Academy (whether established or to be established). | <p><i>Schedule 4,</i></p> <p><i>paragraph</i></p> <p><i>2(2)</i></p> |

| <p>(2) The Secretary of State shall not authorise the compulsory purchase of any land required for the purposes of a foundation, voluntary or foundation special school unless he is satisfied that the arrangements made—</p> <p>(a) as to the vesting of the land to be purchased, and</p> <p>(b) as to the appropriation of that land for the purposes of the school,</p> <p>are such as to secure that the expenditure ultimately borne by the local authority will not include any expenditure which, if the land had been purchased by the governing body of the school, would have fallen to be borne by the governing body.</p> <p>(3) Subsection (2) shall not, however, apply where the local authority propose that expenditure to be incurred in connection with the purchase should ultimately be borne by them—</p> <p>(a) in the case of an authority in England, under any provision of regulations under section 24 of the Education and Inspections Act 2006 (implementation of proposals under section 19 of that Act) which by virtue of subsection (7) of section 24 of that Act authorises a local authority to provide assistance to the governing body of a voluntary aided school in connection with the implementation of the obligations of the governing body under the regulations, or</p> <p>(b) in the case of an authority in Wales, under paragraph 18 of Schedule 6 to the School Standards and Framework Act 1998 paragraph 9 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013 (assistance in respect of maintenance and other obligations relating to voluntary aided schools) (including that paragraph as applied by section 76(3) of that Act).</p> <p>(4) In this section “land” includes buildings and other structures and land covered with water.</p> | | | | | | | | | |
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| <p>Schedule 36A</p> <p>Education functions</p> <p>1 Functions conferred on a local authority under the Education Acts (as defined in section 578).</p> <p>2 Functions conferred on a local authority under the enactments specified in the first column of the table below (being the functions which are described in general terms in the second column of that table).</p> <table border="1" data-bbox="231 1780 1141 2009"> <thead> <tr> <th colspan="2">Table</th> </tr> <tr> <th><i>Enactment</i></th> <th><i>Nature of functions</i></th> </tr> </thead> <tbody> <tr> <td colspan="2">Children and Young Persons Act 1933 (c 12)</td> </tr> <tr> <td>Section 18</td> <td>Making of byelaws relating to the employment of children.</td> </tr> </tbody> </table> | Table | | <i>Enactment</i> | <i>Nature of functions</i> | Children and Young Persons Act 1933 (c 12) | | Section 18 | Making of byelaws relating to the employment of children. | |
| Table | | | | | | | | | |
| <i>Enactment</i> | <i>Nature of functions</i> | | | | | | | | |
| Children and Young Persons Act 1933 (c 12) | | | | | | | | | |
| Section 18 | Making of byelaws relating to the employment of children. | | | | | | | | |

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| Superannuation Act 1972 (c 11) | | |
| Section 9(5A) | Payment of injury benefit to or in respect of teachers. | |
| Employment and Training Act 1973 (c 50) | | |
| Sections 10 and 10A | Powers and duties relating to careers services | |
| Section 12 | Duty to provide information to the Secretary of State. | |
| Public Passenger Vehicles Act 1981 (c 14) | | |
| Section 46 | Power to use a school bus to carry fare-paying passengers. | |
| Representation of the People Act 1983 (c 2) | | |
| Paragraph 2 of Schedule 5 | Duty to prepare and revise lists of rooms in school premises which candidates may use. | |
| Disabled Persons (Services, Consultation and Representation) Act 1986 (c 33) | | |
| Section 5(1) to (4), (6) and (8) | Duty to require the appropriate officer to give an opinion as to whether a child with an EHC plan or a statement is disabled. | |
| Children Act 1989 (c 41) | | |
| Section 36 and Part 3 of Schedule 3 (except paragraph 19(2)) | Education supervision orders. | |
| Learning and Skills Act 2000 (c 21) | | |
| Section 33J | Duty to assist the Welsh Ministers <u>the Commission for Tertiary Education and Research</u> in planning the local curriculum. | <i>Schedule 4, paragraph 2(3)(a)</i> |
| Section 33K | Duty relating to delivery of local curriculum and joint working (in Wales). | |
| Section 33L | Duty to have regard to guidance and comply with directions relating to section 33K. | <i>Schedule 4, paragraph 2(3)(b)</i> |
| Section 83 | Duty (of local authority in Wales) to provide information to Chief Inspector. | <i>Schedule 4, paragraph 2(3)(c)</i> |
| Section 84 | Duties relating to preparation of an action plan following an area inspection in Wales. | <i>Schedule 4, paragraph 2(3)(c)</i> |

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| Sections 96, 101 | Duties as an “authorised body” relating to qualifications (in England). | <i>Schedule 4, paragraph 2(3)(d)</i> |
| Sections 123 to 125 and 128 | Support services for 11 to 25 years olds: Wales. | |
| Section 140(5) | Duty to send copy of a statement of special educational needs to the Welsh Ministers if requested. | |
| Schedules 7 and 7A | Duty to implement approved proposals relating to sixth forms. | |
| Local Government Act 2000 (c 22) | | |
| Paragraphs 7, 8 and 9 of Schedule 1 | Duty to include certain persons on overview and scrutiny committee if it relates to education functions. | |
| Nationality, Immigration and Asylum Act 2002 (c 41) | | |
| Section 37 | Powers and duties relating to education of a child in an accommodation centre. | |
| Anti-social Behaviour Act 2003 (c 38) | | |
| Sections 19, 20, 21 and 22A | Powers and duties relating to parenting orders and parenting contracts. | |
| National Health Service Act 2006 (c 41) | | |
| Paragraph 5 of Schedule 1 | Duty to make available to the Secretary of State appropriate accommodation for enabling the Secretary of State to arrange for medical inspections in schools. | |
| Equality Act 2010 (c 15) | | |
| Section 29(7) in its application to a local authority's functions under the Education Acts | Duty to make reasonable adjustments for disabled persons. | |
| Section 85(6) | Duty (as responsible body) to make reasonable adjustments for disabled pupils. | |
| Section 92(6) | Duty (as responsible body) to make reasonable adjustments for disabled persons in further and higher education. | |
| Section 93(6) | Duty (as responsible body) to make reasonable adjustments for disabled persons in the | |

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| | provision of recreational or training facilities. | |
| paragraph 1 of Schedule 10 | Duty to prepare and implement accessibility strategy. | |
| paragraph 3 of Schedule 10 | Duty (as responsible body) to prepare and implement an accessibility plan. | |
| <u>Tertiary Education and Research (Wales) Act 2020</u> | | |
| <u>Section 56</u> | <u>Duty (of local authority in Wales) to provide information to the Chief Inspector.</u> | |

| Teaching and Higher Education Act 1998 | |
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| <p>27 Expenditure eligible for funding</p> <p>Section 65 of the Further and Higher Education Act 1992 (administration of funds by Higher Education Funding Councils) shall have effect, and be deemed always to have had effect, with the insertion of the following subsections after subsection (3)—</p> <p>(3A) In the application of subsection (3) above to any grants, loans or other payments by a Council, the reference to expenditure incurred or to be incurred by the governing body of a higher education institution as mentioned in paragraph (a) of that subsection includes a reference to expenditure incurred or to be incurred by any connected institution to which the governing body propose, with the consent of the Council, to pay the whole or part of any such grants, loans or other payments.</p> <p>(3B) In subsection (3A) “connected institution”, in relation to a higher education institution, means any college, school, hall or other institution which the Council in question are satisfied has a sufficient connection with that institution for the purposes of that subsection.”</p> | <p><i>Schedule 4, paragraph 3</i></p> |

| School Standards and Framework Act 1998 | |
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| <p>49 Maintained schools to have delegated budgets</p> <p>(1) Every maintained school shall have a delegated budget.</p> <p>(2) A new school shall have a delegated budget from a date determined in accordance with regulations.</p> <p>(2A) Regulations under subsection (2) may—</p> <p>(a) enable the date that would otherwise apply by virtue of the regulations to be varied in accordance with the regulations, on the application of the local authority, by the authority's schools forum or by the Secretary of State, and</p> <p>(b) make provision about the respective powers of the schools forum and the Secretary of State in relation to any application to vary that date.</p> <p>(4) Subject to—</p> <p>(a) section 50 (right of governing body to spend budget share where school has a delegated budget),</p> <p>(b) paragraph 4 of Schedule 15 (power of governing body to spend amounts out of budget share where delegation of budget suspended),</p> <p>(c) section 489(2) of the Education Act 1996 (education standards grants), and</p> <p>(d) any provisions of the scheme,</p> <p>a local authority may not delegate to the governing body of any maintained school the power to spend any part of the authority's non-schools education budget or schools budget.</p> <p>(5) Any amount made available by a local authority to the governing body of a maintained school (whether under section 50 or otherwise)—</p> <p>(a) shall remain the property of the authority until spent by the governing body or the head teacher; and</p> <p>(b) when spent by the governing body or the head teacher, shall be taken to be spent by them or him as the authority's agent.</p> <p>(6) Subsection (5)(b) does not apply to any such amount where it is spent—</p> <p>(a) by way of repayment of the principal of, or interest on, a loan, or</p> <p>(b) in the case of a voluntary aided school to meet expenses payable by the governing body under paragraph 3(1) or (2) of Schedule 3 expenditure payable by the governing body under paragraph 3(1) of Schedule 3, or paragraph 8 of Schedule 8 to the Education Act 2002 section 75(2)(b) of, or paragraph 4 of Schedule 3 to, the School Standards and Organisation (Wales) Act 2013.</p> | <p><i>Schedule 4, paragraph 4(2)</i></p> |

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| <p>(7) In this Part—</p> <p>(a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school's budget share; and</p> <p>(b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.</p> | |
| <p>Disposal of land by governing body of foundation, voluntary or foundation special school</p> <p>1</p> <p>(1) Subject to sub-paragraph (1A), this paragraph applies to any disposal by the governing body of a foundation or voluntary school in Wales of—</p> <p>(a) any land acquired under a transfer under section 201(1)(a) of the Education Act 1996, or acquired under paragraph 2 of Schedule 3 or paragraph 16 of Schedule 6 (including that provision as applied by any enactment) or paragraph 5(4)(c) or 5(4B)(d) of this Schedule or under any regulations made under paragraph 5 of Schedule 8;</p> <p>(aa) any land acquired under paragraph 7 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section 76(1) of that Act or under Part 3 of Schedule 4 to that Act;</p> <p>(b) any land acquired from a foundation body;</p> <p>(c) [repealed]</p> <p>(d) any land acquired, or enhanced in value, wholly or partly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);</p> <p>(e) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of the school and treated by the local authority as expenditure of a capital nature; or</p> <p>(f) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in any of paragraphs (a) to (e).</p> <p>(1A) This paragraph does not apply to any disposal which—</p> <p>(a) is made by the governing body of a foundation or foundation special school after the commencement of this sub-paragraph, and</p> <p>(b) is a disposal to the trustees of the school made on the school becoming a school with a foundation established otherwise than under this Act.</p> <p>(2) The governing body shall not make any disposal to which this paragraph applies without the written consent of the Assembly.</p> <p>(3) Where the governing body apply to the Assembly for its consent</p> | <p><i>Schedule 4, paragraph 4(3)(a)</i></p> |

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| <p>to any such disposal and the Assembly decides to give that consent, the Assembly may do one or more of the following, namely—</p> <ul style="list-style-type: none"> (a) require the land or any part of the land to be transferred to such local authority as the Assembly may specify, subject to the payment by that authority of such sum by way of consideration (if any) as the Assembly determines to be appropriate; and (b) give the governing body, when the land or any part of the land is disposed of— <ul style="list-style-type: none"> (i) a direction to pay, either to the Assembly or to such local authority as the Assembly may specify, the whole or any part of the proceeds of disposal; and (ii) a direction as to the use to which the whole or any part of the proceeds of disposal should be put. <p>(4) More than one direction may be given under sub-paragraph (3)(b)(i) in relation to a disposal of land within sub-paragraph (1) where it is just to do so, in particular where the disposal involves the creation of a lease.</p> <p>(5) Sub-paragraph (1)(e) shall not apply in the case of any expenditure incurred on or after the appointed day unless the authority—</p> <ul style="list-style-type: none"> (a) prepared a statement in writing— <ul style="list-style-type: none"> (i) containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and (ii) indicating that the expenditure was being treated by them as expenditure of a capital nature; and (b) sent a copy of the statement to the governing body either before, or no later than 12 months after, the expenditure was incurred. <p>Disposal of land by foundation body</p> <p>2</p> <p>(1) This paragraph applies to any disposal by a foundation body in Wales of—</p> <ul style="list-style-type: none"> (a) any land acquired under paragraph 2, 4 or 9 of Schedule 3, paragraph 16 or 20 of Schedule 6 (including that provision as applied by any enactment) or paragraph 5 or 6 of Schedule 21 or under any regulations made under paragraph 5 of Schedule 8; (aa) any land acquired under paragraph 7 or 11 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under either of those paragraphs as applied by section 76(1) or (3) of that Act or under Part 3 of Schedule 4 to that Act; (b) any land acquired from the governing body of a maintained school; | <p><i>Schedule 4, paragraph 4(3)(b)</i></p> |
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| <p>(c) any land acquired from another foundation body;</p> <p>(d) any land acquired, or enhanced in value, wholly or partly by means of any grant provided by the Assembly on or after the appointed day;</p> <p>(e) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of any of the schools comprising the group for which the body acts and treated by the local authority as expenditure of a capital nature; or</p> <p>(f) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in any of paragraphs (a) to (e).</p> <p>(1A) A “foundation body in Wales” means a foundation body where each of the schools comprising the group of schools for which the foundation body acts is maintained by a local authority in Wales.</p> <p>(2) The foundation body shall not make any such disposal without the written consent of the Assembly.</p> <p>(3) Where the foundation body apply to the Assembly for its consent to any such disposal and the Assembly decides to give that consent, the Assembly may do either or both of the following, namely—</p> <p>(a) make any such requirement as is mentioned in paragraph 1(3)(a); and</p> <p>(b) give any such direction to the foundation body as the Assembly could give to a governing body under paragraph 1(3)(b).</p> <p>(4) More than one direction may be given under sub-paragraph (3)(b) to make a payment in relation to the proceeds of disposal of land within sub-paragraph (1) where it is just to do so, in particular where the disposal involves the creation of a lease.</p> <p>(5) Sub-paragraph (1)(e) shall not apply in the case of any expenditure incurred on or after the appointed day unless the authority—</p> <p>(a) prepared a statement in writing—</p> <p>(i) containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and</p> <p>(ii) indicating that the expenditure was being treated by them as expenditure of a capital nature; and</p> <p>(b) sent a copy of the statement to the foundation body either before, or no later than 12 months after, the expenditure was incurred.</p> <p>Disposal of land by trustees of foundation school</p> <p>2A</p> | |
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| <p>(1) This paragraph applies to any disposal by the trustees of a foundation school in Wales of—</p> <ul style="list-style-type: none"> (a) any land acquired under paragraph 2 of Schedule 3, under paragraph 16 of Schedule 6 (including that provision as applied by any enactment), under paragraph 5(4B)(d) of this Schedule or under any regulations made under paragraph 5 of Schedule 8, (aa) any land acquired under paragraph 7 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section 76(1) of that Act or under Part 3 of Schedule 4 to that Act; (b) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired as mentioned in paragraph (a) or (aa), or (c) any land falling within sub-paragraph (2) which was acquired by the trustees from the governing body of the school or of another foundation school. <p>(2) Land falls within this sub-paragraph if—</p> <ul style="list-style-type: none"> (a) it had been acquired by the governing body— <ul style="list-style-type: none"> (i) under a transfer under section 201(1)(a) of the Education Act 1996, or (ii) under any of the provisions mentioned in sub-paragraph (1)(a) or (aa), or (b) it had been acquired by the governing body, or enhanced in value, wholly or partly with the proceeds of disposal of land acquired as mentioned in paragraph (a) or (aa). <p>(3) The trustees shall not make any disposal to which this paragraph applies without the written consent of the Assembly.</p> <p>(4) Where the trustees apply to the Assembly for its consent to any such disposal and the Assembly decides to give that consent, the Assembly may do one or more of the following, namely—</p> <ul style="list-style-type: none"> (a) require the land or any part of the land to be transferred to such local authority as the Assembly may specify, subject to the payment by that authority of such sum by way of consideration (if any) as the Assembly determines to be appropriate; and (b) give the trustees, when the land or any part of the land is disposed of— <ul style="list-style-type: none"> (i) a direction to pay to such local authority as the Assembly may specify the whole or any part of the proceeds of the disposal; and (ii) a direction as to the use to which the whole or any part of the proceeds of disposal should be put. <p>(5) More than one direction may be given under sub-paragraph (4)(b)(i) in relation to a disposal of land within sub-paragraph (1) where it is just to do so, in particular where the disposal involves the creation of a lease.</p> | <p><i>Schedule 4, paragraph 4(3)(c)</i></p> |
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| <p>(6) Where the trustees of a foundation school in Wales wish, in the case of any land held by them for the purposes of the school, to use the land for purposes not connected with the provision of education in maintained schools—</p> <p>(a) the preceding provisions of this paragraph shall apply as if any such change of use of the land were a disposal of the land; and</p> <p>(b) the value of the land as at the date of any direction under sub-paragraph (4)(b)(i) or (ii) shall be treated as proceeds of the disposal of the land.</p> <p>Disposal of land by trustees of foundation or voluntary school</p> <p>3</p> <p>(1) Subject to sub-paragraph (2A), this paragraph applies to any disposal by the trustees of a foundation or voluntary school in Wales of—</p> <p>(a) any land acquired under section 60, 61 or 70 of the Education Act 1996, under paragraph 2, 4 or 9 of Schedule 3 or paragraph 16 or 20 of Schedule 6 (including that provision as applied by any enactment), under paragraph 5(4B)(d) of this Schedule or under any regulations made under paragraph 5 of Schedule 8;</p> <p>(aa) any land acquired under paragraph 7 or 11 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under those paragraphs as applied by section 76(1) or (3) of that Act or under Part 3 of Schedule 4 to that Act;</p> <p>(b) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred on or after the appointed day for the purposes of the school and treated by the local authority as expenditure of a capital nature;</p> <p>(c) any land acquired by the governing body of the school—</p> <p>(i) under a transfer under section 201(1)(a) of the Education Act 1996, or</p> <p>(ii) wholly or partly with the proceeds of disposal of any land so acquired, and transferred by the governing body to be held on trust by the trustees;</p> <p>(d) [repealed]</p> <p>(e) any land acquired, or enhanced in value, wholly or partly by means of—</p> <p>(i) any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996), or</p> <p>(ii) any grant paid under section 216(2) of that Act;</p> <p>(f) any land acquired wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in paragraph (e); or</p> <p>(g) any land acquired, or enhanced in value, wholly or partly by means of any grant made in pursuance of a special</p> | <p><i>Schedule 4, paragraph 4(3)(d)</i></p> |
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| <p>agreement (as defined by section 32(5) of the Education Act 1996).</p> <p>(2) If a voluntary aided school in Wales was, immediately before the appointed day, a controlled school within the meaning of the Education Act 1996, this paragraph also applies to any disposal by the trustees of the school of any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred under section 63 or 64 of that Act.</p> <p>(2A) Nothing in sub-paragraph (1) applies in relation to any disposal to the extent that it is a disposal to which paragraph 2A applies.</p> <p>(3) Where paragraph (a), (aa), (b) or (c) of sub-paragraph (1) or sub-paragraph (2) applies, the trustees shall notify the local authority that that provision applies to them and they or their successors shall pay to the authority so much of the proceeds of disposal as may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the Assembly.</p> <p>(4) In making any determination under sub-paragraph (3), the trustees and the authority, or the Assembly, as the case may be, shall have regard in particular to—</p> <ul style="list-style-type: none">(a) the value, as at the date of the determination, of the land acquired from the authority;(b) any enhancement in value of the land attributable to expenditure by the local authority, the trustees or the governing body of the school on school buildings on the land; and(c) any payments already made by the trustees to the authority—<ul style="list-style-type: none">(i) in respect of the current school site; or(ii) under section 60(4) of the Education Act 1996 or under paragraph 2(6) of Schedule 3 or paragraph 16(5) of Schedule 6 to this Act or under paragraph 7(6) of Schedule 3 to the School Standards and Organisation (Wales) Act 2013. <p>(5) More than one determination may be made under sub-paragraph (3) in relation to a disposal of land within sub-paragraph (1) or (2) where it is just to do so, in particular where the disposal involves the creation of a lease.</p> <p>(6) Sub-paragraph (1)(b) shall not apply in the case of any expenditure unless the authority—</p> <ul style="list-style-type: none">(a) prepared a statement in writing—<ul style="list-style-type: none">(i) containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and | |
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| <p>(ii) indicating that the expenditure was being treated by them as expenditure of a capital nature; and</p> <p>(b) sent a copy of the statement to the trustees either before, or no later than 12 months after, the expenditure was incurred.</p> <p>(7) Sub-paragraph (3) does not apply in the case of land acquired under section 60 or 61 of the Education Act 1996 or under paragraph 2 or 4 of Schedule 3 to this Act by the trustees of an institution which is, or has at any time been, within the further education sector (as defined by section 4(3) of the Education Act 1996).</p> <p>(8) Where paragraph (e) or (f) of sub-paragraph (1) applies, the trustees shall notify the local authority that that paragraph applies to them and they and their successors shall (subject to sub-paragraph (9)) undertake to the authority to use the proceeds of disposal—</p> <p>(a) for the purposes of the school, or</p> <p>(b) for the purposes—</p> <p>(i) of any other existing foundation or voluntary school, or</p> <p>(ii) of any other proposed voluntary school, whether or not proposals have yet been published under any enactment in respect of that proposed school.</p> <p>(9) Where it appears to the Assembly that the trustees have not given a suitable undertaking under sub-paragraph (8), the Assembly may direct the trustees to pay to the authority either the whole or any part of the proceeds of disposal as the Assembly determines to be just.</p> <p>(10) More than one direction may be given under sub-paragraph (9) in relation to a disposal of land with-in sub-paragraph (1) where it is just to do so, in particular where the disposal involves the creation of a lease.</p> <p>(11) Where paragraph (g) of sub-paragraph (1) applies, the governing body of the school shall repay the grant referred to in that paragraph to the local authority by whom the school is maintained, unless the governing body and the authority otherwise agree.</p> <p>(12) Where the trustees of a foundation or voluntary school in Wales wish, in the case of any land held by them for the purposes of the school, to use the land for purposes not connected with the provision of education in maintained schools—</p> <p>(a) the preceding provisions of this paragraph shall apply as if any such change of use of the land were a disposal of the land; and</p> <p>(b) the value of the land as at the date of any determination under sub-paragraph (3) or of any direction under sub-</p> | |
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| <p>paragraph (9) shall be treated as proceeds of the disposal of the land.</p> <p>Land required by local authority for new school</p> <p>4</p> <p>(1) This paragraph applies where, on an application made by a local authority in Wales, the Assembly is satisfied—</p> <p>(a) that any relevant land—</p> <p>(i) held, or held on trust, for the purposes of a foundation or voluntary school by the governing body or the trustees of the school, or</p> <p>(ii) held by a foundation body for the purposes of the group of schools for which it acts, is not required for the purposes of the school or (as the case may be) those schools; and</p> <p>(b) that that land is required by the authority as the site for a new maintained school or as the site to which a maintained school is to be transferred.</p> <p>(2) In such a case the Assembly may by order require the relevant land to be transferred to the authority by the body or trustees holding the land, subject to the payment by the authority of such sum by way of consideration (if any) as the Assembly determines to be appropriate.</p> <p>(3) In this paragraph “relevant land” means land which was acquired by the governing body of the school, or (as the case may be) one of the schools, mentioned in sub-paragraph (1)(a) under a transfer under section 201(1)(a) of the Education Act 1996.</p> | |
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| Learning and Skills Act 2000 | |
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| <p>31 Education and training for persons aged 16 to 19</p> <p>(1) The Welsh Ministers must secure the provision of proper facilities for—</p> <ul style="list-style-type: none"> (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19; (b) training suitable to the requirements of such persons; (c) organised leisure time occupation connected with such education, and (d) organised leisure time occupation connected with such training. <p>(2) Facilities are proper if they are—</p> <ul style="list-style-type: none"> (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. <p>(3) In performing the duty imposed on them by subsection (1) the Welsh Ministers must—</p> <ul style="list-style-type: none"> (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped; (b) take account of the different abilities and aptitudes of different persons; (c) take account of the education and training required in different sectors of employment for employees and potential employees; (cc) take account of 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; (cd) take account of 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; (d) take account of facilities whose provision the Welsh Ministers think might reasonably be secured by other persons; (e) [repealed]. <p>(4) [repealed]</p> <p>(5) For the purposes of this section—</p> <ul style="list-style-type: none"> (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; | <p><i>Schedule 4, paragraph 5(2)</i></p> |

~~(d) — higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.~~

32 Education and training for persons over 19

- ~~(1) — The Welsh Ministers must secure the provision of reasonable facilities for —~~
- ~~(a) — education (other than higher education) suitable to the requirements of persons who have attained the age of 19,~~
 - ~~(b) — training suitable to the requirements of such persons,~~
 - ~~(c) — organised leisure-time occupation connected with such education, and~~
 - ~~(d) — organised leisure-time occupation connected with such training.~~
- ~~(2) — [repealed]~~
- ~~(3) — In performing the duty imposed on them by subsection (1) the Welsh Ministers must —~~
- ~~(a) — take account of the places where facilities are provided, the character of facilities and the way they are equipped;~~
 - ~~(b) — take account of the different abilities and aptitudes of different persons;~~
 - ~~(c) — take account of the education and training required in different sectors of employment for employees and potential employees;~~
 - ~~(cc) — take account of 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;~~
 - ~~(cd) — take account of 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;~~
 - ~~(d) — take account of facilities whose provision the Welsh Ministers think might reasonably be secured by other persons;~~
 - ~~(e) — [repealed].~~
- ~~(4) — [repealed]~~
- ~~(5) — For the purposes of this section —~~
- ~~(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;~~
 - ~~(d) — higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.~~
- ~~(6) — References in this Part to post-16 education are to —~~
- ~~(a) — education falling within section 31(1)(a) or subsection (1)(a) above, and~~

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| <p>(b) organised leisure-time occupation connected with such education.</p> <p>(7) References in this Part to post-16 training are to—</p> <p>(a) training falling within section 31(1)(b) or subsection (1)(b) above, and</p> <p>(b) organised leisure-time occupation connected with such training.</p> <p>33 Encouragement of education and training</p> <p>The Welsh Ministers must—</p> <p>(a) encourage individuals to undergo post-16 education and training;</p> <p>(b) encourage employers to participate in the provision of post-16 education and training;</p> <p>(c) encourage employers to contribute to the costs of post-16 education and training.</p> | |
| <p>33A Formation of local curricula for students aged 16 to 18</p> <p>(1) The Welsh Ministers <u>The Commission</u> must form for the area of each local authority one or more local curricula for students who are above compulsory school age but have not attained the age of nineteen.</p> <p>(2) Each local curriculum must consist of courses of study each of which—</p> <p>(a) falls within a category in subsection (3) (the “learning domains”); and</p> <p>(b) is from time to time selected by the Welsh Ministers <u>the Commission</u> to form part of that local curriculum.</p> <p>(3) The learning domains are—</p> <p>(a) mathematics, science and technology;</p> <p>(b) business, administration and law;</p> <p>(c) services for people;</p> <p>(d) arts, media, culture and languages;</p> <p>(e) humanities, social sciences and preparation for life and work.</p> <p>(4) For the purposes of this section, a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides.</p> | <p><i>Schedule 4, paragraph 5(3)(a)</i></p> <p><i>Schedule 4, paragraph 5(3)(b)</i></p> |
| <p>33B Local curricula: Welsh language</p> <p>The Welsh Ministers <u>The Commission</u> must exercise their <u>its</u> functions in relation to local curricula so as to promote access to and availability of courses of study which are taught through the medium of the Welsh language.</p> | <p><i>Schedule 4, paragraph 5(4)</i></p> |
| <p>33C Areas with more than one local curriculum</p> <p>(1) This section applies where the Welsh Ministers form <u>the Commission forms</u> more than one local curriculum for the area</p> | <p><i>Schedule 4, paragraph 5(5)(a)</i></p> |

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| <p>of a local authority under section 33A.</p> <p>(2) In relation to each local curriculum, the Welsh Ministers <u>the Commission</u> must designate the maintained schools or institutions whose relevant students are to be entitled to elect under section 33E to follow courses of study included within the curriculum.</p> | <p><i>Schedule 4, paragraph 5(5)(b)</i></p> |
| <p>33D Determination of a pupil's "relevant school or institution"</p> <p>(1) Where, during the fourth key stage, a registered pupil of a maintained school requests that the school's head teacher determines the pupil's relevant school or institution, the head teacher must comply with that request. But this is subject to regulations made under subsection (3).</p> <p>(2) A pupil's relevant school or institution is the maintained school or institution whose governing body is, in the opinion of the head teacher, likely to be responsible for providing (or making arrangements for the provision of) the majority of the pupil's education once he or she has ceased to be of compulsory school age.</p> <p>(3) Regulations may make provision as to the making of requests and determinations under this section, including in particular provision as to the date or time by which a request or determination is to be made.</p> <p><u>(3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3).</u></p> <p>(4) This section does not require any person to admit a pupil to a particular school or institution.</p> | <p><i>Schedule 4, paragraph 5(6)</i></p> |
| <p>33E Pupils' choices of local curriculum courses</p> <p>(1) A registered pupil of a maintained school has the right to elect to follow, during the period de-scribed in subsection (2) ("the entitlement period"), a course or courses of study included within the relevant local curriculum for that pupil. But this is subject to regulations made under subsection (3).</p> <p>(2) The entitlement period—</p> <p>(a) begins on the first day of the academic year subsequent to the pupil having ceased to be of compulsory school age; and</p> <p>(b) ends on the day on which he or she attains the age of nineteen.</p> <p>(3) Regulations may make provision as to the making of elections under this section, including in particular provision—</p> <p>(a) specifying the maximum number of courses of study of a particular type that a pupil has the right to elect to follow;</p> | |

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| <p>(b) identifying points to be allotted to courses of study and preventing a pupil from having the right to elect to follow a combination of courses of study if their aggregate points exceed a specified amount;</p> <p>(c) as to the period during which elections are to be made.</p> <p><u>(3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3).</u></p> <p>(4) For the purposes of this section the “relevant local curriculum”, in relation to a pupil, means—</p> <p>(a) where it has been determined under section 33D that a pupil’s “relevant school or institution” is a school—</p> <p>(i) where the Welsh Ministers have <u>the Commission has</u> formed under section 33A a single local curriculum for the area of the local authority by which the school is maintained, that local curriculum; or</p> <p>(ii) where the Welsh Ministers have <u>the Commission has</u> formed under section 33A more than one local curriculum for the area of the local authority by which the school is maintained, the local curriculum in respect of which the school is designated under section 33C(2);</p> <p>(b) where it has been determined under section 33D that a pupil’s “relevant school or institution” is an institution—</p> <p>(i) where the Welsh Ministers have <u>the Commission has</u> formed under section 33A a single local curriculum for the local authority area in which the institution is situated, that local curriculum; or</p> <p>(ii) where the Welsh Ministers have <u>the Commission has</u> formed under section 33A more than one local curriculum for the local authority area in which the institution is situated, the local curriculum in respect of which the institution is designated under section 33C(2).</p> | <p><i>Schedule 4, paragraph 5(7)(a)</i></p> <p><i>Schedule 4, paragraph 5(7)(b)</i></p> |
| <p>33G Head teacher's or principal's decision as to entitlement</p> <p>(1) If the head teacher or principal of a student's relevant school or institution is satisfied that any of the grounds in subsection (2) apply, the head teacher or principal may decide that the student is not entitled to follow a course of study which the student has elected to follow under section 33E.</p> <p>(2) The grounds referred to in subsection (1) are that—</p> <p>(a) as a result of the student's level of educational attainment, the course of study is not suitable for him or her;</p> <p>(b) as a result of other elections made by the student under section 33E(1), it is not reasonably practicable for him or her to follow the course of study;</p> | <p><i>Schedule 4, paragraph 5(8)</i></p> |

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| <p>(c) the amount of time likely to be spent travelling to the place at which the course is likely to be delivered would be detrimental to the student's education;</p> <p>(d) disproportionate expenditure would be incurred if the student were to follow the course of study;</p> <p>(e) the student's or another person's health or safety would be placed unacceptably at risk if the student were to follow the course of study.</p> <p>(3) Regulations may make provision connected with the making of decisions under subsection (1), including in particular provision—</p> <p>(a) as to the time or date by which decisions are to be made;</p> <p>(b) as to the procedure to be followed in connection with the making of decisions;</p> <p>(c) for appeals against decisions to be made to the school or institution's governing body or another person specified in the regulations;</p> <p>(d) as to the time or date by which appeals are to be determined;</p> <p>(e) as to the procedure to be followed in connection with the determination of an appeal.</p> <p>(4) A head teacher or principal and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.</p> <p>(5) The Welsh Ministers may by order—</p> <p>(a) amend or omit any paragraph of subsection (2);</p> <p>(b) add additional paragraphs to that subsection;</p> <p>(c) amend or omit such additional paragraphs.</p> <p><u>(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).</u></p> | |
| <p>33I Head teacher's or principal's decision to remove entitlement</p> <p>(1) If the head teacher or principal of a student's relevant school or institution is satisfied that any of the grounds in subsection (2) apply, the head teacher or principal may decide that a student is no longer entitled to follow a course of study that the student was entitled to follow under section 33F.</p> <p>(2) The grounds referred to in subsection (1) are that—</p> <p>(a) the student's or another person's health or safety would be placed unacceptably at risk if the pupil were to continue to follow the course of study;</p> <p>(b) disproportionate expenditure would be incurred if the pupil were to continue to follow the course of study.</p> <p>(3) Regulations may make provision connected with the making of</p> | <p><i>Schedule 4, paragraph 5(9)</i></p> |

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| <p>decisions under subsection (1) including in particular provision—</p> <ul style="list-style-type: none"> (a) as to the procedure to be followed in connection with the making of decisions; (b) for appeals against decisions to be made to the school or institution's governing body or an other person specified in the regulations; (c) as to the effect of a decision pending determination of an appeal; (d) as to the procedure to be followed in connection with the determination of an appeal. <p>(4) A head teacher or principal and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.</p> <p>(5) The Welsh Ministers may by order—</p> <ul style="list-style-type: none"> (a) amend or omit any paragraph of subsection (2); (b) add additional paragraphs to that subsection; (c) amend or omit such additional paragraphs. <p><u>(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).</u></p> | |
| <p>33J Planning the local curriculum</p> <p>(1) The following persons must assist the Welsh Ministers <u>the Commission</u> in planning the local curriculum or curricula for a local authority's area—</p> <ul style="list-style-type: none"> (a) the local authority; (b) the governing body and head teacher of any maintained school maintained by the authority; (c) the governing body and principal of an institution in the authority's area. <p>(2) In subsection (1), “planning the local curriculum or curricula” means the process by which the Welsh Ministers decide <u>the Commission decides</u> under section 33A which courses of study to include in the local curriculum or curricula.</p> <p>(3) The persons mentioned in paragraphs (a) to (c) of subsection (1) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under that sub-section.</p> <p>(4) The persons mentioned in paragraphs (a) and (b) of subsection (1) must comply with any direction given by the Welsh Ministers as to the exercise of their functions under that subsection.</p> | <p><i>Schedule 4, paragraph 5(10)(a)</i></p> <p><i>Schedule 4, paragraph 5(10)(b)</i></p> <p><i>Schedule 4, paragraph 5(10)(c)</i></p> |

