Llywodraeth Cymru
Welsh Government

TERTIARY EDUCATION AND RESEARCH (WALES) BILL

Explanatory Memorandum

incorporating the
Regulatory Impact Assessment and
Explanatory Notes

Revised post stage 3 which took place on 21 June 2022

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26.6(vii)	Summary of intentions of each of the provisions	Annex 1 – Explanatory Notes Tertiary Education and Research (Wales) Bill	251 - 303
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List of abbreviations in this document

Legislation	Abbreviation
Learning and Skills Act 2000	2000 Act
Education Act 2002	2002 Act
Higher Education (Wales) Act 2015	2015 Act
Further and Higher Education Act 1992	1992 Act
Higher Education Act 2004	2004 Act
School Standards and Organisation (Wales) Act 2013	2013 Act
Apprenticeships, Skills, Children and Learning Act 2009	2009 Act
Education Reform Act 1988	1988 Act

Body	Abbreviation
Quality Assurance Agency for Higher Education	QAA
European Association for Quality Assurance in Higher Education	ENQA

Term	Abbreviation
Tertiary Education and Research	TER
“Public Good and a Prosperous Wales – Building a reformed PCET system” White Paper published in June 2017	White Paper
“Public Good and a Prosperous Wales – the next steps” consultation undertaken in April 2018	Technical Consultation

PART 1 – EXPLANATORY MEMORANDUM

Chapter 1. Description

1.1 The Tertiary Education and Research (Wales) Bill ("the Bill") provides for the establishment of a new Commission for Tertiary Education and Research.

1.2 The Commission for Tertiary Education and Research will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales.

1.3 Tertiary education encompasses post-16 education including further and higher education, adult community learning and work based education, apprenticeships and local authority maintained school sixth forms.

1.4 In summary, the Bill, which comprises seven Parts:

Part 1 including Schedule 1 and 2:

- Establishes the Commission for Tertiary Education and Research ("the Commission") and provides for its membership and governance.

- Provides for the dissolution of the Higher Education Funding Council for Wales and enables Welsh Ministers to make transfer schemes providing for HEFCW and Welsh Government staff to become Commission staff and the transfer of property, rights and liabilities of HEFCW or the Welsh Ministers to the Commission.

- Places a number of strategic duties on the Commission to:

  (a) encourage participation in tertiary education

  (b) promote:
    - life-long learning
    - equality of opportunity
    - continuous improvement in tertiary education
    - research and innovation
    - collaboration and coherence in tertiary education
    - tertiary education through the medium of Welsh
    - a civic mission
    - a global outlook
    - collaboration between tertiary education providers and trade unions

  (c) contribute to a sustainable and innovative economy.

- Requires the Welsh Ministers to set out their strategic priorities for tertiary education and research in Wales in the form of a statement of priorities.

- Establishes a strategic planning framework for the Commission, to support the delivery of their objectives in line with the national strategic priorities, as set out in the statement of priorities, and the discharge of their strategic duties.

- Requires the Welsh Ministers and the Commission to have regard to the importance of protecting the academic freedom of higher education providers and staff, when exercising their functions under the Bill.

- Requires the Welsh Minister and the Commission to have regard to the importance of protecting the freedom within the law of tertiary education providers in Wales to conduct their day to day management in an effective and competent way, when exercising their functions under the Bill.

- Prohibits the Commission or the Welsh Ministers, in exercising any of their functions under the Bill, from imposing requirements on the governing body of a tertiary education provider, that require it to act in breach of its charitable obligations, or to act in a manner that is incompatible with its governing documents.

Part 2 including Schedule 3:

- Requires the Commission to establish and maintain a register of tertiary education providers.

- Subjects the Welsh Ministers to a duty to make regulations specifying one or more categories of registration for which the Commission must make provision in the register. The Commission must register those providers that apply to be registered and satisfy the conditions for registration, as set out on the face of the Bill.

- Sets out the scenarios in which the Commission must, or may, remove providers from the register.

- Enables the Commission to publish quality assurance frameworks setting out the Commission's guidance and information in relation to quality, and quality assessment, of tertiary education in Wales.

- Requires the Commission to monitor and promote improvement in the quality of education and training across registered and funded tertiary education providers, and enables the Commission to provide, or make arrangements for the provision of, advice or other assistance for the purpose of:
  - improving the quality of education and training, or
  - preventing the quality from of education and training becoming inadequate.

- Requires the Commission to 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.

- Sets out the different types of education and training that Estyn must inspect and requires the Commission to provide Estyn with such funding as the Commission considers appropriate to enable Estyn to complete its work in relation to the education or training funded by the Commission.

- Makes provision in respect of the inspection of further education and training, including in respect of local authority maintained school sixth forms, by the Chief Inspector of Education and Training (Estyn).

- Enables the Welsh Ministers to intervene in the conduct of providers of further education, through the issuing of a direction to their governing body, where the Welsh Ministers are satisfied that one or more grounds for intervention exist. The grounds for intervention are prescribed on the face of the Bill.

Part 3:

- Enables the Welsh Ministers to fund the Commission and attach terms and conditions to that funding. In order to protect institutional autonomy and academic freedom, certain limitations are set out on the face of the Bill in respect of the terms and conditions that may be applied by the Welsh Ministers.

- Enables the Commission to fund higher education and research and innovation activities undertaken by tertiary education providers in Wales, registered in categories specified by the Welsh Ministers in regulations.

- Requires the Commission to secure the provision of proper facilities in Wales for the further education and training for young people aged 16 to 19 years old.

- Requires the Commission to secure the provision of proper facilities for 'relevant' further education and training for 'eligible' adults.
  - 'relevant' is defined in regulations the Welsh Ministers are required to make; and
  - 'eligible' adults are those who are over the age of 19 years old and meet the criteria set out in regulations the Welsh Ministers may make.

- Requires the Commission to secure the provision of reasonable facilities in Wales for the further education and training for adults aged 19 years old and over.

- Enables the Commission to provide financial support for, or in connection with, the provision of an approved Welsh apprenticeship or the preparation of an apprenticeship framework.

- Enables the Commission to fund school sixth form provision via local authorities, as well as the preparation and delivery of approved Welsh apprenticeships.

Part 4:

- Provides for approved Welsh apprenticeships, setting out the functions of Welsh Ministers and the Commission.

- Enables the Welsh Ministers to specify requirements in relation to approved Welsh apprenticeships, including the content and preparation of apprenticeship frameworks.

Part 5:

- Provides for learner protection arrangements to be set out in learner protection plans.

- Places a duty on the Commission to take steps to ensure that tertiary education providers have procedures in place to investigate learner complaints.

- Requires the Commission to develop, consult and publish a learner engagement code.

Part 6:

- Requires, and enables, the Commission to give advice and information on its functions following request by the Welsh Ministers.

- Enables the Welsh Ministers to give information to the Commission.

- Requires certain tertiary education providers and other bodies to give information on request to the Commission and enables various public bodies to share information with the Commission.

- Provides for a duty to share information relating to applications for admission to higher education courses.

Part 7:

- Requires the Welsh Ministers to consult with the Commission in respect of their duties in relation to careers advice.

- Makes amendments to existing legislation in respect of Welsh Ministers' powers to amend or repeal certain requirements placed on the contents of higher education corporations' governing documents.

- Makes amendments to existing legislation in respect of the Welsh Ministers' powers to make an Order dissolving a higher education corporation, providing an Order can only be made if requested by, or with the consent of, the higher education corporation. The higher education corporation may not unreasonably withhold consent, or unreasonably delay the giving or withholding of consent.

- Requires the Welsh Ministers to publish, and keep under review, a statement setting out the circumstances in which they propose to exercise their power to make an Order to dissolve a higher education corporation in Wales.

Schedule 4:

- Makes amendments to existing legislation as a consequence of the establishment of the Commission, the closure of HEFCW and the transfer of Welsh Minister and HEFCW functions to the Commission.

- Amends the School Standards and Organisation (Wales) Act 2013:
  - removing the Welsh Ministers' powers to make proposals to restructure local authority maintained school sixth form education,
  - enabling the Commission to direct, in certain circumstances, a local authority or a governing body of a foundation or voluntary school to bring forward proposals about local authority maintained school sixth form education,
  - requiring the Welsh Minister to approve any proposals affecting sixth form education, made by a local authority, or the governing body of a voluntary or foundation school (including where directed to do so by the Commission), in respect of which a written objection has been submitted and not withdrawn (within the relevant timeframes).

- Amends the Well-being of Future Generations (Wales) Act 2015 replacing references to HEFCW with the Commission.

- Subjects the Commission to the Welsh Language standards set out in the Welsh Language Standards (No 6) Regulations 2017.

Chapter 2. Legislative Competence

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

Chapter 3. Purpose and intended effect of the legislation

Context

3.1 A changing global context requires new thinking and a reinvigorated approach to the role of Wales' tertiary education and research sector, at home and internationally. The Welsh Government, working in partnership with the sector and the new Commission for Tertiary Education and Research, will deliver a tertiary education system which is centred on the learner and has excellence, equality and engagement at its heart.

3.2 As with the reforms to the school curriculum, this new approach places learners at the heart of the system, within a sector that will help learners grow as engaged and enterprising citizens and contributes significantly to national and individual prosperity and well-being. The Welsh Government will continue to support the sector to build its resilience and strengthen and deepen international education links. This will benefit individuals, education providers, communities and industry.

3.3 To deliver for citizens and the nation, it is essential that providers are global in outlook, and this starts with being good stewards of their local communities, and the people living there, widening access to provision and informing research and other activities.

Climate change and the Covid-19 pandemic – combating the key challenges

3.4 Rebuilding post pandemic with a greener economy, and robust and effective tertiary education will be integral to preparing people for new jobs utilising innovative new technologies.

3.5 Wales can deliver world-leading research and innovation in health, clean energy, digital transformation, social sciences and the humanities that will help Welsh society to meet the key challenges ahead. To achieve this, it is essential the tertiary education and research sector is sustained through the immediate challenges presented by the pandemic.

3.6 The Welsh Government is taking steps to mitigate the disruption to learning created by the pandemic and give everyone the best chance to find and keep high quality fulfilling work, with long term prospects. This includes providing opportunities for people to develop their skills and to acquire new ones, and also to build upon the increased use of digital learning and working.

An ageing population – towards lifelong learning for skills and well-being

3.7 As the economy and labour market continue to change, and the population of Wales is set to grow older, lifelong learning has never been more important. People of all ages must be supported in entering, or re-entering, learning at all skill levels, enabling constant improvement and independent learning.

3.8 Through education reforms, and curriculum reform specifically, the Welsh Government have articulated clear aspirations for learners aged 3 - 16. These are

underpinned by four core purposes of education, namely supporting children and young people to become:

- Ambitious, capable learners, ready to learn throughout their lives,
- Healthy, confident individuals, ready to lead fulfilling lives as valued members of society,
- Enterprising, creative contributors, ready to play a full part in life and work, and
- Ethical, informed citizens of Wales and the world.

3.9 Building on these reforms, the Welsh Government intends to support these learners in achieving their potential beyond compulsory education, with tertiary education playing a critical role in providing opportunities to build on this foundation. It is essential that people are equipped with the transferable skills and knowledge to thrive in a changing labour market throughout their lives.

3.10 The benefits of lifelong learning go beyond economic gain. Education and training develops resilient, ambitious, fulfilled individuals and active citizens, able to contribute to their local community and wider society. Successful engagement with learning is widely accepted as a significant determinant of life outcomes including health, socio-economic position and life expectancy.

3.11 The Welsh Government believes that learners of all ages should be provided with opportunities to develop their capabilities and competencies via a broad range of bilingual learning pathways at all levels of learning, whether full-time or part-time, based in the classroom, online or in the workplace. Individuals should be encouraged to take responsibility for their learning throughout their lifetime.

3.12 Enabling learners to transition smoothly between vocational and non-vocational routes is a core aspect of this, as is ensuring learners are provided with sound and well-timed advice to support and inform their choices, and ensure those choices reflect their own ambitions, as well as the economic and social needs of Wales.

Digital transformation and automation

3.13 Digital technology needs to seamlessly integrate into educational delivery. It is critical that innovation is embraced in order to secure inclusive, accessible and bilingual approaches to enhance learners' experiences through technology and building on the Digital 2030 framework.

3.14 Education and training providers need to equip learners and staff with the higher level digital skills, capabilities and confidence that they will need to succeed in everyday life and in work in a digital world. Wales' research and innovation system must be at the forefront of new developments in technology and digital transformation.

Economic inequality - enabling economic and social justice

3.15 Wales continues to face the challenges of an unequal economy, a need for better economic opportunities outside of growing urban areas, and a lack of skills in communities hurt by deindustrialisation. A more equal tertiary education system is essential to breaking down the inequalities in society, in particular inequalities of class, geography, race, gender and disability.

3.16 Systematic action is needed to break down the inequalities of access, attainment and employment outcomes that continue to exist across education, working towards true equality of esteem across all forms of tertiary education and training, and a gradual dismantling of traditional hierarchies between learners, providers and sectors.

Introduction

3.17 As a country, Wales has a strong record and a great history in how the tertiary education sector has delivered for citizens and communities over many decades. It is essential this sector is futureproofed and, building on existing strengths, is enabled to respond nimbly to the challenges the nation currently faces.

3.18 The Welsh Government considers this will be best achieved through reforms which deliver a strategic, coherent, sector-wide approach based on a single sector with a diversity of providers working collaboratively and focused on the needs and aspirations of learners.

3.19 In line with the requirements of the Well-being of Future Generations (Wales) Act 2015, the proposed reforms are being approached from the viewpoint of improving the social, economic, environmental and cultural well-being of current and future generations. This will be achieved through longer term thinking, integrated policy making, collaboration between providers, and improved involvement of users and citizens.

3.20 In 2020, the Welsh Government's published its strategic vision for the tertiary education sector (*figure 1*). The Bill and the Commission it establishes, are key aspects to delivering the strategic vision and realising the Welsh Government's goals, as set out in the Programme for Government, in respect of education reform.

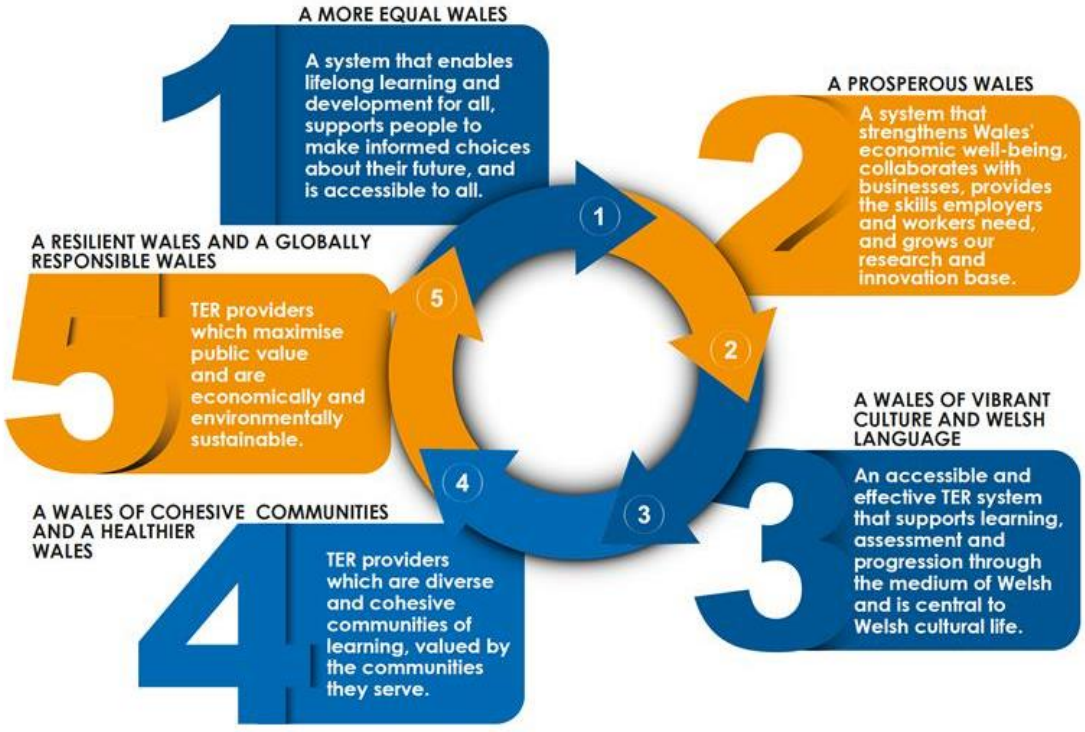


Figure 1

3.21 The Commission will exercise functions previously undertaken by HEFCW and the Welsh Ministers. Combining these functions within a single body will support the creation of a regulatory body, with legal responsibility for the funding, oversight, quality and regulation of all tertiary education in Wales.

3.22 The Bill confers powers on the Commission enabling it to shape tertiary education and research in Wales to better meet the needs of learners and employers, helping to build a stronger future economy, and promote greater cohesion across the sector and between compulsory and post-compulsory education within schools.

3.23 The Welsh Government intends to ensure that learners are able to move seamlessly from compulsory education to post-compulsory education and training, building on the national mission for education reform. At the core of this will be a joined up system that:

- is easy for all learners to navigate,
- is valued by the public,
- creates a highly skilled society,
- helps tackle inequalities,
- is globally renowned for excellent education, training, research and innovation, and
- has a civic mission at its heart.

3.24 To support the development of more coherent learning and career pathways for all ages and talents, the Commission will be tasked with strengthening 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.

3.25 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 will be put in place to facilitate and support 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.

Policy Objectives

3.26 The Welsh Government's immediate policy objectives for the Bill are to:

a) Bring together responsibility for strategy, planning, funding, and oversight of tertiary education in Wales into a new arms-length public body.

b) Create an improved strategic approach to policy and planning in tertiary education which is grounded in legislative duties and responsive to government priorities.

c) Establish an effective, robust, and sustainable legislative basis for regulating tertiary education providers, particularly those providers primarily funded by student support.

d) Create an outcomes-focused approach to planning and funding of tertiary education, ensuring investment is aligned to a national strategy and priorities.

e) Enable a more coherent approach to quality assurance and enhancement.

f) Advance the interests of students and learners through improved learner representation, expanding the student complaints scheme, and establishing new requirements on providers to protect learners' interests.

g) Create a more responsive system for the development and design of apprenticeships in Wales.

3.27 The Welsh Government's longer-term policy objectives, with learners at the heart of the system, resulting from passage of the Bill are to:

a) Expand lifelong learning opportunities across a wide range of modes, levels, and types of tertiary education.

b) Improve equality of opportunity in tertiary education, ensuring greater access, continuation, and success for learners from under-represented and disadvantaged groups.

c) Grow overall participation in tertiary education, reducing gaps in qualification levels between Wales and elsewhere in the UK.

d) Improve the quality of tertiary education and learner experience in the sector so that learners have the knowledge, experiences and skills needed to thrive as engaged, employable and educated citizens.

e) Ensure greater collaboration between tertiary education providers, allowing different types of providers to focus on their diverse strengths and to collaborate for the benefit of learners and wider society.

f) Promote collaboration between tertiary education providers and trade unions in a social partnership at institutional and strategic level.

g) Align tertiary education, research, and skills development with the economic, social, and cultural needs of local communities and Wales a whole.

h) Promote global opportunities and partnerships which benefit learners, academics, providers, communities and the nation as a whole.

i) Increase the undertaking of research in Wales, including through the medium of Welsh, and further develop a competitive and collaborative research sector.

j) Support providers as civically engaged actors who promote community and national economic, social, environmental or cultural well-being.

k) Grow tertiary education provision through the medium of Welsh.

3.28 The Bill seeks to achieve these objectives by:

a) Establishing the Commission for Tertiary Education and Research.

b) Specifying in legislation long-term, strategic target duties for the Commission, and a new process for setting ministerial priorities in tertiary education which are delivered through the Commission's strategy.

c) Establishing a register of tertiary education providers for the purposes of robust, proportionate, and transparent regulation.

d) Setting out the Commission's duties in respect of quality assurance and improvement, and its relationship with Estyn and a designated quality assessment body for higher education.

e) Providing the Commission with necessary legal functions to fund higher education provision, further education and training, school sixth-form provision, apprenticeships, and research and innovation.

f) Allowing for creation of a Welsh apprenticeship specification and a new process for the development of Welsh apprenticeship frameworks.

g) Creating new requirements for providers in respect of equality of opportunity, learner voice, learner complaints, and learner protections.

3.29 The following pages describe the purpose of the legislation and its intended effect.

Part 1 - Strategic Framework for Tertiary Education and Research

The Commission for Tertiary Education and Research

3.30 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 the Welsh Ministers. This framework will reflect the Welsh Government Sponsored Body standard framework document.

Relationship with the Welsh Government

3.31 The Commission will be accountable to the Welsh Ministers for most of its functions. Some stakeholders wanted the Commission to be accountable to the Senedd. However, the Welsh Government has given Ministers the responsibility for overseeing sponsored bodies. The relevant Minister will be responsible for the policy framework and will, in turn, be responsible to the Senedd.

3.32 The Commission's relationship with the Welsh Government will be managed through partnership arrangements, with a team established within the Welsh Government to provide support. This partnership team will be the main contact point between the Commission and the Welsh Government.

3.33 The partnership arrangements will take into account the outcomes from the 2017 review 'Delivering Together – Strengthening the Welsh Government's Sponsorship of Arm's-length Bodies' ("the 2017 review") and include 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 within the Welsh Government to concentrate on the Commission's strategic directions and delivery of outcomes.

3.34 The Public Bodies Unit was established as a result of the 2017 review. 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 the Welsh Government.

3.35 Its remit covers the following categories of public body:

- Welsh Government Sponsored Bodies
- Welsh Government owned companies
- Welsh Government Advisory Bodies
- Commissioners
- Executive Agencies

- Non-ministerial Departments
- Estyn and Education Workforce Council

3.36 Supporting the partnership teams within policy divisions, the Public Bodies Unit undertakes centralised functions in the following areas:

(a) Public appointments. The Unit 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;

(b) Pay and Remuneration.

(c) Governance & policy.

The Commission's Strategic Duties

3.37 Given the breadth of the Commission's remit, and the policy intent for the Commission to be able to deal with all post-16 education as a single (albeit wide ranging) sector, the Bill sets out eleven strategic duties under which the Commission is required to exercise its functions.

3.38 These strategic duties, as set out below (*figure 2*), are intended to frame the strategic direction and focus of the Commission and support the delivery of its functions, providing clarity as to its purpose and overarching remit.

Figure 2

3.39 In combination, they are intended to form a cohesive suite of duties to inform the strategic vision the Commission will be enabled and equipped to deliver. These duties, in conjunction with the Welsh Ministers' statement of priorities, will outline the core matters the Commission must consider and take in account when exercising its functions.

3.40 By including these duties on the Bill, the Welsh Government is providing a consistent set of principles under which the Commission will operate.

3.41 This revised approach reflects more closely the purpose of the wider reforms and is intended to support the Commission's long term planning and organisation, whilst not diminishing the importance of the Welsh Ministers' statement of priorities.

Lifelong learning, participation in tertiary education and equality of opportunity

3.42 Requiring the Commission to promote life-long learning, equality of opportunity and participation in tertiary education reflects the importance of it supporting the achievement of a tertiary education sector which serves the needs of people of all ages and with different interests, competencies, needs and aspirations.

3.43 The Commission must also promote increased participation in the carrying out of research and innovation in Wales by persons who are members of groups currently under-represented as a result of social, cultural, economic or organisational factors, building and supporting research capability within these under-represented groups, and helping to break down those barriers that exist within the system.

3.44 The duty to encourage participation in tertiary education is an expansion of the duty in the Draft Bill to encourage participation in further education or training and extends its reach to incorporate all aspects of tertiary education. It will now be a core part of the Commission's overall aims.

3.45 These duties build on one of the four purposes of education, as set out by the Welsh Government in relation to the curriculum reforms already delivered, namely empowering children and young people to be ambitious, capable learners, ready to learn throughout their lives.

3.46 The Commission will also need to be mindful of valuing equally: vocational and academic, full-time and part-time, classroom, both in-person and remote, and work based settings.

Collaboration and continuous improvement in tertiary education

3.47 Quality assurance on its own is not sufficient. In keeping with the Welsh Government's ambitions for schools and the teaching profession in Wales, the tertiary education sector needs to be focused not just on maintaining minimum quality standards, but on continuous improvement.

3.48 The Commission will be in the ideal position to support and promote continuous improvement across the sector through the discharge of a strategic duty to promote continuous improvement in tertiary education.

3.49 It is intended that cooperation and collaboration rather than competition and division underpin Wales' tertiary education sector, and the Commission will be central to achieving this. The Commission will be in a position to create a number of opportunities for greater collaboration across the sector including, for example:

- seeking to fund collaborative projects, co-managed by different providers from different sectors, that drive forward strategic priorities in areas such as quality, widening access, and research and innovation.

- working with providers to develop more opportunities for so-called 'articulation' arrangements between colleges and universities, where learners can more smoothly progress from level 4 and 5 study into degree-level qualifications.

- As the Welsh apprenticeships offer continues to develop, supporting colleges, training providers, universities and employers to work more closely together to develop coherent pathways through the apprenticeship system from lower-level skills to high-level technical and professional opportunities.

Welsh Language

3.50 In *Cymraeg 2050: A million Welsh speakers*, the Welsh Government outlined its vision to achieve a million Welsh speakers by 2050. 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:**
  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:**
  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.

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

3.52 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.

3.53 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. The Cymraeg 2050 Work Programme from 2021 to 2026 includes a commitment to further expand the role of the Coleg and to develop proposals to place it on a statutory footing.

3.54 The Bill places a strategic duty on the Commission to promote tertiary education through the medium of Welsh. The Commission will be required to:

- encourage demand for, and participation, in tertiary education provided in Wales through the medium of Welsh;
- take all reasonable steps to ensure that there is sufficient tertiary education provided in Wales through the medium of Welsh to meet demand; and
- encourage the provision of tertiary education through the medium of Welsh by registered providers in Wales, and other persons providing tertiary education, funded or otherwise secured by the Commission.

3.55 The policy aim is that the Commission will go beyond meeting the current demand for Welsh medium provision and actively build demand for and encourage individuals to participate in tertiary education through the medium of Welsh. 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. Some examples of how it is envisaged this requirement may be implemented and appropriately monitored by the Commission include to:

- plan strategically to positively promote and increase Welsh-medium tertiary education,
- encourage providers to deliver, develop and increase their Welsh medium tertiary education, which could be, for example, by way of outcome agreements (see paragraph 3.230 – 3.240),
- 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,
- monitor availability and take up of Welsh-medium learning opportunities, and any subjects where the demand for Welsh-medium learning cannot be met currently,
- work effectively with the Coleg to achieve the above.

3.56 The Commission will be expected encourage providers to offer provision through the medium of Welsh where demand may be initially low on the basis that to do so would eventually increase demand.

3.57 The Commission will be required to report to Welsh Ministers on an annual basis on the extent of Welsh-medium tertiary education provided and the extent to which Welsh was taught to persons above compulsory school age.

3.58 Provision has been included in the Bill requiring the Welsh Ministers to designate a person to give relevant advice to the Commission for the purpose of assisting the Commission in the discharge of its duties related to promoting tertiary education through the medium of Welsh. The Commission must have regard to any relevant advice given to it by a person designated by Welsh Ministers for this purpose.

3.59 A person may be designated only if the person consents and the Welsh Ministers consider them to be suitable to give advice on the matters listed on the face of the Bill, namely:

- the promotion, maintenance, development and planning of tertiary education provided in Wales through the medium of Welsh,
- the promotion of the acquisition and improvement of Welsh language skills,
- the maintenance, development, planning and provision of activities to support the acquisition and improvement of Welsh language skills, and
- collaboration between tertiary education providers in Wales in relation to the above matters.

3.60 An example, at the time of writing, of a body which could be considered best placed to give advice on the listed matters, and therefore appropriate for designation, is the Coleg.

3.61 Designation of the Coleg would enable the Commission to benefit from its expertise and ensure the two bodies could work collaboratively and strategically to build demand for, and encourage individuals to participate in, tertiary education through the medium of Welsh.

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

Research and innovation

3.63 Published in August 2019, following the completion of a review commissioned by Professor Peter Halligan, the Chief Scientific Adviser for Wales, the publication '*A performance based assessment of the Welsh research base*' considered the research produced by Welsh universities, partnerships and other institutions between 2010 and 2018.

3.64 The publication showed that over the previous 20 years, Wales boosted the volume, quality, and international reach of its research base to become one of the most efficient UK nations at converting relatively small levels of funding into highly-regarded and innovative research.

3.65 The Commission will be integral to supporting the continued growth of the research sector in Wales, ensuring its ongoing competiveness and continuous improvement, with a focus on collaboration and the undertaking of research, including through the medium of Welsh.

Sustainable and innovative economy

3.66 The Bill will place a duty on the Commission to promote tertiary education and research in a way that contributes to the Welsh economy.

3.67 An excellent, effective tertiary education and research system, with equality of opportunity at its heart, is essential to support the development and maintenance of a sustainable and innovative Welsh economy.

3.68 The Commission, as the single national steward for the sector, will be ideally placed to identify skills gaps in the labour force, create learning opportunities to fill these gaps, and facilitate access and progression to those opportunities for learners.

Collaboration with trade unions

3.69 The Commission will be required to promote collaboration between tertiary education providers and relevant trade unions, in order to assist in the discharge of the Commission's other strategic duties. The trade unions must either be represented by Wales TUC Cymru or considered by the Commission to represent members of the tertiary education workforce.

3.70 In creating a duty that promotes collaboration with trade union in its widest sense, the Commission will be able to promote collaboration at institutional and strategic level across matters such as lifelong learning, widening access, quality and so on.

Civic Mission

3.71 Since the financial year 2017-18 some level of expectation with regard to civic mission has been placed on HEFCW by means of their annual Ministerial remit letter. HEFCW's remit letter for the 2021-22 remit letter asks HEFCW to use its Research Wales Innovation Fund to

'*ensure institutions maintain their sense of civic responsibility and continue their crucial work in supporting their local communities, especially as we emerge from the pandemic*'.

3.72 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.

3.73 It is envisaged that going forward, civic mission should be applicable across the tertiary education sector as a whole. The concept of 'adding value' extends into other areas of tertiary education already and there will be many examples of best practice to draw on.

3.74 The Bill creates a duty for the Commission to promote the pursuit of a civic mission by tertiary education providers in Wales that are institutions within the higher education and further education sectors.

3.75 Civic Mission is defined in the Bill as "action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales, (including action aimed at achieving any of the well-being goals)".

3.76 The Commission will be able to comply with this duty in the exercise of its other functions created by the Bill. The Commission may also seek to promote the pursuit of a civic mission by other persons that it funds under the Bill, such as in respect of research and innovation. In order to comply with the duty to promote a civic mission, it is expected that the Commission would work collaboratively with stakeholders in setting out how this may be achieved.

3.77 The civic mission duty created by the Bill will complement the aims of the Well-being of Future Generations Act, which includes the duty for public bodies (which will include 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.

Global Outlook

3.78 A duty to promote a global outlook highlights the importance of the Commission representing the Welsh sector internationally, working to further international programmes and collaboration in tertiary education, including the new International Learning Exchange programme, whilst being mindful of providers' own international partnerships and the international recruitment of learners.

Strategy for tertiary education and research

Statement of Priorities

3.79 The Welsh Ministers will be required to prepare and publish a statement setting out the national strategic priorities for, and in connection with, tertiary education and research and innovation in Wales. The Welsh Ministers may amend, and re-publish, this statement at any time.

3.80 The statement of priorities is intended to set the long-term overarching policy direction for tertiary education and research and innovation in Wales. It is anticipated this will be based on a five year programme of government reflecting the Welsh Government's move to term of government business planning.

3.81 It is intended that the priorities contained within the statement will guide the way in which the Commission exercises its functions, and therefore guide its allocation of funding.

Strategic Plan

3.82 The Commission will be required to produce and publish a strategic plan setting out how it intends to address the strategic priorities and discharge its strategic duties.

3.83 The requirement to prepare a strategic plan is intended to facilitate the Commission in taking a longer term approach to strategic planning and provide a consistent thread of purpose through the Commission's planning. The Commission must take all reasonable steps to implement the strategic plan.

3.84 When preparing its strategic plan the Commission must consult persons it considers appropriate. It is anticipated that this will likely include tertiary education providers, learners, trade unions and bodies representing education providers and learners.

3.85 The Commission must submit a copy of the strategic plan to the Welsh Ministers for approval, with the Welsh Ministers able to approve the plan, or approve with modifications. If the Welsh Ministers wish to approve the plan with any modification, they must seek the agreement of the Commission before making those modifications.

3.86 If the Welsh Ministers are not able to secure the agreement of the Commission to any modification of the plan, they must set out their reasons for each modification not agreed to and provide them to the Commission.

3.87 Once approved, the Commission must publish its strategic plan, thereby making it accessible to all the relevant stakeholders. To ensure transparency the Welsh Ministers' reasons for modifying the strategic plan without the consent of the Commission must also be published by the Commission.

3.88 This new approach to strategic planning is intended to enable the Commission to take a longer term approach to strategic planning.

Annual Report

3.89 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, developed in response to the strategic duties and the statement of priorities;
- 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;
- financial health and sustainability of tertiary education providers;
- funding for research and innovation;
- an assessment of quality of regulated tertiary education;
- details of how designated bodies have performed;
- an assessment of learner protection plans; and
- the effectiveness of the learner engagement code.

3.90 The Commission must send a copy of the report to the Welsh Minister and the Welsh Ministers must lay a copy before the Senedd.

Governance of the Commission

Membership

3.91 The Commission will have a Board and an Executive and will consist of a maximum of 17 members comprising a Chair, Deputy Chair, (who will be Chair of the Research and Innovation Committee), the Chief Executive and up to 14 'ordinary' members.

3.92 To remain quorate, there will be no fewer than seven members, including the Chair, Deputy Chair, Chief Executive and four 'ordinary' members.

3.93 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.

3.94 The Board will include a number of associate members, who will be non-voting members of the Commission, these members will include:

- at least two tertiary education workforce representatives, one to represent the academic workforce, and one to represent the non-academic workforce, both of whom will be appointed by Welsh Ministers;
- one Commission staff member; and
- at least one person appointed by Welsh Ministers to represent learners in tertiary education.

3.95 Under the social partnership model, the Commission will be required to formally recognise representatives of the trade unions. One of the criteria for the associate members is that the applicants are members of a trade union recognised by the Commission.

3.96 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. 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.

3.97 The Commission, with the Welsh Ministers' approval, may make provision for remuneration, allowances, and pension.

3.98 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;
- promoting the needs of learners in tertiary education; and
- the provision of education or training through the medium of Welsh or the promotion of such education and training.

3.99 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.

3.100 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.

3.101 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, and for the financial stewardship and performance management of the CEO and of the organisation as a whole.

<u>Committees</u>

3.102 The Commission will include three statutory committees: Research and Innovation Committee; the Quality Committee; and the Staff Member Appointment Committee.

3.103 The Research and Innovation Committee will oversee the Commission's functions in respect of research and innovation and is intended to help ensure the Commission acts as a champion for Welsh research at the UK and global level.

3.104 The creation of the committee is intended to help ensure that the research and innovation system remains competitive and is sufficiently strategic and agile to deliver national capability that drives discovery and growth, thus fostering a mix of curiosity-driven research and challenge-led research and innovation.

3.105 The Chair of the committee will be the Deputy Chair of the Commission. The remaining size and membership of the committee will be determined by the Commission. The Chair of the committee 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.

3.106 The Welsh Ministers will have the power to suspend and/or remove the Chair of the Research and Innovation Committee 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.

3.107 The Quality Committee will oversee the Commission's functions in relation to quality assurance and assessment and improvement, as set out in Chapter 2 of Part 2 of the 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 are up to the determination of the Commission.

3.108 The Commission will also 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.

3.109 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 non-statutory committee or sub-committee it establishes. The Commission may also establish joint committees with other bodies in connection with joint functions, such as inspection powers with Estyn.

3.110 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.

3.111 The establishment of committees and sub-committees, and the ability to allow for remuneration of committee members, will allow the Commission to work effectively and flexibly across the whole of its remit.

<u>Delegation of functions</u>

3.112 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.

3.113 It is expected that the Commission will prepare a scheme of delegation and will maintain a list of non-delegated functions.

Audit and accounts

3.114 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.

3.115 At present, the Welsh Ministers may confer supplementary functions on HEFCW by Order and have previously done so in connection with the fulfilment of the Welsh Government's statutory arrangements for student support.

3.116 The Bill includes provision for the Welsh Ministers to confer additional functions on the Commission by regulations. Such functions must relate to tertiary education or research and innovation and must be exercisable by the Welsh Ministers. This approach allows for future flexibility and mirrors the existing arrangements in place for HEFCW.

Academic freedom and institutional autonomy

3.117 The Bill requires the Commission and the Welsh Ministers to have regard to the importance of protecting the academic freedom of providers of higher education in Wales as well as the academic staff within those providers.

3.118 The Commission and the Welsh Ministers are also required to have regard to protecting the institutional autonomy of tertiary education providers in Wales, that is freedom, within the law, to conduct their day to day business in an effective and competent manner.

Part 2 - Registration and Regulation of tertiary education providers

Aims of registration and regulation under the Commission.

3.119 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.

3.120 An effective and future proof system of regulating tertiary education providers in Wales will need to deliver:

- proportionate accountability and transparency for providers in receipt of Welsh Government student support and/or grant funding, particularly in regard to educational quality, financial assurance, and governance of providers.
- regulatory requirements that are adjustable to changing circumstances in funding, provider structure, and public need.
- continued and appropriate autonomy for education providers, whilst also ensuring the delivery of the Welsh Government's strategic objectives.
- value for money for taxpayers together with assurances about the use of public funds.

The register of tertiary education providers

3.121 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.

3.122 The register will equip the Commission with sufficient legal means to effect regulation of providers whilst also respecting and protecting the autonomy and independence of tertiary education providers.

3.123 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

3.124 Providers which meet appropriate regulatory requirements will be eligible for appropriate forms of public funds.

3.125 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. The Welsh Ministers will be required to determine these categories of registration and may also specify the categories of registration which will be eligible for respective forms of funding from the Commission.

3.126 The Welsh Ministers will also be able to make regulations to specify particular higher education courses which may be funded by the Commission, with the provider which is providing the course not needing to 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 not otherwise available in Wales and which would not otherwise be eligible for funding.

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

Eligibility for registration

3.128 Making a registration application will be voluntary, however all providers that wish to access the benefits of registration must register with the Commission. A provider is eligible to register if:

- it is a tertiary education provider in Wales,
- 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, and
- it satisfies, in the view of the Commission, the initial registration conditions applicable to it in respect of the category of registration sought.

3.129 Providers which are providing tertiary education on behalf of another provider 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.

3.130 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 learners on these courses, for ensuring that regulatory requirements are met, and for ensuring appropriate use of public funds.

Conditions of registration

3.131 The 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:

- the quality condition,
- a condition relating to financial sustainability of the applicant tertiary education provider,
- a condition relating to the effectiveness of the governance and management of the applicant provider,
- a condition relating to the effectiveness of the applicant tertiary education provider's arrangements for supporting and promoting the welfare of its students and staff and
- a condition relating to the effectiveness of arrangements to ensure the quality of provision delivered externally but validated by the applicant provider.

3.132 The Welsh Ministers may prescribe additional initial conditions of registration by way of regulations. The Bill requires the Commission to publish a document specifying the requirements that applicant tertiary education providers must meet to satisfy the initial conditions of registration. The Bill also enables the Commission to revise those requirements. Before the Commission publishes its requirements, or its revised requirements, it must, if it considers appropriate to do so, consult on its proposals.

3.133 The Bill also outlines the mandatory ongoing conditions of registration that must apply to all categories. These are:

- the quality condition,

- a condition relating to the effectiveness of the governance and management of the provider,
- a condition relating to the financial sustainability of the provider,
- a condition relating to the effectiveness of the applicant tertiary education provider's arrangements for supporting and promoting the welfare of its students and staff,
- a condition relating to the effectiveness of arrangements to ensure the quality of validated provision,
- a learner protection plan condition (see paragraph 3.373 – 3.381 for further detail),
- a learner engagement code condition (see paragraph 3.393 – 3.395 for further detail), and
- 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.

3.134 The Bill also requires the Commission to ensure that the ongoing registration conditions of each registered provider include conditions requiring the delivery of measurable outcomes relating to equality of opportunity.

3.135 The equal opportunity conditions will require registered providers to deliver outcomes which further the following aims:

- increasing participation in tertiary education by people from under-represented groups.
- retention of learners in tertiary education who are members of under-represented groups.
- reduction of gaps in attainment in tertiary education between groups where the differences between the groups result from social, cultural, economic, and other structural inequalities.
- Provision of support for tertiary education learners from under-represented groups finishing their courses, to continue in education, find employment or start a business..

3.136 The Welsh Ministers may prescribe additional mandatory ongoing conditions of registration applicable to all, or any, of the categories of registration.

3.137 The Welsh Ministers may also specify the registration category (or categories) to which a fee limit condition should apply.

3.138 A fee limit condition will require providers to have an approved fee limit statement, and to ensure that qualifying courses fees for qualifying persons ('regulated' fees) do not exceed the relevant fee limit. This will replace the fee limit function of fee and access plans and ensure that tuition fees for qualifying courses cannot exceed the maximum fee amount specified in student support regulations (currently £9000 for full-time courses).

3.139 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. The Commission will be required to consult, if it appears appropriate to do so, whomsoever it considers appropriate (for example

those registered providers which will be subject to the registration conditions) and publish guidance for registered providers about the ongoing registration conditions.

3.140 A number of the conditions of registration are expected to build upon current regulatory practice by both HEFCW and the Welsh Government in respect of terms and conditions of funding and other assurance mechanisms provided for by existing legislation.

3.141 Conditions in regard to learner protection and learner engagement are new additions to the regulatory framework for providers of higher education. The focus on learner protection and learner engagement were widely welcomed by stakeholders during 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 through close consultation with providers and learner representatives.

3.142 The initial and ongoing conditions regarding support for and the promotion of student and staff welfare will introduce new regulatory requirements for providers which, it was envisaged, would encompass matters such as mental health, wellbeing and safety of learners and staff at the provider . The Commission will be required to set out and publish requirements which must be met by registered providers regarding their arrangements in respect the initial and ongoing conditions. In the context of student and staff welfare, it is envisaged that ‘arrangements’ would include policies, procedures and support services for student and staff wellbeing and safety. ‘Wellbeing’ in this context is intended to mean emotional wellbeing and mental health. ‘Safety’ is intended to mean freedom from harms including harassment, misconduct, violence (including sexual violence), and hate crime.

3.143 More information on the Welsh Government’s preferred policy at the time of the introduction of this Bill can be found in the accompanying Statement of Policy Intent.

Operation of the register, compliance, and intervention

3.144 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.

3.145 The Commission will be required to monitor providers’ compliance with regulatory requirements relevant to their category of registration.

3.146 The Commission will have recourse to a range of interventions in order to deal with situations where providers are either at risk of failing, or have failed, to comply with the ongoing conditions of their registration. The purpose of such intervention is to protect the interests of learners, taxpayers, and the Welsh Ministers, as well as the reputation of the Welsh tertiary education sector.

3.147 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.

3.148 The Commission should promote the efficient achievement of policy objectives and public confidence in the operations of the providers 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.

3.149 The Commission will be enabled to work with tertiary education providers to ensure compliance and better regulation in order 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.

3.150 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 intended that the Commission will take proportionate and appropriate intervention steps to protect the interests of learners and the use of public funds, for example the Commission may choose to offer advice and assistance to secure compliance ahead of enforcement actions.

3.151 It is expected that the Commission will identify the most appropriate course of action in light of the specific nature of any compliance concerns it identifies in the course of its monitoring. Furthermore, any enforcement action taken should be in line with the statement of intervention the Commission is required to consult on, publish and keep under review.

Advice and assistance

3.152 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 regard to the proper use of public funds.

3.153 The Commission will have the power to provide advice and guidance to registered providers in order to secure compliance with ongoing registration conditions. Providers will be required to have regards to any such advice or guidance given.

3.154 Examples where supportive interventions will be most appropriate include low level issues around the quality of education being provided by the registered provider or on its behalf, or minor issues around governance, such as out of date or inadequate policies being in place relating to staffing or learners, but which are not causing any adverse impacts.

Investigation and enhanced monitoring

3.155 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 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.

3.156 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

3.157 The Commission will be able to apply specific conditions to individual registered providers. 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.

3.158 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.

3.159 The 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 provider in question. The Commission must also notify the governing body of the provider of its decision and publish the notice.

3.160 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, or mismanagement of funds granted to a provider by the Commission.

De-registration

3.161 Removal of a provider from the register 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 are significant and repeated breaches of registration conditions, when all other intervention measures have been exhausted, or when a provider requests that it does so.

3.162 It is expected that de-registration of a provider would take place in the context of substantial institutional turmoil and disruption for staff, learners, 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 learners or public funds (for example, in regard to ensuring a provider honours its commitments in a learner protection plan).

3.163 Procedural requirements for the Commission to follow in the event of a de-registration decision are set out in the legislation.

3.164 The Commission must maintain a list of providers removed from categories of the register by de-registration, list any regulations relating to that de-registration and make this list publicly available.

3.165 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.

3.166 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 Bill in respect of registration or directions in respect of a failure to comply with ongoing registration conditions. The 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.

Quality Assurance and Improving Quality

General functions: assuring and promoting improvement in quality

3.167 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.

3.168 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 its strategic duties as well as the statement of priorities published by Welsh Ministers.

3.169 The Commission will have a power to produce and publish a quality assurance framework. The framework will set out the Commission's policy in regard 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.

3.170 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. 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.

3.171 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.

3.172 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 Further Education and training – Estyn

3.173 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.

3.174 Estyn will retain its duty to inspect education or training for persons aged 16 or over (other than higher education), 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 it inspects will remain unchanged.

3.175 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 provides value for money.

3.176 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 action they propose to take in light of a report. These statements will be published.

3.177 When asked to do so by the Commission, Estyn will inspect education or training for persons aged 16 or over (other than higher education) where the provider is financially supported by the Commission, or by a local authority in Wales, which is in turn funded by the Commission.

3.178 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.

3.179 Estyn will be required to keep the Commission informed about the quality of education and training 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).

3.180 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 the Commission: changes to funding

3.181 Whilst Estyn will retain its current independence in terms of the activities it undertakes and the reports it produces, 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.

3.182 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.

3.183 The 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.

3.184 Funding for Estyn's activities in respect of further education funded or secured by the Commission, will be the responsibility of the Commission.

3.185 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.

3.186 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 regard to what it considers Estyn will need to spend in discharging its duties.

3.187 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

3.188 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 providers registered with the Commission (for example in cases of franchised or sub-contracted arrangements).

3.189 The Commission are required to ensure the reports of these assessments are published. 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.

3.190 The Commission may designate a body to conduct the quality assessments. The Commission will be required to obtain the consent of the Welsh Ministers in making its designation. Before making a recommendation regarding designation, the Commission will also consult with registered higher education providers and other

stakeholders it deems appropriate regarding the requirements and qualities of the body to be appointed.

3.191 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).

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

- conduct assessments of the quality of higher education provided in Wales by registered providers, at intervals as prescribed in regulations,
- 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
- provide the Commission with information as required regarding the quality of higher education provided in Wales by registered providers.

3.193 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 higher education assessment body will enable substantial improvements in the co-ordination of quality assessments in respect of these providers, with the Commission able to play a coordinating and facilitating role between the two assessment/inspection bodies.

3.194 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.

3.195 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. The Commission may also fund the designated body to perform its assessment functions, and/or any research or other activity relevant to its functions.

Enforcement

3.196 It is expected that the Commission will focus on driving forward quality enhancement by co-ordinating activities across the two assessment and inspection bodies, supporting collaboration, disseminating good practice, and determining strategic priorities for quality improvement.

3.197 However, the Commission will also 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 sectors it funds and regulates and will be empowered by the Bill to take action in instances of inadequate quality.

3.198 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 the issuing of advice and guidance, enhanced monitoring, and review of quality in a provider, and directions to registered providers in more serious cases.

3.199 Ultimately, a registered provider which persistently fails to meet minimum standards in quality will be liable for de-registration 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.

3.200 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.

3.201 In respect of tertiary education providers that are institutions within the further education sector ('further education institutions'), the Welsh Ministers will also have the power to intervene where they are satisfied that there are grounds upon which to intervene, as set out in the Bill (see paragraph 3.204 – 3.212).

Intervention in the conduct of further education institutions

Current Position

3.202 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:

- institution's affairs have been or are being mismanaged by its governing body,
- 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,
- 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,
- 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.

3.203 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:
  - 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 further education institution or a school; and
  - a governing body of a further education corporation to resolve to dissolve the institution.

Purpose and intended effect of the legislation

3.204 The 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.

3.205 The Bill largely retains the grounds for intervention and the form that intervention may take if any of those 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 Bill.

3.206 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.

3.207 As the Welsh Ministers' current funding and regulatory relationship with institutions in the further education sector will largely transfer to the Commission, the Bill makes provision for the Commission to play a central role in the exercise of these intervention powers.

3.208 In particular, the 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. The Bill requires the Welsh Ministers to have regard to the Commission's view in deciding whether to exercise these intervention functions. Advice from the Commission will help the Welsh Ministers take all relevant factors into account when deciding whether or not to intervene in the specific circumstances of each case.

3.209 Alongside this, the Welsh Ministers are required to consult with the Commission before the intervention powers are exercised.

3.210 The Welsh Government consider that this role aligns with the Commission's funding and regulatory functions in respect of further educations 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 further education institutions.

3.211 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.

3.212 The Bill also requires the Welsh Ministers to publish and keep under review, a statement of intervention policy setting out how these intervention powers will be exercised. Before publishing the statement, the Welsh Ministers must consult such persons they consider appropriate. 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. The Welsh Ministers are required to lay a copy of the published statement before the Senedd.

Financial Sustainability - Duty to monitor and report on financial sustainability

3.213 The Bill places the Commission under a duty to monitor and report on the financial sustainability of particular tertiary education providers, these are:

- registered providers;
- providers in Wales within the further education sector funded by the Commission that are not registered providers;
- other tertiary education providers of a kind specified in regulations made by the Welsh Ministers.

3.214 This requirement is intended to help ensure 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 may 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.

3.215 Whilst this duty will formalise these requirements in legislation, the Welsh Government do not consider it to be a significant step change from current practice whereby HEFCW prepares and publishes an annual circular on the financial position of providers of higher education in Wales.

3.216 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.

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

3.218 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.

Part 3 - Securing and Funding Tertiary Education and Research

Introduction

3.219 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.

3.220 The general policy intention is for the Commission to be able to fund tertiary education in Wales in relation to those who are ordinarily resident in Wales. The Commission will also be able to fund research and innovation activities undertaken by Welsh providers registered in a category specified in regulations, made by the Welsh Ministers.

3.221 The overall approach is to provide for the funding structures to be set out in one place on the face of the 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.

Funding the Commission

Current Position

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

3.223 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 further education 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.

3.224 The Welsh Ministers provide funding to HEFCW for higher education, including degree level apprenticeships and HEFCW in turn allocates funding to eligible institutions.

3.225 The Welsh Ministers may make grants to HEFCW for the purpose of supporting the provision of higher education under section 68 of the 1992 Act 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.

3.226 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.

3.227 The Welsh Ministers may also rely on their powers under section 68 of the 1992 Act 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 funding. This is distributed on the basis of performance in the Research Excellence Framework which is based heavily on academic research excellence measures.

3.228 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.

3.229 Additionally, under section 10 of the Higher Education Act 2004 ("the 2004 Act") 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 the legislation

3.230 The Bill makes provision for the Welsh Ministers to fund the Commission and attach terms and conditions to that funding. To protect institutional autonomy and academic freedom (see also paragraph 3.117 – 3.118), the Bill provides for certain limitations on the terms and conditions that may be applied by the Welsh Ministers.

3.231 Firstly, whilst the Welsh Ministers will be able to apply terms and conditions in respect of categories of tertiary education providers, they cannot apply terms and condition to the activities of individual tertiary education providers.

3.232 Secondly, the Bill prohibits the Welsh Ministers from applying terms and conditions that relate to the criteria for the selection, appointment, or dismissal of academic staff, including how those criteria are applied, or to the criteria for the admission of students and how those are applied.

3.233 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 Bill provides 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.

3.234 The Welsh Minister may include, within the terms and conditions, a requirement on the Commission to enter into outcome agreements with the provider to whom the Commission proposes to provide funding. This could apply to any provider which is to be funded by the Commission, whether registered or un-registered.

3.235 The Bill defines an outcome agreement as an agreement between the Commission, and the provider to whom the Commission proposes to provide financial resources, that sets out the activities to be carried out by that provider for the purposes of contributing to the implementation of the Commission's approved strategic plan.

3.236 Outcome Agreements would be the responsibility of the Commission and are, where specified in the terms and conditions, intended to form the basis of "performance

commitments" attached to funding. This approach would provide a line of sight from the Welsh Ministers' statement of strategic priorities through the Commission's strategic plan to the activities of providers. The intention is that outcome agreements will be the product of co-production through negotiation between the Commission and funded bodies.

3.237 Currently, it is envisaged that the recipients of funding which are likely to be required to enter into an outcome agreement with the Commission could include:

- local authorities (in respect of local authority maintained school sixth form funding and potentially adult community based learning),
- further education and training providers – who at least for the short-term may not be required to register (this could include further education institutions and possibly other training providers depending on the scope of the terms and conditions)

3.238 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 Bill will enable the Welsh Ministers to give funding to the Commission for particular courses of study subject to the Commission agreeing that it will fund them. However, the Welsh Ministers will not be able to oblige the Commission to do anything that would result in the Commission being required to provide such courses.

3.239 The Bill enables the Welsh Ministers to fund a limited range of courses of higher education directly and retains their ability to fund further education and training directly. These provisions largely replicate the Welsh Ministers' current functions under the Learning and Skills Act 2000 ("the 2000 Act") and are necessary to enable extant Welsh Government funded initiatives such as Working Wales to continue to be funded in the short to medium term. The Welsh Ministers may provide financial resources directly to a provider or arrange for others to provide the resources.

3.240 The Welsh Ministers will not have a power to directly fund higher education in general.

Policy on funding powers

3.241 The Commission will be required to consult on and publish a statement about how it proposes to exercise its funding powers. In preparing the funding policy statement, the Commission must have regard to the importance of transparency in its decision making in respect of the provision of funding. The Commission must keep the statement under review.

3.242 It is intended that development of the statement will help ensure stakeholders are kept informed about how the Commission proposes to exercise its funding functions in relation to the full range of tertiary education provision and in respect of research and innovation. It is anticipated that the Commission's consultation would include proposals for the terms and conditions it intends to apply to its funding.

Funding of Higher Education

Current position

3.243 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 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 the legislation

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

3.245 The Welsh Ministers will specify in regulations the category of registration required in order for a provider to be eligible to receive funding from the Commission.

3.246 Providers 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.

3.247 The intention is to allow for the funding of collaborative activities where a provider is registered in a category specified by the Welsh Ministers in regulations and is working in partnership with another registered provider or organisation (which is not a registered provider) to deliver courses or activities which the Commission considers should benefit from public funds.

3.248 The Commission will maintain regulatory oversight of the passage of such funds and registered providers 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.

3.249 In addition to funding higher education and associated activities provided by, or on behalf of, providers registered in a category specified in regulations, 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 categories specified in regulations, or only deliver a very limited amount of higher education wholly or mainly in Wales or to learners ordinarily resident in Wales.

3.250 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.

3.251 In respect of initial teacher education for the school workforce, the intention is that only initial teacher education programmes leading to qualified teacher status accredited by the Education Workforce Council should be eligible for funding by the Commission. The 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 ("the 2002 Act") to enable them to fund initial teacher education.

3.252 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).

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

Current position

3.253 Currently, the 2000 Act provides that the Welsh Ministers must secure the provision of:

(a) 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

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

3.254 The effect of these two duties is that the Welsh Ministers will currently give priority to meeting the learning and skills needs of young people up to the age of 19.

3.255 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.

3.256 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.

3.257 In addition to 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 learners distributed by providers.

3.258 The Learning and Skills (Wales) Measure 2009 (by making amendments to the 2000 Act) provides for learners aged 16 to 19 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 aged 16 to 19 to provide that such facilities are proper if they satisfy learners' local curriculum entitlements under section 33F of the 2000 Act.

3.259 At present, the Welsh Ministers are subject to a duty to form the local curriculum for learners aged 16 to 19. The local curriculum consists of a minimum number of courses of study to be included within a local curriculum, local area curricula should contain a wide range of courses of study both academic and vocational in nature.

3.260 Local authorities, the governing bodies and head teachers of local authority maintained schools and the governing bodies and principals of further education institutions must assist the Welsh Ministers in planning the local curricula. 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.

3.261 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, make awards and recover sums of money against specified criteria.

3.262 The Welsh Ministers currently issue a financial memorandum to funded institutions which, together with an annual grant letter, sets out the conditions imposed on the provision of grants or grant in aid.

3.263 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.

3.264 In addition to the above functions under the 2000 Act, the Welsh Ministers also have functions under the 2002 Act 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 and the Welsh Government Learning Grant - Further Education schemes. The intention is for these functions to remain with the Welsh Ministers.

<u>Purpose and intended effect of the legislation</u>

3.265 The Commission will be required to secure the provision of facilities in Wales for further education and training for young people over the age of 16, but who have not reached the age of 19, and for adults over the age of 19. This includes vocational, social, physical, and recreational training and includes a wide range of organised activities offering opportunities for non-formal types of learning.

3.266 These duties are framed around securing the provision of 'proper' facilities or 'reasonable' facilities for Wales which means both facilities in Wales *and* other

facilities available to persons ordinarily resident in Wales. This may include provision by way of distance learning or face-to-face provision taking place outside Wales and is consistent with the effect of the equivalent duties in current legislation.

3.267 Facilities are 'proper' if they:

- are of a quantity sufficient to meet the reasonable needs of individuals,
- are of a quality adequate to meet those needs, and,
- in respect of young people aged 16 to 19, sufficient to satisfy the entitlements conferred under section 33F of the 2000 Act

3.268 Facilities are reasonable if, taking account of the Commission's resources, the facilities are of such a quantity and quality that the Commission can reasonably be expected to secure their provision.

3.269 The Commission must secure the provision of 'proper' facilities for Wales for:

- further education and training of a quality and quantity suitable to the requirements of young persons who are 16 or over but have not attained the age of 19;
- 'relevant education and training' of a quality and quantity suitable to the requirements of 'eligible' persons over 19 years old.

3.270 The Bill requires the Welsh Ministers to make regulations specifying relevant education and training for the purposes of the duty to secure proper facilities for adults over the age of 19. Relevant education may be specified by reference to matters including, but not limited to, subject, level of study or type of qualification.

3.271 The approach of defining relevant education in subordinate legislation, rather than on the face of the Bill, is intended to balance establishing a minimum duty to fund further education and training for persons aged over 19 whilst enabling that duty to be amended over time, in order to ensure it remains fit for the future.

3.272 'Eligible' adults are those who are over the age of 19 years old and meet the criteria set out in regulations the Welsh Ministers may make. Enabling the Welsh Minister to specify eligibility in regulations will help to ensure that an expanded commitment to adult education is targeted at those who most require it and contributes to the wider social and economic needs of Wales.

3.273 The Commission will also be subject to a duty to secure the provision of reasonable facilities for further education and training for adults aged 19 years old or over. This is a continuation of the existing duty on the Welsh Ministers.

3.274 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 and those adults over the age of 19 who meet the criteria set out in regulations made by the Welsh Minister (in relation to education and training specified in regulations). This is an expansion of current policy.

3.275 In discharging these duties, 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. The Commission will also be required to have regard to the requirements of employers, employees, and

potential employees in relation to the education and training required in different sectors of employment.

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

3.277 The above proposals have implications for the way in which the provisions of the 2000 Act will work in future. The Bill provides for amendments intended to ensure that post-16 learners' entitlements continue to be delivered and that enforcement action can be taken if necessary.

3.278 The intention is to retain the current entitlements for learners aged 16 to 19, with the Commission having responsibility for ensuring the formation of local curricula, in line with its responsibilities to plan and fund post-16 education and training and to secure proper facilities for learners aged 16 to 19.

3.279 The Bill will also enable the Welsh Ministers to continue to support future development and design of local curricula for learners aged 16 to 19. Currently the Welsh Ministers have the powers to amend the learning domains that form the basis for the 16 to 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 Bill will require the Welsh Ministers to consult the Commission.

3.280 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 further education 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 through the provision of goods and services. The Commission will also be able to make financial support available to further education learners and prospective further education learners. This could include for example, awards to learners which are distributed by further education institutions.

3.281 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.

3.282 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, as the School Standards and Framework Act 1998 includes the necessary provisions alongside regulations made under that Act. This builds on the arrangements currently operated by the Welsh Ministers.

3.283 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.

3.284 Where the Commission funds further education or training in Wales, it may assign terms and conditions to that funding including in relation to the providers being required to have a learner protection plan, comply with the requirements of the learner engagement code and to have regard to guidance given by the Commission.

3.285 In addition, the Commission will 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 to 19 i.e. individuals above compulsory school age who have not attained the age of 19.

Additional Learning Needs

Purpose and intended effect of the legislation

3.286 In discharging its duties to secure proper and reasonable facilities for further education and training, and its funding functions under sections 94(1), 101(1) and 101(2) of the Bill, 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 2018 Act").

3.287 The intention is that the Commission will secure general, proper, and reasonable facilities for learners with additional learning leads 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

Current position

3.288 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, together with the role that the Welsh Ministers have in that decision, is detailed in the School Standards and Organisation (Wales) Act 2013 ("the 2013 Act").

3.289 Currently the Welsh Ministers have the power to propose new sixth form schools, 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 to 19 year olds.

Purpose and intended effect of the legislation

3.290 The Bill amends the 2013 Act to reflect the Commission taking on the strategic responsibility for securing proper facilities for the education and training of 16 to 19 year olds.

3.291 The Welsh Ministers' power, under sections 71 to 76 of the 2013 Act, to re-structure sixth form education is removed, with the Bill instead inserting a new Chapter 3A into Part 3 of the 2013 Act. These new provisions have been developed, rather than amending existing powers, to better reflect the changes to the regulatory landscape brought about by the establishment of the Commission. The provisions in this new Chapter will enable the Commission to take a more strategic approach, offering a wider perspective to school sixth form provision and ensuring it can support choice and progression.

3.292 The Commission is enabled to direct a local authority to exercise its existing powers in the 2013 Act to make proposals to:

- establish or discontinue a school that is only providing sixth form education, or
- make a regulated alteration, as defined in Schedule 2 to the 2013 Act, to a school the effect of which would be to:
    - increase the provision of sixth form education at the school
    - decrease the provision of sixth form education at the school

3.293 The Commission may also direct the governing body of a foundation or voluntary school to exercise its existing powers in the 2013 Act to make proposals to make a regulated alteration to the school, the effect of which would be to:

- increase the provision of full time sixth form education at the school
- decrease the provision of full time sixth form education at the school

3.294 Local authorities and the governing bodies of foundation or voluntary schools will retain the current functions in relation to the bringing forward of proposals in relation to the organisation of school sixth forms. The provisions inserted into the 2013 Act by the Bill will not result in any loss of existing protections in relation to the publication, consultation, ability to object to proposals and other significant provisions in the 2013 Act will remain in place.

3.295 The Commission will be enabled, in in the limited circumstances set out in amendments to the 2013 Act, to make its own proposals affecting sixth form education. The Commission must secure the consent of the Welsh Ministers before making a proposal to increase or decrease the provision of full time sixth form education at a foundation or voluntary school which provides full time education suitable to the requirements of pupils of compulsory school age.

3.296 All proposals made by the Commission will be subject to requirements in relation to publication, consultation, the ability to object, and approval, which are in line with those requirements for proposals made by local authorities and governing bodies already set out in the 2013 Act.

3.297 The Welsh Minister will be required to approve any proposal affecting sixth form education in relation to which a written objection has, in line with the requirement of the 2013 Act, been submitted to the proposer and not withdrawn, in writing, within the relevant timeframe. This requirement will apply to proposals made by the Commission or by a local authority or governing body, including where the Commission has directed the local authority or governing body to prepare the proposals.

3.298 The Commission will be required to act in accordance with the statutory School Organisation Code at all times when exercising its powers under the 2013 Act. The

circumstances and limitations on what might trigger the Commission to direct a local authority or the governing body of a voluntary or foundation school to bring forward proposals, and the matters it will need to consider when preparing its own proposals, will be consulted on, and included in the Code.

Funding of other activities connected to tertiary education

Current position

3.299 The Welsh Ministers may currently fund facilities designed to form links between employers, providers of education and training and learners or prospective learners.

3.300 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.

Purpose and intended effect of the legislation

3.301 The Commission and the Welsh Ministers 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.

3.302 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. The same applies to the Welsh Ministers.

Funding of Apprenticeships

Current position

3.303 Apprenticeships below degree level are funded by the Welsh Ministers by means of a fully procured tender exercise that includes further education institutions, independent training providers, local authorities and third sector organisations.

3.304 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.

3.305 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.

3.306 Delivery of degree apprenticeships commenced in September 2018 and are being funded via a grant through HEFCW.

Purpose and intended effect of the legislation

3.307 The Bill provides for the Commission to fund the preparation of Welsh apprenticeship frameworks and the provision of approved Welsh apprenticeships.

3.308 This will enable the Commission to fund apprenticeships in the same way that other tertiary education is funded and provide, for the first time in Wales, a standalone apprenticeships funding power for both degree apprenticeships and apprenticeships below degree level.

3.309 See paragraph 3.355 - 3.370 for further detail of the reforms, provided for in the Bill, to the apprenticeships system in Wales.

Funding of Research and Innovation

Current position

3.310 Currently, HEFCW receives funds from the Welsh Government for research, innovation and engagement, the bulk of which is used to fund quality-related funding. HEFCW funds only 3* and 4* research in Wales, as measured by the Research Excellence Framework. The Higher Education Funding Council for England (HEFCE) distributes quality-related funding in relation to England according to a similar, though not identical, quality related based formula.

3.311 HEFCW also manages the Research Wales Innovation Fund, and postgraduate student research funding.

Purpose and intended effect of the legislation

3.312 The Commission will be able fund registered providers for research and innovation activities, as well as bodies collaborating with registered providers, this will primarily involve inheriting HEFCW's research and innovation funding functions.

3.313 Funding for collaborating bodies will be made available where the Commission is satisfied that a registered provider will take appropriate steps to ensure that public money is protected.

3.314 The Commission will have powers to impose terms and conditions on funding for research and innovation. In doing so, the Commission must have regard to the need to protect academic freedom, and the principle that decisions on individual research projects are best taken following an evaluation of the quality and likely impact of the proposals.

3.315 The 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'. The detail of the kind of research, i.e. a 'programme of research' will be a matter for the Commission (through the Research and Innovation Committee), as will the administration of those funds.

3.316 The Commission will have a duty to promote the results of research and innovation carried out in Wales in order to support it reaching a wide audience in Wales and beyond and to promote actively the exploitation of research and innovation knowledge.

3.317 It is envisaged that the Commission will work closely with relevant bodies responsible for research and innovation across the UK, Research England, the research councils, Innovate UK, and others. It will also inherit HEFCW's current responsibilities for joint-oversight of common UK initiatives such as the Research Excellence Framework.

Funding of Welsh medium tertiary education

Current position

3.318 The Welsh Ministers are able to allocate financial resources to support both the development and delivery of Welsh-medium tertiary provision. This will continue and 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.

Purpose and intended effect of the legislation

3.319 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.

3.320 Provision has been included in the 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.

3.321 The 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 Bill also enables the Commission to allocate funding to providers to teach Welsh.

3.322 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.

Terms and conditions of funding

3.323 The Commission will be required when determining the terms and conditions to be imposed on its funding to non-registered providers for the purposes of specified higher education courses, further education and training and approved Welsh apprenticeships to consider whether to impose requirements relating to the following matters:

- the quality of the relevant education provided by or on behalf of the provider,
- the effectiveness of the governance and management of the provider,
- the financial sustainability of the provider,
- the effectiveness of the provider's arrangements for supporting and promoting the welfare of its students and staff,
- the delivery of measurable outcomes in respect of equality of opportunity aims.

3.324 The above matters are addressed by the mandatory ongoing conditions of registration to be applied to registered tertiary education providers. The requirement for the Commission to consider their application to non-registered providers will ensure greater alignment in the regulatory oversight of registered and non-registered providers in receipt of public funds.

3.325 It will be for the Commission to determine the specific terms and conditions for particular funding streams. It will have the necessary flexibility to tailor the terms and conditions, so they are proportionate, appropriate and reasonable depending on the particular circumstances of a given funding arrangement. It is expected that the Commission will take into account the circumstances of the funding, for example, the conditions that may be appropriate in respect of a large, recurrent grant may be unnecessary and unduly burdensome for a small, ad hoc contractual arrangement.

Consent for payments to collaborating Bodies

3.326 The Bill makes provision for the passage of funds from directly funded tertiary education providers to collaborating bodies. The Commission will not have a direct regulatory or funding relationship with collaborating bodies. In order to ensure protection for the use of public funds the Commission must give its prior consent to funding being passed from a directly funded provider to a collaborating body. The Bill makes provision for the passage of funds from a directly funded provider to collaborating body with whom the directly funded provider is intending to collaborate, in addition to those with whom the provider is already collaborating or has previously collaborated.

3.327 The Commission will be able to give its consent generally, or in relation to a specific payment or a specific collaborating body. This arrangement applies to the Commission's funding for the purpose of higher education (financial resources to registered institutions and for specified courses), further education or training, approved Welsh apprenticeships as well as research and innovation.

3.328 The Commission will be able to attach terms and conditions to any consents that it gives and must apply a condition requiring directly funded providers to make arrangements ensuring financial resources paid to a collaborating body are managed efficiently and in a way that provides value for money. The Commission will also be required to keep all active consents under review. The Commission will be able to withdraw, suspend or vary its consent once given and must follow procedural requirements when doing so. For example, giving notice to directly funded providers to whom consents apply and having regard to any representation received before it decides whether to withdraw, vary or suspend active consents.

Financial Support Directions

Current position

3.329 The Welsh Ministers are currently able to give directions to HEFCW in relation to the provision of financial support to a provider of higher education if it appears that the financial affairs of that provider have been or are being mismanaged.

Purpose and intended effect of the legislation

3.330 The Bill makes similar provision enabling the Welsh Ministers to issue a financial support direction to the Commission about the provision of financial support to a relevant person, where it appears to the Welsh Ministers that the financial affairs of that person have been, or are being, mismanaged.

3.331 The Bill defines a relevant person as a registered provider or a person other than a registered provider that is in receipt of financial resources provided or secured by the Commission under specified funding powers. The Welsh Ministers are required to consult the Commission and the relevant person concerned before issuing a financial support direction (other than in the case of urgency, or where consultation would defeat the purpose of the direction).

3.332 The Welsh Ministers must also keep any financial support direction given to the Commission under review. The Commission will be required to comply with any financial support directions that may be given. The Welsh Ministers must publish any financial support direction that is given to the Commission under these powers. The Welsh Ministers are also required to report to the Senedd on any such directions.

3.333 These provisions will build on existing arrangements and ensure that the Welsh Ministers can take appropriate action in circumstances where it might be necessary to protect the interests of students, safeguard public funds or prevent reputational damage to the tertiary education sector in Wales.

Part 4 - Apprenticeships

3.334 The Hazelkorn report identified two key challenges in respect of apprenticeship development in Wales:

- lack of 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.

3.335 The White Paper and the Technical Consultation both set out the intent for the Commission to have responsibility for apprenticeships in Wales. This approach was widely supported.

Current position

3.336 A Welsh apprenticeship is a job combined with practical 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 combined with a qualification.

3.337 The apprenticeship system in Wales is underpinned by the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"), which includes a number of regulation-making powers that the Welsh Ministers can exercise, including in respect of:

- the alternative Welsh completion conditions, including requirement for an apprenticeship agreement (section 2(5)(b);
- provision about the issue of apprenticeship certificates in Wales and specification of the Welsh certifying authority (section 9, 10, 11);
- contents of an apprenticeship certificate (section 11(2));
- the issuing of the specification of apprenticeship standards for Wales (section 28); and
- apprenticeship agreements (section 32).

3.338 The 2009 Act makes provision for Welsh Ministers to publish and amend the specification of apprenticeship standards for Wales.

3.339 The specification of apprenticeships standards for Wales 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.

3.340 Section 18 of the 2009 Act 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'.

3.341 An Issuing Authority's function entails certifying that a new or revised apprenticeship framework meets the requirements set out in specification of apprenticeships standards, subject to these requirements being satisfied, the framework is issued. A Welsh Issuing Authority is accountable to the Welsh Ministers and is required to comply with directions and have regard to guidance given by them.

3.342 Section 38 of the 2009 Act requires the Welsh Ministers to specify, by order, the 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, and an apprenticeship framework must relate to a particular sector.

3.343 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. Section 32 of the 2009 Act, and the regulations made under that section 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 may be refused by the certifying authority.

Case for change

3.344 The Welsh Government intends to develop an apprenticeship system for Wales that is responsive to the needs of learners, the economy, and employers.

3.345 Demand for apprenticeships is changing as employers demand skills at higher levels and young people look towards work-based training and apprenticeships, as an alternative to traditional full-time undergraduate provision. Apprenticeships are now extending into new professions which offer an opportunity to enhance the esteem of apprenticeships 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.

3.346 Apprenticeships are being increasingly aligned to broader workforce skills programmes where flexible training routes are being developed to meet sector needs. Apprenticeships are also having to respond flexibly to changing technology and market needs. There is a risk that if the apprenticeships do not remain relevant, employers will no longer value them.

3.347 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. More influence over what is delivered under the apprenticeship programme is desired, and the apprenticeship system needs to be able to respond in a timely and flexible manner.

3.348 The current arrangements for apprenticeship development inadvertently constrains innovative training and flexible design. Apprenticeship frameworks are unduly complex and long; for example, they can include many qualifications, which can be brought together in a number of combinations to 'design' an apprenticeship training programme.

3.349 An apprenticeship system which stimulates providers to deliver the type of apprenticeships that employers want and encourages more technical higher level apprenticeships is required. 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.

3.350 Against this backdrop the Welsh Government is seeking to develop a responsive and streamlined system that can adapt to differing economic and social stimulus and be calibrated to meet skills challenges. This is an opportunity to design a Welsh solution and develop 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.

3.351 Non-statutory measures are already being put in place to improve the existing system. These includes the Wales Apprenticeship Advisory Board which was established in April 2018. As an independent enterprise led Board, with representatives from business, trade unions, further education bodies and the Welsh Government, this Board serves to provide advice and recommendations on matters relating to the content of apprenticeship frameworks and priorities in relation to their development in Wales. Informed by input from Regional Skills Partnerships, this is intended to help improve the scope and impact of the apprenticeship offer in Wales.

3.352 Qualifications Wales is also a part of the mechanism for improving the quality and reach of the apprenticeship programme, ensuring that qualifications contained in apprenticeships meet employer and apprentice needs.

3.353 The Welsh Minister's policy intention in respect of apprenticeships cannot though be fully delivered through refinement of the existing system. The underpinning legislative framework was not designed with Wales in mind and cannot deliver the apprenticeship system the Welsh Government is now seeking to implement.

3.354 The current legislative framework:

- is based on arrangements which 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;
- provides for a specification of apprenticeship standards in Wales which is not sufficiently flexible and responsive to the changing needs of Welsh industry; and
- does not allow for changes to be implemented with the speed needed in a rapidly-changing skills environment.

<u>Purpose and intended effect of the Bill</u>

3.355 The Bill provides an overview of what a Welsh Apprenticeship is. An apprenticeship can take place under an approved Welsh apprenticeship agreement or be an alternative Welsh apprenticeship. The latter is designed to capture what are called non-standard completion situations; such as where an apprentice's role is made redundant during the currency of their apprenticeship; or where they are working other than in an employer employee relationship, such as voluntary work.

3.356 To be a Welsh apprenticeship the work element of the apprenticeship must take place wholly or mainly in Wales.

3.357 A key feature of a Welsh Apprenticeship is the need for an apprenticeship agreement to be in place. The Bill provides that such an agreement is one where a person works for another for reward, in an occupation where an apprenticeship framework is in force at the time the apprentice and employer enter into an apprenticeship agreement. The apprenticeship agreement must provide for the apprentice to receive training to assist them to complete the relevant apprenticeship framework. The Welsh Ministers may in regulations specify other conditions as to the content of apprenticeship agreements.

3.358 The Bill provides that an apprenticeship framework is a document that specifies the requirements that must be met for an apprentice to complete an approved Welsh apprenticeship. An apprenticeship framework is comparable to a curriculum that must be completed in order that an apprentice can complete their apprenticeship, it may contain particular qualifications, and levels of attainment, as well as what type or amount of training an apprentice should receive to become proficient.

3.359 To be an approved apprenticeship framework a framework must comply with requirements that the Welsh Ministers specify. The intention is Ministers will have strategic stewardship of the Welsh apprenticeship system, but with its operation and the delivery of apprenticeships being undertaken by the Commission.

3.360 Ministers may specify requirements around the occupations to which a framework must relate, general standards of attainment, general types of qualification and the amount of training needed to complete a framework. Requirements may also relate to how an apprenticeship framework is prepared, updated, and withdrawn.

3.361 The Bill provides that Welsh Ministers will be able to issue, modify and withdraw requirements but they must publish them and include the date upon which they have effect. The Welsh Ministers must consult the Commission and other appropriate persons before issuing or withdrawing a requirement.

3.362 The use of requirements moves away from the current approach of the 2009 Act which necessitates a statutory instrument to give effect to the Specification of Apprenticeship Standards for Wales. The Bill will allow for a more responsive and collaborative apprenticeship system.

3.363 The Commission will be responsible for preparing and publishing apprenticeship frameworks or securing others to prepare them on its behalf. Apprenticeship frameworks must comply with any requirements specified by the Welsh Ministers. A key element of the Commission's role will be the active oversight of apprenticeship frameworks by reviewing them, revising them, or withdrawing frameworks as appropriate.

3.364 A key facet of this active oversight of apprenticeship frameworks will be a requirement that the Commission maintain and publish a register of apprenticeship frameworks which will be a repository for Welsh apprenticeship frameworks. The register will have to include details of each framework, including when it was published, revised, or withdrawn. The Welsh Ministers may via regulations specify other information that the register must contain.

3.365 The Commission may issue certificates (and copies of certificates) to apprentices who complete their apprenticeship. Operational details including the process for applying for a certificate, and its content will now be up to the Commission and not the Welsh Ministers. The Commission may charge a fee, but as is currently the case Ministers will specify the maximum amount of the fee that can be charged for certificates.

3.366 The Commission will be able to delegate its power to publish frameworks and issue certificates to others. This is designed to enable maximum operational flexibility and moves away from the current approach of Welsh Ministers determining such arrangements. The Commission may issue guidance or directions to a person to whom it has delegated such functions to and pay remuneration to such persons acting on its behalf.

3.367 The Bill makes provision to ensure that apprentices are made aware of any variations to their apprenticeship agreements that may mean it is no longer valid.

3.368 The Bill also makes clear that an approved Welsh apprenticeship is a statutory apprenticeship and not a common law apprenticeship.

3.369 The Bill provides that where the Commission engages another person to prepare apprenticeship frameworks on its behalf, and with that person's consent the framework is published by the Commission, the ownership of the copyright which subsists in the framework transfers to the Commission.

3.370 The Bill also continues the current approach of allowing those who are Crown servants to be able to undertake apprenticeships.

Part 5 – Learner Protection, Complaints Procedures and Learner Engagement

Learner Protection arrangements

Current position

3.371 The policy objective is to support the implementation of consistent arrangements 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.

3.372 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 of the legislation

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

- protecting the interests of persons undertaking a relevant course in the event of the course ceasing to be provided for any reason; and
- 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).

3.374 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 providers or where the provider is not registered, 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.

3.375 Discretion is provided to the Commission to determine which 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.

3.376 The Commission will not provide notice to a local authority to submit a learner protection plan in relation to school sixth form provision. Arrangements are in place to secure 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.

3.377 The requirement to have approved learner protection plans 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.

3.378 Provision has been included in the 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.

3.379 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.

3.380 The Commission may approve a learner protection plan with or without modifications. If the Commission is not satisfied that a plan meets the appropriate criteria for approval it is expected that the Commission would enter into dialogue with the provider to resolve any issues of concern. In the unlikely event that agreement cannot be reached between the Commission and the provider on the content of a plan, the Commission may approve a 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.

3.381 Provision is included in the 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.

Arrangements for addressing learner complaints

Current position

3.382 Currently only higher education students are able to refer their unresolved complaint to an independent body. The 2004 Act allows for the designation of a body to operate a student complaints scheme. The Office of the Independent Adjudicator is the designated body for handling unresolved student complaints in higher education in England and Wales. The Office of the Independent Adjudicator's role currently extends to 'qualifying institutions' defined under the 2004 Act.

Purpose and intended effect of the legislation

3.383 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.

3.384 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.

3.385 For the purpose of these provisions, a "relevant course" is defined as any course provided by or on behalf of a registered provider or where the provider is not registered, a course of tertiary education (higher education, further education and training or apprenticeship) provided by the provider, or on its behalf which is funded by the Commission.

3.386 A "tertiary education provider" is defined as a registered provider or a person other than a registered provider 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).

3.387 Provision has been included that enables Welsh Ministers to make regulations specifying, as a qualifying institution for the purposes of the student complaint scheme:

- a registered provider or
- a provider that is not registered and is in receipt of financial resources from the Commission.

although the Welsh Ministers will not be able to specify local authorities in relation to school sixth form provision.

3.388 This will enable providers to be brought into the scheme gradually, allowing time for the Office of the Independent Adjudicator and individual providers build their capacity.

Learner engagement code

Background

3.389 The Hazelkorn report identified that the post compulsory education and training 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.

3.390 Proposals to address this area will affect Post 16 learners and tertiary education providers. 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.

3.391 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.

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

Purpose and intended effect of the legislation

3.393 The Bill provides for there to be learner representation on the board of the Commission. It is intended that this will mean learner views from across the learner and student population within Wales are represented.

3.394 The Commission will have a duty to develop, consult and publish a learner engagement code, intended to ensure the interests of learners are effectively represented in 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.

3.395 In carrying out these functions the policy intention is that:

- 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.
- the Code may make a different provision for different purposes and different providers, although each provider will need to maintain the same level of learner engagement.
- 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.
- the Commission will be required to ensure that all tertiary education providers as defined in the Bill, sign up and adhere to the learner engagement code.
- 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).
- provision is included in the Bill to require the Commission to monitor the effectiveness of the learner engagement code and include in its annual report the conclusions it reaches from that monitoring during the financial year to which the report relates.

Part 6 - Information, Advice and Guidance

Background

3.396 In *'Maximising the Contribution of the Post-Compulsory Education and Training System to the Achievement of Welsh National Goals'*, published in April 2018, Professor Harvey Weingarten outlines that 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 system as a whole and the contribution of individual providers to meeting strategic objectives and targets.

3.397 The White Paper and the 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.

3.398 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.

3.399 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.

3.400 It is anticipated that the Commission will utilise data to inform its oversight of the tertiary education sector in Wales, to support the engagement that it has with providers, and to support public and other legitimate interests.

3.401 The Commission may put in place governance mechanisms to determine the specification of data that it requires, and to make appropriate arrangements to control how such data will be collected, quality-assured, processed, analysed, and disseminated. It is anticipated the Commission will co-operate with other data collectors, and may, for example, choose to designate a body to exercise, on its behalf, higher education assessment functions in support of specified information, advice, and guidance duties.

Information sharing

3.402 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 sector. In addition, the Commission will have a strategic role in influencing learning providers' data, statistics, and research responsibilities.

3.403 In order to achieve these policy objectives, the Bill includes provision in relation to the providing of information, advice, and guidance. This includes:

- a duty on the Commission to give advice and information on request of the Welsh Ministers and power to do so;
- a power for the Welsh Ministers to give information to the Commission;
- a duty for certain tertiary education providers and other bodies to give information on request to the Commission;
- power for various public bodies to share information with the Commission;
- a duty to share information relating to applications for admission to higher education courses.

3.404 The Bill provides for the Commission to share information with the Welsh Ministers, other specified person, and administrative/public bodies, together with any other person it considers appropriate.

3.405 The Bill provides for the Commission to be a devolved authority for the purposes of section 91(3) of the Education and Skills Act 2008. This allows the Commission, alongside the Welsh Ministers, to access certain information held by the Secretary of State and HMRC.

3.406 In relation to information sharing, it is intended that the Commission will be a public authority for the purposes of the Data Protection Act 2018, and as such will be required to be compliant with the provisions of that Act as well as the General Data Protection Regulations. In doing so the Commission will need to ensure that any data requested, held, used, shared etc. is in relation to the carrying out of the Commissions functions. Any duty or power in or under the Bill which requires, or enables, the disclosure or use of information must not operate in contravention of any existing data protection legislation.

3.407 The Welsh Ministers or the Commission will be able to carry out, or secure the provision of funding for, research in relation to education and training in Wales, including any matter connected to education and training. The result of such research may then be published, provided no individual can be identified from the publication.

3.408 The Bill also provides for the Welsh Ministers to be able to require "application-to-acceptance" information from organisations, such as UCAS, who provide admissions 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. Application-to-acceptance information relates to applications for admission to higher education courses provided by higher education providers in Wales, offers and rejections, and acceptance of such offers.

3.409 The Bill allows for this information to be used to inform "qualifying research", which means research in relation to:

- choices available in higher education in Wales;
- consideration of offers;
- equality of opportunity; and
- other topics approved by the Welsh Ministers.

3.410 This information is intended to help inform the strategic priorities of the Commission, and future policy.

3.411 To protect this information, an approved body may give information obtained under section 133 (application to acceptance information) to an approved researcher, but an approved researcher must not pass the information on to another approved researcher or another approved body. An "approved person" is a body approved by the Welsh Ministers to receive this information for research purposes ("approved body") or an individual approved by the Welsh Ministers or an approved body ("approved researcher").

3.412 The Welsh Ministers, the Commission and an approved person may publish the product of research carried out using application-to-acceptance information, provided that:

- a purpose of publishing is to provide statistical information;
- no individual may be identified; and
- no information that may be regarded as commercially sensitive is published.

3.413 The Bill also requires the Commission to identify good practice in relation to data sharing by 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.

3.414 It is also intended that the Commission will be an official statistical body following the making of the relevant subordinate legislation.

Part 7- Miscellaneous and General

Higher Education Corporations in Wales – Governing Documents

Background

3.415 In 2015, the Law Commission undertook a consultation on technical issues in charity law as part of its '*Charity Law: Selected Issues*' project. This looked at a number of proposed technical changes to charity law and included proposals relating to the way higher education institutions, and charities more widely amend their governing documents. These proposals were geared towards streamlining and simplifying the procedures for amending governing documents.

3.416 The Law Commission's final report was published in September 2017[1] and, amongst other recommendations, made specific recommendations in respect of the amendment of governing documents for higher education institutions in Wales.

3.417 The recommendations relating to higher education institutions in Wales supported the retention of the approach to the amendment and simplification of higher education institutions' governing documents that was set out in the Welsh Government's 2006 guidance to universities in Wales[2]. However, the Law Commission's final report identified problems in relation to the application of the guidance for higher education corporations as a result of the statutory requirements placed on their governing documents under Education Reform Act 1988 ("the 1988 Act").

3.418 The Law Commission considered that these statutory requirements created a barrier for higher education corporations and prevented them from carrying out an overhaul of their governing documents in accordance with the 2006 guidance in a similar manner to chartered universities.

3.419 As a result, the Law Commission recommended that the current statutory requirements placed on higher education corporation governing documents under the 1988 Act be removed so that the guidance could be applied in the same way to all higher education institutions regardless of their constitutional underpinnings.

Current Position

3.420 The Technical Consultation set out the Welsh Government's support for the broad approach recommended by the Law Commission. In particular, the Technical Consultation sought stakeholder views on the removal of the current legislative requirements in the 1988 Act that apply to higher education corporation governing documents, in order to address the issues identified by the Law Commission in respect of the application of 2006 guidance for these bodies.

3.421 Amongst those stakeholders responding to the Technical Consultation, there was general opposition to the removal of the current statutory requirements placed on the contents of higher education corporation governing documents at the same time as progressing the wider reforms. The majority of higher education respondents

[1] The Law Commission | Technical Issues in Charity Law

[2] *Deregulating Higher Education Institutions' governance arrangements*

were of the view that arrangements for amending governing documents should not be changed at this stage but felt that this could be revisited once the Commission was established and operational and should be subject to a full and proper consultation.

Purpose and intended effect of the legislation

3.422 As a result of the feedback received from stakeholders, the proposal to remove the current statutory requirements placed on the governing documents of higher education corporations in Wales, in accordance with the Law Commission's recommendation, was not taken forward in the Bill. Instead, provision has been included allowing this proposal to be revisited at a later date in full consultation with the Commission, the higher education sector, and other relevant stakeholders.

3.423 To enable future consideration of this matter, the Bill amends the 1988 Act extending the Welsh Ministers existing powers to amend or repeal certain requirements placed on the contents of higher education corporation governing documents under the 1988 Act via order.

3.424 Currently, the Welsh Ministers order making powers under the 1988 Act only apply to a limited number of the requirements placed on higher education corporation governing documents under Schedule 7A of that Act. These are the requirements under paragraphs 3 to 5 and paragraph 11 of the Schedule. This means that any future changes to those requirements that are outside the scope of the current powers could not be made in the same way or to the same timeframe as they would be subject to a separate legislative process.

3.425 The provisions in the Bill will address this by extending the Welsh Ministers current order making powers so that they apply to all of the statutory requirements placed on higher education corporation governing documents under Schedule 7A, with the exception of paragraph 1, and to those requirements under section 125(2) to (4) of the 1988 Act.

3.426 This will allow future changes to any or all of the statutory requirements within the scope of the new extended powers to be considered and taken forward in the same way via statutory order made by the Welsh Ministers. This will provide a more consistent and responsive approach that will allow any future changes that are considered necessary to be made more quickly than is the case under current arrangements.

3.427 The provisions in the Bill will provide an effective way to address the type of situation identified by the Law Commission in its final report by enabling the removal of potential barriers faced by higher education corporations in applying guidance or changing good governance best practice as a result of the current legislative requirements placed on their governing documents. In particular, the provisions will provide a means to revisit and, if considered appropriate, take forward the proposals set out in the Technical Consultation in relation to the removal of current statutory requirements for higher education corporation governing documents, in line with the Law Commission's recommendation, at a time when the Bill has been implemented and the Commission's assurance and regulatory arrangements for higher education governance are known.

3.428 The Bill places the Welsh Ministers under a duty to consult the Commission and any other persons they consider appropriate before bringing forward an order to amend or repeal the statutory requirements placed on the governing documents of a higher education corporation. This will ensure that the Commission, the Welsh higher education sector, and any other relevant stakeholders are fully consulted in respect of any proposed changes before they are made. Orders made by the Welsh Ministers under these powers will also be subject to scrutiny by the Senedd**.**

Welsh Ministers' powers to dissolve a Higher Education Corporation in Wales

Current Position

3.429 Currently, section 128 of the ERA 1988 enables the Welsh Ministers, by order, to dissolve a higher education corporation 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;
- a body corporate established for purposes which include the provision of such facilities or services;
- HEFCW; or
- the Welsh Ministers.

Purpose and intended effect of the legislation

3.430 The retention of the power to dissolve a higher education corporation is necessary to ensure that, in exceptional circumstances and subject to safeguards and protections, arrangements can be made to smoothly, and at appropriate speed, dissolve a higher education corporation thereby protecting learners and public money.

3.431 Whilst recognising that Charter institutions and higher education corporations are historically created and dissolved using different legal instruments and processes, the amendments made by the Bill seek to ensure there are greater similarities between those institutions as regard the arrangements for their dissolution, and that higher education corporations in Wales are not substantively disadvantaged when compared to Charter Universities in respect of a necessary dissolution, subject to the safeguards that are set out in the amendments made by the Bill.

3.432 The Bill amends section 128 of the ERA 1988 to provide that the Welsh Ministers' ability to make an order to dissolve a higher education corporation is subject to the affected higher education corporation requesting an order be made or giving their consent to the making of the order. The Welsh Minister may make an order without the consent of the higher education corporation where they consider consent has been unreasonably withheld or delayed.

3.433 The ability for the Welsh Ministers to make an order without the consent of the higher education corporation is necessary to ensure appropriate measures are in place to protect learners and public money and ensure arrangements can be made for the transfer of learners, property, rights, and liabilities to other institutions in a controlled manner.

3.434 A decision by the Welsh Ministers that consent has been unreasonably withheld or unreasonably delayed will be amenable to challenge by way of Judicial Review. The Welsh Ministers' reasons for coming to that view will need to be sufficiently strong to justify that decision and the decision will need to have been taken in line with public law principles or else the court could declare it to be unlawful and/or strike it down.

3.435 The Bill also requires the Welsh Ministers to publish and keep under review, a statement setting out the circumstances in which they would propose to exercise the power to dissolve a higher education corporation. Prior to publishing such a statement the Welsh Minister must consult persons they consider appropriate, and the statement must be laid before the Senedd as soon as possible after its publication.

Consultation about careers services

3.436 Some responses to the consultation on the Draft Bill (see Chapter 4) indicated that the Commission should have a clearly defined role in supporting careers information, advice, and guidance for the post 16 sector, which should be impartial, consistent and collaborative and avoid duplication.

3.437 The Bill includes a duty for the Welsh Ministers to consult the Commission when exercising their powers to secure careers advice under sections 8 and 9 of the Employment and Training Act 1973. As it currently stands Careers Wales is the body responsible for delivering careers information, advice, and guidance to schools and to support further education and training on behalf of the Welsh Ministers.

3.438 This policy approach, and legislative change, will encourage partnership and collaborative working between Welsh Ministers, the Commission and Careers Wales, to improve the quality of careers information, advice and guidance and reduce the likelihood of duplication and overlap.

Distance learning

3.439 Tertiary education provided by or on behalf of tertiary education providers in Wales includes, for the purposes of the Act, tertiary education provided by means of 'distance learning', as set out in section 144(8). This is intended to ensure there is clarity in the law about the application of relevant clauses to tertiary education provided where, for example, the learner or student may be located at a distance from the location of the provider, including where this may be outside of Wales.

Chapter 4. Consultation

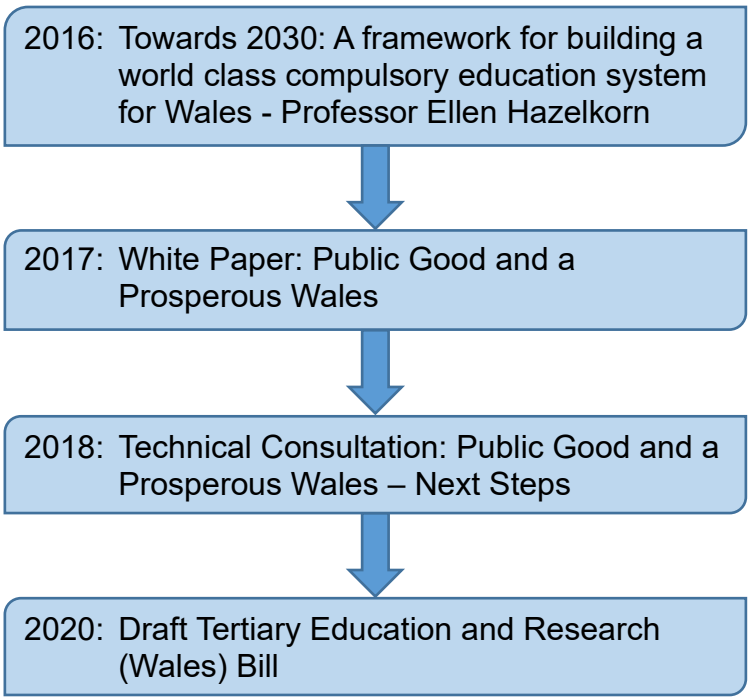


Figure 4.3 – Consultation Timeline

Towards 2030: A framework for building a world-class post-compulsory education system for Wales

4.1 In 2016, Professor Hazelkorn published her review "Towards 2030: A framework for building a world-class post-compulsory education system for Wales"[3] which examined the oversight of post-compulsory education and training in Wales.

4.2 There were two primary recommendations in the review:
(a) the Welsh Government should develop an overarching vision for post-compulsory education and training sector; and
(b) the Welsh Government should establish a new arm's length body responsible for the oversight, strategic direction, and leadership of the sector.

White Paper: Public Good and a Prosperous Wales – Building a reformed PCET system

4.3 Following these recommendations, the Welsh Government launched a White Paper "*Public Good and a Prosperous Wales – Building a reformed PCET system*"[4] , in June 2017 setting out high-level proposals for reform of the post-compulsory education and training system in Wales.

4.4 This included the establishment of the Commission, which would be responsible for higher and further education, work-based learning, and adult learning. The decision

[3] Towards 2030: A framework for building a world class post-compulsory education system in Wales
[4] Public Good and a Prosperous Wales - Building a reformed PCET system

as to whether sixth forms would fall under the remit of the Commission was still to be decided.

4.5 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.

4.6 The written consultation received 92 responses, with the stakeholder events accommodating a total of 214 delegates with circa 165 learners from across the various sectors.

4.7 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.

4.8 Overall, the responses suggested that learning providers, institutions and learners broadly supported the proposals for reform.

Technical Consultation – Public Good and a Prosperous Wales – the next steps

4.9 In April 2018, the Welsh Government published "Public Good and a Prosperous Wales - the next steps"[5] to consult on a set of detailed proposals for the reform of the post compulsory education and training 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.

4.10 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.

4.11 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.

4.12 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;
- 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 learner 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;

[5] Welsh Government | Public Good and a Prosperous Wales - the next steps

- 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 allows for 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.

4.13 Areas where stakeholders recommended further refinement of the proposals included:

- a need for the 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 learners 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.

4.14 Given the technical nature of the Bill and its limited appeal to the wider public, it was originally not felt appropriate to undertake an open consultation on a Draft Bill. However, in light of the COVID-19 pandemic and the subsequent postponement of the Bill's planned introduction, the decision to publish the Bill in draft was seen as an opportunity to further engage with stakeholders, examine the detailed policy proposals and determine their full impact.