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| <p>33K Delivery of local curriculum entitlements: joint-working</p> <p>(1) The objective of this section is to maximise the availability of courses of study included in a local curriculum formed under section 33A.</p> <p>(2) In relation to the local curriculum or curricula for a local authority, the persons mentioned in subsection (4) must take all reasonable steps in order to achieve the objective of this section.</p> <p>(3) The duty under subsection (2) includes, but is not limited to, a duty to seek to enter into cooperation arrangements where, having considered whether it would further the objective of this section to do so, the persons mentioned in subsection (4) have concluded that entering into such arrangements would further that objective.</p> <p>(4) The persons are—</p> <ul style="list-style-type: none"> (a) the local authority; (b) the governing body of a secondary school maintained by the authority; and (c) the governing body of an institution within the further education sector which is situated within the area of the authority. <p>(5) In this section and section 33L “co-operation arrangements” means—</p> <ul style="list-style-type: none"> (a) arrangements under which any person provides, on behalf of the governing body of a maintained school, a course of study included within the relevant local curriculum for the school; (b) arrangements under which any person provides, on behalf of the governing body of an institution, a course of study included within the relevant local curriculum for the institution; (ba) arrangements made in exercise of the powers of collaboration described in section 4 of the Education (Wales) Measure 2011 (c) [repealed] (d) [repealed]. <p>(6) For the purposes of this section, “relevant local curriculum” means—</p> <ul style="list-style-type: none"> (a) in relation to a maintained school— <ul style="list-style-type: none"> (i) where the Welsh Ministers have <u>the Commission has</u> formed a single local curriculum for the area of the local authority by which the school is maintained, that local curriculum; or (ii) where the Welsh Ministers have <u>the Commission has</u> formed more than one local curriculum for the area of the local authority by which the school is | <p><i>Schedule 4, paragraph 5(11)</i></p> |
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| <p>maintained, the local curriculum in respect of which the school is designated under section 33C(2);</p> <p>(b) in relation to an institution—</p> <p>(i) where the Welsh Ministers have <u>the Commission has</u> have formed a single local curriculum for the local authority area in which the institution is situated, that curriculum; or</p> <p>(ii) where the Welsh Ministers have <u>the Commission has</u> formed more than one local curriculum for the local authority area in which the institution is situated, the local curriculum in respect of which the institution is designated under section 33C(2).</p> | |
| <p>33L Joint-working: guidance and directions</p> <p>(1) A local authority, a governing body of a maintained school and the governing body of an institution must have regard to any guidance given from time to time by the Welsh Ministers as to the discharge of their duties under section 33K.</p> <p>(2) Guidance given under subsection (1) may relate to the contents of co-operation arrangements.</p> <p><u>(2A) The Welsh Ministers must consult the Commission before giving guidance under subsection (1).</u></p> <p>(3) A local authority and a governing body of a maintained school must comply with any direction given by the Welsh Ministers as to the entering into of co-operation arrangements.</p> <p>(4) A direction under subsection (3)—</p> <p>(a) may require persons to enter into specified arrangements;</p> <p>(b) may specify the terms upon which arrangements are to be entered into (whether generally or in respect of specified arrangements);</p> <p>(c) in the case of a direction to enter into specified arrangements with a person who is not mentioned in subsection (1), must not be given unless that person consents to the direction.</p> | <p><i>Schedule 4, paragraph 5(12)</i></p> |
| <p>33M Power to amend learning domains</p> <p><u>(1)</u> The Welsh Ministers may by order—</p> <p>(a) amend or omit any paragraph of subsection (3) of section 33A;</p> <p>(b) add additional paragraphs to that subsection;</p> <p>(c) amend or omit such additional paragraphs.</p> <p><u>(2) The Welsh Ministers must consult the Commission before making an order under subsection (1).</u></p> | <p><i>Schedule 4, paragraph 5(13)</i></p> |
| <p>33N The local curriculum: interpretation</p> <p>(1) In sections 33A to 33L<u>33M</u>—</p> | |

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| <p>“academic year” means the period beginning on the fourth Monday of September in any year and ending on the first day of September in the following year;</p> <p><u>“the Commission” means the Commission for Tertiary Education and Research;</u></p> <p>“course of study” means a course of education or training that—</p> <p>(a) leads to a form of qualification or set of forms of qualification approved under Part 4 of the Qualifications Wales Act 2015 or designated under Part 5 of that Act, or</p> <p>(b) is designated by the Welsh Ministers under section 34(8) of that Act;</p> <p>“entitlement period” means the period described in section 33E(2);</p> <p>“fourth key stage” is to be construed in accordance with section 103 of the Education Act 2002;</p> <p>“institution” means an institution within the further education sector in Wales unless the institution provides education wholly or mainly for persons with a learning difficulty (within the meaning of section 41); additional learning needs (within the meaning given by the Additional Learning Needs and Education Tribunal (Wales) Act 2018);</p> <p>“local curriculum” and “local curricula” are to be construed in accordance with section 33A;</p> <p>“local authority” means a local authority in Wales;</p> <p>“maintained school” means a community, foundation or voluntary school maintained by a local authority in Wales provided that it is also a secondary school;</p> <p>“principal”, in relation to an institution, means the principal or other head of the institution;</p> <p>“regulations” means regulations made by the Welsh Ministers;</p> <p>“relevant school or institution”, in relation to a person, is to be construed in accordance with section 33D;</p> <p>“relevant student”, in relation to a maintained school or institution, means a student for whom the school or institution is his or her relevant school or institution;</p> <p>“student” means a person who has made an election under section 33E.</p> <p>(2) Unless the context otherwise requires, an expression used in sections 33A to 33N, 33P and 33Q and also the Education Act 1996 is to bear for the purposes of those sections the meaning given to it for the purposes of that Act.</p> | <p><i>Schedule 4, paragraph 5(14)(a)</i></p> <p><i>Schedule 4, paragraph 5(14)(b)</i></p> |
| <p>33O Local curriculum: directions</p> <p>Any direction given by the Welsh Ministers under sections 33A(4), 33J(3) and 33L(3) may be varied or revoked by a further direction.</p> | <p><i>Schedule 4, paragraph 5(15)</i></p> |

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| <p>modifications as appear to the Welsh Ministers to be necessary or expedient.</p> <p><u>(4) The Welsh Ministers must consult the Commission for Tertiary Education and Research before making regulations under subsection (1).</u></p> | <p><i>Schedule 4, paragraph 5(17)(b)</i></p> |
| <p>34 Provision of financial resources</p> <p>(1) The Welsh Ministers may secure the provision of financial resources to —</p> <ul style="list-style-type: none"> (a) persons providing or proposing to provide post-16 education or training; (b) persons providing or proposing to provide goods or services in connection with the provision by others of post-16 education or training; (c) persons receiving or proposing to receive post-16 education or training; (d) persons providing or proposing to provide courses falling within paragraph 1(g) or (h) of Schedule 6 to the Education Reform Act 1988 (courses in preparation for professional examinations at a higher level or providing education at a higher level); (e) institutions within the further or higher education sector (within the meaning of section 91 of the Further and Higher Education Act 1992) which provide or propose to provide secondary education (other than post-16 education); (f) persons undertaking or proposing to undertake research relating to education or training; (g) persons providing or proposing to provide facilities designed to form links between (on the one hand) employers and (on the other) persons who provide or receive education or training; (h) persons carrying out means tests under arrangements made under section 37; (i) persons providing or proposing to provide information, advice or guidance about education or training or connected matters (including employment). <p>(2) The Welsh Ministers may secure the provision of financial resources under subsection (1) —</p> <ul style="list-style-type: none"> (a) by providing resources 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 Welsh Ministers). <p>(3) In exercising their power under subsection (1)(c) the Welsh</p> | <p><i>Schedule 4, paragraph 5(18)</i></p> |

~~Minister 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).~~

~~35 Financial resources: conditions~~

- ~~(1) If the Welsh Ministers themselves provide financial resources under section 34 they may impose conditions; and the conditions may include any provisions described below.~~
- ~~(2) The conditions may—~~
- ~~(a) require the Welsh Ministers or a person designated by them to be allowed access to a person's accounts and documents and to be given rights in relation to a person's computers and associated apparatus and material;~~
 - ~~(b) require a person to whom financial resources are provided to give to the Welsh Ministers information they request for the purpose of carrying out their functions under this Part.~~
- ~~(3) The conditions may require a person providing or proposing to provide education or training (the provider) to make arrangements providing for all or any of the following—~~
- ~~(a) for the provider to charge fees by reference to specified criteria;~~
 - ~~(b) for the provider to make awards by reference to specified criteria;~~
 - ~~(c) for the provider to recover amounts from persons receiving education or training or from employers (or from both);~~
 - ~~(d) for amounts to be determined by reference to specified criteria where provision is made under paragraph (c);~~
 - ~~(e) for specified exemptions to operate where provision is made under paragraph (c);~~
 - ~~(f) for the provider to make provision specified in a report of an assessment conducted under section 140.~~
- ~~(4) [repealed]~~
- ~~(5) The conditions may—~~
- ~~(a) enable the Welsh Ministers to require the repayment (in whole or part) of sums paid by the Welsh Ministers if any of the 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 Welsh Ministers in accordance with any condition is unpaid.~~

~~(6) [repealed]~~

~~36 Funding of school sixth forms~~

- ~~(1) The Welsh Ministers may make a grant to a local authority—~~

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| <p>(a) on the condition that the grant be applied as part of the authority's schools budget for a financial year funding period, and</p> <p>(b) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons above compulsory school age.</p> <p>(2) A grant made under this section may be made on conditions in addition to the condition mentioned in subsection (1)(a) (including conditions of a kind which could be imposed under section 35).</p> <p>(3) "Schools budget" has the same meaning as in Part II of the School Standards and Framework Act 1998 (framework for maintained schools).</p> <p>(3) In this section —</p> <p>"funding period" 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 (maintained schools to have budget shares), that other period;</p> <p>"local authority" means a local authority in Wales (within the meaning of section 579(1) of the Education Act 1996);</p> <p>"schools budget" has the same meaning as in Part 2 of that Act (framework for maintained schools).</p> <p>37 Assessments and means tests</p> <p>(1) The Welsh Ministers may develop schemes for the assessment of the performance of persons in providing post-16 education and training.</p> <p>(2) The Welsh Ministers may take the assessments into account in deciding how to exercise their powers under section 34.</p> <p>(3) The Welsh Ministers may —</p> <p>(a) carry out means tests;</p> <p>(b) arrange for other persons to carry out means tests.</p> <p>(4) The Welsh Ministers may take the results of the tests into account in exercising their power under section 34(1)(c).</p> <p>38 Qualifying accounts and arrangements</p> <p>(1) The Welsh Ministers may promote —</p> <p>(a) the holding of accounts which qualify under section 104;</p> <p>(b) the making of arrangements which qualify under section 105.</p> <p>(2) [repealed]</p> | |
| <p>40 Research and information</p> <p>(1) [repealed]</p> | <p><i>Schedule 4, paragraph 5(19)</i></p> |

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| <p>(2) [repealed]</p> <p>(3) [repealed]</p> <p>(4) [repealed]</p> <p>(5) The Welsh Ministers must establish systems for collecting information which is designed to secure that their decisions with regard to education and training are made on a sound basis.</p> <p>(6) The Welsh Ministers may secure the provision of facilities for providing information, advice or guidance about education or training or connected matters (including employment).</p> | |
| <p>41 Persons with additional learning needs</p> <p>(1) In discharging its functions under sections 31, 32 and 34(1)(a) to (d) and (g) the Welsh Ministers must have regard—</p> <p style="padding-left: 2em;">(a) to the needs of persons with learning difficulties, and additional learning needs;</p> <p style="padding-left: 2em;">(b) to the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.</p> <p>(2) If the Welsh Ministers are satisfied that they cannot secure the provision of facilities for education or training which are sufficient in quantity and adequate in quality for a person with a learning difficulty who is over compulsory school age but who has not attained the age of 19 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him.</p> <p>(3) If the Welsh Ministers are satisfied that they cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 19 but not the age of 25 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him.</p> <p>(4) If the Welsh Ministers are satisfied that they cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 25 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers may secure the provision of boarding accommodation for him.</p> <p>(5) A person has a learning difficulty if—</p> <p style="padding-left: 2em;">(a) he has a significantly greater difficulty in learning than the majority of persons of his age, or</p> <p style="padding-left: 2em;">(b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.</p> | <p><i>Schedule 4, paragraph 5(20)</i></p> |

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| <p>(5A) In this Part, “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and “additional learning provision” has the meaning given by section 3 of that Act.</p> <p>(6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.</p> | |
| <p>73 Inspectors of Education and Training in Wales</p> <p>(1) Her Majesty's Chief Inspector of Schools in Wales is renamed Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.</p> <p>(2) Her Majesty's Inspectors of Schools in Wales are renamed Her Majesty's Inspectors of Education and Training in Wales or Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.</p> <p>(3) In any provision of, or made under, any enactment—</p> <p>(a) for “Her Majesty's Chief Inspector of Schools in Wales” substitute “Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru”; and</p> <p>(b) for “Her Majesty's Inspectors of Schools in Wales” substitute “Her Majesty's Inspectors of Education and Training in Wales or Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru”.</p> | <p><i>Schedule 4, paragraph 5(21)</i></p> |
| <p>74 Some defined terms</p> <p>(1) In this Part—</p> <p>“local authority in Wales” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);</p> <p>“the National Assembly” means the National Assembly for Wales.</p> <p>(2) In this Part, any reference to the Chief Inspector for Wales is to be read as a reference to the person mentioned in section 73(1). <u>Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.</u></p> <p>75 The extended remit of the Chief Inspector for Wales</p> <p>(1) The following kinds of education and training are brought within the remit of the Chief Inspector for Wales by this Part—</p> <p>(a) education or training for persons aged 16 or over where the provider of the education or training is given financial support by the National Assembly in the discharge of its functions under Part 2 or by a local authority in Wales (either generally or for a specific purpose);</p> | <p><i>Schedule 4, paragraph 5(22)</i></p> <p><i>Schedule 4, paragraph 5(23)</i></p> |

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| <p>(b) education or training for persons aged 16 or over where the National Assembly in the discharge of its functions under Part 2 is, or a local authority in Wales are, contemplating giving the provider of the education financial support (either generally or for a specific purpose);</p> <p>(c) education or training provided for persons of compulsory school age in an institution in Wales which is within the further education sector;</p> <p>(d) further education provided by a school under section 80 of the School Standards and Framework Act 1998;</p> <p>(e) such other education or training in Wales as may be prescribed by regulations made by the National Assembly.</p> <p>(2) Neither paragraph (a) nor paragraph (b) of subsection (1) applies—</p> <p>(a) to education of a kind that may be inspected under Part 4 of the Education Act 2005; or</p> <p>(b) if the financial support mentioned in that paragraph is given for a specific purpose, to education or training at which that support is not directed.</p> <p>76 Additional functions of the Chief Inspector for Wales</p> <p>(1) The Chief Inspector for Wales must keep the National Assembly informed about—</p> <p>(a) the quality of the education and training which is brought within the remit of the Chief Inspector for Wales by this Part;</p> <p>(b) the standards achieved by those receiving that education and training; and</p> <p>(c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.</p> <p>(2) When asked to do so by the National Assembly, the Chief Inspector for Wales must—</p> <p>(a) give the National Assembly advice on such matters, relating to education and training brought within the remit of the Chief Inspector for Wales by this Part, as the National Assembly may specify;</p> <p>(b) inspect such education or training, or such class of education or training, within that remit as the National Assembly may specify;</p> <p>(c) report on the result of an inspection conducted under this section.</p> <p>(3) The Chief Inspector for Wales is to have such other functions in connection with education and training brought within the remit of the Chief Inspector for Wales by this Part as the National Assembly may specify.</p> <p>(4) The functions specified under subsection (3) may include</p> | |
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~~functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of education or training which is brought within the remit of the Chief Inspector for Wales by this Part.~~

- ~~(5) In exercising functions under this Part, the Chief Inspector for Wales must have regard to—~~
- ~~(a) advice given by the National Assembly; and~~
 - ~~(b) such aspects of the National Assembly's policy as the National Assembly may specify.~~

77 Inspections

- ~~(1) The Chief Inspector for Wales must inspect education and training brought within the remit of the Chief Inspector for Wales by this Part.~~
- ~~(2) Inspections are to be conducted at such intervals as may be prescribed.~~
- ~~(3) The Chief Inspector for Wales must report in writing on—~~
- ~~(a) the quality of the education or training inspected;~~
 - ~~(b) the standards achieved by those receiving that education or training; and~~
 - ~~(c) whether the financial resources made available to the provider of the education or training are managed efficiently and used in a way which provides value for money.~~
- ~~(4) The report under subsection (3) must be made within such period as may be prescribed.~~
- ~~(5) The Chief Inspector for Wales must without delay send a copy of the report under subsection (3) to—~~
- ~~(a) the National Assembly;~~
 - ~~(b) [repealed]~~
 - ~~(c) any local authority in Wales providing funds for the education or training inspected; and~~
 - ~~(d) the provider of the inspected education or training.~~
- ~~(6) Copies may also be sent to such other persons as the Chief Inspector for Wales considers appropriate.~~
- ~~(7) A copy may be supplied under subsection (6) free of charge or on payment of such fee, not exceeding the cost of supplying the copy, as the Chief Inspector for Wales may determine.~~
- ~~(8) The Chief Inspector for Wales must arrange for the report to be published in such manner as he considers appropriate.~~
- ~~(9) "Prescribed" means prescribed in regulations made by the National Assembly.~~

78 General powers

- ~~(1) The Chief Inspector for Wales may give advice to the National Assembly on any matter relating to education or training brought~~

~~within the remit of the Chief Inspector for Wales by this Part.~~

- ~~(2) The Chief Inspector for Wales may inspect, and report on, any education or training of that kind.~~
- ~~(3) The Chief Inspector for Wales may inspect any education or training—~~
- ~~(a) which is not of that kind, but~~
 - ~~(b) which would be if it were funded in one of the ways mentioned in section 75,~~
- ~~if the provider of the education or training asks the Chief Inspector for Wales to do so.~~
- ~~(4) The Chief Inspector for Wales may charge for the cost of an inspection conducted under subsection (3).~~
- ~~(5) Subsections (5) to (8) of section 77 apply to a report under subsection (2) as they apply to a report under that section.~~
- ~~(6) The Chief Inspector for Wales may arrange for a report of an inspection carried out as a result of a request under subsection (3) to be published.~~

~~**79 Right of entry and offences**~~

- ~~(1) When conducting an inspection under this Part, the Chief Inspector for Wales 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 in writing.~~
- ~~(3) The right to inspect records 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 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 for Wales may reasonably require.~~

~~(5) It is an offence wilfully to obstruct the Chief Inspector for Wales in the exercise of functions in relation to an inspection under this Part.~~

~~(6) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.~~

~~80~~ **Action plans**

~~(1) This section applies if the Chief Inspector for Wales 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 78(3); or
(b) under section 83.~~

~~(3) The provider of the education or training which is the subject of the report must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it.~~

~~(4) The person making the statement must —
(a) publish it within such period, and in such manner, as may be prescribed by regulations made by the National Assembly; and
(b) send copies of it to such persons as may be so prescribed.~~

~~81 [repealed]~~

~~82~~ **Inspections of education and training provided under 1973 Act arrangements**

(1) The Chief Inspector for Wales may, at the request of the Secretary of State or the Chief Inspector for England, inspect any education or training provided in Wales by the Secretary of State in accordance with arrangements made under section 2 of the Employment and Training Act 1973.

(2) A report of an inspection conducted under this section at the request of the Secretary of State must be given to the Secretary of State.

(3) The Secretary of State may arrange for the report to be published in such manner as he considers appropriate.

(4) A report of an inspection conducted under this section at the request of the Chief Inspector for England must be given to that Chief Inspector.

(5) The Chief Inspector for England may arrange for the report to be published in such manner as it considers appropriate.

(6) The Chief Inspector for Wales must send a copy of any report under subsection (2) or (4) to the National Assembly.

(7) In this section “the Chief Inspector for England” means Her

Majesty's Chief Inspector of Education, Children's Services and Skills.

83 — Area inspections

- (1) ~~If asked to do so by the National Assembly, the Chief Inspector for Wales must inspect—~~
- (a) ~~the quality and availability of a specified description of education or training, in a specified area in Wales, for persons who are aged 15 or over;~~
 - (b) ~~the standards achieved by those receiving that education or training; and~~
 - (c) ~~whether the financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money.~~
- (2) ~~The Chief Inspector for Wales may, without being asked to, conduct such an inspection.~~
- (3) ~~If financial resources have been applied by the National Assembly or a local authority in Wales in respect of education or training which is being inspected under this section, the inspection may extend to considering the manner in which those resources have been applied and whether they have been applied in a way which provides value for money.~~
- (4) ~~The education or training that may be made the subject of an area inspection is any education or training within the remit of the Chief Inspector for Wales (whether as a result of this Part or of any other enactment).~~
- (5) ~~A provider of education or training which is the subject of an area inspection must provide such information as the Chief Inspector for Wales may reasonably require in connection with the inspection.~~
- (6) ~~The National Assembly and any local authority in Wales within the area which is the subject of an area inspection must provide such information as the Chief Inspector for Wales may reasonably require in connection with the inspection.~~
- (7) ~~The National Assembly may by regulations make further provision with respect to the obligation to provide information imposed by this section.~~
- (8) ~~On completing an area inspection, the Chief Inspector for Wales must make a written report.~~
- (9) ~~Subsections (4), (5)(a) to (c) and (6) to (9) of section 77 apply to a report under this section as they apply to a report under that section.~~
- (9A) ~~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.~~

~~(10) “Area inspection” means an inspection under this section.~~

~~(11) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.~~

~~**84 — Action plans following section 83 inspections**~~

~~(1) This section applies if the Chief Inspector for Wales publishes a report of an area inspection conducted under section 83.~~

~~(2) [repealed]~~

~~(3) The National Assembly may direct a local authority in Wales whose area is wholly or partly in the area covered by the report to prepare a written statement of the action which they propose to take in the light of the report and the period within which they propose to take it.~~

~~(4) In preparing the statement the authority must consult such persons as the National Assembly may direct.~~

~~(5) The person making the statement must —
(a) publish it within such period, and in such manner, as may be prescribed by regulations made by the National Assembly; and
(b) send copies of it to such persons as may be so prescribed.~~

~~**85 — Studies across Wales or of provision made outside Wales**~~

~~(1) The National Assembly may direct the Chief Inspector for Wales to carry out —
(a) a survey of Wales, or of a specified area within Wales, in respect of specified matters relating to policy concerned with education or training for persons aged 16 or over; or
(b) a comparative study of the provision made outside Wales in respect of specified matters relating to such education or training.~~

~~(2) The Chief Inspector for Wales may, without being directed to, carry out a survey or study of that kind.~~

~~**86 — Annual reports**~~

~~(1) The annual report of the Chief Inspector for Wales required by section 21(1)(a) of the Education Act 2005 must include an account of the exercise of functions of the Chief Inspector for Wales under this Part.~~

~~(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 which is brought within the remit of the Chief Inspector for Wales by this Part.~~

87 — Annual plan of the Chief Inspector for Wales

- (1) ~~The Chief Inspector for Wales must, for the purposes of the consultation required under section 104(4) of the 1998 Act (funding of HM Chief Inspector of Education and Training for Wales), prepare a plan for each financial year.~~
- (2) ~~The plan must be submitted to the National Assembly by such time before the beginning of the financial year to which it relates as the National Assembly may direct.~~
- (3) ~~The plan must contain 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 for Wales are discharged effectively; and~~
 - ~~(b) the income which the Chief Inspector for Wales will receive in that financial year and which may be applied towards meeting the expenses of the Chief Inspector for Wales.~~
- (4) ~~The plan must also contain proposals for the management of any funds which may be provided by the National Assembly for that financial year.~~
- (5) ~~The Chief Inspector for Wales may, after the plan has been approved under section 104(4A) of the 1998 Act, publish it in such manner and at such time as appear to the Chief Inspector for Wales to be appropriate.~~
- (6) ~~“The 1998 Act” means the Government of Wales Act 1998.~~

88 — Defamation

- (1) ~~For the purposes of the law of defamation, any report under this Part is privileged unless its publication is shown to have been made with malice.~~
- (2) ~~Nothing in subsection (1) limits any privilege subsisting apart from that subsection.~~

| Education Act 2002 | |
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| <p>178 Training and education provided in the workplace for 14 to 16 year olds</p> <p>(1) The Learning and Skills Act 2000 (c 21) is amended as follows.</p> <p>(2) [repealed]</p> <p>(3) [repealed]</p> <p>(4) In section 83 (area inspections in Wales) — (a) in subsection (1)(a) for “16” there is substituted “15”, and (b) after subsection (10) there is inserted — “(11) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.”.</p> | <p><i>Schedule 4,</i> <i>paragraph</i> <i>6(2)</i></p> |
| <p>Learning and Skills Act 2000 (Schedule 21)</p> <p>125</p> <p>(1) Section 36 of the Learning and Skills Act 2000 (funding of school sixth-forms by National Council for Education and Training for Wales) is amended as follows.</p> <p>(2) In subsection (1)(a) for “local schools budget” there is substituted “schools budget”.</p> <p>(3) In subsection (3) for “Local schools budget” there is substituted “Schools budget”.</p> | <p><i>Schedule 4,</i> <i>paragraph</i> <i>6(3)</i></p> |

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| <p>(i) <u>provided by the Commission for Tertiary Education and Research under paragraph (a) of subsection (3) of section 82 of the Tertiary Education and Research (Wales) Act 2021 (higher education courses).</u></p> <p>(ii) <u>secured by the Commission for Tertiary Education and Research or the Welsh Ministers under paragraph (a) of subsection (1) of section 89 of that Act (further education or training), or</u></p> <p>(iii) <u>provided by the Commission for Tertiary Education and Research under paragraph (a) of subsection (1) of section 95 of that Act (apprenticeships).</u></p> <p>(3) <u>In subsection (2)</u></p> <p><u>“institution in Wales” means an institution whose activities are wholly or mainly carried on in Wales;</u></p> <p><u>“registered institution” means an institution registered in the register established and maintained by the Commission for Tertiary Education and Research under section 11 of the Tertiary Education and Research (Wales) Act 2021.</u></p> <p>(4) <u>The power to make regulations in subsection (2) is to be exercised by statutory instrument.</u></p> <p>(5) <u>A statutory instrument containing regulations made under subsection (2) is subject to annulment in pursuance of a resolution of Senedd Cymru.</u></p> | |
| <p>12 Qualifying complaints</p> <p>(1) In this Part “qualifying complaint” means, subject to subsections (2) and (3), a complaint about an act or omission of a qualifying institution which is made by a person—</p> <p>(a) as a student or former student at that institution, or</p> <p>(b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards.</p> <p>(2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment.</p> <p>(2A) <u>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—</u></p> <p>(i) <u>paragraph (a) of subsection (3) of section 82 of the Tertiary Education and Research (Wales) Act 2021 (higher education courses).</u></p> | <p><i>Section 116, paragraph 3</i></p> |

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| <p>(ii) <u>paragraph (a) of subsection (1) of section 89 of that Act (further education or training), or</u></p> <p>(iii) <u>paragraph (a) of subsection (1) of section 95 of that Act (apprenticeships).</u></p> <p>(3) The designated operator may determine that a complaint within subsection (1) about an act or omission of a qualifying institution within paragraph (e) paragraph (da), (e), (ea) or (f) of section 11 <u>subsection (1) of section 11, or of a qualifying institution specified in regulations made under subsection (2) of that section,</u> is a qualifying complaint only if it is made by a person who is undertaking or has undertaken a particular course or a course of a particular description.</p> | |
| <p>20A Institutions that cease to be qualifying institutions</p> <p>(1) An institution that ceases to be a qualifying institution is a “transitional institution” during the shorter of—</p> <p>(a) the period of 12 months beginning with the day on which it ceases to be a qualifying institution, and</p> <p>(b) the period beginning with that day and ending when it becomes a qualifying institution again,</p> <p>(and the shorter period is referred to in this section as “the transitional period”).</p> <p>(2) For the purposes of this Part, a transitional institution is to be treated as continuing to be a qualifying institution during the transitional period, subject to subsection (3).</p> <p>(3) A complaint is not a qualifying complaint to the extent that it is about an act or omission of a transitional institution which occurred on or after the day on which the transitional period began.</p> <p>(4) In section 12(3) (power of designated operator to determine when certain complaints are qualifying complaints), the reference to a qualifying institution within paragraph (da), (e), (ea) or (f) of <u>subsection (1) of section 11</u> includes a transitional institution that was a qualifying institution within the paragraph in question immediately before the beginning of the transitional period.]</p> | <p><i>Schedule 4, paragraph 7(2)</i></p> |

| Education Act 2005 | |
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| <p>20 Functions of Chief Inspector</p> <p>(1) The Chief Inspector has the general duty of keeping the Assembly informed about—</p> <ul style="list-style-type: none">(a) the quality of the education provided by schools in Wales,(b) how far that education meets the needs of the range of pupils at those schools,(c) the educational standards achieved in those schools,(d) the quality of the leadership in and management of those schools, including whether the financial resources made available to those schools are managed efficiently,(e) the spiritual, moral, social and cultural development of pupils at those schools, and(f) the contribution made by those schools to the well-being of those pupils,(g) actions taken at maintained schools to promote healthy eating and drinking. <p>(2) When asked to do so by the Assembly, the Chief Inspector must—</p> <ul style="list-style-type: none">(a) give advice to the Assembly on such matters as may be specified in the Assembly's request, and(b) inspect and report on such school, or class of school, in Wales as may be so specified. <p>(3) In addition, the Chief Inspector has the following specific duties—</p> <ul style="list-style-type: none">(a) establishing and maintaining the register mentioned in section 25(1);(b) giving guidance to inspectors registered in that register, and such other persons as he considers appropriate, in connection with inspections of schools in Wales under section 28 and the making of reports of such inspections;(c) keeping under review the system of inspecting schools under that section and, in particular, the standard of such inspections and of the reports made by registered inspectors;(d) keeping under review the extent to which any requirement imposed by or under this Part, or any other enactment, on any registered inspector, local authority, proprietor of a school or governing body in relation to inspections of schools in Wales is complied with;(e) promoting efficiency in the conduct and reporting of inspections of schools in Wales by encouraging competition in the provision of services by registered inspectors. <p>(4) The Chief Inspector may at any time give advice to the Assembly on any matter connected with schools, or a particular</p> | |

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| <p>school, in Wales.</p> <p>(5) The Chief Inspector is to have such other functions in connection with schools in Wales, including functions with respect to the training of teachers for such schools, as may be assigned to him by the Assembly.</p> <p>(6) In exercising his functions, the Chief Inspector must have regard to such aspects of policy adopted or formulated by the Assembly as the Assembly may direct.</p> <p>(7) This section does not apply in relation to education which is brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c 21) <u>to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2021 apply.</u></p> <p>24 Power of Chief Inspector to arrange for inspections</p> <p>(1) The Chief Inspector may cause any school in Wales to be inspected by one or more of Her Majesty's Inspectors of Education and Training in Wales (in this section referred to as "Inspectors").</p> <p>(2) Where an inspection of a school in Wales is being conducted by a registered inspector under section 28, the Chief Inspector may arrange for that inspection to be monitored by one or more Inspectors.</p> <p>(3) An Inspector inspecting a school, or monitoring an inspection, under this section has at all reasonable times—</p> <p>(a) a right of entry to the premises of the school,</p> <p>(b) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who—</p> <p>(i) are registered at the school, and</p> <p>(ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,</p> <p>are receiving part of their education from any person ("the provider"),</p> <p>(c) a right of entry to any premises of the provider used in connection with the provision by him of that education,</p> <p>(d) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions, and</p> <p>(e) a right to inspect and take copies of—</p> <p>(i) any records kept by the provider relating to the provision of education for pupils registered at the school, and</p> <p>(ii) any other documents containing information relating to the provision of such education by the provider,</p> | <p><i>Schedule 4, paragraph 8(2)</i></p> |
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| <p>which the Inspector considers relevant to the discharge of his functions.</p> <p>(4) It is an offence intentionally to obstruct any Inspector in the exercise of any of his functions under this section.</p> <p>(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>(6) An inspection of a school conducted under subsection (1) may not extend to any education of a kind brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c 21) <u>“to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2021 apply that is provided by the school.</u></p> <p>28 Duty to arrange regular inspections of certain schools</p> <p>(1) It is the duty of the Chief Inspector to secure that every school in Wales to which this section applies is inspected under this section, at such intervals as may be prescribed, by an inspector registered under section 25 or by a member of the Inspectorate.</p> <p>(2) Subject to subsection (3), the schools to which this section applies are—</p> <p>(a) community, foundation and voluntary schools,</p> <p>(b) community special schools,</p> <p>(c) maintained nursery schools, and</p> <p>(d) schools approved under section 342 of the Education Act 1996 (non-maintained special schools).</p> <p>(3) This section does not apply to any school—</p> <p>(a) which is a closing school (as defined by subsection (4)), and</p> <p>(b) in respect of which the Chief Inspector has decided, having regard to the date on which the closure is to take effect, that no useful purpose would be served by the school being inspected under this section.</p> <p>(4) In subsection (3)(a) a “closing school” means—</p> <p>(a) any community, foundation or voluntary school, community special school or maintained nursery school in respect of which proposals to discontinue the school have been approved, adopted, confirmed or determined under any enactment,</p> <p>(b) a foundation or voluntary school in respect of which the governing body have given notice of discontinuance under section 80 of the School Standards and Organisation (Wales) Act 2013,</p> <p>(c) a community, foundation or voluntary or community special school in respect of which the Assembly has given a direction to discontinue the school under section 16(2)</p> | <p><i>Schedule 4, paragraph 8(3)</i></p> |
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| <p>or 81(1) of the School Standards and Organisation (Wales) Act 2013, or</p> <p>(d) a special school which is not a community special school but is for the time being approved by the Assembly under section 342 of the Education Act 1996 (c 56) and which the proprietor has decided to close.</p> <p>(5) It is the general duty of any inspector conducting an inspection under this section to report on—</p> <p>(a) the quality of the education provided in the school,</p> <p>(b) how far the education provided in the school meets the needs of the range of pupils at the school,</p> <p>(c) the educational standards achieved in the school,</p> <p>(d) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively,</p> <p>(e) the spiritual, moral, social and cultural development of the pupils at the school, and</p> <p>(f) the contribution made by the school to the well-being of those pupils.</p> <p>(6) Subsection (1) has effect subject to section 32.</p> <p>(7) An inspection which is required under this section must not extend to—</p> <p>(a) denominational education,</p> <p>(b) education which is brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c 24) to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2020 apply, or</p> <p>(c) the content of collective worship which falls to be inspected under section 50.</p> <p>(8) Schedule 4 makes further provision with respect to inspections under this section.</p> | <p><i>Schedule 4, paragraph 8(4)</i></p> |
| <p>44C Report after area inspection on schools with sixth forms requiring significant improvement</p> <p>(1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 <u>section 55 of the Tertiary Education and Research (Wales) Act 2021</u> the Chief Inspector forms the opinion that a school requires significant improvement in relation to its sixth form.</p> <p>(2) The Chief Inspector must make a report about the school stating that opinion.</p> <p>(3) The report is to be treated for the purposes of this Part as if it were a report of an inspection of the school under section 28.</p> <p>44E Report on sixth form schools causing concern after area inspection</p> | <p><i>Schedule 4, paragraph 8(5)</i></p> |

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| <p>(1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 <u>section 55 of the Tertiary Education and Research (Wales) Act 2021</u> the Chief Inspector forms the opinion that—</p> <p>(a) special measures are required to be taken in relation to a sixth form school, or</p> <p>(b) that a sixth form school requires significant improvement.</p> <p>(2) The Chief Inspector must make a report about the school stating that opinion.</p> <p>(3) The report is to be treated for the purpose of this Part as if it were a report of an inspection of the school under section 28.</p> <p>(4) A “sixth form school” is a maintained school which—</p> <p>(a) provides full-time education suitable to the requirements of pupils over compulsory school age, and</p> <p>(b) does not provide full-time education suitable to the requirements of pupils of compulsory school age.</p> | <p><i>Schedule 4, paragraph 8(6)</i></p> |
| <p>44D Copies of report and action plan</p> <p>(1) This section applies to a report of an inspection under Chapter 3 which—</p> <p>(a) states an opinion that a school requires significant improvement in relation to its sixth form, and</p> <p>(b) is made by a member of the Inspectorate or states that the Chief Inspector agrees with the opinion.</p> <p>(2) The person making the report must send a copy (together with a copy of the summary, if there is one)—</p> <p>(a) to the Welsh Ministers, and</p> <p>(b) if the person making the report is a member of the Inspectorate, to the appropriate authority for the school.</p> <p>(3) The following provisions apply (with the necessary modifications) in relation to a report to which this paragraph <u>section</u> applies—</p> <p>(a) section 38(2) <u>(38)(3)</u> (additional copies),</p> <p>(b) section 38(4) (publication by appropriate authority),</p> <p>(c) section 39 (action plan by appropriate authority), and</p> <p>(d) where the local authority receives a copy of a report about a school the governing body of which have a delegated budget, section 40(2) and (3) (measures by local authority).</p> <p>(4) In the application of those provisions—</p> <p>(a) a reference to a report and summary is to be taken as a reference to a report and, if there is one, its summary, and</p> <p>(b) a reference to a summary alone is to be taken, in a case where there is no summary, as a reference to the report.</p> | <p><i>Schedule 4, paragraph 8(7)(a)</i></p> <p><i>Schedule 4, paragraph 8(7)(b)</i></p> |
| <p>85 Qualifying activities and eligible institutions in relation to HEFCW funding</p> | <p><i>Section 4, paragraph 8(8)</i></p> |

~~(1) The Higher Education Funding Council for Wales (in this Part referred to as “HEFCW”) are responsible for administering funds made available to them by the Assembly and others for the purpose of providing financial support for the carrying on by eligible institutions of qualifying activities.~~

~~(2) The activities qualifying for funding by HEFCW under this Part (“qualifying activities”) are—~~

~~(a) the provision of teacher training,~~

~~(b) the provision of facilities, and the carrying on of other activities, by eligible institutions which the governing bodies of those institutions consider it necessary or desirable to provide or carry on for the purposes of or in connection with activities within paragraph (a), and~~

~~(c) the provision by any person of services for the purposes of, or in connection with, such activities.~~

~~(3) The institutions eligible for funding by HEFCW under this Part (“eligible institutions”) are—~~

~~(a) any institution in Wales within the higher or further education sector,~~

~~(b) the Open University,~~

~~(c) any school in Wales, and~~

~~(d) and other institution or body in Wales designated by order of the Assembly,~~

~~and any partnership or association of eligible institutions, or body established by one or more such institutions, for the purpose of carrying on qualifying activities.~~

~~(4) For the purposes of subsection (3), an institution or body is in Wales if its activities are carried on, or principally carried on, in Wales.~~

~~(5) In sections 86 to 91—~~

~~(a) “qualifying activities” is to be read in accordance with subsection (2);~~

~~(b) “eligible institution” is to be read in accordance with subsection (3).~~

~~86 Grants, loans and other payments by HEFCW~~

~~(1) HEFCW may—~~

~~(a) make grants, loans or other payments in respect of expenditure incurred or to be incurred by the governing body of an eligible institution for the purposes of activities qualifying for funding by HEFCW under this Part by virtue of section 85(2)(a) or (b), and~~

~~(b) make grants, loans or other payments in respect of expenditure incurred or to be incurred for the purposes of the provision of services as mentioned in section 85(2)(c),~~

~~subject in each case to such terms and conditions as HEFCW think fit.~~

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| <p>(2) The terms and conditions on which HEFCW may make any grants, loans or other payments under this section may in particular—</p> <p>(a) enable HEFCW to require the repayment, in whole or in part, of sums paid by HEFCW if any of the terms and conditions subject to which the sums were paid is not complied with, and</p> <p>(b) require the payment of interest in respect of any period during which a sum due to HEFCW in accordance with any of the terms and conditions remains unpaid.</p> <p>(3) The power of HEFCW to impose conditions on the making of any grants, loans or other payments under this section to an eligible institution includes in particular power to impose conditions prohibiting, restricting or requiring the charging of fees in connection with the carrying out by that institution of qualifying activities.</p> <p>(4) Where—</p> <p>(a) a condition is imposed under subsection (3) in connection with any grant, loan or other payment to an eligible institution, and</p> <p>(b) the grant, loan or other payment is to any extent made in respect of persons undertaking training which is provided in whole or in part by another training provider,</p> <p>then, for the purposes of the condition, fees payable by such persons to the other training provider are to be regarded as fees charged by the eligible institution.</p> <p>(5) The terms and conditions must not relate to the application of any sums derived otherwise than from HEFCW, but this subsection does not affect the power to impose conditions by virtue of subsection (3).</p> <p>(6) In exercising their functions under this section HEFCW must have regard—</p> <p>(a) generally, to any forecast of demand for newly-qualified teachers that is notified to them by the Assembly, and</p> <p>(b) in relation to any particular institution, to any assessment of the quality of the teacher training provided by that institution—</p> <p>(i) made by the Chief Inspector for Wales, or</p> <p>(ii) to which HEFCW think it appropriate to have regard or to which the Assembly directs them to have regard.</p> <p>87 Provisions supplementary to section 86</p> <p>(1) In exercising their functions in relation to the provision of financial support for qualifying activities, HEFCW must have regard to the desirability of not discouraging any institution for whose activities financial support is provided under this Part</p> | |
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from maintaining or developing its funding from other sources.

- ~~(2) Before exercising their discretion under section 86(1)(a) or (b) with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, HEFCW must consult such of the following bodies as appear to them to be appropriate to consult in the circumstances—~~
- ~~(a) such bodies representing the interests of eligible institutions as appear to HEFCW to be concerned, and~~
 - ~~(b) the governing body of any particular eligible institution which appears to HEFCW to be concerned.~~
- ~~(3) In exercising their functions in relation to the provision of financial support for qualifying activities HEFCW must have regard (so far as they think it relevant to do so in the light of any other relevant considerations) to the desirability of maintaining—~~
- ~~(a) what appears to them to be an appropriate balance in the support given to them as between institutions which are of a denominational character and other institutions, and~~
 - ~~(b) any distinctive characteristics of any eligible institution for whose activities financial support is provided under this Part.~~
- ~~(4) In exercising their functions HEFCW must take such steps as appear to them appropriate to secure that the governing body of any institution which provides a course of initial teacher training funded by HEFCW makes available such information relating to the course, in such manner and to such persons, as HEFCW may require.~~
- ~~(5) Subsection (1) does not affect the power by virtue of section 86(3) to impose conditions prohibiting or restricting the charging of fees.~~

88 Grants to HEFCW

- ~~(1) The Assembly may make grants to HEFCW of such amounts and subject to such conditions as the Assembly may determine.~~
- ~~(2) The terms and conditions subject to which grants are made by the Assembly to HEFCW under this section—~~
- ~~(a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by HEFCW in respect of activities carried on by the institution, but~~
 - ~~(b) may not otherwise relate to the provision of financial support by HEFCW in respect of activities carried on by any particular institution or institutions.~~
- ~~(3) Such terms and conditions may not be framed by reference to~~

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| <p>criteria for the selection and appointment of staff and for the admission of students.</p> <p>(4) Such terms and conditions may in particular—</p> <p>(a) enable the Assembly 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, and</p> <p>(b) require the payment of interest in respect of any period during which a sum due to the Assembly in accordance with any of the terms and conditions remains unpaid.</p> <p>(5) Section 68 of the Further and Higher Education Act 1992 (c 13) does not apply in relation to grants made to HEFCW under this section.</p> | |
| <p>Learning and Skills Act 2000 (c 21)</p> <p>24</p> <p>In section 75 of the Learning and Skills Act 2000 (extended remit of Chief Inspector for Wales), in subsection (2)(a), for “the Schools Inspections Act 1996” substitute “Part 1 of the Education Act 2005”.</p> <p>25</p> <p>In section 86 of the Learning and Skills Act 2000 (annual reports), in subsection (1), for “section 5(7)(a) of the School Inspections Act 1996” substitute “section 21(1)(a) of the Education Act 2005”.</p> <p>26</p> <p>(1) Section 118 of the Learning and Skills Act 2000 (inspection) is amended as follows.</p> <p>(2) For subsection (5) substitute—</p> <p>“(5) A person carrying out or participating in the inspection shall have the same powers as the Chief Inspector has under the following provisions of the Education Act 2005—</p> <p>(a) section 10(1)(a) and (d) (right of access), and</p> <p>(b) section 58 (computer records).”</p> <p>(3) In subsection (6), for “Section 42A of the 1996 Act” substitute “Section 11 of the Education Act 2005”.</p> <p>27</p> <p>(1) Section 128 of the Learning and Skills Act 2000 (conduct and effect of inspections) is amended as follows.</p> <p>(2) For subsection (2) substitute—</p> <p>“(2) A person carrying out or participating in the inspection shall have the same powers as an Inspector has under the following provisions of the Education Act 2005—</p> <p>(a) section 24(3)(a) and (d) (right of access), and</p> | <p><i>Schedule 4, paragraph 8(9)</i></p> |

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| <p>(b) section 58 (computer records).”</p> <p>(3) In subsection (3), for “Section 42A” substitute “Section 29”.</p> | |
| <p>Learning and Skills Act 2000 (c 21)</p> <p>12</p> <p>(1) Section 7 of the Learning and Skills Act 2000 (funding of school sixth-forms: England) is amended as follows.</p> <p>(2) In subsection (1)(a), for “financial year” substitute “funding period”.</p> <p>(3) For subsection (3) substitute—</p> <p>“(3) In this section—</p> <p>“funding period” means a financial year or, if some other period is prescribed in relation to England under subsection (1B) of section 45 of the School Standards and Framework Act 1998 (maintained schools to have budget shares), that other period;</p> <p>“schools budget” has the same meaning as in Part 2 of that Act (framework for maintained schools).”</p> <p>13</p> <p>(1) Section 36 of the Learning and Skills Act 2000 (funding of school sixth-forms: Wales) is amended as follows.</p> <p>(2) In subsection (1)(a), for “financial year” substitute “funding period”.</p> <p>(3) For subsection (3) substitute—</p> <p>“(3) In this section—</p> <p>—— “funding period” 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 (maintained schools to have budget shares), that other period;</p> <p>—— “schools budget” has the same meaning as in Part 2 of that Act (framework for maintained schools).”</p> | <p><i>Schedule 4, paragraph 8(10)</i></p> |

| Commissioner for Older People (Wales) 2006 | |
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| <p>Education and training</p> <p>The National Council for Education and Training for Wales.</p> <p>The Office of Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.</p> <p>The Higher Education Funding Council for Wales. <u>The Commission for Tertiary Education and Research.</u></p> <p>A further education corporation discharging functions in relation to Wales.</p> <p>A higher education corporation discharging functions in relation to Wales.</p> <p>An institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992 (c 13).</p> <p>The governing body of a maintained school in Wales at which further education is provided.</p> <p>Qualifications Wales.</p> | <p><i>Schedule 4, paragraph 9</i></p> |

| Government of Wales Act 2006 | |
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| <p>148 Meaning of “Welsh public records”</p> <p>(1) The following are Welsh public records—</p> <ul style="list-style-type: none"> (a) administrative and departmental records belonging to Her Majesty which are records of the Welsh Government, (b) administrative and departmental records of the Auditor General, (ba) administrative and departmental records belonging to Her Majesty which are records of or held by the Welsh Revenue Authority, (d) administrative and departmental records belonging to Her Majesty which are records of or held in any government department which is wholly or mainly concerned with Welsh affairs, (e) administrative and departmental records belonging to Her Majesty which are records of any office, commission or other body or establishment under Her Majesty's Government which is wholly or mainly concerned with Welsh affairs in a field or fields in which the Welsh Ministers have functions, or the First Minister or the Counsel General has functions, (f) administrative and departmental records of the bodies and establishments specified in subsection (2) (but not records of health service hospitals in Wales which are of the descriptions excepted from being public records for the purposes of the Public Records Act 1958 (c 51) in the case of health service hospitals in England), and (g) any other description of records (other than records of the Assembly or the Assembly Commission or records of any court or tribunal or held in any department of the Supreme Court) which is specified by order made by the Secretary of State. <p>(2) The bodies and establishments referred to in subsection (1)(e) are—</p> <ul style="list-style-type: none"> (a) the Care Council for Wales, (aa) <u>Commission for Tertiary Education and Research</u> (b) [repealed] (c) the Curriculum and Assessment Authority for Wales, (d) Family Practitioner Committees for localities in Wales, (e) the Further Education Funding Council for Wales, (f) the General Teaching Council for Wales, (g) health service hospitals, within the meaning of the National Health Service (Wales) Act 2006, in Wales, (h) the Higher Education Funding Council for Wales, (i) the Local Government Boundary Commission for Wales, (j) the National Council for Education and Training for Wales, | <p><i>Schedule 4, paragraph 10(2)(a)</i></p> <p><i>Schedule 4, paragraph 10 (2)(b)</i></p> |

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| <p>(k) National Health Service Authorities for districts or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales,</p> <p>(ka) the Natural Resources Body for Wales,</p> <p>(l) the Qualifications, Curriculum and Assessment Authority for Wales,</p> <p>(la) Qualifications Wales,</p> <p>(m) the Wales Centre for Health, and</p> <p>(n) the Welsh Board of Health.</p> <p>(3) An order under subsection (1)(f) may be made in relation to a description of records—</p> <p>(a) which (immediately before the order is made) are public records for the purposes of the Public Records Act 1958, or</p> <p>(b) which (at that time) are not public records for those purposes.</p> <p>(4) No order under subsection (1)(f) may be made—</p> <p>(a) in relation to records within paragraph (a) of subsection (3), unless the Secretary of State has consulted the Welsh Ministers, and</p> <p>(b) in relation to records within paragraph (b) of that subsection, without the agreement of the Welsh Ministers.</p> <p>(5) A statutory instrument containing an order under subsection (1)(f) is subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>(6) In this section “records” includes—</p> <p>(a) written records, and</p> <p>(b) records conveying information by any other means.</p> | |
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| Education and Skills Act 2008 | |
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| <p>91 Information: supplementary</p> <p>(1) This section applies for the purposes of sections 87 to 90.</p> <p>(2) Nothing in these sections affects the use or disclosure of information by virtue of—</p> <ul style="list-style-type: none">(a) section 3 of the Social Security Act 1998 (c 14);(b) any other enactment or rule of law. <p>(3) These are the devolved authorities—</p> <ul style="list-style-type: none">(a) the Scottish Ministers;(b) the Welsh Ministers;(c) <u>the Commission for Tertiary Education and Research</u> <p>(4) A reference to the Secretary of State includes a reference to a person providing services to the Secretary of State.</p> <p>(5) A reference to a devolved authority includes a reference to a person providing services to the authority.</p> <p>(6) [repealed]</p> | <p><i>Schedule 4, paragraph 11(2)</i></p> |

| Apprenticeships, Skills, Children and Learning Act 2009 | |
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| <p>2 Meaning of “completing a Welsh apprenticeship”</p> <p>(1) This section applies for the purposes of this Chapter.</p> <p>(2) A person completes a Welsh apprenticeship in relation to an apprenticeship framework if—</p> <p style="padding-left: 20px;">(a) the standard Welsh completion conditions are met, or</p> <p style="padding-left: 20px;">(b) the alternative Welsh completion conditions are met.</p> <p>(3) The standard Welsh completion conditions are—</p> <p style="padding-left: 20px;">(a) that the person has entered into an apprenticeship agreement in connection with the apprenticeship framework,</p> <p style="padding-left: 20px;">(b) that at the date of that agreement the framework was a recognised Welsh framework,</p> <p style="padding-left: 20px;">(c) that the person has completed a course of training for the competencies qualification identified in the framework,</p> <p style="padding-left: 20px;">(d) that, throughout the duration of the course, the person was working under the apprenticeship agreement, and</p> <p style="padding-left: 20px;">(e) that the person meets the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate.</p> <p>(4) In subsection (3)(d)—</p> <p style="padding-left: 20px;">(a) the reference to the apprenticeship agreement mentioned in subsection (3)(a) includes a reference to any apprenticeship agreement which the person subsequently entered into in connection with the same apprenticeship framework;</p> <p style="padding-left: 20px;">(b) the reference to the course of training for the competencies qualification is to be read, in a case where the person has followed two or more courses of training for the competencies qualification, as a reference to both or all of them.</p> <p>(5) The alternative Welsh completion conditions are conditions which—</p> <p style="padding-left: 20px;">(a) apply in cases where a person works otherwise than under an apprenticeship agreement, and</p> <p style="padding-left: 20px;">(b) are specified in regulations made by the Welsh Ministers.</p> <p>(6) The kinds of working in relation to which provision may be made under subsection (5) include—</p> <p style="padding-left: 20px;">(a) working as a self-employed person;</p> <p style="padding-left: 20px;">(b) working otherwise than for reward.</p> | <p><i>Schedule 4, paragraph 12(2)(a)</i></p> |
| <p>7 Duty to issue: Wales</p> <p>(1) The Welsh certifying authority must issue a certificate relating to an apprenticeship framework to a person who applies to the</p> | <p><i>Schedule 4, paragraph 12(2)(b)</i></p> |

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| <p>authority in the prescribed manner if—</p> <p>(a) it appears to the authority that the person has completed a Welsh apprenticeship in relation to the apprenticeship framework,</p> <p>(b) in a case within section 2(2)(a), it appears to the authority that the condition in subsection (3)(e) of that section was met at the date of the person's application, and</p> <p>(c) the person—</p> <p style="padding-left: 2em;">(i) provides the authority with such information and evidence as the authority requires the person to provide, and</p> <p style="padding-left: 2em;">(ii) pays any fee charged by the authority for the issue of the certificate (see section 9).</p> <p>(2) The “prescribed manner” is the manner prescribed by regulations made by the Welsh Ministers.</p> <p>8 Power to issue: Wales</p> <p>(1) The Welsh certifying authority may issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if—</p> <p style="padding-left: 2em;">(a) it appears to the authority that at the date of the application the person met the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate,</p> <p style="padding-left: 2em;">(b) the framework is, or has been, a recognised Welsh framework,</p> <p style="padding-left: 2em;">(c) the person—</p> <p style="padding-left: 4em;">(i) provides the authority with such information and evidence as the authority requires the person to provide, and</p> <p style="padding-left: 4em;">(ii) pays any fee charged by the authority for the issue of the certificate (see section 9).</p> <p>(2) The “prescribed manner” for the purposes of subsection (1), is the manner prescribed by regulations made by the Welsh Ministers.</p> <p>9 Issue by the Welsh certifying authority: supplementary</p> <p>(1) The Welsh certifying authority may charge a fee for issuing an apprenticeship certificate only if, and to the extent that, it is authorised to do so by regulations made by the Welsh Ministers.</p> <p>(2) Regulations made by the Welsh Ministers may make provision about the supply of copies of apprenticeship certificates issued under section 7 or 8.</p> <p>(3) Regulations under subsection (2) may include provision authorising a person supplying a copy of an apprenticeship certificate to charge a fee for doing so.</p> <p>10 The Welsh certifying authority</p> | |
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| <p>(1) In this Chapter, the “Welsh certifying authority”, in relation to an apprenticeship certificate of any description, means—</p> <ul style="list-style-type: none">(a) the person (if any) designated under this section to issue apprenticeship certificates of that description;(b) if there is no one within paragraph (a), the person (if any) designated under this section to issue apprenticeship certificates generally;(c) if there is no one within paragraph (a) or (b), the Welsh Ministers. <p>(2) A person designated under this section to issue apprenticeship certificates must, in exercising functions under this Chapter—</p> <ul style="list-style-type: none">(a) comply with directions given by the Welsh Ministers, and(b) have regard to guidance given by the Welsh Ministers. <p>(3) “Designated” means designated by an order made by the Welsh Ministers.</p> <p>11 Contents of apprenticeship certificate</p> <p>(1) An apprenticeship certificate must state—</p> <ul style="list-style-type: none">(a) the name of the person to whom it is issued,(b) the apprenticeship framework to which it relates,(c) the level of that framework, and(d) the apprenticeship sector to which that framework relates. <p>(2) An apprenticeship certificate must also state such other matters as the Welsh Ministers may by regulations require to be stated in a certificate of that description.</p> <p>12 Apprenticeship frameworks: interpretation</p> <p>(1) In this Chapter, “apprenticeship framework” means a specification of requirements, for the purpose of the issue of apprenticeship certificates, that satisfies subsection (2).</p> <p>(2) The requirements specified must—</p> <ul style="list-style-type: none">(a) be at a particular level stated in the specification, and(b) relate to a particular skill, trade or occupation included in an apprenticeship sector stated in the specification. <p>(3) [repealed]</p> <p>(4) In this Chapter, “recognised Welsh framework” means an apprenticeship framework issued under section 19(1) from which recognition has not been withdrawn under section 19(2).</p> <p>(5) For the purposes of this Chapter—</p> <ul style="list-style-type: none">(a) an apprenticeship framework is at the level of the requirements stated in it;(b) an apprenticeship framework relates to the apprenticeship sector stated in it. | |
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| <p>18 Welsh issuing authority</p> <p>(1) The Welsh Ministers may designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector.</p> <p>(2) The power to designate conferred by this section may not be exercised in such a way that there is at any time more than one person designated to issue apprenticeship frameworks relating to a particular apprenticeship sector.</p> <p>(3) A person designated under this section must, in exercising functions under this Chapter—</p> <p style="padding-left: 2em;">(a) comply with directions given by the Welsh Ministers;</p> <p style="padding-left: 2em;">(b) have regard to guidance given by the Welsh Ministers.</p> <p>(4) A designation under this section may be amended or revoked by the Welsh Ministers.</p> <p>(5) In this Chapter, the “Welsh issuing authority”, in relation to an apprenticeship framework, means—</p> <p style="padding-left: 2em;">(a) the person (if any) designated under this section to issue frameworks of that description;</p> <p style="padding-left: 2em;">(b) if there is no one so designated, the Welsh Ministers.</p> <p>19 Issue: Wales</p> <p>(1) The Welsh issuing authority may issue an apprenticeship framework only if the authority is satisfied that the framework meets the requirements specified, by the specification of apprenticeship standards for Wales, for recognised Welsh frameworks of that description.</p> <p>(2) Recognition of a recognised Welsh framework may be withdrawn by the Welsh issuing authority—</p> <p style="padding-left: 2em;">(a) [repealed]</p> <p style="padding-left: 2em;">(b) [repealed].</p> <p>20 Recognised Welsh frameworks: notification and publication</p> <p>(1) On issuing an apprenticeship framework under section 19(1), the Welsh issuing authority must—</p> <p style="padding-left: 2em;">(a) publish the framework;</p> <p style="padding-left: 2em;">(b) if the issuing authority is not the Welsh Ministers, notify the Welsh Ministers of the issue of the framework.</p> <p>(2) A notice given under subsection (1)(b) must be accompanied by a copy of the framework.</p> <p>(3) A Welsh issuing authority which withdraws recognition of an apprenticeship framework under section 19(2) must—</p> <p style="padding-left: 2em;">(a) publish a notice stating that recognition of the framework has been withdrawn;</p> <p style="padding-left: 2em;">(b) in the case where the issuing authority are not the Welsh Ministers, notify the Welsh Ministers of the withdrawal.</p> | <p><i>Schedule 4, paragraph 12(2)(c)</i></p> |
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| <p>(4) Where this section imposes a duty on a person to publish a framework or notice, the publication may be in such manner as the person thinks fit.</p> <p>21 Submission of draft framework for issue: Wales</p> <p>(1) This section applies if a person —</p> <p>(a) submits a draft of an apprenticeship framework to the Welsh issuing authority, and</p> <p>(b) requests that the authority issue a framework in the form of the draft.</p> <p>(2) The authority may require the person to provide such information and evidence in connection with the draft as the authority thinks appropriate.</p> <p>(3) If the authority decides not to issue a framework in the form of the draft, it must give the person reasons for its decision.</p> <p>22 Transitional provision: Wales</p> <p>(1) The Welsh Ministers may by order provide for an existing vocational specification to be treated, for all purposes or for purposes specified in the order, as if it were an apprenticeship framework issued under section 19(1) that specified requirements for the purpose of the issue of apprenticeship certificates.</p> <p>(2) For the purposes of its application in relation to an existing vocational specification that, by virtue of an order under subsection (1), is treated as an apprenticeship framework issued under section 19(1), this Chapter has effect subject to any modifications specified in the order.</p> <p>(3) An order under subsection (1) must —</p> <p>(a) specify a date on which the deemed framework is to be treated as being issued under section 19(1);</p> <p>(b) specify a date on which recognition of the deemed framework is to be treated as having been withdrawn under section 19(2);</p> <p>(c) specify a qualification that the deemed framework is to be treated as identifying as the competencies qualification;</p> <p>(d) specify the level and apprenticeship sector that are to be treated as being stated in the deemed framework.</p> <p>(4) The date specified under subsection (3)(b) in an order under subsection (1) must be no later than the day after the day that is the school leaving date for 2013.</p> <p>(5) In this section —</p> <p>“the deemed framework”, in relation to an order under subsection (1), means an existing vocational specification that, by virtue of the order, is treated as being an apprenticeship framework issued under section 19(1);</p> | |
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| <p>“existing vocational specification” means a specification, prepared before the coming into force of section 19, of training, qualifications and skills appropriate for persons engaging in a particular trade, skill or occupation.</p> <p>(6) Nothing in this section limits the powers conferred by section 262.</p> | |
| <p>28 Specification of apprenticeship standards for Wales</p> <p>(1) The Welsh Ministers may prepare a draft specification of apprenticeship standards.</p> <p>(2) In preparing the draft, the Welsh Ministers must consult such persons as they think appropriate.</p> <p>(3) Having prepared a draft, the Welsh Ministers may by order provide that a specification of apprenticeship standards (“the specification of apprenticeship standards for Wales”) is to have effect—</p> <p>(a) in the form of the draft, or</p> <p>(b) in that form with such modifications as the Welsh Ministers think appropriate.</p> <p>(4) Subsection (2) does not apply in relation to the first draft specification to be prepared by the Welsh Ministers after the commencement of this section.</p> <p>(5) The Welsh Ministers may not make an order under subsection (3) unless satisfied that the specification of apprenticeship standards given effect to by the order complies with section 31.</p> <p>(6) The power conferred by subsection (3) is to be exercised so as to secure that at any time only one specification of apprenticeship standards has effect as the specification of apprenticeship standards for Wales.</p> <p>29 Modification: Wales</p> <p>(1) The Welsh Ministers may by order provide that the specification of apprenticeship standards for Wales is to have effect subject to modifications specified in the order.</p> <p>(2) The Welsh Ministers may not make an order under this section unless satisfied that the specification, as so modified, complies with section 31.</p> <p>30 Replacement or modification: recognised Welsh frameworks</p> <p>(1) Subject to subsection (2), a recognised Welsh framework does not cease to be a recognised Welsh framework if, by virtue of an order under section 28 or 29, it ceases to meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for Wales.</p> <p>(2) An order under section 28 may provide for an apprenticeship framework which—</p> | <p><i>Schedule 4, paragraph 12(2)(d)</i></p> |

- ~~(a) immediately before the making of the order is a recognised Welsh framework, but~~
 - ~~(b) does not meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for Wales to which the order gives effect,~~
- ~~to cease to have effect as a recognised Welsh framework.~~

31 Contents of specification of apprenticeship standards for Wales

- ~~(1) The specification of apprenticeship standards for Wales—~~
 - ~~(a) must specify requirements to be met by recognised Welsh frameworks,~~
 - ~~(b) may specify different requirements in relation to recognised Welsh frameworks at different levels.~~
- ~~(2) The requirements specified by the specification of apprenticeship standards for Wales must include—~~
 - ~~(a) requirements as to Welsh certificate requirements, including requirements as to standards of attainment to be required by them,~~
 - ~~(b) requirements for a recognised Welsh framework to include, as a Welsh certificate requirement, the requirement that an apprenticeship certificate relating to the framework may be issued to a person only if the person has received both on-the-job training and off-the-job training, and~~
 - ~~(c) requirements for a recognised Welsh framework to—~~
 - ~~(i) include, as a Welsh certificate requirement, the requirement that one or more qualifications be held,~~
 - ~~(ii) include, as a Welsh certificate requirement, the requirement that the qualification, or the qualifications taken together, demonstrate the relevant occupational competencies and the relevant technical knowledge, and~~
 - ~~(iii) identify the qualification that demonstrates the relevant occupational competencies as the competencies qualification in relation to the framework.~~
- ~~(3) Requirements as to standards of attainment may be specified by reference, in particular, to descriptions of qualifications or training.~~
- ~~(4) In this section—~~
 - ~~“off-the-job training” in relation to a recognised Welsh framework, is training which—~~
 - ~~(a) is received for the purposes of the skill, trade or occupation to which the framework relates, and~~
 - ~~(b) is not on-the-job training;~~
 - ~~“on-the-job training” in relation to a recognised Welsh framework, is training received in the course of carrying~~

on the skill, trade or occupation to which the framework relates;

~~“the relevant occupational competencies”, in relation to a recognised Welsh framework, means the competencies required to perform the skill, trade or occupation to which the framework relates at the level required in the framework;~~

~~“the relevant technical knowledge”, in relation to a recognised Welsh framework, means the technical knowledge required to perform the skill, trade or occupation to which the framework relates at the level required in the framework;~~

~~“Welsh certificate requirement” means a requirement specified in a recognised Welsh framework for the purpose of the issue of apprenticeship certificates relating to that framework by the Welsh certifying authority.~~

32 Meaning of “apprenticeship agreement”

- (1) ~~In this Chapter, “apprenticeship agreement” means an agreement in relation to which each of the conditions in subsection (2) is satisfied.~~
- (2) ~~The conditions are—~~
- ~~(a) that a person (the “apprentice”) undertakes to work for another (the “employer”) under the agreement;~~
 - ~~(b) that the agreement is in the prescribed form;~~
 - ~~(c) that the agreement states that it is governed by the law of England and Wales;~~
 - ~~(d) that the agreement states that it is entered into in connection with a qualifying apprenticeship framework.~~
- (3) ~~The power conferred by subsection (2)(b) may be exercised, in particular—~~
- ~~(a) to specify provisions that must be included in an apprenticeship agreement;~~
 - ~~(b) to specify provisions that must not be included in an apprenticeship agreement;~~
 - ~~(c) to specify all or part of the wording of provisions that must be included in an apprenticeship agreement.~~
- (4) ~~Where an agreement states that it is entered into in connection with an apprenticeship framework (“the relevant framework”) that is not a qualifying apprenticeship framework, subsection (2)(d) is to be taken to be satisfied in relation to the agreement if—~~
- ~~(a) at a time within the period of three years ending with the date of the agreement, the relevant framework was a qualifying apprenticeship framework;~~
 - ~~(b) at the date of the agreement, the apprentice has not completed the whole of a course of training for the~~

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| <p>competencies qualification identified in the relevant framework,</p> <p>(c) before the date of the agreement, the apprentice entered into an apprenticeship agreement (“the earlier agreement”) which stated that it was entered into in connection with the relevant framework, and</p> <p>(d) at the date of the earlier agreement, the relevant framework was a qualifying apprenticeship framework.</p> <p>(5) In subsection (4)(b), the reference to a course of training for the competencies qualification is to be read, in a case where the person follows two or more courses of training for the competencies qualification, as a reference to both or all of them.</p> <p>(6) An apprenticeship framework is a “qualifying apprenticeship framework”, for the purposes of this section, if it is—</p> <p>(a) [repealed]</p> <p>(b) a recognised Welsh framework.</p> <p>33 Ineffective provisions</p> <p>(1) To the extent that provision included in an apprenticeship agreement conflicts with the prescribed apprenticeship provisions, it has no effect.</p> <p>(2) In this section, the “prescribed apprenticeship provisions”, in relation to an apprenticeship agreement, means those provisions—</p> <p>(a) that are included in the agreement, and</p> <p>(b) without the inclusion of which the agreement would not satisfy section 32(2)(b).</p> <p>34 Variation</p> <p>(1) If a variation to an apprenticeship agreement is within subsection (2), it has effect only if, before it was made, the employer complied with the requirement in subsection (3).</p> <p>(2) A variation to an apprenticeship agreement is within this subsection if its nature is such that, were it to take effect, the agreement would cease to be an apprenticeship agreement.</p> <p>(3) The employer must give the apprentice written notice stating that, if the variation takes effect, the agreement will cease to be an apprenticeship agreement.</p> <p>35 Status</p> <p>(1) To the extent that it would otherwise be treated as being a contract of apprenticeship, an apprenticeship agreement is to be treated as not being a contract of apprenticeship.</p> <p>(2) To the extent that it would not otherwise be treated as being a contract of service, an apprenticeship agreement is to be treated as being a contract of service.</p> | |
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| <p>(3) This section applies for the purposes of any enactment or rule of law.</p> <p>36 Crown servants and Parliamentary staff</p> <p>(1) Sections 32 to 35 apply in relation to—</p> <p>(a) an agreement under which a person undertakes Crown employment,</p> <p>(b) an agreement under which a person undertakes service as a member of the naval, military or air forces of the Crown, and</p> <p>(c) an agreement under which a person undertakes employment as—</p> <p>(i) a relevant member of the House of Lords staff, or</p> <p>(ii) a relevant member of the House of Commons staff,</p> <p>as they apply in relation to any other agreement under which a person undertakes to work for another.</p> <p>(2) Subsection (1) is subject to subsection (3) and to any modifications which may be prescribed under subsection (5).</p> <p>(3) Section 35(2) does not apply in relation to an apprenticeship agreement that is an agreement within paragraph (a), (b) or (c) of subsection (1).</p> <p>(4) Without prejudice to section 262(3), the power conferred by section 32(2)(b) may be exercised, in particular, to make provision in relation to an apprenticeship agreement which is an agreement within any of paragraphs (a), (b) and (c) of subsection (1) that differs from provision made in relation to other apprenticeship agreements.</p> <p>(5) Regulations may provide for any provision of this Chapter to apply with modifications in relation to—</p> <p>(a) an agreement within paragraph (a), (b) or (c) of subsection (1), or</p> <p>(b) a person working, or proposing to work, under such an agreement.</p> <p>(6) In subsection (1)—</p> <p>“Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision (but does not include service as a member of the naval, military or air forces of the Crown);</p> <p>“relevant member of the House of Commons staff” has the meaning given by section 195(5) of the Employment Rights Act 1996 (c 18);</p> <p>“relevant member of the House of Lords staff” has the meaning given by section 194(6) of that Act.</p> | |
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| <p>38 Apprenticeship sectors</p> <p>(1) The Welsh Ministers must by order specify sectors of skill, trade or occupation for the purposes of this Chapter.</p> <p>(2) The sectors specified under subsection (1) must in the opinion of the Welsh Ministers encompass the full range of skills, trades and occupations.</p> <p>39 Interpretation of Chapter</p> <p>(1) In this Chapter—</p> <p style="padding-left: 40px;">“apprenticeship agreement” has the meaning given by section 32(1);</p> <p style="padding-left: 40px;">“apprenticeship certificate” means a certificate issued under section 7 or 8;</p> <p style="padding-left: 40px;">“apprenticeship framework” has the meaning given by section 12(1);</p> <p style="padding-left: 40px;">“apprenticeship sector” means a sector specified under section 38;</p> <p style="padding-left: 40px;">“the competencies qualification”, in relation to an apprenticeship framework, means the qualification identified in the framework as being the competencies qualification;</p> <p style="padding-left: 40px;">“recognised Welsh framework” has the meaning given by section 12(4);</p> <p style="padding-left: 40px;">“the specification of apprenticeship standards for Wales” means the specification of apprenticeship standards having effect for the time being by virtue of an order made by the Welsh Ministers under section 28 or 29;</p> <p style="padding-left: 40px;">“Welsh certifying authority”, in relation to an apprenticeship certificate of any description, has the meaning given by section 10(1);</p> <p style="padding-left: 40px;">“Welsh issuing authority”, in relation to an apprenticeship framework, has the meaning given by section 18(5).</p> <p>(2) References in this Chapter—</p> <p style="padding-left: 40px;">(a) to the level of an apprenticeship framework, or</p> <p style="padding-left: 40px;">(b) to the apprenticeship sector to which an apprenticeship framework relates,</p> <p style="padding-left: 80px;">are to be construed in accordance with section 12(5).</p> <p>(3) References in this Chapter to an employer and an apprentice, in relation to an apprenticeship agreement, are to be construed in accordance with section 32.</p> | <p><i>Schedule 4, paragraph 12(2)(e)</i></p> |
| <p>262 Orders and regulations</p> <p>(1) A power to make an order or regulations under Chapter 1 of Part 1, or Part 3 or 4, or section 253A—</p> <p style="padding-left: 40px;">(a) so far as exercisable by the Secretary of State, the Welsh Ministers or the Scottish Ministers, is exercisable by statutory instrument;</p> | <p><i>Schedule 4, paragraph 12(3)</i></p> |