Draft Tertiary Education and Research (Wales) Bill consultation

4.15 On the 14 July 2020, the Welsh Government published a consultation on the Draft Tertiary Education and Research (Wales) Bill.

4.16 In addition, in November 2020, the Welsh Government also published its vision for the post compulsory education and training sector in Wales.

4.17 The consultation ran for 20 weeks, in order to provide stakeholders with more time to consider the Draft Bill, in light of the additional challenges they were facing due to the pandemic.

4.18 The consultation contained a series of questions that covered different aspects of the Draft Bill, including a specific question that sought stakeholder views on the Draft Bill in light of the pandemic, and a general question enabling stakeholders to propose other additional levers to support the reform agenda for post-compulsory education and training in Wales.

4.19 A number of technical briefings were held with stakeholders throughout October and November 2020 to provide further background and context to the Draft Bill. The briefings were held virtually due to Coronavirus restrictions. Stakeholders were represented from across the sector, and the sessions allowed stakeholders to raise questions to aid their understanding of the proposals, and to assist their response to the consultation. The consultation closed on 4 December 2020. It received 65 responses.

4.20 The consultation demonstrated broad support for the new Commission, but also generated some more technical and detailed responses which prompted further exploration of a range of policy and legislative options.

4.21 A summary of the responses to the Draft Bill consultation was published on 25 February 2021.

4.22 Following consideration of the consultation responses and ongoing policy development, a number of changes to the Draft Bill were made prior to its introduction into the Senedd. Table 4.1 sets out the changes, and the reasons for those changes. The section numbers below refer to the sections of the Bill as amended at Stage 2, unless otherwise stated.

Table 4.1

Changes made	Reason
Part 1: Strategic framework for tertiary education and research – Commission's strategic duties Section 2 of the Draft Bill which provided for 'General duties of the Commission' has been removed and replaced by eleven strategic duties (see sections 2 -12 of the Bill). The requirements for the Commission's strategic plan (section 4 of the Draft Bill and section 14 of the Bill) have been expanded to include a requirement that the strategic plan set out how the Commission intends to discharge the strategic duties	**Amended in light of stakeholder responses to the consultation** whereby stakeholders highlighted the need for the Bill to provide a clear statement of the strategic direction of the Commission and its reasons for existing. It was considered more appropriate to replace the general duties with a suite of strategic duties, covering the range of matters which the Commission will be required to promote, encourage, or undertake. These strategic duties are intended to frame the strategic focus of the Commission and underpin the delivery of its functions.
Part 1: Strategic framework for tertiary education and research – academic freedom The Draft Bill included provision in respect of the academic freedom of providers of higher education at section 2(1)(g) and s2(3), these provisions have been removed from the Bill. Section 17 of the Bill requires the Commission and the Welsh Ministers to have regard to the importance of protecting the academic freedom of providers and staff of higher education in Wales when exercising any of their functions under the Bill.	**Amended in light of stakeholder responses to the consultation** Responses to the consultation called for clearer and more comprehensive protections for academic freedoms. The new provisions are intended to ensure the duties on the Commission and the Welsh Minister around protecting academic freedoms are clear and comprehensive, capturing all functions they may exercise under the Bill

Changes made	Reason
Part 1: Strategic framework for tertiary education and research – Welsh Ministers guidance, directions, and additional functions New sections inserted: (a) requiring the Commission to have regard to guidance issued by Welsh Ministers when exercising its functions (section 20). (b) Enabling the Welsh Ministers to give general directions (section 21) to the Commission about the performance of its functions. (c) Enabling the Welsh Ministers to confer, via regulation, supplementary functions onto the Commission (section 22).	**Identified during drafting process** and intended to replicate existing powers the Welsh Ministers hold in relation to HEFCW.
Part 2: Registration of tertiary education providers – registration conditions Section 18 of the Draft Bill has been removed from the Bill for introduction and replaced with a more general registration condition, as set out in Chapter 1 of Part 2 of the Bill, together with a strategic duty on the Commission to promote equality of opportunity (section 3 of the Bill as introduced). The provisions of section 18 of the Draft Bill in respect of a fee limit condition have been retained, with some relevant modifications, and are provided for in section 32 of the Bill.	**Amended in light of stakeholder responses to the consultation** which indicated that Access and Opportunity Plans (formerly Fee and Access Plans) are too bureaucratic and prescriptive. These provisions have been removed as part of a move to a more strategic, outcomes focused approach, and will provide a more flexible regulatory requirement for the Commission to administer.
Part 3: Securing and funding tertiary education and research – funding of sixth forms The Draft Bill had the effect of enabling the Commission and the Welsh Ministers to provide funding to the governing body of a maintained school in Wales providing post-16 education in relation to further education or training (section 90) or tertiary education through the medium of Welsh (section 95(2)). The Bill has been amended, through the insertion of a new subsection (4) into these provisions, so as to prevent the Commission from providing funding, or making arrangements for a local authority to provide funding, to the governing body of a maintained school in Wales providing post-16 education in relation to further education or training (section 96) or tertiary education through the medium of Welsh (section 102(2)).	**Development of an existing policy intention which was not fully realised in the Draft Bill** The Draft Bill was not consistent with the policy expectation that school sixth form provision will be funded under specific provisions within the Bill, namely section 98 of the Bill as introduced. However, the policy intention is that the Commission should be enabled to provide funding to the governing bodies of individual schools, or make arrangements for local authorities to provide funding, to support innovative activities.

Changes made	Reason
In order to enable the Commission to fund innovative activities, section 96(5) of the Bill enables the Commission to provide funding or make arrangements for a local authority to provide funding, to the governing body of a maintained school in Wales that provides post-16 education for the purpose of innovative activities. An 'innovative activity' is defined in section 96(6) an activity that: (a) in the Commission's opinion will contribute to the raising of standards of tertiary education, and (b) is described in a document prepared by the Commission and approved by the Welsh Ministers.	
Part 3: Securing and funding tertiary education and research – education and training for persons aged 19 plus The Draft Bill, at section 86, required the Commission to secure the provision of reasonable facilities in Wales for further education and training suitable for the requirements of adults 19 years old or over. This provision is retained at section 94 of the Bill and expanded to include new provision in section 93 of the Bill. The new section requires the Commission to secure the provision of proper facilities in Wales for relevant education and training for eligible persons that is suitable to their requirements. The Welsh Ministers are required to specify relevant education in regulations, whilst an eligible person is a person over 19 years old or over who and falls within the description specified in regulations the Welsh Ministers may make.	**Development of an existing policy intention which was not fully realised in the Draft Bill, informed by stakeholder responses to the consultation** which included calls for a stronger funding duty for further education and training in relation to adults over 19 years old. The duty on the Commission in respect of education and training for adults aged 19 or over, as provided for in the Draft Bill is insufficient to expand lifelong learning opportunities, particularly in relation to further education and training. The retention of funding duties in the Learning and Skills Act 2000 is also insufficient

Changes made	Reason
Part 3: Securing and funding tertiary education and research - collaborating bodies: consent The Draft Bill enabled a provider in receipt of funding from the Commission, under sections 80(1), 81(3), 88(1), 94(1) and 95(1) or regulations made under section 84, to pass the funding to a collaborating body. For a person to be a collaborating body the Commission must have given consent to financial resources being paid to it by the person receiving funds from the Commission. Section 107 of the Bill provides a framework of controls in respect of the Commission's consent for the passage of funds from directly funded providers, organisations, or individuals to collaborating bodies under the specified funding powers (sections 87(3), 88(4)(a), 96(3)(a), 103(2)(a), 104(4) of the Bill).	**Identified during drafting process** Whilst the Draft Bill required the consent of the Commission for the passage of funds to collaborating bodies it did not set out any requirements surrounding the giving of such consent. The framework of controls is intended to allow the Welsh Ministers and the Commission to protect the interests of students, the proper use of public money and the reputation of the Welsh tertiary education and research sector whilst retaining the original policy intent of allowing a wide range of collaborative working.
Part 3: Securing and funding tertiary education and research and Part 5: learner protection, complaints procedures and learner engagement – learner engagement code and school sixth forms New provisions have been added at sections 100 and 123 of the Bill so as to require the governing bodies of local authority maintained schools in Wales, which provide education to those above compulsory school age (i.e. sixth form) to comply with the requirements of the learner engagement code.	**Amended in light of stakeholder responses to the consultation** which raised concerns regarding a lack of parity across the post-16 sector due to the exclusion of sixth form learners from the learner engagement code.
Part 3: Securing and funding tertiary education and research – financial support directions A new section 108 enables the Welsh Ministers to issue directions to the Commission about provision of financial support to relevant persons, where it appears to the Welsh Ministers that the financial affairs of the relevant person has been, or is being, mismanaged.	**Identified during drafting process** and intended to provide the Welsh Ministers with a power equivalent to their existing powers in relation to HEFCW.
Part 4: Apprenticeships Section 101 of the Draft Bill required the Welsh Ministers to specify occupational sectors for the purposes of apprenticeship frameworks. Section 101 has been removed from the Bill for introduction, with provision instead included in section	**Amended in light of stakeholder responses to the consultation** A number of consultation respondents were concerned about the division of powers between the Welsh Ministers

Changes made	Reason
113 of the Bill enabling the Welsh Ministers to specify a requirement in relation to occupational sectors for the purposes of apprenticeship frameworks. Before doing so the Welsh Ministers must consult with the Commission. This reflects the Welsh Ministers' ability to specify high level requirements but not the content of individual apprenticeship frameworks. Under the revised provisions, determination of specific qualifications will be the remit of the Commission, as will the process of certification.	and the Commission regarding their respective functions relating to Apprenticeships.
Part 7: Miscellaneous and general New provisions at section 138 include a duty for the Commission to be consulted on careers services.	**Amended in light of stakeholder responses to the consultation** regarding the role of the Commission in relation to careers information, advice, and guidance.
Schedule 1: Commission for Tertiary Education and Research Paragraph 11 of Schedule 1 to the Draft Bill provided for the established of the Research and Innovation Wales Committee and for the appointment of the Chair and members of the Committee by the Welsh Ministers Schedule 1 to the Bill as introduced provides for the establishment of the Committee, now referred to as the Research and Innovation Committee, at paragraph 11, whilst paragraph 12 of that same Schedule provides that the Welsh Ministers will appoint the Chair to the Committee.	**Amended in light of stakeholder responses to the consultation** where the public appointment of the Chair and members of the Research and Innovation Wales Committee was highlighted as a limitation on the independence of the Commission from the Welsh Government and added to further administrative burden.
Schedule 4: Minor and consequential amendments Additional consequential amendments to existing legislation provided for in Schedule 4 to the Bill.	**Identified during drafting process**

4.23 Full summaries of all consultation responses have been published:

- White Paper Consultation – summary of responses: Public Good and a Prosperous Wales
- Young learner events undertaken as part of the White Paper Consultation
- Technical Consultation – Public Good and a Prosperous Wales – the next steps
- Technical thematic workshops undertaken as part of the Technical Consultation

- Draft Tertiary Education and Research (Wales) Bill consultation

Chapter 5. Power to make subordinate legislation

5.1 The 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:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- 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 Tertiary Education and Research (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
22(1)	Welsh Ministers	Regulations	Regulations provide the Welsh Ministers with appropriate flexibility to ensure the Commission is enabled to exercise all relevant functions in relation to tertiary education, research and innovation should the sector evolve in the future.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
25(2)	Welsh Ministers	Regulations	Providing for the categories of registration in regulations rather than on the face of the Bill provides appropriate flexibility to ensure they reflect relevant future changes in the tertiary education sector. This will allow the system for regulating the sector to remain proportionate, accountable, and flexible and ensure if continues to address future needs.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
25(5)	Welsh Ministers	Regulations	Enabling the Welsh Ministers to prohibit, through regulations, the registration of a provider in one category of the register, at the same time that it is registered in one or more other categories, is appropriate as it will ensure the	Negative	The substance on this provision is set out clearly on the face on the Bill. These regulations prescribe technical and administrative

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			necessary flexibility to allow the arrangements for the registration system to respond to future changes.		matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
25(8)	Welsh Ministers	Regulations	Different information may be appropriate for inclusion on the register in the future, as such this is suitable for specification in regulations so as to provide the Welsh Ministers with the necessary flexibility.	Negative	The substance on this provision is set out clearly on the face on the Bill. These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
27(6)	Welsh Ministers	Regulations	As the tertiary education sector evolves it may be necessary to prescribe additional conditions providers must satisfy in order to be added to the register, as such regulations are appropriate.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
32(2)(b)	Welsh Ministers	Regulations	Specifying, in regulations, the categories of registration which are to be fee limit categories provides appropriate flexibility to reflect any changes in the tertiary education sector.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			This will allow the system for regulating the sector to remain proportionate, accountable, and flexible and ensure if continues to address future needs.		affirmative procedure in those circumstances
32(4)	Welsh Ministers	Regulations	Regulations are suitable as they provide the necessary flexibility to ensure the descriptions of qualifying courses reflect any future changes.	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
32(9)(b)	Welsh Ministers	Regulations	Regulations are appropriate as the specification of qualifying person is likely to require regular updates to reflect changing policy needs.	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
32(11)	Welsh Ministers	Regulations	Regulations are appropriate as the circumstances in which a fee may be payable may need to change to take account of future changes and ensure the registration system remains flexible. In addition, this is a re-statement of an existing power	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
34	Welsh Ministers	Regulations	Providing the Welsh Ministers with the flexibility to provide for mandatory ongoing registration conditions in regulations is appropriate as it allows for future changes to be taken account and	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			helps ensures the registration system remains flexible.		follow the Senedd's draft affirmative procedure in those circumstances
41(2)	Welsh Ministers	Regulations	Enabling additional circumstances in which a registered provider must be removed from one or more categories of the register to be provided for in regulations provides for appropriate flexibility to ensure any future changes are reflected. This will allow the system for regulating the sector to remain proportionate, accountable, and flexible and ensure if continues to address future needs.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
41(6)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessity flexibility to prescribe different transitional or saving provisions as required	Negative	These will be technical and procedural in nature and will only be used where necessary for the purposes of ensuring the effective removal of an institution from a category of the register
43(13)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessity flexibility to prescribe different transitional or saving provisions as required	Negative	These will be technical and procedural in nature and will only be used where necessary for the purposes of ensuring the effective voluntary removal of an institution from a category of the register

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
46(6)	Welsh Ministers	Regulations	Regulations are appropriate as the maximum amount for the fee limit is likely to require regular updates to reflect future changes. In addition, this is a re-statement of an existing power	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
54(5)(a) & (b)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessary flexibility to prescribe different timeframes as required	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
54(8)	Welsh Ministers	Regulations	Regulations are suitable as they provide the necessary flexibility to ensure the circumstances in which a person is, or is not, to be treated as responsible for providing a course reflect any future changes. In addition, this is a re-statement of an existing delegated power	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
57(1)(f)	Welsh Ministers	Regulations	Whilst the substance of the duty is set out on the face of the Bill, it may be necessary to add to the list of education and training in section 57(1) to ensure	Negative	The substance on this provision is set out clearly on the face on the Bill.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			any changes to the education sector are reflected in the inspection arrangements.		These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
57(4)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessity flexibility to prescribe different timeframes as required	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
61(1)	Welsh Ministers	Regulations	Suitable for regulations as it provides the Welsh Ministers with appropriate flexibility to ensure the Chief Inspector is enabled to exercise all relevant functions in connection with the education and training described in section 57(1)	Negative	The substance of the Chief Inspector's duty is set out on the face of the Bill in section 57(1). These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate
63(9)(a)	Welsh Ministers	Regulations	Whilst the substance of the duty to provide information is set out on the face of the Bill, enabling further provision to be made in regulations is appropriate as it allows for flexibility to	Negative	The substance on this duty is set out clearly on the face on the Bill.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			respond to future changes in the tertiary education sector		These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
63(9)(b)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessary flexibility to prescribe different timeframes as required	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
79(3)	Welsh Ministers	Regulations	Suitable for regulations as it requires the Welsh Ministers to make regulations which will provide the detail of the review process including the grounds for review, the period within which an application for review may be made and how a notice or direction is to be treated pending a review. This detail may be subject to future changes. In addition, this is a re-statement of an existing delegated power in the Higher Education (Wales) Act 2015	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
80(1)(c)	Welsh Ministers	Regulations	As the tertiary education sector evolves it may be necessary to specify other providers whose financial sustainability should be subject to monitoring by the	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			Commission, as such regulations are appropriate		subject additional providers to the Commission's duty to monitor and report on financially sustainability. Therefore, it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances.
80(2)	Welsh Ministers	Regulations	As the tertiary education sector evolves it may be necessary to exempt certain registered providers from the Commission's duty to monitor financial sustainability, as such regulations are appropriate	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation by exempting certain providers from the application of the Commission's duty to monitor and report on financial sustainability. Therefore, it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances.
83(4)	Welsh Ministers	Regulations	Suitable for regulations as it enables the Welsh Ministers to set out details as to how applications may be made, the circumstances in which designation may be withdrawn and the effect of withdrawal and in doing so respond to	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			the changing nature of providers of higher education In addition, this is a re-statement of an existing delegated power		affirmative procedure in those circumstances
84	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessary flexibility to prescribe different or additional exceptions from the definition of fees in response to any future changes In addition, this is a re-statement of an existing delegated power	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
88(3)	Welsh Ministers	Regulations	Regulations are suitable to ensure the necessary flexibility for the Welsh Ministers to specify the categories of registered providers to which the Commission may provide financial support, taking into account any future changes in the tertiary education sector.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
88(5)	Welsh Ministers	Regulations	Regulations are suitable to ensure the necessary flexibility for the Welsh Ministers to specify 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	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
89(1)	Welsh Ministers	Regulations	Regulations are suitable as 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 as the tertiary education sector evolves.	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate.
94(3)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the Welsh Ministers have the flexibility to specify relevant education and training taking into account future changes in the tertiary education sector or the nature of courses.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
94(7)(b)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the Welsh Ministers have the flexibility to specify eligible person taking into account future changes and evolving policy needs	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
98(2)	Welsh Ministers	Regulations	Regulations are suitable to ensure the necessary flexibility for Welsh Ministers to specify the categories of registered providers, taking into account any future changes in the tertiary education sector.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			In addition, it may be necessary for the changes to be transitional.		affirmative procedure in those circumstances
99(6)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessary flexibility to specify exemptions taking in account future changes in the tertiary education sector	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
104 (5)	Welsh Ministers	Regulations	Regulations are suitable to ensure the necessary flexibility for Welsh Ministers to take into account any future changes in the tertiary education sector when specifying categories of providers.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
105(4)	Welsh Ministers	Regulations	Regulations are suitable to ensure the necessary flexibility for Welsh Ministers to take into account any future changes in the tertiary education sector when specifying categories of providers to which the Commission may provide funding.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
111(4)	Welsh Ministers	Regulations	Providing for the description of an approved Welsh apprenticeship must satisfy in regulations rather than on the face of the Bill provides appropriate flexibility to ensure any future changes are taken into account. This will allow the apprenticeship system to remain responsive, innovation and flexible and ensure if continues to address future needs.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
112(1)(c)	Welsh Ministers	Regulations	Providing for the description of an approved Welsh apprenticeship agreement must satisfy in regulations rather than on the face of the Bill provides appropriate flexibility to ensure any future changes are taken into account. This will allow the apprenticeship system to remain responsive, innovation and flexible and ensure if continues to address future needs.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
113(1)	Welsh Ministers	Regulations	Providing for the description of an alternative Welsh apprenticeship in regulations rather than on the face of the Bill provides appropriate flexibility to ensure any future changes are taken into account.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			This will allow the apprenticeship system to remain responsive, innovation and flexible and ensure if continues to address future needs.		
118(6)	Welsh Ministers	Regulations	Different information may be appropriate for inclusion on the register in the future, as such this is suitable for specification in regulations so as to provide the Welsh Ministers with the necessary flexibility.	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate
119(4)	Welsh Ministers	Regulations	Regulations are appropriate as provision may be needed in relation of the charging of fees may need to change to take account of future changes	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate
124(5)	Welsh Ministers	Regulations	Regulations are appropriate to ensure the necessity flexibility to apply to provisions of Part 4 of the Bill with modifications	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate
128(2)(b)	Welsh Ministers	Regulations	Amends section 11 of the Higher Education Act 2004 Regulations are suitable to ensure the necessary flexibility for Welsh Ministers	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			to take into account any future changes in the tertiary education sector when specifying a qualifying provider		procedure is deemed to be appropriate
132(1)(k)	Welsh Ministers	Regulations	Regulations are appropriate to allow suitable flexibility for the Welsh Ministers to modify the categories of persons who can share information with the Commission, taking into account future changes.	Negative	These regulations prescribe technical and administrative matters, which may require updating from time to time, therefore the negative procedure is deemed to be appropriate
145(1)	Welsh Ministers	Regulations	Providing for conditions that should apply to the Open University (as a distance learning provider based outside of Wales) in regulations rather than on the face of the Bill provides appropriate flexibility to ensure the conditions reflect any future changes.	Draft Affirmative	Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Senedd's draft affirmative procedure in those circumstances
146(1)	Welsh Ministers	Regulations	Regulations are appropriate to ensure, that where amendments to other legislation are found to be necessary, to give full effect to this Bill, further primary legislation is not required.	Draft Affirmative Negative	Where regulations amend, repeal, or otherwise modify primary legislation, and the changes may substantially affect that legislation, draft affirmative procedure is deemed appropriate. Where regulations are not amending primary legislation, negative procedure is appropriate

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
148	Welsh Ministers	Order	Commencing Bill provisions by order will enable the coming into force and implementation of the Bill's provisions to be appropriately timed.	No Senedd procedure	This is a power to set a coming into force date for provisions already agreed in the Bill, it is considered appropriate that this does not require a Senedd procedure.

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

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
20	Welsh Ministers	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
21	Welsh Ministers	Direction	The Welsh Ministers may give the Commission directions of a general nature. A power of direction is considered appropriate as the direction is specific to the practical implementation of the Bill. In addition, the substance of the power to direct the Commission is set out on the face of the Bill and is limited in scope.	No Senedd procedure. Requirement to lay a copy of the direction before the Senedd	The Welsh Minister may give the Commission directions in relation to specific matters, as set out on the face of the Bill. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature, as such, to apply a Senedd procedure is not considered appropriate.
22(4) & (5)	Welsh Ministers	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
31(1)(i)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
35	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
39(1)	Commission for Tertiary Education and Research	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill. Publication of the direction makes it open and transparent to those involved.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate
40	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
65	Commission for Tertiary Education and Research	Direction	Power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			applies is set out on the face of the Bill.		procedure is not considered appropriate.
70(1)	Welsh Ministers	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate.
73(4)	Commission for Tertiary Education and Research	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate.
90(4)(c)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
99(7)(c)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
101(4)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			arrangements need to be flexible to allow for future changes.		Senedd procedure is not considered appropriate.
104(9)(c)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
110(1)	Welsh Ministers	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill.	No Senedd procedure. Requirement to lay a copy of the direction before the Senedd	The Welsh Minister may give the Commission directions in relation to specific matters, as set out on the face of the Bill. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature, as such, to apply a Senedd procedure is not considered appropriate.
120(3)(a)	Commission for Tertiary Education and Research	Direction	A power of direction is considered appropriate and proportionate, the substance of the function to which the power to issue a direction applies is set out on the face of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate.
120(3)(b)	Commission for Tertiary	Guidance	The guidance is intended to facilitate the application of the	No Senedd procedure	This guidance is largely concerned with process

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
	Education and Research		primary legislation, and the arrangements need to be flexible to allow for future changes.		and, as such, to apply a Senedd procedure is not considered appropriate.
126(6)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
129(1)	Commission for Tertiary Education and Research	Code	Setting out requirements in a Code rather than on the face of the Bill, or in regulations, provides a practical and easily accessible tool, and also enables the Commission will develop the Code with tertiary education providers and learners.	No Senedd procedure	This code is largely concerned with procedure and, as such, to apply a Senedd procedure is not considered appropriate.
134(5)	Welsh Ministers	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
135(1) & (2)(b)	Commission for Tertiary Education and Research	Guidance	The guidance is intended to facilitate the application of the primary legislation, and the arrangements need to be flexible to allow for future changes.	No Senedd procedure	This guidance is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate.
Schedule 1 Paragraph 5(1)	Welsh Ministers	List	Detailing the relevant trade unions in a published list rather than on the face of the Bill or in regulations	No Senedd procedure	This matter is largely concerned with process and, as such, to apply a

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			provides appropriate flexibility to ensure the list remains up to date. A published list will also make the process open and transparent to those involved.		Senedd procedure is not considered appropriate
Schedule 1, Paragraph 7(1)	Welsh Ministers	List	Detailing the relevant bodies in a published list rather than on the face of the Bill or in regulations provides appropriate flexibility to ensure the list remains up to date. A published list will also make the process open and transparent to those involved.	No Senedd procedure	This matter is largely concerned with process and, as such, to apply a Senedd procedure is not considered appropriate
Schedule 1, Paragraph 15(1)(b)	Welsh Ministers	Direction	The Welsh Ministers may give the Commission directions in relation to the preparation of their statement of accounts This is appropriate as a direction is specific to the practical implementation of the Bill. The substance of the power to direct the Commission is set out on the face of the Bill and is limited in scope	No Senedd procedure	Directions will be technical in nature and largely deal with process, as such, to apply a Senedd procedure is not considered appropriate
Schedule 3, Paragraph 8	Commission for Tertiary	Direction	Directions are considered appropriate to ensure the appropriate delivery of delegated	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
	Education and Research		functions, where the responsibility for a delegated function remains with the Commission.		Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate
Schedule 4, Paragraph 29(7)	Commission for Tertiary Education and Research	Direction	Insertion of new section 63A into the School Standards and Organisations (Wales) Act 2013 The circumstances and limitations on what might trigger the Commission to direct a local authority to bring forward proposals will be consulted on and included in the statutory School Organisation Code	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope, as such, to apply a Senedd procedure is not considered appropriate

PART 2 – REGULATORY IMPACT ASSESSMENT

Chapter 6. Regulatory Impact Assessment Summary

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

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

6.3 The following tables present a summary of the costs and benefits for the Bill as a whole. The tables have been designed to present the information required under Standing Order 26.6 (viii) and (ix).

Covid-19 Pandemic

6.4 While the cost estimates set out in this Regulatory Impact Assessment assume early introduction of key transitional roles and establishment of the new Commission from 2023, it is recognised that the full scope of implications of the Covid-19 crisis for the proposed reforms (including the implementation of the Bill) is not yet known. The development and establishment of the Commission continues to be a priority for the Welsh Ministers.

Tertiary Education and Research Wales Bill		
Preferred option: Introduce legislation to – Dissolve HEFCW and establish a new Commission with responsibility for oversight of tertiary education and research (see Chapters 7 to 18 for options appraisal and further details on each option).		
Stage: 2	**Appraisal period:** 2021-22 – 2030-31	**Price base year:** 2021-22
Total Cost **£40,986,667**	**Total Benefits** **£-**	**Net Present Value (NPV):** **-£34,793,412**
Present value: **£34,793,412**	**Present value:** **£-**	

Administrative Costs

Costs

All current costs for management and monitoring of the tertiary education and research sector fall ultimately to the Welsh Ministers, as the direct delivery agent and funder. This includes the duty to fund HEFCW.

The 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 partnership and policy teams.

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 Bill.

The creation of the Commission will cost an additional £41.0m in running costs over the appraisal period (2021-22 – 2030-31). More detail is provided in Chapter 19 - Costs and Benefits.

The net total cost of £41.0m is the difference between the £158.6m 'do nothing' option, i.e., the continuation of HEFCW and the retention of existing Welsh Minister functions with the associated Welsh Government staff and the estimated total cost of establishing the Commission at £199.5m, as demonstrated in the cost summary table below.

Cost description	Years	Cost (£,000)
Transitional costs	2021-22 to 2023-24	9,550
Welsh Government staffing and associated costs	2021-22 to 2022-23 (October)	30,021
HEFCW staffing and associated costs	2021-22 to 2022-23 (October)	10,424
Recurrent Commission running costs	2023-24 (November) to 2030-31	149,552
Total costs	**2021-22 to 2030-31**	199,547
Less: 'Do Nothing' costs	2021-22 to 2030-31	158,560
Net additional costs	**2021-22 to 2030-31**	40,987

The costs have been calculated over a 10-year period (2021-22 to 2030-31).

The transitional costs are estimated at £9.6m split across 2022-23 and 2023-24. It is anticipated that some ICT and location costs (estimated at total £6.6m) will be capitalised, although the final value to be capitalised will depend on technical accounting guidance.

The bulk of transition costs are IT costs (£4.9m). Other transitional costs, include:

- redundancy of £2m (a worst-case scenario figure from KPMG's work).
- £1.7m on location (including lease, charges such as connection costs).
- £0.6m on early recruitment, salaries, and non-payroll costs of key staff; and
- £0.3m on other corporate costs during transition

The creation of a new body will result in additional running costs necessary to support a new stand-alone organisation and the partnership team within the Welsh Government. On an annual basis the new Commission is estimated to have annual running costs in the region of £20.1m, compared to the current business-as-usual costs of £15.7m per annum.

No non-cash costs, such as depreciation, have been included and the cost impact of the provisions on other public bodies is unknown.

In summary, the Commission will cost an extra £41.0m (over the 10-year forecast period) to create and will have increased recurrent costs of £4.5m, per annum over current arrangements.

The detailed assumptions which form the basis of the cost calculations can be found in Appendix A to this Regulatory Impact Assessment

Transitional:	Recurrent:	Total:	Present Value:
£9,550,000	£189,997,000	£199,547,000	£171,216,000

Cost-savings

It has not been possible to quantify any cost savings as yet however bringing together the funding and payments teams from the Welsh Government and HEFCW may have the potential to create synergies and savings. Until that work has been completed, the creation of the new Commission is not expected to deliver any cost savings.

The costs in the box below represent the business-as-usual costs. These are presented here to demonstrate the basis of the calculation of the additional costs associated with the preferred option.

Transitional:	Recurrent:	Total:	Present Value:
£-	£158,560,000	£158,560,000	£136,422,000

Net Administrative Cost: £40,987,000

Compliance Costs

Compliance costs are unknown.

Transitional:	Recurrent:	Total:	Present Value:
£	£	£	£

Other Costs

Indirect costs (costs to other bodies)

These costs and/or benefits are unknown at present. It is anticipated that the following bodies and organisations may be affected by the provisions in the Bill and hence, may also incur additional costs or cost savings:

- Providers of higher education in Wales.
- Providers of further education in Wales.
- local authorities.
- Coleg Cymraeg Cenedlaethol
- The Open University.
- National Union of Students Wales.
- work based learning providers.
- Quality Assurance Association.
- Estyn.
- Education Workforce Council; and
- Independent Adjudicators Office.

It has not been possible to quantify these costs as they will depend upon decisions taken by the Commission, any assumptions made by the Welsh Government at this time, to inform this Regulatory Impact Assessment, may pre-empt these decisions.

Further evidence and research are planned to help determine additional indirect costs including as part of the post implementation review (see Chapter 22).

However, while they have not been quantified, information about the indirect impacts and consequences is set out in Chapter 19 of this Regulatory Impact Assessment and in the Alma Economics Report at Appendix B.

Transitional:	Recurrent:	Total:	Present Value:
£-	£-	£-	£-

Unquantified costs and disbenefits

Unquantified costs and disbenefits are unknown.

Benefits

There are several benefits associated with the implementation of the proposed legislation, it has not been possible to quantify these at this time and as such their financial value is unknown.

Details of the benefits anticipated from the implementation of the proposed legislation can be found in Chapter 7 (Options), Chapters 8 – 18 (Detailed options for reform) and Chapter 19 (Costs and Benefits).

Total:	Present Value:
£-	£-

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 discounting 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 £1,150,000 has been included.
- Given the number of uncertainties around the creation and operation of the Commission, the cost estimate has been prepared on a prudent basis using key assumptions at the maximum range of expected values and at the earliest likely point. Details of key assumptions, including the impact of using maximum estimates and sensitivity analysis in Appendix A.

Chapter 7. Options

7.1 This chapter sets out a structured appraisal of the long list of options for approaching reforms (see Chapter 3 for a detailed rationale for reform) to the tertiary education sector in Wales.

7.2 An initial options appraisal against a set of nine key objectives for reform was undertaken in September 2016 by senior Welsh Government officials. These options were then considered by Welsh Ministers in December 2016 and were presented for consideration by stakeholders during two consultations exercises in 2017 and 2018 (see Chapter 4).

7.3 Following an extensive exercise to refine the vision, mission and goals for the Commission and the development of a benefits realisation plan the nine key objectives were updated to reflect this process and new and significant challenges facing the sector, which were not in play at the time of the original options appraisal.

7.4 There are five high level goals and 11 high level objectives with associated benefits. These benefits will be discussed in Chapter 19.

7.5 The goals for the Commission are consistent with the Welsh Government's priorities for tertiary education, as articulated in the Welsh Government's Strategic Vision. 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[6]' and contribute directly to the goals set out in the Well-being of Future Generations Act[7].

7.6 The high level goals are for:

(a) A system that strengthens Wales' economic wellbeing and foundations, encourages enterprise, responds to employer needs, and enables a relevant and growing research base,
(b) A system that enables learning, assessment, and progression through the medium of Welsh,
(c) A learner focused system that promotes lifelong learning and delivers effective choice and guidance, and equitable access to appropriate learning pathways and opportunities,
(d) A high resilience, integrated, sustainable, and responsive system that promotes collaboration, excellence; and regulates with autonomy, and
(e) A system supported by collaborative and engaged providers that enhance the communities they serve.

7.7 The high level objectives for the Commission, are for the system to:

- be responsive to employer needs and address skills gaps.
- improve research institutions ranking (currently defined by Research Excellence Framework ranking), reputation and research funding.
- improve apprenticeship opportunities.

[6] Welsh Government | Maximising the Contribution of the Post-Compulsory Education and Training System to the Achievement of Welsh National Goals
[7] Welsh Government | The Well-being of Future Generations

- raise standards for all; improving learner participation, progression, performance, and outcomes.
- improve the curriculum offer.
- improve the learner experience and capture the learner voice.
- improve the reputation, agility and direction of tertiary education and training.
- introduce an improved, compliant, and effective data collection, analysis and dissemination system that ensures timely, accessible and relevant information about tertiary education in Wales is available for all who need it.
- reduce unnecessary course duplication and competition.
- improve the coherence and consistency of financial and performance monitoring, and quality assurance.
- improve community use of tertiary education facilities and greater connectivity.

Structured approach to options appraisal

7.8 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 this Regulatory Impact Assessment. The process for re-appraising selected options for reform is outlined below.

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

(a) **Option 1:** Business as usual.

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

(c) **Option 3:** Adopting the approach developed in England.

(d) **Option 4:** Centralisation:
- **4a**: Retaining all further education/apprenticeship/local authority maintained school 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.

(e) **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:** the Welsh Government would retain responsibility for further education / apprenticeships / local authority maintained school 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 further education, apprenticeships, some aspects of local authority maintained school sixth form delivery and higher education. It would also be responsible for securing external inspection for all of the post16 sectors, supporting leadership development, and continuing professional development, 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 and Regional Skills Partnership functions and advising the Welsh Government on the future strategy for tertiary education.
- **5c**: As Option 5b, but with a separate body, 'Research and Innovation Wales', to oversee research.

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

Options Appraisal and Evaluation Process

7.10 All options were cross referenced and evaluated against the following agreed set of high level objectives outlined above (see paragraph 7.7).

Scoring Criteria

7.11 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.

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

Benchmarking and Impact

7.13 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

7.14 Upon completion of the appraisal / scoring process each option was classified as either Discounted, Preferred, or Possible.

7.15 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 19 of this Regulatory Impact Assessment.

7.16 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

- Whether the options accord with / promote the WFG Act - 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.

7.17 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 sector, or
- being undeliverable i.e. there would be no political and/or stakeholder support.

7.18 Therefore, three options for approaching the reform of the tertiary education 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)

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

Description of the key elements of this option

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 in relation to post-compulsory education and training in Wales are:

(a) the Welsh Government,
(b) HEFCW,
(c) Estyn, and
(d) the Quality Assurance Agency.

7.21 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.

7.22 In recent years there has been a change in the policy landscape. There has been a significant increase in the number of learners, providers and programmes in Wales and an emphasis on mergers, to improve strategic management, increase efficiency and enhance quality.

7.23 The Welsh Government has responsibility for policy, strategy, and funding of post-compulsory education, including sponsorship of HEFCW. Further education has been directly governed and funded by the Welsh Government since 2006. Although

broad higher education policy is set by the Welsh Government, it is delivered through HEFCW.

7.24 HEFCW, a Welsh Government Sponsored Body, established under the 1992 Act, 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 further education institutions. With effect from 1 August 2015, HEFCW became responsible for certain aspects of the new regulatory system for higher education, established by the 2015 Act. Full implementation took place from 1 September 2017.

7.25 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 Ministerial remit letter sets the high level strategic priorities for the Council.

7.26 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 2015 Act. 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.

7.27 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 higher education institutions. However, changes in the Higher Education 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 2015 Act.

7.28 This will require a strong partnership approach for 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

7.29 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, work based learning and adult community learning 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.

7.30 QAA, operating under a service level agreement with HEFCW, has oversight of higher education programmes delivered in further education institutions, as well as within universities. Higher education delivered by further education institutions is subject to QAA review. This means that some institutions fall within the remit of both Estyn and the QAA.

7.31 The Welsh Government is responsible for planning policy and funding further education, sixth forms, apprenticeships and employability programmes and adult learning.

7.32 Local authorities are responsible for planning sixth forms, improving standards and taking action in the case of underperformance.

Research

7.33 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') which is allocated to universities to support research staff and infrastructure. This is allocated on the basis of performance in the Research Excellence Framework[8] conducted every 6-7 years. Quality related funding is effectively devolved and is currently administered by HEFCW.

Key advantages of Option 1

7.34 The Hazelkorn[9] report found that:

(a) Wales has a functioning post-compulsory education and research system, and a commitment to strengthening its role and contribution to society and the economy, enhancing quality and participation;
(b) the current system broadly meets learner and societal needs with the current approach working to some extent in that learning is being delivered in the post-compulsory education and research sector and the overall quality of performance is good;
(c) coherence between sixth forms, further education and higher education has improved; and
(d) there are examples of good to excellent relationships between higher education institutions, further education institutions and work based learning and adult community learning providers around specific initiatives – although this could be described as episodic.

7.35 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. Local authority maintained school sixth forms are well integrated within compulsory education.

7.36 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.

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

[8] Research Excellence Framework
[9] Welsh Government | Towards 2030: A framework for building a world-class post-compulsory education system for Wales

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

7.38 Curriculum for Wales 2022[10] 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.

Key Disadvantages of Option 1

7.39 The purpose and intended effect of the Bill are explained in Chapter 3 and cover the policy objectives and specific disadvantages of not reforming the post-compulsory education and training system. However, the key risks are outlined below.

Complexity and fragmentation

7.40 Overall, the post-compulsory education and training sector is too complex, with overlapping organisations and duplication of resources and programming, including complex governance, regulation, quality assurance and performance arrangements.

7.41 There is a lack of collaboration between different parts of the sector to meet learner needs. Further education institutions and higher education institutions are often focused on their own agendas, with limited evidence of genuine working relationships between them[11]. There is a risk that failure to reform will not address the lack of joined-up planning between sixth forms and further education.

7.42 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 or responsibility for the full range of provision there could be gaps in provision at geographic and subject level.

7.43 Maintaining the status quo would perpetuate the long-standing fragmentation of the system, making it significantly more difficult to implement the Programme for Government.

7.44 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 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.

7.45 There is insufficient connectivity between provision and the identification of skills gaps for future Welsh societal, cultural, and economic development needs. Without

[10] Welsh Government | Introduction to Curriculum for Wales guidance

[11] Welsh Government | Towards 2030: A framework for building a world-class post-compulsory education system for Wales

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.[12] [13] This will create negative consequences for prosperity and secure employment within our communities.

7.46 There is disconnect and discontinuity between pre and post-16 (16 to 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 sector it may not deliver the required improvements in the 16 to 19 sphere – ergo overall quality of provision will not improve.

7.47 There is an inconsistent approach to assessment, evaluation, and performance measures across the sector, which causes confusion within schools (see consultation document). Inconsistency is also apparent in terms of practitioner standards (i.e. Qualified Teacher Status).

7.48 Issue of sub optimal course provision in both sixth forms and further education institutions may continue to remain largely ignored.

Levers to influence

7.49 HEFCW levers are regarded as insufficient to influence universities. In recent years, changes in funding arrangements for higher education have reduced HEFCW's ability to encourage higher education institutions to deliver the Welsh Government's priorities because more funding is now paid directly to institutions, in the form of tuition fees.

7.50 The new regulatory system set up under the 2015 Act has helped to mitigate the situation, at least with widening access, quality, and financial sustainability. However, there remains a need to strengthen the regulatory oversight provided by the 2015 Act and accountability derived from the 1992 Act - as highlighted in the Senedd Children, Young People and Education Committee's post-legislative scrutiny of the 2015 Act.

A strategic approach

7.51 As detailed in Chapter 3, the Welsh Government has developed a strategic vision for post-compulsory education and training, focusing on meeting the education, training and research needs and aspirations of the people, businesses, and communities of Wales.

7.52 Sixth forms, colleges, universities, training, and adult learning providers are crucial to meeting the key challenges that Wales will face in the near future, including:

- recovery from the Covid-19 pandemic
- a new relationship with the European Union
- dramatic longer term technological, environmental, cultural, and demographic change

[12] City and Guilds Group | People Power: Does the UK economy have the skilled people it needs for the future?

[13] OECD | Getting Skills Right: United Kingdom

7.53 The sector, as currently structured, may not be well placed to reflect strategic Welsh Government objectives and support the realisation of the strategic vision alongside responding to these challenges and others arising from developments in England and elsewhere.

7.54 The combined and cumulative effect of these challenges has given rise to concerns about the current and future financial health of providers of tertiary education in Wales. The Commission, when established, will have improved systems for monitoring and overseeing the sector. The Commission will also have 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 learners, sponsors, and the Welsh Government.

Augar Review[14]

7.55 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.

7.56 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).

7.57 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 or 3 qualification for all learners

7.58 The UK Government's response to Augar has been postponed several times since the publication of the review, primarily due to Brexit, the General Election, and the Covid-19 pandemic. A response is currently alongside the spending review later in 2021.

7.59 The 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 the Welsh Government. The implementation of these recommendations would have a differential impact across the Higher Education 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

[14] Department for Education | Post-18 Review of Education and Funding: Independent panel report

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.

7.60 The provisional analysis of the implications is based on several assumptions relating to unknown details of the proposals. 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 higher education sector.

Competition

7.61 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.

7.62 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.

7.63 The demographic upturn will begin to filter into 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

7.64 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, universities, colleges and

apprenticeship providers across the UK have not been expanding their provision in these areas quickly enough to meet employer demands.

7.65 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.

7.66 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.

Learner pathways

7.67 The present system is insufficiently learner focused with a lack of clear learning and career pathways for learners of all ages into and through tertiary education.

7.68 Learners do not always 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.

7.69 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

7.70 In Wales, research and innovation 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 research and innovation becoming a more integral part of tertiary education provision – particularly at the teaching level because of the disparate nature of the delivery structures.

7.71 UKG invests less in Welsh research and innovation than in the rest of the UK. EU structural and development funds have filled a gap in capacity-building, but these are set to be phased out in the coming years. Wales is engaging strongly with the emerging place based agenda in the UK Government and is establishing a common understanding of research and innovation strengths in order to communicate these better externally.

7.72 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.

This 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.

7.73 Additionally, the level and pace of research and innovation 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 the Welsh Government, thus facilitating greater coordination and alignment between Government and the new body on research and innovation matters. The 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 research and innovation in Wales.

Data collection and knowledge sharing

7.74 The June 2018 Weingarten Review of Systems for Monitoring and Improving the Effectiveness of Post-compulsory Education in Wales[15] 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'.*

7.75 The current absence of an effective data collection, analysis and dissemination system across the tertiary education sector 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

7.76 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.

7.77 Maintaining the status quo would perpetuate challenges for the Welsh Government in forging a partnership with HEFCW and the Higher Education 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.

7.78 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 tertiary education sector. Coherence and consistency of approach is essential for

[15] Welsh Government | A review of systems for monitoring and improving the effectiveness of post-compulsory education and training.

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 Further Education and sixth form functions within the Welsh Government and transferring all HEFCW functions to the Welsh Government (Possible)

Description of the key elements of this option

7.79 This would result in no change for sectors dealing with further education, apprenticeship and local authority maintained school sixth form provision. It would result in significant changes for the higher education sector as it would transfer HEFCW's current responsibilities for regulation, funding, and quality assurance etc. to the Welsh Government.

7.80 As the Welsh Government would have direct control over strategy, planning and funding, it would strengthen Welsh Government leverage over the tertiary education sector (and the higher education sector in particular) as a whole.

7.81 This option has two variants:

- **Option 4a**: Retaining all further education / work based learning / sixth form functions within the Welsh Government and transferring all HEFCW functions to the Welsh Government.
- **Option 4b**: As Option 4a, but with a separate body responsible for research, namely, Research and Innovation Wales.

Key advantages of Option 4a and 4b

7.82 There would be increased Welsh Government control over strategic direction, with the 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 tertiary education sector through greater simplicity and the removal of layers of bureaucracy.

7.83 Centralisation would bring planning and funding together in the same organisation – thus creating (as with option 6) a single line of sight, albeit within the 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 19).

7.84 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.

7.85 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 Higher Education and the industrial research base. There could

be economic benefits of research and innovation being a part for everything that happens, including at a teaching level.

Key disadvantages of Options 4a and 4b

7.86 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, further education institutions and higher education institutions are classified as Non-profit Institutions Serving Households (NPISH), 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.

7.87 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 the Welsh Government education budgets.

7.88 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 the Welsh Government from UK government.

7.89 The extent to which the ONS risk applies to this option is likely to depend on how much control the Welsh Government would have over higher education institutions.

7.90 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.

7.91 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-today operations of the higher education sector.

7.92 If option 4a (full centralisation) were adopted the level and pace of decision making in research and innovation 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 research and innovation as a distinctive face to engage with UK Research and Innovation.

7.93 Ultimately a Bill to progress this option is unlikely to pass due to strong opposition and lobbying on behalf of the higher education sector. There would be strong opposition by the higher education sector to the removal of an 'arm's length' body, particularly because of concerns about institutional autonomy and the Haldane principle.

7.94 UK Research and Innovation 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".

7.95 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

7.96 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 higher education 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 tertiary education sector (Preferred)

Description of the key elements of this option

7.97 This option involves the transfer of powers and agreed functions of the Welsh Ministers and all HEFCW functions to a Commission for Tertiary Education and Research.

7.98 In terms of levers, the Welsh Government would set out its requirements in the founding legislation and in the control framework. The legislation would specify the functions, powers, and duties of the Commission. The control framework would determine the degree of control and influence the Welsh Government would have over the Commission itself and, ultimately, over the sector as a whole.

7.99 It is proposed that the following sectors would be brought together - further education, school sixth forms, higher education, apprenticeships, and adult community-based learning.

7.100 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.

7.101 All functions carried out by HEFCW would also transfer to the new Commission. The entire tertiary education sector would thereby be brought together under one regulatory body.

7.102 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 will be transferred to the Commission and a Research and Innovation committee will be established.

7.103 The Bill and delivery of associated schemes would transfer the powers and agreed functions of the Welsh Ministers and HEFCW to the Commission.

7.104 The Commission would be responsible for tertiary education, research and innovation as follows:

- 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;
- funding and regulation of the provision of higher education, including higher education forming part of an apprenticeship in relation to Wales;
- the funding of research and innovation in Welsh tertiary education institutions and collaborating bodies;
- the development, issue and review of Welsh apprenticeship frameworks and the issuing of Welsh apprenticeship certificates;
- the funding and delivery of local authority maintained school sixth form provision and elements of post 16 schools based provision; and
- 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

7.105 The Welsh Government would have the power to take steps 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.

7.106 There would be a single line of sight with one arm’s length body to oversee the whole tertiary education sector, which will improve strategic planning and help to prevent duplication and gaps in provision. The Commission will promote collaboration between institutions / 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 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.

7.107 The Commission would also promote more effective synergies as the body would fund both Further Education and Higher Education.

7.108 There would be a more joined up and collaborative tertiary education 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.

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

7.110 The Commission would possess sufficient levers to influence universities as appropriate, this would address the current issues faced by HEFCW.

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

7.112 Establishing the Commission would provide the opportunity to implement a consistent approach across the sector regarding investigating complaints and managing appeals, thus demonstrating a commitment to meeting the needs of learners.

7.113 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.

7.114 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 take steps to ensure that no funding is provided for research that does not support these outcomes.

7.115 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 help ensure a consistent approach to investigating complaints and managing appeals, across the sector.

7.116 The creation of the Commission would provide an opportunity to align professional standards and qualifications to practice (teaching at tertiary education level) across Post 16 provision.

7.117 This option would also allow for alignment of policy intentions with the 2018 Act for post 16 learners.

7.118 Establishing the Commission may also provide an opportunity to address the inconsistent approach to assessment, evaluation, and performance improvement across the sector.