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| <p>(b) so far as exercisable by the Department for Employment and Learning in Northern Ireland, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)).</p> <p>(2) Any other power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.</p> <p>(3) A power of the Secretary of State or the Welsh Ministers to make an order or regulations under this Act (except a power conferred by section 17, 22 or 269) includes power—</p> <p>(a) to make different provision for different purposes (including different areas);</p> <p>(b) to make provision generally or in relation to specific cases;</p> <p>(c) to make incidental, consequential, supplementary, transitional, transitory or saving provision.</p> <p>(3A) An order under section 83A(12) may amend, repeal or revoke any provision of, or in an instrument made under, this or any other Act.</p> <p>(4) [repealed]</p> <p>(5) Subject to subsections (6) to (8), a statutory instrument containing an order or regulations made by the Secretary of State under any provision of this Act (other than an order under section 269) is subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>(6) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—</p> <p>(za) the first regulations under section A9;</p> <p>(zb) the first regulations under section A10;</p> <p>(aa) regulations under section 1(5);</p> <p>(aza) regulations under section 40AA;</p> <p>(aaa) regulations under section 40B;</p> <p>(aab) regulations under section ZA5;</p> <p>(ab) an order under section 83A(12);</p> <p>(b) an order under section 88 or paragraph 9 of Schedule 5;</p> <p>(c) [repealed]</p> <p>(d) an order under section 130(5);</p> <p>(e) an order under section 141(1);</p> <p>(ea) an order under section 151B(2);</p> <p>(f) [repealed]</p> <p>(g) an order under section 252(5);</p> <p>(h) an order under section 265 which amends or repeals any provision of an Act.</p> <p>(7) Subsections (5) and (6) do not apply to a statutory instrument</p> | |
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| <p>which contains only—</p> <ul style="list-style-type: none">(a) an order revoking an order under section 141(1), or(b) an order amending an order under section 141(1) for the purpose only of removing a qualification or description of qualification from the application of the order. <p>(8) A statutory instrument within subsection (7) must be laid before Parliament.</p> <p>(9) Subject to subsection (10), a statutory instrument containing an order or regulations made by the Welsh Ministers under Chapter 1 of Part 1 (other than an order under section 10) or under section 68, 107 or 253A is subject to annulment in pursuance of a resolution of the National Assembly for Wales.</p> <p>(10) A statutory instrument which contains (whether alone or with other provision) regulations under section 2(5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.</p> <p>(11) A statutory instrument containing an order made by the Scottish Ministers under section 68 or 107 is subject to annulment in pursuance of a resolution of the Scottish Parliament.</p> <p>(12) A statutory rule containing an order made by the Department for Employment and Learning in Northern Ireland under section 68 or 107 is to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c 33 (NI)) as if it were a statutory instrument within the meaning of that Act.</p> <p>(13) If a draft of an instrument containing an order under paragraph 9 of Schedule 5 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.</p> | |
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| Learning and Skills (Wales) Measure 2009 | |
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| <p>21 Education and training for persons aged 16 to 18</p> <p>(1) Section 31 of the Learning and Skills Act 2000 (c 21) is amended in accordance with subsection (2).</p> <p>(2) In section 31(2)—</p> <p style="padding-left: 2em;">(a) in paragraph (a) delete “and”;</p> <p style="padding-left: 2em;">(b) at the end of paragraph (b) insert “and”;</p> <p style="padding-left: 2em;">(c) following paragraph (b) insert—</p> <p style="padding-left: 4em;">“(c) sufficient to satisfy the entitlements conferred under section 33F”.</p> | <p><i>Schedule 4, paragraph 13(2)</i></p> |
| <p>43 The learning pathway document</p> <p>(1) This section makes provision for a relevant pupil and a relevant student to be provided with a document which records his or her learning pathway (a “learning pathway document”).</p> <p>(2) In subsection (1), a pupil's or student's “learning pathway” means—</p> <p style="padding-left: 2em;">(a) the courses of study (if any) that the pupil or student is entitled to follow under section 116E(1) of the Education Act 2002 or section 33F(1) of the Learning and Skills Act 2000; and</p> <p style="padding-left: 2em;">(b) the learner support services (if any) to be provided to a pupil or student by virtue of section 40 of this Measure.</p> <p>(3) The learning pathway document—</p> <p style="padding-left: 2em;">(a) must be provided within a reasonable period of time following an entitlement arising as described in subsection (2)(a) or a decision being taken to provide services as described in subsection (2)(b); and</p> <p style="padding-left: 2em;">(b) must subsequently be amended or re-issued within a reasonable period of time following—</p> <p style="padding-left: 4em;">(i) a variation in such an entitlement or decision; or</p> <p style="padding-left: 4em;">(ii) such an entitlement arising or such a decision being taken.</p> <p>(4) The duty to provide a learning pathway document under subsection (3)(a) is a duty of—</p> <p style="padding-left: 2em;">(a) in the case of a relevant pupil, the head teacher of the pupil's maintained school when an event described in subsection (3)(a) occurs; and</p> | <p><i>Schedule 4, paragraph 13(3)</i></p> |

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| <p>(b) in the case of a relevant student, the principal of the student's institution when an event described in subsection (3)(a) occurs.</p> <p>(5) The duty to amend or re-issue a learning pathway document under subsection (3)(b) is a duty of—</p> <p>(a) in the case of a relevant pupil, the head teacher of the pupil's maintained school when an event described in subsection (3)(b) occurs; and</p> <p>(b) in the case of a relevant student, the principal of the pupil's institution when an event described in subsection (3)(b) occurs.</p> <p>(6) A head teacher of a maintained school and principal of an institution must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.</p> <p>(7) <u>The Welsh Ministers must consult the Commission for Tertiary Education and Research before giving guidance under subsection (6).</u></p> | |
| <p>Learning and Skills Act 2000 (c 21)</p> <p>1—Amend the Learning and Skills Act 2000 as follows.</p> <p>2—In the sections mentioned in paragraph 3 replace each reference to “National Assembly” with “Welsh Ministers”.</p> <p>3—The sections are 32(1), 33, 34, 35(2) and (5), 36(1), 37, 38(1), 40 and 41(1).</p> <p>4—In section 31—</p> <p>(a) in subsection (1) replace “National Assembly for Wales (the National Assembly)” with “Welsh Ministers”;</p> <p>(b) in subsection (3) replace “on it” with “on them”;</p> <p>(c) in subsection (3) replace the first reference to “National Assembly” with “Welsh Ministers”; and</p> <p>(d) in subsection (3)(d) replace “National Assembly thinks” with “Welsh Ministers think”.</p> <p>5—In section 32(3) replace— (a) “on it” with “on them”;</p> <p>(b) the first reference to “National Assembly” with “Welsh Ministers”; and</p> <p>(c) “National Assembly thinks” with “Welsh Ministers think”.</p> <p>6—In section 34—</p> | <p><i>Schedule 4, paragraph 13(4)</i></p> |

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| <p>(a) in subsection (2)(a) replace “itself” with “themselves”; and</p> <p>(b) in subsection (3) replace “its power” with “their power”.</p> <p>7 In section 35—</p> <p>(a) in subsection (1) replace—</p> <p>(i) “National Assembly itself provides” with “Welsh Ministers themselves provide”; and</p> <p>(ii) “it may impose” with “they may impose”; (b) in subsection (2) replace—</p> <p>(i) “by it” with “by them”;</p> <p>(ii) “it requests” with “they request”; and (iii) “its functions” with “their functions”.</p> <p>8 In section 37—</p> <p>(a) in subsection (2) replace “its powers” with “their powers”;</p> <p>and</p> <p>(b) in subsection (4) replace “its power” with “their power”.</p> <p>9 In section 40(5) replace “its decisions” with “their decisions”.</p> <p>10 In section 41—</p> <p>(a) in subsections (2) to (4) replace—</p> <p>(i) each reference to “National Assembly is” with “Welsh Ministers are”;</p> <p>(ii) each reference to “it cannot” with “they cannot”; and</p> <p>(iii) each reference to “it also secures” with “they also secure”;</p> <p>(b) in subsections (2) and (3) replace each reference to “National Assembly must” with “Welsh Ministers must”; and</p> <p>(c) in subsection (4) replace “National Assembly may” with “Welsh Ministers may”.</p> | |
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| Children and Families (Wales) Measure 2010 | |
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| <p>6 The Welsh authorities</p> <p>(1) For the purposes of this Measure, each of the following is a “Welsh authority”—</p> <ul style="list-style-type: none"> (a) the Welsh Ministers; (b) a local authority; (c) a Local Health Board; (d) a Welsh fire and rescue authority, that is an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c 21) or a scheme to which section 4 of that Act applies; (e) a National Park authority in Wales; (f) the Natural Resources Body for Wales; (g) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>; (h) the Public Health Wales National Health Service Trust; (i) the National Museum of Wales; (j) the Arts Council of Wales; (k) the National Library of Wales; (l) the Sports Council for Wales. <p>(2) The Welsh Ministers may by order—</p> <ul style="list-style-type: none"> (a) amend or omit any paragraph of subsection (1), except paragraphs (a) and (b); (b) add paragraphs to that subsection; (c) amend or omit such additional paragraphs; (d) make any amendments to section 5 that are necessary or expedient in consequence of any provision made under paragraphs (a) to (c). <p>(3) Before making an order under subsection (2) to include a person within subsection (1) or to remove a person from subsection (1), the Welsh Ministers must consult that person.</p> <p>(4) The Welsh Ministers must not exercise their power under subsection (2) so as to include any of the following within subsection (1)—</p> <ul style="list-style-type: none"> (a) a person who does not have functions of a public nature; | <p><i>Schedule 4, paragraph 14</i></p> |

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| <p>(b) a person whose principal functions do not relate to one or more of the fields in Part 1 of Schedule 5 to the Government of Wales Act 2006 (c 32); (c) a tribunal.</p> <p>(5) If the Welsh Ministers exercise their power under subsection (2) so as to include a person within subsection (1) who has functions of both a public and a private nature, they must include that person only in relation to those of its functions which are of a public nature.</p> | |
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| Welsh Language (Wales) Measure 2011 | |
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| Column 1 | Column 2 |
| Person/Category | Potentially applicable standards |
| GOVERNMENT | |
| The Welsh Ministers (<i>"Gweinidogion Cymru"</i>) | Service delivery standards Policy making standards Operational standards Promotion standards Record keeping standards |
| Ministers of the Crown (<i>"Gweinidogion y Goron"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Government departments (<i>"Adrannau'r Llywodraeth"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Persons exercising, on behalf of the Crown, functions conferred by or under an Act or Measure (<i>"Personau sy'n arfer, ar ran y Goron, swyddogaethau a roddir gan neu o dan Ddeddf neu Fesur"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| LOCAL GOVERNMENT ETC | |
| County borough councils and county councils in Wales (<i>"Cynghorau sir a chynghorau bwrdeistref sirol yng Nghymru"</i>) | Service delivery standards Policy making standards Operational standards Promotion standards Record keeping standards |

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| Community councils (<i>"Cynghorau cymuned"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Local authority joint committees (<i>"Cyd-bwyllgorau awdurdodau lleol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Local authority joint boards (<i>"Cyd-fyrddau awdurdodau lleol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Local Health Boards (<i>"Byrddau Iechyd Lleol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Community Health Councils (<i>"Cynghorau Iechyd Cymuned"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| National Health Service Trusts (<i>"Ymddiriedolaethau Gwasanaeth Iechyd Gwladol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Special Health Authorities (<i>"Awdurdodau Iechyd Arbennig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| National Park Authorities (<i>"Awdurdodau Parciau Cenedlaethol"</i>) | Service delivery standards Policy making standards Operational standards Promotion standards Record keeping standards |

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| Fire and Rescue Authorities (<i>"Awdurdodau Tân ac Achub"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Providers of Social Housing (<i>"Darparwyr Tai Cymdeithasol"</i>) | Service delivery standards Policy making standards Operational standards |

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| | Record keeping standards |
| Strategic planning panels (<i>"Paneli cynllunio strategol"</i>) | Service delivery standards Policy making standards Operational standards Promotion standards Record keeping standards |
| GENERAL | |
| Aberystwyth University (<i>"Prifysgol Aberystwyth"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Agricultural Land Tribunal (Wales) (<i>"Tribiwnlys Tir Amaethyddol Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Agriculture and Horticulture Development Board (<i>"Bwrdd Datblygu Amaethyddiaeth a Garddwriaeth"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Alcohol Education and Research Fund (<i>"Cronfa Addysgu ac Ymchwilio Alcohol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Arts Council of Wales (<i>"Cyngor Celfyddydau Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The Arts and Humanities Research Council (“ <i>Y Cyngor Ymchwil i'r Celfyddydau a'r Dyniaethau</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Auditor General for Wales (“ <i>Archwilydd Cyffredinol Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
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| Bangor University (“ <i>Prifysgol Bangor</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Bank of England (“ <i>Banc Lloegr</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Big Lottery Fund (“ <i>Y Gronfa Loteri Fawr</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Biotechnology and Biological Sciences Research Council (“ <i>Cyngor Ymchwil Biotechnoleg a Gwyddorau Biolegol</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Board of Community Health Councils in Wales (“ <i>Bwrdd Cyngorau Iechyd Cymuned Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The British Broadcasting Corporation (“ <i>Y Gorfforaeth Ddarlledu Brydeinig</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The British Council (“ <i>Y Cyngor Prydeinig</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The British Film Institute (“ <i>Y Sefydliad Ffilm Prydeinig</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| British Transport Police Authority (“ <i>Awdurdod Heddlu Trafnidiaeth Prydain</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The British Wool Marketing Board (“ <i>Bwrdd Marchnata Gwlân Prydain</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Canal & River Trust (“ <i>Glandŵr Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Carbon Trust (“ <i>Yr Ymddiriedolaeth Garbon</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Cardiff University (“ <i>Prifysgol Caerdydd</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Social Care Wales (“ <i>Gofal Cymdeithasol Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Career Choices Dewis Gyrfa Limited (<i>"Career Choices Dewis Gyrfa Cyfyngedig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Charities Commission for England and Wales (<i>"Comisiwn Elusennau Cymru a Lloegr"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Child Maintenance and Enforcement Commission (<i>"Comisiwn Trefnu a Gorfodi Cynhaliaeth Plant"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Children's Commissioner for Wales (<i>"Comisiynydd Plant Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Civil Nuclear Police Authority (<i>"Awdurdod Heddlu Niwclear Sifil"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Coleg Ceredigion | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Coleg Sir Gâr | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Colleges Wales Limited (<i>"Colegau Cymru Cyfyngedig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| <p>The Commission for Equality and Human Rights (<i>"Comisiwn Cydraddoldeb a Hawliau Dynol"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | <p><i>Schedule 4, paragraph 15(a)</i></p> |
| <p><u>The Commission for Tertiary Education and Research</u> (<i>"Comisiwn Addysg Drydyddol ac Ymchwil"</i>)</p> | <p><u>Service delivery standards</u> <u>Policy making standards</u> <u>Operational Standards</u> <u>Record keeping standards</u></p> | |
| <p>The Commissioner for Older People in Wales (<i>"Comisiynydd Pobl Hŷn Cymru"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Community Development Foundation (<i>"Sefydliad Datblygu Cymunedol"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Consumer Council for Water (<i>"Y Cyngor Defnyddwyr Dŵr"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
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| <p>The Professional Standards Authority for Health and Social Care (<i>"Yr Awdurdod Safonau Proffesiynol ar gyfer Iechyd a Gofal Cymdeithasol"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Criminal Injuries Compensation Authority (<i>"Yr Awdurdod Digolledu am Anafiadau Troseddol"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Disabled Persons Transport Advisory Committee (<i>"Pwyllgor Ymgynghorol Trafnidiaeth i'r Anabl"</i>)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |

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| The Economic and Social Research Council (<i>"Y Cyngor Ymchwil Economaidd a Chymdeithasol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Electoral Commission (<i>"Y Comisiwn Etholiadol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Energy Saving Trust Limited (<i>"Yr Ymddiriedolaeth Arbed Ynni Cyfyngedig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Engineering and Physical Sciences Research Council (<i>"Cyngor Ymchwil Peirianneg a Gwyddorau Ffisegol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Engineering Construction Industry Training Board (<i>"Bwrdd Hyfforddi'r Diwydiant Adeiladu Peiriannol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Environment Agency (<i>"Asiantaeth yr Amgylchedd"</i>) | Service delivery standards Policy making standards Operational standards |

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| | Record keeping standards |
| Finance Wales plc (<i>"Cyllid Cymru ccc"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Financial Conduct Authority (<i>"Awdurdod Ymddygiad Ariannol"</i>) | Record keeping standards Service delivery standards Policy making standards Operational standards |

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| Further education corporations (<i>"Corfforaethau addysg bellach"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Gambling Commission (<i>"Y Comisiwn Hapchwarae"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The General Chiropractic Council (<i>"Y Cyngor Ceiropractig Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The General Dental Council (<i>"Y Cyngor Deintyddol Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The General Medical Council (<i>"Y Cyngor Meddygol Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The General Optical Council (<i>"Y Cyngor Optegol Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The General Osteopathic Council (<i>"Y Cyngor Osteopathig Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards |
| | Record keeping standards |
| The General Pharmaceutical Council (<i>"Y Cyngor Fferyllol Cyffredinol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Education Workforce Council (<i>"Cyngor y Gweithlu Addysg"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Gofal Cymru | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The governing bodies of schools (<i>"Cyrff Ilywodraethu ysgolion"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The governing body of Saint David's Catholic College (<i>"Corff Ilywodraethu Coleg Catholig Dewi Sant"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Hafal | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Health, Education and Social Care Chamber (<i>"Y Siambr Iechyd, Addysg a Gofal Cymdeithasol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Health and Care Professions Council (<i>"Y Cyngor Proffesiynau Iechyd a Gofal"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Her Majesty's Chief Inspector of Education and Training in Wales (<i>"Prif Arolygydd ei"</i>) | Service delivery standards Policy making standards Operational standards | |
| <i>Mawrhydi dros Addysg a Hyfforddiant yng Nghymru"</i>) | Record keeping standards | |

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| Higher education corporations (“ <i>Corfforaethau addysg uwch</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | <i>Schedule 4, paragraph 15(b)</i> |
| The Higher Education Funding Council for Wales (“<i>Cyngor Cyllide Addysg Uwch Cymru</i>”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Human Fertilisation and Embryology Authority (“ <i>Yr Awdurdod Ffrwythloni ac Embryoleg Dynol</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Human Tissue Authority (“ <i>Yr Awdurdod Meinweoedd Dynol</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Hybu Cig Cymru—Meat Promotion Wales | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Independent Police Complaints Commission (“ <i>Comisiwn Cwynion Annibynnol yr Heddlu</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Information Commissioner’s Office (“ <i>Swyddfa’r Comisiynydd Gwybodaeth</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Investors in People UK (“ <i>Buddsoddwyr mewn Pobl y DU</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Leonard Cheshire Disability | Service delivery standards Policy making standards | |

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| | Operational standards Record keeping standards | |
| The Local Democracy and Boundary Commission for Wales (“Comisiwn Ffiniau a Democratiaeth Leol Cymru”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Local Government Data Unit—Wales (“ <i>Uned Ddata Llywodraeth Leol—Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Medical Research Council (“ <i>Y Cyngor Ymchwil Meddygol</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Mental Health Review Tribunal for Wales (“ <i>Tribiwnlys Adolygiad Iechyd Meddwl Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Merthyr Tydfil College Limited (“ <i>Coleg Merthyr Tudful Cyfyngedig</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| Motability | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The National Association of Citizens Advice Bureaux (“ <i>Cymdeithas Genedlaethol Cyngor ar Bopeth</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| National Botanic Garden of Wales (“ <i>Gardd Fotaneg Genedlaethol Cymru</i> ”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |

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| National Endowment for Science, Technology and the Arts (“Y Gwaddol | Service delivery standards Policy making standards | |
| <i>Cenedlaethol ar gyfer Gwyddoniaeth, Technoleg a'r Celfyddydau</i>) | Operational standards Record keeping standards | |
| National Institute for Health and Clinical Excellence (“Sefydliad Cenedlaethol dros Iechyd a Rhagoriaeth Glinigol”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The National Library of Wales (“Llyfrgell Genedlaethol Cymru”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The National Museum of Wales (“Amgueddfa Genedlaethol Cymru”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The National Theatre of Wales | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Natural Environment Research Council (“Cyngor Ymchwil yr Amgylchedd Naturiol”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| The Natural Resources Body for Wales (“Corff Adnoddau Naturiol Cymru”) | Service delivery standards Policy making standards Operational standards Record keeping standards | |
| NIACE | Service delivery standards Policy making standards Operational standards Record keeping standards | |

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| <p>The Nursing and Midwifery Council (“<i>Y Cyngor Nyrsio a Bydwreigiaeth</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Office of Communications (“<i>Y Swyddfa Gyfathrebiadau</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Office of Rail and Road (“<i>Y Swyddfa Rheilffyrdd a Ffyrdd</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Open University (“<i>Y Brifysgol Agored</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>Transport Focus</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Pensions Advisory Service (“<i>Gwasanaeth Cyngori ar Bensiynau</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Pensions Ombudsman (“<i>Yr Ombwdsmon Pensiynau</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |
| <p>The Pensions Regulator (“<i>Y Rheoleiddiwr Pensiynau</i>”)</p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> | |

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| Police and Crime Commissioners (<i>"Comisiynwyr Heddlu a Throseddu"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Providers of career services (<i>"Darparwyr gwasanaethau gyrfaoedd"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Prudential Regulation Authority (<i>"Awdurdod Rheoleiddio Darbodus"</i>) | Record keeping standards Service delivery standards Policy making standards Operational standards |
| Qualifications Wales (<i>"Cymwysterau Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Quality Assurance Agency for Higher Education (<i>"Asiantaeth Sicrwydd Ansawdd Addysg Uwch"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Rent Assessment Committees for Wales (<i>"Y Pwyllgorau Asesu Rhenti i Gymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Residential Property Tribunal Wales (<i>"Tribiwnlys Eiddo Preswyl Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Royal Commission on the Ancient and Historical Monuments of Wales (<i>"Comisiwn Brenhinol Henebion Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Royal Mail Group plc (<i>"Grŵp y Post Brenhinol ccc"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Royal Voluntary Service | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Royal Welsh College of Music and Drama Limited (<i>"Coleg Brenhinol Cerdd a Drama Cymru Cyfyngedig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The Sector Skills Councils (<i>"Y Cynghorau Sgiliau Sector"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Security Industry Authority (<i>"Awdurdod y Diwydiant Diogelwch"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Sianel 4 Cymru | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Science and Technology Facilities Council (<i>"Cyngor Cyfleusterau Gwyddoniaeth a Thechnoleg"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Special Educational Needs Tribunal for Wales (<i>"Tribiwnlys Anghenion Addysgol Arbennig Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The Sports Council for Wales (<i>"Cyngor Chwaraeon Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Statistics Board (<i>"Y Bwrdd Ystadegau"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Student Loans Company Limited (<i>"Cwmni Benthyciadau Myfyrwyr Cyfyngedig"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Swansea University (<i>"Prifysgol Abertawe"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| Theatr Genedlaethol Cymru | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Trustees of the National Heritage Memorial Fund (<i>"Ymddiriedolwyr Cronfa Goffa'r Dreftadaeth Genedlaethol"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| UFI Ltd (<i>"UFI Cyf"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The UK Commission For Employment and Skills (<i>"Comisiwn y DU dros Gyflogaeth a Sgiliau"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| The UK Sports Council (<i>"Cyngor Chwaraeon y DU"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| United Kingdom Research and Innovation (<i>"Ymchwil ac Arloesedd y Deyrnas Unedig"</i>) | Service delivery standards Policy making standards Operational Standards Record keeping standards |
| The University of Wales (<i>"Prifysgol Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| University of Wales: Trinity St David (<i>"Prifysgol Cymru: Y Drindod Dewi Sant"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Valuation Tribunal for Wales (<i>"Tribiwnlys Prisio Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| The Wales Audit Office (<i>"Swyddfa Archwilio Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Wales Council for Voluntary Action (<i>"Cyngor Gweithredu Gwirfoddol Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |
| Wales Millennium Centre (<i>"Canolfan Mileniwm Cymru"</i>) | Service delivery standards Policy making standards Operational standards Record keeping standards |

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| <p>The Welsh Books Council <i>("Cyngor Llyfrau Cymru")</i></p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> |
| <p>The Welsh Local Government Association <i>("Cymdeithas Llywodraeth Leol Cymru")</i></p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> |
| <p>Welsh National Opera Limited <i>("Opera Cenedlaethol Cymru Cyfyngedig")</i></p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> |
| <p>WJEC CBAC Limited <i>("WJEC CBAC Cyfyngedig")</i></p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> |
| <p>The Youth Justice Board for England and Wales <i>("Bwrdd Cyfiawnder Ieuencid Cymru a Lloegr")</i></p> | <p>Service delivery standards Policy making standards Operational standards Record keeping standards</p> |

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| <p>School Standards and Organisation (Wales) Act 2013</p> | |
| <p>Overview of this Act</p> <p>(1) This Act has 6 Parts.</p> <p>(2) Part 2 is divided into 3 Chapters containing provisions concerned with maintaining and improving standards—</p> <p style="padding-left: 20px;">(a) in maintained schools, and</p> <p style="padding-left: 20px;">(b) in the exercise of education functions by local authorities.</p> <p>(3) Chapter 1 of Part 2 (including Schedule 1)—</p> <p style="padding-left: 20px;">(a) sets out the grounds for intervention by local authorities and the Welsh Ministers in the conduct of maintained schools that are causing concern, and</p> <p style="padding-left: 20px;">(b) provides a range of intervention powers to enable local authorities and the Welsh Ministers to deal with the causes of concern.</p> <p>(4) Chapter 2—</p> <p style="padding-left: 20px;">(a) sets out the grounds for intervention by the Welsh Ministers in the exercise of education functions by local authorities that are causing concern, and</p> <p style="padding-left: 20px;">(b) provides a range of intervention powers to enable the Welsh Ministers to deal with the causes of concern.</p> <p>(5) Chapter 3 makes provision for the Welsh Ministers to give guidance to the governing bodies of maintained schools, the head teachers of such schools and local authorities on how functions should be exercised with a view to improving the standard of education provided in maintained schools.</p> <p>(6) Part 3 is divided into 6 Chapters containing provision about the organisation of maintained schools.</p> <p>(7) Chapter 1 of Part 3 provides for a School Organisation Code about the exercise of functions under Part 3.</p> <p>(8) Chapter 2 (including Schedules 2 to 4) makes provision requiring the establishment, alteration and discontinuance of maintained schools in accordance with a specified process.</p> <p>(9) Chapter 3 provides for the rationalisation of school places if the Welsh Ministers are of the opinion that there is excessive or insufficient provision for primary or secondary</p> | |

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| <p>education in maintained schools.</p> <p><u>(9A) Chapter 3A provides for powers for the Commission for Tertiary Education and Research to rationalise sixth form education.</u></p> <p>(10) Chapter 4 provides for the making of regional provision for <i>special educational</i> additional learning needs.</p> <p>(11) Chapter 5 provides for powers for the Welsh Ministers to re-structure sixth form education.</p> <p>(12) Chapter 6 provides for miscellaneous and supplemental matters relating to school organisation.</p> <p>(13) Part 4 makes provision for Welsh in education strategic plans, which are to be—</p> <ul style="list-style-type: none"> (a) prepared by local authorities, (b) approved by the Welsh Ministers, and (c) published and implemented by local authorities (sections 84, 85 and 87). <p>(14) Part 4 also provides a power exercisable by regulations for the Welsh Ministers to require local authorities to carry out an assessment of the demand among parents for Welsh medium education for their children (section 86).</p> <p>(15) Part 5 makes provision about miscellaneous functions relating to maintained schools, including provision—</p> <ul style="list-style-type: none"> (a) requiring local authorities to provide breakfasts for pupils at maintained primary schools at the request of the governing bodies of those schools (sections 88 to 90); (b) amending the existing powers of local authorities and governing bodies to charge for school meals, so that— <ul style="list-style-type: none"> (i) a related requirement to charge every person the same price for the same quantity of the same item is removed, and (ii) a new requirement that the price charged for an item does not exceed the cost of providing that item is imposed (section 91); (c) requiring local authorities to secure reasonable provision for a service providing counselling in respect of health, emotional and social needs for specified school pupils and other children (section 92); | <p><i>Schedule 4, paragraph 16(2)(a)</i></p> <p><i>Schedule 4, paragraph 16(2)(b)</i></p> |
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| <p>(d) requiring governing bodies of maintained schools to hold a meeting if requested to do so by parents in a petition (section 94) and repealing an existing duty to hold an annual parents' meeting (section 95);</p> <p>(e) repealing the Welsh Ministers' duty to issue a code of practice for securing effective relationships between local authorities and maintained schools (section 96).</p> <p>(16) Part 6—</p> <p>(a) introduces Schedule 5, which makes minor and consequential amendments to other legislation arising from the provisions of this Act;</p> <p>(b) contains definitions that apply for the purposes of this Act generally and an index of definitions that apply to a number of provisions, but not the whole Act (section 98);</p> <p>(c) contains other provisions which apply generally for the purposes of this Act.</p> | |
| <p>38 School Organisation Code</p> <p>(1) The Welsh Ministers must issue, and may from time to time revise, a code on school organisation (“the Code”).</p> <p>(2) The Code is to contain provision about the exercise of the functions of the following persons under this Part— (a) the Welsh Ministers;</p> <p>(b) local authorities;</p> <p>(c) governing bodies of maintained schools;</p> <p><u>(ca) the Commission for Tertiary Education and Research;</u></p> <p>(d) other persons in connection with proposals made (or to be made) by them under this Part.</p> <p>(3) The Code may impose requirements, and may include guidelines setting out aims, objectives and other matters.</p> <p>(4) The persons referred to in subsection (2) must, when exercising functions under this Part—</p> <p>(b) act in accordance with any relevant requirements contained in the Code, and</p> <p>(c) have regard to any relevant guidelines contained in it.</p> <p>(5) The duty imposed by subsection (4) also applies to a person exercising a function for the purpose of the discharge of functions under this Part by the Welsh Ministers,</p> <p>(a) local authority,</p> <p>(b) the governing body of a maintained school, or</p> <p><u>(ca) the Commission for Tertiary Education and Research,</u></p> <p><u>or</u></p> <p>(d) other persons in connection with proposals made (or to be made) by them under this Part.</p> | <p><i>Schedule 4, paragraph 16(3)(a)</i></p> <p><i>Schedule 4, paragraph 16(3)(b)</i></p> |

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| <p>(6) The Welsh Ministers must publish the Code for the time being in force on their website.</p> <p>(7) The Welsh Ministers may make separate provision (by means of separate codes) in relation to different functions under this Part of the persons mentioned in subsection (2).</p> <p>(8) References in this section to “the Code” or to functions under this Part have effect, in relation to a separate code, as references to that code or to functions under this Part to which it relates.</p> | |
| <p>39 Making and approval of School Organisation Code</p> <p>(1) Before issuing or revising a code under section 38, the Welsh Ministers must consult the following persons on a draft of the code (or revised code)—</p> <ul style="list-style-type: none"> (a) each local authority, (b) the governing body of each maintained school, (c) Her Majesty's Chief Inspector of Education and Training in Wales, and <u>(ca) the Commission for Tertiary Education and Research, and</u> (d) any other person the Welsh Ministers consider appropriate. <p>(2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.</p> <p>(3) If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the code, the Welsh Ministers must not issue the proposed code in the form of that draft.</p> <p>(4) If no such resolution is made before the end of that period—</p> <ul style="list-style-type: none"> (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and (b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers. | <p><i>Schedule 4, paragraph 16(4)</i></p> |

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| <p>(5) The 40 day period—</p> <p>(a) begins on the day on which the draft is laid before the National Assembly for Wales, and</p> <p>(b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.</p> <p>(6) Subsection (3) does not prevent a new draft of a proposed code from being laid before the National Assembly.</p> <p>(7) References in this section to a proposed code include a proposed revised code.</p> <p>(8) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part even though the code issued under section 38(1) takes account (to any extent) of any provision made by this Part.</p> | |
| <p>50 Approval by Welsh Ministers</p> <p>(1) Proposals published under section 48 require approval under this section if—</p> <p>(a) the proposals affect sixth form education, or</p> <p>(b) the proposals have been made by a proposer other than the relevant local authority and an objection has been made by that authority in accordance with section 49(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.</p> <p>(2) Proposals affect sixth form education if—</p> <p>(a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or</p> <p>(b) they are proposals to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.</p> <p>(3) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (4) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.</p> <p>(4) The documents are—</p> <p>(a) the report published under section 48(5),</p> | <p><i>Schedule 4, paragraph 16(5)(a)</i></p> <p><i>Schedule 4, paragraph 16(5)(b)</i></p> |

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| <p>(b) the published proposals,</p> <p>(c) any objections made in accordance with section 49(2) (and not withdrawn), and</p> <p>(d) where objections have been so made (and not withdrawn), the response published under section 49(3).</p> <p>(5) Where proposals require approval under this section, the Welsh Ministers may— (a) reject the proposals,</p> <p>(b) approve them without modification, or</p> <p>(c) approve them with modifications—</p> <p>(i) after obtaining the consent of the proposer to the modifications, and</p> <p>(ii) (except where the governing body or local authority, as the case may be, is the proposer), after consulting the governing body (if any) of the school to which the proposals relate and the relevant local authority.</p> <p>(6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.</p> <p>(7) The Welsh Ministers may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.</p> <p>(8) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the Welsh Ministers at any time before they are approved under this section.</p> <p>(9) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56).</p> <p>(10) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.</p> | |
| <p>54 Referral to the Welsh Ministers</p> <p>(1) This section applies if a local authority has—</p> <p>(a) determined to approve or reject proposals under section 51(4), or</p> <p>(b) determined under section 53(1) to implement proposals to which there was an objection made in accordance with section 49 (and which was not withdrawn in writing before the end of 28 days beginning with the obligation period).</p> | |

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| <p>(2) Before the end of 28 days beginning with the day of the local authority's determination under section 51(4) or 53(1), the following may refer the proposals to the Welsh Minister—</p> <ul style="list-style-type: none"> (a) another local authority which is likely to be affected by the proposals; (b) a local authority in England which is likely to be affected by the proposals ; (c) the appropriate religious body for— <ul style="list-style-type: none"> (i) the school to which the proposals relate if it is, or is intended to be, a school which has a religious character, or (ii) any other school which has a religious character and which is likely to be affected by the proposals; (d) if the school to which the proposals relate is a foundation or voluntary school, the governing body of the school; (e) a trust holding property for the purpose of the school <p style="padding-left: 40px;">to which the proposals relate;</p> <ul style="list-style-type: none"> (f) an institution within the further education sector which is likely to be affected by the proposals. (g) <u>if the proposals affect sixth form education, the Commission for Tertiary Education and Research.</u> <p>(3) Whether an authority, school or institution is likely to be affected by the proposals for the purpose of subsection (2) is a question to be determined by the Welsh Ministers.</p> <p><u>(3A) Proposals affect sixth form education for the purposes of subsection (2)(g) if –</u></p> <ul style="list-style-type: none"> <u>(a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or</u> <u>(b) they are proposals to make a regulated alternation to a school, the effect of which would be that provision of education suitable to the requirements of person above compulsory school age at the school increases or decreases.</u> <p>(4) The Welsh Ministers must consider proposals referred to them under this section afresh and subsections (5) to (8)</p> | <p><i>Schedule 4, paragraph 16(6)(a)</i></p> <p><i>Schedule 4, paragraph 16(6)(b)</i></p> |
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| <p>of section 50 apply as if the proposals required their approval under that section.</p> <p>(5) Proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56) may not be referred to the Welsh Ministers under this section.</p> <p>(6) Proposals which the Welsh Ministers are required to consider under this section are not to be treated for the purposes of section 55 or 61 as proposals approved under section 51 or as proposals that the proposer has determined to implement under section 53.</p> <p>(7) Proposals approved in accordance with this section are to be treated for the purposes of section 55 as proposals approved under section 50.</p> <p>(8) Proposals rejected in accordance with this section are to be treated for the purposes of paragraph 35(3)(e) of Schedule 4 as proposals rejected under section 50.</p> | |
| <p>61 Local inquiry into proposals</p> <p>(1) This section applies where the Welsh Ministers have made proposals under section 59 (other than proposals made by virtue of section 62(1)) which they have not withdrawn.</p> <p>(2) If objections have been made in accordance with section 60(2), then, unless all objections so made have been withdrawn in writing within the 28 days referred to in that section, the Welsh Ministers must cause a local inquiry to be held.</p> <p>(3) The purpose of the local inquiry is to consider the Welsh Ministers' proposals, any other proposals the Welsh Ministers refer to the inquiry and the objections mentioned in subsection (2).</p> <p>(4) Proposals referred to a local inquiry under this section are to be determined under section 62, and sections 50, 51, 53, 54, <u>63F</u>, <u>63G</u> and <u>70</u> 70 and 73 do not apply to them.</p> <p>(5) Where a local inquiry is required to be held, the Welsh Ministers must refer the proposals listed in subsection (6) to the inquiry if the proposals—</p> <p>(a) have not been determined before the proceedings on the inquiry begin, and</p> <p>(b) appear to the Welsh Ministers to be related to the proposals made under section 59 in respect of which the inquiry is to be held.</p> <p>(6) The proposals to be referred are—</p> | <p><i>Schedule 4, paragraph 16(7)(a)</i></p> |

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| <p>(a) any other proposals published under section 59 in relation to the area of the local authority (and not withdrawn);</p> <p>(b) any proposals made by that authority in the exercise of their powers to make proposals to establish, alter or discontinue schools (and not withdrawn);</p> <p>(c) any proposals made by the governing body of a foundation or voluntary school in the area in the exercise of its powers to make proposals to alter its school (and not withdrawn);</p> <p>(d) any proposals made under section <u>63C or 68</u> 68 or 71 (and not withdrawn).</p> <p>(7) If, before the proceedings on the inquiry begin, the Welsh Ministers form the opinion that any proposals should be implemented, subsection (5) does not require them to refer those proposals to the inquiry unless they form a different opinion before—</p> <p>(a) the proceedings on the inquiry are concluded, or (b) (if earlier) the proposals are determined.</p> <p>(8) It is not open to the inquiry to question the principles specified in the direction under section 57(2) <u>a direction under section 57(2) or 63A(1)</u>.</p> <p>(9) References in this section to the determination of proposals are to—</p> <p>(a) a determination whether or not to adopt or approve the proposals under section 50, 51, 62, <u>63F or 70</u> 70 or 73;</p> <p>(b) a determination whether or not to implement the proposals under section 53 <u>or 63G</u>;</p> <p>(c) a determination whether or not to approve proposals referred to the Welsh Ministers under section 54.</p> | <p><i>Schedule 4, paragraph 16(7)(b)</i></p> <p><i>Schedule 4, paragraph 16(7)(c)</i></p> <p><i>Schedule 4, paragraph 16(7)(d)(i)</i> <i>Schedule 4, paragraph 16(7)(d)(ii)</i></p> |
| <p>63 Implementation of proposals</p> <p>(1) Proposals adopted or approved by the Welsh Ministers under section 62 have effect as if they had been approved by the Welsh Ministers under section 50 after having been made—</p> <p>(a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or</p> <p>(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.</p> | <p><i>Schedule 4, paragraph 16(8)</i></p> |

- (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 adopted or approved under section 62 which have effect as mentioned in subsection (1)(b).

Chapter 3A

PROPOSALS FOR THE RATIONALISATION OF SIXTH FORM PROVISION

Directions by the Commission to make sixth form proposals

63A The Commission may, in accordance with the Code –

- (a) direct a local authority to exercise its powers to make proposals to –
- (1)
- (i) establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or
- (ii) make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of person above compulsory school age at the school increases or decreases.
- (b) direct the governing body of a foundation or voluntary school to exercise its powers to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of person above compulsory school age at the school increases or decreases.
- (2) A direction under subsection (1) must –
- (a) require the proposals to be published no later than the date specified in the direction, and
- (b) require the proposals, in giving effect to the direction, to apply any principles specified in it.

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

- (1) Proposals made in accordance with a direction under section 63A(1) may not be withdrawn without the consent of the Commission.
- (2) The Commission may give consent for the purposes of subsection (1) subject to conditions.
- (3) A local authority must reimburse expenditure reasonably

incurred by a governing body of a school maintained by it in making proposals in accordance with a direction under section 63A(1).

- (4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), a local authority must meet the cost of implementing proposals made by a governing body of a school maintained by it in accordance with a direction under section 63A(1) which have been approved or determined to be implemented.

63C Making 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

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| <p>(1) <u>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 –</u></p> <p>(a) <u>by the local authority under its powers to make proposals to establish, alter or discontinue schools, or</u></p> <p>(b) <u>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.</u></p> <p>(2) <u>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).</u></p> <p>63I <u>Interpretation of Chapter 3A</u></p> <p><u>In this chapter “the Code” (“Y Cod”) means the code on school organisation issued under section 38(1)</u> <u>“the Commission” (“Y Comiswn”) means the Commission for Tertiary Education and Research</u></p> | |
| <p>71 W educ</p> <p>(1) Welsh Ministers' powers to restructure sixth form ation</p> <p>The Welsh Ministers may make proposals under this section for—</p> <p>(a) the establishment by a local authority of one or more new community or community special schools to provide secondary education suitable to the requirements of sixth formers (and no other secondary education);</p> <p>(b) an alteration described in paragraph 6 of Schedule 2 to one or more maintained schools;</p> <p>(c) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of sixth formers (and no other secondary education).</p> <p>(2) A “sixth former” is a person who is above compulsory school age but below the age of 19.</p> <p>72 Consultation, publication and objections</p> | <p><i>Schedule 4, paragraph 16(9)</i></p> |

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| <p>(1) Before publishing proposals made under section 71, the Welsh Ministers must consult on the proposals in accordance with the code issued under section 38(1) for the time being in force.</p> <p>(2) The Welsh Ministers must publish proposals made under section 71 in accordance with the code issued under section 38(1) for the time being in force.</p> <p>(3) Any person may object to the proposals.</p> <p>(4) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.</p> <p>73 Determination by Welsh Ministers</p> <p>(1) After the end of the 28 days referred to in section 72(4), the Welsh Ministers must determine whether to— (a) — adopt the proposals, with or without modifications, or (b) — withdraw the proposals.</p> <p>(2) In making a determination under subsection (1), the Welsh Ministers must have regard to any objections made in accordance with section 72(4) and not withdrawn.</p> <p>(3) Before adopting proposals subject to modifications, the Welsh Ministers must consult such persons as they consider appropriate.</p> <p>(4) The adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified.</p> <p>(5) If the event does not occur by the specified date the Welsh Ministers must reconsider their determination under subsection (1).</p> <p>(6) The Welsh Ministers may withdraw their proposals at any time before they make a determination under subsection (1).</p> <p>Implementation of Proposals for Restructuring Sixth Form Education</p> <p>74 Form of implementation</p> <p>(1) This section applies to proposals which have been adopted by the Welsh Ministers under section 73.</p> <p>(2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were adopted.</p> <p>(3) At the request of a specified body, the Welsh Ministers—</p> | |
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| <p>(a) may modify proposals adopted under section 73 after consulting the specified bodies, and</p> <p>(b) where the adoption of proposals was expressed to take effect subject to the occurrence of a specified event, may specify a later date by which that event must occur.</p> <p>(4) The Welsh Ministers may determine that subsection (2) does not apply to the proposals if they are satisfied, after consulting the specified bodies—</p> <p>(a) that implementation of the proposals would be unreasonably difficult, or</p> <p>(b) that circumstances have so altered since the proposals were adopted that implementation of the proposals would be inappropriate.</p> <p>(5) Each of the following is a “specified body” for the purposes of subsections (3) and (4)—</p> <p>(a) the governing body of the school to which the proposals relate;</p> <p>(b) in the case of a proposal to establish a new school, the temporary governing body constituted in accordance with arrangements made under section 34 of the Education Act 2002;</p> <p>(c) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;</p> <p>(d) where the school to which the proposals relate is a community special school each local authority which maintains a statement of special educational needs under Part 4 of the Education Act 1996 an individual development plan under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 in respect of a registered pupil at the school.</p> | |
| <p>75 Responsibility for implementation</p> <p>(1) Proposals to establish a school must be implemented by the local authority that it is proposed will maintain the school.</p> <p>(2) Proposals to make an alteration described in paragraph 6 of Schedule 2 must be implemented—</p> <p>(a) in the case of proposals relating to a community school, by the local authority that maintains the school;</p> | |

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| <p>(b) in the case of proposals relating to a voluntary aided school—</p> <p>(i) so far as relating to the provision of any relevant premises, by the local authority that maintains the school, and</p> <p>(ii) otherwise, by the local authority that maintains the school and the governing body of the school to the extent (if any) as the proposals provide for each of them to do so;</p> <p>(c) in the case of proposals relating to any other school, by the local authority that maintains the school and the governing body of the school to the extent (if any) as the proposals provide for each of them to do so.</p> <p>(3) In subsection (2) “relevant premises” means— (a) ——— playing fields, or (b) buildings which are to form part of the school premises but are not to be school buildings.</p> <p>(4) Proposals to discontinue a school must be implemented— (a) in the case of proposals relating to a community or community special school, by the local authority that maintains the school, and (b) in any other case, by the local authority that maintains the school and the governing body of the school.</p> <p>(5) If a school changes category from a community school after proposals have been published under section 72 but before they have been implemented, the proposals (to the extent that they have not been implemented) must be implemented by the local authority that maintains the school (despite subsections (2) and (4)).</p> <p>76 Further provision as to implementation</p> <p>(1) Where a local authority is required by virtue of section 75 to provide a site for a foundation or voluntary controlled school, paragraph 7 of Schedule 3 (provision of site and buildings for foundation or voluntary controlled school) applies as it applies in the circumstances mentioned in sub-paragraph (1) of that paragraph.</p> <p>(2) Paragraph 8 of Schedule 3 (grants in respect of certain expenditure relating to voluntary aided schools) applies in relation to the obligation under section 75(2)(b)(ii) as it applies in relation to the obligations referred to in paragraph 8(1)(a) of that Schedule.</p> | |
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| <p>(3) Paragraph 9 of Schedule 3 (assistance from local authority in respect of voluntary aided schools) applies in relation to obligations imposed on the governing body of a voluntary aided school under section 75(2)(b)(ii) as it applies in relation to the obligations referred to in that paragraph 9, and paragraph 11 of that Schedule (duty on local authority to transfer interest in premises provided under paragraph 9 or 10) applies accordingly.</p> | |
| <p>80 Notice by governing body to discontinue foundation or voluntary school</p> <p>(1) The governing body of a foundation or voluntary school may discontinue the school by giving the Welsh Ministers and the local authority that maintains the school two years' notice of its intention to do so.</p> <p>(2) The Welsh Ministers' consent is required before giving a notice under this section if expenditure has been incurred on the school premises (otherwise than in connection with repairs)—</p> <p>(a) by the Welsh Ministers, or</p> <p>(b) by any local authority.</p> <p>(3) The governing body must consult the Welsh Ministers <u>the Commission for Tertiary Education and Research</u> before giving a notice under this section if discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19.</p> | <p><i>Schedule 4, paragraph 16(10)</i></p> |
| <p>82 Transitional exemption orders for purposes of Equality Act 2010</p> <p>(1) This section applies to proposals for a school to cease to be a single-sex school.</p> <p>(2) The making of such proposals under section 59 or 68 68 or 71 is to be treated as an application by the responsible body to the Welsh Ministers for a transitional exemption order under the 2010 Act, and the Welsh Ministers may make such an order accordingly.</p> <p>(3) In this section—</p> <p>“the 2010 Act” (“<i>Deddf 2010</i>”) means the Equality Act 2010;</p> <p>“make” (“<i>gwneud</i>”), in relation to a transitional exemption order, includes vary or revoke;</p> <p>“the responsible body” (“<i>y corff sy'n gyfrifol</i>”) has the same meaning as in section 85 of the 2010 Act;</p> <p>“single-sex school” (“<i>ysgol un rhyw</i>”) has the same meaning as in paragraph 1 of Schedule 11 to the 2010 Act;</p> | <p><i>Schedule 4, paragraph 16(11)</i></p> |

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| <p>“transitional exemption order” (“<i>gorchymyn esemptio trosiannol</i>”) has the same meaning as in paragraph 3 of Schedule 11 to the 2010 Act.</p> | |
| <p>98 General interpretation and index of defined expressions</p> <p>(1) The provisions of this Act and those of the Education Act 1996 are to be read as if they were all contained in the Education Act 1996.</p> <p>(2) But where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of the Education Act 1996.</p> <p>(3) In this Act—</p> | |

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| <p>“appropriate diocesan authority” (“<i>awdurdod esgobaethol priodol</i>”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;</p> <p>“appropriate religious body” (“<i>corff crefyddol priodol</i>”) means—</p> <p>(a) in the case of a Church in Wales school or a Roman Catholic Church school, or proposed such school, the appropriate diocesan authority, and</p> <p>(b) in the case of other schools or proposed schools, the body representing the religion or religious denomination stated, or that it is intended to be stated, in relation to the school in an order under section 69(3) of the School Standards and Framework Act 1998;</p> <p>“Church in Wales school” (“<i>un o ysgolion yr Eglwys yng Nghymru</i>”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;</p> <p>“the Code” (“<i>y Cod</i>”) in Chapter 2 <u>Chapters 2 and 3A</u> of Part 3 means the code on school organisation issued under section 38(1);</p> <p><u>“the Commission” (“<i>y Comisiwn</i>”) in Chapter 3A of Part 3 means the Commission for Tertiary Education and Research;</u></p> <p>“foundation body” (“<i>corff sefydledig</i>”) has the same meaning as in section 21(4)(a) of the School Standards and Framework Act 1998;</p> <p>“foundation governor” (“<i>llywodraethwr sefydledig</i>”), in relation to a foundation school or a voluntary school, means a person appointed as a foundation governor in accordance with regulations under section 19 of the Education Act 2002;</p> <p>“local authority” (“<i>awdurdod lleol</i>”) (except in section 54(2)(b)) means a county or county borough council in Wales;</p> <p>“maintained school” (“<i>ysgol a gynhelir</i>”) means a school in Wales which is a community, foundation or voluntary school, a community special school or a maintained nursery school;</p> <p>“objection period” (“<i>cyfnod gwrthwynebu</i>”) is defined in section 49(2) for the purposes of Chapter 2 of Part</p> | <p>Schedule 4, paragraph 16(12)(b)</p> <p>Schedule 4, paragraph 16(12)(a)</p> |
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| <p><u>3 and in section 63E(2) for the purposes of Chapter 3A of Part 3;</u></p> <p>“powers to make proposals to alter its school” (“<i>pwerau i wneud cynigion i newid ei ysgol</i>”) is defined in section 83 for the purposes of Part 3;</p> <p>“powers to make proposals to establish, alter or discontinue schools” (“<i>pwerau i wneud cynigion i sefydlu, newid neu derfynu ysgolion</i>”) is defined in section 83 for the purposes of Part 3;</p> <p>“prescribed” (“<i>rhagnodedig</i>”) means prescribed by regulations;</p> <p>“primary school” (“<i>ysgol gynradd</i>”) is defined in section 90 for the purposes of sections 88 and 89; “proposer” (“<i>cynigydd</i>”) is defined in section 56 for the purposes of Chapter 2 of Part 3;</p> <p>“provide” (“<i>darparu</i>”) is defined in section 90 for the purposes of sections 88 and 89;</p> <p>“pupil” (“<i>disgybl</i>”) is defined in section 90 for the purposes of sections 88 and 89;</p> <p>“regional provision” (“<i>darpariaeth ranbarthol</i>”) is defined in section 64 for the purposes of Chapter 4 of Part 3;</p> <p>“regulated alteration” (“<i>newid rheoleiddiedig</i>”) in Chapter 2 of Part 3 means an alteration described in Schedule 2;</p> <p>“regulations” (“<i>rheoliadau</i>”) means regulations made by the Welsh Ministers;</p> <p>“Roman Catholic Church school” (“<i>un o ysgolion yr Eglwys Gatholig Rufeinig</i>”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;</p> <p>“school authority” (“<i>awdurdod ysgol</i>”) is defined in section 32 for the purposes of Chapter 3 of Part 2; “small school” (“<i>ysgol fach</i>”) is defined in section 56 for the purposes of Chapter 2 of Part 3;</p> <p>“<i>special education functions</i>” (“<i>swyddogaethau addysg arbennig</i>”) “additional learning needs functions” (“<i>swyddogaethau anghenion dysgu ychwanegol</i>”) is defined in section 64 for the purposes of Chapter 4 of Part 3.</p> <p>(4) For references in Part 3 to—</p> <p>(a) the discontinuance of a maintained school, see section 83;</p> | <p><i>Schedule 4, paragraph 16(12)(c)</i></p> |
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| <p>(b) a school's category, see section 83.</p> <p>(5) A reference in this Act to a school which has a religious character is to a school which is designated as having such a character by an order under section 69(3) of the School Standards and Framework Act 1998.</p> | |
| <p>SCHEDULE 2 Regulated Alterations</p> <p>Part 1 All Maintained Schools</p> <p>1 Paragraphs 2 and 3 describe regulated alterations in relation to community, foundation, voluntary schools, community special schools, and maintained nursery schools.</p> <p><i>Site transfers</i></p> <p>2 The transfer of a school to a new site or sites unless a main entrance of the school on its new site or sites would be within 1.609344 kilometres (one mile) of a main entrance of the school on its current site or sites.</p> <p><i>Mixed sex and single-sex schools</i></p> <p>3 (1) An alteration to a school so that—</p> <p>(a) a school which admitted pupils of one sex only admits pupils of both sexes, or</p> <p>(b) a school which admitted pupils of both sexes admits pupils of one sex only.</p> <p>(2) For the purposes of this paragraph a school is to be treated as admitting pupils of one sex only if the admission of pupils of the other sex—</p> <p>(a) is limited to pupils over compulsory school age; and</p> <p>(b) does not exceed 25% of the number of pupils in the age group in question normally at the school.</p> <p>Part 2 All Maintained Schools Other than Maintained Nursery Schools</p> <p>4 Paragraphs 5 to 8 describe regulated alterations in relation to community, foundation and voluntary schools, and community special schools.</p> <p><i>Age range</i></p> <p>5 (1) The alteration by a year or more of the lowest age of pupils for whom education is normally provided at the school.</p> | |

- (2) The alteration by a year or more of the highest age of pupils for whom education is normally provided at a school where the school, both before and after the alteration, provides education suitable to the requirements of pupils of compulsory school age and does not provide full time education suitable to the requirements of pupils over compulsory school age.

Sixth form provision

- 6 (1) The introduction of the provision of full-time education suitable to the requirements of pupils over compulsory school age at a school which provides full time education suitable to the requirements of pupils of compulsory school age.
- (2) The ending of the provision of full time education suitable to the requirements of pupils over compulsory school age at a school which is to continue to provide full time education suitable to the requirements of pupils of compulsory school age.

Language medium—primary education

- 7 (1) This paragraph applies to—
- (a) primary schools,
 - (b) special schools but only in relation to the provision of primary education to pupils at the schools, and
 - (c) middle schools but only in relation to the provision of primary education to pupils at the schools.
- (2) An alteration comes within this paragraph if the teaching of a class of pupils in an age group (or groups) at a school falls within a description in an entry in column 1 of table 1 below, and it is proposed to alter the teaching of the corresponding class of pupils in that age group (or those age groups) so that it falls within the description in the corresponding entry in column 2.
- (3) In this paragraph—
- (a) “age group” means—
 - (i) a year group of the foundation phase (within the meaning given by section 102 of the Education Act 2002), or

- (ii) a year group of the second key stage (within the meaning given by section 103 of the Education Act 2002);
- (b) a reference to the teaching of a class of pupils does not include a school assembly or other school activities usually conducted with large groups of pupils.

TABLE 1

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| At least 20% but no more than 80% of the teaching is conducted through the medium of English | An increase or a decrease of more than 20% in the teaching which is conducted through the medium of Welsh |
| At least 20% but no more than 80% of the teaching is conducted through the medium of Welsh | An increase or a decrease of more than 20% in the teaching which is conducted through the medium of English |
| More than 80% of the teaching is conducted through the medium of English, and some teaching is conducted through the medium of Welsh | An increase of more than 10% in the teaching which is conducted through the medium of Welsh |
| More than 80% of the teaching is conducted through the medium of Welsh, and some teaching is conducted through the medium of English | An increase of more than 10% in the teaching which is conducted through the medium of English |
| No teaching is conducted through the medium of Welsh | More than 10% of teaching is conducted through the medium of Welsh |
| No teaching is conducted through the medium of English | More than 10% of teaching is conducted through the medium of English |
| Some teaching is conducted through the medium of English | No teaching is conducted through the medium of English |
| Some teaching is conducted through the medium of Welsh | No teaching is conducted through the medium of Welsh |

Language medium—secondary education

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| 8 | <p>(1) This paragraph applies to—</p> <ul style="list-style-type: none"> (a) secondary schools, (b) special schools but only in relation to the provision of secondary education to pupils at the schools, and (c) middle schools but only in relation to the provision of secondary education to pupils at the schools. <p>(2) An alteration comes within this paragraph if the teaching of pupils in a year group at a school falls within a description in an entry in column 1 of table 2 below, and it is proposed to alter the teaching of pupils in that year group so that it falls within the description in the corresponding entry in column 2.</p> <p>(3) In this paragraph a “relevant subject” is any subject other than English and Welsh which is taught at the school to pupils in the year group concerned.</p> |
| TABLE 2 | |
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| Five or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils | A decrease by four or more of the relevant subjects taught (wholly or mainly) through the medium of Welsh to any pupils |
| Five or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils | A decrease by four or more of the relevant subjects taught (wholly or mainly) through the medium of English to any pupils |
| Every relevant subject is taught (wholly or mainly) through the medium of Welsh to all pupils | Three or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils |
| Every relevant subject is taught (wholly or mainly) through the medium of English to all pupils | Three or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils |

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| One or more relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils | No relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils | |
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| One or more relevant subject is taught (wholly or mainly) through the medium of English to any pupils | No relevant subject is taught (wholly or mainly) through the medium of English to any pupils | |
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Part 3 Community, Foundation and Voluntary Schools

9 Paragraphs 10 to 17 describe regulated alterations in relation to community, foundation and voluntary schools.

Alterations to premises

10 (1) An enlargement of the premises of the school which would increase the capacity of the school by at least 25% or 200 pupils as compared with the school's capacity on the appropriate date.

(2) In determining an increase in capacity for the purpose of sub-paragraph (1), all enlargements that have taken place since the appropriate date are to be taken into account together with the proposed enlargement.

(3) The "appropriate date" is the latest of—

(a) the date falling five years before the date on which it is planned to implement the proposals to make the enlargement;

(b) the date when the school first admitted pupils;

(c) the date (or latest date) of implementation of proposals to make an alteration to the school consisting of an enlargement of its premises which proposals were published under—

(i) section 48, 59, 63D, 68 or 72, or

(ii) section 28 of the School Standards and Framework Act 1998 or paragraph 5 of Schedule 7 to that Act.

(4) References in this paragraph to an enlargement do not include a temporary enlargement.

11 (1) An enlargement of the premises of the school which would increase the capacity of the school if the date on which it is planned to implement the proposals to make the enlargement falls within the period described in sub-paragraph (2).

(2) The period is five years beginning with the date (or latest date) of implementation of proposals falling within paragraph 13 (reducing a school's capacity).

*Schedule 4,
paragraph
16(13)(a)*

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| <p>(3) “Enlargement” does not include a temporary enlargement.</p> <p>12 The making permanent of a temporary enlargement which at the time of its making would have fallen within paragraph 10 (but for the fact that it was temporary).</p> <p>13 An alteration of the premises of the school which would reduce the capacity of the school, where the proposed capacity would be lower than the highest number of registered pupils at the school at any time during the two years before the date on which the proposer formed the intention to make the proposed alteration.</p> <p>14 For the purposes of paragraphs 10 to 13—</p> <p>(a) references to the capacity of a school are to the number of pupils the school can accommodate as determined in accordance with guidance given by the Welsh Ministers, and</p> <p>(b) a “temporary enlargement” is an enlargement of a school's premises which it is anticipated, at the time of its making, will be in place for fewer than three years.</p> <p><i>Special educational Additional learning needs</i></p> <p>15 (1) The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with <i>special educational</i> additional learning needs.</p> <p>(2) Where there is provision which is recognised by the local authority as reserved for children with <i>special educational</i> additional learning needs, a change in the type of such provision.</p> <p><i>Admission arrangements</i></p> <p>16 The introduction of admission arrangements to which section 101(1) of the School Standards and Framework Act 1998 (pupil banding) applies. <i>Boarding provision</i></p> <p>17 (1) The introduction or ending of provision for boarding accommodation.</p> <p>(2) The alteration of provision for boarding accommodation so that the number of pupils for whom such provision is made is increased or decreased by 50 pupils or more or by 50% or more.</p> <p>Part 4 Special Schools</p> | |
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| 18 | <p>Paragraphs 19 – 21 describe regulated alterations in relation to community special schools</p> <p><i>Increase in pupils</i></p> | |
| 19 | <p>(1) Except where the school is established in a hospital, an increase in the number of pupils for whom the schools makes provision which, when taken with all previous increases since the appropriate date, would increase the number of pupils at least by 10% or by the relevant number as compared with the number of pupils on an appropriate date.</p> <p>(2) In this paragraph— the “appropriate date” (“<i>dyddiad priodol</i>”) is the latest</p> <p>of—</p> <p>(a) 19 January 2012;</p> <p>(b) the date when the school first admitted pupils;</p> <p>(c) the date (or latest date) of implementation of proposals to make an alteration to the school to increase the number of pupils for whom the school makes provision which proposals were published under—</p> <p>(i) section 48, 59, <u>63D</u>, 68 or 72,</p> <p>or</p> <p>(ii) section 31 of the School Standards and Framework Act 1998 or paragraph 5 of Schedule 7 to that Act; and</p> <p>“relevant number” (“<i>y nifer perthnasol</i>”) in relation to the number of pupils at a school, is—</p> <p>(a) where the school provides boarding accommodation only, 5, and (b) in any other case, 20.</p> <p><i>Boarding provision</i></p> <p>The alteration of the provision of boarding accommodation so that the number of pupils for whom such provision is made is increased or decreased by 5 pupils or more.</p> <p><i>Special educational Additional learning needs provision</i></p> | <p><i>Schedule 4, paragraph 16(13)(b)</i></p> |
| 20 | <p>(a) where the school provides boarding accommodation only, 5, and (b) in any other case, 20.</p> | |
| 21 | <p>A change in the type of <i>special educational</i> additional learning needs for which the school is organised to make provision.</p> <p>Part 5 Maintained Nursery Schools</p> | |

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| <p>22 Paragraphs 23 to 25 describe regulated alterations in relation to maintained nursery schools.</p> <p><i>Teaching space</i></p> <p>23 (1) An enlargement of the teaching space, other than a temporary enlargement, by 50% or more.</p> <p>(2) The making permanent of a temporary enlargement of the teaching space by 50% or more.</p> <p>(3) In this paragraph—</p> <p>“teaching space” (<i>“man addysgu”</i>) means any area used wholly or mainly for the provision of nursery education excluding—</p> <ul style="list-style-type: none">(a) any area used wholly or mainly for the education of pupils whose educational needs are being assessed under section 323 of the Education Act 1996 and pupils with statements of special educational needs maintained under section 324 of that Act determined under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and pupils with individual development plans maintained under that Act;(b) any area constructed, adapted or equipped so as to be unsuitable for general teaching purposes;(c) any area constructed, adapted or equipped primarily for the storage of apparatus, equipment or materials used in teaching;(d) any part of an area which is required for the movement of pupils through that area and which is used wholly or mainly for that purpose;(e) a “temporary enlargement” (<i>“ehangu dros dro”</i>) is an enlargement of the teaching space which it is anticipated, at the time of its making, will be in place for fewer than three years. <p><i>Special educational Additional learning needs</i></p> <p>24 (1) The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with <i>special educational</i> additional learning needs.</p> | |
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| <p>(2) Where there is provision which is recognised by the local authority as reserved for children with <i>special educational</i> additional learning needs, a change in the type of such provision.</p> <p><i>Language medium</i></p> <p>25 (1) In the case of a school at which a group of pupils is taught wholly or mainly through the medium of Welsh, an alteration to the school so that all pupils would be taught wholly or mainly through the medium of English.</p> <p>(2) In the case of a school at which a group of pupils is taught wholly or mainly through the medium of English, an alteration to the school so that all pupils would be taught wholly or mainly through the medium of Welsh.</p> <p>26 (1) Part 6 Supplementary <i>Power to amend</i> The Welsh Ministers may by order amend any provision of this Schedule.</p> <p>(2) An order under sub-paragraph (1) may make consequential amendments to any provision of Part 3 of this Act.</p> | |
| <p>SCHEDULE: 5 Minor and Consequential Amendments Part 2 Amendments Relating to Part 3 (School Organisation)</p> | |
| <p>14 (1) <i>Education Reform Act 1988</i> The Education Reform Act 1988 is amended as follows.</p> <p>(2) In section 198(1) (transfers under Parts 1 and 2) after paragraph (c) insert—“or (d) Part 3 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013;”.</p> <p>Diocesan Boards of Education Measure 1991</p> <p>15 (1) The Diocesan Boards of Education Measure 1991 is amended as follows.</p> <p>(2) In section 3 (transactions for which advice or consent of the Board is required)—</p> <p>(a) omit subsection (1)(a)(ii), (b)(ii) and (d);</p> <p>(b) in subsection (1)(c) for “1998 Act” substitute “School Standards and Framework Act 1998 (“the 1998 Act”)”.</p> | |

- (3) In section 7 (powers of Board to give directions to governing bodies of voluntary aided church schools)—
- (a) in subsection (1)—
- (i) omit paragraphs (a)(ii), (b)(ii) and (c);
- (ii) in paragraph (b)(i) for “1998 Act” substitute “School Standards and Framework Act 1998”;
- (b) in subsection (1A) omit “or paragraph 2 or 3 of Schedule 8 to the 1998 Act”;
- (c) in subsection (3)—
- (i) in paragraph (a) omit “or section 28(2)(b) of the 1998 Act”;
- (ii) omit paragraph (b);
- (iii) in the words after paragraph (b) omit “the 1998 Act and”.

Further and Higher Education Act 1992

16 (1) The Further and Higher Education Act 1992 is amended as follows.

(2) In section 58 (reorganisation of schools involving establishment of further education corporation)—

(a) in subsection (3), for paragraph (b) substitute—

“(b) a relevant alteration has been made to the school,”;

(b) omit subsection (4); (c) at the end insert—

“(5) In subsection (3)(b) “relevant alteration” means—

(3) (a) in the case of a school in England, a prescribed alteration within the meaning of section 18 of the Education and Inspections Act 2006, and

(4) (b) in the case of a school in Wales, a regulated alteration within the meaning of Chapter 2 of Part 3 of the School Standards and

Organisation (Wales) Act 2013.” *Act 1996*

The Education Act 1996 is amended as follows.

Education

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| <p>(2) In section 5(3A)(b) (primary schools, secondary schools and middle schools)—</p> <p>(a) the words after “Wales,” become sub-paragraph (i);</p> <p>(b) after “1998” insert—“, and</p> <p>(ii) section 48, 59 or 68 of the School Standards and Organisation (Wales) Act 2013”.</p> <p>(3) In section 394 (determination of cases in which requirement for Christian collective worship is not to apply), omit subsection (9)(b).</p> <p>(4) In section 409(2) (complaints and enforcement: maintained schools in Wales), omit “or foundation special”.</p> <p>(5) In section 529(2) (power to accept gifts on trust for educational purposes)—</p> <p>(a) for “28 and 31 of the School Standards and Framework Act 1998” substitute “41 and 44 of the School Standards and Organisation (Wales) Act 2013”;</p> <p>(b) for the words from “(so that” to “in Wales” substitute “and sections 48 to 55 of, and Schedule 3 to, that Act (school organisation proposals”.</p> <p>(6) In section 530(3)(b) (compulsory purchase of land) for the words from “paragraph 18” to the end substitute “paragraph 9 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013 (assistance in respect of maintenance and other obligations relating to voluntary aided schools) (including that paragraph as applied by section 76(3) of that Act”.</p> <p><i>Education Act 1997</i></p> <p>18 (1) The Education Act 1997 is amended as follows.</p> <p>(2) In section 29 (functions of the Welsh Ministers in relation to curriculum and assessment)—</p> <p>(a) in subsection (5) in the definition of “maintained school”, omit “or foundation”;</p> <p>(b) in subsection (6) omit “or foundation”.</p> <p>(3) In section 43(2)(c) (provision of careers education in schools in Wales), omit “or foundation”.</p> <p><i>School Standards and Framework Act 1998</i></p> | |
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| 19 | <p>(1) The School Standards and Framework Act 1998 is amended as follows.</p> <p>(2) In section 20(2A)(b) (new categories of maintained schools) after “this Act” insert “or sections 45 to 55 of, and Schedule 4 to, the School Standards and Organisation (Wales) Act 2013”.</p> <p>(3) In section 21(6) (kinds of foundation and voluntary schools and types of foundations)—</p> <p style="padding-left: 20px;">(a) in paragraph (a)—</p> <p style="padding-left: 40px;">(i) omit “in accordance with Schedule 8 or”, and</p> <p style="padding-left: 40px;">(ii) after “Act 2006” insert “or in accordance with proposals made under section 45 of the School Standards and Organisation (Wales) Act 2013”;</p> <p style="padding-left: 20px;">(b) in paragraph (f)—</p> <p style="padding-left: 40px;">(i) in sub-paragraph (i), omit “under paragraph 2 of Schedule 8 or” and after “Act 2006” insert “or under section 48 of the School Standards and Organisation (Wales) Act 2013”,</p> <p style="padding-left: 40px;">(ii) in sub-paragraph (ii), for “that paragraph or that section” substitute “either of those sections”,</p> <p style="padding-left: 40px;">(iii) omit sub-paragraph (iii).</p> <p>(4) Omit sections 28 and 29 (proposals for establishment, alteration and discontinuance of mainstream schools).</p> <p>(5) In section 30 (notice by governing body to discontinue foundation or voluntary school)—</p> <p style="padding-left: 20px;">(a) in subsection (1) after “voluntary school” insert “in England”;</p> <p style="padding-left: 20px;">(b) in subsection (3) omit paragraph (b);</p> <p style="padding-left: 20px;">(c) in subsection (9) omit paragraph (a);</p> <p style="padding-left: 20px;">(d) in the heading after “voluntary school” insert “in England”.</p> <p>(6) Omit sections 31 to 35 (provisions relating to special schools, rationalisation of school places and change of category of schools).</p> <p>(7) In section 49(6) (maintained schools to have delegated budgets)—</p> | |
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| <p>(a) omit “paragraph 14(2) of Schedule 6, paragraph 3(3) of Schedule 7A to the Learning and Skills Act 2000”,</p> <p>(b) after “2002” insert “section 75(2)(b) of, or paragraph 4 of Schedule 3 to, the School Standards and Organisation (Wales) Act 2013”.</p> <p>(8) In section 82(1) (modification of trust deeds) for “or the Academies Act 2010” substitute “, the Academies Act 2010 or the School Standards and Organisation (Wales) Act 2013”.</p> <p>(9) Omit section 101(3) (permitted selection: pupil banding).</p> <p>(10) In section 103(2)(b) (permitted selection: introduction, variation or abandonment of provision for such selection) for “prescribed alteration for the purposes of section 28” substitute “regulated alteration within the meaning of Chapter 2 of Part 3 of the School Standards and Organisation (Wales) Act 2013”.</p> <p>(11) In section 143 (index)—</p> <p>(a) omit the entry beginning “alteration”;</p> <p>(b) omit the entry beginning “area”;</p> <p>(c) omit the entry beginning “discontinuing”;</p> <p>(d) omit the entry beginning “promoters”;</p> <p>(e) omit the entry beginning “school opening date”.</p> <p>(12) In Schedule 3 (funding of foundation, voluntary and foundation special schools)—</p> <p>(a) in paragraph 2(2)(a)(ii), for the words from “or promoters” to “proposals” substitute “or the person by whom proposals were made is required to provide by virtue of Part 2 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013 (provision of premises and other assistance)”;</p> <p>(b) in paragraph 7—</p> <p>(i) in sub-paragraph (3)(a) after “28,” insert—</p> <p style="padding-left: 40px;">(5) “(ia) the implementation of proposals made under section 42 of the School Standards and Organisation (Wales) Act 2013 to make a regulated alteration to a school,”;</p> <p>(ii) in sub-paragraph (5) for “to the promoters” substitute—</p> | |
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| <p>(6) “(a) in relation to England, to the promoters, and</p> <p>(7) (b) in relation to Wales, to the person who made the proposals under section 41(2) of the School Standards and Organisation (Wales) Act 2013”.</p> <p>(13) Omit Schedules 6 to 8 (provisions about procedure and implementation of statutory proposals, rationalisation of school places and changes of category of schools).</p> <p>(14) In Schedule 22 (disposals of land)—</p> <p>(a) in paragraph 1,—</p> <p>(i) in sub-paragraph (1) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(ii) after sub-paragraph (1)(a) insert—</p> <p>(8) “(aa) any land acquired under paragraph 7 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section 76(1) of that Act or under Part 3 of Schedule 4 to that Act;”; (b) in paragraph 2, after sub-paragraph (1)(a) insert—</p> <p>“(aa) any land acquired under paragraph 7 or 11 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under either of those paragraphs as applied by section 76(1) or (3) of that Act or under Part 3 of Schedule 4 to that Act;”;</p> <p>(c) in paragraph 2A—</p> <p>(i) in sub-paragraph (1) omit “or foundation special”;</p> <p>(ii) after sub-paragraph (1)(a) insert—</p> <p>(9) “(aa) any land acquired under paragraph 7 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section 76(1) of that Act or under Part 3 of Schedule 4 to that Act;”;</p> | |
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| <p>(10) (iii) in sub-paragraph (1)(b) after “(a)” insert “or (aa)”;</p> <p>(11) (iv) in sub-paragraph (1)(c) omit “or foundation special”;</p> <p>(12) (v) in sub-paragraph (2)(a)(ii) after “(a)” insert “or (aa)”;</p> <p>(13) (vi) in sub-paragraph (2)(b) after “(a)” insert “or (aa)”;</p> <p>(14) (vii) in sub-paragraph (6) omit “or foundation special”;</p> <p>(15) (viii) in the heading omit “or foundation special school”;</p> <p>(d) in paragraph 3—</p> <p>(i) in sub-paragraph (1) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(ii) after sub-paragraph (1)(a) insert—</p> <p>(16) “(aa) any land acquired under paragraph 7 or 11 of Schedule 3 to the School Standards and Organisation (Wales) Act 2013, under those paragraphs as applied by section 76(1) or (3) of that Act or under Part 3 of Schedule 4 to that Act;”;</p> <p>(iii) in sub-paragraph (3) after “(a),” insert “(aa),”;</p> <p>(iv) in sub-paragraph (4)(c)(ii) after “this Act” insert “or under paragraph 7(6) of Schedule 3 to the School Standards and Organisation (Wales) Act 2013”;</p> <p>(v) in sub-paragraph (8)(b)(i) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(vi) in sub-paragraph (8)(b)(ii) for “foundation, voluntary or foundation special” substitute “voluntary”;</p> <p>(vii) in sub-paragraph (12) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(viii) in the heading for “, voluntary or foundation special” substitute “or voluntary”;</p> | |
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| <p>(e) in paragraph 4(1)(a)(i) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(f) in paragraph 5—</p> <p>(i) in sub-paragraph (1)(b)(i) for “, voluntary or foundation special” substitute “or voluntary”;</p> <p>(ii) omit sub-paragraph (1)(b)(ii);</p> <p>(iii) in sub-paragraph (4)(c) after “alteration” insert “or regulated alteration”;</p> <p>(iv) in sub-paragraph (4A) omit “or foundation special” and after “(a),” insert “(aa),”;</p> <p>(v) in sub-paragraph (4B)(b)(ii) omit “or foundation special”;</p> <p>(vi) in sub-paragraph (4B)(d) after “alteration” insert “or regulated alteration”;</p> <p>(vi) in sub-paragraph (6)(a) after “2A(1)(a),” insert “(aa),”;</p> <p>(g) in paragraph 6—</p> <p>(i) in sub-paragraph (1) after “section 30(1)” insert “or section 80 of the School Standards and Organisation (Wales) Act 2013”;</p> <p>(ii) in sub-paragraph (2)(a) after “section 30(2)” insert “or section 80(2) of the School Standards and Organisation (Wales) Act 2013”;</p> <p>(h) in paragraph 8—</p> <p>(i) in sub-paragraph (1) after “section 30(10)” insert “or section 80(11) of the School Standards and Organisation (Wales) Act 2013”;</p> <p>(ii) in sub-paragraph (2) after “section 30(2)(a) to (d)” insert “or section 80(2) of the School Standards and Organisation (Wales) Act 2013”;</p> <p>(i) in paragraph 10 after sub-paragraph (1)(e) insert— “(f) “regulated alteration” has the same meaning as in Chapter 2 of Part 3 of the School Standards and Organisation (Wales) Act 2013.”</p> <p><i>Learning and Skills Act 2000</i></p> | |
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| <p>20 (1) The Learning and Skills Act 2000 is amended as follows.</p> <p>(2) In section 33P(3)(b)(i) (application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties) omit “or foundation”.</p> <p>(3) After section 83(9) (area inspections) insert— “(9A) 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.”</p> <p>(4) Omit sections 113 and 113A.</p> <p>(5) In section 126(3)(b) (educational institutions: information and access) omit “or foundation”.</p> <p>(6) Omit the following provisions—</p> <p>(a) Schedules 7 and 7A;</p> <p>(b) paragraphs 84, 89 and 90 of Schedule 9.</p> | <p><i>Schedule 4, paragraph 16(14)</i></p> |
| <p><i>Education Act 2002</i></p> | |
| <p>21 (1) The Education Act 2002 is amended as follows.</p> <p>(2) In section 19(2)(e) (governing bodies) omit “, a foundation special school”.</p> <p>(3) Omit section 72 (restructuring sixth form education).</p> <p>(4) In section 97 (interpretation of Part 7)—</p> <p>(a) in paragraph (b) in the definition of “maintained school” omit “or foundation”;</p> <p>(b) in the definition of “maintained secondary school” omit “or foundation”.</p> <p>(5) In section 111(4) (development work and experiments) for “, voluntary aided or foundation special” substitute “or voluntary aided”.</p> <p>(6) In section 116N(3)(b) (application of local curriculum provisions to children who are registered pupils of special schools) omit “or foundation”.</p> <p>(7) In section 129(6)(b) (transfer of employment) after “1998” insert “or Part 3 of the School Standards and Organisation (Wales) Act 2013”.</p> <p>(8) In section 153(4) (powers of local authority in respect of funded nursery education) in the definition of “maintained school” omit “or foundation”.</p> <p>(9) Omit section 154 (establishment or alteration of maintained nursery schools).</p> | |

- (10) Omit sections 191 to 193 (regional provision for special educational needs).
- (11) In paragraph 5(2)(b) of Schedule 1 (incorporation and powers of governing body) for paragraphs (i) to (iii) substitute—
 - “(i) the date on which proposals for discontinuing the school are implemented under Part 3 of the School Standards and Organisation (Wales) Act 2013,
 - (ii) the date on which the school is discontinued under section 80 of the School Standards and Organisation (Wales) Act 2013, or
 - (iii) the date specified in a direction given under section 16(2) or 81(1) of the School Standards and Organisation (Wales) Act 2013”.
- (12) Omit Schedules 9 and 10 (proposals relating to sixth forms and establishment of schools).
- (13) In Schedule 21 (minor and consequential amendments) omit paragraphs 98, 115, 116 and 126.