Key disadvantages of Option 6

7.119 The scale of change could, potentially, be disruptive for the tertiary education 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 (further education, apprenticeship providers, and local authority maintained school sixth forms) would be further removed from the Welsh 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 help ensure relationships between the Commission, the Welsh Ministers and Welsh Government 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 the 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, a comparison between the costs of operating a new system with the cost of the current arrangements cannot be made. However, it is anticipated that a large number of benefits would be realised through the establishment of the Commission (see Chapter 19). 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 research and innovation to become the 'poor relation' of education by becoming a funding mechanism for institutions if it is subsumed into the higher education funding route, but this will be mitigated by the creation of the Research and Innovation committee and the public appointment of the committee Chair.

Summary

7.128 The Welsh Government identified option 6, the creation of a single body to fund and regulate the whole of the tertiary education sector, as the preferred option as this is

the only option with the potential to address all of Professor Hazelkorn's recommendations. Responses to the White Paper 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 tertiary education 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 tertiary education sector and is therefore the Welsh Government's preferred option.

Tertiary education reform - Options evaluation moderated score sheet

Table 7.1: Extent to which options respond to the Welsh Government's High Level Goals and Objectives for Reform

High Level goal & objectives	Option 1	Option 2	Option 3	Option 4a	Option 4b	Option 5a	Option 5b	Option 5c	Option 6
To be responsive to employer needs and address skills gaps	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	0	0	0	1	2	0	0	2	2
To improve apprenticeship opportunities	0	0	0	1	1	1	1	1	2
To raise standards for all; improve learner participation, progression, performance, and outcomes.	0	1	0	1	1	2	2	2	2
To improve the curriculum offer	0	0	0	1	0	1	1	1	2
To improve the learner experience and capture the learner voice.	0	0	0	1	1	1	1	0	2
To improve the reputation, agility and direction of the tertiary education sector.	0	0	0	1	0	1	1	1	2
To introduce an improved, compliant, and effective sector wide data collection, analysis and dissemination system that ensures timely and relevant information	0	1	0	2	2	1	1	1	2

High Level goal & objectives	Option 1	Option 2	Option 3	Option 4a	Option 4b	Option 5a	Option 5b	Option 5c	Option 6
about tertiary education in Wales is available for all who need it.									
To reduced unnecessary course duplication and competition across the tertiary education sector.	0	1	-1	1	0	1	1	1	2
To improve the coherence and consistency of financial and performance monitoring and quality assurance.	0	0	-1	1	1	1	1	1	2
To improve community use of tertiary education facilities and greater connectivity.	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	7th	9th	2nd	=4th	=4th	=4th	3rd	1st
Options Appraisal Workshop Classification (Discounted / Preferred / Possible)	Discounted	Discounted	Discounted	Possible	Discounted	Discounted	Discounted	Discounted	Preferred

Chapter 8. Detailed options for reform - Governance of the Commission

Current arrangements and the case for change

HEFCW

8.1 HEFCW is a Welsh Government sponsored body established under 62(1)(b) of the 1992 Act.

8.2 It is the body responsible for the regulation of higher education in Wales, under powers contained in the 2015 Act, and for administering funds made available by the Welsh Ministers for the purpose of providing financial support to providers of higher education in Wales for activities relating to the provision of higher education, research, and associated activities. It also provides funds for prescribed higher education courses at further education colleges.

8.3 In 2021/22 HEFCW will manage a budget in excess of £213m. Its Chief Executive is the designated Accounting Officer, having a specific responsibility relating to the use and safeguarding of public funds made available by the Welsh Government.

8.4 The 1992 Act specifies that the Council shall consist of not less than 8 nor more than 12 members, including the Chair and Chief Executive.

8.5 As the statutory regulator of higher education 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; and
- developing a Financial Management Code and monitoring the compliance of providers of higher education with the Code.

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

8.7 HEFCW currently has a Quality Assessment Committee constituted under section 25 of the 2015 Act. Its terms of reference indicate a membership of up to 10 members. As of April 2021, its membership consists of 9 members (including three from HEFCW); two observers and HEFCW officers in attendance.

8.8 HEFCW also has powers under section 8 of Schedule 1 of the 1992 Act enabling it to establish a committee for any purpose. The 1992 Act enables the Council to set the number and terms of members and provides for the membership to include persons who are not members of the Council.

8.9 Under these powers HEFCW has established a non-statutory Research Wales Committee to advise Council on its Research, Innovation and Engagement strategies, make recommendations (including recommendations in relation to the Council's Research Wales Innovation Fund), 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 14 ordinary members, to include at least two members of Council. The Committee chair and deputy chair are also Council members. As of April 2021, the Committee has 12 members (of which four are from HEFCW's Council); five observers and several HEFCW officers in attendance.

8.10 The 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 tertiary education 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 UK Research and Innovation (UKRI) on behalf of Wales, to take responsibility for the strategic and dynamic use of public funds for research and innovation.

Partnership Team

8.11 The Partnership 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 the Welsh Government's arrangements for the oversight of its sponsored bodies.

8.12 The Partnership Team fulfils the following principal functions:

- Monitoring and liaising with HEFCW with regard to its annual grant in aid budget and its financial position throughout the year.
- Confirming the Minister for Education's policy priorities for the higher education sector through the Minister's remit letter to the Council.
- Monitoring HEFCW's operational and financial performance against business and financial plans and remit letter activities and advising Ministers as appropriate.
- Assessing and monitoring risks associated with the delivery of HEFCW's key objectives.
- Overseeing arrangements for the appointment of the chair and members of HEFCW.
- 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 the delivery of higher education.

Public Bodies Unit

8.13 The partnership team is supported by the Public Bodies Unit, further information on the role and functions of this unit can be found at paragraph 3.108 – 3.110.

Options considered and preferred approach

8.14 Chapter 7 sets out an appraisal of approaches to tackling the issues facing the tertiary education and research sector. Given that the preferred option, the creation of the Commission, has been agreed, the governance arrangements for the new

organisation must change in order to reflect the new body's changed powers and duties.

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

Option 1 - Business as Usual

8.16 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.

Key advantages of Business as Usual

8.17 There would be no disruption to current arrangements

Key risks of Business as Usual

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

Option 2 – The Preferred Option - A moderately-sized governance board with statutory Research and Innovation and Quality Committees

8.19 HEFCW would be dissolved, and the new Commission established, with responsibility for oversight of learning and research across the tertiary education sector.

8.20 The 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 Bill will also require the Commission to establish the Research and Innovation Committee (with a chair appointed by Welsh Ministers and the remaining membership determined by the Commission) and a Quality Committee whose membership will be determined by the Commission.

8.21 The Chair of the Research and Innovation Committee will be the deputy chair of the Commission.

8.22 The Commission will have the ability to create its own additional committees as it considers appropriate to carry out its functions.

8.23 All committees would be accountable to the Commission's board.

8.24 The Commission relationship with the Welsh Government would be overseen by a Welsh Government partnership team.

8.25 Members of the Commission and the Chair of the Research and Innovation Committee would be appointed via a public appointments process.

8.26 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.

8.27 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 two representative members of the wider tertiary education workforce trade unions to represent academic and non-academic staff.

8.28 The Technical Consultation proposed for two 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 National Union of Students (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

8.29 Constituting the governance of the Commission in this way is intended to 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.

8.30 A statutory basis for the Research and Innovation Committee would give this area greater prominence and would provide a vehicle to engage and collaborate with UK Research and Innovation on behalf of Wales.

8.31 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 the Research and Innovation Committee.

Key risks associated with the preferred approach

8.32 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.

8.33 A third option was set out in the Technical Consultation, which was made the subject of wide consultation during the spring of 2018.

8.34 This approach suggested legislating for the establishment of a Governance Board of nine to fifteen members, including the Chair, CEO and learner representatives, and a Research and Innovation Committee of six to nine members.

8.35 It proposed the setting in legislation of the establishment of a further seven committees to look at key areas across tertiary education:

- 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

8.36 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.

8.37 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

8.38 In response to the consultation[16], 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.

8.39 There was also a concern that in option 3, workforce representatives were not included, and the Board would therefore not reflect their perspective.

8.40 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.

Summary

8.41 The preferred option enables the Commission to determine committees that it may require to fulfil its functions. In addition, the Commission, as a sponsored body, will be governed by the Welsh Government Framework Document, which includes the requirement for an Audit committee.

[16] Welsh Government | Public Good and a Prosperous Wales – the next steps

Chapter 9. Detailed options for reform - The relationship between the Welsh Government and the Commission

Current arrangements and the case for change

9.1 Currently, as a sponsored body, HEFCW 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.

9.2 In Welsh Government there is small team, part of whose role is to manage the HEFCW sponsorship role. 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.

9.3 The Higher Education Division within the Welsh Government 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.

9.4 Currently HEFCW's remit is higher education and research only. One of the principal policy aims in establishing the Commission is to create a body which is able to deal with the strategic planning and funding aspects of the tertiary education system in Wales as a whole including research and innovation (see Chapter 3).

Options considered and preferred approach

Option 1 - Business as usual

9.5 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.

Key advantages of Business as Usual

9.6 There would be no disruption to current arrangements. HEFCW would continue to fund higher education provision, research and related activities and funding allocated to HEFCW would continue to be managed via the Welsh Government sponsor team.

Key risks of Business as Usual

9.7 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.

9.8 Currently the mechanism of the annual remit letter does not always facilitate long term planning and there is a risk that the business as usual approach would mean this would continue.

9.9 There would be a lost opportunity to encourage the entire tertiary education sector to provide sustainability, coherence, and effectiveness across sixth forms, further education, higher education and apprenticeships providers.

Option 2 – The preferred approach – Strategy for tertiary education and research

9.10 A new statutory duty would be imposed on the Welsh Ministers to prepare and publish a statement of priorities, setting out the long-term overarching policy and strategic direction for the tertiary education sector and research and innovation in Wales.

9.11 A related duty would be imposed on the Commission to prepare a strategic plan, taking into account the statement of priorities. The Commission will be required to submit their strategic plan in response to the statement of priorities within 6 months of it being published by the Welsh Ministers. The Commission must have consulted on the draft before submission.

9.12 A suite of nine strategic duties would be provided for on the face of the Bill. These would cover a range of matters which the Commission will be expected to promote, encourage, or undertake and are intended to frame the strategic focus of the Commission and underpin the delivery of its functions.

9.13 The statement of priorities, the strategic duties and strategic plan are intended to form a strategic planning framework which will guide the Commission's investment in tertiary education and research, and the discharge of the full range of its functions in support of the priorities as set out in the Welsh Ministers' statement.

9.14 The proposal is to place the Welsh Ministers under a general, ongoing, duty to prepare, publish and maintain the statement of priorities, with the ability to amend or revise these priorities from time to time following future elections or future reshuffles / coalitions. There will be flexibility for the priorities to be amended, however the revisions are not expected to be radical in nature, unless there is a change in government resulting in a change in direction.

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

9.16 The proposed way of managing the relationship between the Commission 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 partnership arrangements; i.e. a framework agreement and a partnership 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.

<u>Key advantages of the preferred approach</u>

9.17 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.

9.18 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.

9.19 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.

9.20 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.

9.21 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.

9.22 By including strategic duties in relation to the key activities the Commission will be expected to encourage, promote, or undertake, these matters will be required to be considered across the Commission's relevant functions.

Key risks associated with the preferred approach

9.23 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.

9.24 If the funding for the priorities becomes subject to cuts during the lifetime of the statement, then the potential benefits could be significantly reduced.

Chapter 10. Detailed options for reform - Welsh Medium Provision

Current arrangements and the case for change

10.1 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.

10.2 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.

10.3 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**
  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**
  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.

10.4 The majority of respondents to the White Paper 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 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

10.5 A Business as Usual (no-change) 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

10.6 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

10.7 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

10.8 It is proposed that the strategic duties to be placed on the Commission will include a duty in relation to Welsh medium tertiary education. This duty 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.

10.9 Whilst it will be a matter for the Commission to determine how it discharges this duty, some examples of how it is envisaged this requirement may be implemented and appropriately monitored by the Commission include:

- planning strategically to positively promote and increase Welsh-medium tertiary education;
- encouraging providers to deliver, develop and increase their Welsh-medium tertiary education, which could be, if appropriate, by way of Outcome agreements;
- encouraging 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;
- monitoring availability and take up of Welsh-medium learning opportunities, and any subjects where the demand for Welsh-medium learning cannot be met currently.

10.10 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.

10.11 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 Bill also enables the Commission to allocate funding to providers to teach Welsh.

10.12 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.

10.13 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.

10.14 It is also proposed that provision be included in the 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.

<u>Key advantages of the preferred approach</u>

10.15 Including a duty related to Welsh-medium education within the Commission's strategic duties, 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.

10.16 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.

10.17 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.

10.18 The Welsh Government considers there to be risk, that if the funding for the Coleg and National Centre was allocated to the Commission, 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

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

10.20 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.

Chapter 11. Detailed options for reform - Registration and regulation

Current arrangements

11.1 HEFCW currently exercises a number of functions under the provisions of the 2015 Act. 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.

11.2 The 2015 Act enables HEFCW to ensure that regulated institutions comply with fee limits and fair access commitments; make provision for the assessment of the quality of education delivered by and on behalf of regulated institutions; and provide oversight of the financial management of regulated institutions.

11.3 A separate administrative system (specific course designation) is currently operated to deal with higher education institutions 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 higher education courses) and they may not be charities. These providers are designated by the Welsh Ministers under the case-by-case designation policy, which is now administered by HEFCW.

11.4 The 2015 Act was introduced in Wales as a response to the changing balance of funding of higher education.

11.5 The principal source of funding for higher education 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 2015 Act. 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.

11.6 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.

Case for change

11.7 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 dissolution of HEFCW.

11.8 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 tertiary education sector, as well as the diversity of funding streams and historic ways of working with both Welsh Government and HEFCW.

11.9 This policy area aligns closely with the Commission's powers in relation to planning and funding (see Chapter 13).

Options considered and preferred approach

Option 1 - Business as usual

11.10 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

11.11 There would be no disruption to current arrangements. HEFCW would continue to fund higher education 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 higher education) and staff currently supporting these areas would not be subject to any change or disruption.

11.12 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

11.13 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 regard to regulation and oversight providers, the following risks are worth highlighting from that report:

- Accelerating competition within the UK and internationally, alongside changes in higher education 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.

11.14 The introduction of the 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.

11.15 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 – Single regulatory system operated by the Commission

11.16 Under the preferred option, the registration and regulatory functions of the Commission will encompass the regulatory relationship between the Commission and providers of tertiary education. 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 regard to widening access.

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

(a) The Commission will be required to establish a register of tertiary education providers.

(b) The 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.

(c) The Welsh Ministers (through regulations), will specify which registration categories will be subject to formal regulation including:
- fee-limits,
- equality of opportunity conditions, and
- eligibility for grant funding from the Commission.

(d) The Commission will also be able to determine conditions of registration in addition to those listed above, which are also outlined in the Bill.

(e) All registered providers will be subject to mandatory conditions of registration related to quality, governance, and financial viability.

Key advantages of the preferred approach

The merits of registration

11.18 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.

11.19 The Welsh Government has concluded that a registration system will be the most effective and flexible legal means by which to implement appropriate regulation across a diverse tertiary education sector.

11.20 In particular, a registration model has been determined as the most effective way by which the 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.

11.21 An effective and future proof system of regulating tertiary education providers in Wales will need to deliver the following:

- proportionate accountability and transparency for tertiary education providers in Wales in receipt of Welsh Government funded tuition fee support and/or direct grant funding from the Commission, particularly in regard to educational quality, financial assurance, and provider governance.
- regulatory requirements that are adjustable to changing circumstances in funding, provider structure, and public need.
- continued and appropriate autonomy for education providers, whilst also ensuring the delivery of Welsh Government strategic objectives.
- value for money for taxpayers together with assurances about the use of public funds.

Future proofing

11.22 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 the 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.

11.23 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 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

11.24 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 publicly accountable and can contribute to the Commission's strategic priorities.

11.25 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

11.26 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.

11.27 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 equality of opportunity, but there will also be clarification of requirements in respect of learner protections, learner complaints, and learner voice and representation (see Chapters 16 and 17). These will form the basis of the Commission's regulatory powers in respect of providers designated for Welsh Government student support.

11.28 Providers predominantly in receipt of non-discretionary grant funding from the Commission will primarily be regulated through the terms and conditions to which the funding is subject. 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.

<u>Key risks associated with the preferred approach</u>

Proportionate regulation

11.29 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.

11.30 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

11.31 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

11.32 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

11.33 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

11.34 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

11.35 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 Bill is to create greater coherence in regulation and direction across the sector.

Risk of need for further primary legislation

11.36 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.

Chapter 12. Detailed options for reform - Quality assurance and enhancement

Current arrangements and the case for change

12.1 Learning providers in all tertiary education 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.

12.2 HEFCW has developed a quality Assessment Framework in line with its statutory remit for the quality of regulated higher education providers under the 2015 Act.

12.3 Under this framework, regulated higher education providers are able to commission any agency on the European Quality Assurance Register to undertake external quality reviews of their provision but currently have chosen to contract QAA as a sector through the higher education representative body, Universities Wales. It is understood by the Welsh Government that there is a framework agreement between Universities Wales and the QAA, plus individual contracts between the QAA and each provider.

12.4 Further education, work based learning and adult learning providers are inspected by Estyn under its own statutory powers under Section 75 of 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 forms[17]. In consultation with stakeholders, Estyn has developed a common inspection framework for all sectors of education and training that it inspects. Estyn, as a Crown Body, is currently funded by, and reports to, Welsh Government.

12.5 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, further education, work based learning 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 higher education programmes delivered in further education institutions as well as within universities.

12.6 There is a need for an approach which allows the Commission to evaluate the effectiveness of the tertiary education 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.

[17] 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.

Options considered and the preferred approach

Business as Usual

12.7 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

12.8 The key advantages of the no change (business as usual) option are:

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

12.9 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 higher education institutions, 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.

12.10 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

12.11 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 tertiary education would remain.

12.12 Hazelkorn indicated that there was a broad view that the overall quality and performance of both the further and higher education sectors is good, and that they broadly meet learner and societal needs.

12.13 However, many challenges were noted including:

- Further education institutions and higher education institutions 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 tertiary education sector and its institutions; and
- while a lot of data is being gathered, it is not necessarily being thought about in a coherent cross-governmental way.

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

Option 2 – The preferred approach

12.15 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.

12.16 The Commission will have a power to produce and publish a quality assurance framework. The framework will set out the Commission's policy in regard 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.

12.17 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.

12.18 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, and education provided on behalf of each institution registered with the Commission.

12.19 The Commission will be able to designate a body to conduct quality assessments of higher education providers. It is expected that this designated body will be on the ENQA register of approved agencies. The functions of the designated quality body will be as follows:
- To conduct assessments of the quality of higher education provided in Wales by registered institutions, at intervals as prescribed in regulations.
- To conduct assessments of the quality of higher education provided in Wales by institutions seeking to be registered by the Commission.
- To provide the Commission with information and advice as required regarding the quality of higher education provided in Wales by registered institutions.

12.20 In order to perform its quality assessment functions, the designated body will have the power to charge providers of higher education fees, as is the current arrangement between higher education providers and the QAA.

12.21 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.

12.22 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.

12.23 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.

12.24 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.

12.25 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.

<u>Key advantages of the preferred approach</u>

12.26 The advantages of the preferred approach are as follows:

- will provide continuity of quality assurance and address stakeholders' desire for quality systems to build on the existing arrangements;
- 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;
- helps ensure that the Commission should have autonomy to develop its own quality framework and drive forward priorities in quality improvement policy across the tertiary education sectors, informed by the Weingarten Review.

- carries a relatively limited financial impact for Estyn and tertiary education providers.

Key risks associated with the preferred approach

12.27 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 young persons aged 16 to 19 and adults over 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.

12.28 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 tertiary education sectors.

12.29 By taking an evolutionary rather than revolutionary approach, there will likely continue to be differences in approach to quality assurance and assessment across the tertiary education 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 tertiary education system.

Option 3 – single designated body to assess quality

12.30 The Technical Consultation consulted on using a single designated body to assess the quality of all provision across the tertiary education 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

12.31 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 tertiary education 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 3

12.32 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.

12.33 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.

12.34 A single body operating across higher and further education may fail to meet the requirements of the ENQA register of approved agencies. This might jeopardise the critical UK-wide and international comparability of Welsh higher education quality assurance.

Chapter 13. Detailed options for reform - Strengthening the link between planning and funding

Current arrangements

13.1 The current arrangements for planning and funding tertiary education provision are split between the functions of the Welsh Ministers and those of HEFCW. Post-16 education and training other than higher education has been directly funded by the Welsh Government since 2006.

13.2 The Welsh Government currently allocates funding to further education 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.

13.3 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

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

13.5 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.

13.6 The activities supported by HEFCW's funding predominantly relate to the provision of HE, teacher training and other activities of higher education institutions in Wales but also include the provision of certain higher education courses by further education institutions in Wales. HEFCW may attach terms and conditions to financial support provided to institutions as it thinks fit.

13.7 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 1992 Act. 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.

13.8 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 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.

13.9 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 2015 Act. 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-higher education) Funding

13.10 Currently, under the 2000 Act, 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.

13.11 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.

13.12 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.

13.13 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.

13.14 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.

13.15 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.

13.16 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.

13.17 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.

13.18 The Welsh Ministers also have functions under the 2002 Act 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 and the Welsh Government Learning Grant Further Education schemes.

13.19 Although there is no specific statutory power dealing with planning, requirements for planning (and funding) related activity for further education institutions, adult learning and sixth form provision are administered via annual terms and conditions of funding.

13.20 A Post-16 Planning and Funding Framework was introduced in 2014 which operationalised and brought consistency and alignment to the planning and funding of further education institution mainstream provision and local authority maintained school sixth form provision. In addition, the Welsh Ministers write annually to principals and chief executives of funded further education institutions notifying them of their policy priorities and also to local authority chief education officers.

13.21 Currently the Welsh Government imposes terms and conditions of funding by way of annual grant award letters issued to further education institutions and local authorities. Terms and conditions of contract are applied to providers of

apprenticeships. Regional Skills Partnerships recommendations are communicated annually to further education institutions and work based learning providers via separate mechanisms. Responses are monitored and impact assessed via the relevant Welsh Government funding teams.

Case for change

13.22 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.

13.23 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 the proposed planning and funding system.

Options considered and preferred approach

Business as usual

13.24 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.

<u>Key advantages of Business as usual</u>

13.25 There would be no disruption to current arrangements.

13.26 HEFCW would continue to fund higher education 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.

13.27 Welsh Government teams would continue to plan and fund post-16 provision (other than higher education) 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

13.28 The different types of tertiary education providers 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

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

- fund the Commission;
- taking account of academic freedom and institutional autonomy, attach terms and conditions to the funding, such as requiring 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 2000 Act.

13.30 The Welsh Ministers current duties and functions in relation to securing proper and reasonable facilities for post-16 education and training (other than higher education) or functions very similar to them, would in future be vested in the Commission.

13.31 In addition the proposal is for the Commission to be enabled to:

- fund tertiary education (higher education, further education, 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.

13.32 Currently, the planning and funding of tertiary education 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. It is proposed that the Commission's planning and funding relationships with providers and local authorities could be achieved though the negotiation of outcome agreements, other than where provision and services are secured by means of contracts.

13.33 It is envisioned that these would, in effect, be "performance contracts" to be negotiated between the Commission and providers in receipt of recurrent funds, and between the Commission and local authorities in respect of funding allocated for school sixth form provision.

13.34 Should the Welsh Minister specify outcome agreements as a requirement in the funding terms and conditions (see paragraph 3.232 – 3.235), or the Commission chose to implement outcomes agreement, the proposal is that these outcome

agreements should be the mechanism by which the Commission seek to ensure the alignment of the activities of recurrently funded learning providers with the Welsh Government's strategic priorities.

13.35 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 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

13.36 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 tertiary education sector as whole. The proposed planning and funding system 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

13.37 The introduction of the planning and funding system provided for in the Bill would inevitably mean some changes to the current arrangements operated by the Welsh Government and HEFCW.

13.38 The proposed approach 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

13.39 The Technical Consultation proposed a system of regulation and outcome agreements. The proposal was that for learning providers and those delivering higher education provision to receive funding, they would need to:

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

13.40 Regulation and outcome agreements 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. Work based learning providers would not be required to draw up a regulation and outcome agreement as this must be fulfilled via their contractual obligations, inclusive of issues covered in regulation and outcome agreement. It was proposed that regulation and outcome agreements would be used as an enforcement mechanism in the event of a regulatory breach by the provider.

13.41 The proposal was that regulation and outcome agreements would come in two parts: Part I: regulatory requirements, and Part II: agreed outcomes.

Key advantages of option 3

13.42 The regulation and outcome agreement model would combine regulatory oversight with eligibility to receive funding from the Commission

13.43 This option sought to introduce a single 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 regulation and outcome agreement model aimed to provide consistency of approach to regulation and accountability.

Key risks associated with option 3

13.44 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 regulation and outcome agreements 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 higher education courses are currently supported by income derived from student fees as opposed to funding received from HEFCW.

13.45 The consultation feedback demonstrated a mixed response to the proposal to base the Commission's planning, funding and regulatory functions on regulation and outcome agreements. There was some significant opposition to the regulation and outcome agreement 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.

Chapter 14. Detailed options for reform - Research and Innovation

Current arrangements and the case for change

14.1 Government provided research and innovation funding in Welsh tertiary education institutions operates on a 'dual-support' basis.

14.2 Competitively awarded research funding is awarded by UK Research and Innovation, comprising the seven Research Councils and Innovate UK. The Research Councils are a reserved matter and outside of the legislative competence of the Welsh Government.

14.3 Core 'quality-related' grant funding is distributed by HEFCW, based upon institutions' performance in the Research Excellence Framework. HEFCW also distributes postgraduate research funding and higher education innovation funds.

14.4 HEFCW distributes quality-related research funding, higher education innovation funding, and postgraduate research funding to higher education institutions. Welsh Government does not stipulate how these funds are distributed beyond giving HEFCW a broad steer on strategic matters.

14.5 The Welsh Government Office for Science also organises research funding programmes, such as the Sêr Cymru programme.

14.6 To take forward the first recommendation from the Reid Review[18], the already well-established Welsh Government London Office was enhanced to help promote research and innovation activity in Wales with an increased emphasis on the Welsh Government's research and innovation functions.

14.7 As well as higher education institutions and the bodies that are currently funded, other public sector bodies when working with higher education institutions have potential to benefit from research and innovation where they are collaborating providers, but generally do not receive regular funding at present.

14.8 Setting up the Commission will provide the strategic oversight to engage with UK and international funding bodies on behalf of Welsh institutions in a rapidly changing research and innovation landscape.

14.9 Research capacity in Wales is proportionately lower than in England. Recent evidence suggests that Welsh researchers operate at a high level but that there are too few researchers in key areas. Recent reports by Halligan & Bright[19], Elsevier[20] and Research Excellence Framework 2014[21] highlight the quality of research in Welsh higher education institutions, but also illustrate the smaller research capacity in Wales relative to the rest of the UK.

[18] Welsh Government | Review of government funded research and innovation (Reid review)
[19] The Case for Growing STEMM Research Capacity in Wales', Prof Peter Halligan; Dr Louise Bright published by Leadership Foundation for Higher Education, May 2015.
[20] Elsevier for HEFCW and the Welsh Government | International Comparative Performance of the Welsh Research Base 2013
[21] Research Excellence Framework 2014

14.10 The UK Government has published a 'Research and Development Roadmap' setting out action it intends to take to meet its commitment to increasing investment in research and development to 2.4% of GDP by 2027. The creation of the UK Shared Prosperity Fund (to replace EU structural funding) and the Advanced Research and Invention Agency will also significantly change the research and innovation environment for Welsh research institutions and businesses.

Options considered and the preferred approach

Business as Usual

14.11 The creation of the Commission and dissolution of HEFCW necessitates a review of research and innovation funding functions. No change (Business as Usual) would only apply if the Commission were not established.

Key advantages of Business as Usual

14.12 There would be no disruption to current arrangements.

Key risks of Business as Usual

14.13 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.

14.14 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 risk that the share of UK research funding arriving in Wales will reduce.

Option 2 – The preferred approach

14.15 The Commission will take on responsibility for overseeing research funding currently undertaken by HEFCW and will be tasked with aligning funding in with other, competitively-awarded research capacity funding from both UK and Welsh (e.g. Sêr Cymru) sources.

14.16 The Commission will have a Research and Innovation Committee. The committee would oversee the Commission's research and innovation functions, comprising experts in the fields of research and innovation and some members of the Commission.

14.17 The Board of the Commission would have overall responsibility for ensuring that its activities across the tertiary education sector and those of the research and innovation committee are fully aligned with national strategic goals. It should maintain close engagement and collaboration with other funding sources, such as UKRI. The Commission will engage with Research England on common responsibilities such as the Research Excellence Framework.

14.18 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 precise research and innovation projects that the funding should be directed to, and this will not impact on institutions academic freedom.

14.19 The Commission will be placed under a duty to:

- Monitor the performance of its funding programmes;
- promote the results of research and innovation 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

14.20 The Commission would be the national strategic delivery mechanism for research and innovation funding in Welsh tertiary education institutions.

14.21 It would allow alignment and coordinated focus of research and innovation 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.

14.22 Allows easy prioritisation of all the above towards national priorities determined by Welsh Government.

Key risks associated with the preferred approach

14.23 Potential for the Commission to be seen to be too close to higher education and other delivery bodies.

14.24 Potential for lack of coordination with research and innovation funding delivery retained by Government.

Option 3 – Separate arms-length body for Research and Innovation

14.25 A consideration was given to the research and innovation activities being removed entirely from the tertiary education 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 research and innovation funding was provided by the Welsh Development Agency. Although there was no suggestion of recreating the Welsh Development Agency, there was a suggestion that a research and innovation 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 tertiary education body (thus creating the Commission for Tertiary Education and Research).

Key advantages of option 3

14.26 There would have been advantages to this separate body in that it would have a very specific focus and remit on research and innovation specialising in research and innovation for Wales and able to engage directly with UKRI.

Key risks associated with option 3

14.27 The risk of this option was that it would be too far removed from the educational aspects of tertiary education, especially in HE, and consequently the synergies, alignment and coordination of research and innovation 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.

Chapter 15. Detailed options for reform - Supporting and developing apprenticeships in Wales

Current arrangements

15.1 Currently the apprenticeship programme (other than degree apprenticeships) is delivered via contracted work based learning providers (allocated through a full procurement exercise).

15.2 The Welsh Government's Further Education and Apprenticeship Division are responsible for developing apprenticeship policy, managing programme delivery and quality assurance. The Welsh Government holds the apprenticeship budget.

15.3 There is also an independent Provider Assurance Governance Service based within Welsh Government who audit apprenticeship providers, from their learner plans to wage slips. The Provider Assurance Governance Service provide risk-based monitoring reviews of European Social Fund (ESF) funded external training providers based all across Wales who are contracted to deliver Work Based Learning programmes on behalf of the Welsh Government.

15.4 Details of the current apprenticeship system in Wales are set out in paragraph 3.336 – 3.343.

Case for change

15.5 The underpinning legislative framework contained in 2009 Act was not designed with Wales in mind and does not now cater to the distinct needs of the Welsh economy and Welsh society.

15.6 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. Currently, the arrangements in respect of the specification of apprenticeship standards for Wales are inflexible and unresponsive to the changing needs of industry; changes cannot be implemented with the speed needed in a rapidly changing skills environment.

15.7 In addition, 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.

15.8 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 Commission.

Options considered and the preferred approach

Business as Usual

15.9 A Business as Usual (no-change) scenario would only apply if the reform to create the Commission were not taken forward.

Key advantages of Business as Usual

15.10 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.

15.11 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.

15.12 The apprenticeship system is currently being reformed, changes have already been implemented to 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

15.13 Although the current system is able to deliver apprenticeships in Wales the underpinning legislation was not designed with Wales in mind and is therefore not flexible or responsive enough to meet employer's needs and the changing needs of the Welsh economy.

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

Option 2 – The preferred approach

15.15 The preferred approach involves the repeal of the existing provision in the 2009 Act and the creation of new arrangements, leading to a more flexible apprenticeship system to help meet the varying needs of learners and industry in Wales whilst ensuring portability across the UK.

15.16 The approach would help 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.

15.17 The specification of apprenticeship standards for Wales will be replaced by a new flexible Welsh apprenticeship specification which is broader in scope with clearer requirements for the development of apprenticeship frameworks.

15.18 The duty, in section 38 of the 2009 Act, which states that the Welsh Ministers must specify sectors of skill, trade or occupation 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 the Welsh Ministers within the Welsh apprenticeship specification.

15.19 The Bill would provide that apprenticeship frameworks would be able to include industry recognised standards alongside the traditional qualifications. The Commission would be able to contract with external bodies for the development of apprenticeship frameworks or develop them in house.

15.20 All frameworks would be issued by the Commission or a person it has delegated its functions to, with the Commission under a duty to keep all frameworks under review. The Commission would be able to withdraw or modify apprenticeship frameworks

15.21 The Commission will be required to keep and publish a register of issued Welsh apprenticeship frameworks.

15.22 The Commission (or a person it delegates functions to) will be able to issue apprenticeship certificates, the power to charge a fee for this will be maintained. The contents of an apprenticeship to be prescribed within the Welsh apprenticeship specification.

Key advantages of the preferred approach

15.23 The proposed changes are intended to result in a new apprenticeship system which is more flexible, meets 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 the skill needs and level of the Welsh economy.

15.24 The introduction of the Welsh apprenticeship specification and the ability therefore to implement changes without lengthy legislation processes will help to ensure a more flexible system, which is responsive to the needs of industry.

15.25 The Commission, with its oversight of the whole tertiary education sector will be able to help ensure a coherent system with clear pathways for learners to progress. It will help to remove duplication and support equal value between vocational and academic studies with higher level and Degree apprenticeships available as an alternative to traditional full-time undergraduate provision.

15.26 As the rest of the tertiary education 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**.**

15.27 Option 3 was proposed in the Technical Consultation however, comments from stakeholders and further internal review 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

15.28 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

15.29 This option mirrors the proposals in option 2 except for:

- Apprenticeship frameworks are replaced with new apprenticeship pathways.
- The Commission, rather than the Welsh Ministers, 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 as the necessary accountability requirements will be covered in their existing contractual obligations.
- The Technical Consultation suggested that degree apprenticeships, at level six, would be funded via a grant to the Commission and therefore subject to the regulatory outcome agreements process.

Key advantages of Option 3

15.30 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.

15.31 The proposals to give the Commission rather than the Welsh Ministers 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.

15.32 It is anticipated that the management of the relationship between providers and the Commission through the regulatory outcome agreement process (as originally proposed within the Technical Consultation) could help ensure that apprenticeship provision is managed in a similar way to other provision within the tertiary education sector.

Key risks associated with Option 3

15.33 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.

15.34 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.

15.35 During the development of the operating system it has been decided to move away from the proposals of a regulatory outcome agreement 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 the tertiary education sector.

Chapter 16. Detailed options for reform - Protecting the interests of learners

Current arrangements and the case for change

Introduction

16.1 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.

Higher Education Institutions

16.2 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 Higher Education Institution they believe to be at risk of failure.

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

Further Education Institutions

16.4 The Technical and Further Education Insolvency Act 2017 makes provision for a special administration regime to operate alongside ordinary insolvency to seek to ensure that learners are protected in the event that a Further Education 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

16.5 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 work based learning tendering exercise.

School sixth forms

16.6 Arrangements are in place to help 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 must

accompany them. When a pupil leaves a school for a new school a Common Transfer File must be sent to the new school.

16.7 Currently, 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

Higher education institutions

16.8 Higher education 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 higher education providers have procedures in place to handle academic appeals and learner complaints about the quality of learning opportunities.

16.9 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. The 2004 Act allows for the designation of a body to operate a student complaints scheme. The Office of the Independent Adjudicator has been designated as the operator for handling unresolved student complaints in higher education in England and Wales. The Office of the Independent Adjudicator's role currently extends to 'qualifying institutions' defined under the 2004 Act. Providers of higher education are required to pay a subscription fee to the Office of the Independent Adjudicator.

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

Further education institutions

16.11 Further education institutions and apprenticeships have their own complaints procedures. In 2017, the Welsh Government issued guidance to these providers on handling complaints. Further education 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 Office of the Independent Adjudicator unless the learner is undertaking a higher education qualification.

16.12 It should be noted that further education institutions who deliver higher education provision are required to subscribe to the Office of the Independent Adjudicator and that students learning higher education at further education institutions have access to the Office for complaints resolution.

School sixth forms

16.13 The 2002 Act requires the governing bodies of all local authority 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.

16.14 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 in relation to complaints, where appropriate.

16.15 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

16.16 There is a risk that without adequate learner protection arrangements in place, a learner may not be able to complete their studies should their course, campus, or provider close, or if their personal circumstances change. The Welsh Government considers the implementation of clear, coherent, and easily accessible learner protection arrangements to be essential in preventing this occurring.

16.17 Responses to the White Paper suggest that current arrangements are inconsistent and not transparent for the learner, with scope to strengthen the arrangements to protect learners studying at tertiary education providers in Wales.

16.18 Differences and complexities within existing arrangements 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 and do not provide a comprehensive, formalised approach including both practical arrangements and support for learners' progress and well-being.

Complaints handling and resolution

16.19 Research carried out by NUS in 2011 highlighted the issues surrounding the complaints processes within the further education sector, with inconsistency and transparency key issues amongst providers.

16.20 Based on the feedback from the White Paper, 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.

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

Options considered and preferred approach

Business as usual

16.22 In this case a business as usual (no-change) scenario would involve existing arrangements being taken forward largely unchanged.

Key advantages of Business as usual

16.23 The main key advantages of the 'business as usual' option 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 further education and apprenticeship providers in requiring subscription to the Office of the Independent Adjudicator.

Key risks of Business as usual

16.24 At present time there are inconsistencies across providers with variable arrangements for learners depending on where and at what level they are studying.

16.25 There are also differences depending on the part of the sector you are studying in with, for instance, learners studying (non-higher education courses) at further education institutions or apprentices unable to address their unresolved complaints to an independent body.

16.26 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, to help ensure a level playing field a more standardised approach needs to be introduced.

Option 2 – The preferred approach

Learner Protection Plans

16.27 The Commission would 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.

16.28 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 Common Transfer File. 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.

16.29 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).

16.30 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.

16.31 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.

16.32 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.

16.33 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

16.34 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.

16.35 Welsh Ministers will be able to specify by regulations a registered institution or other person in receipt of funding under the 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 Office of the Independent Adjudicator and individual providers build their capacity.

16.36 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

16.37 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 leaners' 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

16.38 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.

16.39 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

16.40 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

16.41 Extending the independent complaints scheme will place additional burden on the Office of the Independent Adjudicator 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 Office of the Independent Adjudicator and existing providers may see their subscription fee increase as new learners are brought within the scope of the scheme.

Chapter 17. Detailed options for reform - Strengthening the learner voice and representation

Current Arrangements

17.1 Currently, there are different arrangements across the tertiary education 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.

17.2 Higher education institutions in the partnership with HEFCW and NUS Wales have embedded student partnership within their institutions with students' unions required to produce an annual quality report and every provider of higher education to have a student charter in place.

17.3 Further education institutions are encouraged to develop their own learner involvement strategy with the help of the Welsh Government's Learner Involvement Strategies Guidance.

17.4 The Further and Higher Education (Governance and Information) (Wales) Act 2014 requires that all further education institutions have student representatives on their governing bodies. A budget of £25,000 was allocated to the further education team to deliver a joint research project with HEFCW, the recommendations for which are being worked through.

17.5 Prior to this, a larger budget of £150,000 was set aside per financial year for the Learner Voice Wales learner satisfaction survey that ran between 2013 and 2015. This covered learners in Further Education, work-based learning, adult community learning and Welsh for Adults. In the past the Further Education team contributed grant funding to NUS Wales and later the Wise Wales student partnership.

17.6 Further education institutions are encouraged to develop collaboration facilitated by NUS Wales, to help embed the learner voice strategies guidance in further education. This was in the region of £25,000 per financial year and was for further education only.

17.7 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.

17.8 Apprentices are represented by the National Society of Apprentices Wales alongside a requirement for a formal learner involvement strategy (as noted above for further education) 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.

17.9 Currently each contracted provider is expected to operate its own learner survey and Welsh Government 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.

17.10 The responses to the White Paper 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.

17.11 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.

17.12 Feedback from stakeholders from both the White Paper and the Technical Consultation 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 tertiary education 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

17.13 A Business as Usual (no-change) scenario would only apply if the reform to create the Commission were not taken forward

Key advantages of Business as Usual

17.14 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

17.15 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.

17.16 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

17.17 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.

17.18 The proposals include the development of a learner engagement Code, which all learning 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.

17.19 The Commission will be under a duty to consult 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.

17.20 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.

17.21 The 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.

17.22 It is envisaged that guidance from the Welsh Ministers will stipulate this will consist of two parts:

- a statement of high level principles to help learning providers establish effective representation for their learners
- practical steps as to how effective engagement and involvement of learners can be achieved

<u>Key advantages of the preferred approach</u>

17.23 The preferred approach will introduce a standardised system across the whole of the tertiary education sector 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 tertiary education they chose to study through.

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

<u>Key risks associated with the preferred approach</u>

17.25 The main risk that respondents to the White Paper and the Technical Consultation 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.

17.26 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

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

- include a learner representative on the Board of the Commission.
- only a National Framework would be developed to bring consistency across the tertiary education 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

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

17.29 Providers will have to ensure that the needs of learners are being taken into account whilst developing and agreeing their outcome measures.

17.30 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.

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

Key risks associated with option 3

17.32 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 tertiary education sector. Instead it was suggested that learner representatives could become observers on the board, with the ability to influence.

17.33 Stakeholder engagement events highlighted that this thinking had reversed, and the NUS (in particular) now prefer two learner representatives to have full board membership status.

Chapter 18. Detailed options for reform - Data, statistics, and research

Current arrangements and the case for change

PLASC, the Post-16 Data Collection and LLWR

18.1 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.

18.2 PLASC is a statutory data collection undertaken every January which 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 within the Welsh Government. 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 the Welsh Ministers, as required in legislation.

18.3 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 in Year 12 or above at any time in the previous academic year and as it is a statutory data collection, all maintained establishments must submit a post-16 collection return.

18.4 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. The majority of the data relates to children of compulsory school age, but a small number of post-16 learners are included

18.5 The pupil data for the post-16 census is held by schools within their management information system 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 authority that maintains them.

18.6 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.

18.7 The Lifelong Learning Wales Record (LLWR) collects learning provision data for post 16 education (non-higher education learners in Wales across the further education, work based learning and adult community learning sectors.

18.8 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.

18.9 Since 2017, LLWR data is only collected 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.

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

18.11 The LLWR collection underpins many aspects of the 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.

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

Higher education data collection

18.13 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 process and publish 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.

Welsh Government

18.14 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 DEWi[22], 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

[22] 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.

PLASC, EOTAS, Post-16, School Workforce Annual Census, National Data Collection, Welsh National Tests, Primary and Secondary attendance, and the Welsh Examinations Database (WED).

18.15 The key driver for reform is to enable the transfer functions and powers to the Commission 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

18.16 Enabling the new Commission to be able to collect and store its own data supports Commission's objective to improve the tertiary education wide data and information system that ensures timely, useful, accessible and relevant information about tertiary education 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.

18.17 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.

18.18 There was a 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.

18.19 The higher and further education stated 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 learners would be a real benefit.

Options considered and preferred approach

Option 1 - Business as Usual

18.20 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

18.21 There would be no disruption to current arrangements. HEFCW and 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

18.22 There would be no tertiary education 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.

18.23 The lack of a centrally managed system would hinder any assessment of value for money, make identifying gaps and duplications difficult and would not enable the provision of timely and relevant information to those who need it.

18.24 Without central oversight of the whole system, it would also be 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 the 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

18.25 The Commission would 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 would gather this information and carry out research and statistical analysis into the progress of learners generally and comparing those in particular categories.

18.26 The Commission would use this information both to inform the exercise of its own functions and to aid policy development by the Welsh Ministers. This would involve processing large amounts of personal data in compliance with the lawful processing requirements of the General Data Processing Regulations.

18.27 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.

18.28 The Welsh Ministers would 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 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.

18.29 The Commission would 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.

18.30 The Commission will also be able to enter into arrangements with third parties to collect and process data on its behalf (e.g. with HESA for higher education data). The Commission may maintain the existing data collection arrangements or make changes if and when it wishes.

18.31 The Commission would be able to 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.

18.32 Finally, the Commission would 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 ICT 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

18.33 The Commission would be in a position to take a broad view of the effectiveness of the tertiary education sector as a whole.

18.34 The benefits of this approach would be that it would 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 further education and sixth 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 further education and Local Education Authority data suppliers.

18.35 A distinct beneficial outcome would 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 further education providers and post-16 directly.

Key risks associated with the preferred approach

18.36 The risks posed by this option are:

- Reliance on a third party for higher education data. Local Education Authorities will continue to be responsible for collecting the initial data from schools and learners and Local Education Authorities and further education institutions would submit data to the Commission instead of Welsh Government. However, the Commission would still be reliant on HESA for higher education 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.

Chapter 19. Costs and benefits

Background

19.1 The full options appraisal has been set out in Chapter 7. This Chapter outline the costs associated with the two highest ranking options (options 6 and 4a), in addition to Business as Usual (option 1).

19.2 The assessment of costs and benefits is centred on the 10-year period 2021-22 to 2030-31. If passed the Bill is expected to receive Royal Assent in summer 2022 and, consequently, it will be during 2022-23 that initial costs are expected to be incurred. The Commission is expected to become fully operational during 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.

19.3 The Regulator Impact Assessment 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 Regulatory Impact Assessment; and
- costs from comparator organisations such as Qualifications Wales.
- a report commissioned from Alma Economics - Cost benefits analysis of education reforms: A Rapid Evidence Assessment (REA) (Appendix B).

19.4 Nevertheless, it has been necessary to make a series of assumptions to complete the calculations. Any assumptions made are explained in the narrative and/or assumptions annex (Appendix A). All cost estimates have been rounded to the nearest £1,000.

19.5 As is standard practice in economic appraisal, the cost estimates have been discounted using HM Treasury's central discount rate of 3.5%.

19.6 A further due diligence exercise will be carried out during 2022-23 to ensure the cost estimates continue to be robust.

Benefits Realisation Plan

19.7 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,
- identify a benefit realisation timeline, and
- form the basis of post programme reviews to determine whether the planned benefits have been realised.

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

19.9 The Benefits Realisation Plan forms part of a suite of programme management documents. Programme benefits will also be reflected in this Regulatory Impact Assessment. To ensure consistency each document will inform the other and they will be treated as an integrated suite of programme information to inform future reviews, including Gateway reviews and for evaluation purposes.

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

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

Preferred option (option 6): Establish the Commission for Tertiary Education and Research

Costs to Welsh Government and the Commission

19.11 Due to the unavailability of key decisions, several significant assumptions have been made around staffing, IT costs and location which could have a large impact on the forecast figures. These assumptions are set out in Appendix A. It is important to note that a change to these assumptions could have an impact on the costings. Modelling of the impact of changes to key assumptions is covered in more detail in Appendix A.

19.12 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.

19.13 Because of the uncertainties at this stage involved in establishing and operating of the Commission, the estimates for this Option have been prepared on a prudent basis using maximum values in key assumptions. As well as this there will be areas of remaining risk. This is calculated to be 7% of total forecast costs following a sensitivity analysis, which amounts to £13.8m. The breakdown of these figures is set out and explained further in Appendix A.

19.14 For option 6, Welsh Government have assumed that the Commission will have a total compliment of up to 169 staff (164 FTE), comprising 59 staff from HEFCW and up to 110 staff from Welsh Government. 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 19.2 at the end of this Chapter, and explained further in Appendix A.

19.15 The total cost of this option is estimated to be £199.5m over the appraisal period (£171.2m in present value terms). This represents an additional cost of £40.1m compared to the Do-Nothing option (£34.1m in present value terms).

Comparator costs

19.16 In determining the costings for option 6, Welsh Government 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 at Appendix A.

Costs to stakeholders

19.17 The potential costs to wider stakeholders across the sector are unknown.

19.18 The process of stakeholder engagement has been on-going as the Bill has been developed. As the Bill moves towards its final stages', further discussions will take place with stakeholders as to any estimated costs to inform the impacts on wider stakeholders.

19.19 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 Bill team and by Education and Skills Research staff during the preparation of this Regulatory Impact Assessment.

19.20 Responses obtained from external stakeholders during the technical consultation focus group activity have also been taken into account.

Impact on bodies within the tertiary education sector

19.21 The following impacts have been considered in relation to the provisions in the Bill.

Statement of priorities, strategic duties, strategic planning cycle

19.22 It is anticipated that the strategic duties will have some impact on providers of tertiary education, the extent of this impact will depend on the approach taken by the Commission to the discharge of these strategic duties and in turn the distance an organisation may need to travel to meet any new requirements, which will vary.

19.23 The approach to strategic planning set out in the Bill is in line with Welsh Government's revised model for managing relationships with arms-length bodies. It has been designed to ensure the Commission, and the wider tertiary education sector have clear aims and objectives which extend over a term of government, thereby enabling planning and funding decisions to be taken within the context of a longer time frame.

Learner engagement code

19.24 It is not anticipated that the learner engagement code, learner protection plan and learner complaints provisions in Part 5 of the Bill will have a substantial financial impact on providers.

19.25 For example, most providers have arrangements in place to ensure learner representation, however, any new guidance will be developed by the Commission in consultation with stakeholders. This guidance is likely to include key principles to learner engagement and practical steps to enhance existing arrangement and assist consistent implementation across the post-16 sector.

Registration of tertiary education providers

19.26 Upon commencement of the registration provisions under the Bill, and the enactment of relevant secondary legislation, there may be some impact on providers of higher education in Wales due to the need to meet the initial conditions of registration.

19.27 Most registration conditions cover matters which are already regulated or assured by HEFCW, but the change in regulator and how regulation is conducted may lead to some transitional administrative impact. The Welsh Government will seek to ensure, when developing relevant secondary legislation, that this impact is minimised to ensure a smooth transition to the new regulatory framework.

Quality

19.28 It is not expected that there will be any major immediate financial 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.

19.29 This is, in part, based on the assumption that the QAA will be the body designated by the Commission to conduct higher education quality assessments.

19.30 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.

Governance

19.31 It is not anticipated that the governance provisions of the Bill will create additional burdens for stakeholders.

19.32 Section 133 of the Bill extends the Welsh Ministers' existing powers to amend or repeal the statutory requirements placed on the governing documents of higher education corporations under the 1988 Act. In exercising these powers, the Welsh Ministers are required to consult with the Commission and any other persons considered appropriate.

19.33 The Welsh Ministers' powers to intervene in the conduct of a further education institution in Wales largely carry forward existing provisions in section 57 of the 1992 Act. The Welsh Ministers' may only intervene in the conduct of a further education institution if one or more of the grounds for intervention set out in the provisions are met, as is the case now.

19.34 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.

19.35 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.

Benefits

19.36 Further benefits for option 6 can be found in detail in Chapter 7.

19.37 The list of anticipated benefits in this section reflects the workings from a series of workshops held with Welsh Government 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 Regulatory Impact Assessment.

19.38 Responses obtained from external stakeholders during the technical consultation focus group activity have also been considered.

19.39 The work undertaken to identify benefits associated with reform and to inform the Regulatory Impact Assessment included a benefits realisation plan and a report undertaken by Alma Economics, whose findings are summarised in this Chapter (see Appendix B for full report).

19.40 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 of policy in respect of tertiary education. This was broadened to also consider evidence on wider education reforms and provide some coverage of other Impact Assessment practices, specifically in Wales. Both academic literature and public sector publications were considered.

19.41 The nature of the benefits identified in this Regulatory Impact Assessment 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."*

19.42 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.

19.43 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.

19.44 It is important to note from the outset that some benefits resulting from the establishment of the Commission may not be realised for several years.

<u>High-Level benefits of creating the Commission</u>

19.45 The benefits realisation work identified several benefits arising from the high-level objectives of the Commission (see also Chapter 7). Most 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.

19.46 Increased public confidence in the tertiary education 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.

19.47 Simplification of the regulatory landscape and more coherent regulation will discharge providers from the compliance burden of dealing with multiple overseeing bodies. Standards of compliance will be clear, and all providers will be overseen by a single body, reducing any confusion currently caused by overlapping roles across the sector between the different agencies.

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

19.48 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 Welsh Government 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.

- 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 backgrounds and other potentially marginalised groups and their peers.

19.49 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 approach aligned with the Programme for Government.

- Integrated and improved evidence base, providing better quality, comparable sector-wide data, and information to inform policy development, and decision making at all levels (the 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 helps ensure timely, accessible, and relevant information about the sector in Wales, and which is available for all who need it (see also Chapter 18). Specifically, more detailed, centralised and publicly available information reduces information asymmetries and improves social mobility. Learners will make better decisions from improved information and improved comparability among providers. With improved collection of and access to data, the Commission and the Welsh Government will be more effective in setting the direction and detail of policy in respect of tertiary education.

- A more coherent and consistent funding model across the sector.

19.50 A clearer, more efficient, and more flexible regulatory system should ensure that the regulatory burden results in appropriate accountability and transparency for tertiary

education providers in receipt of public funds, particularly regarding educational quality, financial assurance, and provider governance.

- Improvement in the financial health of tertiary education providers in Wales

19.51 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.

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

19.52 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 tertiary education 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).

19.53 Research by Alma Economics did not return any specific evidence in the literature concerning how the introduction of the Commission in the tertiary education 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.

19.54 This research also found evidence for additional benefits, not originally identified by the Welsh Government, which may be realised through the creation of the Commission (see Appendix B 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).

19.55 Table 19.1, below, is taken from the Alma Economics report and shows the benefits evidenced in the literature of the creation of the Commission for the 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 the 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).

19.56 The assumptions in Table 19.1 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.

19.57 As costs are currently unknown, the Welsh Government cannot confirm the specific costs for the groups noted in this table, however it should be noted that these activities may not necessarily result in an increase in cost.

Table 19.1. Summary of benefits (Cost Benefit Analysis of Education Reforms - Rapid Evidence Assessment, Alma Economics, page 28)

Benefits Categories	Affected Group	Type of Benefit
Direct	Welsh Government	• 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	• More coherent regulation to comply with (UK Government, 2016b; DIISRTE, 2012). • Less regulatory burden (for low risk PCET providers) (UK Government, 2016a).

Benefits Categories	Affected Group	Type of Benefit
		• More consistency and improved quality across providers (UK Government, 2016a). • Productivity gains for providers from reduced administrative tasks (UK Government, 2016b)
Wider	Learners	• 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).
Wider	Businesses/ Employers	• Greater confidence on the quality and skills of graduates (DIISRTE, 2012). • Private sector productivity boost (UK Government, 2016b, 2016c).
Wider	Taxpayers	• Better value for taxpayers' money (UK Government, 2016c). • Better loan repayment rates through increased productivity (UK Government, 2016c).

Summary

19.58 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 must be based on whether the additional costs are outweighed by the benefits.

Table 19.2: Summary of costs - Option 6 (Establish the Commission for Tertiary Education and Research)

	2021-22 (£,000)	2022-23 (£,000)	2023-24 (£,000)	2024-25 (£,000)	2025-26 (£,000)	2026-27 (£,000)	2027-28 (£,000)	2028-29 (£,000)	2029-30 (£,000)	2029-31 (£,000)	Total (£,000)
Transitional costs											
Staff Costs	-	-	109	-	-	-	-	-	-	-	109
Board Costs	-	50	191	-	-	-	-	-	-	-	241
Redundancy	-	-	2,030	-	-	-	-	-	-	-	2,030
Non-payroll staff costs	-	30	262	-	-	-	-	-	-	-	292
IT Costs - capital	-	1,710	3,191	-	-	-	-	-	-	-	4,901
Other corporate costs	-	5	270	-	-	-	-	-	-	-	275
Location costs - capital	-	15	1,687	-	-	-	-	-	-	-	1,702
Programme Costs	-	-	-	-	-	-	-	-	-	-	-
Total	**-**	**1,810**	**7,740**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**9,550**
Running Costs											
Staff Costs	-	-	5,474	13,137	13,137	13,137	13,137	13,137	13,137	13,137	97,433
Board Costs	-	-	199	477	477	477	477	477	477	477	3,538
Redundancy	-	-	-	-	-	-	-	-	-	-	-
Non-payroll staff costs	-	-	161	388	388	388	388	388	388	388	2,877
IT Costs - capital	-	-	2,142	5,141	5,141	5,141	5,141	5,141	5,141	5,141	38,129
Other corporate costs	-	-	272	654	654	654	654	654	654	654	4,850
Location costs - capital	-	-	142	340	340	340	340	543	340	340	2,725
Programme Costs	-	-									
Total	-	-	8,390	20,137	20,137	20,137	20,137	20,340	20,137	20,137	149,552
Business as Usual	**15,656**	**15,656**	**9,133**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**40,445**
Total	**15,656**	**17,466**	**25,263**	**20,137**	**20,137**	**20,137**	**20,137**	**20,340**	**20,137**	**20,137**	**199,547**

Option 4a – Centralisation

Costs

19.59 Table 19.3 below shows the estimated costs of centralising HEFCW and the Further Education Division within the Welsh Government for the next ten years, the costs of which fall to the Welsh Government. The assumptions for costing this option are set out in Appendix A.

19.60 The total cost of this option is estimated to be £172.4m over the appraisal period (£148.5m in present value terms). This represents an additional cost of £13.8m compared to the Do-Nothing option (£12.1min present value terms).

Benefits

19.61 The benefits for option 4a can be found in detail in Chapter 7.

Summary

19.62 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).

Table 19.3: Summary of Costs - Option 4a (Centralisation)

	2021-22 (£,000)	2022-23 (£,000)	2023-24 (£,000)	2024-25 (£,000)	2025-26 (£,000)	2026-27 (£,000)	2027-28 (£,000)	2028-29 (£,000)	2029-30 (£,000)	2029-30 (£,000)	Total (£,000)
HEFCW											
Staff Costs	3,195	3,195	-	-	-	-	-	-	-	-	**6,390**
Board Costs	119	119	-	-	-	-	-	-	-	-	**238**
Redundancy	-	-	2,031	-	-	-	-	-	-	-	**2,031**
Non-payroll staff costs	100	100	-	-	-	-	-	-	-	-	**200**
IT Costs	293	293	-	-	-	-	-	-	-	-	**586**
Other corporate costs	186	186	-	-	-	-	-	-	-	-	**372**
Location costs	142	142	-	-	-	-	-	-	-	-	**284**
Programme Costs	-	-	-	-	-	-	-	-	-	-	**-**
Total	**4,035**	**4,035**	**2,031**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**10,101**
Welsh Government											
Staff Costs	8,245	8,245	11,939	11,939	11,939	11,939	11,939	11,939	11,939	11,939	**112,002**
IT Costs	83	83	434	239	239	239	239	239	239	239	**2,273**
Non-payroll staff costs	2,720	6,491	5,539	4,747	4,747	4,747	4,747	4,747	4,747	4,747	**47,979**
Total	**11,048**	**14,819**	**17,912**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**162,254**
Total	**15,083**	**18,854**	**19,943**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**16,925**	**172,355**

Option 1 – do nothing/Business as Usual

Costs

19.63 Technically, as a ‘do nothing’ option, there should be no additional costs associated with this option.

19.64 Table 19.4 below shows the estimated costs of maintaining HEFCW and the Further Education Division within the Welsh Government for the next ten years (baselined at budgets for 2019/20), the costs of which fall to the Welsh Government.

19.65 The cost of the Do-Nothing options is estimated to be £158.6m over the appraisal period or £136.4m in present value terms.

Benefits

19.66 The benefits for option 1 can be found in detail in Chapter 7.

Summary

19.67 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.

Table 19.4: Summary of Costs - Option 1 (Do Nothing)

	2021-22 (£,000)	2022-23 (£,000)	2023-24 (£,000)	2024-25 (£,000)	2025-26 (£,000)	2026-27 (£,000)	2027-28 (£,000)	2028-29 (£,000)	2029-30 (£,000)	2029-30 (£,000)	Total (£,000)
HEFCW											
Staff Costs	3,195	3,195	3,195	3,195	3,195	3,195	3,195	3,195	3,195	3,195	**31,950**
Board Costs	119	119	119	119	119	119	119	119	119	119	**1,190**
Redundancy	-	-	-	-	-	-	-	-	-	-	-
Non-payroll staff costs	100	100	100	100	100	100	100	100	100	100	**1,000**
IT Costs	293	293	543	543	543	543	543	543	543	543	**4,930**
Other corporate costs	186	186	186	186	186	186	186	186	186	186	**1,860**
Location costs	142	142	142	142	142	142	142	142	142	142	**1,420**
Programme Costs	-	-	-	-	-	-	-	-	-	-	-
Total	**4,035**	**4,035**	**4,285**	**4,285**	**4,285**	**4,285**	**4,285**	**4,285**	**4,285**	**4,285**	**42,350**
Welsh Government											
Staff Costs	8,694	8,694	8,694	8,694	8,694	8,694	8,694	8,694	8,694	8,694	**86,940**
IT Costs	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	**28,400**
Non-payroll staff costs	87	87	87	87	87	87	87	87	87	87	**870**
Total	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**11,621**	**116,210**
Total	**15,656**	**15,656**	**15,906**	**15,906**	**15,906**	**15,906**	**15,906**	**15,906**	**15,906**	**15,906**	**158,560**

Chapter 20. Integrated Impact Assessments

20.1 Specific impact assessments have also been undertaken, which cover the whole of the Bill. A summary of the impacts is included below. All impact assessments have been published[23] and where the impact is directly relevant to a particular provision, it has been identified within the relevant assessments. Specific impact assessments have been undertaken on the following topics:

- Children's Rights
- Equality
- Rural Proofing
- Data
- Welsh Language
- Biodiversity
- The Socio-economic Duty
- Justice Impact Assessment

Children's Rights

20.2 The potential impacts identified on children via the Children's Rights impact assessment have been positive; The Commission will promote a shared focus for the tertiary education sector, improving information, advice and services to learners and businesses across Wales.

20.3 The intended positive impacts on children and young people are:

- Strengthening the arrangements to protect learners studying at tertiary education providers.
- Ensuring that learning and training opportunities are of the highest quality and deliver the desired learner outcome.
- Guaranteeing equal respect for both vocational and academic routes.
- Clearer access to courses.
- A clear link to career pathways by linking in with the employment sector.

20.4 The Commission will be required in law to ensure that suitable provision is available for young people to access tertiary education.

20.5 With its overview of all tertiary education learning providers, the Commission will be perfectly placed to ensure that gaps in provision are addressed and that barriers faced by different groups of young people are identified and resolved.

20.6 In the long-term it is hoped that this will increase the ability of learners to access sustainable employment and career success, working to ensure that the correct learning opportunities are available to match the needs of the Welsh labour market.

20.7 This in turn will lead to greater potential for employability resulting in associated improvements in income levels, health and wellbeing for children and young people and their families for current and future generations.

20.8 No negative impacts on children have been identified.

[23] Welsh Government | Tertiary Education and Research (Wales) Bill - Impact assessments

Equality

20.9 The Equalities Act 2010 places a General Equality Duty on Welsh public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, as well as to advance equality of opportunity and to foster good relations between people who share a protected characteristic and those who do not. The Commission will replace HEFCW as a 'public authority' in the Equality Act 2010 and will be required to adhere to the specific duties under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

20.10 An Equality Impact Assessment (EIA) has been completed for the Bill. This has indicated that the proposals as a whole are likely to positively affect people with protected characteristics.

20.11 It has identified a distinction between those aged up to the age of 19 and those aged over 19 in further education. The provisions proposed within the Bill provide for a continuation of existing duties to secure proper and reasonable facilities for further education and training for learners aged 16 to 19 and 19+ as is currently contained in section 31 of the 2000 Act.

20.12 Section 90 of the Bill places a duty on the Commission to secure proper facilities for further education and training for persons aged 16 to19, suitable the requirements of individuals and which meet local curriculum entitlements under the Learning and Skills Act 2000.

20.13 Section 91 of the Bill places a duty on the Commission to secure proper facilities for relevant further education and training for eligible persons aged 19 and over. The Commission must also secure reasonable facilities for further education and training for persons aged 19 and over. Facilities are reasonable if they are of a quantity and quality that the Commission can be reasonably expected to secure.

20.14 The effect of these provisions is to create slightly differing criteria for proper facilities which must be secured for young persons aged 16 to 19 and adults over 19. However, the inclusion of a duty to secure proper facilities for persons aged 19 and over reduces the previous distinction under the 2000 Act.

20.15 Provision for which proper facilities must be secured for people aged 19 and over will be specified in regulations, and therefore may be more specific than the duty for persons aged 16 to 19. This is to enable Welsh Government and the Commission to most effectively allocate limited financial resources.

20.16 The broader range of qualifications and previous education which persons aged 19 and over might bring to further education and training when compared with persons aged 16 requires that regulations allow the provision prioritised to be specified, so as to control costs and make clear which provision will be available. This is not necessary for the provision for persons aged 16 to 19, where there are already well established patterns of provision for school leavers who largely enter education at this age with similar prior qualifications and educational background.

20.17 The power to make regulations regarding eligible persons for the duty to secure proper facilities for persons aged 19+ includes a power to make reference to age. This could create further possibilities for age discrimination, the equality impacts of

which would need to be fully assessed when preparing and presenting those regulations.

Rural Proofing

20.18 The provisions proposed within the Bill will apply to anyone undertaking or providing tertiary education or research in Wales, including learners and providers based in rural locations.

20.19 Discussions held with stakeholders during the Technical Consultation suggested that access to choice was seen as the greatest challenge for rural areas in Wales, for example in terms of limitations in non-tertiary areas or for access to higher education.

20.20 For providers, provision is more costly in rural areas although this can be mitigated to some extent through online or blended learning, as long as learners have access to the relevant technology. Support for learners can be more difficult to deliver over a sparse rural area.

20.21 It is envisaged that the extent of the impact of our proposals on rural communities will be moderate. The establishment of the Commission should have a positive impact on meeting the needs of learners in both rural and urban areas throughout Wales and will help to establish clear and flexible learning and career pathways, providing better information and advice to learners and potential learners wishing to participate or progress in post 16 education and training.

20.22 The Commission will have an overview of all tertiary education providers along with the education and training opportunities that those providers deliver. It will therefore be well placed to identify gaps in provision, including problems faced by learners in parts of Wales where they are unable to access the courses they require, and problems faced by businesses where they are unable to recruit appropriately skilled workers.

20.23 Provisions within the Bill will ensure that the Commission must, when securing further education and training, have regard to the requirements of employers in relation to the education and training required in different sectors of employment.

20.24 The Commission must promote tertiary education and research in a way that contributes to the development of a sustainable and innovative economy in Wales. In discharging this duty (section 7) it must have regard to: *the reasonable requirements of industry, commerce, finance, the professions and other employers regarding tertiary education and research and innovation.* By working closely with Regional Skills Partnerships, the Commission will have the opportunity to review the learning provision available, in order to align this with the skills needs of local businesses and learners.

20.25 Long-term, this should help learners to access the skills required to obtain high quality employment within an increasingly competitive labour market.

20.26 As the impact on rural learners will be moderate and it is not proposed that the provisions of the Bill will have a direct impact on rural communities, a full rural proofing impact assessment has not been completed.

Data

20.27 The Universities and Colleges Admissions Council (UCAS) provides applications and admissions services to higher education institutions and collects personal data from prospective learners that apply to higher education providers. The majority of higher education providers use UCAS to manage their entry of higher education courses.

20.28 The Bill creates a new Commission to oversee the tertiary education providers in Wales and the Commission will receive this data from UCAS.

20.29 The Bill will provide the Welsh Ministers with power to require "application-to-acceptance" information from bodies providing admissions services to Welsh higher education institutions (i.e. UCAS). They will be able to provide this information to approved persons in the same way and with the same conditions and safeguards as the Secretary of State in section 80 of the Higher education and Research Bill (HERA). The Bill will also have a power to provide the information to the Commission, which should be under a duty to take account of the data when exercising its functions.

20.30 The Commission will be able to publish research derived from its analysis of data, including statistical information, subject to a requirement that all personal information is anonymised. It will also be able to contract third parties to undertake such publication, subject to the same restriction on anonymity.

20.31 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.

20.32 The Bill amounts to a creation of new powers/duties regarding personal data. The Commission will ensure that data protection compliance is fully considered once it has been established.

20.33 The legislation allows the Commission to require information from UCAS in regard to its application to acceptance data. The Welsh Government currently receives this information from UCAS, and the new power provides a legal basis for this exchange of information.

20.34 The Welsh Government has engaged with UCAS, who have confirmed that they already have an agreement in place for the Office for Students in England to provide this data. Therefore it is considered that there will be minimal impact to learners in implementing this power.

20.35 Compliance with those notices is enforceable by injunction, made on application of the Welsh Ministers.

20.36 The Commission will have powers to require any person that receives funding from it (or responsibility for regulating) to provide any information it needs for the exercise of its functions.

20.37 The number of individuals likely to be affected as a result of our proposals is believed to be very small. The system currently operates without being enforceable

by injunction and this element is only being introduced as a precaution to ensure the information will be available in the future if colleagues or providers change. Officials envisage that it is unlikely that this power will be used but have requested the power to safeguard the system.

20.38 The Data Privacy Impact Assessment has been cleared by the Freedom of Information and Data Protection Senior Case Advisor.

Welsh Language

20.39 Cymraeg 2050 is Wales' national strategy for increasing the number of Welsh speakers to a million by 2050. The Welsh Government is fully committed to the target of a million Welsh speakers included in the Taking Wales Forward programme for government, and the Programme for Government 2021-2026. A thriving Welsh language is also part of one of the seven well-being goals set out in the WFG Act, as explained above.

20.40 The Commission will have a critical role to play in the achievement of the transformational change that is required across the tertiary education sector to achieve the Cymraeg 2050 target. The Commission will instrumental in the achievement of key aims within the 2050 strategy including 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' These aims include ensuring that all learners can develop their Welsh Language skills to their full potential and the encouragement of robust linguistic progression from one phase of education and training to the next; and to improve the ways of providing central support for Welsh-medium education and training.

20.41 The Bill places a strategic duty on the Commission to promote tertiary education through the medium of Welsh. The Commission will be required to encourage demand for, and participation, in tertiary education provided in Wales through the medium of Welsh; take all reasonable steps to ensure that there is sufficient tertiary education provided in Wales through the medium of Welsh to meet demand; and encourage the provision of tertiary education through the medium of Welsh by registered providers in Wales, and other persons providing tertiary education funded or otherwise secured by the Commission

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

20.43 The Welsh Government also has a statutory obligation to fully consider the effects of its work on the Welsh language. Considering the impacts, both positive and negative, of its work on the Welsh language, and Welsh speaking people and communities is an essential part of the policy development and delivery process.

20.44 Increasing the opportunities for learners to continue into post-16 Welsh medium education and training, whether in schools, further education colleges, apprenticeships or higher education will allow them to further develop their Welsh

language skills. This increase in the number of individuals with Welsh language skills at a range of levels will benefit the communities they live in and will help to create a bilingual workforce.

Biodiversity

20.45 The Commission will be subject to the section 6 duty under the Environment (Wales) Act 2016 and will therefore be obliged to seek to maintain and enhance biodiversity in the exercise of its functions. This will include embedding and raising awareness of biodiversity through the authority's day to day activities, policies, plans, programmes, and projects. In addition, the Commission will have a duty to promote the pursuit of a civic mission by institutions in Wales within the further and higher education sector. Within this legislation civic mission is defined as "action for the purpose of promoting or improving the economic, social, environmental, or cultural well-being of Wales (including action aimed at achieving any of the well-being goals)".

20.46 The Commission will need to reflect on progress against the civic mission duty within their annual reports, alongside their other priorities. An implementation project has been set up and the establishment of the new Commission is being considered as part of that project. Although the Bill itself will not affect species and habitats, until more information is known regarding the location of the premises for the new body, the impact on local environments cannot be fully assessed. However, these factors will be taken into account when deciding upon the location of the Commission.

20.47 To demonstrate compliance with Section 6 of the Environment (Wales) Act 2016, a Biodiversity Impact Assessment has been completed and no impacts were identified. However, once established, the Commission will be under a duty to publish a plan and a triannual report on how they are complying with the duty.

The Socio-economic Duty

20.48 The socio-economic duty requires relevant public bodies, including Welsh Ministers to have due regard to the need to reduce inequality of outcome that results from socio-economic disadvantage. The Socio-economic Duty applies to the Welsh Government and therefore Ministers are required to give due regard to the Duty when strategic decisions are taken forward. However the Commission for Tertiary Education and Research (the Commission) is not captured under the Duty, although the Welsh Government would like to see all public bodies working in the spirit of the Duty**.**

20.49 The Commission for tertiary education is intended to provide long-term benefit to providers, learners, and employers by aligning all tertiary education under one arm's length body and putting learners' needs at the heart of decision-making. This should help to ensure that learners are able to look at all the options available to make informed decisions about learning routes appropriate to their needs and aspirations. The strategy is to deliver coherent progression through and between the different post-16 education sectors, so that the individual's learning pathway meets their needs and aspirations and is not defined by artificial boundaries.

Justice Impact Assessment

20.50 The Bill re-states an offence for wilfully obstructing the Chief Inspector (of Estyn) in the exercise of functions in relation to an inspection by them under the Bill. Reviews of Commission decisions will be by an appointed person or panel, as occurs under the 2015 Act. Recommendations by that person or panel will then be made to the Commission, who will make a fresh decision (or stand by its original decision).

20.51 In addition, within the data provisions where the Commission will have a power of direction to request information from an institution or certain persons. Any such direction is enforceable by injunction, However, because there will be mechanisms in place for ensuring the information is collated as a matter of routine, this is considered unlikely in practice.

20.52 In conclusion, the likely impact on the justice system of the proposals in the Bill is likely to be minimal or nil.

20.53 The Justice Impact Assessment has been approved by the Ministry of Justice.

Chapter 21. Competition Assessment

21.1 The organisations that will be affected by the legislation include:

- 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
  - Estyn
  - Local Authorities in their role to maintained school sixth forms and as funders of Adult and Community Learning

- Sector 2: Organisations delivering post 16 training and education (providers)
  - Higher Education Institutions in carrying out their various functions (including teaching, student support, learner experience, research, civic engagement, functions)
  - Further Education Institutions
  - Schools with local authority maintained sixth forms
  - Local Authorities in their role as providers of Adult and Community
  - Learning

- Sector 3: Commercial and charitable organisations carrying out and participating in (part-) publicly-funded research.

- 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

21.2 Currently the only places in which competition exists amongst the organisations above are:

(a) 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 learners 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)

(b) between the organisations in Sector 3, who seek to be preferred research partners.

(c) between the organisations in Sector 4, who compete to supply the desired goods at competitive prices.

Risks of the legislation upon competition

21.3 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 the 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.

21.4 The Commission may provide or support the provision of funds for research to the organisations in Sector 3.

21.5 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 Bill will not create any different or additional impact upon the competition opportunities that currently exist within the Sectors set out above.

21.6 The competition filter test has been completed

Question	Funders and regulators (Sector 1)	Learning providers (Sector 2)	Researchers (Sector 3)	Suppliers of goods and services (Sector 4)
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%[24] of the total further and higher education learners in Wales.	Possibly – some providers of higher education 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 providers of higher education and businesses may be attracting more than 20% of the share of research funding in Wales.	Yes

[24] Source: StatsWales 2017/18 see: Stats Wales: Student enrolments in Wales by institution and year

Question	Funders and regulators (Sector 1)	Learning providers (Sector 2)	Researchers (Sector 3)	Suppliers of goods and services (Sector 4)
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 providers of higher education and businesses which attracting more than 50% of the share of research funding in Wales.	Yes
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 Score	1	1	4	3

Chapter 22. Post-implementation Review

22.1 The review and evaluation of the policy contained in the Bill will focus on the implementation of the following:

- The Commission's statutory functions.
- The Commission's responsibility for reviewing the effectiveness of the tertiary education 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 tertiary education 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 Commission statutory functions

22.2 The Commission will have functions in relation to tertiary education system in Wales. Similar functions are currently exercised by the Welsh Ministers and HEFCW.

22.3 The provision, planning, funding and regulation of further education, higher education, adult learning and maintained school sixth form (via local authorities): funding of research and innovation; 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 are within the Commission's remit.

22.4 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. The Welsh Ministers will lay a copy of the annual report before the Senedd.

22.5 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.

22.6 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.

22.7 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 tertiary education and research system in Wales

22.8 In support of the high level objective of:

- ensuring the effectiveness of Welsh tertiary education and research;
- raising standards for all; and
- 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.

22.9 This will, for example, enable the Commission to advise Welsh Ministers on the development of tertiary education and research in Wales in the longer term.

22.10 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 tertiary education and research in Wales.

22.11 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 tertiary education and research in Wales, 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.

22.12 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. 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.

Public confidence in Wales' tertiary education

22.13 Alongside the development of the Regulatory Impact Assessment, a benefits realisation plan 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.

22.14 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 tertiary education system in Wales'.

22.15 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.

22.16 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 and precedes the Technical Consultation–which has the potential to influence behaviours in anticipation of the establishment of the Commission.

22.17 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

22.18 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. As noted above a benefits realisation plan has been prepared.

22.19 The benefits realisation 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.

22.20 The benefits identified in this plan support and are aligned with the goals and objectives of the Commission Implementation Programme within Welsh Government.

22.21 From 2024, the Commission will take ownership of the benefits realisation 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.

22.22 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 within the Welsh Government. A final evaluation report will be produced by the Commission to reflect related and available data for 2033/34.

22.23 It is intended that the Commission will work closely with Welsh Government and adopt Government Social Research and Government Statistical Services

protocols[25],with the Commission able to produce official statistics and access some existing research and evaluation mechanisms, as well as commission new ones.

22.24 The multi-faceted approach outlined above will focus on the extent to which the legislation has contributed to delivering change across the range of anticipated outcomes. This will include, as recommended by the Finance Committee in their 2017 'Inquiry into the financial estimates accompanying legislation', consideration of the accuracy of the estimated costs included in the Regulatory Impact Assessment.

22.25 Consideration is also being given to the requirement for interim programme evaluation and a possible Welsh Audit Office report and value for money evaluation. This evaluation would be informed by the work undertaken in relation to the Regulatory Impact Assessment.

[25] 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/ .

Option 6 (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 some 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, the Welsh Government 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 Commission 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, commencement of the organisation's operations in November 2023 has been followed for Option 6. This is the earliest point at which this is likely. It has been assumed that until October 2023 business as usual costs will continue for HEFCW and the Commission. Any residual costs falling to HEFCW and Welsh Government after 31st October 2023 have been captured in the Commission's forecast running costs.

6. For Option 6, early discovery work has been undertaken to produce an options analysis for the location/s and the possible premises for the new Commission. The location is dependent on decisions made by the Minister for Education and the Welsh Language, therefore, solely for the purposes of this exercise, location costings for the Commission have been determined using a southeast Wales base, more details of which are contained below.

7. In early 2019, the then Minister for Education provided an early steer on the approach to identifying a location for the new Commission. This was in no way a decision on the location or premises for Commission but to provide a baseline for benchmarking purposes only.

8. The Minister agreed to take forward exploring accommodation options in the southeast Wales area for up to 110 staff allowing for any growth (now expanded to 127 staff or 75% occupation density). This work provided baseline costings to inform the costings for this Regulatory Impact Assessment as well as the work for the

projects within the wider programme including the HR & OD, Operational Processes, and the Data & ICT projects.

9. The rationale for using a southeast Wales area as a baseline considers the existing critical mass of staff within both Welsh Government and HEFCW based in this area. The early analysis also considers the 39 (approx.) staff working remotely in southwest Wales, mid Wales, and north Wales.

10. However, the vision of a traditional office space for the Commission now needs to be challenged and considered within the wider context of the requirements of a 21st century workspace. Since the outbreak of Covid 19 and the advice that where possible, the population should work from home, the traditional office base has radically changed.

11. Working from home has become the norm for so many office workers fortunate to have sufficiently agile systems able to accommodate remote working. This way of working transformed lives through freeing up time to spend with loved ones and pursuing activities to maximise wellbeing without the pressures of a daily commute. However, for some, the reverse has been the case, where working from home has been detrimental to wellbeing and has exacerbated feelings of loneliness and reduced contact with others has contributed to social isolation. Therefore, a range of options will be considered with digital technologies very much at the forefront considering the lessons learnt over the past two years.

12. Supporting Welsh Ministers imperative to reduce the carbon footprint through reducing numbers working in offices has resulted in a fall in road congestion and private car use which has contributed to improved air quality. Therefore, exploring new opportunities for regeneration and economic activity - moving from a retail dominated model to a more diverse range of activity, will be a consideration.

13. The eventual determination of a location strategy for the Commission is likely to have a significant impact on other cost elements within these forecasts.

Status of the organisation

14. For Option 6, it has been assumed that the organisation would not have charitable status and would not attract a UK corporation tax charge.

15. Any changes to tax status could have a significant impact on the costs incurred.

16. The Commission will be a public records body.

VAT

17. Whether the Commission would become VAT-registered would depend on whether it will be making taxable supplies over and above the VAT threshold. The Commission would have to register for VAT should it make taxable supplies of goods and services over and above the current VAT threshold of £85k. Whether or not the Commission wish to register voluntarily regardless of this will be up to the Commission.

18. VAT has been included for the purposes of these costings, and no assumption of VAT recovery has been made.

Inflation and Net Present Value

19. No inflation has been applied to the cost base used within these forecasts.

20. No discounting has been applied to any of the costs used within these forecasts.

Programme spend

21. 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.

Risks and Mitigation

22. Establishing a new organisation carries risks and uncertainties, not least due to the current volatile environment with the ongoing impacts of COVID, Brexit, and the war in Ukraine being felt concurrently. This environment is causing price volatility and shortages of skills and materials, which in turn means that there are risks to the forecast costs of establishing and operating the new Commission.

23. To mitigate the risks as much as possible key parts of the cost estimates were prepared using maximum elements of forecast range.

24. There are key assumptions around the establishment of the Commission that drive a significant portion of the costs, these are:
    - the number of staff,
    - all staff costs based on the top bands of current pay scales,
    - occupation percentage of the Commission's location,
    - IT set up and user costs needed for the Commission,

    In all cases a maximum or prudent approach has been taken to using these assumptions to estimate the transition and ongoing costs of the Commission. For example, the Commission is forecast to need a maximum of 169 staff, this is the figure that has been used to calculate how big a building is needed and ongoing IT user costs. It is plausible however that the final number will be lower than this since this is the maximum number needed.

25. Table A1 sets out how this approach mitigates against an increase in costs by undertaking sensitivity analysis and modelling the impact of reducing these maximum assumptions by small amounts on the overall estimate. The analysis in table A1 demonstrates that significant headroom has been built into the overall cost estimate to mitigate against the risk of additional or increased costs. The analysis shows that there could be a potential reduction in forecast of 10% of the overall estimate.

26. Due to the volatile environment that is likely to remain for at least the short to medium term, the project faces the risk of price increases amongst other risks. Although inflation is not applied to the estimates, given the unprecedented times and projected increase in energy, fuel and other costs it is prudent to make estimates for the level of risk that remain after the mitigation described above. These risk levels have been applied to the summary of costs in Table A2.

27. The risks percentage for staff, board, non-payroll, and other corporate costs has been estimated at 10%. This percentage is based on expectation that prices are rising and that wage costs, including the Health and Social Care Levy, as well as other costs may rise. 10% represents over 1.5x the current rate of UK Inflation (March 2022) to offer a prudent risk profile. Location costs have an increased percentage based on the forecast high utility (energy) costs, and material costs during fit out. IT has a reduced percentage as a reflection of the already high percentage of mitigation that is built into the original forecasts.

28. As set out in table A2 sets the impact of these risks could potentially add £13.7m to the overall cost of the project. As the sensitivity analysis shows these risks are expected to be offset by reductions in the cost estimates.

Table A1: Summary of costs - Option 6 with sensitivity analysis applied

	Total costs (£000s)	Desk ratio to 65	Staff Numbers to 110	Data software to 750K	Estimates using 75% of salary bands	IT user costs reduced to £17,500 per year per user	Redundancy not used	Reduction in forecast	Total costs after adjustment (£000s)	Risk %
Transitional costs										
Staff Costs	109								109	
Board Costs	241								241	
Redundancy	2,030						-2,030	-2,030		100%
Non-payroll staff costs	292								292	
IT Costs - capital	4,901		-33	-400				-433	4,468	9%
Other corporate costs	275								275	
Location costs - capital	1,702	-191	-79					-270	1,432	16%
Total	**9,550**	**-191**	**-112**	**-400**			**-2,030**	**-2,733**	**6,817**	**29%**
Running Costs										
Staff Costs	97,433		-4,925		-5,755			-10,680	86,753	11%
Board Costs	3,538								3,538	
Redundancy										
Non-payroll staff costs	2,877								2,877	
IT Costs - capital	38,129		-1,483			-3,783		-5,266	32,863	14%
Other corporate costs	4,850								4,850	
Location costs - capital	2,725	-334	-131					-465	2,260	17%
Total	**149,552**	**-334**	**-6,539**		**-5,755**	**-3,783**		**-16,411**	**133,141**	**11%**
Business as Usual	**40,445**								**40,445**	
Total	**199,547**							**-19,144**	**180,403**	**10%**

Table A2: Summary of costs - Option 6 with sensitivity analysis

Item	Original total costs (£,000s)	Risk %	Impact (£,000s)	Total costs after adjustment (£000s)
Transitional costs				
Staff Costs	109	10%	11	120
Board Costs	241	10%	24	265
Redundancy	2,030	0%		2,030
Non-payroll staff costs	292	10%	29	321
IT Costs - capital	4,901	5%	245	5,146
Other corporate costs	275	10%	28	303
Location costs - capital	1,702	15%	255	1,957
Total	**9,550**	**6%**	**592**	**10,142**
Running Costs				
Staff Costs	97,433	10%	9,743	107,176
Board Costs	3,538	10%	354	3,892
Redundancy		0%		
Non-payroll staff costs	2,877	10%	288	3,165
IT Costs - capital	38,129	5%	1,906	40,035
Other corporate costs	4,850	10%	485	5,335
Location costs - capital	2,725	15%	409	3,134
Total	**149,552**	**9%**	**13,185**	**162,737**
Business as Usual	**40,445**	**0%**		**40,445**
Total	**199,547**	**7%**	**13,777**	**213,324**

Option 6 (Preferred Option) Detailed Assumptions

Staff costs

29. Costs are based on all 59 HEFCW staff transferring into the new organisation.

30. 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 110 positions:
    - 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

31. The Welsh Government will require an additional 45 staff within the Sponsorship; Policy; and IT teams to manage the relationship with the new organisation and safeguard IT systems on which the Welsh Government is also reliant.

32. Staff will transition into the Commission on their current terms and conditions; therefore salary and on-cost data are based on a combination of HEFCW, Welsh Government and market rates.

33. HEFCW staff have been costed, at the top of their 2021 scale bandings as per their 2021 pay scale.

34. Welsh Government costings are based upon the most recent uplift as of April 2021, and all staff costs have been based on the top bands of their respective pay scales.

35. On costs for Welsh Government staff have been based upon those supplied by the Welsh Government and range from 34% to 40%. HEFCW on costs have been estimated at 40%.

36. No allowance has been included for the regrading of any roles.

37. Staff costings are based on full time equivalent. The Commission will have up to 169 positions (164 FTE).

38. It is assumed that a programme team would be established within the Welsh Government to manage the delivery of the selected option. The cost of deploying Welsh Government staff to work on the programme have not been included in this Regulatory Impact Assessment. These costs are estimated at approximately £3m per year from 2021-22 to 2023-24.

39. The CEO costs have been calculated on the assumption that the CEO will be in post no earlier than 1 April 2023 at an annual salary of £133,000.

Table A3: Breakdown of ongoing staff numbers and cost

Org	Staff		Cost (£,000s)	No. of staff
CTER	Existing	HEFCW staff	3,695	59
	Existing	Welsh Government transferred in	6,116	104
	New	Additional staff for IT, HR, and Finance	368	6
WG	New	New WG Sponsorship Team staff	2,958	45
		Total	**13,137**	**214**

Board Costs

40. The first appointments to the Commission's Board will be the Chair and the Deputy Chair (who will also be the Chair of the Research and Innovation Committee), it is anticipated they will take up the role no earlier than January 2023.

41. There will be 4 'ordinary' Board members appointed from June 2023 with a further 8 'ordinary' members appointed in November 2023.

42. All Board members costs have been calculated using the earliest likely point of appointment.

43. The membership of the statutory committees, which are the Quality Committee and the Research and Innovation Committee, will be determined and appointed by the Commission, apart from the Chair of the Research and Innovation Committee (who will be the Deputy Chair of the Commission, see above) which will be a public appointment.

44. The costs for the statutory committees have been developed based on the committees being established no earlier than November 2023, and comprising 8 members each, this membership is based on the relevant equivalent, non-statutory committees, within HEFCW who have up to 10 ordinary members.

45. The Commission will determine the remuneration for the members of the statutory committees and the costs have been assessed on the basis the Commission will not pay above Band 3 members rates, to ensure there is no disparity between publicly appointed or Commission appointed membership roles for the Research and Innovation Committee.

46. The final statutory committee is the staff member appointment committee, the role of which will be appointing the associate Commission staff member to the Board. This committee will be chaired by the Chair of the Board and its members will be the ordinary members of the Board. The term of the associate Commission staff member can be up to 4 years, and on this basis, it is assumed that this Committee will likely meet less than once a year, and potentially only once every 3 to 4 years. On this basis the costs of this Committee have not been included in the RIA.

47. Tables A4 and A5, below, included the costings of the roles of the committees and main board, the number of members, and the rates and recruitment costs associated with the roles.

Table A4 – Breakdown of Board roles

Roles	No	Days per role per month	Daily Rate (£)
Chair of Main board	1	4 from 1 Jan 2023 8 from 1 Nov 2023	394
Deputy Chair	1	4 from 1 Jan 2023 6 from 1 Nov 2023	366
Main Board Members	12 (4 members from 1 Jun 23 then further 8 members from 1 Nov 23)	4 from 1 Jun 2023 (No change to number of days when additional members start)	337
Research and Innovation Committee Chair (Deputy Chair of Board)	1	2 from 1 Nov 2023	366
Research Committee members	8	2 from 1 Nov 2023	282
Quality Committee Chair (Ordinary member of Board)	1	2 from 1 Nov 2023	337
Quality Committee members	8	2 from 1 Nov 2023	282

Table A5: Breakdown of Board ongoing annual costs

Item	Cost (£,000s)
Chair	38
Deputy Chair	26
Main Board Members	194
Statutory Committees Members	123
Travel & subsistence	38
Meeting costs	57
Total per year	**357**

48. £132,000 has been included in transition costs for recruitment of all Board roles

49. Travel & Subsistence for the Board is estimated to be around 10% of Board member fees and meeting costs at around 15%. Both percentages are based upon HEFCW's current cost profile with an applied deduction as an expected outcome of remote working, however both are subject to the final location strategy.

50. Each Board member will be provided with IT equipment and software at a cost of £1,250 upon commencement.

Redundancy Costs

51. The redundancy costs were calculated by KPMG and represent the maximum potential costs that would be incurred if redundancy were required. This cost has been adopted based on a worst-case scenario as there are currently no plans to offer

this as an option prior to transfer. These costs will be revisited during the due diligence exercise that will be carried out during 2022-23.

52. No costs have been included for any Welsh Government staff who are in post that are transferring to the Commission as this is a Cabinet Office Statement of Practice (COSoP) transfer and if they refuse to transfer this is a resignation not a redundancy under COSoP (TUPE Principles).

53. The eventual location strategy chosen for the new organisation may have a significant impact on the above assumptions and therefore costs.

54. Although these redundancy costs are a cost to the public sector it is worth recognising that there is an equivalent 'benefit' to the individual in economic terms.

Non-payroll costs

55. Recruitment costs of the CEO have been estimated at £30,211.

56. It is assumed that most staff will transfer across into the Commission from HEFCW and the Welsh Government, however some losses are anticipated for the purposes of the Regulatory Impact Assessment, and therefore £90,000 has been set aside as a contingency for general recruitment costs into the Commission during 2023/24.

57. Most non-payroll costs have been estimated as a percentage of staff salaries based upon current HEFCW as set out in Table A6.

Table A6: Basis of non-payroll costs

Cost	% of salary
Staff Travel & Subsistence (reduced to reflect use of remote working)	1.00
Training	1.00
Staff Subscriptions	0.10
Catering	0.10
Misc. (inc. Occ. Health & Employee Assistance programme)	0.50
Conferences	0.25

58. The eventual location strategy chosen for the new organisation may have an impact on the assumptions around Travel and subsistence.

59. £169,000 (£1000 per staff member) has been included in transition costs for training of staff on new systems or new ways of working.

IT Costs

<u>IT Transition Costs</u>

60. It is anticipated that implementation teams will be used to assist the setting up of the Commissions ICT infrastructure and the transfer of systems and data from HEFCW and Welsh Government legacy systems to the new body. This has been estimated as requiring, on average, 8 IT consultants hired for the period from May 2022 to October 2023 at a total cost of £2.4m,

61. IT development software costs for the team of 8 consultants is estimated to be £200 a month per developer for developer desktops and £750 per developer per year for licenses.

62. Development software costs of £12,800 have been estimated for every month from May 2022 to October 2023 for implementation.

63. IT security “health checks” must 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 and the estimated cost is therefore £100,000 for initial IT security health checks,”.

64. 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.

65. Bespoke data collection software is anticipated to cost in the range of £500,000 and £1,800,000. This is an estimate based upon costs incurred by Qualifications Wales and WRA for their systems. 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. A mid-point cost of £1,150,000 has been estimated.

66. Intranet and website expenditure have been costed based upon those incurred by Qualifications Wales at an initial £117,000.

67. Initial hardware costs, including all laptops, PCs, printers, mobile phones, teleconference facilities, etc. are forecast at £785,000 with current user levels.

Table A7: Breakdown of IT transition costs

Item	Cost (£,000s)
Consultants	2,376
Development software	230
Initial Security review	100
Website creation	117
Initial licences and data systems	1,293
IT Hardware	785
Total	**4,901**

IT Running Costs (ongoing costs)

68. The estimated cost for IT Software licences is £154,000, based upon the number of users and current market prices of applications.

69. Ongoing website development is included in the costings of the 3 IT consultants.

70. IT security “health checks” must be made annually on systems, these have been estimated at £30,000 per year.

71. Annual running costs to incorporate all licences, maintenance, and internet etc. have been estimated at £20,000 per user, per year in line with the maximum estimate of Welsh Government costs. This includes periodic laptop replacement.

72. From September 2023 it is assumed 3 consultants will be hired indefinitely at a cost of £700 a day for ongoing development work, including website maintenance, costing approximately £693,000 per annum.

Table A8: Breakdown of IT ongoing annual costs

Item	Cost (£,000s)
Development software	138
Annual security recertification	30
User costs	4,280
IT Consultants	693
Total	**5,141**

73. 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.

Consultancy costs

74. Most IT transition costs, and a portion of ongoing IT support and development costs have been costed using external IT consultants. These have been used to ensure the estimates have been produced on a prudent (i.e., maximum basis). It is possible that implementation partners and teams will be used to manage the IT transition between HEFCW and Welsh Government and no decision has yet been taken. Given the continued high demand for specialist IT skills it is possible that recruiting permanent staff will be difficult and unattractive given the fixed term nature of the transition period. The estimate does not represent a decision to use 8 full time consultants but is a prudent forecast in the face of potential significant cost volatility and builds in risk and contingency.

75. Once the Commission is in operation it will be up to the Commission itself to determine the IT support strategy. The Commission has a duty to ensure value for money so it will be for them to assess whether the long-term use of consultants meet that test. The estimates are the maximum forecast building in risk and contingency.

Other Corporate Costs

76. These have been estimated as follows in table A9, based upon comparator organisations or current ongoing HEFCW costs:

Table A9: Breakdown of ongoing annual Other Corporate Costs

Item	Cost (£,000s)
Translation	51
Subscriptions	59
Off-site document storage	8
Telephone	13
Postage	3
Office Supplies and stationery	3
Photocopier costs	3
Conferences hosted by the Commission	34
Other	6
Insurance	30
Legal fees	172
Internal audit	69
Auditor's remuneration	77
Consultancy fees	123
Bank charges	3
Total	**654**

Location Costs

77. In the absence of post Covid occupancy evidence, and no real clarity around public sector hubs, the assumptions made at this stage will need to be subject to regular review. Whilst a location strategy for the new entity has not been finalised, costs have been drawn together to provide a general indication of total costs.

78. Rent has been estimated at £121,920 per annum (including VAT), based upon a second-hand purpose-built office facility within south Wales that would provide accommodation for 127 employees. Although total expected compliment is up to169 FTE staff, a maximum occupancy level of 75% has been assumed under our flexible working assumptions. This is based on the maximum Welsh Government provision for similar staff numbers.

79. In line with standard practice a six-month rent-free period has been included to cover fit out. This practice is dependent on the market at the time, which is also location dependent.

80. £5,000 has been included in 2022-2023 transition costs under consultancy fees (other Corporate Costs) for an external commission for an option appraisal for the location of the Commission.

81. Agents' fees of £14,630 (10% of annual rent plus VAT) have been included for the search for suitable premises.

82. A provision of £100,000 has been made for dilapidation costs upon termination of the current HEFCW lease. This will be payable to the landlord, the Welsh Government.

83. Tables A10 and A11 details the costs for transition and on an ongoing basis which have been included in the estimated location costs, these are based upon those incurred by similar sized organisations.