Education Act 2005

- 22 (1) The Education Act 2005 is amended as follows.
- (2) In section 28 (duty to arrange regular inspections of certain schools)—
 - (a) in subsection (2)(b) omit “and foundation”;
 - (b) in subsection (4)—
 - (i) in paragraph (a) omit “or foundation”;
 - (ii) in paragraph (b) for “section 30 of the School Standards and Framework Act 1998 (c31)” substitute “section 80 of the School Standards and Organisation (Wales) Act 2013”;
 - (iii) in paragraph (c) omit “or foundation” and for “section 19 or 32 of that Act” substitute “section 16(2) or 81(1) of the School Standards and Organisation (Wales) Act 2013”;
 - (iv) in paragraph (d) omit “or foundation”.
- (3) In section 31(1) (interpretation of Chapter 3) in the definition of “maintained school” omit “or foundation”.
- (4) In section 41(3) (destination of reports: nonmaintained schools) omit “or foundation”.

- (5) In section 42(4) (statement to be prepared by proprietor of school) omit “or foundation”.
- (6) In section 43 (interpretation of Chapter 4) in the definition of “maintained school” omit “or foundation”.
- (7) Omit the following provisions—
 - (a) section 46 (sixth forms requiring significant improvement);
 - (b) sections 68, 69, 70, 71 (school organisation).
- (8) In paragraph 1 of Schedule 4 (school inspections in Wales under section 28) in the definition of “appropriate authority” omit “or foundation”.
- (9) Omit the following provisions—
 - (a) Schedule 5 (sixth forms requiring significant improvement);
 - (b) paragraphs 7, 8, 13 and 14 of Schedule 12 (amendments relating to school organisation).

Education and Inspections Act 2006

23 (1) The Education and Inspections Act 2006 is amended as follows.

- (2) Omit section 54(1)(e) (pupil banding).
- (3) In Schedule 3 (amendments relating to school organisation) omit paragraphs 14(b)(ii), 18, 20, 22 to 26, 33 to 36, 46 and 50.
- (4) In Schedule 14 (minor and consequential amendments) omit paragraphs 61 and 66.

National Health Service (Wales) Act 2006

24 (1) The National Health Service (Wales) Act 2006 is amended as follows.

- (2) In paragraph 5(1)(a) and (b) of Schedule 1 (further provision about the Welsh Ministers and services under this Act) for “, voluntary or foundation special” substitute “or voluntary”.

Learner Travel (Wales) Measure 2008

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

- (2) In section 24(1) (general interpretation) in the definition of “maintained school” omit “or foundation”.

Learning and Skills (Wales) Measure 2009

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

- (2) In section 44 (learning pathways: interpretation) in the definition of “maintained school” omit “or foundation”.

Healthy Eating in Schools (Wales) Measure 2009

- 27 (1) The Healthy Eating in Schools (Wales) Measure 2009 is amended as follows.
- (2) In section 11 (interpretation) in the definition of “maintained school” omit “or foundation”.

Equality Act 2010

- 28 (1) The Equality Act 2010 is amended as follows. (2) In paragraph 4 of Schedule 11 (single-sex schools turning co-educational)—
- (a) in sub-paragraph (2) for the words from “paragraph 22” to “1998” substitute “section 82 of, or Part 3 of Schedule 3 to, the School Standards and Organisation (Wales) Act 2013”; (b) omit sub-paragraph (5).

Education (Wales) Measure 2011

- 29 (1) The Education (Wales) Measure 2011 is amended as follows.
- (2) In section 8 (interpretation of Part 1) in the definition of “maintained school” omit “or foundation”.
- (3) In section 13(b) (single governing body for federations) for the words from “Chapter 2” to the end substitute “Part 3 of the School Standards and Organisation (Wales) Act 2013 (school organisation) or in Part 3 of the School Standards and Framework Act 1998 (school admissions)”.
- (4) Omit section 20 (minor and consequential amendments to the Education Act 2005).
- (5) In section 21(1) (interpretation of Chapter 1) in the definition of “maintained school” omit “or foundation”.
- (6) Omit sections 26 to 30 (foundation schools).

Welsh Language (Wales) Measure 2011

- 30 (1) The Welsh Language (Wales) Measure 2011 is amended as follows.
- (2) In paragraph 2 of Schedule 6 in the definition of “governing body of a school” omit “or foundation”.

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| Well-being of Future Generations (Wales) Act 2015 | | |
| 6 | | <i>Schedule 4, paragraph 17</i> |
| (1) | <p>Meaning of “public body”</p> <p>For the purposes of this Part and Part 3 of this Act, each of the following persons is a “public body”— (a) the Welsh Ministers;</p> <p>(b) a local authority;</p> <p>(c) a Local Health Board;</p> <p>(d) the following NHS Trusts— (i) Public Health Wales; (ii) Velindre;</p> <p>(e) a National Park authority for a National Park in Wales;</p> <p>(f) a Welsh fire and rescue authority;</p> <p>(g) the Natural Resources Body for Wales;</p> <p>(h) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>;</p> <p>(i) the Arts Council of Wales;</p> <p>(j) the Sports Council for Wales;</p> <p>(k) the National Library of Wales; (l) the National Museum of Wales.</p> | |
| (2) | Section 52 enables the Welsh Ministers to amend the meaning of a “public body”. | |
| (3) | Chapter 1 of Part 4 provides for persons who are listed as public bodies in subsection (1) (as well as certain other persons who exercise functions of a public nature) to be either members, invited participants or other partners of the public services boards established under that Part. | |
| Higher Education (Wales) Act 2015 | | |
| The Higher Education (Wales) Act is repealed | | <i>Schedule 4, paragraph 18</i> |
| Deregulation Act 2015 | | |
| 3 | Apprenticeships: simplification | <i>Schedule 4, paragraph 19(2)</i> |
| (1) | Schedule 1 makes provision about apprenticeships. | |
| (2) | Part 1 of the Schedule amends Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”) so as to | |

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| <p>simplify the provision made by that Part about English apprenticeships.</p> <p>(3) Part 2 of the Schedule contains further amendments of the 2009 Act in consequence of the amendments made by Part 1.</p> <p>(4) Part 3 of the Schedule contains minor amendments of the provision made by Part 1 of the 2009 Act about Welsh apprenticeships.</p> <p>(5) Part 4 of the Schedule contains transitional provision.</p> | |
| <p>Schedule 1: Approved English Apprenticeships</p> <p>PART 3 Apprenticeships: Wales</p> <p>24 Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.</p> <p>25 (1) Section 18 (Welsh issuing authority) is amended as follows.</p> <p>(2) For subsection (2) substitute—</p> <p>“(2) The power to designate conferred by this section may not be exercised in such a way that there is at any time more than one person designated to issue apprenticeship frameworks relating to a particular apprenticeship sector.”</p> <p>(3) For subsection (5) substitute—</p> <p>“(5) In this Chapter, the “Welsh issuing authority”, in relation to an apprenticeship framework, means—</p> <p>(a) the person (if any) designated under this section to issue frameworks of that description;</p> <p>(b) if there is no one so designated, the Welsh Ministers.”</p> <p>26 In section 19 (issue: Wales), in subsection (2)—</p> <p>(a) after “withdrawn” insert “ by the Welsh issuing authority</p> <p>”;</p> <p>(b) omit paragraphs (a) and (b).</p> <p>27 (1) Section 20 (recognised Welsh frameworks: notification and publication) is amended as follows.</p> <p>(2) In subsection (1)(b), at the beginning insert “ if the issuing authority is not the Welsh Ministers, ”.</p> | <p><i>Schedule 4, paragraph 19(3)</i></p> |

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| <p>(3) — In subsection (3) —</p> <p>(a) — for “A person who” substitute “ A Welsh issuing authority which ”;</p> <p>(b) — in paragraph (b), for “in the case of withdrawal otherwise than by the Welsh Ministers,” substitute “ in the case where the issuing authority are not the Welsh Ministers, ”.</p> | |
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| Environment (Wales) Act 2016 | |
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| <p>10 Meaning of public body in sections 11 to 15</p> <p>(1) In sections 11 to 15, “public body” means any one of the following—</p> <ul style="list-style-type: none"> (a) a council of a county or county borough in Wales; (b) a Local Health Board; (c) the following NHS Trusts— (i) Public Health Wales; (ii) Velindre; (d) a National Park authority for a National Park in Wales; (e) a Welsh fire and rescue authority; (f) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>; (g) the Arts Council of Wales; (h) the Sports Council for Wales; (i) the National Library of Wales; (j) the National Museum of Wales. <p>(2) The Welsh Ministers may by regulations amend subsection (1) by—</p> <ul style="list-style-type: none"> (a) adding a person, (b) removing a person, or (c) amending a description of a person. <p>(3) But the regulations—</p> <ul style="list-style-type: none"> (a) may amend subsection (1) by adding a person only if that person exercises functions of a public nature; (b) may amend that subsection by adding a Minister of the Crown only if the Secretary of State consents. <p>(4) If the regulations amend subsection (1) so as to add a person who has functions of a public nature and other functions, sections 11 to 15 apply to that person only in relation to those of the person's functions that are of a public nature.</p> <p>(5) Before making regulations under subsection (2), the Welsh Ministers must consult—</p> <ul style="list-style-type: none"> (a) NRW, (b) each person the Welsh Ministers propose to add or remove by the regulations, and (c) such other persons as the Welsh Ministers consider appropriate | <p><i>Schedule 4, paragraph 20</i></p> |

| Public Health (Wales) Act 2017 | |
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| <p>110 Meaning of “public body”</p> <p>(1) For the purposes of sections 108 and 109, each of the following persons is a “public body”— (a) the Welsh Ministers;</p> <p>(b) a local authority;</p> <p>(c) a Local Health Board;</p> <p>(d) the following National Health Service Trusts— (i) Public Health Wales;</p> <p>(ii) Velindre;</p> <p>(e) a National Park authority for a National Park in Wales;</p> <p>(f) a Welsh fire and rescue authority;</p> <p>(g) the Natural Resources Body for Wales;</p> <p>(h) the Higher Education Funding Council for Wales <u>the Commission for Tertiary Education and Research</u>;</p> <p>(i) the Arts Council of Wales;</p> <p>(j) the Sports Council for Wales;</p> <p>(k) the National Library of Wales;</p> <p>(l) the National Museum of Wales.</p> <p>(2) Regulations may amend subsection (1) by— (a) adding a person,</p> <p>(b) removing a person, or</p> <p>(c) amending a reference to a person.</p> <p>(3) But the regulations may not amend subsection (1) by adding a person unless that person exercises functions of a public nature.</p> <p>(4) If the regulations amend subsection (1) so as to add a person who has functions of a public nature and other functions, sections 108 and 109 apply to that person only in relation to those of its functions which are of a public nature.</p> <p>(5) In this section—</p> <p>“Local Health Board” (“Bwrdd Iechyd Lleol”) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c 42);</p> <p>“Welsh fire and rescue authority” (“awdurdod tân ac achub yng Nghymru”) means an authority in Wales</p> | <p><i>Schedule 4, paragraph 21</i></p> |

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| constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c 21) or a scheme to which section 4 of that Act applies. | |
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| Higher Education and Research Act 2017 | |
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| <p>Public Records Act 1958</p> <p>1 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), omit—</p> <p>(a) “Director of Fair Access to Higher Education.”, and</p> <p>(b) “Higher Education Funding Council for England.</p> <p>Parliamentary Commissioner Act 1967</p> <p>2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit—</p> <p>(a) “The Director of Fair Access to Higher Education.”, and</p> <p>(b) “Higher Education Funding Council for England.</p> <p>Superannuation Act 1972</p> <p>3 In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of the 1972 Act can apply), omit—</p> <p>(a) “Employment by the Director of Fair Access to Higher Education.”, and</p> <p>(b) “Higher Education Funding Council for England.”</p> <p>House of Commons Disqualification Act 1975</p> <p>4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices), omit—</p> <p>(a) “Director of Fair Access to Higher Education.”, and</p> <p>(b) “Any member of the Higher Education Funding Council for England in receipt of remuneration.</p> <p>Education (No 2) Act 1986</p> <p>5 (1) Section 43 of the Education (No 2) Act 1986 (freedom of speech in universities etc) is amended as follows.</p> <p>(2) After subsection (4) insert—</p> <p>“(4A) The establishments in England to which this section applies are—</p> <p>(a) any registered higher education provider;</p> <p>(b) any establishment of higher or further education which is maintained by a local authority;</p> <p>(c) any institution within the further education sector.”</p> <p>(3) In subsection (5), after “The establishments” insert “in Wales”.</p> <p>(4) In subsection (6), in the definition of “governing body”, for “in relation to any university” substitute “—</p> <p>(a) in relation to a registered higher education provider, has the meaning given by section 85(1) of the Higher Education and Research Act 2017;</p> <p>(b) in relation to a university in Wales.”.</p> | <p><i>Schedule 4,</i> <i>paragraph</i> <i>22(2)</i></p> |

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| <p>(5) In subsection (6), after the definition of “governing body” insert— ““registered higher education provider” has the meaning given by section 3(10) of the Higher Education and Research Act 2017;”.</p> <p>(6) After subsection (6) insert— “(6A) For the purposes of this section— (a) an establishment is taken to be in England if its activities are carried on, or principally carried on, in England; (b) an establishment is taken to be in Wales if its activities are carried on, or principally carried on, in Wales.”</p> <p>(7) In subsection (7)(a), after “subsection” insert “(4A)(b) or”.</p> <p>Education Reform Act 1988</p> <p>6 The Education Reform Act 1988 is amended as follows.</p> <p>7 In section 124B(2)(b) (accounts), for “the higher education funding council” substitute “the Higher Education Funding Council for Wales”.</p> <p>8 (1) Section 128 (dissolution of higher education corporations) is amended as follows. (2) In subsection (1)(b)(iii), for “a higher education funding council” substitute “the Higher Education Funding Council for Wales”. (3) In subsection (4)(b), for “the higher education funding council” substitute “the Higher Education Funding Council for Wales”.</p> <p>9 In section 129(1) (designation of institutions), for “a higher education funding council” substitute “the Higher Education Funding Council for Wales”.</p> <p>10 (1) Section 133 (payments in respect of persons employed in the provision of higher or further education) is amended as follows. (2) In the heading, omit “by Polytechnics and Colleges Funding Council”. (3) In subsection (1)— (a) for “A higher education funding council shall” substitute “The Office for Students and the Higher Education Funding Council for Wales each”, and (b) for “the council” substitute “they”.</p> <p>11 In Schedule 7 (higher education corporations), in paragraph 18(2)(b), for “higher education funding council” substitute “Higher Education Funding Council for Wales”.</p> <p>Further and Higher Education Act 1992</p> <p>12 The Further and Higher Education Act 1992 is amended as follows.</p> | |
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| <p>13 In section 61 (interpretation of Part 1), omit subsection (3)(b).</p> <p>14 (1) Section 62 (establishment of the Higher Education Funding Councils) is amended as follows.</p> <p style="padding-left: 20px;">(2) In the heading, for “The Higher Education Funding Councils” substitute “The Higher Education Funding Council for Wales”.</p> <p style="padding-left: 20px;">(3) In subsection (1)—</p> <p style="padding-left: 40px;">(a) omit paragraph (a), and</p> <p style="padding-left: 40px;">(b) in paragraph (b), after “them” insert “(referred to in this Act as “the HEFCW”).</p> <p style="padding-left: 20px;">(4) Omit subsection (2).</p> <p style="padding-left: 20px;">(5) In subsection (4), for “a council” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(6) Omit subsections (5) and (6).</p> <p style="padding-left: 20px;">(7) In subsection (7)—</p> <p style="padding-left: 40px;">(a) omit “institutions in England or”,</p> <p style="padding-left: 40px;">(b) in paragraph (a), omit “England or, as the case may be,” and</p> <p style="padding-left: 40px;">(c) in paragraph (b), omit “, in both cases,”.</p> <p style="padding-left: 20px;">(8) In subsection (7A), for “each council” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(9) In subsection (8), for “one of the councils” substitute “the HEFCW or the Office for Students”.</p> <p style="padding-left: 20px;">(10) In subsection (9), for “each of the councils” substitute “the HEFCW”.</p> <p>15 (1) Section 65 (administration of funds by councils) is amended as follows.</p> <p style="padding-left: 20px;">(2) In the heading, for “councils” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(3) In subsection (1)—</p> <p style="padding-left: 40px;">(a) for “Each council” substitute “The HEFCW”, and</p> <p style="padding-left: 40px;">(b) for “the council” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(4) In subsection (2)(a), for “the council’s” substitute “the HEFCW’s”.</p> <p style="padding-left: 20px;">(5) In subsection (3)—</p> <p style="padding-left: 40px;">(a) for “A council” substitute “The HEFCW”, and</p> <p style="padding-left: 40px;">(b) for “the council” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(6) In subsection (3A)—</p> <p style="padding-left: 40px;">(a) for “a Council” substitute “the HEFCW”, and</p> <p style="padding-left: 40px;">(b) for “the Council” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(7) In subsection (3B), for “the Council in question” substitute “the HEFCW”.</p> <p style="padding-left: 20px;">(8) In subsection (4)—</p> <p style="padding-left: 40px;">(a) for “a council” substitute “the HEFCW”, and</p> <p style="padding-left: 40px;">(b) for “the council”, in each place, substitute “the HEFCW”.</p> <p>16 (1) Section 66 (administration of funds: supplementary) is amended as follows.</p> <p style="padding-left: 20px;">(2) In subsection (1)—</p> <p style="padding-left: 40px;">(a) for “a council” substitute “the HEFCW”, and</p> | |
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| <p>(b) for “the council”, in each place, substitute “the HEFCW”.</p> <p>(3) In subsections (2) and (3), for “a council” substitute “the HEFCW”.</p> <p>(4) In subsection (4), for “the council” substitute “the HEFCW”.</p> <p>17 (1) Section 68 (grants to councils) is amended as follows.</p> <p>(2) In the heading, for “councils” substitute “the HEFCW”.</p> <p>(3) In subsection (1), for “each of the councils” substitute “the HEFCW”.</p> <p>(4) In subsection (2)—</p> <p style="padding-left: 20px;">(a) for “either of the councils” substitute “the HEFCW”,</p> <p style="padding-left: 20px;">and</p> <p style="padding-left: 20px;">(b) for “the council”, in each place, substitute “the HEFCW”.</p> <p>18 (1) Section 69 (supplementary functions) is amended as follows.</p> <p>(2) In subsection (1), for “Each council” substitute “The HEFCW”.</p> <p>(3) Omit subsections (1A) and (1B).</p> <p>(4) In subsection (2), for “Each council” substitute “The HEFCW”.</p> <p>(5) In subsection (3), for “A council” substitute “The HEFCW”.</p> <p>(6) In subsection (4)—</p> <p style="padding-left: 20px;">(a) in paragraph (a), for “an institution” substitute “an institution in Wales”, and</p> <p style="padding-left: 20px;">(b) for “the council” substitute “the HEFCW”.</p> <p>(7) In subsections (5) and (6), for “a council” substitute “the HEFCW”.</p> <p>19 Omit section 70 (England: assessment of quality of education provided by institutions).</p> <p>20 (1) Section 79 (duty to give information to funding councils) is amended as follows.</p> <p>(2) In the heading, for “the funding councils” substitute “the HEFCW”.</p> <p>(3) For “a council” substitute “the HEFCW”.</p> <p>21 Omit section 79A (Higher Education Funding Council for England's power to request information from institutions that are exempt charities).</p> <p>22 (1) Section 81 (directions) is amended as follows.</p> <p>(2) In subsection (1), for “each council” substitute “the HEFCW”.</p> <p>(3) In subsection (2), for “a council” substitute “the HEFCW”.</p> <p>(4) In subsection (3), for “the council”, in each place, substitute “the HEFCW”.</p> <p>23 (1) Section 82 (joint exercise of functions) is amended as follows.</p> | |
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| <p>(2) Omit subsections (1) to (1B).</p> <p>(3) In subsection (2), for “Great Britain” substitute “Wales and Scotland”.</p> <p>(4) In subsection (2A), after “Scottish” insert “Further and”.</p> <p>(5) In subsection (3)(a)—</p> <p style="padding-left: 20px;">(a) for “a higher education funding council” substitute “the HEFCW”,</p> <p style="padding-left: 20px;">(b) for “the National Assembly of Wales” substitute “the Welsh Ministers”,</p> <p style="padding-left: 20px;">(c) for “it is discharging its” substitute “they are discharging their”, and</p> <p style="padding-left: 20px;">(d) after “Scottish” insert “Further and”.</p> <p>24 In section 83 (efficiency studies), in subsection (1B), for “A higher education funding council” substitute “The HEFCW”.</p> <p>25 In section 91(4) (interpretation of Education Acts), for the words from “a council established under section 62” to the end substitute “the Higher Education Funding Council for Wales.</p> <p>26 (1) Section 92 (index) is amended as follows.</p> <p>(2) Omit the entry for “council (in Part 2), or higher education funding council”.</p> <p>(3) After the entry for “governing body” insert— <div style="padding-left: 40px;">“the HEFCW section 62(1)”</div> <p>(4) For “institution in England or in Wales (in relation to higher education funding councils)” substitute “institution in Wales (in relation to the HEFCW)”.</p> <p>Education Act 1994</p> <p>27 (1) Section 18 of the Education Act 1994 (power to reimburse certain payments to persons formerly employed in teacher training) is amended as follows.</p> <p>(2) In subsection (1), for “A higher education funding council” substitute “The Office for Students or the Higher Education Funding Council for Wales”.</p> <p>(3) In subsection (4)—</p> <p style="padding-left: 20px;">(a) for “a higher education funding council” substitute “the Office for Students or (as the case may be) the Higher Education Funding Council for Wales”, and</p> <p style="padding-left: 20px;">(b) for “the council” substitute “they”.</p> <p>Education Act 1996</p> <p>28 In section 13 of the Education Act 1996 (local authorities' general responsibility for education), for subsection (2)(b) substitute—</p> <p style="padding-left: 20px;">“(b) the Higher Education Funding Council for Wales, or</p> <p style="padding-left: 20px;">(c) the Office for Students.”</p> <p>Freedom of Information Act 2000</p> <p>29 (1) Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies) is amended as follows.</p> </p> | |
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- (2) In Part 4 (educational institutions), in paragraph 53(1)—
- (a) after paragraph (a) insert—
- “(aa) a registered higher education provider of a description prescribed by regulations made by the Secretary of State for the purposes of section 39(1) of the Higher Education and Research Act 2017,”,
- (b) in paragraph (c), after “institution” insert “in Wales”, and
- (c) in paragraph (e), after “institution of” insert “a registered higher education provider which falls within paragraph (aa) or”.
- (3) In Part 4, in paragraph 53(2)—
- (a) after paragraph (a) insert—
- “(aa) “registered higher education provider” has the meaning given by section 3(10) of the Higher Education and Research Act 2017,”, and
- (b) in paragraph (c), after “paragraph (c),” insert “the reference to an institution in Wales is to be construed in accordance with section 62(7) of that Act, and”.
- (4) In Part 6 (other public bodies), omit—
- (a) “The Director of Fair Access to Higher Education.”, and
- (b) “The Higher Education Funding Council for England.

Higher Education Act 2004

- 30 (1) The Higher Education Act 2004 is amended as follows.
- (2) Omit sections 22 to 41 and Schedule 5 (student fees and fair access).
- (3) In section 47 (orders and regulations)—
- (a) in subsection (3), omit paragraphs (a) and (c), and
- (b) omit subsection (4).
- (4) In section 48 (general interpretation), omit the definition of “the 2005 Act”.
- (5) In Schedule 6 (consequential amendments)—
- (a) omit paragraph 1 (amendment to the Public Records Act 1958),
- (b) in paragraph 4 (amendment to the House of Commons Disqualification Act 1975), omit ““Director of Fair Access to Higher Education.””, and
- (c) in paragraph 10 (amendment to the Freedom of Information Act 2000), omit ““The Director of Fair Access to Higher Education.””

Education Act 2005

- 31 (1) The Education Act 2005 is amended as follows.
- (2) In section 92 (joint exercise of functions)—
- (a) in subsection (2), for “Higher Education Funding Council for England” substitute “Office for Students”, and
- (b) omit subsection (5).

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| <p>(3) In Schedule 14, omit paragraphs 26 to 35 (which amend provisions of Part 3 of the Higher Education Act 2004 which are repealed by this Schedule).</p> <p>Equality Act 2010</p> <p>32 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to public sector equality duty), omit “The Higher Education Funding Council for England.</p> <p>Education Act 2011</p> <p>33 In the Education Act 2011, omit the following (which amend provisions of Part 3 of the Higher Education Act 2004 which are repealed by this Schedule)—</p> <ul style="list-style-type: none">(a) section 77;(b) paragraphs 18 to 29 of Schedule 5;(c) paragraph 22 of Schedule 16. <p>Charities Act 2011</p> <p>34 In Part 2 of Schedule 7 to the Charities Act 2011, omit paragraph 97 (which amends section 40 of the Higher Education Act 2004 which is repealed by this Schedule).</p> <p>Counter-Terrorism and Security Act 2015</p> <p>35 In section 32(5)(b) of the Counter-Terrorism and Security Act 2015 (monitoring of performance: further and higher education bodies) for “Higher Education Funding Council for England” substitute “Office for Students”.</p> | |
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| Additional Learning Needs and Education Tribunal (Wales) Act 2018 | |
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| <p>4 Additional learning needs code</p> <p>(1) The Welsh Ministers must issue, and may from time to time revise, a code on additional learning needs (“the code”).</p> <p>(2) The code may include guidance about the exercise of functions under this Part and about any other matter connected with identifying and meeting additional learning needs.</p> <p>(3) The following persons must, when exercising functions under this Part, have regard to any relevant guidance contained in the code—</p> <ul style="list-style-type: none"> (a) a local authority in Wales or England; (b) the governing body of a maintained school in Wales or England; (c) the governing body of an institution in the further education sector in Wales or England; <u>(ca) the Commission for Tertiary Education and Research;</u> <u>(cb) the Welsh Ministers;</u> (d) the proprietor of an Academy; (e) a youth offending team for an area in Wales or England; (f) a person in charge of relevant youth accommodation in Wales or England; (g) a Local Health Board; (h) an NHS trust; (i) the National Health Service Commissioning Board; (j) a clinical commissioning group; (k) an NHS foundation trust; (l) a Special Health Authority. <p>(4) For provision about local authorities requiring certain providers of nursery education to have regard to guidance contained in the code, see section 153 of the Education Act 2002 (c 32).</p> <p>(5) The code may impose requirements—</p> <ul style="list-style-type: none"> (a) on a local authority in respect of arrangements it must make under sections 9 (advice and | <p><i>Schedule 4, paragraph 23(2)</i></p> |

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| <p>information), 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services);</p> <p>(b) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales or a local authority in respect of—</p> <p>(i) decisions as to whether a child or young person has additional learning needs,</p> <p>(ii) the preparation, content, form, review and revision of individual development plans, or</p> <p>(iii) ceasing to maintain individual development plans;</p> <p>(c) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales in respect of the provision of information for the purposes of this Part.</p> <p>(6) The code must include the following requirements on governing bodies and local authorities—</p> <p>(a) a requirement under subsection (5)(b)(i) for the notification of a decision that a child or young person does not have additional learning needs to be given in accordance with section 11(4), 13(3), 18(3) or 40(4) before the end of a period of time specified in the code, subject to any exceptions to the requirement specified in the code;</p> <p>(b) a requirement under subsection (5)(b)(ii) to prepare an individual development plan and give a copy of it in accordance with section 22 or 40(5) before the end of a period of time specified in the code, subject to any exceptions to the requirement specified in the code;</p> <p>(c) a requirement under subsection (5)(b)(ii) to use the appropriate standard form set out in the code for an individual development plan; and the code must include one or more standard forms for this purpose.</p> <p>(7) The code may make—</p> <p>(a) different provision for different purposes or cases, and</p> <p>(b) transitory, transitional or saving provision, in relation to a requirement imposed under subsection (5) or provision made under section 7(4) or 8(4).</p> <p>(8) The duty imposed by subsection (3) and a duty imposed</p> | |
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| <p>under subsection (5) also apply to a person exercising a function for the purpose of the discharge of functions under this Part by the persons mentioned in subsection (3).</p> <p>(9) The power to impose requirements under subsection (5)(c) does not include the power to impose requirements in respect of the disclosure of personal data to a person who is not the data subject, except for cases where the person is the parent of a child and the data subject is the child.</p> <p>(9A) In subsection (9)— “data subject” (“testun y data”) has the meaning given by section 3(5) of the Data Protection Act 2018; “personal data” (“data personol”) has the same meaning as in Parts 5 to 7 of that Act (see section 3(2) and (14) of that Act).</p> <p>(10) The Education Tribunal for Wales must have regard to any provision of the code that appears to it to be relevant to a question arising on an appeal under this Part.</p> <p>(11) The Welsh Ministers must publish the code for the time being in force on their website.</p> | |
| <p>5 Procedure for making the code</p> <p>(1) Before issuing or revising a code under section 4, the Welsh Ministers must consult the following persons on a draft of the code—</p> <ul style="list-style-type: none"> (a) each local authority; (b) the governing body of each maintained school in Wales; (c) the governing body of each institution in the further education sector in Wales; (d) Her Majesty's Chief Inspector of Education and Training in Wales; <u>(da) the Commission for Tertiary Education and Research;</u> (e) the Children's Commissioner for Wales; (f) the Welsh Language Commissioner; (g) the relevant committee of the National Assembly for Wales with remit for the education of children and young persons; (h) any other person the Welsh Ministers consider appropriate. <p>(2) If the Welsh Ministers wish to proceed with the draft (with</p> | <p><i>Schedule 4, paragraph 23(3)</i></p> |

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| <p>or without modifications) they must lay a copy of the draft before the National Assembly for Wales.</p> <p>(3) The Welsh Ministers must not issue a code unless a draft of it is approved by a resolution of the National Assembly for Wales.</p> <p>(4) If the National Assembly for Wales resolves to approve a draft of the code—</p> <p>(a) the Welsh Ministers must issue the code in the form of the draft, and</p> <p>(b) the code comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.</p> <p>(5) An order under subsection (4)(b) may—</p> <p>(a) appoint different days for different purposes;</p> <p>(b) make transitory, transitional or saving provision in connection with the coming into force of a provision in the code.</p> <p>(6) References in this section to a code include a revised code.</p> <p>(7) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part.</p> | |
| <p>50 Welsh Ministers' duties to secure post-16 education and training</p> <p>(1) The Learning and Skills Act 2000 (c 21) is amended as follows.</p> <p>(2) In section 31(3) (education and training for persons aged 16 to 19), after paragraph (c) insert—</p> <p style="padding-left: 40px;">“(cc) take account of 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;</p> <p style="padding-left: 40px;">(cd) take account of 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;”.</p> <p>(3) In section 32(3) (education and training for persons over 19), after paragraph (c) insert—</p> | <p><i>Schedule 4, paragraph 23(4)</i></p> |

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| <p>“(cc) take account of 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;</p> <p>(cd) take account of 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;”.</p> <p>(4) In section 41 (persons with learning difficulties)—</p> <p>(a) in the heading, for “learning difficulties” substitute “additional learning needs”;</p> <p>(b) in subsection (1)—</p> <p>(i) in paragraph (a), for “learning difficulties, and” substitute “additional learning needs;”;</p> <p>(ii) for paragraph (b) substitute—</p> <p>“(b) to the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.”;</p> <p>(c) omit subsections (2), (3) and (4);</p> <p>(d) for subsection (5) substitute—</p> <p>“(5A) In this Part, “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and “additional learning provision” has the meaning given by section 3 of that Act.”;</p> <p>(e) omit subsection (6).</p> <p>(5) Omit section 140 (assessments relating to learning difficulties).</p> | |
| <p>65 Duties to provide information and other help</p> <p>(1) Subsection (2) applies if a local authority requests a person mentioned in subsection (4) to exercise the person's functions to provide the authority with information or other help, which it requires for the purpose of exercising its functions under this Part.</p> <p>(2) The person must comply with the request unless the person considers that doing so would—</p> | <p><i>Schedule 4, paragraph 23(5)</i></p> |

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| <p>(a) be incompatible with the person's own duties, or</p> <p>(b) otherwise have an adverse effect on the exercise of the person's functions.</p> <p>(3) A person that decides not to comply with a request under subsection (1) must give the local authority that made the request written reasons for the decision.</p> <p>(4) The persons are—</p> <p>(a) another local authority;</p> <p>(b) a local authority in England;</p> <p>(c) the governing body of a maintained school in Wales or England;</p> <p>(d) the governing body of an institution in the further education sector in Wales or England;</p> <p><u>(da) the Commission for Tertiary Education and Research;</u></p> <p><u>(db) the Welsh Ministers;</u></p> <p>(e) the proprietor of an Academy;</p> <p>(f) a youth offending team for an area in Wales or England;</p> <p>(g) a person in charge of relevant youth accommodation in Wales or England;</p> <p>(h) a Local Health Board;</p> <p>(i) an NHS trust;</p> <p>(j) the National Health Service Commissioning Board;</p> <p>(k) a clinical commissioning group; (l) an NHS foundation trust;</p> <p>(m) a Special Health Authority.</p> <p>(5) Regulations may provide that, where a person is under a duty to comply with a request under this section, the person must comply with the request within a prescribed period, unless a prescribed exception applies.</p> | |
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| Public Services Ombudsman (Wales) Act 2019 | |
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| <p>Schedule 3</p> <p>Listed authorities</p> <p>Government of Wales</p> <p>The Welsh Government.</p> <p>The National Assembly for Wales Commission.</p> <p>Local government, fire and police</p> <p style="padding-left: 40px;">A local authority in Wales.</p> <p style="padding-left: 40px;">A joint board the constituent authorities of which are all local authorities in Wales.</p> <p style="padding-left: 40px;">A fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c 21) or a scheme to which section 4 of that Act applies.</p> <p style="padding-left: 40px;">A police and crime commissioner for a police area in Wales.</p> <p style="padding-left: 40px;">A strategic planning panel.</p> <p>Environment</p> <p>The Committee on Climate Change.</p> <p>A National Park authority for a National Park in Wales.</p> <p>The Natural Resources Body for Wales.</p> <p>The Environment Agency.</p> <p>The Forestry Commissioners.</p> <p>The Flood and Coastal Erosion Committee.</p> <p>Health and social care</p> <p>Social Care Wales.</p> <p>The Board of Community Health Councils in Wales.</p> <p>A Local Health Board.</p> <p style="padding-left: 40px;">An NHS trust managing a hospital or other establishment or facility in Wales.</p> <p style="padding-left: 40px;">A Special Health Authority not discharging functions only or mainly in England.</p> <p>A Community Health Council.</p> <p>An independent provider in Wales.</p> | <p><i>Schedule 4, paragraph 24</i></p> |

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| <p>A family health service provider in Wales.</p> <p>A person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c 43).</p> <p>The Welsh Health Specialised Services Committee.</p> <p>Housing</p> <p>A social landlord in Wales.</p> <p>Education and training</p> <p>The Office of Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.</p> <p>The Higher Education Funding Council for Wales<u>The Commission for Tertiary Education and Research.</u></p> <p>An admission appeal panel constituted in accordance with regulations under section 94(5) or 95(3) of the School Standards and Framework Act 1998 (c 31).</p> <p>The governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise discharging any of their functions under Chapter 1 of Part 3 of the School Standards and Framework Act 1998 (c 31).</p> <p>An exclusion appeal panel constituted in accordance with regulations under section 52 of the Education Act 2002 (c 32).</p> <p>Qualifications Wales.</p> <p>Arts and leisure</p> <p>The Arts Council of Wales.</p> <p>The Sports Council for Wales.</p> <p>Tax</p> <p>The Welsh Revenue Authority.</p> <p>Miscellaneous</p> <p>The Building Regulations Advisory Committee for Wales.</p> <p>Coity Walia Board for Conservators.</p> <p>Comisiynydd y Gymraeg (The Welsh Language Commissioner).</p> <p>Harbour authorities in Wales (and “harbour authority” has the meaning given in section 313(1) of the Merchant Shipping Act 1995 (c 21)) and port authorities in Wales (and “port authority” means a harbour authority or, if there</p> | |
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| <p>is no such authority, the person having control of the operation of the port)—</p> <ul style="list-style-type: none">(a) used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes);(b) so far as acting in connection with protecting human, animal or plant health, animal welfare or the environment. <p>The Local Democracy and Boundary Commission for Wales.</p> <p>Towyn Trewan Board for Conservators.</p> | |
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ANNEX 5 – ALMA Economics post-compulsory education and training (rapid evidence assessment)

Cost benefit analysis of education reforms:

A Rapid Evidence Assessment (REA)



October 2019

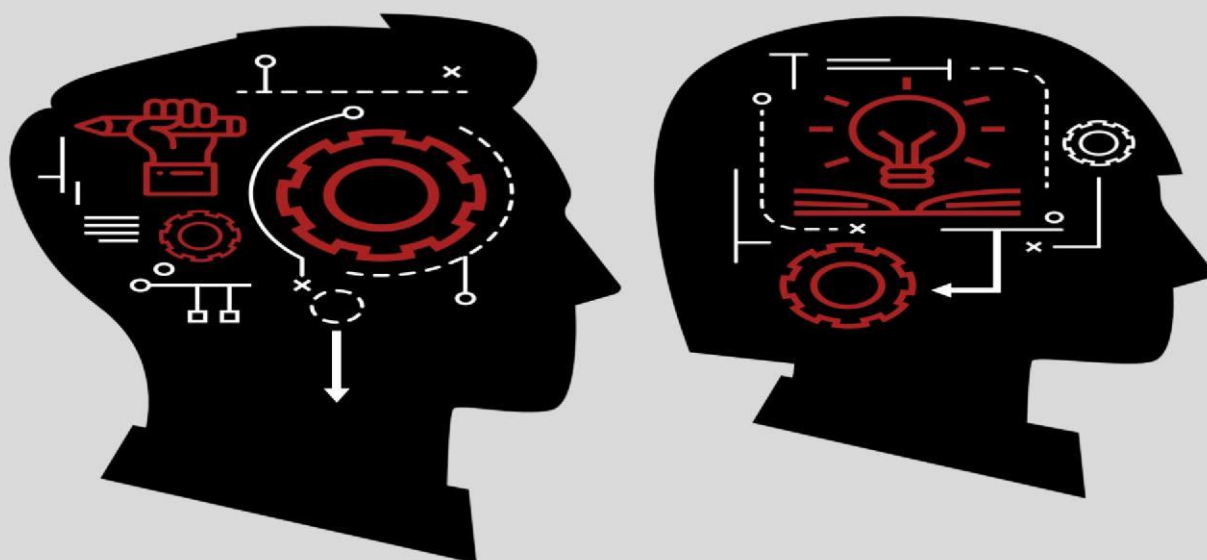


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Executive Summary

The Welsh Government has commissioned Alma Economics to conduct a Rapid Evidence Assessment of the evidence base on conducting cost-benefit analysis (CBA) of post-compulsory education and training (PCET) policy. This has been broadened out to also consider evidence on wider education reforms and to also provide some coverage of other Impact Assessment (IA) practices, specifically in Wales. Both academic literature and public sector publications have been considered.

Two different search strategies were employed to ensure a thorough coverage of the evidence base. Papers were added to a long list from initial searches were prioritised according to their relevance and quality. Higher priority was also assigned to more recent research, focusing particularly on the period since 2000, although some earlier research was also considered. Section I outlines the methodology in more detail.

Sections II to VI outline key findings from the review of the evidence (with Section VI focusing on evidence relating to the draft benefit realisation plan), which are:

1. **There are very few studies that provide quantitative evaluations of the benefits of educational reforms.** This is a feature of both academic research and publications from the public sector. Within the literature, there is some criticism of the suitability of quantified CBA as a technique on the basis that it may be an intractable task to produce robust quantitative estimates for many policy reforms. Where the impacts of PCET are quantified in the literature, e.g. an assessment of the graduate premium, it is not clear how these would be applied to cost benefit analysis.
2. **Where IAs have been produced in this policy area, in all cases identified, benefits have been quantified as “zero” and described qualitatively.** This is a feature of UK publications relating to education reforms, international evidence on education reforms and also a feature of Welsh Government IAs.
3. **There is evidence supporting the majority of benefits identified for current proposals for PCET reform in Wales** (as outlined in the draft benefit realisation plan). IAs that satisfied our inclusion criteria and that were identified as informative for the proposed Welsh PCET reforms were: the case for creation of the Office for Students; the case for the creation of UK Research and Innovation; the Higher Education and Research Bill: detailed impact assessment; the Qualifications Wales Bill; and the Australian Regulation Impact Statement for the Reform of National Regulation of Higher Education Providers. Evidence has not been identified for all the benefits listed in the benefit realisation plan, although this does not mean these benefits will not be realised in practice. Some features of the current proposed reforms are likely to be under researched in the previous evidence base or relatively novel and so lacking historical precedents. Some additional benefits that are not

included in the benefits realisation plan have been identified and are described at the end of Section VI.

Introduction

The Welsh post-compulsory education and training (PCET) sector is composed of a set of institutions that provide educational opportunities to learners from 16 onward. In particular, the PCET sector encompasses mainstream sixth form/further education, higher education, post-16 training academies, apprenticeships, private training organisations (for example within businesses) and any other teaching and training that does not fall within the Primary or Secondary Education sectors. The sector plays an integral role in enhancing social mobility and inclusion, as well as creating opportunities for research and innovation and its successful commercialisation.

This review aims at building the evidence base for the appraisal of the introduction of a new single regulatory body in the PCET sector in Wales, with a particular focus on the benefits side of CBA. This has been done through summarising existing evidence on the benefits of similar reforms in the UK and overseas. It also seeks to identify the proposed reform's impact in key areas from similar reforms in the broader field of education, given the interconnection of those two types of learning. The report is structured as follows:

- Section I outlines our methodology for searching and arriving at a shortlist of academic and policy papers that will help us answer our research questions. In this section, we present the search terms we used to arrive at our bibliography and our inclusion criteria for assessing the fitness of studies for our review.
- Section II discusses evidence we found, using our outlined search methods, that falls outside the category of impact assessments (IAs). Those papers are predominately academic publications which discuss methodological issues on appraising policy, the key benefits from higher education and vocational training, as well as previous reforms in the field of education and their impacts (where identified).
- Section III presents the four most relevant IAs found, based on use of the search terms and inclusion criteria of Section I. Here we summarise some key benefits that are expected to result after the introduction of a national regulatory framework in the fields of education or after legislation for a single regulator. An important finding of this section is that no IA provides quantitative estimates for the anticipated high-level benefits, and so the section of the report devoted to benefits appraisal is restricted to narrative descriptions.
- Section IV summarises the findings from IAs conducted for non-education policy reforms in Wales. We reviewed previous Welsh IAs to increase our understanding of wider IA precedents in Wales.
- Section V presents evidence on international reforms and attempts to identify other countries pursuing similar reforms to Wales. Our view is that although similar reforms take place internationally, e.g. the recently introduced

Scottish Funding Council, no IA or CBA attempts to quantify the benefits stemming from such reforms.

- Section VI relates the findings of our literature review with the Welsh Government's anticipated benefits and lists some extra benefits that our research has highlighted. More specifically, we found arguments in our shortlisted IAs relating to how the introduction of the new Commission would result in productivity gains for various stakeholders in the PCET sector, as well as other non-market benefits like improved health, improved delivery of public services, and cost avoidance through greater resilience to shocks. Finally, we list the expected benefits for the Welsh Government for which we found an absence of evidence during this Rapid Evidence Assessment. Annex A summarises some of the information from Section VI in a table.

I. Methodology

Search Strategy A

The primary search strategy for finding evidence to support this Rapid Evidence Assessment was to search for academic and policy papers that quantify social and private economic impacts from regulation of the sector based on the search terms in Table 1.

Table 1. Rapid Evidence Assessment Search Terms

| Primary terms | General terms | Secondary | Specific Secondary Terms |
|-----------------------------|--------------------------------|-----------|--------------------------|
| Post – Compulsory education | Policy | | Regulatory costs |
| Higher education | Reform | | Costs |
| Adult learning | Change in policy | | Impact |
| Work based learning | Consolidation | | Savings |
| Sixth forms | Policy Appraisal | | Benefits |
| Tertiary education sector | Policy evaluation | | Equality |
| Education policy | Cost benefit analysis | | Research |
| | Planning, funding & monitoring | | Wellbeing |
| | Governance | | Growth |
| | Regulatory Body | | Jobs |
| | | | Rural communities |

To arrive at a short list of papers, having screened abstracts and titles, we then applied the inclusion criteria shown in Table 2 to select the list of papers that will be fully reviewed

Table 2. Terms and descriptions

| Criteria | Review Scope |
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| Exposure of interest | <ul style="list-style-type: none"> • Education policy reforms • Consolidation of regulatory functions reforms |
| Specific focus | <ul style="list-style-type: none"> • Benefits stemming from education reforms • Benefits from consolidating regulatory functions |
| Groups of interest | <ul style="list-style-type: none"> • Post-16-year-old learners • Learning providers • Research & Innovation providers • Government departments, public bodies • Employers and communities |
| Peer- review | <ul style="list-style-type: none"> • Focus on IAs of policy reforms but peerreviewed evidence will be also included |
| Geographic location | <ul style="list-style-type: none"> • Focus on UK studies but international evidence will also be considered |
| Dates of research | <ul style="list-style-type: none"> • Prioritise post-2000 research |
| Research methods/ study design | <ul style="list-style-type: none"> • All methods |
| Language | <ul style="list-style-type: none"> • English only |
| Types of publication | <ul style="list-style-type: none"> • Peer reviewed journal articles; nonpeer reviewed academic outputs (reports, working papers, etc.); government commissioned research; publications by other research organisations practitioner and provider evidence; government publications • Includes evidence reviews and original studies • Excludes editorials/newspaper articles |

After conducting the search for evidence using various combinations of the proposed search terms above, we concluded that there are very few studies that provide quantitative assessments of the benefits of educational reform.

The proposed methodology broadly returned the follow types of publication:

- i) Papers related to consolidation of institutions (schools, universities etc),⁴⁶ ii) Studies devoted to methodological issues concerning the appraisal of education policies, and critical assessments of the suitability of CBA for such a purpose, and⁴⁷
- iii) Literature related to the benefits and returns from education or further education.⁴⁸

Search Strategy B

In addition to the methodology above, we also adopted another approach to search using more narrowly defined keywords. This strategy provided us with a list of papers more related to:

- (i) past education reform in the UK and their impact, and
- (ii) the distributional impact of reforms in education.

II. Evidence outside of the IA literature

CBA and its limitations in Education Policy

A consistent theme from the external literature reviewed was the general absence of formal CBA studies. For example, Belfield, Brooks Bowden and Rodriguez, in their 2019 literature review, identify a lack of CBA with respect to education policy. Their research returned only 28 cases of formal CBA, found in regulatory impact assessments (RIA) for reforms in education, and after reviewing them, they assessed them as of unsatisfactory quality. In their review only 1 out of 28 CBA studies managed to calculate a dollar value for benefits, no IA calculated a net present value (NPV), while only 37% of the IAs adequately documented key methodological assumptions.

One factor leading to the relatively low use of CBA in educational reforms is the issue of whether this technique is likely to produce robust results. For example, Gilead (2014) critically examined whether CBA is a robust approach for appraising educational reforms, concluding that specific technical difficulties related to CBA practice might lead to misleading results and recommendations that misrepresent the real value of assessed educational options. Such difficulties include the high

⁴⁶ The Short-Term Effects of School Consolidation on Student Achievement: Evidence of Disruption? Available at <http://ftp.iza.org/dp10195.pdf>

⁴⁷ Methods for Causal Evaluation of Education Policies and Practices: An Econometric Toolbox. Available at http://www.eenee.de/dms/EENEEAnalytical_Reports/EENEE_AR5.pdf Education and the Rationale of Cost Benefit Analysis. Available at <https://www.tandfonline.com/doi/abs/10.1080/00071005.2014.969190> , Evaluating Regulatory Impact Assessments in Education Policy available at <https://journals.sagepub.com/doi/abs/10.1177/1098214018785463?journalCode=ajec>

⁴⁸ The Economic Inefficiency of Student Fees in England: Why paying tuition fees from the public purse makes financial sense. Available at http://www.if.org.uk/wp-content/uploads/2017/04/The-Economic-Inefficiency-of-Student-Fees_Final.pdf and Costs and Benefits in Vocational Education and Training available at <https://www.oecd.org/education/innovationeducation/41538706.pdf>

number of benefits (or costs) that cannot be measured or predicted prior to reform, the degree of unpredictability of outcomes, and the uncertainty relating to institutional compliance with the new regulation. The presence of these limitations renders the value of CBA controversial (Belfield, Bowden, & Rodriguez, 2019; Gilead, 2014). It is only when most of the anticipated outcomes are highly measurable, a condition hardly met when it comes to assessing educational reforms, that CBA has the power to guide evidence-based policy.

Key benefits of higher and vocational education

Despite the limitations of the existing literature, we reviewed a number of informative studies on the key benefits of higher education and vocational education. According to the UK Government, graduate premia in the UK for the year 2013 were £252,000 for women and £168,000 for men (Albertson, 2017). Looking only at earnings differentials can be misleading however since earnings might also reflect differences in motivation, age, sex and social background, while at the same time they fail to capture any 'spillover' benefits leaking to other than educated workers in the form of productivity gains (Woodhall, 1992). Labour market imperfections also limit the value of earnings differentials as a measure of returns to education. Other than differentials in private returns to earnings, education results in externalities and 'nonmarket' effects which are difficult to monetise. Such benefits include efficiency gains from specialisation as well as healthier and more risk averse, law-abiding, tolerant, stable and innovative societies (Albertson, 2017) (Woodhall 2004). The list of indirect social benefits has been argued to include the consumption value of education, democratisation of societies, poverty reduction and improved environmental quality (Woodhall, 2004).

Looking specifically at vocational education and training (VET), our literature review highlighted various short-term and long-term benefits accruing to various stakeholders at different points in time. For example, individuals in VET are expected to benefit in the shortterm from greater chances to be employed, increased earnings, as well as more satisfactory jobs. In the long run they can expect greater flexibility and mobility, and improved chances for lifelong learning. Employers' gains are derived from a better trained workforce and cost savings from recruitment of skilled workers. Wider societal benefits in the short-run include savings on welfare costs, resulting from a smoother transition from education to employment, while in the longrun society can expect productivity gains due to better education as well as increases in income tax revenues (Hoeckel, 2008).

Consolidating schools in Denmark

Looking specifically at the impacts of consolidating regulatory powers under one overarching regulator in the field of education and further education highlights a clear gap in the current literature; one that has left this subject area under-researched. This lack of evidence might be an indication of the difficulty of measuring the highlevel benefits that regulatory reforms of this kind target, or the difficulty of defining robust counterfactual groups.

For example, Beuchert et al (2016) assessed the short-term effect of schools' consolidation that took place in Denmark between 2010-2011. The authors employed a differences-in-differences (DID) strategy, with estimates suggesting that the overall effect of schools' consolidation is negative (although insignificant). Being exposed to school closings, as a specific type of consolidation, is estimated to decrease students' test scores by 5.9% of a standard deviation (SD), while this adverse effect on test scores rises to 11% if the student who experiences the school closing comes from a small school (150 students or less). On the other hand, expansions and mergers of schools are estimated to have a statistically insignificant effect on students' performance. The DID method is an experimental design that makes use of treatment and control groups to obtain appropriate causal effects. Comparing changes in outcomes between treated and control groups is a widely used methodological tool for appraising policy reforms and interventions provided that pre- and post- intervention data are available (Schlotter, Schwerdt, & Woessmann, 2009). Despite its methodological fitness for purpose, we found no similar research design that evaluates the consolidation of regulatory functions in the sector of education or vocational education.

Previous UK education reforms

There is a linkage between the micro-behaviours of higher education providers and the macro environment at the state level. Our research into the UK experience highlighted that there has been an increased effort from governments in recent years to intervene in the higher education sector, including in post compulsory education, institutions' incentives and 'steering' organisational and academic behaviours towards national policy goals (Ferlie, Musselin, & Andresani, 2009). Such 'steering' from the state has the ultimate goal of organising the market for higher education toward achieving specific national objectives that the market itself could not achieve. Modes of coordination include planning and funding allocation mechanisms, regulatory authorities and frameworks, and even the provision of a set of ideas designed to provide ideological and normative assumptions on how institutions should be governed (Meek, 2002).

The 'long tail' of relatively low achievement is a consistent empirical trend for the UK education system, together with the low levels of social mobility, poor basic skills of its population, low staying-on rates at age 16, and a complex vocational education system (Hupkau, McNally, Ruiz-Valenzuela, & Ventura, 2017; Machin & Vignoles, 2006). Addressing such issues has been key driver of previous reforms.

Creating a 'quasi market' in education – fostering competition

The paper "Education Policy in the UK", published by the Centre of Economics of Education,⁴⁹ reviews empirical evidence on the impact of key reforms, designed to address several deficiencies in the UK education system. Such reforms are focused on addressing the flaws of the UK education system previously identified. The most striking reform was the introduction of market mechanisms through the creation of a

⁴⁹ Available at: http://eprints.lse.ac.uk/19430/1/Education_Policy_in_the_UK.pdf

quasi-market in education via the 1988 Education Reform Act. To address the 'long tail' of poor achievement the UK Government increased parental choice (allowing parents to have representation on school governing bodies), reduced information asymmetries (by making test score information publicly available in 'league tables'), and linked school funding with the schools' enrolment numbers (incentivising schools to attract and admit more students) (Machin & Vignoles, 2006). Linking school funding with enrolments while making data on school effectiveness public has the effect of encouraging a more level playing field for schools where competition for students is on merit, encouraging better outcomes. To what extent institutions will respond constructively to such market reforms is an empirical question. Equity issues may arise if certain institutions 'cream skim' the most promising students at the expense of other institutions. Admitting more students based predominately on their tests results will improve the school' ranking in the 'league tables' and so intakes will be more skewed towards the most capable students or those who have better ability to exploit public information; (Hoxby, 2000, 2003) test the effect of increased parental choice on US students' test scores, finding that increased choice leads to a rise in students' test scores and a lowering of schools spending per student – hence generating an overall positive effect on schools' productivity. Evidence relating to the UK calls for more transparency in the admission process, as well as stronger monitoring of education providers intake practices. West and Pennel (1998), after examining information required from the parents as part of the admission process, report that in the UK system there are incentives for schools to select students who perform better in tests, or those who are likely to be higher achievers due to their socioeconomic background. Schools required information on parents' occupation, pupil's past achievements and a historical track of absences, hobbies, attainment to music classes and/or any grade earned, sport activities and any distinction accomplished as well as any special help received in the form of extra help with reading (West, Pennell, & Noden, 1998). Despite the strong incentives for schools' and parents' selectivity, inspecting the UK's staying-on rates at age 16 for the years 1974, 1986 and 1996, broken down by parental income group for a number of different cohorts, evidence seem not to suggest increased socioeconomic segregation across schools. During the period that market reforms were introduced in England (1986 to 1996) there was a rise in the staying-on rate for all children, while staying on rates grew faster for children from the lowest income levels (Machin & Vignoles, 2006).

Curriculum reform and the introduction of national literacy and numeracy strategies

To address the problem of the very low level of basic skills in numeracy and literacy, and with a long-term goal to raise standards for all, education policymakers introduced two major reforms in UK. The first was to introduce a standardised national curriculum for pupils aged between 7 and 16, and the second was the introduction of National Literacy and Numeracy Strategies. The former was aimed at ensuring that all students between of 7-16 years of age study a prespecified set of subjects up to a minimum level. The latter was the decision of the UK Government

to prescribe the content and the teaching methods for teaching basic skills curriculum including numeracy and literacy lessons (Machin & Vignoles, 2006). Robust evidence on the effectiveness of the overall national curriculum has not been identified. However, there is some evidence on the effectiveness of the National Literacy and Numeracy Strategies. Machin and McNally (2004), in their empirical investigation of the effectiveness of the National Literacy Policy (NLP) during its pilot period, compared pupils exposed to National Literacy and Numeracy Strategies with pupils from schools not subject to the policy, and found that there were statistically significant improvements in reading and English Key Stage 2.

Reforming post compulsory education

Education policymakers in UK, other than being concerned with the relatively low fraction of young people staying on beyond the compulsory schooling age, were also troubled by the relatively weak participation in vocational education and training (Machin & Vignoles, 2006). The UK during the 80's and 90's, had too few young people undertaking vocational qualifications, and too many students dropping out of education and training altogether; effectively entering the labour market with no qualifications at all. Additionally, there has been criticism from parents and students as to the economic value of pursuing a vocational qualification since there are hundreds of different qualifications offered by different providers with different requirements (Machin & Vignoles, 2006).

To tackle this problem, the Government introduced a series of reforms. The National Vocational Qualifications (NVQ) introduced in 1988, was followed by the General National Vocational Qualifications (GNVQ) in 1992, while in 2004 conditional cash transfers were introduced through the Education Maintenance Allowance (EMA) for all post-16 year old individuals from disadvantaged backgrounds who stayed on in full time education. EMA reform seemed to be very successful; paying a modest allowance increased stay-on rates past the age of 16 by 4.5 percentage points, while half of the individuals who stayed-on were drawn from inactivity rather than employment (Dearden, Frayne, Emmerson, & Meghir, 2005).

Dearden et al (2002), in their study on 'The Returns to Academic and Vocational Qualifications in Britain', provide evidence identifying the existence of a gap between the wage premia earned from academic qualifications and those earned from vocational ones after the NVQ and GNVQ reforms. This gap could be interpreted as a negative signal of holding a vocational qualification to employers, who perceive these people are of low ability since, especially in UK, poor workforce performers are those who usually undertake vocational training (Machin & Vignoles, 2006). Dearden's study however challenges this statement by showing that, after controlling for time required to obtain the qualification, the two types of wage premia converge, suggesting a greater sense equality between the two types of education (Dearden, McIntosh, Myck, & Vignoles, 2002).

Distributional impacts of education policy reforms

The chapter “Education Policy Reforms” in the “Analysing the Distributional Impact of reforms” report, by the World Bank,⁵⁰ draws on country level case studies and recent empirical evidence to identify the distributional consequences of education policy reforms on the wellbeing of different stakeholders, the principal transmission channels through which stakeholders are affected by or affect the reforms, and the standard methods for social impact analysis in education. Education policy reforms affect prices, earnings, wages and employment. Redeployment of resources can lead to the access to education widening; in the long-run reforms that expand education and reallocate income have important dynamic intergenerational effects in the form of improved access to employment opportunities and poverty alleviation. *Ceteris paribus*, increases in human capital accumulation in a country lead to a stronger income generating capacity, and so policies that aim at improving human capital of the poor have progressive distributional impacts.

Different objectives require different types of reform in education. Management and institutional reform programs usually aim for decentralisation of power and can take place either through a simple transfer of administrative functions (‘de-concentration’) or a full transfer of authority from central to local units (‘devolution’) (Tiongson, 2005). Such changes are more than mere administrative adjustments since they alter radically the relationships of accountability and the way services are provided. Expenditure reforms reallocate spending towards a specific level of education, income group or a specific geographic unit. Financing reforms aim at increasing participation in education by mitigating the cost of education and providing finance tools in the form of grants or scholarships. Relaxing financing constraints to specific socioeconomic groups, easing access to high quality schools (e.g. through vouchers), and improving the quality of schooling, can lead to increased enrolments among the poor. On the other hand, reforms that make it harder for the disadvantaged to access education run the risk of reducing enrolments for the specific group. Such reforms could include introducing or raising user fees (Tiongson, 2005).

III. Evidence from education IAs

To our knowledge, policy appraisals relevant to our task are limited to just a few RIAs that only discuss benefits from regulation in a narrative way and provide estimates on cost savings resulting from the merging of functions and removal of duplication of work. Shortlisted policy papers include, and are limited to, the Case for creation of the Office for Students,⁵¹ the Case for the creation of UK Research and Innovation,⁵² the Higher Education and Research Bill: detailed impact

⁵⁰ Available at: <http://siteresources.worldbank.org/INTPSIA/Resources/490023-1120845825946/Education.pdf>

⁵¹ Available at <https://www.gov.uk/government/publications/office-for-students-business-case>

⁵² Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/527803/bis16291-ukri-case-for-creation.pdf

assessment,⁵³ the Qualifications Wales Bill: Explanatory Memorandum⁵⁴ and the Reform of National Regulation of Higher Education Providers Regulation Impact Statement.⁵⁵ In this section we also review two previous IAs relating to reforms that took place in Wales to increase our understanding of wider IA precedents in Wales. None of these IAs quantify the expected benefits, with the exception of the IA for Additional Learning Needs and Education Tribunal in Wales where the cost savings were estimated. For the majority of IAs reviewed it is notable that prior to the introduction of the reforms the benefits are uncertain, and the outcomes depend largely on how a new policy is implemented; a good policy may be ineffective if it is poorly implemented.

Office for Students

The creation of the Office for Students was part of a wider set of regulatory reforms introduced in the 2016 Higher Education and Research Bill. The Bill aimed to introduce more competition in the markets for Higher Education (HE) and Research and Innovation (RI) in order to deliver increased value to students, taxpayers and businesses. The case for the creation of Office for Students set out the rationale for the UK Government's preferred option of replacing the two public bodies required by statute to regulate higher education in England with one non-departmental public body that would act as the single market regulator. The new higher education regulator, called the Office for Students, would combine and update the regulatory functions of Higher Education Funding Council for England (HEFCE) and the roles of Office for Fair Access (OFFA). OFFA was the statutory body set up to support the Director of Fair Access (DFA), with the body's duties encompassing agreeing and monitoring access agreements with universities and colleges that charged higher tuition fees, and ensuring higher education (HE) providers have adequate measures in place to attract students from disadvantaged backgrounds. HEFCE also had a related regulatory objective to allocate funding so as to widen participation in HE. By merging the functions of these two regulators, the Government aimed to bring together two interconnected agendas, with the combined organisation benefiting from the expertise of two organisations and allowing for a more coherent strategy towards the goal of widening participation in HE. The business case identifies the following as the expected immediate benefits derived from the reform: i) simplification of HE architecture and improved coherence in the regulatory approaches and allocation of funding, ii) better promotion of students' interests in the area of education through increased competition and increased choice, and iii) a more powerful and fit for purpose regulator tasked with running a risk-based regulatory framework applicable to all HE providers (UK Government, 2016a). An additional benefit for the UK Government was expected to come in the form of cost

⁵³ Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/528005/bis16295-he-research-bill-detailed-impact-assessment.pdf

⁵⁴ Available at <http://www.assembly.wales/laid%20documents/pri-ld10026-em%20-%20qualifications%20wales%20bill%20%20explanatory%20memorandum/pri-ld10026-em-e.pdf>

⁵⁵ Available at <https://ris.pmc.gov.au/sites/default/files/posts/2012/01/03-Reform-of-National-Regulation-of-HigherEducationProviders-Regulation-Impact-Statement.pdf>

savings, resulting from the reduction of public bodies and from the application of more efficient systems. For the purpose of the RIA, efficiency savings were assumed to reduce Government's operating cost by 10%.

UK Research and Innovation

Similar to the Office for Students, the UK Government favoured the option of introducing a counterpart regulatory body in the research and innovation market. The 2016 Case for the creation of UK Research and Innovation assessed the Government's preferred option of creating a new single non-departmental public body (NDPB), operating at arm's length from UK Government and bringing together the seven Research Councils, the research funding functions of HEFCE and the funding functions of Innovate UK. As with the Office for Students, straightforward benefits stemmed from better value for taxpayers' money, increased efficiency and less duplication of work. Proposed areas of further consolidation to better exploit efficiencies were identified as HR functions, procurement, finance, auditing, IT and communications services, and the administrative savings resulting from the merger were assumed to be equivalent to 5% of the UK Government's total administrative costs (UK Government, 2016b). It was also envisioned that the UKRI, by removing duplicate work and bureaucracy, would be better able to embed the efficiency savings achieved and redirect its resources towards more strategic leadership functions that would allow the office to make better informed research and innovation (RI) funding decisions based on providers' performance indicators.

Additionally, consolidation was expected to reduce the regulatory burden for the RI providers and to allow them to allocate their resources more efficiently. This could occur because the reduced regulatory burden would allow RI institutions to merge administrative office functions related to dealing with multiple regulators and allocate more resources towards research.

Another benefit of the reform was an increase in the rate of return of public spending on R&D activities; equivalent to a 1 percentage point increase in private sector productivity, as well as an increase in the social rate of return of innovation resulting from more collaboration of the research base and better commercialisation of innovation in the business place (UK Government, 2016b). Lastly, there were other non-marketable, more difficult to monetise outcomes, including improvements in wellbeing and health, better development of public policy and enhanced resilience to shocks through cost avoidance.

Other IAs of the Higher Education and Research Bill

The Detailed Impact Assessment of the Higher Education and Research Bill, published by the UK Government in June 2016, provides two more cases of reforms that align with the Welsh Government's rationale for creating one single regulatory body which will absorb all funding, planning and monitoring functions in postcompulsory education and training sector.

Those two reforms are the IA for the *Entry into the higher education sector and single-entry gateway* and the IA for *Information Sharing and Data Transparency Duties*.

The former assessed benefits from reforming the validation system and other regulatory functions related to degree recognition, HE status recognition by the UK Government, as well as the introduction of a risk based regulatory framework. The latter assessed the benefits from introducing legislation that enables Office for Students to be the principal government body with the power to require HE providers, and other bodies providing admissions services, to share financial and other student data (e.g. ethnic, gender, socioeconomic background breakdown of annual intakes). In assessing the Welsh case, and its preference on legislating a Commission that among other things will have the duty to monitor and regulate PCET providers under a risk based regulatory framework, the first IA provides evidence on what kind of benefits are expected to result from introducing a similar framework. The assessment states explicitly that it is difficult to predict the full extent of costs for providers, or the benefits from the reduction of excess regulation prior to the implementation of the reform, since both costs as well as benefits depend largely on the measures that will be developed and employed to assess the riskiness of each provider, as well as other aspects of the framework (UK Government, 2016c). On the basis of economic intuition, it was expected that the reformed system would result in a fairer allocation of administrative burdens which would ensure the cost of regulation and increased monitoring would add value to students and safeguard the quality of English HE system, as well as a better management of high-risk providers. The IA for *Information Sharing and Data Transparency Duties* emphasises the benefits to students, UK Government and taxpayers stemming from remedies to market failures prevalent in the field of higher education. Specifically, more detailed, centralised and publicly available information was expected to reduce information asymmetries and improve social mobility. Students were expected to make better informed decisions and the Government to be more effective at designing policy that promotes participation of students from disadvantaged backgrounds. Improved matching between program and students would lead to more productive graduates, better prepared to achieve their full potential in the labour market (UK Government, 2016c). Apart from productivity gains in the economy, more productive graduates were expected to accelerate the repayment of student loans that would effectively lead to better value for taxpayers' money.

The Qualifications Wales Bill

Our shortlist of relevant papers includes a previously conducted regulatory impact statement on assessing the options available to Welsh Government for reforming the qualifications system of the country. The assessment has been prepared in December 2014 by the Department for Education and Skills of the Welsh Government to support the Qualifications Wales Act 2015. The Welsh Government's preferred option was to create an arm's length regulatory body that would have the statutory duty to regulate and supervise all non-degree qualifications providers. In the specific IA there are no direct financial benefits accruing to any party from this reform. However, similarly to the already discussed IAs, wider benefits are discussed in a narrative way. The introduction of a regulatory body in the qualifications market was expected to simplify regulatory processes, improve regulatory activity, enhance

the reputation and independence of Wales' regulatory system, and increase the confidence, consistency, clarity, accountability and authority that would facilitate widespread impact throughout the country (Welsh Government, 2014). The IA concludes that due to the nature of the benefits, positive and negative outcomes could not be compared and judgements should be made based on how well the benefits justified the costs of the reform.