Table A10: Breakdown of Location Transition costs

Item	Cost (£,000s)	Notes
ICT costs (Inc. VAT)	203	Recurring every 5
Furniture Costs (Inc. VAT)	410	Recurring every 10
Staff Removal Costs	2	One-off
Capital Fit-out Works	864	One-off
Rent	-	Six months fit out
Rates	19	During six months fit
Other costs	83	During six months fit
Dilapidations payable (provisioned over 10 years)	8	During six months fit
Dilapidations - HEFCW vacating Bedwas Office	100	One-off
Agent's fees	15	One-off
Total	**1,702**	

Table A11: Breakdown of Location Ongoing Annual Costs

Item	Cost (£,000s)	Notes
Rent per sq. m	122	Recurring Annually
Rates per sq. m	38	Recurring Annually
Other Costs per sq. m	165	Recurring Annually
Dilapidations payable (provisioned over 10 years)	15	Recurring Annually
Total per year	**340**	
* In 2028-2029 an additional £203K of ICT costs incurred due to 5 yearly recurring costs		

84. Other costs include utilities, facilities management, and carbon costs.

Option 1 Assumptions

85. Whilst Options 6 and 4a 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.

86. 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. £250,000 per year has been included for an IT Enhancement programme for HEFCW.

87. Staff costings are based on full time equivalent for the purpose of the costings.

88. All HEFCW costs are based on the latest information available.

89. Welsh Government Staff costs are in respect of the policy area teams, as per paragraph 30 above.

90. Non-pay costs for Welsh Government staff comprise of staff T&S at 1.00% of salary costs.

Option 4a Assumptions

91. HEFCW costs for 2020-21 to 2022-23 are as per Option 1.

92. Redundancy costs are as per Option 6.

93. Welsh Government Staff costs and non-payroll staff are as per Option 6 without the additional staff required.

94. Staff costings are based on full time equivalent for the purpose of the costings.

95. 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 Option 6, excepting for costs treated by the Welsh Government as overheads and met centrally.

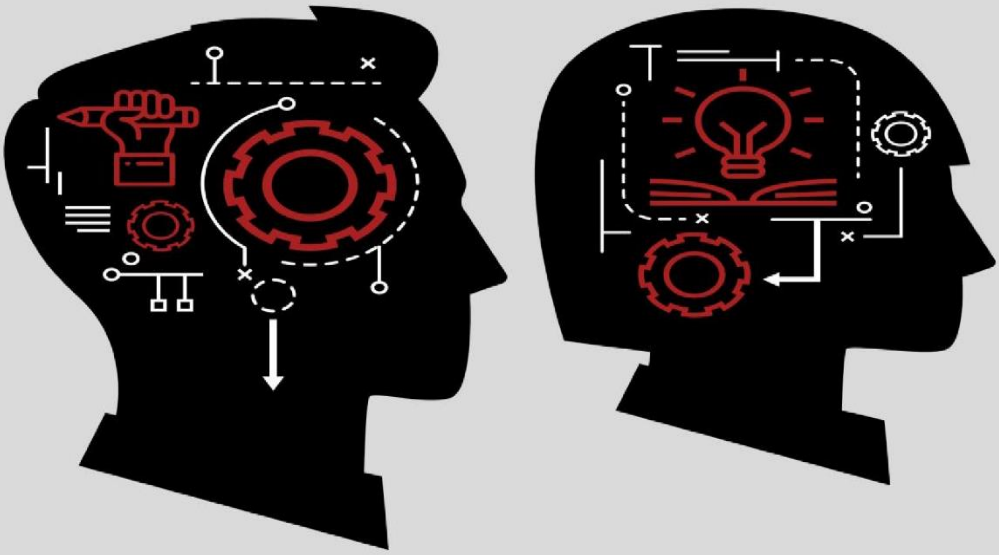
Appendix B – ALMA Economics post-compulsory education and training (rapid evidence assessment)

Cost benefit analysis of education reforms:

A Rapid Evidence Assessment (REA)

Llywodraeth Cymru
Welsh Government

October 2019



alma economics

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 Secondary terms	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
Exposure of interest	• Education policy reforms • Consolidation of regulatory functions reforms
Specific focus	• Benefits stemming from education reforms • Benefits from consolidating regulatory functions
Groups of interest	• Post-16-year-old learners

Criteria	Review Scope
	• Learning providers • Research & Innovation providers • Government departments, public bodies • Employers and communities
Peer- review	• Focus on IAs of policy reforms but peer reviewed evidence will be also included
Geographic location	• Focus on UK studies but international evidence will also be considered
Dates of research	• Prioritise post-2000 research
Research methods/ study design	• All methods
Language	• English only
Types of publication	• 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),[26]
ii) Studies devoted to methodological issues concerning the appraisal of education policies, and critical assessments of the suitability of CBA for such a purpose[27], and
iii) Literature related to the benefits and returns from education or further education.[28]

[26] The Short-Term Effects of School Consolidation on Student Achievement: Evidence of Disruption? Available at http://ftp.iza.org/dp10195.pdf

[27] Methods for Causal Evaluation of Education Policies and Practices: An Econometric Toolbox. Available at http://www.eenee.de/dms/EENEE/Analytical_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

[28] 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

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 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 'spill-over' 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 short-term 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 long run 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 high level 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 in Denmark between 2010-2011. The authors employed a differences-indifferences (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,[29] reviews empirical evidence on the impact of key reforms, designed to address several deficiencies in the UK education system. Such reforms are focussed 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 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).

[29] Available at: http://eprints.lse.ac.uk/19430/1/Education_Policy_in_the_UK.pdf

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,[30] 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 Impact Assessments

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,[31] the Case for the creation of UK Research and Innovation,[32] the Higher Education and Research Bill: detailed impact assessment,[33] the Qualifications Wales Bill:

[30] Available at: http://siteresources.worldbank.org/INTPSIA/Resources/490023-1120845825946/Education.pdf

[31] Available at https://www.gov.uk/government/publications/office-for-students-business-case

[32] Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/527803/bis16291-ukri-case-for-creation.pdf

[33] Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/528005/bis16295-he-research-bill-detailed-impact-assessment.pdf

Explanatory Memorandum[34] and the Reform of National Regulation of Higher Education Providers Regulation Impact Statement.[35] 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 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%.

[34] Available at http://www.assembly.wales/laid%20documents/pri-ld10026-em%20-%20qualifications%20wales%20bill%20%20explanatory%20memorandum/pri-ld10026-em-e.pdf

[35] Available at https://ris.pmc.gov.au/sites/default/files/posts/2012/01/03-Reform-of-National-Regulation-of-HigherEducationProviders-Regulation-Impact-Statement.pdf

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 rational for creating one single regulatory body which will absorb all funding, planning and monitoring functions in post-compulsory 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) Bill[36] 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).

IV. Education reforms: international evidence

[36] Available at: http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf

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,[37] and the relationship between governance structure and the strategies of policymakers.[38] 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) 20142019,[39] 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 research-based institutions; growing international linkages) that the Government 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:[40]

- 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),[41] 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.

[37] 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

[38] See more here: https://eric.ed.gov/?id=ED412866

[39] See more here: http://www.nzqa.govt.nz/studying-in-new-zealand/understand-nz-quals/nzqf/

[40] See more here: https://www.education.govt.nz/further-education/policies-and-strategies/tertiary-education-strategy/

[41] See more here: http://eae.alberta.ca/post-secondary/institutions/public.aspx

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[42].

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 province's 20 publicly assisted institution.[43] 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:[44]

- 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 non-departmental public body charged with funding Scotland's further and higher education institutions, including its 25 colleges and 19 universities.[45]
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 Bill[46] 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.

[42] See more here: http://eae.alberta.ca/media/155107/sixsectormodel.pdf

[43] See more here: http://www.tcu.gov.on.ca/pepg/audiences/universities/uff/UniversityFundingFormulaConsultationReport_2015.pdf

[44] See more here: http://www.heqco.ca/SiteCollectionDocuments/EN_HEQCO_AR_2017_18_WEB.pdf

[45] See more at: http://www.sfc.ac.uk/

[46] Available at: http://www.legislation.gov.uk/asp/2005/6/pdfs/asp_20050006_en.pdf

V. Evidence relating to the Benefits Realisation Plan

Professor Hazelkorn's 2016 government commissioned report[47], 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 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,

[47] http://gov.wales/docs/dcells/publications/160310-hazelkorn-report-en.pdf

- 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 post compulsory education. In this way, the CTER can effectively succeed in meeting two of its objectives; increasing participation and staying on 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 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 Commission 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 A – 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	• 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	• 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	• Reduced confusion regarding paths and their transition to labour markets (DIISRTE, 2012).

Benefit Categories	Affected Group	Type of Benefit
		• 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).
Wider	**Businesses / Employers**	• Greater confidence on the quality and skills of graduates (DIISRTE, 2012). • Private sector productivity boost (UK Government, 2016b, 2016c).
Wider	**Taxpayers**	• Better value for taxpayers' money (UK Government, 2016c). • Better loan repayment rates through increased productivity (UK Government, 2016c).

Annex 1: Explanatory Notes

Explanatory notes can be found here:
https://www.legislation.gov.uk/asc/2022/1/pdfs/ascen_20220001_en.pdf

Annex 2: Table of Derivations

Tertiary Education and Research (Wales) Bill

The table below is intended to provide information on the derivation of the provisions of the Tertiary Education and Research (Wales) Bill. The table does not provide definitive or exhaustive guidance and should be read in conjunction with the Bill and with the explanatory notes to the Bill.

While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.

Key to abbreviations:

FHEA 1992:	Further and Higher Education Act 1992
LSA 2000:	Learning and Skills Act 2000
ASCLA 2009:	Apprenticeships, Skills, Children and Learning Act 2009
HE(W)A 2015:	Higher Education (Wales) Act 2015

Section	Corresponding reference in existing legislation	Substantive change?
Part 1: Strategic Framework for Tertiary Education and Research		
1 to 3	New	N/A
4	Section 33(a) and (b) LSA 2000	Yes
5 to 18	New	N/A
19	Section 47 HE(W)A 2015 (charity law)	No
20	New	N/A
21	Section 81(1) and (2) FHEA 1992	Yes
22	Section 69(4) to (7) FHEA 1992	Yes
23 to 24	New	N/A
Part 2: Registration and Regulation of Tertiary Education Providers		
25 to 45	New	N/A
46	Section 5 HE(W)A 2015	Yes
47	Section 7 HE(W)A 2015	Yes
48	Section 8 HE(W)A 2015	Yes
49	Section 14 HE(W)A 2015	No
50 to 51	New	N/A
52	Sections 18(2) and 20(1) HE(W)A 2015	Yes

Section	Corresponding reference in existing legislation	Substantive change?
53	Section 20(2) HE(W)A 2015	Yes
54	Section 17 HE(W)A 2015	Yes
55 to 56	New	N/A
57	Sections 75 and 77 LSA 2000	Yes
58	Section 78 LSA 2000	No
59	Section 76(1) and (2) LSA 2000	Yes
60	Section 76(1) LSA 2000	Yes
61	Section 76(3) and (4) LSA 2000	No
62	Section 80 LSA 2000	Yes
63	Section 83 LSA 2000	Yes
64	Section 79 LSA 2000	No
65	Section 85 LSA 2000	Yes
66	Section 86 LSA 2000	No
67	Section 87 LSA 2000	Yes
68	New	N/A
69	Section 57 FHEA 1992	Yes
70	Section 57 FHEA 1992	Yes
71 to 73	New	N/A
73	Section 21 HE(W)A 2015	Yes
74	Section 22 to 36 HE(W)A 2015	Yes
75	Section 41 HE(W)A 2015	Yes
76	Section 42 HE(W)A 2015	Yes
77	Section 43 HE(W)A 2015	Yes
78	Section 44 HE(W)A 2015	Yes
79	Section 44 HE(W)A 2015	Yes
80	New	N/A
81	Section 52 HE(W)A 2015	Yes
82	Section 45 HE(W)A 2015	Yes
83	Section 3 HE(W)A 2015	Yes

Section	Corresponding reference in existing legislation	Substantive change?
84	New	N/A
Part 3: Securing and Funding Tertiary Education and Research		
85	Section 68(1) and (4) FHEA 1992	Yes
86	Section 68(2) and (3) FHEA 1992	Yes
87	New	N/A
88	Section 65(1) and (2) FHEA 1992	Yes
89	Section 65(2) FHEA 1992	Yes
90	Sections 65(4) and 66(1) FHEA 1992	Yes
91	Section 66(2) and (3) FHEA 1992	Yes
92	Section 34(1)(d) and 35(1), (5) LSA 2000	Yes
93	Section 31(1) and (2) LSA 2000	Yes
94	New	N/A
95	Section 32(1) LSA 2000	Yes
96	Section 31(3) and 32(3) LSA 2000	Yes
97	Section 34(1) and (2) LSA 2000	Yes
98	Section 34(3) LSA 2000	Yes
99	Section 35 LSA 2000	Yes
100	Section 37(3) and (4) LSA 2000	Yes
101	Section 36 LSA 2000	Yes
102	Section 41 LSA 2000	Yes
103	Section 34(1)(g), (i), 35(1), (5) and 40(6) LSA 2000	Yes
104	New	N/A
105	Sections 65 and 66(2) FHEA 1992	Yes
106	Section 65 FHEA 1992	Yes
107	New	N/A
108	New	N/A
109	New	N/A
110	Section 81(3) FHEA 1992	Yes

Section	Corresponding reference in existing legislation	Substantive change?
Part 4: Apprenticeships		
111	Section 2 ASCLA 2009	Yes
112	Section 32 ASCLA 2009	Yes
113	Section 2 ASCLA 2009	Yes
114 to 118	New	N/A
119	Section 8 and 9 ASCLA 2009	Yes
120	New	N/A
121	Section 33 and 34 ASCLA 2009	Yes
122	Section 35 ASCLA 2009	Yes
123	New	N/A
124	Section 36 ASCLA 2009	Yes
125	New	N/A
Part 5: Learner Protection, Complaints Procedures and Learner Engagement		
126 to 129	New	N/A
Part 6: Information, Advice and Guidance		
130	Section 69(1) FHEA 1992	Yes
131 to 134	New	N/A
135	Section 40(5) LSA 2000	Yes
136	New	N/A
Part 7: Miscellaneous and General		
137 to 149	New	N/A
Schedule 1: Commission for Tertiary Education		
Whole Schedule	New	N/A
Schedule 2: Transfers of Property and Staff to the Commission		
Whole Schedule	New	N/A
Schedule 3: Assessing Higher Education: Designated Body		
Whole Schedule	New	N/A
Schedule 4: Minor and Consequential Amendments		
Whole Schedule	New	N/A

Annex 3: Schedule of Amendments

Amendments to be made by the Tertiary Education and Research (Wales) Bill

This document is intended to show how the provisions of the following legislation, as they applied in relation to Wales on 1 May 2022, would look once amended by the Tertiary Education and Research (Wales) Bill (if enacted), as amended on 12 May 2022.

Primary Legislation

- Government of Wales 1998
- Higher Education Act 2004
- Education Reform Act 1988
- Employment and Training Act 1973
- Education (Fees and Awards) Act 1983
- Education (No. 2) Act 1986
- Employment Act 1988
- Further and Higher Education Act 1992
- Education Act 1994
- Education Act 1996
- Education Act 1997
- Teaching and Higher Education Act 1998
- School Standards and Framework Act 1998
- Care Standards Act 2000
- Learning and Skills Act 2000
- Education Act 2002
- Children Act 2004
- Education Act 2005
- Commissioner for Older People (Wales) Act 2006
- Government of Wales Act 2006
- Safeguarding Vulnerable Groups Act 2006
- Education and Skills Act 2008
- Learner Travel (Wales) Measure 2008
- Apprenticeships, Skills, Children and Learning Act 2009
- Learning and Skills (Wales) Measure 2009
- Children and Families (Wales) Measure 2010
- Welsh Language (Wales) Measure 2011
- School Standards and Organisation (Wales) Act 2013
- Well-being of Future Generations (Wales) Act 2015
- Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015
- Qualifications Wales Act 2015
- Deregulation 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

Secondary Legislation

- The Welsh Language Standards (No. 6) Regulations 2017

Material to be deleted by the Tertiary Education and Research (Wales) Bill is shown 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.

Where relevant, related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

Warning

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 the Bill.

It has been produced solely to help people understand the effect of the Tertiary Education and Research (Wales) Bill. It is not intended for use in any other context

Government of Wales 1998

<table>
<tr><th>Section</th><th>Amended by</th></tr>
<tr><td>104 Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
(1) The provision of funding for Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru (“the Chief Inspector”) shall be the responsibility of the Welsh Ministers.

<u>(1A) But the Welsh Ministers are not responsible for providing funding to the Chief Inspector for the discharge of the Chief Inspector’s functions under Chapter 2 of Part 2 of the Tertiary Education and Research (Wales) Act 2021 so far as they relate to education and training that is funded or otherwise secured by the Commission for Tertiary Education and Research.</u>

(2) What subsection (1) requires of the Welsh Ministers is that they shall provide such funding for the Chief Inspector as they consider appropriate.

(3) In deciding what funding they consider appropriate to provide for the Chief Inspector, the Welsh Ministers shall have regard in particular to what they consider the Chief Inspector needs to spend in order to discharge his functions effectively.

(4) The Welsh Ministers shall before the beginning of each financial year consult the Chief Inspector about the funding they are to provide for him in that financial year.

(4A) The Welsh Ministers shall—

~~(a) approve the plan submitted to them under section 87 of the Learning and Skills Act 2000; and~~

<u>(a) approve such part (or parts) of the plan prepared by the Chief Inspector under section 65 of the Tertiary Education and Research (Wales) Act 2022 as relate to functions in respect of which they are required to provide funding under this section, and</u>

(b) determine the amount of the funding they are to provide under this section in accordance with the plan as approved by them.

(4B) But before they give their approval under subsection (4A)(a), the Welsh Ministers may require the Chief Inspector to modify the plan.

(5)

(6) Schedule 6 (which makes further provision about the Chief Inspector) has effect.</td><td>Part 2
Section 68</td></tr>
<tr><td>145B Studies at request of educational bodies
(1) The Auditor General for Wales may undertake studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of a body specified in the first column of the Table, if requested to do so by the body (or one of the bodies) specified in relation to it in the second column of the Table.

<table><tr><th>Subject of study</th><th>Requesting body</th></tr><tr><td>The governing body of an institution in Wales within the higher education sector.</td><td>The governing body or ~~the Higher Education Funding Council for Wales~~ <u>the Commission for Tertiary Education and Research</u>.</td></tr></table></td><td>Schedule 4
Paragraph 12</td></tr>
</table>

Section		Amended by
~~The governing body of an institution in Wales receiving financial support under section 86 of the Education Act 2005 from the Higher Education Funding Council for Wales.~~	~~The governing body or the Higher Education Funding Council for Wales~~	
The governing body of an institution in Wales within the further education sector.	The governing body ~~or the Assembly~~or the Commission or the Welsh Ministers..	
(1A) (2) Subsection (1) does not entitle the Auditor General for Wales to question the merits of the policy objectives of a body. (3) Where the Auditor General for Wales undertakes a study under subsection (1) he may, with the consent of the body that requested the study, arrange for a report containing— (a) the results of the study, and (b) his recommendations (if any), to be laid before the Assembly. (4) The Auditor General for Wales may, at the request of the Higher Education Funding Council for Wales, give the council advice in connection with the discharge of the council's functions under section 124B(2)(b) of the Education Reform Act 1988 or paragraph 18(2)(b) of Schedule 7 to that Act. (5) The Auditor General for Wales may, at the request of a higher education corporation or further education corporation in Wales— (a) advise them in connection with the appointment of persons to audit their accounts; (b) audit their accounts for a financial year. (6) In subsection (5)— (a) “higher education corporation” and “further education corporation” have the same meaning as in the Further and Higher Education Act 1992; (b) references to the accounts of a higher education corporation include references to a statement of accounts prepared by the corporation under section 124B of the Education Reform Act 1988 or paragraph 18 of Schedule 7 to that Act. (7) This section must be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include this section.		
Schedule 4 Public Bodies Subject to Reform by Assembly **Section 28** **Part III Bodies which may only Gain Functions** **15** **16** ~~The Higher Education Funding Council for Wales.~~ **17**		Schedule 4 Paragraph 12

Section	Amended by
SCHEDULE 17 Audit etc of Welsh Public Bodies **Section 144** **Part I Bodies Subject Generally to Audit etc Provisions** **1** A body specified in Part I ~~or III~~ of Schedule 4. **2** An Agricultural Land Tribunal established for an area wholly in, or consisting of, Wales. **3** A housing action trust established for an area wholly in Wales. **4** The Local Democracy and Boundary Commission for Wales. **5** The Mental Health Review Tribunal for Wales. **6** The National Library of Wales. **7** The National Museum of Wales. **8** A panel, established under Schedule 10 to the Rent Act 1977, of persons to act as chairmen and other members of rent assessment committees for an area or areas every part of which is in Wales. **9** The Royal Commission on Ancient and Historical Monuments of Wales. **10** An urban development corporation established for an urban development area wholly in Wales. **11** A valuation tribunal exercising functions in relation only to Wales or an area of Wales. **11A** The Commission for Tertiary Education and Research.	Schedule 4 Paragraph 12

Higher Education Act 2004

Section	Amended by
11 Qualifying institutions 1 In this Part "qualifying institution" means any of the following institutions in England or Wales— (a) a university in England or Wales (whether or not receiving financial support under ~~section 65 of the 1992 Act~~ Part 3 of the Tertiary Education and Research (Wales) Act 2022 or section 39 or 93 of the Higher Education and Research Act 2017 ("the 2017 Act")) whose entitlement to grant awards is conferred or confirmed by— (i) an Act of Parliament, (ii) a Royal Charter, or (iii) an order under section 76 of the 1992 Act or section 42 or 45 of the 2017 Act; (b) a constituent college, school or hall or other institution in England or Wales of a university falling within paragraph (a); (c) an institution in England or Wales conducted by a higher education corporation; (d) an institution in Wales which is a designated institution, as defined by section 72(3) of the 1992 Act; (da) an institution in England which is a registered higher education provider as defined by section 85 of the 2017 Act (other than one within paragraph (a), (b), (c) or (d) of this section); (e) an institution in England or Wales (other than one within any of the preceding paragraphs of this section) which provides higher education courses which are designated for the purposes of section 22 of the 1998 Act by or under regulations under that section; (ea) an institution in England (other than one within any of the preceding paragraphs of this section) which provides higher education courses leading to the grant of an award by or on behalf of— (i) another institution in England within another paragraph of this section, or (ii) the Office for Students where the grant is authorised by regulations under section 51(1) of the 2017 Act; (f) an institution in England or Wales (other than one within another paragraph of this section) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act or section 42 or 45 of the 2017 Act. (2) The Welsh Ministers may, by regulations, specify as a qualifying institution for the purposes of this Part, a person other than one within subsection (1) who is— (a) a registered provider, or (b) a tertiary education provider in Wales other than a registered provider in receipt of financial resources—	Part 5 Section 128 Schedule 4 Paragraph 16

Section	Amended by
(i) provided by the Commission for Tertiary Education and Research under section 86(3)(a) of the Tertiary Education and Research (Wales) Act 2022 (higher education courses specified in regulations), (ii) secured by the Commission for Tertiary Education and Research or the Welsh Ministers under section 94(1)(a) of that Act (further education or training), or (iii) provided by the Commission for Tertiary Education and Research under section 101(1)(a) of that Act (apprenticeships). (3) In subsection (2) "registered provider" means a tertiary education provider registered in the register established and maintained by the Commission for Tertiary Education and Research under section 23 of the Tertiary Education and Research (Wales) Act 2022; "tertiary education provider in Wales" has the meaning given by section 139 of the Tertiary Education and Research (Wales) Act 2022. (4) The power to make regulations in subsection (2) is to be exercised by statutory instrument. (5) A statutory instrument containing regulations made under subsection (2) is subject to annulment in pursuance of a resolution of Senedd Cymru.	
12 Qualifying complaints (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— (a) as a student or former student at that institution, or (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. (2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment. (2A) A complaint within subsection (1) about an act or omission of a qualifying institution specified in regulations made under paragraph (b) of subsection (2) of section 11 is a qualifying complaint only if it is made by a person who is undertaking or has undertaken a course funded by the Commission for Tertiary Education and Research or the Welsh Ministers under— (a) section 86(3)(a) of the Tertiary Education and Research (Wales) Act 2022 (higher education courses specified in regulations), (b) section 94(1)(a) of that Act (further education or training), or (c) section 101(1)(a) of that Act (apprenticeships). (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~~ subsection (1) of section 11, or of a qualifying institution specified in regulations made under subsection (2) of that section, 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.	Part 5 Section 128

Section	Amended by
20A Institutions that cease to be qualifying institutions (1) An institution that ceases to be a qualifying institution is a "transitional institution" during the shorter of— (a) the period of 12 months beginning with the day on which it ceases to be a qualifying institution, and (b) the period beginning with that day and ending when it becomes a qualifying institution again, (and the shorter period is referred to in this section as "the transitional period"). (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). (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. (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 ~~section 11~~ subsection (1) of section 11, or a qualifying institution specified in regulations made under subsection (2) of that section includes a transitional institution that was a qualifying institution within the paragraph in question immediately before the beginning of the transitional period.	Schedule 4 Paragraph 16

Education Reform Act 1988

Section	Amended by
120 Functions of local authorities with respect to higher and further education (1) A local authority shall no longer be under a duty to secure the provision for their area of facilities for higher education, that is to say, education provided by means of a course of any description mentioned in Schedule 6 to this Act. (2) (3) A local authority shall have power— (a) to secure the provision for their area of such facilities for higher education as appear to them to be appropriate for meeting the needs of the population of their area; (b) to secure the provision of higher education for persons from other areas; and (c) to do anything which appears to them to be necessary or expedient for the purposes of or in connection with such provision. (4) In exercising their power under subsection (3)(a) above a local authority shall have regard to any facilities for higher education provided by institutions within the higher education sector or the further education sector and other bodies which are provided for, or available for use by persons living in, their area. <u>(4A) In exercising its powers under subsection (3) a local authority must have regard to the Commission for Tertiary Education and Research's strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.</u> (5) – (9) (10) The Secretary of State may by order amend Schedule 6 to this Act.	Schedule 4 Paragraph 5
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	Part 7 Section 137

Section	Amended by
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. (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. (9) The Secretary of State may by order amend or repeal any of paragraphs ~~3 to 5 and~~ 2 to 11 of Schedule 7A to this Act. (9A) Before making an order under subsection (9) the Welsh Ministers must consult— (a) the Commission for Tertiary Education and Research, and (b) any other persons they think appropriate." (9B) An order made under subsection (9) may, where it is necessary in consequence of amendments made to Schedule 7A to this Act, repeal or amend the following provisions of this Act— (a) subsection 122A(3); (b) in subsection (4) of this section, the words "any provision authorised to be made by that Schedule and"; (c) in section 124C— (i) in subsection (1), the words beginning with "and, in determining" to the end; (ii) subsection (2). (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.	
125 Articles of government: higher education corporations in Wales (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. (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	Part 7 Section 138

Section	Amended by
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. (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 corporation (including in either case quorum and proxies), and may make provision with respect to— (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. (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— (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. (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. (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— (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; in any manner so specified. (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. (8) The Welsh Ministers may by order amend or repeal any of subsections (2) to (4) of this section. (9) Before making an order under subsection (8) the Welsh Ministers must consult— (a) the Commission for Tertiary Education and Research, and (b) any other persons they think appropriate.	
128 Dissolution of higher education corporations in Wales (1) Subject to the following provisions of this section, the Secretary of State may by order provide for— (a) the dissolution of any higher education corporation in Wales; and (b) the transfer of property, rights and liabilities of the corporation to— (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;	Part 7 Section 139

Section	Amended by
(ii) any body corporate established for purposes which include the provision of such facilities or services; (iia) [repealed] (iib) [repealed] (iii) ~~the Higher Education Funding Council for Wales~~ the Commission for Tertiary Education and Research ("the Commission"); or (v) the National Assembly for Wales. (1A) An order under this section may be made only if— (a) the higher education corporation to be dissolved has requested that an order be made, or (b) if there has been no such request, the higher education corporation consents to an order being made. (1B) But an order may be made as if consent had been given under subsection (1A)(b) if the Welsh Ministers consider that the higher education corporation— (a) has unreasonably withheld its consent, or (b) has unreasonably delayed in giving or withholding its consent.' (1C) An order undersubsection (1)(b)— (a) may, in relation to any property or rights of the corporation transferred under the order, make provision about the effect of such transfer on any right of pre-emption, right of return or other similar right that may apply in respect of such property or rights (including provision about the calculation and payment of any just compensation); (b) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) of any enactment or any rule of law, which would otherwise prevent, penalise or restrict the transfer of the property rights or liabilities. (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. (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. (4) Before making an order under this section in respect of a higher education corporation in Wales the Secretary of State shall consult— (a) the corporation; and (b) ~~the Higher Education Funding Council for Wales~~ the Commission. ~~(5) In this section "charitable purposes" has the meaning given by section 11 of the Charities Act 2011.~~ (5) In this section— "charitable purposes" has the meaning given by section 11 of the Charities Act 2011(c. 25);	

Section	Amended by
"right of return" means any right under a provision for the return or reversion of property in specified circumstances. (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. (7) The Welsh Ministers must publish a statement setting out the circumstances in which they propose to exercise the power under this section to make an order. (8) The Welsh Ministers— (a) must keep the statement under review; (b) may revise it. (9) Before publishing the statement or a revised statement, the Welsh Ministers must consult such persons as they consider appropriate. (10) As soon as possible after publishing the statement or revised statement, the Welsh Ministers must lay a copy of it before Senedd Cymru	
Designation of certain institutions for funding by the Polytechnics and Colleges Funding Council, etc **129 Designation of institutions** (1) ~~The Secretary of State~~ The Welsh Ministers may by order designate ~~as an institution eligible to receive support from funds administered by the Higher Education Funding Council for Wales~~ for the purposes of this section - (a) any institution in Wales which appears to ~~him~~ them to fall within subsection (2) below; and (b) any institution in Wales which is, or is to be, conducted by a successor company to a higher education corporation. (2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent of its total full-time equivalent enrolment number. (3), (4) (5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if— (a) it is a company limited by a guarantee formed and registered under the Companies Act 2006; (b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation; (c) its objects— (i) are exclusively charitable according to the law of England and Wales; and (ii) include the conduct of the institution which was at that time conducted by that corporation; (d) its articles of association have been approved by ~~the Secretary of State~~ the Welsh Ministers; and (e) an order has been made under section 127A or 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the	Schedule 4 Paragraph 5

Section	Amended by
corporation to the company (whether or not that order has taken effect before the order under this section is made).	
133 Payments in respect of persons employed in the provision of higher or further education (1) The Office for Students ~~and the Higher Education Funding Council for Wales each have~~ has power to make payments, subject to such terms and conditions as ~~they think~~ it thinks fit, to— (a) any local authority in ~~their~~ its area; (b) the London Residuary Body; (c) the London Pensions Fund Authority; and (d) the governing body of any institution designated under section 129 of this Act, as originally enacted; in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section. (2) In subsection (1) above "relevant expenditure" means— (a) in relation to a local authority, the London Residuary Body or the London Pensions Fund Authority, expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and (b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution. (3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date and in any other case the reference to further education shall be read as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect on that date. (4) Each of the following, that is to say— (a) a local authority; (aa) the London Residuary Body; (ab) the London Pensions Fund Authority and (b) the governing body of any institution so designated; shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.	Schedule 4 Paragraph 5
232 Orders and regulations (1) Any power of the Secretary of State or the Welsh Ministers to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument. (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.	Part 7 Section 138

Section	Amended by
(3) (4) A statutory instrument containing— (a) an Order in Council made under section 207 of this Act which amends or repeals any provision of an Act; or (b) any order or regulations made by the Secretary of State under this Act, other than an order under section, 214, 216, or 236; shall be subject to annulment in pursuance of a resolution of either House of Parliament. (4ZA) A statutory instrument containing any order or regulations made by the Welsh Ministers under this Act, other than an order under section 124A, 125, 214 or 216, shall be subject to annulment in pursuance of a resolution of Senedd Cymru. (4ZB) A statutory instrument containing an order made by the Welsh Ministers under section 124A or 125 of this Act may not be made unless a draft of the instrument has been laid before, and approved by resolution of, Senedd Cymru. (4ZC) For the purposes of subsection (4ZA) above, any order or regulations made by the Welsh Ministers under this Act includes any order or regulations made under a power that is expressed as a power of the Secretary of State and has been transferred to the Welsh Ministers. (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. (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~~ or the Welsh Ministers think fit or, in the case of orders under section 214 or 216 made by the Office for Students, the Office for Students thinks fit. (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.	

Employment and Training Act 1973

Section	Amended by
Careers services **8 Duty of Secretary of State to ensure provision of careers services for school and college students** (1) It shall be the duty of the Secretary of State to secure the provision of relevant services for assisting persons undergoing relevant education to decide— (a) what employments, having regard to their capabilities, will be suitable for and available to them when they cease undergoing such education, and (b) what training or education is or will be required by and available to them in order to fit them for those employments, and for assisting persons ceasing to undergo relevant education to obtain such employments, training and education. (2) In subsection (1) of this section and section 9 of this Act "relevant services" means— (a) giving of assistance by collecting, or disseminating or otherwise providing, information about persons seeking, obtaining or offering employment, training and education, (b) offering advice and guidance, and (c) other services calculated to facilitate the provision of any services specified in paragraphs (a) and (b) of this subsection. (3) In this section and section 9 of this Act "relevant education" means— (a) education involving full-time attendance at any educational institution in Great Britain, other than an educational institution within the higher education sector, and (b) education involving part-time attendance at any educational institution in Great Britain, other than an educational institution within the higher education sector, which is education of a description commonly undergone by persons in order to fit them for employment. (4) The references in subsection (3) of this section to an educational institution within the higher education sector shall be construed— (za) as respects England, as references to a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, other than a provider which is also an institution within the further education sector within the meaning given by section 91(3) of the Further and Higher Education Act 1992, ~~(a) as respects Wales, in accordance with section 91(5) of the Further and Higher Education Act 1992 or, if this section is in force at any time before section 65 of that Act comes into force, in accordance with section 61(3)(a) of that Act until that section comes into force, and~~ (a) as respects Wales as references to a tertiary education provider registered under section 25 of the Tertiary Education and Research (Wales) Act 2022 to provide higher education, other than a provider which is also an institution within the further education sector (within the meaning given by	Part 7 Section 140 Schedule 4 Paragraph 1

Section	Amended by
section 91(3) of the Further and Higher Education Act 1992) or a school (within the meaning given by section 4 of the Education Act 1996), and (b) as respects Scotland, in accordance with section 56(2) of the Further and Higher Education (Scotland) Act 1992. **9 Power of Secretary of State to arrange for provision of careers services for others** The Secretary of State shall have power to secure the provision of relevant services, or any description of relevant services, for assisting persons other than those undergoing relevant education, or any description of such persons, to decide— (a) what employments, having regard to their capabilities, are or will be suitable for and available to them, and (b) what training or education is or will be required by and available to them in order to fit them for those employments, and for assisting those persons to obtain such employments, training and education. **9A Duty of Welsh Ministers to consult the Commission for Tertiary Education and Research** (1) In each financial year the Welsh Ministers must consult the Commission for Tertiary Education and Research on strategic priorities in the next financial year for the performance of their duty in section 8 and the exercise of their power in section 9. (2) In this section, “financial year” means a period of 12 months ending on 31 March.	

Education (Fees and Awards) Act 1983

Section	Amended by
1 Fees at universities and further education establishments (1) The Secretary of State may, as respects any institutions to which this section applies, make regulations requiring or authorising the charging of fees which are higher in the case of students not having such connection with the United Kingdom or any part of it as may be specified in the regulations than in the case of students having such a connection. (2) The regulations may provide for exceptions and make different provision for different cases or purposes. (3) This section applies to— (a) any university, university college or college, school, hall or other institution of a university; (b) any institution within the higher education sector (c) any institution which provides higher education or further education (or both) and is either maintained by a local authority or falls within subsection (3A) below; and (ca) any institution within the further education sector (cb) any designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992; and (d) any further education institution in Scotland (i) which is administered by an education authority; or (ii) which is a college of further education for which there is a board of management established under Part I of the Further and Higher Education (Scotland) Act 1992; (e) any training provider, within the meaning of Part 3 of the Education Act 2005 (training the school workforce), who is receiving financial assistance— (i) from the Secretary of State or the Welsh Ministers under section 14 of the Education Act 2002, or (ii) from a person who is receiving financial assistance under that section]; ~~(ee) any institution eligible for funding by the Higher Education Funding Council for Wales under Part 3 of that Act;~~ (f) any institution which receives funding from the Secretary of State (whatever proportion that funding represents of the institution's total funding) and which is specified in, or is of a class or description specified in, the regulations; (g) any institution which receives funding from the <u>Welsh Ministers or the Commission for Tertiary Education and Research</u> ~~National Assembly for Wales~~ (whatever proportion that funding represents of the institution's total funding) and which is specified in, or is of a class or description specified in, the regulations. (3A) An institution falls within this subsection if it is substantially dependent for its maintenance on public funds and either is specified in the regulations or is of a class or description so specified.	Schedule 4 Paragraph 2

Section	Amended by
(4) In this section “fees” includes charges however described (including charges for board and lodging) and “public funds” means assistance from a local authority or, in Scotland, an education authority or grants under section 485 of the Education Act 1996] or section 73 of the Education (Scotland) Act 1980 and expressions used in this section and in the 1996 Act have the same meaning as in that Act. (5) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. (6) [repealed]	

Education (No. 2) Act 1986

Section	Amended by
Part IV Miscellaneous **43 Freedom of speech in universities, polytechnics and colleges** (1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers. (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with— (a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body. (3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out— (a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation— (i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and (ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and (b) the conduct required of such persons in connection with any such meeting or activity; and dealing with such other matters as the governing body consider appropriate. (4) Every individual and body of persons concerned in the government of any such establishment shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for that establishment, issued under subsection (3) above, are complied with. (4A) The establishments in England to which this section applies are— (a) any registered higher education provider; (b) any establishment of higher or further education which is maintained by a local authority; (c) any institution within the further education sector. (5) The establishments in Wales to which this section applies are— (a) any university; ~~(aa) any institution other than a university within the higher education sector;~~	Schedule 4 Paragraph 3

Section	Amended by
(aa) a tertiary education provider registered under section 25 of the Tertiary Education and Research (Wales) Act 2022 to provide higher education, other than an institution within paragraph (a) or (ba) or a school; (b) any establishment of higher or further education which is maintained by a local authority; and (ba) any institution within the further education sector (c) . (6) In this section— "governing body"— (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; ~~(b) in relation to a university in Wales, means the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs (that is to say the body commonly called the council of the university);~~ (b) in relation to an institution in Wales within the higher education sector or the further education sector has the meaning given by section 90(1) of the Further and Higher Education Act 1992 (c. 13), but subject to any provision made by virtue of section 90(2) of that Act;. "registered higher education provider" has the meaning given by section 3(10) of the Higher Education and Research Act 2017; "university" includes a university college and any college, or institution in the nature of a college, in a university. (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. (7) Where any establishment— (a) falls within subsection (4A)(b) or (5)(b) above; or (b) the local authority shall, for the purposes of this section, be taken to be concerned in its government. (8) Where a students' union occupies premises which are not premises of the establishment in connection with which the union is constituted, any reference in this section to the premises of the establishment shall be taken to include a reference to the premises occupied by the students' union.	

Employment Act 1988

Section	Amended by
26 Status of trainees etc (1) Where it appears to the Secretary of State that provision has been made under section 2 of the 1973 Act, or under section 2(3) or section 14A of the Enterprise and New Towns (Scotland) Act 1990, for persons using facilities provided in pursuance of arrangements under any of those three sections to receive payments from any person in connection with their use of those facilities, the Secretary of State may by order provide— (a) that those persons are, for the purposes and in the cases specified or described in or determined under the order, to be treated in respect of their use of those facilities as being or as not being employed; (b) that where those persons are treated as being employed they are to be treated as being the employees of the persons so specified, described or determined and of no others; (c) that where those persons are treated as not being employed they are to be treated as being trained, or are to be treated in such other manner as may be so specified, described or determined; and (d) that those payments are to be treated for the purposes of such enactments and subordinate legislation as may be so specified, described or determined in such manner as may be so specified, described or determined. (1A) The Secretary of State may make an order under subsection (1B) where it appears to the Secretary of State that provision has been made for trainees to receive payments— (a) from the Secretary of State under section 14 of the Education Act 2002, (b) (c) from the Welsh Ministers ~~under section 34(1)(c) of the Learning and Skills Act 2000~~ <u>or the Commission for Tertiary Education and Research under section 94(1)(d) or (e) of the Tertiary Education and Research (Wales) Act 2022</u>. (1B) An order under this subsection may provide— (a) that the trainees are, for the purposes and in the cases specified or described in or determined under the order, to be treated in respect of the training as being or as not being employed; (b) that where the trainees are treated as being employed they are to be treated as being the employees of the persons so specified, described or determined and of no others; (c) that where the trainees are treated as not being employed, they are to be treated in such other manner as may be so specified, described or determined; and (d) that the payments are to be treated for the purposes of such enactments and subordinate legislation as may be so specified, described or determined in such manner as may be so specified, described or determined. For the purposes of subsection (1A) and this subsection, trainees are persons receiving or proposing to receive training.	Schedule 4 Paragraph 4

Section	Amended by
(2) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may— (a) modify any enactment or subordinate legislation; (b) make different provision for different purposes and for different cases; and (c) contain such incidental, consequential and transitional provision as appears to the Secretary of State to be appropriate. (3) The consent of the Treasury shall be required for the making of any order under this section which contains provision for the manner in which any payment is to be treated for the purposes of the Income Tax Acts. (4) In this section— "enactment" includes an enactment contained in this Act or in any Act passed after this Act; and "subordinate legislation" has the same meaning as in the Interpretation Act 1978.	

Further and Higher Education Act 1992

Section	Amended by
49B Destinations (1) The Secretary of State may provide destination information to the governing body of an institution in England within the further education sector. (2) ~~The Welsh Ministers~~ The Commission for Tertiary Education and Research may provide destination information to the governing body of an institution in Wales within the further education sector. (3) In this section "destination information", in relation to an institution, means information which— (a) relates to a former student of the institution, and (b) includes information as to prescribed activities of the former student after leaving the institution. (4) Regulations under subsection (3)(b) which prescribe activities as to which ~~the Welsh Ministers~~ the Commission for Tertiary Education and Research may provide information are to be made by the Welsh Ministers. (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. (6) This section— (a) does not affect any power to provide or publish information which exists apart from this section, and (b) is subject to any express restriction on the provision of information imposed by another enactment.	Schedule 4 Paragraph 6
~~**57 Intervention: Wales**~~ ~~(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.~~ ~~(2) These are the conditions—~~ ~~(a) the Welsh Ministers are satisfied that the institution's affairs have been or are being mismanaged by its governing body;~~ ~~(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;~~ ~~(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 performance of any duty imposed by or under any Act or any Measure of the National Assembly for Wales;~~ ~~(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.~~ ~~(3) [repealed]~~ ~~(4) If this section applies the Welsh Ministers may by order—~~ ~~(a) declare which of the conditions is (or are) satisfied, and~~ ~~(b) do one or more of the things listed in subsection (5).~~	Schedule 4 Paragraph 6

Section	Amended by
(5) They may— (a) remove all or any of the members of the institution's governing body; (b) appoint new members of that body if there are vacancies (however arising); (c) give to that body such directions as they think expedient as to the exercise of their powers and performance of their duties. (5A) The directions that may be given to a governing body under this section include— (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 (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. (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. (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. (6A) The Welsh Ministers may not direct a governing body under subsection (5)(c) to dismiss a member of staff. (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. (7) A governing body must comply with any directions given to them under this section. (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. (9) [repealed]	
62 The Higher Education Funding Council for Wales (1) There shall be established— (a) [repealed] (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"). (2) [repealed] (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	Schedule 4, Paragraph 6

Section	Amended by
~~State, of whom one shall be so appointed as chairman.~~ ~~(4) In appointing the members of the HEFCW the Secretary of State—~~ ~~(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~~ ~~(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.~~ ~~(5) [repealed]~~ ~~(6) [repealed]~~ ~~(7) In this Part of this Act references to institutions in Wales—~~ ~~(a) are to institutions whose activities are carried on, or principally carried on, in Wales, but~~ ~~(b) include the Open University.~~ ~~(7A) In exercising their functions, the HEFCW shall have regard to the requirements of disabled persons.~~ ~~(7B) In subsection (7A) "disabled persons" means persons who are disabled persons for the purposes of the Equality Act 2010.~~ ~~(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.~~ ~~(9) Schedule 1 to this Act has effect with respect to the HEFCW.~~	
~~**65 Administration of funds by the HEFCW**~~ ~~(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.~~ ~~(2) The activities eligible for funding under this section are—~~ ~~(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—~~ ~~(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.~~	Schedule 4 Paragraph 6

Section	Amended by
~~(3) The HEFCW may—~~ ~~(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,~~ ~~subject in each case to such terms and conditions as the HEFCW think fit.~~ ~~(3A) In the application of subsection (3) above to any grants, loans or other payments by the HEFCW, 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 HEFCW, to pay the whole or part of any such grants, loans or other payments.~~ ~~(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.~~ ~~(4) The terms and conditions on which the HEFCW may make any grants, loans or other payments under this section may in particular—~~ ~~(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~~ ~~(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,~~ ~~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.~~ ~~(4A) [repealed]~~ ~~(4B) [repealed]~~ ~~(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.~~	
~~**66 Administration of funds: supplementary**~~ ~~(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—~~ ~~(a) such bodies representing the interests of higher education institutions as appear to the HEFCW to be concerned, and~~	Schedule 4 Paragraph 6

Section	Amended by
(b) the governing body of any particular higher education institution which appears to the HEFCW to be concerned. (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 developing its funding from other sources. (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— (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 (b) any distinctive characteristics of any institution within the higher education sector for whose activities financial support is provided under that section. (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— (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, (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 (c) any of the property held for the purposes of the institution is held on trust for or in connection with— (i) the provision of education, or (ii) the conduct of an educational institution, in accordance with the tenets of a religion or religious denomination.	
68 Grants to the HEFCW (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. (2) The terms and conditions subject to which grants are made by the Secretary of State to the HEFCW— (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 (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. (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 manner in which they are taught, supervised	Schedule 4 Paragraph 6

Section	Amended by
or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students. (4) Such terms and conditions may in particular— (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 (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.	
69 Supplementary functions (1) The HEFCW— (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 (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit, 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. (1A) (1B) (2) The HEFCW shall keep under review activities eligible for funding under section 65 of this Act. (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. (4) Where— (a) any land or other property is or was used or held for the purposes of an institution in Wales, and (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, 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. (5) The Secretary of State may by order confer or impose on the HEFCW such supplementary functions relating to the provision of education as he thinks fit. (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— (a) the exercise by the Secretary of State of functions of his under any enactment, or	Schedule 4 Paragraph 6

<table>
<tr><th>Section</th><th>Amended by</th></tr>
<tr><td>~~(b) the doing by the Secretary of State of anything he has power to do apart from any enactment,~~

~~and it relates to, or to the activities of, any institution mentioned in subsection (7) below.~~

~~(7) Those institutions are—~~

~~(a) institutions within the higher education sector, or~~

~~(b) institutions within the further education sector, or maintained or assisted by local authorities, at which prescribed courses of higher education are currently provided.~~</td><td></td></tr>
<tr><td>~~79 Duty to give information to the HEFCW~~
~~(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—~~

~~(a) a local authority,~~

~~(b) the governing body of any institution within the higher education sector, and~~

~~(c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided.~~</td><td>Schedule 4
Paragraph 6</td></tr>
<tr><td>~~81 Directions.~~
~~(1) In exercising their functions under this Part of this Act, the HEFCWshall comply with any directions under this section, and such directions shall be contained in an order made by the Secretary of State.~~

~~(2) the Secretary of State may give general directions to the HEFCW about the exercise of their functions.~~

~~(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.~~</td><td>Schedule 4
Paragraph 6</td></tr>
<tr><td>83 Efficiency studies
(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.

(1A) “Efficiency studies” are studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution.

(1B) The table referred to in subsection (1) is—

<table><tr><th>Person</th><th>Institution</th></tr><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></table></td><td>Schedule 4
Paragraph 6</td></tr>
</table>

Section		Amended by
~~The HEFCW~~	~~An institution within the higher education sector~~ ~~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).~~	
(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— (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, as the person may reasonably require for that purpose.		
91 Interpretation of Education Acts (1) This section applies for the interpretation of the Education Acts. (2) (3) References to institutions within the further education sector are to— (a) institutions conducted by further education corporations, and (b) designated institutions for the purposes of Part I of this Act (defined in section 28(4) of this Act), and (c) sixth form colleges, and references to institutions outside the further education sector are to be read accordingly. (3A) References to sixth form colleges are to institutions conducted by sixth form college corporations. ~~(4) References to a higher education funding council are to the Higher Education Funding Council for Wales.~~ (5) References to institutions within the higher education sector are to— (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, ~~(a) universities receiving financial support under section 65 of this Act,~~ ~~(aa) universities that are regulated institutions,~~ (a) tertiary education providers registered in a category specified in regulations made for the purposes of section 88 or 105 of the Tertiary Education and Research (Wales) Act 2022, other than providers that are also institutions within the further education sector or schools (b) institutions in Wales conducted by higher education corporations, and (c) designated institutions for the purposes of Part II of this Act (defined in section 72(3) of this Act),		Schedule 4 Paragraph 6

<table>
<tr><th>Section</th><th>Amended by</th></tr>
<tr><td>and references to institutions outside the higher education sector are to be read accordingly.