Tertiary Education Quality and Standards Agency Threshold Standards Reform

As part of the literature search, we identified a regulatory impact statement prepared by the

Australian Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) that considered the regulatory impact of the Tertiary Education Quality and Standards Agency (TEQSA) Threshold Standards 2015 on higher education providers.

Assigning TEQSA the regulatory duty to implement Threshold Standards was the Australian Government's preferred option for addressing the country's weaknesses in the field of higher education, related to lack of enforceable clarity in the standards frameworks and the inconsistency in their application. The reform left TEQSA to be the single regulatory body responsible for compliance, monitoring and quality assurance. The reform's objective was to implement a risk-based approach, ensuring that only high-quality providers would enter the system and that providers at risk of non-compliance would be identified in a timely manner, and closely monitored. The main benefits of the proposed reform are in the form of efficiencies from more streamlined registration and accreditation processes, better regulatory environment for the providers who would have to deal with only one agency, enhanced consistency within the sector, as well as more certainty and confidence for employers and the community on the quality of graduates (DIISRTE, 2012). Additionally, as already mentioned in the previous cases examined, an economic benefit for the sector was anticipated as a result of the risk-based allocation of regulatory burden, with low-risk providers subject to less regulation and lower registration fees.

The Childcare Funding (Wales) Bill

The Childcare Funding (Wales) Bill of 2018 legislated powers to provide funding for childcare for qualifying children of working parents and to make regulations about the arrangements for administering and operating such funding.

The preferred option was the development of a Welsh application and eligibility checking system within the HM Revenue and Customs (HMRC) tax-free childcare platform. Potential benefits of this strategy include: reduction of administrative burden and data security risks; parental burden being significantly reduced; facilitation of funding recipients; and fraud risk being significantly reduced as eligibility can be checked on a live basis with data that cannot be misrepresented or altered by parents endeavouring to make a fraudulent claim of eligibility (Education and Public Services Group, 2018).

Additional Learning Needs and Education Tribunal in Wales

The Additional Learning Needs and Education Tribunal (Wales) Bill⁵⁶ created a new unified legislative framework for supporting children and young people with additional learning needs (ALN). The new framework replaced the existing legislation surrounding special education needs (SEN) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training.

Potential benefits of this reform were the following: fewer disagreements regarding decisions; fewer decisions appealed to the Special Educational Needs Tribunal for Wales; removal of the incentive of parents to pursue local authorities to issue a statement; potentially reduced involvement of health services staff; available information about the young person and evidence about what support worked well for him/her, leading to the allocation of resources in the most efficient and effective way; a less complex system, resulting in less time needed for statementing process and early intervention; earlier intervention is expected to help avoid issues from escalation, and hence save resources; reduction of the rate at which young people with ALN are excluded from school; reduction of parental confusion, anxiety and frustration (Education and Public Services Group, 2016).

V. Education reforms: international evidence

As an additional source of evidence, recent selected international experiences of education reforms have been considered. More specifically, we reviewed some more general papers which referred to intermediate bodies in Higher Education system and their role,⁵⁷ and the relationship between governance structure and the strategies of policymakers.⁵⁸ Notably, none of the papers reviewed contained CBA techniques or any attempt to quantify specific benefits relating to policy reforms.

New Zealand

The Government of New Zealand introduced the Tertiary Education Strategy (TES) 2014-2019,⁵⁹ which sets out the Government's long-term strategic direction for tertiary education and how a high-performing tertiary education system can contribute to improved outcomes for individuals and society. It includes six priorities (delivering skills for industry; getting at-risk young people into a career; boosting achievement of Māori and Pasifika; improving adult literacy and numeracy; strengthening researchbased institutions; growing international linkages) that the Government

⁵⁶ Available at: <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf>

⁵⁷ See more here:

http://oro.open.ac.uk/11795/1/William_Locke_%282007%29_Intermediary_Bodies_in_UK_HE_Governance_with_particular_reference_to_UUK.pdf and http://www.heqco.ca/SiteCollectionDocuments/Trick_Intermediaries_ENG.pdf

⁵⁸ See more here: <https://eric.ed.gov/?id=ED412866>

⁵⁹ See more here: <http://www.nzqa.govt.nz/studying-in-new-zealand/understand-nz-quals/nzqf/>

seeks to improve. The TES focuses on ensuring that tertiary education in New Zealand:

- is more flexible, outward-facing and engaged,
- is focused on improving outcomes for learners and employers, and
- has strong links to industry, community and the global economy.

There was some evidence from the TES 2010-2015 regarding the extent of the improvement across the tertiary education sector. Some educational performance indicators are listed below:⁶⁰

- There was a 23% increase in the number of students completing bachelor's degrees between 2010 and 2012,
- There was a steady increase in students moving from school to degree level study,
- There was a 6 percentage points increase between 2007-2012 in people of 25 years who have completed a qualification or a degree at level 4 or above, and
- The participation of Māori people between 18-19 years old in bachelor's degrees rose from 11% in 2009 to 13% in 2012, and for Pasifika, from 13% to 16%.

Canada

There are 26 publicly funded post-secondary institutions in Alberta (a province of Canada),⁶¹ which offer most of Alberta's post-secondary programs, receive government funding to offset their operating costs, and are accountable to Alberta taxpayers. The publicly funded postsecondary institutions are governed by boards that provide leadership, guiding the institutions' future and being held accountable for ensuring that public funds are used effectively and appropriately.

The 2007 Roles and Mandates Policy Framework for Alberta's publicly funded advanced education system outlined a six-sector model which provided clarity on the contribution each institution makes in the educational sector.¹⁷

Regarding Ontario, another province of Canada, we reviewed some papers which were concerned with the funding model of the institutions of the province and the Higher Education Quality Council of Ontario.

The purpose of the funding model is to provide a fair and balanced method for determining the share of the provincial operating grant to be allocated to each

⁶⁰ See more here: <https://www.education.govt.nz/further-education/policies-and-strategies/tertiary-education-strategy/>

⁶¹ See more here: <http://eae.alberta.ca/post-secondary/institutions/public.aspx> ¹⁷

See more here: <http://eae.alberta.ca/media/155107/sixsectormodel.pdf>

province's 20 publicly assisted institution.⁶² The Ontario University funding model aims to ensure a reasonable degree of equity in the distribution of available government support but does not determine the overall level of funding in the system.

The Higher Education Quality Council of Ontario (HEQCO) is an agency of the Government of Ontario that brings evidence-based research to the continued improvement of the Province's post-secondary education system. The purpose of this council is to help:⁶³

- educate students and provide them with knowledge and skills to ensure their future success,
- produce engaged and civic-minded citizens,
- foster research and innovation, and
- support a robust economy and fuel its growth.

Australia

The case of Australia has previously been analysed in the context of the Tertiary Education Quality Standards Agency (TEQSA) undertaking also the role to implement Threshold Standards in the field of Higher Education.

Scotland

Regarding Scotland, we assessed the Scottish Funding Council, which is the nondepartmental public body charged with funding Scotland's further and higher education institutions, including its 25 colleges and 19 universities.⁶⁴

The Council was established by the Further and Higher Education (Scotland) Act 2005, and it supersedes the two separate Councils, the Scottish Further Education Funding Council (SFEFC), and the Scottish Higher Education Funding Council (SHEFC), which were later dissolved.

No CBA or IA accompanied the Bill⁶⁵ at the time that SHEFC was legislated, nor was an ex post assessment found as part of our research for a retrospective evaluation of this reform.

⁶² See more here:

http://www.tcu.gov.on.ca/pepg/audiences/universities/uff/UniversityFundingFormulaConsultationReport_2015.pdf

⁶³ See more here: http://www.heqco.ca/SiteCollectionDocuments/EN_HEQCO_AR_2017_18_WEB.pdf

⁶⁴ See more at: <http://www.sfc.ac.uk/>

⁶⁵ Available at: http://www.legislation.gov.uk/asp/2005/6/pdfs/asp_20050006_en.pdf

VI. Evidence relating to the Benefits Realisation Plan

Professor Hazelkorn's 2016 government commissioned report⁶⁶, examined the effectiveness of Post Compulsory Education and Training (PCET) system in Wales, focusing particularly on regulatory effectiveness issues in relation to funding, governance, quality assurance and standards, and the management of risk. Her report identified various areas for improvement in the PCET sector and highlighted the need to maximise spending effectiveness due to increased budgetary pressures, the need to maintain academic and research excellence, the need to invest in and improve students experience and employment opportunities as well as the need for building an innovative dynamic culture. Other issues raised in her report are the need for more regulatory cohesion in the sector, the need for better alignment of the PCET sector with current and future social and economic needs, the need for more collaboration in the field of education and research, as well as the need for establishing appropriate governance structures. Her recommendations to the Welsh Government for meeting those needs were '*Establish a new integrated authority (to replace HEFCW) with the organisational capacity, capability and structure to steer, oversee and monitor systemic change and ongoing improvement across the whole post compulsory education sector*' (Hazelkorn, 2016).

The Welsh Government issued a consultation paper in 2017 titled 'Public Good and a Prosperous Wales – Building a reformed PCET' to set out proposals for taking

⁶⁶ <http://gov.wales/docs/dcells/publications/160310-hazelkorn-report-en.pdf>

forward the reforms needed. The consultation paper proposed that a new regulatory authority should be established – the Tertiary Education and Research Commission for Wales (The Commission) – to provide oversight, strategic direction and leadership for the post-compulsory education and training sector (Welsh Government, 2017). Key roles of the Commission would include:

- strategic planning of education and skills delivery across all post-compulsory education and training in Wales,
- establishing a mechanism for managing the relationship between the Commission and the institutions, and training providers it regulates or funds,
- funding, contracting, quality, financial monitoring and audit of higher education, further education, work-based learning, adult community learning, and relevant employability and employer-led programmes, and
- functions currently undertaken by the Welsh Government.

The end goal of this regulatory reform is to protect and promote the interest of learners, to increase parity between vocational and academic education, and to reduce the skills gap in the labour market. The new body will be encouraged to operate and work towards a shared vision for making Wales more prosperous, resilient, healthier, more equal, and a country globally responsible, with cohesive communities, vibrant culture and a thriving Welsh language. The intended reform is expected to contribute to the Welsh Government's efforts to achieve this national agenda. After the introduction of the new Commission, the Welsh Government anticipates the following list of high-level benefits to result:

- To be responsive to employer needs and address skills gaps,
- To improve research institutions ranking, reputation and research funding,
- To improve apprenticeship opportunities,
- To raise standards for all; improving learner participation, progression, performance and outcomes,
- To improve the curriculum on offer,
- To improve the learner experience and capture the learner's voice,
- To improve PCET reputation, agility and direction,
- To introduce an improved, compliant and effective PCET wide data collection, analysis and dissemination system that ensures timely, accessible and relevant information about PCET in Wales is available for all who need it,
- To reduce unnecessary course duplication and competition across PCET,
- To improve the coherence and consistency of financial and performance monitoring, and quality assurance, and
- To increase community use of PCET facilities and encourage greater connectivity.

Our systematic literature review provides some evidence which justifies the Welsh Government expectations, although there is a number of anticipated benefits that policy and academic research has not yet explored. Gaps in the literature do not necessarily indicate that the Welsh Government's expectations are unrealistic or non-feasible. Instead, they highlight the novel nature of the reforms, as well as the difficulty in measuring high-level targets.

This section continues with a list of more specific benefits, attempting to capture the essence of the aforementioned higher-level benefits, and their relation to the literature we reviewed.

Evidence by category in the Benefits Realisation Plan

Increased public confidence in the PCET system in Wales

Increased public confidence in the sector will come from a more direct line of sight across PCET, leading to stronger and more secure national and regional planning. Similar to the Welsh Government, all the RIAs reviewed expect a relevant intermediate benefit that would effectively increase public confidence in the sector. The Office for Students, which has many regulatory similarities with the Welsh Commission, was expected to empower regulatory practice in HE through the implementation of a risk-based regulatory framework applicable to all HE providers. Effectively, the Office for Students, after assuming and concentrating the functions of HEFCE and OFFA, is expected to improve regulatory coherence (UK Government, 2016a).

Integrating oversight functions into one regulatory body and replacing all the Welsh Government Sponsored Bodies assigned with the duty to supervise, oversee and quality assure PCET providers, is expected to lead to a simplification of the qualifications market and improved regulatory activity comparable to the expectations in Qualifications Wales RIA. Additionally, a single, independent and authoritative body will be better able to respond to changes in the qualifications landscape in the UK, and will empower the Welsh voice in the European and International qualifications environments (Welsh Government, 2014). The less complex system will also allow for early intervention where needed, as well as reduced confusion resulting from vaguely defined paths between PCET education and the labour market. As a result, consistency among PCET providers will improve and employers with more confidence in the quality of graduate students, and students will make more confident decisions (DIISRTE, 2012).

Consistency in the approach to the regulation of institutions across PCET through a common purpose

This benefit relates closely to the previous one. Drawing from TEQSA's IA, there is justification behind the Government's expectation of increased consistency across the sector. Simplification of the regulatory landscape and more coherent regulation will discharge providers from the compliance burden of dealing with multiple overseeing bodies (DIISRTE, 2012). Standards of compliance will be clear and

uniform to all PCET providers and any confusion – as it is identified in the Hazelkorn report (Hazelkorn, 2016) relating to overlapping roles across the PCET sector between the different agencies, will be reduced. CTER will bring the PCET sector together under one regulatory body and eliminate the confusion around overlapping roles of a number of organisations, namely the Higher Education Funding Council Wales (HEFCW), Estyn, Local Authorities (LAs), the Department for Education and Skills (DfES), Sêr Cymru, the Quality Assurance Agency (QAA).

Additionally, the risk-based regulatory framework will ensure that the highest risk providers will bear the greatest share of the regulatory burden hence all providers will have the incentive to comply and deliver high quality services so to reduce their regulatory costs.

Increase in learner participation rates and more post-16 learners progressing to higher learning (vocational and academic) and/or well-paid employment

Our research has already highlighted the importance of funding in education and its effects on social mobility. Cash transfers and other demand-side financing schemes aiming to increase participation amongst people from disadvantaged backgrounds have immediate short-term impacts on the distribution of access to education, as well as dynamic long-run impacts on intergenerational employment opportunities and poverty reduction (Tiongson, 2005). Dearden et al (2005) estimate that after the provision of the Education Maintenance Allowance (EMA) in the UK stay-on rates past the age of 16 grew by 4.5 percentage points while half of the individuals who stayed on in education were drawn from inactivity rather than work.

To the extent that the Commission could allocate funds to more efficiently target people who leave education too early because of financial constraints, significant distributional impacts can result. Participation rates and post-16 staying-on rates could increase if financial easing is able to target people who cannot afford postcompulsory education. In this way, the CTER can effectively succeed in meeting two of its objectives; increasing participation and stayingon rates, as well as reducing the attainment and outcome gaps between learners from poorer and other disadvantaged background and their other more well-off peers. This is an important observation for the Commission and its future role of funding the PCET sector.

Integrated and improved evidence base – providing better quality, comparable PCET-wide data and information to inform policy development, and decision making at all levels (WG, providers, employers and learners)

One of the proposed roles of the new Commission, as the principal oversight body of the PCET sector, will be to introduce an improved, compliant and effective PCET wide data collection, analysis and dissemination system that ensures timely, accessible and relevant information about PCET in Wales, and which is available for all who need it. Drawing from the IA of *Information Sharing and Data Transparency Duties*, similar reforms in the UK were also expected to result in benefits for students, the Government and taxpayers, as a result of remedies to market failures prevalent in the field of higher education. Specifically, more detailed,

centralised and publicly available information reduces information asymmetries and improves social mobility. Students make better decisions from improved information and improved comparability among providers. The Government is also more effective at designing policy that promotes participation of students from disadvantaged backgrounds, making use of the highly detailed available database (UK Government, 2016c). It follows that it is reasonable to expect similar benefits to accrue to the Welsh Government, students and taxpayers.

A more coherent and consistent funding model across the PCET sector

A single regulator will provide for a comparable and consistent approach to quality assurance and assessment across PCET according to a similar argument made for the Office for Students (UK Government, 2016a). The new Commission will be better able to bring together the multiple, but interconnected, agendas of the various organisations that supervise, fund and quality assure the PCET sector under the current system and pursue a common national PCET approach aligned with the Welsh Government's strategic objective of prosperity for all. Additionally, it can be argued that the CTER will be a more efficient funder of research and innovation than HEFCW. Considering its empowered position for collecting and centralising R&I providers' performance data, the new Commission will be better able to judge which providers contribute most to Wales' growth through the commercialisation of their research, and better promote the Government's national strategy for the PCET sector.

Improvement in the financial health of PCET institutions in Wales

Continuing with the logic behind the arguments for the Office of Students, a clearer and more efficient, more flexible regulatory system should ensure that the regulatory burden, more proportionate to the level of inherent risk of each provider, would burden less risky providers with less regulatory costs (UK Government, 2016a). There is an apparent negative linear relationship between the riskiness of the PCET provider and its regulatory costs. If riskier providers are to undertake higher costs, we can expect that after the reform only the less risky and compliant providers will enjoy improvements in their financial health. Progressively, the situation could evolve with riskier providers leaving the PCET market because they will not be able to meet their financial obligations, while at the same time leaving room for more efficient providers to expand or new providers to enter the market. Hence, the Welsh Government is justified expecting improvements in the financial health of PCET institutions especially for low-risk providers.

Better alignment between funding and cost of provision across PCET system

We have identified expectations for significant cost efficiencies, in the forms of savings from the removal of duplicate work after the merging of government bodies. In the UK, cost savings from reduced duplication and more strategic alliance between research councils' work in the areas of business planning, grant administration, analytical and evaluation work, were assumed to be 5% of the total amount of administration costs (UK Government, 2016b). Similar cost efficiencies

were expected to result, in the case of the Office for Students, from the reduction of public bodies and the application of more efficient systems.

The expected efficiency savings were assumed to reduce Government's operating cost by 10% (UK Government, 2016a). Similarly, the Welsh Government can expect to experience some reduction in its administration costs resulting from the removal of duplicate work and the reduction of Government Sponsored Bodies with duty to supervise, oversee and quality assure PCET providers. Nonetheless, the actual reduction in administration costs, and the achieved amount of efficiency savings, will be determined by the exact final size and structure of the Commission as with the cases of the Office for Students and UKRI.

Other benefits in the benefits realisation plan not listed above

Our research did not return any evidence concerning how the introduction of the Commission in the PCET sector could lead to a number of benefits that the Welsh Government anticipates. The literature is generally silent regarding the following anticipated benefits:

- Enhanced problem detection and prevention capability, including the ability to respond to macro changes, and to mitigate disruption through changes in learner and employer demand,
- improvements in the overall learner satisfaction,
- improved matching between available training and research opportunities (supply side), and employer and learners' requests (demand side),
- increased number of, and income generated by, collaborative RI projects,
- increases in recognition of the value of both academic and vocational qualifications,
- the creation of a coherent route map for learners, employers and providers,
- reductions in the number of duplicated courses across the PCET sector that are uneconomic to deliver,
- improved planning and delivery of the skills set required in a particular locality and/or region, and
- increase in the joint use of facilities.

Further benefits found in the literature

A boost to private sector productivity may result from lower administration costs and more room for strategic leadership in the funding of research, according to the IA of the UK Research and Innovation reform (UK Government, 2016b, 2016c; IA of UK Research and Innovation reform). The advent of UKRI, assuming that it creates a clearer and more cohesive regulatory landscape, was expected to relieve research leaders appointed to fund research from excessive bureaucracy and administration tasks, allowing them to reallocate their efforts towards RI strategic leadership.

Strategic leadership involves making the most informed funding decisions. By pooling multiple datasets into a centralised system and processing different sources of information on providers' performance, the new funding body will manage to target those providers that deliver multi- and inter-disciplinary research on cross-cutting areas and improve the quality of research and technological base. The reduction in regulatory requirements and bureaucratic tasks will also release academic and research institutes from administration activities and allow them to focus their resources in more research.

To the extent that the new Commission is able to successfully implement efficiency savings and redirect efforts towards more productive functions, similar to the case argued for the creation of UKRI, it could go beyond "efficiency savings". The CTER could consequently achieve an increased rate of return from public spending in R&I through more strategic leadership, better-informed funding decisions and more successful research and development (R&D) outcomes.

The case for the creation of UKRI proposes two indicative scenarios that could be relevant to the Welsh Government.

- Scenario 1: For every £1 of public spending in R&D, private sector productivity rises by 20 pence annually; this is equivalent to a 20% rate of return in public spending in R&D. If, after the consolidation of research functions into the new non-departmental public body, this rate of return increases by only one percentage point to only 10% of the total spending from 2020-2021 and onwards, this would give an economic benefit of around £230 million over a 10-year period.
- Scenario 2: For every £1 of public spending in supporting innovation, the social rate of return achieved is equal to a 50% rate of return. If, after the consolidation of research functions into the new non-departmental public body, this rate of return increases by only one percentage point to only 10% of the total spending from 2020-2021 and onwards, this would give an economic benefit of around £20 million over a 10-year period.

In reality, the highlighted benefits were expected to accrue over a much longer period (UK Government, 2016b, 2016c; IA of UK Research and Innovation reform). Productivity gains may arise also from reduced information asymmetries. If more students are at institutions that are the best match for them, then they are more likely to fulfil their potential in the labour market (UK Government, 2016c; IA of Information Sharing and Data Transparency Duties; DIISRTE, 2012). Productivity gains will accrue to taxpayers as well; if the Welsh Government can better design policy to improve outcomes for all groups, alongside more informed choices made by students, these may result in more productive graduates entering the labour force. This in turn can increase the rate of loan repayments (UK Government, 2016c; IA of Information Sharing and Data Transparency Duties).

Other less easily quantified benefits (non-market benefits) include improved health and wellbeing, better development of public policy and delivery of public services, and cost avoidance through resilience to shocks (UK Government, 2016b).

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Annex – Summary of Benefits

Table 3 summarises the benefits found in the review grouped by the benefits categories, as those specified in the benefits realisation plan, and the groups for which these benefits are expected to accrue. The Welsh Government defines as “direct” those benefits that accrue to it. Indirect benefits include the benefits for PCET providers, and wider benefits are those that will accrue to different groups of society (i.e. taxpayers, employers, learners).

Table 3. Summary of benefits

| Benefit Categories | Affected Group | Type of Benefit |
|--------------------|------------------|---|
| Direct | Welsh Government | <ul style="list-style-type: none"> • Stronger and more secure national planning (UK Government, 2016a) • More consistency across the sector (DIISRTE, 2012) • Improved oversight and faster intervention when needed. (DIISRTE, 2012) • More flexibility responding to changes in qualification system in the UK. (Welsh Government, 2014). • More effective policy, targeting disadvantaged groups through the use of centralised and highly detailed data (UK Government, 2016c). • Cost efficiencies as a result of administration cost savings (UK Government, 2016a; 2016b). • Increased tax revenue as a result of productivity boost and increased return on earnings (UK Government, 2016c). |

| | | |
|-----------------|----------------------------------|--|
| <p>Indirect</p> | <p>PCET providers</p> | <ul style="list-style-type: none"> • More coherent regulation to comply with (UK Government, 2016b; DIISRTE, 2012). • Less regulatory burden (for low risk PCET providers) (UK Government, 2016a). • More consistency and improved quality across providers (UK Government, 2016a). • Productivity gains for providers from reduced administrative tasks (UK Government, 2016b) |
| <p>Wider</p> | <p>Learners</p> | <ul style="list-style-type: none"> • Reduced confusion regarding paths and their transition to labour markets (DIISRTE, 2012). • Reduced information asymmetry – better informed decisions (UK Government, 2016c; IA of Information Sharing and Data Transparency Duties; DIISRTE, 2012). • Increased participation (to the extent that the Commission will allocate funds more efficiently towards disadvantaged groups) (UK Government, 2016c; DIISRTE, 2012). • Improved social mobility (UK Government, 2016c). • Productivity gains (UK Government, 2016c; DIISRTE, 2012). |
| <p>Wider</p> | <p>Businesses/ Employers</p> | <ul style="list-style-type: none"> • Greater confidence on the quality and skills of graduates (DIISRTE, 2012). • Private sector productivity boost (UK Government, 2016b, 2016c). |

| | | |
|-------|-----------|--|
| Wider | Taxpayers | <ul style="list-style-type: none">• Better value for taxpayers' money (UK Government, 2016c).• Better loan repayment rates through increased productivity (UK Government, 2016c). |
|-------|-----------|--|

ANNEX 6 – Costing the options

Please note the [caveat](#) contained in Part 2 – Regulatory Impact Assessment.

INTRODUCTION

OPTION 2 (PREFERRED OPTION) PRINCIPAL ASSUMPTIONS

1. As part of the development of the costing analysis, the following key assumptions were used:

Non-Programme Costs

2. A critical assumption within the projections is that any significant cost savings made by transferring staff and expenditure, currently treated as overhead (or non-programme costs) within the Welsh Government, is provided as additional resource funding to the new organisation.

Capital and Revenue Expenditure

3. It is anticipated that most IT and Location costs during transition will be capitalised and therefore treated as capital expenditure, however given the accounting requirements around internally created intangibles, such as software and website costs, we are unable to confirm this treatment at this time.
4. Under the IFRS 16 accounting standard on Leases it is probable that any property leased by CTER will be capitalised. Currently, the lease rentals are included within Property Costs, however the eventual accounting treatment, dependent upon the location strategy, will not have a significant impact on these forecasts.

Establishment of the organisation

5. For the purposes of these costings, the policy intention for the organisation's commencement of operations in April 2023 has been followed for Option 2.
6. For Option 2, work is yet to be undertaken to produce a detailed options analysis for the location for the new Commission. The location is dependent on

decisions made by the Minister and CEO for CTER. Therefore, solely for the purposes of this exercise, location costings for CTER have been determined using a south east Wales base, more details of which are contained below.

7. The eventual determination of a location strategy for CTER is likely to have a significant impact on other cost elements within these forecasts.

VAT

8. VAT has been included for the purposes of these costings, but it is important to note it is a transfer payment and therefore has a neutral impact on the UK economy. Therefore table A below shows the equivalent benefit/receipt of VAT to HMRC.

Status of the organisation

9. For Option 2, it has been assumed that the organisation would not have charitable status and would not attract a UK corporation tax charge. HEFCW is not a VAT registered organisation. It has also been assumed that CTER would become VAT-registered, based on comparator organisations.
10. Any changes to tax status could have a significant impact on the costs incurred.
11. CTER will be a public records body.

Inflation and Net Present Value (NPV)

12. No inflation has been applied to the cost base used within these forecasts.
13. NPV has not been applied to the cost base used within these forecasts.

Programme spend

14. Programme expenditure has been excluded from these forecasts as it will be the same for both options. This expenditure covers areas such as research, communication and expert services.

OPTION 2 (PREFERRED OPTION) DETAILED ASSUMPTIONS

Staff costs

15. All 50 HEFCW staff will be transferred into the new organisation.
16. It is anticipated that the following Welsh Government functions will transfer to the new organisation, however the scope of exact functions and staff has not yet been determined and these figures are currently an estimate, totalling 116 roles:
 - Apprenticeship Policy
 - Funding & Planning
 - Further Education & Apprenticeships
 - Policy & Programme Development
 - Post-16 Policy
 - Post-16 Quality & Data Management Provision Management
 - Youth Support & Guidance
 - Student Finance,
 - Scientific Policy
 - IT Digital Services
17. The Welsh Government will require an additional 31 staff within the Sponsorship (8); Policy (14); and IT (9) teams in order to manage the relationship with the new organisation and safeguard IT systems on which the Welsh Government is also reliant.
18. Staff will transition into CTER on their current terms and conditions, therefore salary and on-cost data is based on a combination of HEFCW, Welsh Government and market rates.
19. HEFCW staff have been costed, from commencement of CTER, at the top of their 2019 scale bandings as per their 2019 pay scale, with bandings as per KPMG's Project Langdon Report.
20. Welsh Government costings are based upon the most recent uplift as at April 2019, and all staff costs have been based on the top bands of their respective pay scales.
21. On costs for Welsh Government staff have been based upon those supplied by the centre and range from 34% to 40%. HEFCW on costs have been estimated at 40%.
22. No allowance has been included for the regrading of any roles.

23. It is assumed that most staff will transfer across into CTER from HEFCW and the Welsh Government, however some losses are anticipated, and therefore a recruitment exercise costing in the region of £80,000 to £100,000 is anticipated in the six month lead up to 1 April 2023.
24. It is assumed that all staff are full time for the purpose of the costings.
25. Staff working on the discovery phase of the programme have not been included as they are considered necessary for all three options.
26. An additional Chief Digital Officer role (not currently in WG or HEFCW) has been identified to work on implementation of the Commission within the Welsh Government 18 months prior which will then transition into the new Commission. This will be a Grade 6 post.
27. An extra IT support worker is included within the forecast to provide internal IT support.
28. Four additional HR and Finance staff have been included for the new organisation, two at Grade 7 and two at HEO level.

Board Costs

29. The Chair of the Board will be recruited to commence employment in September 2020 for an initial 2 days per month that will increase to 4 days from 1 April 2021 and rise to 8 days per month from 1 April 2023. As a Band 4 role, the Chair's daily rate will be £394 per day.
30. The Deputy Chair will start on 1 June 2021 for an initial 1 day per month, rising to 4 days from CTER commencement. This will also be a Band 4 role at a daily rate of £366 per day.
31. There will be 8 main Board members who will be appointed on 1 March 2023, for 4 days per month from CTER's establishment. Also Band 4 roles, these members will be paid £337 per day.
32. The Research Board will also comprise 8 members, chaired by the Main Board's Deputy Chair. As Band 3 roles, members will be paid £282 per day.
33. Each recruitment round will cost in the region of £35,000 to £45,000. For modelling purposes we have estimated £160,000 for all four Boards.
34. Travel & Subsistence for the Board is estimated to be around 20% of Board member fees and meeting costs at around 25%. Both percentages are based

upon HEFCW's current cost profile, however are subject to final location strategy.

35. Each Board member will be provided with IT equipment and software at a cost of £1,000 upon commencement.

Redundancy Costs

36. The Redundancy costs were calculated by KPMG at an early stage in the project, and these will be revisited in light of our better knowledge and awareness of likely arrangements for staff transfer. The figures from KPMG represent the maximum potential costs that would be incurred if all eligible HEFCW employees took the voluntary redundancy option as at 31 March 2023, as opposed to moving to the new body. These totalled £2,031,000 and we have used this figure within our forecasts. Any HEFCW staff taking redundancy will be replaced during the planned recruitment round.

37. No costs have been included for any Welsh Government staff who may be entitled to redundancy as a result of potential changes to terms and conditions of their employment.

38. The eventual location strategy chosen for the new organisation may have a significant impact on the above assumptions and therefore costs.

39. Although these redundancy costs are a cost to the public sector it is worth recognising that there is an equivalent 'benefit' to the individual.

Non-payroll costs

40. Most non-payroll costs have been estimated as a percentage of staff salaries based upon current HEFCW costs at the following rates:

| | |
|--|------------------------------------|
| • Staff Travel & Subsistence | 2.00% |
| • Training | 1.00% (1.0% uplift for first year) |
| • Staff Subscriptions | 0.10% |
| • Catering | 0.10% |
| • Misc. (inc. Occ. Health & Employee Assistance programme) | 0.50% |
| • Conferences | 0.25% |

41. Recruitment costs of the CEO have been estimated at £15,000 to £25,000. Within the model we have chosen the mid-point of this range, being £20,000.

42. The eventual location strategy chosen for the new organisation may have a significant impact on the above assumptions and therefore costs.

IT Costs

43. It should be noted that some of the IT costs included here are costs that would be applicable regardless of the option taken. This is particularly the case for costs relating to the need to upgrade existing legacy systems or align to industry standard approaches to ensure that software is secure, reliable and performant.
44. It is anticipated that a team of, on average, 8 IT consultants will be hired for the period from April 2022 to September 2023 at a cost of £900 per day each, to assist the transfer of systems and data from HEFCW legacy systems to the new body.
45. Development Software costs of £11,000 have been estimated for every month from April 2022 for implementation. These will carry on post-creation to enable ongoing development of applications within the new body.
46. "IT security "health checks" have to be made annually on systems, and on the launch of any new systems or major change in setup of existing applications. These health checks cost up to £10k each. We therefore have estimated £100,000 for initial IT security health checks, and an annual ongoing cost of £30,000 thereafter".
47. IT Software licences are expected to range from £125,000 to £150,000. We have estimated at £145,000, based upon the number of users and current market prices of applications.
48. It is assumed that Sharepoint will be used as a document management system, and that these costs would be incorporated as part of the office suite. There would be set up costs but it is impossible to estimate at this stage and they have therefore been excluded.
49. Bespoke data collection software is anticipated to cost in the region of £500,000. This is an estimate based upon costs incurred by Qualifications Wales for their system. This assumes that a new body will be collecting data, but exact costs will depend on the nature and timeliness of the data that the new organisation will be required to collect
50. Intranet and website expenditure have been costed based upon those incurred by Qualifications Wales at an initial £117,000 with an ongoing £25,000 per annum.
51. Annual ongoing costs of development consultants is anticipated to be in the region of £594,000 per year

52. Initial hardware costs, including all PCs, printers, mobile phones, teleconference facilities, etc. are forecast at £295,000 with current user levels.

53. Annual running costs to incorporate all licences, maintenance, and internet etc. have been estimated at £20,000 per user, in line with the higher estimate of Welsh Government costs.

Other Corporate Costs

54. These have been estimated as follows, based upon comparator organisations or current ongoing HEFCW costs:

| | |
|----------------------------------|----------|
| • Translation | £50,000 |
| • Subscriptions | £27,000 |
| • Off-site document storage | £6,000 |
| • Telephone | £20,000 |
| • Postage | £5,000 |
| • Office Supplies and stationery | £20,000 |
| • Conferences | £36,000 |
| • Other | £6,000 |
| • Insurance | £30,000 |
| • Legal fees | £200,000 |
| • Internal audit | £50,000 |
| • Auditor's remuneration | £30,000 |
| • Consultancy fees | £130,000 |
| • Bank charges | £3,000 |

Location Costs

55. Whilst a location strategy for the new entity has not been determined costs have been drawn together to provide a general indication of total costs.

56. Rent has been estimated at £285,000 per annum, based upon a facility within south Wales that would provide accommodation for 130 employees. Although total expected PCET compliment is approximately 166 staff, an occupancy level of 75% has been assumed under our flexible working assumptions.

57. Agents' fees of 10% of annual rent (plus VAT) will be incurred during the search for suitable premises.

58. A provision of £100,000 has been made for dilapidation costs upon termination of the lease. This will be payable to the landlord, the Welsh Government.

59. The following costs have been included, based upon those incurred by similar sized organisations:

| | |
|--|----------|
| • Rates | £69,000 |
| • Utilities | £60,000 |
| • Repairs & renewals | £33,000 |
| • Security | £50,000 |
| • Cleaning | £40,000 |
| • Fit our costs at £3,600 per person for 130 | £462,000 |

OPTION 1 ASSUMPTIONS

60. Whilst Options 2 and 3 include significant expenditure on IT migration, including the upgrading of HEFCW's legacy systems to enable cloud functionality, no expenditure has been included within the 'Business as Usual' Option. Although not as immediate, there is a requirement to update HEFCW's systems to the latest acceptable industry standards which would involve significant expenditure. Given their bespoke and specialised nature costs are extremely difficult to predict and may prove insufficient. £500,000 has been included re IT Enhancement programme for HEFCW. This has been costed for 2023/24 to 2024/25.

61. Staff costs are based upon HEFCW's standard staffing compliment of 50, each at the top of their banding scale.

62. All other HEFCW costs are as per their budget forecasts for 2019-20.

63. Welsh Government Staff costs are in respect of the policy area teams, as per note 16, above.

64. It is assumed that all staff are full time for the purpose of the costings.

65. Staff working on the discovery phase of the programme have not been included as they are needed for all three options.

66. Non-pay costs for Welsh Government staff comprise of staff T&S at 2.00% of salary costs.

OPTION 4a ASSUMPTIONS

67. HEFCW costs for 2020-21 to 2022-23 are as per paragraphs 54 above.

68. Redundancy costs are as per paragraphs 36 to 39 above.

69. Welsh Government Staff costs and non-payroll staff costs as per paragraphs 61 to 66 above.

70. It is assumed that all staff are full time for the purpose of the costings.

71. Staff working on the discovery phase of the programme have not been included as they are needed for all three options.

72. IT Costs represent the development and migration costs of HEFCW systems and data onto the Welsh Government system, and have been calculated in accordance with paragraphs 43 to 53, excepting for costs treated by the Welsh Government as overheads and met centrally.