(5ZA) For the purposes of subsection (5)(b), the reference to institutions in Wales is to be read in accordance with section 62(7).

(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.

(6) References, in relation to a further education corporation or higher education corporation, to the institution—

(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

(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.</td><td></td></tr>
<tr><td>92 Index
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.

<table><tr><th>Expression</th><th>Relevant provision</th></tr><tr><td>appropriate further education funding council</td><td>section 1(6)</td></tr><tr><td>contract of employment, etc</td><td>section 90(1)</td></tr><tr><td>council (in Part I), or learning and skills council</td><td>sections 61A(1) and 90(2A)</td></tr><tr><td>designated institution (in Part I)</td><td>section 28(4)</td></tr><tr><td>designated institution (in Part II)</td><td>section 72(3)</td></tr><tr><td>the Education Acts</td><td>section 90(1)</td></tr><tr><td>functions</td><td>section 61(1)</td></tr><tr><td>further education</td><td>section 90(1)</td></tr><tr><td>further education corporation</td><td>section 17(1)</td></tr><tr><td>further education corporation in England</td><td>section 90(1)</td></tr><tr><td>further education corporation in Wales</td><td>section 90(1)</td></tr><tr><td>governing body</td><td>section 90(1) and (2)</td></tr><tr><td><s>the HEFCW</s></td><td><s>section 62(1)</s></td></tr><tr><td>higher education</td><td>section 90(1)</td></tr><tr><td>higher education corporation</td><td>section 90(1)</td></tr><tr><td><s>institution in Wales (in relation to the HEFCW)</s></td><td><s>section 62(7)</s></td></tr><tr><td>institutions within or outside the further education sector</td><td>section 91(3)</td></tr></table></td><td>Schedule 4
Paragraph 6</td></tr>
</table>

Section		Amended by
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)	
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)	

~~**SCHEDULE 1 The Further and Higher Education Funding Councils**~~

Schedule 4 Paragraph 6

~~**Sections 1, 9, 62, 70**~~

~~*1 Supplementary powers*~~

~~(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—~~

~~(a) acquiring and disposing of land and other property,~~

~~(b) entering into contracts,~~

~~(c) investing sums not immediately required for the purpose of the discharge of their functions, and~~

~~(d) accepting gifts of money, land or other property.~~

~~(2) The council shall not borrow money.~~

~~*2 Chief officer*~~

~~(1) One of the members of the council shall be the chief officer.~~

~~(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.~~

~~(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.~~

~~(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—~~

~~(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~~

~~(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~~

Section	Amended by
term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer. *3 Tenure of members of councils* (1) A person shall hold and vacate office as a member or as 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	

Section	Amended by
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. *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. *12* 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	

Section	Amended by
(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 Treasury as to— (a) the information to be contained in it, (b) the manner in which the information contained in it is to be presented, or (c) the methods and principles according to which the statement is to be prepared, 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. (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. (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. *17 Status of council* 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.	

Education Act 1994

Section	Amended by
18 Power to reimburse certain payments to persons formerly employed in teacher training (1) The Office for Students ~~or the Higher Education Funding Council for Wales~~ may make payments, subject to such terms and conditions as ~~they think~~ it thinks fit, to— (a) (b) a further education corporation or the governing body of any institution designated under section 28 of the Further and Higher Education Act 1992, in respect of expenditure incurred or to be incurred by that body in making safeguarded salary payments to which this section applies. (2) This section applies to payments made to a person who in consequence of a direction given by the Secretary of State under— (a) regulation 3(2) of the Further Education Regulations 1975, (b) regulation 15 of the Education (Schools and Further Education) Regulations 1981, being a direction relating to a course for the training of teachers, or (c) regulation 16 of those Regulations, ceased before 1st April 1989 to be employed in a college for the training of teachers, or in a department for the training of teachers in any other establishment of further education. (3) The amount of the safeguarded salary payment is the amount by which, in consequence of the matters mentioned in subsection (2), a person's salary exceeds that which would normally be appropriate to the post held by him. (4) A body to which subsection (1)(a) or (b) applies shall give to the Office for Students ~~or (as the case may be) the Higher Education Funding Council for Wales~~ such information as ~~they~~ it may require for the purposes of the exercise of ~~their~~ its power under that subsection.	Schedule 4 Paragraph 7
18C Inspection of teacher training in Wales (1) Her Majesty's Chief Inspector of Education and Training in Wales ("the Chief Inspector") may inspect and report on— (a) any initial training of teachers, or specialist teaching assistants, for schools, or (b) any in-service training of such teachers or assistants, which is provided by a training provider in Wales. (2) When asked to do so by the National Assembly for Wales, the Chief Inspector must— (a) give advice to the Assembly on such matters connected with training falling within subsection (1)(a) or (b) as may be specified in the Assembly's request; (b) inspect and report on such one or more relevant training providers as may be so specified. (3) The Chief Inspector may at any time give advice to—	Schedule 4, Paragraph 7

Section	Amended by
(a) the Assembly, ~~(b) a funding agency, or~~ (b) the Commission for Tertiary Education and Research, or (c) the General Teaching Council for Wales, on any matter connected with training falling within subsection (1)(a) or (b). (4) The Chief Inspector may— (a) make such reports of inspections carried out by him under this section as he considers appropriate, and (b) arrange for any such report to be published in such manner as he considers appropriate, and subsections (2) to (4) of section 29 of the 2005 Act (publication of inspection reports) apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in subsection (2) of that section. (5) When inspecting a training provider under this section, the Chief Inspector has at all reasonable times— (a) a right of entry to the premises of the training provider, and (b) a right to inspect, and take copies of, any records kept by the training provider, and any other documents containing information relating to the training provider, which he considers relevant to the exercise of his functions under this section; and section 58 of the 2005 Act (inspection of computer records) applies for the purposes of this section as it applies for the purposes of Part 1 of the 2005 Act. (6) Without prejudice to subsection (5), a training provider to which an inspection under this section relates— (a) must give the Chief Inspector all assistance in connection with the exercise of his functions under this section which he is reasonably able to give, and (b) must secure that all such assistance is also given by persons who work for the training provider. (7) The Chief Inspector may not carry out any inspection under subsection (1) unless— (a) at least eight weeks previously, he has given notice of his intention to carry out the inspection— (i) to the training provider concerned, or (ii) where the training is provided by a partnership or association of training providers, to one of those training providers, or (b) with the agreement of that training provider or (as the case may be) one of those training providers, he has given it shorter notice of that intention. (8) Any notice under subsection (7)— (a) must be given in writing, and	

Section	Amended by
(b) may be sent by post; and any such notice may (without prejudice to any other lawful method of giving it) be addressed to a training provider at any address which the training provider has notified to a funding agency as its address. (9) Nothing in this section confers any right or imposes any duty, whether as regards the carrying out of any inspection or otherwise, in relation to any course which consists of instruction given wholly or mainly for purposes other than training falling within subsection (1)(a) or (b). (10) Any reference in this section to the Chief Inspector is to be read, in relation to any inspection which he is authorised or required to carry out under this section, as including a reference to any person authorised to act on his behalf under paragraph 5(1) or (2) of Schedule 2 to the 2005 Act. (11) Nothing in this section is to be taken as prejudicing the generality of sections 20 to 23 of, or paragraph 5(1) or (2) of Schedule 2 to, the 2005 Act. (12) In this section— (a) "the 2005 Act" means the Education Act 2005; (b) "funding agency" means the Higher Education Funding Council for Wales. (c) "training provider" has the same meaning as in Part 3 of the 2005 Act; (d) "relevant training provider" means any training provider who provides training falling within subsection (1)(a) or (b); (e) "in-service training" includes any training provided to a teacher serving an induction period (within the meaning of section 19 of the Teaching and Higher Education Act 1998); (f) "documents" and "records" each include information recorded in any form.	
21 Establishments to which Part II applies (1) The establishments in England and Wales to which this Part applies are— (za) any registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017; (a) any university receiving financial support under ~~section 65 of the Further and Higher Education Act 1992~~ section 85 of the Tertiary Education and Research (Wales) Act 2022; (b) any institution in Wales conducted by a higher education corporation or further education corporation within the meaning of ~~that Act~~ the Further and Higher Education Act 1992; (ba) any sixth form college; (c) any institution designated under section 129 of the Education Reform Act 1988 ~~as eligible to receive support from funds administered by a higher education funding council~~; (d) any institution designated under section 28 of the Further and Higher Education Act 1992 as eligible to receive support from funds administered by a further education funding council; (da) any institution in Wales designated under section 28 of the	Schedule 4 Paragraph 7

Section	Amended by
Further and Higher Education Act 1992; (e) any institution substantially dependent on financial support under section 6(5) of that Act (certain institutions providing facilities for part-time, or adult, further education); (f) any institution designated, or of a description designated, by order of the Secretary of State; (g) any college, school or hall in an establishment within any of the above paragraphs. (2) The establishments in Scotland to which this Part applies are— (a) any institution within the higher education sector for the purposes of section 56(2) of the Further and Higher Education (Scotland) Act 1992; (b) any college of further education (within the meaning of section 36(1) of that Act), the board of management of which is established in pursuance of Part 1 of that Act; (c) any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980; (d) any institution designated, or of a description designated, by order of the Secretary of State. (2A) For the purposes of subsection (1)(b), institution in Wales ~~has the meaning given by section 62(7) of the Further and Higher Education Act 1992~~ means an institution whose activities are wholly or mainly carried out in Wales. (3) For the purposes of subsection (1)(e) an institution is substantially dependent on financial support under section 6(5) of the Further and Higher Education Act 1992 in any year in which such support amounts to 25 per cent or more of its income. For this purpose “year” means an accounting year of the institution, and “income” means receipts of any description, including capital receipts. (4) In subsection (1)(g) “college” includes any institution in the nature of a college. (5) References in this Part to the governing body of an establishment are to the executive governing body which has responsibility for the conduct of affairs of the establishment and the management and administration of its revenue and property.	

Education Act 1996

Section	Amended by
13 General responsibility for education (1) A local authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education and, in the case of a local authority in England, further education, are available to meet the needs of the population of their area. (2) The duty imposed by subsection (1) does not extend to matters in respect of which any duty is imposed on— (a) the Secretary of State under Part 4 of the Apprenticeships, Skills, Children and Learning Act 2009, or ~~(aa) the National Assembly for Wales under Part 2 of the Learning and Skills Act 2000, or~~ ~~(b) the Higher Education Funding Council for Wales, or~~ (ba) the Commission for Tertiary Education and Research, or (c) the Office for Students (3) The reference in subsection (1) to further education is to further education for persons— (a) who are over compulsory school age but under 19, or (b) who are aged 19 or over and for whom an EHC plan is maintained. (4) (5) (6) For the purposes of subsection (1), persons who are subject to a detention order are to be regarded as part of the population of the area in which they are detained (and not any other area).	Schedule 4 Paragraph 8
15A Powers in respect of education and training for 16 to 18 year olds (1) A local authority in Wales may secure the provision for their area of full-time or part-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, including provision for persons from other areas. (1ZA) A local authority in England may secure the provision for their area of full-time or part-time education suitable to the requirements of persons from other areas who are over compulsory school age but have not attained the age of 19. (1A) The power under subsections (1) and (1ZA) to secure the provision of education includes power to secure the provision— (a) of training, including vocational, social, physical and recreational training, and (b) of organised leisure time occupation (within the meaning of section 2(6)) which is provided in connection with the provision of education or of training within paragraph (a). (2) Subsections (6) and (7) of section 14 shall apply in relation to functions under this section as they apply in relation to functions under that section in respect of secondary education.	Schedule 4 Paragraph 8

Section	Amended by
(3) In exercising their functions under this section in respect of further education— (a) a local authority in England must in particular have regard to the needs of persons with learning difficulties or disabilities (within the meaning of section 15ZA(6) and (7)); (b) a local authority in Wales must in particular have regard to the needs of persons with additional learning needs. <u>(3A) In exercising its functions under this section a local authority in Wales must also have regard to the Commission for Tertiary Education and Research's strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.</u> (4) A local authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section.	
15B Functions in respect of education for persons over 19 (1) A local authority may secure the provision for their area of full-time or part-time education suitable to the requirements of persons who have attained the age of 19, including provision for persons from other areas. (2) The power under subsection (1) to secure the provision of education includes power to secure the provision— (a) of training, including vocational, social, physical and recreational training, and (b) of organised leisure time occupation (within the meaning of section 2(6)) which is provided in connection with the provision of education or of training within paragraph (a). (3) In exercising their functions under this section— (a) a local authority in England must in particular have regard to the needs of persons with learning difficulties or disabilities (within the meaning of section 15ZA(6) and (7)); (b) a local authority in Wales must in particular have regard to the needs of persons with additional learning needs. <u>(c) a local authority in Wales must also have regard to the Commission for Tertiary Education and Research's strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.</u> (4) A local authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section. (5) This section does not apply to higher education.	Schedule 4 Paragraph 8
Part VIII Grants and Other Financial Matters **Grants** ~~**484 Education standards grants**~~ ~~(1) The National Assembly for Wales may pay grants, known as education standards grants, to local authorities in Wales in respect of eligible expenditure incurred or to be incurred by them.~~ ~~(2) In this section "eligible expenditure" means expenditure of any class or description for the time being specified in regulations, being expenditure for or~~	Schedule 4 Paragraph 8

Section	Amended by
~~in connection with educational purposes which it appears to the National Assembly for Wales that local authorities should be encouraged to incur in the interests of education in Wales.~~ ~~(3) The regulations shall provide that any education standards grant payable in pursuance of the regulations—~~ ~~(a) shall only be payable in respect of eligible expenditure incurred or to be incurred by a local authority in a financial year to the extent to which that expenditure is approved for that year by the National Assembly for Wales for the purposes of the regulations, and~~ ~~(b) shall be payable at such rate as may be specified in the regulations.~~ ~~(4) The regulations may provide for the time and manner of payment of any education standards grant.~~ ~~(5) The regulations may provide for expenditure incurred or to be incurred by any local authority in making payments, whether by way of maintenance, assistance or otherwise, to any body or persons who incur expenditure for or in connection with educational purposes (including another local authority) to be treated, in such circumstances as may be specified in the regulations, as eligible expenditure.~~ ~~(6)~~ ~~(7) Nothing in section 29(1) or 507 applies in relation to any function of the National Assembly for Wales under this section or under section 489 so far as it relates to regulations under this section; and nothing in section 495 or in Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 applies in relation to any function arising by virtue of section 489 so far as it relates to such regulations.~~	
489 Conditions as to payment of grants under ~~sections 484 to 488~~ <u>section 485</u> (1) Regulations made ~~under any of sections 484 to 488~~ <u>section 485</u> may provide— (a) for the payment of grant under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and (b) for requiring persons to whom payments have been made under the regulations to comply with such requirements as may be so determined. ~~(2) Conditions and requirements determined under subsection (1)(a) and (b) by or in accordance with regulations made under section 484 may include conditions and requirements obliging the local authority in question to delegate decisions about the spending of—~~ ~~(a) education standards grant, and~~ ~~(b) amounts allocated by the authority to meet eligible expenditure (within the meaning of that section) which is approved by the Secretary of State,~~ ~~to such persons as may be determined by or in accordance with the regulations.~~ (3) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to or regulating any institution that— (a) provides or is concerned in the provision of educational services, or	Schedule 4 Paragraph 8

Section	Amended by
(b) is concerned in educational research, as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations under section 485. (4) Any modification made by an order under subsection (3) may be made to have permanent effect or to have effect for such period as may be specified in the order.	
508 Local authorities in Wales: functions in respect of facilities for recreation and social and physical training (1) A local authority in Wales shall secure that the facilities for primary, and secondary education provided for their area include adequate facilities for recreation and social and physical training. (1A) A local authority in Wales may provide facilities for recreation and social and physical training as part of the facilities for further education provided (whether or not by them) for their area. (2) For the purpose of subsection (1) or (1A) a local authority— (a) may establish, maintain and manage, or assist the establishment, maintenance and management of, — (i) camps, holiday classes, playing fields, play centres, and (ii) other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school or other educational institution, at which facilities for recreation and social and physical training are available for persons receiving primary, secondary or further education; (b) may organise games, expeditions and other activities for such persons; and (c) may defray, or contribute towards, the expenses of such games, expeditions and other activities. (3) When making arrangements for the provision of facilities or the organisation of activities in the exercise of their powers under subsection (2), a local authority shall, in particular, have regard to the expediency of co-operating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character. <u>(4) In exercising its functions under this section a local authority must have regard to the Commission for Tertiary Education and Research's strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.</u>	Schedule 4 Paragraph 8
530 Compulsory purchase of land (1) The Secretary of State may authorise a local authority to purchase compulsorily any land (whether within or outside their area) which— (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).	Schedule 4 Paragraph 8

Section	Amended by
(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— (a) as to the vesting of the land to be purchased, and (b) as to the appropriation of that land for the purposes of the school, 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. (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— (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 (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)~~. (4) In this section "land" includes buildings and other structures and land covered with water.	
578 Meaning of "the Education Acts" (1) In this Act "the Education Acts" means this Act together with the following Acts— 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	Part 7 Section 149

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<tr><th>Section</th><th>Amended by</th></tr>
<tr><td>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 2022.</u></td><td></td></tr>
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1 Functions conferred on a local authority under the Education Acts (as defined in section 578).

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).

Table
<table><tr><th>Enactment</th><th>Nature of functions</th></tr><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><tr><td colspan="2">Superannuation Act 1972 (c 11)</td></tr><tr><td>Section 9(5A)</td><td>Payment of injury benefit to or in respect of teachers.</td></tr><tr><td colspan="2">Employment and Training Act 1973 (c 50)</td></tr><tr><td>Sections 10 and 10A</td><td>Powers and duties relating to careers services</td></tr><tr><td>Section 12</td><td>Duty to provide information to the Secretary of State.</td></tr><tr><td colspan="2">Public Passenger Vehicles Act 1981 (c 14)</td></tr><tr><td>Section 46</td><td>Power to use a school bus to carry fare-paying passengers.</td></tr><tr><td colspan="2">Representation of the People Act 1983 (c 2)</td></tr><tr><td>Paragraph 2 of Schedule 5</td><td>Duty to prepare and revise lists of rooms in school premises which candidates may use.</td></tr><tr><td colspan="2">Disabled Persons (Services, Consultation and Representation) Act 1986 (c 33)</td></tr><tr><td>Section 5(1) to (4), (6) and (8)</td><td>Duty to require the appropriate officer to give an opinion as to whether a child</td></tr></table></td><td>Schedule 4
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Section		Amended by
	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~~ the Commission for Tertiary Education and Research in planning the local curriculum.	
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.	
~~Section 83~~	~~Duty (of local authority in Wales) to provide information to Chief Inspector.~~	
~~Section 84~~	~~Duties relating to preparation of an action plan following an area inspection in Wales.~~	
Sections 96, 101	Duties as an "authorised body" relating to qualifications (in England).	
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		Amended by
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 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.	
Tertiary Education and Research (Wales) Act 2020		
Section 56	Duty (of local authority in Wales) to provide information to the Chief Inspector.	

Education Act 1997

Section	Amended by
Part VI Inspection of Local Authorities and School Inspections **Chapter I** **Inspection of Local Authorities in Wales** **38 Inspection of local authorities in Wales** (1) The Chief Inspector— (a) may, and (b) if requested to do so by the the Welsh Ministers or the Commission for Tertiary Education and Research ("the Commission") ~~Secretary of State, shall~~, arrange for any local authority in Wales to be inspected under this section. (2) [repealed] (2A) An inspection of a local authority in Wales under this section shall consist of a review of the way in which the authority are performing— (a) any education function of theirs; (b) the functions conferred on them under sections 25 and 26 section 25 of the Children Act 2004 so far as relating to education, training or youth support services (within the meaning of section 123 of the Learning and Skills Act 2000). (2B) Where the Commission has made a request under subsection (2)(b), the review mentioned in subsection (2A) is to be of the way that the local authority is performing the functions mentioned in subsection (2A)(a) and (b) in so far as those functions relate to further education and training within the meaning of section 139(2) to (5) of the Tertiary Education and Research (Wales) Act 2022. (3) A request by the Welsh Ministers or the Commission ~~the Secretary of State~~ under this section may relate to one or more local authorities, and shall specify both— (a) the local authority or authorities concerned, and (b) the functions of theirs to which the inspection is to relate. (4) Before making any such request the Welsh Ministers or the Commission ~~the Secretary of State~~ shall consult the Chief Inspector as to the matters to be specified in the request in accordance with subsection (3). (5) Any inspection under this section shall be conducted— (a) by one of Her Majesty's Inspectors of Schools in Wales, or (b) by any additional inspector authorised under paragraph 2 of Schedule 2 to the Education Act 2005; but he may be assisted by such other persons (whether or not members of the Chief Inspector's staff) as the Chief Inspector thinks fit. (6) For the purposes of this section a local authority in Wales shall provide the Chief Inspector with such information as may be prescribed, and shall do so in such form and— (a) within such period following a request made by the Chief Inspector in any prescribed circumstances, or	Schedule 4 Paragraph 9

Section	Amended by
(b) at such other times, as regulations may provide. (7) In this section and sections 39 to 41A “the Chief Inspector” means— (a) [repealed] (b) in relation to a local authority in Wales, Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru; and in those sections references to “the inspector” in relation to an inspection under this section are references to the person conducting the inspection.	
39 Reports of inspections under s 38 and action plan by local authority (1) Where an inspection under section 38 has been completed, the inspector shall make a written report on the matters reviewed in the course of the inspection, and shall send copies of the report to— (a) any local authority to which the inspection relates; ~~and~~ (b) the Welsh Ministers, and ~~the Secretary of State.~~ (c) where the matters reviewed relate to further education and training within the meaning of section 139(2) to (5) of the Tertiary Education and Research (Wales) Act 2022, the Commission for Tertiary Education and Research. (2) Where a local authority receive a copy of a report under this section, they shall 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. (3) The authority shall publish— (a) the report, and (b) the statement prepared under subsection (2), within such period, and in such manner, as may be prescribed. (4) The Chief Inspector may arrange for any report under this section to be published in such manner as he considers appropriate; and section 29(2) to (4) of the Education Act 2005 shall apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in section 29(2).	Schedule 4 Paragraph 9

Teaching and Higher Education Act 1998

Section	Amended by
~~**27 Expenditure eligible for funding**~~ ~~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)—~~ ~~(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.~~ ~~(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."~~	Schedule 4 Paragraph 10

School Standards and Framework Act 1998

Section	Amended by
49 Maintained schools to have delegated budgets (1) Every maintained school shall have a delegated budget. (2) A new school shall have a delegated budget from a date determined in accordance with regulations. (2A) Regulations under subsection (2) may— (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 (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. (4) Subject to— (a) section 50 (right of governing body to spend budget share where school has a delegated budget), (b) paragraph 4 of Schedule 15 (power of governing body to spend amounts out of budget share where delegation of budget suspended), (c) section 489(2) of the Education Act 1996 (education standards grants), and (d) any provisions of the scheme, 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. (5) Any amount made available by a local authority to the governing body of a maintained school (whether under section 50 or otherwise)— (a) shall remain the property of the authority until spent by the governing body or the head teacher; and (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. (6) Subsection (5)(b) does not apply to any such amount where it is spent— (a) by way of repayment of the principal of, or interest on, a loan, or (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. (7) In this Part— (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 (b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.	Schedule 4 Paragraph 11

Section	Amended by
Schedule 22 Disposals of Land in case of certain schools and disposals on Discontinuance **Section 76** **Disposal of land by governing body of foundation, voluntary or foundation special school** 1 (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— (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; (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 from a foundation body; (c) (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); (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 (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). (1A) This paragraph does not apply to any disposal which— (a) is made by the governing body of a foundation or foundation special school after the commencement of this sub-paragraph, and (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. (2) The governing body shall not make any disposal to which this paragraph applies without the written consent of the Assembly. (3) Where the governing body 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— (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—	Schedule 4 Paragraph 11

Section	Amended by
(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. (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. (5) Sub-paragraph (1)(e) shall not apply in the case of any expenditure incurred on or after the appointed day unless the authority— (a) prepared a statement in writing— (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. **Disposal of land by foundation body** 2 (1) This paragraph applies to any disposal by a foundation body in Wales of— (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; (c) any land acquired from another foundation body; (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; (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 (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). (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. (2) The foundation body shall not make any such disposal without the written consent of the Assembly.	

Section	Amended by
(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— (a) make any such requirement as is mentioned in paragraph 1(3)(a); and (b) give any such direction to the foundation body as the Assembly could give to a governing body under paragraph 1(3)(b). (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. (5) Sub-paragraph (1)(e) shall not apply in the case of any expenditure incurred on or after the appointed day unless the authority— (a) prepared a statement in writing— (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 foundation body either before, or no later than 12 months after, the expenditure was incurred. **Disposal of land by trustees of foundation school** 2A (1) This paragraph applies to any disposal by the trustees of a foundation school in Wales of— (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 un-der 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. (2) Land falls within this sub-paragraph if— (a) it had been acquired by the governing body— (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	

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(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). (3) The trustees shall not make any disposal to which this paragraph applies without the written consent of the Assembly. (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— (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— (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. (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. (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— (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 (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. **Disposal of land by trustees of foundation or voluntary school** 3 (1) Subject to sub-paragraph (2A), this paragraph applies to any disposal by the trustees of a foundation or voluntary school in Wales of— (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 para-graph 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 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, 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; (c) any land acquired by the governing body of the school— (i) under a transfer under section 201(1)(a) of the Education Act 1996, or	

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(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; (d) (e) any land acquired, or enhanced in value, wholly or partly by means of— (i) any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996), or (ii) any grant paid under section 216(2) of that Act; (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 (g) any land acquired, or enhanced in value, wholly or partly by means of any grant made in pursuance of a special agreement (as defined by section 32(5) of the Education Act 1996). (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. (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. (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. (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— (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— (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. (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. (6) Sub-paragraph (1)(b) shall not apply in the case of any expenditure unless the authority—	

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(a) prepared a statement in writing— (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 trustees either before, or no later than 12 months after, the expenditure was incurred. (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). (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— (a) for the purposes of the school, or (b) for the purposes— (i) of any other existing foundation or voluntary school, or (ii) of any other proposed voluntary school, whether or not proposals have yet been published under any enactment in respect of that proposed school. (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. (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. (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. (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— (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 (b) the value of the land as at the date of any determination under sub-paragraph (3) or of any direction under sub-paragraph (9) shall be treated as proceeds of the disposal of the land. **Land required by local authority for new school** 4 (1) This paragraph applies where, on an application made by a local authority	

Section	Amended by
in Wales, the Assembly is satisfied— (a) that any relevant land— (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 (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 (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. (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. (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.	

Care Standards Act 2000

Section	Amended by
Schedule 2A Persons Subject to Review by the Commissioner under Section 72B **1** Any county council, county borough council or community council in Wales. **2** Any Health Authority for an area in, or consisting of, Wales. **2A** Any Local Health Board for an area in, or consisting of, Wales. **3** Any National Health Service trust. **4** **5** Any further education corporation within the meaning of section 17(1) of the Further and Higher Education Act 1992 (c 13) which conducts an institution in Wales. **6** Any higher education corporation within the meaning of section 90(1) of the Further and Higher Education Act 1992 which conducts an institution in Wales. **7** ~~Any institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992~~. Any tertiary education provider (other than one within paragraph 5, 6, 8 or 9) that is registered in a category specified in regulations made for the purposes of section 88 or 105 of the Tertiary Education and Research (Wales) Act 2022 **8** Any institution in Wales in relation to which a designation under section 28 of the Further and Higher Education Act 1992 has effect, which on the date the designation took effect was an institution falling within subsection (2)(a) of that section. **8A** The Commission for Tertiary Education and Research. **9** Any governing body of a school in Wales which is a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c 31). **10** Her Majesty's Chief Inspector of Education and Training in Wales. **10A**	Schedule 4 Paragraph 13

Section	Amended by
Qualifications Wales. **11** Any agricultural wages committee for an area wholly in, or consisting of, Wales. **12** A National Park authority for a National Park in Wales. **13** The Arts Council of Wales. **14** Social Care Wales **15** The Natural Resources Body for Wales **16** The National Library of Wales. **17** The National Museums and Galleries of Wales. **18** **19** The Royal Commission on the Ancient and Historical Monuments of Wales. **20** The Sports Council for Wales. **21** **22** **23** Comisiynydd y Gymraeg (The Welsh Language Commissioner). **24**	
Schedule 2B Persons whose Arrangements are Subject to Review by the Commissioner under Section 73 **1** The Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government. **2** Any county council or county borough council in Wales. **3**	Schedule 4 Paragraph 13

Section	Amended by
Any Health Authority for an area in, or consisting of, Wales. **3A** Any Local Health Board for an area in, or consisting of Wales. **4** Any National Health Service trust **5** . . . **6** Any further education corporation within the meaning of section 17(1) of the Further and Higher Education Act 1992 (c 13) which conducts an institution in Wales. **7** Any higher education corporation within the meaning of section 90(1) of the Further and Higher Education Act 1992 which conducts an institution in Wales. **8** Any institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992. **9** Any institution in Wales in relation to which a designation under section 28 of the Further and Higher Education Act 1992 has effect, which on the date the designation took effect was an institution falling within subsection (2)(a) of that section. **10** Any governing body of a school in Wales which is a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c 31). **11** The Commission of Tertiary Education and Research	

Learning and Skills Act 2000

Section	Amended by
~~31 Education and training for persons aged 16 to 19~~ ~~(1) The Welsh Ministers must secure the provision of proper facilities for—~~ ~~(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.~~ ~~(2) Facilities are proper if they are—~~ ~~(a) of a quantity sufficient to meet the reasonable needs of individuals,~~ ~~(b) of a quality adequate to meet those needs and~~ ~~(c) sufficient to satisfy the entitlements conferred under section 33F.~~ ~~(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 se-cured by other persons;~~ ~~(e)~~ ~~(4)~~ ~~(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.~~ **~~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,~~	Schedule 4 Paragraph 14

Section	Amended by
(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) (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 se-cured by other persons; (e) (4) (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 (b) organised leisure-time occupation connected with such education. (7) References in this Part to post-16 training are to— (a) training falling within section 31(1)(b) or subsection (1)(b) above, and (b) organised leisure-time occupation connected with such training. **33 Encouragement of education and training** The Welsh Ministers must— (a) encourage individuals to undergo post-16 education and training; (b) encourage employers to participate in the provision of post-16 education and training; (c) encourage employers to contribute to the costs of post-16 education and training.	

Section	Amended by
33A Formation of local curricula for students aged 16 to 18 (1) ~~The Welsh Ministers~~ The Commission 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. (2) Each local curriculum must consist of courses of study each of which— (a) falls within a category in subsection (3) (the "learning domains"); and (b) is from time to time selected by ~~the Welsh Ministers~~ the Commission to form part of that local curriculum. (3) The learning domains are— (a) mathematics, science and technology; (b) business, administration and law; (c) services for people; (d) arts, media, culture and languages; (e) humanities, social sciences and preparation for life and work. (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.	Schedule 4 Paragraph 14
33B Local curricula: Welsh language ~~The Welsh Ministers~~The Commission must exercise ~~their~~ its 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.	Schedule 4 Paragraph 14
33C Areas with more than one local curriculum (1) This section applies where ~~the Welsh Ministers form~~ the Commission forms more than one local curriculum for the area of a local authority under section 33A. (2) In relation to each local curriculum, ~~the Welsh Ministers~~ the Commission 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.	Schedule 4 Paragraph 14
33D Determination of a pupil's "relevant school or institution" (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). (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. (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. (3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3). (4) This section does not require any person to admit a pupil to a particular school or institution.	Schedule 4 Paragraph 14

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33E Pupils' choices of local curriculum courses (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). (2) The entitlement period— (a) begins on the first day of the academic year subsequent to the pupil having ceased to be of compulsory school age; and (b) ends on the day on which he or she attains the age of nineteen. (3) Regulations may make provision as to the making of elections under this section, including in particular provision— (a) specifying the maximum number of courses of study of a particular type that a pupil has the right to elect to follow; (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; (c) as to the period during which elections are to be made. (3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3). (4) For the purposes of this section the "relevant local curriculum", in relation to a pupil, means— (a) where it has been determined under section 33D that a pupil's "relevant school or institution" is a school— (i) where ~~the Welsh Ministers have~~ the Commission has 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 (ii) where ~~the Welsh Ministers have~~ the Commission has 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); (b) where it has been determined under section 33D that a pupil's "relevant school or institution" is an institution— (i) where ~~the Welsh Ministers have~~ the Commission has formed under section 33A a single local curriculum for the local authority area in which the institution is situated, that local curriculum; or (ii) where ~~the Welsh Ministers have~~ the Commission has 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).	
33G Head teacher's or principal's decision as to entitlement (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. (2) The grounds referred to in subsection (1) are that—	Schedule 4 Paragraph 14

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(a) as a result of the student's level of educational attainment, the course of study is not suitable for him or her; (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; (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; (d) disproportionate expenditure would be incurred if the student were to follow the course of study; (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. (3) Regulations may make provision connected with the making of decisions under subsection (1), including in particular provision— (a) as to the time or date by which decisions are to be made; (b) as to the procedure to be followed in connection with the making of decisions; (c) for appeals against decisions to be made to the school or institution's governing body or an-other person specified in the regulations; (d) as to the time or date by which appeals are to be determined; (e) as to the procedure to be followed in connection with the determination of an appeal. (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. (5) The Welsh Ministers may by order— (a) amend or omit any paragraph of subsection (2); (b) add additional paragraphs to that subsection; (c) amend or omit such additional paragraphs. (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).	
33I Head teacher's or principal's decision to remove entitlement (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. (2) The grounds referred to in subsection (1) are that— (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; (b) disproportionate expenditure would be incurred if the pupil were to continue to follow the course of study. (3) Regulations may make provision connected with the making of decisions	Schedule 4 Paragraph 14

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under subsection (1) including in particular provision— (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. (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. (5) The Welsh Ministers may by order— (a) amend or omit any paragraph of subsection (2); (b) add additional paragraphs to that subsection; (c) amend or omit such additional paragraphs. (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).	
33J Planning the local curriculum (1) The following persons must assist ~~the Welsh Ministers~~ the Commission in planning the local curriculum or curricula for a local authority's area— (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. (2) In subsection (1), “planning the local curriculum or curricula” means the process by which ~~the Welsh Ministers decide~~ the Commission decides under section 33A which courses of study to include in the local curriculum or curricula. ~~(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.~~ ~~(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.~~	Schedule 4 Paragraph 14
33K Delivery of local curriculum entitlements: joint-working (1) The objective of this section is to maximise the availability of courses of study included in a local curriculum formed under section 33A. (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. (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	Schedule 4 Paragraph 14

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subsection (4) have concluded that entering into such arrangements would further that objective. (4) The persons are— (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. (5) In this section and section 33L "co-operation arrangements" means— (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) (d) (6) For the purposes of this section, "relevant local curriculum" means— (a) in relation to a maintained school— (i) where ~~the Welsh Ministers have~~ the Commission has 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~~ the Commission has formed 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); (b) in relation to an institution— (i) where ~~the Welsh Ministers have~~ the Commission has have formed a single local curriculum for the local authority area in which the institution is situated, that curriculum; or (ii) where ~~the Welsh Ministers have~~ the Commission has 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).	
33L Joint-working: guidance and directions (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. (2) Guidance given under subsection (1) may relate to the contents of co-operation arrangements. (2A) The Welsh Ministers must consult the Commission before giving guidance under subsection (1).	Schedule 4 Paragraph 14

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(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. (4) A direction under subsection (3)— (a) may require persons to enter into specified arrangements; (b) may specify the terms upon which arrangements are to be entered into (whether generally or in respect of specified arrangements); (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.	
33M Power to amend learning domains (1) The Welsh Ministers may by order— (a) amend or omit any paragraph of subsection (3) of section 33A; (b) add additional paragraphs to that subsection; (c) amend or omit such additional paragraphs. (2) The Welsh Ministers must consult the Commission before making an order under subsection (1).	Schedule 4 Paragraph 14
33N The local curriculum: interpretation (1) In sections 33A to ~~33L~~33M— "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; "the Commission" means the Commission for Tertiary Education and Research; "course of study" means a course of education or training that— (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 (b) is designated by the Welsh Ministers under section 34(8) of that Act; "entitlement period" means the period described in section 33E(2); "fourth key stage" is to be construed in accordance with section 103 of the Education Act 2002; "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); "local curriculum" and "local curricula" are to be construed in accordance with section 33A; "local authority" means a local authority in Wales; "maintained school" means a community, foundation or voluntary school maintained by a local author-ity in Wales provided that it is also a secondary school;	Schedule 4 Paragraph 14

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"principal", in relation to an institution, means the principal or other head of the institution; "regulations" means regulations made by the Welsh Ministers; "relevant school or institution", in relation to a person, is to be construed in accordance with section 33D; "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; "student" means a person who has made an election under section 33E. (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.	
33O Local curriculum: directions 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.	Schedule 4 Paragraph 14
33P Application of local curriculum provisions to students who are registered pupils of special schools or who have additional learning needs (1) Regulations made by the Welsh Ministers may apply the provisions of sections 33A to 33L, 33N and 33O and the provisions of any regulations made under section 46 of the Learning and Skills (Wales) Measure 2009 in respect of a person who falls, or is likely to fall, within subsection (3). (2) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient. (3) A person falls within this subsection if he or she— (a) is above compulsory school age; and (b) either— (i) a registered pupil of a community special school which is maintained by a local authority in Wales and is not established in a hospital; or (ii) receiving the majority of his or her education at an institution which provides education wholly or mainly for persons with additional learning needs (within the meaning of section 41). (4) The Welsh Ministers must consult the Commission for Tertiary Education and Research before making regulations under subsection (1).	Schedule 4 Paragraph 14
33Q Application of local curriculum provisions to institutions within the higher education sector (1) Regulations made by the Welsh Ministers may apply the provisions of sections 33A to 33L, 33N and 33O and the provisions of regulations made under section 46 of the Learning and Skills (Wales) Measure 2009 in relation to an institution, or institutions, within the higher education sector in Wales as those provisions apply in relation to an institution within the further education sector in Wales. (2) The regulations may also apply those provisions in relation to the principal or governing body of an institution within the higher education sector in Wales (or to persons with functions that are similar to those of a principal or governing body) as they apply in relation to the principal or governing body of an institution within the further education sector in Wales.	Schedule 4 Paragraph 14

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(3) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient. (4) The Welsh Ministers must consult the Commission for Tertiary Education and Research before making regulations under subsection (1).	
~~**34 Provision of financial resources**~~ ~~(1) The Welsh Ministers may secure the provision of financial resources to—~~ ~~(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).~~ ~~(2) The Welsh Ministers may secure the provision of financial resources under subsection (1)—~~ ~~(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).~~ ~~(3) In exercising their power under subsection (1)(c) the Welsh 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—~~	Schedule 4 Paragraph 14

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(a) require the Welsh Ministers or a person designated by them to be allowed access to a per-son'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 in-formation 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) (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) **36 Funding of school sixth-forms** (1) The Welsh Ministers may make a grant to a local authority— (a) on the condition that the grant be applied as part of the authority's schools budget for a financial year funding period, and (b) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons above compulsory school age. (2) A grant made under this section may be made on conditions in addition to the condition mentioned in subsection (1)(a) (including conditions of a kind which could be imposed under section 35). (3) "Schools budget" has the same meaning as in Part II of the School Standards and Framework Act 1998 (framework for maintained schools). (3) In this section— "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	

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School Standards and Framework Act 1998 (maintained schools to have budget shares), that other period; "local authority" means a local authority in Wales (within the meaning of section 579(1) of the Education Act 1996); "schools budget" has the same meaning as in Part 2 of that Act (framework for maintained schools). **37 Assessments and means tests** (1) The Welsh Ministers may develop schemes for the assessment of the performance of persons in providing post-16 education and training. (2) The Welsh Ministers may take the assessments into account in deciding how to exercise their powers under section 34. (3) The Welsh Ministers may— (a) carry out means tests; (b) arrange for other persons to carry out means tests. (4) The Welsh Ministers may take the results of the tests into account in exercising their power un-der section 34(1)(c). **38 Qualifying accounts and arrangements** (1) The Welsh Ministers may promote— (a) the holding of accounts which qualify under section 104; (b) the making of arrangements which qualify under section 105. (2)	
40 Research and information (1) (2) (3) (4) (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. (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).	Schedule 4 Paragraph 14
41 Persons with additional learning needs (1) In discharging its functions under sections 31, 32 and 34(1)(a) to (d) and (g) the Welsh Ministers must have regard— (a) to the needs of persons with learning difficulties, and additional learning needs; (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. (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	Schedule 4 Paragraph 14

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~~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.~~ ~~(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.~~ ~~(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.~~ ~~(5) A person has a learning difficulty if—~~ ~~(a) he has a significantly greater difficulty in learning than the majority of persons of his age, or~~ ~~(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.~~ ~~(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.~~ ~~(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.~~	
73 Inspectors of Education and Training in Wales ~~(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.~~ ~~(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.~~ (3) In any provision of, or made under, any enactment— (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 (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".	Schedule 4 Paragraph 14
~~**74 Some defined terms**~~ (1) In this Part— "local authority in Wales" has the same meaning as in the Education Act 1996 (see section 579(1) of that Act); "the National Assembly" means the National Assembly for Wales. (2) In this Part, any reference to the Chief Inspector for Wales is to be read as	Schedule 4 Paragraph 14

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a reference to ~~the per-son mentioned in section 73(1).~~ Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru. **~~75 The extended remit of the Chief Inspector for Wales~~** ~~(1) The following kinds of education and training are brought within the remit of the Chief Inspector for Wales by this Part—~~ ~~(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);~~ ~~(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);~~ ~~(c) education or training provided for persons of compulsory school age in an institution in Wales which is within the further education sector;~~ ~~(d) further education provided by a school under section 80 of the School Standards and Frame-work Act 1998;~~ ~~(e) such other education or training in Wales as may be prescribed by regulations made by the Na-tional Assembly.~~ ~~(2) Neither paragraph (a) nor paragraph (b) of subsection (1) applies—~~ ~~(a) to education of a kind that may be inspected under Part 1 of the Education Act 2005; or~~ ~~(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.~~ **~~76 Additional functions of the Chief Inspector for Wales~~** ~~(1) The Chief Inspector for Wales must keep the National Assembly informed about—~~ ~~(a) the quality of the education and training which is brought within the remit of the Chief Inspector for Wales by this Part;~~ ~~(b) the standards achieved by those receiving that education and training; and~~ ~~(c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.~~ ~~(2) When asked to do so by the National Assembly, the Chief Inspector for Wales must—~~ ~~(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;~~ ~~(b) inspect such education or training, or such class of education or training, within that remit as the National Assembly may specify;~~ ~~(c) report on the result of an inspection conducted under this section.~~ ~~(3) The Chief Inspector for Wales is to have such other functions in connection~~	

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with education and training brought within the remit of the Chief Inspector for Wales by this Part as the National Assembly may specify. (4) The functions specified under subsection (3) may include 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) (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	

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~~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~~**	

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~~(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~~	

Section	Amended by
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 re-quire 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 con-ducted under section 83. (2) (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.	

Section	Amended by
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.	

Section	Amended by
125 Consultation and coordination (1) Before complying with a direction under section 123(1) by providing, securing the provision of or participating in the provision of services for residents of a particular place or area, a local authority shall consult each of the following with responsibility for all or part of the area— (a) a Local Health Board, (b) a chief officer of police, (c) a police and crime commissioner, (d) a probation committee, (da) a provider of probation services, and (e) a youth offending team. (2) The local authority shall also— (a) consult any voluntary body which provides services for young persons in the place or area concerned and which the local authority think it appropriate to consult, (aa) consult the Commission for Tertiary Education and Research, (b) (c) consult any authority or person with whom arrangements have been made for the place or area concerned under section 10(1) or(3)(a), (b) or (c) of the Employment and Training Act 1973 (careers services), (d) consult any relevant organisation established for the purpose of enabling voluntary bodies to co-operate and co-ordinate their activities, (e) consult such other persons as the local authority think appropriate, and (f) provide such opportunities as the local authority think appropriate for young persons in the place or area concerned to express their views. (3) Subsection (4) applies where a local authority— (a) provide or propose to provide youth support services for the residents of a particular place or area, or (b) secure or propose to secure the provision of youth support services for the residents of a particular place or area. (4) Where this subsection applies, persons and bodies listed in subsection (1) with responsibility for all or part of that place or area shall— (a) exercise their functions so as to support and assist the services provided, secured or proposed by the local authority, and (b) coordinate the exercise of their functions, so far as seems reasonable, with persons providing those services. (5) Subsection (4) shall not require persons or bodies to take action which would significantly interfere with the efficient or effective exercise of their functions.	Schedule 4 Paragraph 14
126 Educational institutions: information and access (1) Where a person is involved in the provision of services in pursuance of section 123(1)(a) or (b) or section 40(1)(a) or (b) of the Learning and Skills (Wales) Measure 2009, an educational institution to which this section applies shall, for the purpose of the provision of those services—	Schedule 4 Paragraph 14

Section	Amended by
(a) provide him on request with the name and address of a pupil or student; (b) provide him on request with the name and address of a parent of a pupil or student; (c) provide him on request with information in the institution's possession about a pupil or student; (d) permit him to have access to a pupil or student on the institution's premises at reasonable times; (e) make available to him, so far as is reasonably convenient, facilities on the institution's premises for providing services to individual pupils or students or groups of pupils or students. (2) Information shall not be provided under subsection (1)(c)— (a) in the case of a pupil or student who has not attained the age of 16, if a parent of his has instructed the institution not to provide information of that kind under this section, or (b) in the case of a pupil or student who has attained the age of 16, if he has instructed the institution not to provide information of that kind under this section. (3) This section applies to the following institutions— (a) community, foundation and voluntary schools, (b) community special schools (other than those established in hospitals), (c) city technology colleges and city colleges for the technology of the arts, (d) pupil referral units, (e) institutions within the further education sector, and (f) institutions in receipt of funding from the ~~National Assembly for Wales in the discharge of its functions under Part 2~~ Commission for Tertiary Education and Research under section 94 or 101 of the Tertiary Education and Research (Wales) Act 2022	
138 Wales: provision of information by public bodies (1) For the purpose of the provision in Wales of services mentioned in subsection (2), any of the persons or bodies mentioned in subsection (3) may supply information about a young person— (a) to a local authority; (b) to any other person or body involved in the provision of the services. (2) The services are— (a) services provided in pursuance of section 123 of this Act, (b) services provided in pursuance of any of sections 2, 8 , 9 and 10 of the Employment and Training Act 1973 (training and careers services), and (c) services wholly or partly funded in pursuance of section 12 of the Industrial Development Act 1982 (careers in industry). (3) The persons and bodies are— (a) a local authority, (b) (ba) a Local Health Board,	Schedule 4 Paragraph 14

Section	Amended by
(c) the National Assembly for Wales, <u>(ca) the Commission for Tertiary Education and Research;</u> (d) a chief officer of police, (e) a probation committee, (ea) a probation trust, (eb) a provider of probation services (other than a probation trust or the Secretary of State), in carrying out its statutory functions or activities of a public nature in pursuance of arrangements made under section 3 of the Offender Management Act 2007, and (f) a youth offending team.	
144 Designated institutions: disposal of land, &c (1) This section applies to land which after the coming into force of this section is transferred to trustees under section 32(3)(b) of the Further and Higher Education Act 1992 (transfer of property on designation of institution). (2) This section also applies to land which— (a) is held by trustees for the purposes of an institution which became a designated institution after the coming into force of this section, and (b) was acquired or enhanced in value wholly or partly by means of money paid under section 65 of the Education Act 1996 (grants) or paragraph 5 of Schedule 3 to the School Standards and Framework Act 1998 (grants). (3) If trustees dispose of land to which this section applies they shall notify the appropriate authority. (4) If trustees dispose of land to which this section applies they shall pay to the appropriate authority so much of the proceeds of disposal as may be determined to be just— (a) by agreement between the trustees and the authority, or (b) in default of agreement - (i) in the case of land in England held for the purposes of a sixth form college, or land in Wales, by an arbitrator to be appointed in default of agreement by the President of the Chartered Institute of Arbitrators; (ii) in the case of any other land in England, by the Secretary of State. (4A) The expense of an arbitrator appointed under subsection (4)(b)(i) is to be borne equally by the trustees and— (a) in the case of land in England, the Secretary of State; (b) in the case of land in Wales, ~~the Welsh Ministers~~ <u>the Commission for Tertiary Education and Research.</u> (5) In making a determination under subsection (4) regard shall be had, in particular, to— (a) the value of the land at the date of the determination, and (b) any enhancement of the land's value which is attributable to expenditure by the trustees or the governing body of the designated institution. (6) More than one determination may be made under subsection (4) in relation to a particular disposal where it is just to do so, in particular where the disposal involves the creation of a lease.	Schedule 4 Paragraph 14

Section	Amended by
(7) If trustees permit land to which this section applies to be used for purposes not connected with the designated institution— (a) they shall be treated for the purposes of this section as having disposed of the land, and (b) subsection (4) shall have effect as if the reference to the proceeds of disposal were a reference to the value of the land. (8) Where a designated institution has ceased to exist— (a) this section applies to land which satisfied subsection (1) or (2) immediately before the institution ceased to exist, and (b) in subsection (7) the reference to purposes not connected with the designated institution shall be treated as a reference to purposes not connected with an institution within the further education sector (within the meaning given by section 91(3) of the Further and Higher Education Act 1992). (9) In this section "the appropriate authority" means— (a) the Secretary of State, in respect of land in England held; (aa) (b) ~~the National Assembly for Wales~~ the Commission for Tertiary Education and Research, in respect of land in Wales.	

Education Act 2002

Section	Amended by
18 Repeal of specific grant-making powers (1) The following enactments (which confer on the Secretary of State or the National Assembly for Wales specific powers that are superseded by the power in section 14) shall cease to have effect— (a) section 4 of the Education Act 1967 (c 3) (loans for capital expenditure for the purposes of colleges of education), (b) section 1(1)(b) of the Education Act 1986 (c 40) (grants to Further Education Unit), (c) section 50(1)(b) of the Education (No 2) Act 1986 (c 61) (grants to facilitate training of persons other than teachers), (d) section 210 of the Education Reform Act 1988 (c 40) (grants to further education institutions for education of travellers and displaced persons), (e) section 211 of that Act (grants in respect of special provision for immigrants), (f) section 1 of the Nursery Education and Grant-Maintained Schools Act 1996 (c 50) (arrangements for making grants in respect of nursery education), (g) sections 486 to 488 and section 490 of the Education Act 1996 (c 56) (which confer miscellaneous grant-making powers), (h) section 491 of that Act (payment of school fees and expenses), and (i) section 3 of the School Standards and Framework Act 1998 (c 31) (payment of grant in connection with reductions in infant class sizes). ~~(2) The power to pay grants under section 484 of the Education Act 1996 (education standards grants) shall be exercisable only in relation to Wales.~~	Schedule 4, Paragraph 15
28A Power of governing body to provide higher education (1) Subject to subsection (2), the governing body of a maintained school shall have power to arrange the provision to pupils at the school (whether by teachers at the school or other persons) of 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). (2) A governing body may exercise the power under subsection (1) in relation to a particular pupil only if they are satisfied that the provision to that pupil of the course in question will not to any significant extent interfere with the other education with which he is being provided at the school. (3) ~~The National Assembly for Wales~~ <u>The Commission for Tertiary Education and Research</u> may give, or make arrangements for the giving of, financial assistance to any person in connection with the provision of courses mentioned in subsection (1) by the governing body of a maintained school in Wales. (4) Sections 15 and 16 apply to financial assistance given under subsection (3) as they apply to financial assistance given under section 14. (5) This section has effect notwithstanding section 1(4) of the Education Act 1996 (functions not conferred with respect to higher education).	Schedule 4 Paragraph 15

Section	Amended by
140 Further education: general (1) Regulations under any of sections 136 to 139 may provide that a specified provision of the regulations shall not apply where a specified condition (which may refer to the opinion of a specified person) is satisfied. (2) Regulations under any of sections 136 to 139 may impose a function on— (a) a local authority, or (b) the governing body of a further or higher education institution. (3) In sections 136 to 139— "education" includes vocational, social, physical and recreational training, "further education institution" means an institution which— (a) provides further education and is maintained by a local authority, or (b) is within the further education sector, and "higher education institution" means an institution which— (a) is within the higher education sector, and (b) receives financial support under ~~section 65 of the Further and Higher Education Act 1992 (c 13) (administration of funds by higher education funding councils)~~ section 85 of the Tertiary Education and Research (Wales) Act 2022. ~~(4) For the purposes of section 138(3), a university to which an approved plan relates is to be treated (in any case where it would not be so treated but for this subsection) as being a higher education institution.~~ ~~(5) "Approved plan", in subsection (4), has the meaning given in section 7 of the Higher Education (Wales) Act 2015.~~	Schedule 4, Paragraph 15
145 Specification of qualification or course (1) A power under sections 132 to 140 to make provision by reference to a specified qualification, a specified course of education or training or a specified programme includes power to make provision— (a) by reference to a class or description of qualification, course or programme; (b) by reference to the institution, or class or description of institution, which awards the qualification or provides the course or programme; (c) which confers discretion on the Secretary of State, the National Assembly for Wales, ~~the Higher Education Funding Council for Wales~~ the Commission for Tertiary Education and Research, the General Teaching Council for Wales or another specified person. (2) A discretion under subsection (1)(c) may, in particular, refer to approval or accreditation of a qualification, course, programme or institution. (3) Regulations made by virtue of subsection (1) may impose a duty on ~~the Higher Education Funding Council for Wales~~ the Commission for Tertiary Education and Research.	Schedule 4, Paragraph 15

Section	Amended by
178 Training and education provided in the workplace for 14 to 16 year olds ~~(1) The Learning and Skills Act 2000 (c 21) is amended as follows.~~ (2) (3) ~~(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.".~~	Schedule 4, Paragraph 15
Schedule 21 Minor and Consequential Amendments **Section 215(1)** **Education Act 1996 (c 56)** ~~**49**~~ ~~(1) Section 484 of the Education Act 1996 (education standards grants) is amended as follows.~~ ~~(2) For any reference to the Secretary of State there is substituted a reference to the National Assembly for Wales.~~ ~~(3) In subsection (1), after "local authorities" there is inserted "in Wales".~~ ~~(4) In subsection (2) the words "England and" are omitted.~~ ~~(5) Subsection (6) is omitted.~~ **Learning and Skills Act 2000 (c. 21)** ~~**125**~~ ~~(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.~~ ~~(2) In subsection (1)(a) for "local schools budget" there is substituted "schools budget".~~ ~~(3) In subsection (3) for "Local schools budget" there is substituted "Schools budget".~~	Schedule 4, Paragraph 15

Children Act 2004

Section	Amended by
Part 3 Children's Services in Wales **General** **25 Co-operation to improve well-being: Wales** (1) Each local authority in Wales must make arrangements to promote co-operation between— (a) the authority; (b) each of the authority's relevant partners; and (c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority's area. (1A) Each local authority in Wales must also make arrangements to promote co-operation between officers of the authority who exercise its functions. (2) The arrangements under subsections (1) and (1A) are to be made with a view to— (a) improving the well-being of children within the authority's area, in particular those with needs for care and support; (b) improving the quality of care and support for children provided in the authority's area (including the outcomes that are achieved from such provision); (c) rotecting children who are experiencing, or are at risk of, abuse, neglect or other kinds of harm (within the meaning of the Children Act 1989). (3) In making arrangements under this section a local authority in Wales must have regard to the importance of parents and other persons caring for children in improving the well-being of children. (4) For the purposes of this section each of the following is the relevant partner of a local authority in Wales— (a) the local policing body and the chief officer of police for a police area any part of which falls within the area of the local authority; (aa) any other local authority in Wales with which the authority agrees that it would be appropriate to co-operate under this section; (b) a local probation board for an area any part of which falls within the area of the authority; (ba) the Secretary of State in relation to his functions under sections 2 and 3 of the Offender Management Act 2007, so far as they are exercisable in relation to Wales; (bb) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a relevant partner of the authority; (c) a youth offending team for an area any part of which falls within the area of the authority;	Schedule 4, Paragraph 17

Section	Amended by
(d) a Local Health Board for an area any part of which falls within the area of the authority; (e) an NHS trust providing services in the area of the authority; (f) ~~the Welsh Ministers to the extent that they are discharging functions under Part 2 of the Learning and Skills Act 2000~~ the Commission for Tertiary Education and Research; (g) such a person, or a person of such description, as regulations made by the Welsh Ministers may specify. (4A) Regulations under subsection (4)(g) may not specify a Minister of the Crown, the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) or the principal of a secure college unless the Secretary of State consents. (5) The relevant partners of a local authority in Wales must co-operate with the authority in the making of arrangements under this section. (6) A local authority in Wales and any of their relevant partners may for the purposes of arrangements under this section— (a) provide staff, goods, services, accommodation or other resources; (b) establish and maintain a pooled fund. (7) For the purposes of subsection (6) a pooled fund is a fund— (a) which is made up of contributions by the authority and the relevant partner or partners concerned; and (b) out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners. (8) A local authority in Wales and each of their relevant partners must in exercising their functions under this section have regard to any guidance given to them for the purpose by the Welsh Ministers. (9) The Welsh Ministers must obtain the consent of the Secretary of State before giving guidance under subsection (8) at any time after the coming into force of any of paragraphs (a) to (c) of subsection (4). (9A) Information about the arrangements a local authority in Wales makes under this section may be included in the local well-being plan published under section 39, 44(5) or 47(6) or (11) of the Well-being of Future Generations (Wales) Act 2015 (anaw 2) by the public services board of which the local authority is a member. (10) Arrangements under this section may include arrangements relating to— (a) persons aged 18 and 19; (b) persons over the age of 19 who are receiving— (i) services under sections 105 to 118 and 176 of the Social Services and Well-being (Wales) Act 2014; or (ii) youth support services (within the meaning of section 123 of the Learning and Skills Act 2000 (c 21)). (11) In this section— “care and support” means—	

Section	Amended by
(a) care; (b) support; (c) both care and support; "well-being" means well-being in relation to any of the following— (a) physical and mental health and emotional well-being; (b) protection from abuse and neglect; (c) education, training and recreation; (d) domestic, family and personal relationships; (e) contribution made to society; (f) securing rights and entitlements; (g) social and economic well-being; (h) suitability of living accommodation; (i) physical, intellectual, emotional, social and behavioural development; and it includes "welfare" as that word is interpreted for the purposes of the Children Act 1989.	
29 Information databases: Wales (1) The Assembly may for the purpose of arrangements under section 25 or 28 above or under section 175 of the Education Act 2002— (a) by regulations require local authorities in Wales to establish and operate databases containing information in respect of persons to whom such arrangements relate; (b) itself establish and operate, or make arrangements for the operation and establishment of, one or more databases containing such information. (2) The Assembly may for the purposes of arrangements under subsection (1)(b) by regulations establish a body corporate to establish and operate one or more databases. (3) A database under this section may only include information falling within subsection (4) in relation to a person to whom arrangements specified in subsection (1) relate. (4) The information referred to in subsection (3) is information of the following descriptions in relation to a person— (a) his name, address, gender and date of birth; (b) a number identifying him; (c) the name and contact details of any person with parental responsibility for him (within the meaning of section 3 of the Children Act 1989 (c 41)) or who has care of him at any time; (d) details of any education being received by him (including the name and contact details of any educational institution attended by him); (e) the name and contact details of any person providing primary medical services in relation to him under the National Health Service (Wales) Act 2006; (f) the name and contact details of any person providing to him services of such description as the Assembly may by regulations specify;	Schedule 4, Paragraph 17

Section	Amended by
(g) information as to the existence of any cause for concern in relation to him; (h) information of such other description, not including medical records or other personal records, as the Assembly may by regulations specify. (5) The Assembly may by regulations make provision in relation to the establishment and operation of any database or databases under this section. (6) Regulations under subsection (5) may in particular make provision— (a) as to the information which must or may be contained in any database under this section (subject to subsection (3)); (b) requiring a person or body specified in subsection (7) to disclose information for inclusion in the database; (c) permitting a person or body specified in subsection (8) to disclose information for inclusion in the database; (d) permitting or requiring the disclosure of information included in any such database; (e) permitting or requiring any person to be given access to any such database for the purpose of adding or reading information; (f) as to the conditions on which such access must or may be given; (g) as to the length of time for which information must or may be retained; (h) as to procedures for ensuring the accuracy of information included in any such database; (i) in a case where a database is established by virtue of subsection (1)(b), requiring local authorities in Wales to participate in the operation of the database. (7) The persons and bodies referred to in subsection (6)(b) are— (a) the persons and bodies specified in section 28(1); ~~(b) the National Assembly for Wales to the extent that it is discharging its functions under Part 2 of the Learning and Skills Act 2000;~~ (b) the Commission for Tertiary Education and Research; (c) the governing body of a maintained school in Wales (within the meaning of section 175 of the Education Act 2002 (c 32)); (d) the governing body of an institution in Wales within the further education sector (within the meaning of that section); (e) the proprietor of an independent school in Wales (within the meaning of the Education Act 1996 (c 56)); (f) a person or body of such other description as the Assembly may by regulations specify. (8) The persons and bodies referred to in subsection (6)(c) are— (a) a person registered in Wales for child minding or the provision of day care under Part 2 of the Children and Families (Wales) Measure 2010; (b) a voluntary organisation exercising functions or engaged in activities in relation to persons to whom arrangements specified in subsection (1) relate;	

Section	Amended by
(c) the Commissioners of Inland Revenue; (d) a registered social landlord or private registered provider of social housing; (e) a person or body of such other description as the Assembly may by regulations specify. (9) The Assembly and the Secretary of State may provide information for inclusion in a database under this section. (10) The provision which may be made under subsection (6)(e) includes provision for a person of a description specified in the regulations to determine what must or may be done under the regulations. (11) Regulations under subsection (5) may also provide that anything which may be done under regulations under subsection (6)(c) to (e) or (9) may be done notwithstanding any rule of common law which prohibits or restricts the disclosure of information. (12) Regulations under subsections (1)(a) and (5) may only be made with the consent of the Secretary of State. (13) Any person or body establishing or operating a database under this section must in the establishment or operation of the database have regard to any guidance, and comply with any direction, given to that person by the Assembly. (14) Guidance or directions under subsection (13) may in particular relate to— (a) the management of a database under this section; (b) the technical specifications for any such database; (c) the security of any such database; (d) the transfer and comparison of information between databases under this section; (e) the giving of advice in relation to rights under the data protection legislation. (15) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).	

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20 Functions of Chief Inspector (1) The Chief Inspector has the general duty of keeping the Assembly informed about— (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. (2) When asked to do so by the Assembly, the Chief Inspector must— (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. (3) In addition, the Chief Inspector has the following specific duties— (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. (4) The Chief Inspector may at any time give advice to the Assembly on any matter connected with schools, or a particular school, in Wales. (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. (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	Schedule 4 Paragraph 18

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direct. (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)~~ to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2022 apply.	
24 Power of Chief Inspector to arrange for inspections (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"). (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. (3) An Inspector inspecting a school, or monitoring an inspection, under this section has at all reasonable times— (a) a right of entry to the premises of the school, (b) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who— (i) are registered at the school, and (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, are receiving part of their education from any person ("the provider"), (c) a right of entry to any premises of the provider used in connection with the provision by him of that education, (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 (e) a right to inspect and take copies of— (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and (ii) any other documents containing information relating to the provision of such education by the provider, which the Inspector considers relevant to the discharge of his functions. (4) It is an offence intentionally to obstruct any Inspector in the exercise of any of his functions under this section. (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. (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)~~ to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2022 apply that is provided by the school.	Schedule 4 Paragraph 18

28 Duty to arrange regular inspections of certain schools (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. (2) Subject to subsection (3), the schools to which this section applies are— (a) community, foundation and voluntary schools, (b) community special schools, (c) maintained nursery schools, and (d) schools approved under section 342 of the Education Act 1996 (non-maintained special schools). (3) This section does not apply to any school— (a) which is a closing school (as defined by subsection (4)), and (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. (4) In subsection (3)(a) a "closing school" means— (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, (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, (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) or 81(1) of the School Standards and Organisation (Wales) Act 2013, or (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. (5) It is the general duty of any inspector conducting an inspection under this section to report on— (a) the quality of the education provided in the school, (b) how far the education provided in the school meets the needs of the range of pupils at the school, (c) the educational standards achieved in the school, (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, (e) the spiritual, moral, social and cultural development of the pupils at the school, and (f) the contribution made by the school to the well-being of those pupils. (6) Subsection (1) has effect subject to section 32. (7) An inspection which is required under this section must not extend to— (a) denominational education,	Schedule 4 Paragraph 18

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(b) education ~~which is brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c 21)~~ to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2022 apply, or (c) the content of collective worship which falls to be inspected under section 50. (8) Schedule 4 makes further provision with respect to inspections under this section.	
44C Report after area inspection on schools with sixth forms requiring significant improvement (1) This section applies if in the course of an area inspection under ~~section 83 of the Learning and Skills Act 2000~~ section 83 of the Tertiary Education and Research (Wales) Act 2022 the Chief Inspector forms the opinion that a school requires significant improvement in relation to its sixth form. (2) The Chief Inspector must make a report about the school stating that opinion. (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.	Schedule 4 Paragraph 18
44D Copies of report and action plan (1) This section applies to a report of an inspection under Chapter 3 which— (a) states an opinion that a school requires significant improvement in relation to its sixth form, and (b) is made by a member of the Inspectorate or states that the Chief Inspector agrees with the opinion. (2) The person making the report must send a copy (together with a copy of the summary, if there is one)— (a) to the Welsh Ministers, and (b) if the person making the report is a member of the Inspectorate, to the appropriate authority for the school. (3) The following provisions apply (with the necessary modifications) in relation to a report to which this ~~paragraph~~ section applies— (a) section ~~38(2)~~ (38)(3) (additional copies), (b) section 38(4) (publication by appropriate authority), (c) section 39 (action plan by appropriate authority), and (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). (4) In the application of those provisions— (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 (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.	Schedule 4 Paragraph 18

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44E Report on sixth form schools causing concern after area inspection (1) This section applies if in the course of an area inspection under ~~section 83 of the Learning and Skills Act 2000~~ section 61 of the Tertiary Education and Research (Wales) Act 2022 the Chief Inspector forms the opinion that— (a) special measures are required to be taken in relation to a sixth form school, or (b) that a sixth form school requires significant improvement. (2) The Chief Inspector must make a report about the school stating that opinion. (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. (4) A "sixth form school" is a maintained school which— (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and (b) does not provide full-time education suitable to the requirements of pupils of compulsory school age.	Schedule 4 Paragraph 18
Funding of teacher training by Higher Education Funding Council for Wales ~~**85 Qualifying activities and eligible institutions in relation to HEFCW funding**~~ ~~(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).~~	Schedule 4 Paragraph 18

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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. (2) The terms and conditions on which HEFCW may make any grants, loans or other payments under this section may in particular— (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 (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. (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. (4) Where— (a) a condition is imposed under subsection (3) in connection with any grant, loan or other payment to an eligible institution, and (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, 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. (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). (6) In exercising their functions under this section HEFCW must have regard— (a) generally, to any forecast of demand for newly-qualified teachers that is notified to them by the Assembly, and (b) in relation to any particular institution, to any assessment of the quality of the teacher training provided by that institution— (i) made by the Chief Inspector for Wales, or (ii) to which HEFCW think it appropriate to have regard or to which the Assembly directs them to have regard. **87 Provisions supplementary to section 86** (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 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—	

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(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 at 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 criteria for the selection and appointment of staff and for the admission of students. (4) Such terms and conditions may in particular— (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 (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. (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. **89 Power of HEFCW to carry out or commission research** HEFCW may carry out or commission such research as they consider appropriate with a view to improving— (a) the training of teachers, or (b) the standards of teaching.	

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~~**90 Supplementary and ancillary functions of HEFCW**~~ ~~(1) The Assembly may by order confer or impose on HEFCW such functions supplementary to their functions under this Part as the Assembly thinks fit.~~ ~~(2) For the purposes of subsection (1) a function is a supplementary function in relation to HEFCW if—~~ ~~(a) it is exercisable for the purposes of the exercise by the Assembly of functions of the Assembly under any enactment, and~~ ~~(b) it relates to, or to the activities of, an eligible institution.~~ ~~(3) Before making an order under subsection (1) the Assembly must carry out such consultation as appears to it to be appropriate.~~ ~~(4) HEFCW may carry out such activities ancillary to their functions under this Part as the Assembly may direct.~~ ~~**91 Directions by Assembly**~~ ~~(1) In exercising their functions under this Part HEFCW must comply with any directions under this section.~~ ~~(2) The Assembly may give general directions to HEFCW about the exercise of their functions.~~ ~~(3) If it appears to the Assembly that the financial affairs of an eligible institution have been or are being mismanaged the Assembly may, after consulting HEFCW and the institution, give such directions to HEFCW about the provision of financial support in respect of the activities carried on by the institution as the Assembly considers necessary or expedient by reason of the mismanagement.~~ ~~(4) Directions under this section are to be contained in an order made by the Assembly.~~	
Common provisions **92 Joint exercise of functions** (1) The Secretary of State~~, HEFCW~~ and any other relevant funding body may exercise any of their functions jointly. (2) In subsection (1) "other relevant funding body" means the Office for Students~~ or the the Assembly to the extent that it is discharging its functions under Part 2 of the Learning and Skills Act 2000~~. (2A) The reference in subsection (1) to the functions of the Secretary of State is to the functions of the Secretary of State relating to training for members of the school workforce. (3) ~~(4) The Assembly may by order authorise HEFCW to exercise their functions under this Part jointly with a body specified in the order, and the specified body to exercise its functions jointly with HEFCW~~ (5)	Schedule 4 Paragraph 18

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93 Efficiency studies (1) The Secretary of State ~~and HEFCW~~ may arrange for the promotion or the carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of a qualifying person. (2) A person promoting or carrying out such studies at the request of the Secretary of State ~~or HEFCW~~ may require the qualifying person concerned— (a) to provide him, or a person authorised by him, with such information, and (b) to make available to him, or a person authorised by him, for inspection their accounts and such other documents, as he may reasonably require for that purpose. (3) In this section "qualifying person" means— (a) a training provider receiving financial assistance under section 14 of the Education Act 2002 from the Secretary of State, ~~or~~ ~~(b) the governing body of an eligible institution, as defined by section 85(3), receiving financial support under this Part from HEFCW~~	Schedule 4 Paragraph 18
94 Provision of information ~~(1) HEFCW may give the Secretary of State information for the purposes of the exercise of the Secretary of State's functions relating to training for members of the school workforce.~~ ~~(2) The Secretary of State may give HEFCW information for the purposes of the exercise of their functions under any enactment.~~ (3) The persons and bodies mentioned in subsection (4) must— (a) give the Secretary of State such information as the Secretary of State may require for the purpose of the exercise of the Secretary of State's functions relating to training for members of the school workforce; ~~(b) give HEFCW such information as they may require for the purpose of the exercise of their functions under any enactment.~~ (4) The persons and bodies referred to in subsection (3) are— (a) a person receiving, or who has received or applied for~~, a grant, loan or other payment under section 86, or~~ financial assistance from the Secretary of State under section 14 of the Education Act 2002; (b) a local authority.	Schedule 4 Paragraph 18
~~**97 Institutions of a denominational character**~~ ~~For the purposes of this Part an institution is of a denominational character if—~~ ~~(a) at least one quarter of the members of the governing body of the institution, or in the case of a school at least one-fifth, are persons appointed to represent the interests of a religion or religious denomination, or~~ ~~(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 is to be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination, or~~	Schedule 4 Paragraph 18

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~~(c) any of the property held for the purposes of the institution is held on trust for or in connection with—~~ ~~(i) the provision of education, or~~ ~~(ii) the conduct of an educational institution,~~ ~~in accordance with the tenets of a religion or religious denomination.~~	
100 Interpretation of Part 3 (1) In this Part— "the Chief Inspector for England" means Her Majesty's Chief Inspector of Education, Children's Services and Skills; ~~"the Chief Inspector for Wales" means Her Majesty's Chief Inspector of Education and Training in Wales;~~ ~~"denominational character", in relation to an institution, is to be read in accordance with section 97;~~ ~~"governing body", in relation to an institution conducted by a company, is to be read in accordance with an order under subsection (2);~~ ~~"HEFCW" means the Higher Education Funding Council for Wales;~~ "maintained school" means— (a) a community, foundation or voluntary school, (b) a community or foundation special school, or (c) a maintained nursery school; "the school workforce" and "member of the school workforce" are to be read in accordance with subsection (1A); "training", in relation to members of the school workforce, is to be read in accordance with section 96(1); "training provider" means a person who provides training for members of the school workforce. (1A) For the purposes of this Part, the school workforce consists of the following members— (a) persons who work in schools, and (b) other persons who are teachers or who carry out work that consists of or includes teaching. ~~(2) The Assembly may by order provide for references in sections 85 to 91 to the governing body of an institution, in relation to an institution which is conducted by a company, to be read as references to the governing body provided for in the instrument of government, or to the company, or to both~~. (3) Other expressions, if used in this Part and the Education Act 1996 (c 56), have the same meaning in this Part as in that Act.	Schedule 4 Paragraph 18
Schedule 9 Further Amendments Relating to School Inspection **Learning and Skills Act 2000 (c 21)** ~~**24**~~ ~~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~~	Schedule 4 Paragraph 18

Section	Amended by
~~1996" substitute "Part 1 of the Education Act 2005".~~ ~~**25**~~ ~~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".~~ **26** (1) Section 118 of the Learning and Skills Act 2000 (inspection) is amended as follows. (2) For subsection (5) substitute— "(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— (a) section 10(1)(a) and (d) (right of access), and (b) section 58 (computer records)." (3) In subsection (6), for "Section 42A of the 1996 Act" substitute "Section 11 of the Education Act 2005". **27** (1) Section 128 of the Learning and Skills Act 2000 (conduct and effect of inspections) is amended as follows. (2) For subsection (2) substitute— "(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— (a) section 24(3)(a) and (d) (right of access), and (b) section 58 (computer records)." (3) In subsection (3), for "Section 42A" substitute "Section 29".	
Schedule 18 Further Amendments Related to Provisions of Part 4 **Learning and Skills Act 2000 (c 21)** **12** (1) Section 7 of the Learning and Skills Act 2000 (funding of school sixth-forms: England) is amended as follows. (2) In subsection (1)(a), for "financial year" substitute "funding period". (3) For subsection (3) substitute— "(3) In this section— "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; "schools budget" has the same meaning as in Part 2 of that Act (framework for maintained schools)." ~~**13**~~ ~~(1) Section 36 of the Learning and Skills Act 2000 (funding of school sixth-~~	Schedule 4 Paragraph 18

Section	Amended by
~~forms: Wales) is amended as follows.~~ ~~(2) In subsection (1)(a), for "financial year" substitute "funding period".~~ ~~(3) For subsection (3) substitute —~~ ~~"(3) In this section —~~ ~~"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;~~ ~~"schools budget" has the same meaning as in Part 2 of that Act (framework for maintained schools)."~~	

Commissioner for Older People (Wales) Act 2006

Section	Amended by
Schedule 2 Persons whose Functions are Subject to Review under Section 3 **Education and training** The National Council for Education and Training for Wales. 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. ~~The Higher Education Funding Council for Wales.~~ The Commission for Tertiary Education and Research. A further education corporation discharging functions in relation to Wales. A higher education corporation discharging functions in relation to Wales. ~~An institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992 (c 13).~~ a tertiary education provider (other than one mentioned elsewhere in this Schedule) that is registered in a category specified in regulations made for the purposes of section 87 or 104 of the Tertiary Education and Research (Wales) Act 2022 The governing body of a maintained school in Wales at which further education is provided. Qualifications Wales.	Schedule 4, Paragraph 19
Schedule 3 Persons whose Arrangements are Subject to Review under Section 5 **Education and training** The National Council for Education and Training for Wales. A further education corporation discharging functions in relation to Wales. A higher education corporation discharging functions in relation to Wales. A tertiary education provider (other than one mentioned elsewhere in this Schedule) that is registered in a category specified in regulations made for the purposes of section 88 or 105 of the Tertiary Education and Research (Wales) Act 2022. The governing body of a maintained school in Wales at which further education is provided.	Schedule 4, Paragraph 19

Government of Wales Act 2006

Section	Amended by
148 Meaning of "Welsh public records" (1) The following are Welsh public records— (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, (c) 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 (d) 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, (e) 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 (f) 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. (2) The bodies and establishments referred to in subsection (1)(e) are— (a) the Care Council for Wales, (aa) Commission for Tertiary Education and Research (b) (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, (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, (ka) the Natural Resources Body for Wales,	Schedule 4 Paragraph 20

<table>
<tr><th>Section</th><th>Amended by</th></tr>
<tr><td>(l) the Qualifications, Curriculum and Assessment Authority for Wales,

(la) Qualifications Wales,

(m) the Wales Centre for Health, and

(n) the Welsh Board of Health.

(3) An order under subsection (1)(f) may be made in relation to a description of records—

(a) which (immediately before the order is made) are public records for the purposes of the Public Records Act 1958, or

(b) which (at that time) are not public records for those purposes.

(4) No order under subsection (1)(f) may be made—

(a) in relation to records within paragraph (a) of subsection (3), unless the Secretary of State has consulted the Welsh Ministers, and

(b) in relation to records within paragraph (b) of that subsection, without the agreement of the Welsh Ministers.

(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.

(6) In this section “records” includes—

(a) written records, and

(b) records conveying information by any other means.</td><td></td></tr>
<tr><td>Schedule 11 Transitional Provisions

Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedure

35
(1) This paragraph applies where—

(a) a function to make subordinate legislation was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 (c 38) by a pre-commencement enactment,

(b) the function has been transferred to the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31, and

(c) when the function was transferred, no Minister of the Crown had the same or substantially the same function exercisable in relation to England.

(2) No procedure for scrutiny by the Assembly applies to any instrument made in the exercise of the function, or a draft of any such instrument, unless the function is specified in Table 1 or Table 2.

(3) No subordinate legislation is to be made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 1 unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

TABLE 1
<table>
<tr><th>Function</th><th>Description</th></tr>
<tr><td>Section 45B(1) of the Environmental Protection Act 1990 (c 43).</td><td>Power to apply section 45A to Welsh waste collection authorities.</td></tr>
</table>
</td><td>Schedule 4
Paragraph 20</td></tr>
</table>

Section 45D of the School Standards and Framework Act 1998 (c 31).	Power to repeal school funding provisions.
Section 8(3) of the Care Standards Act 2000 (c 14).	Power to confer functions in relation to Part 2 services in Wales.
Section 72B(2) of that Act.	Power to amend list of persons reviewable by Commissioner.
Section 73(5A) of that Act.	Power to amend list of arrangements reviewable by Commissioner.
Section 76(4) of that Act.	Power to confer further functions on Commissioner.
Section 78(1A) of that Act.	Power to provide that person aged 18 or over is a child for the purposes of Part 5.
Section 78(6) of that Act.	Power to make provision about persons to whom Part 5 applies.
Paragraph 2 of Schedule 2 to that Act.	Power to make provision about the appointment etc of Commissioner.
Section 68(1) of the Local Government Act 2000 (c 22), if exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.
Section 68(3) of that Act, if exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.
Section 70(1) of that Act.	Power to make provision about investigations by Ombudsman.
Section 20(1) of the Political Parties, Elections and Referendums Act 2000.	Power to transfer functions of the Local Government Boundary Commission for Wales.
Section 3(4) of the Health (Wales) Act 2003 (c 4).	Power to transfer functions of Wales Centre for Health to Welsh Minister.
Section 4(1) of that Act.	Power to establish Health Professions Wales (HPW).
Section 4(3) of that Act.	Power to provide for HPW to carry out Welsh Ministers' functions.
Section 5(8) of that Act.	Power to abolish HPW
Section 83(2) of the Local Government Act 2003 (c 26).	Power to make fire authorities in Wales major precepting authorities.
Section 92(2) of that Act.	Power to repeal section 24(3) of the Housing Act 1985 (c 68).
Section 23(9) of the Anti-social Behaviour Act 2003 (c 38).	Power to apply to Wales provisions about penalty notices in cases of truancy.
Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c 43), if exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc
Section 96 of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.
Section 101(1) of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc
Section 12(2) of the Public Audit (Wales) Act 2004 (c 23).	Power to add to definition of “local government body in Wales”.
Section 39(1) of that Act, if exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc of accounts.
Section 46(2) of that Act.	Power to apply sections 47 to 49 to other local government bodies.

Section 47(5) of that Act.	Power to shorten period within which body must publish information.
Section 62(1) of the Education Act 2005 (c 18), if exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 103(3) of that Act.	Power to repeal certain provisions in the Education Act 2002 (c 32).
Section 124(1) of that Act, if exercised to amend or repeal an enactment.	Power to make consequential etc provision.
Section 4(1) of the Commissioner for Older People (Wales) Act 2006.	Power to amend Schedule 2 to that Act.
Section 6(5) of that Act.	Power to confer power on the Commissioner to require prescribed persons to provide information for the purposes of his functions under section 5.
Section 7(1) of that Act.	Power to amend Schedule 3 to that Act.
Section 16(4) of that Act.	Power to apply the joint working provisions in section 16 to persons other than the Ombudsmen specified in that section.
Section 17(8) of that Act.	Power to amend subsection 17(6), which specifies persons with whom the Commissioner may work collaboratively under section 17.
Section 18(10) of that Act.	Power to amend the definition of "permitted person" in section 18(9).
Section 27(2) of that Act.	Power to amend the definition of "family health service provider in Wales" and "independent provider in Wales

(4) A statutory instrument containing subordinate legislation made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 2 is (unless a draft of the statutory instrument has been laid before, and approved by a resolution of, the Assembly) subject to annulment in pursuance of a resolution of the Assembly.

TABLE 2

Function	Description
Section 79S(2) of the Children Act 1989 (c 41).	Power to confer functions relating to child minding or day care.
Section 79T(2) of that Act.	Power to make provision about inspection of child minding and day care.
Section 16A(3) of the Environment Act 1995 (c 25).	Power to alter composition of regional flood defence committees in Wales.
Paragraph 5(2) of Schedule 7 to the School Standards and Framework Act 1998 (c 31).	Power to prescribe content and form of publication of proposals.
Section 97D of the School Standards and Framework Act 1998.	Power to make provision about the admission of children looked after by local authorities in Wales to maintained schools in Wales.
Paragraph 12(2)(d) of Schedule 7 to that Act.	Power to prescribe period within which objections to proposals may be made.
Paragraph 17(2) of Schedule 7 to that Act.	Power to make transitional exemption order relating to proposal for school to cease to be single sex.

	Paragraph 13B(1) of Schedule 26 to that Act.	Power to prescribe period within which nursery inspection report must be made.		
	Section 73(5) of the Care Standards Act 2000 (c 14).	Power to confer power on the Commissioner to require information.		
	Section 74(1) of that Act.	Power to provide for examination by Commissioner of particular cases.		
	Section 76(1) of that Act.	Power to confer power on Commissioner to assist children.		
	Paragraph 6(4) of Schedule 2 to that Act.	Power to specify the financial years of Commissioner.		
	Paragraph 8 of that Schedule.	Power to require Commissioner to make reports to Assembly.		
	Paragraph 17 of that Schedule.	Power to add Commissioner to the Superannuation Act 1972 (c 11).		
	~~Section 77(4) of the Learning and Skills Act 2000 (c 21).~~	~~Power to prescribe period within which report must be made.~~		
	~~Section 83(7) of that Act.~~	~~Power to make further provision about obligation to provide information.~~		
	Section 128(4)(b) and (c) ~~of that Act~~ of the Learning and Skills Act 2000 (c 21)..	Power about statement of proposed action.		
	Section 68(1) of the Local Government Act 2000 (c 22), unless exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.		
	Section 68(3) of that Act, unless exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.		
	Section 20(6) of the Political Parties, Elections and Referendums Act 2000.	Power to direct that the Local Government Boundary Commission for Wales shall cease to exist.		
	Section 109(6)(b) of the Transport Act 2000 (c 38).	Power to specify date by which deemed local transport plan to be replaced.		
	Section 113A(1) of the Transport Act 2000.	Power to modify the application of sections 108 to 111 of that Act in relation to local transport authorities whose areas are in Wales.		
	Section 102 of the Education Act 2002 (c 32).	*Power to specify period which is foundation stage.*		
	Section 108(2)(a) of that Act.	*Power to specify areas of learning in respect of foundation stage.*		
	Section 139(1) of that Act.	Power to approve institutions to provide course of higher education etc		
	Section 192 of that Act.	Power to prescribe content and manner of publication of proposals to secure regional provision.		
	Section 193 of that Act.	Power to make provision about proposals to secure regional provision.		
	Section 197 of that Act.	Power relating to partnership agreements and statements.		
	Section 198 of that Act.	Power relating to transition from primary to secondary school.		
	Section 207(4) of that Act.	Power relating to adjustments between local authorities.		
	Section 3(3) of the Health (Wales) Act 2003 (c 4).	Power to make provision about functions of Wales Centre for Health.		
	Section 4(4) of that Act.	Power to make provision for HPW to make arrangements about functions.		
	Section 4(7) of that Act.	Power to make provision about constitution of HPW		

Section 5(1) of that Act.	Power to permit HPW to charge for services.
Section 5(2) of that Act.	Power to transfer property etc and personnel to HPW
Section 5(7) of that Act.	Power to make provision about accounts and audit of HPW
Section 5(9) of that Act.	Power to transfer property etc and staff from HPW
Paragraph 10 of Schedule 2 to that Act.	Power to make provision about Wales Centre for Health.
Paragraph 27 of Schedule 2 to that Act.	Power to make provision about accounts and audit of Centre.
Section 29(1) of the Waste and Emissions Trading Act 2003 (c 33)	Power to require Welsh local authority to have waste management strategy.
Section 30(1) of that Act.	Power to require Welsh local authority to provide information about waste.
Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c 43), unless exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc
Section 94(6) of that Act.	Power to require Welsh local authority to pay fee in relation to review of adoption and fostering functions.
Section 96 of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.
Section 101(1) of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc
Section 62(4) of the Planning and Compulsory Purchase Act 2004 (c 5).	Power to prescribe form and content of local development plan.
Section 63(3)(a) of that Act.	Power to prescribe persons to be included in community involvement scheme.
Section 63(7) of that Act.	Power to prescribe requirements in relation to that scheme and local development plan.
Section 69(1) of that Act.	Power to prescribe times for review of local development plan.
Section 69(3) of that Act.	Power to prescribe form of, and publication requirements for, review.
Section 76(2) of that Act.	Power to prescribe information to be contained in annual monitoring report.
Section 76(3) of that Act.	Power to prescribe timing, form and content of report.
Section 77 of that Act.	Power to make provision about functions conferred by Part 6.
Section 18(2)(c) of the Public Audit (Wales) Act 2004 (c 23).	Power to specify documents to which right of access applies.
Section 21(1) of that Act.	Power to replace scale of audit fees.
Section 39(1) of that Act, unless exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc of accounts.
Section 52(2)(c) of that Act.	Power to specify documents to which right of access applies.
Section 22(1) of the Education Act 2005 (c 18).	Power to establish panel to advise on Chief Inspector's functions.
Section 25(2) of that Act.	Power to prescribe categories of persons who may be registered inspectors.

	Section 25(3)(b) of that Act.	Power to prescribe fees for applications for registration.		
	Section 36(2) of that Act.	Power to make provision as to timing of inspections and reports.		
	Section 38(3)(e) and (4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about maintained schools.		
	Section 39(2)(a), (3), (5) and (7)(b) of that Act.	Power to make provision relating to statement prepared by appropriate authority for school.		
	Section 40(3)(a) of that Act.	Power to make provision relating to statement prepared by local authority.		
	Section 41(4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about non-maintained schools.		
	Section 42(2)(a), (3), (4) and (5)(b) of that Act.	Power to make provision relating to statement prepared by proprietor of school.		
	Section 52(5) of that Act.	Power to make provision about provision of inspection services by local authorities.		
	Section 55(4) of that Act.	Power to prescribe intervals at which careers services are inspected.		
	Section 56(3) of that Act.	Power to prescribe intervals at which related services are inspected.		
	Section 57(7)(a), (b) and (c) of that Act.	Power to require a person inspected to prepare written statement in response.		
	Section 57(9) of that Act.	Power to make provision about inspection reports.		
	Section 62(1) of that Act, unless exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.		
	~~Section 85(3)(d) of that Act.~~	~~Power to designate institutions eligible for HEFCW funding.~~		
	~~Section 90(1) of that Act.~~	~~Power to confer functions on HEFCW~~		
	~~Section 91(1) of that Act.~~	~~Power to give directions to HEFCW~~		
	~~Section 92(4) of that Act.~~	~~Power to authorise joint exercise of HEFCW functions.~~		
	~~Section 100(2) of that Act.~~	~~Power to make provision as to meaning of "governing body".~~		
	Section 124(1) of that Act, unless exercised to amend or repeal an enactment.	Power to make consequential etc provision.		
	Paragraph 2 of Schedule 3 to that Act.	Power to make provision about appeals to, and procedure of, tribunals.		
	Paragraph 3(2)(b) of Schedule 4 to that Act.	Power to prescribe persons who may not be members of inspection team.		
	Paragraph 4(3) of Schedule 4 to that Act.	Power to waive fees for applications to be on the list of inspection team members.		
	Paragraph 6(b) of Schedule 4 to that Act.	Power to make provisions about meetings between inspectors and pupils.		
	Section 8(1) of the Transport (Wales) Act 2006.	Power to establish the Public Transport Users` Committee for Wales or Pwyllgor Defnyddwyr Trafnidiaeth Gyhoeddus Cymru.		
	Section 8(2) of that Act.	Power to change the name of a body established under section 8(1) of that Act.		
	Section 8(6) of that Act	Power to make provision for the transfer of staff, property, rights and		

Section			Amended by
		liabilities, from the Committee to any other person.	
	Section 9(3) of that Act.	Power to change or transfer functions of the Public Transport Users` Committee for Wales.	
	Section 8(1) of the Commissioner for Older People (Wales) Act 2006.	Power to confer power on the Commissioner to give assistance to certain persons to make complaints in respect of matters specified in section 8.	
	Section 10(1) of that Act.	Power to make regulations allowing the Commissioner to examine cases of particular persons who are, or have been, older people in Wales.	
	Section 14(1) of that Act.	Power to confer additional functions on the Commissioner.	
	Section 15(1) of that Act.	Power to make regulations providing for the Commissioner to make reports following the discharge of any of his functions.	
	Section 21(2) of that Act.	Power to prescribe certain functions for the purpose of preventing the Commissioner from being authorised and required to exercise those functions.	
	Paragraph 2 of Schedule 1 to that Act.	Power to make provision as to the appointment of the Commissioner and as to the terms of office of the Commissioner.	
	Article 16(4) of the National Assembly for Wales (Representation of the People) Order 2007.	Power to specify the apportionment of the costs of combined polls at an Assembly general election and an ordinary local government election.	

Safeguarding Vulnerable Groups Act 2006

Section	Amended by
Schedule 7 Barring Information **1** This is the table referred to in sections 30A and 30B—	Schedule 4 Paragraph 21

Column 1	Column 2
1 Person who permits, or is considering whether to permit, B to engage in regulated activity relating to children	Children
2 Person who permits, or is considering whether to permit, B to engage in regulated activity relating to vulnerable adults	Vulnerable adults
3	
4	
5 Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in regulated activity relating to children	Children
6 Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in regulated activity relating to vulnerable adults	Vulnerable adults
7	
8	
9 Person who has parental responsibility for a child and is considering whether B is suitable to engage in regulated activity in relation to the child, but not if B is permitted to do so by an independent regulated activity provider	Children
10 Parent who is considering whether B should be a private foster parent (within the meaning of section 53) in relation to his child	Children
11 Person (except the parent of a child to be fostered) making or who has made arrangements for another to foster a child who is considering whether B is suitable to live in premises in which the child is fostered	Children
12 Local authority (within the meaning of the Children Act 1989) in the exercise of functions under section 67 of that Act considering whether B is suitable—	Children

Section		Amended by
(a) to foster a child privately (within the meaning of that Act); (b) to live in premises in which a child is so fostered		
13 Person who is considering whether B is suitable to engage in regulated activity in relation to a vulnerable adult who is a friend or family member of the person, but not if B is permitted to do so by an independent regulated activity provider	Vulnerable adults	
14 Person who carries on an adult placement scheme or provides an adult placement service and is considering whether B is suitable to live in premises in which an adult is provided with accommodation as part of the scheme or service	Vulnerable adults	
15 Person who is permitting, or considering whether to permit, B to have access to health or educational records relating to a child	Children	
16 Person who is permitting, or considering whether to permit, B to have access to health records relating to vulnerable adults	Vulnerable adults	
17		
18 Person who is permitting, or is considering whether to permit, B to engage in an activity in respect of which financial resources are provided pursuant to section 61 *or* 100 of the Apprenticeships, Skills, Children and Learning Act 2009, section 14 of the Education Act 2002 or ~~section 34(1) of the Learning and Skills Act 2000 (c 21)~~ section 85(1) or (2), 86(3), 89(1), 94(1) or (5), 100(1) or (2), 101(1)(a) or 132(1) of the Tertiary Education and Research (Wales) Act 2022, if engaging in the activity gives B the opportunity to have contact with children	Children	
19		
19 The DBS in relation to members and employees and prospective members and employees of the DBS	Children and vulnerable adults	

Education and Skills Act 2008

Section	Amended by
66 Interpretation of Part (1) In this Part— "apprenticeship agreement" means ~~an apprenticeship agreement within the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009 or~~ an approved English apprenticeship agreement within the meaning given in section A1(3) of that Act; "appropriate full-time education or training" has the meaning given by section 4; "contract of employment" means a contract of service, whether express or implied and (if it is express) whether oral or in writing, but does not include a contract of apprenticeship or an apprenticeship agreement; "level 3 qualification" has the meaning given by section 3; "proprietor", in relation to a school or other institution, means the person or body of persons responsible for its management; "relevant period", in relation to a person to whom this Part applies, has the meaning given by section 7; "relevant training or education" has the meaning given by section 6; "sufficient", in relation to relevant training or education, is to be construed in accordance with section 8(1). (2) Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part. (3) Any reference in this Part to a person's being in full-time occupation is to be construed in accordance with section 5. (4) For the purposes of this Part, a person is failing to fulfil the duty imposed by section 2 if the person— (a) is not participating in education or training in accordance with subsection (1)(a) or (b) of that section, and (b) is not in full-time occupation or is not participating in sufficient relevant training. (5) A reasonable excuse for a failure to be in full-time occupation is not a reasonable excuse for a failure to fulfil the duty imposed by section 2 (unless it is also a reasonable excuse for any failure to participate as mentioned in subsection (4)).	Schedule 4 Paragraph 22
91 Information: supplementary (1) This section applies for the purposes of sections 87 to 90. (2) Nothing in these sections affects the use or disclosure of information by virtue of— (a) section 3 of the Social Security Act 1998 (c 14); (b) any other enactment or rule of law. (3) These are the devolved authorities— (a) the Scottish Ministers; (b) the Welsh Ministers;	Schedule 4 Paragraph 22

Section	Amended by
(c) the Commission for Tertiary Education and Research (4) A reference to the Secretary of State includes a reference to a person providing services to the Secretary of State. (5) A reference to a devolved authority includes a reference to a person providing services to the authority. (6)	

Learner Travel (Wales) Measure 2008

Section	Amended by
Main terms **1 Main terms used in this Measure** (1) This section applies for the purposes of this Measure. (2) "Travel arrangements" are travel arrangements of any description and include— (a) the provision of transport; (b) the provision of one or more persons to escort a child when travelling; (c) the payment of the whole or any part of a person's reasonable travelling expenses; (d) the payment of allowances in respect of the use of particular modes of travel. (3) "Learners" means persons who receive education or training. (4) The following are "relevant places"— (a) maintained schools; (b) institutions in the further education sector; (c) independent schools named in individual development plans maintained under section 14 or 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018; (d) non-maintained special schools; (e) pupil referral units; (f) places other than pupil referral units where education is arranged under section 19(1) of the Education Act 1996; (g) places where education or training funded by ~~the Welsh Ministers under section 34(1) of the Learning and Skills Act 2000 (c 21)~~ <u>the Commission for Tertiary Education and Research or the Welsh Ministers under section 94 of the Tertiary Education and Research (Wales) Act 2022</u> is provided; (h) independent special post-16 institutions within the meaning given by section 56 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which are named in individual development plans maintained under section 14 or 19 of that Act; (i) places where nursery education is provided— (i) by a local authority, or (ii) by any other person who is in receipt of financial assistance given by a local authority under arrangements made by them in pursuance of the duty imposed by section 118 of the School Standards and Framework Act 1998 (c 31); (j) places where work experience is undertaken.	Schedule 4 Paragraph 23
Travel arrangements for learners in post-16 education or training (1) This section applies in relation to learners ordinarily resident in Wales— (a) who—	Schedule 4 Paragraph 23

Section	Amended by
(i) are over compulsory school age but have not attained the age of 19, or (ii) have attained the age of 19 and have begun a particular course of education or training before attaining that age and continue to attend that course; and (b) who receive education or training— (i) at a place in Wales, or (ii) which is funded by the Welsh Ministers at a place outside Wales. (2) Regulations may make provision about travel arrangements for learners to and from the places where they receive education or training. (3) The regulations may in particular— (a) confer powers or impose duties on the following— (i) the Welsh Ministers; (ii) local authorities; (iii) institutions in the further education sector; (b) specify the kinds of place to and from which travel arrangements mayor must be made; (c) specify the travel arrangements that mayor must be made; (d) specify the matters that must be taken into account in making decisions about travel arrangements; (e) make provision about charges; (f) require any person to give any information or other assistance that is reasonably required by any other person in connection with the performance of the other person's functions under the regulations; (g) make provision about the standards of behaviour required of learners while travelling to and from the places where they receive education or training.	

Apprenticeships, Skills, Children and Learning Act 2009

Section	Amended by
~~2 Meaning of "completing a Welsh apprenticeship"~~ ~~(1) This section applies for the purposes of this Chapter.~~ ~~(2) A person completes a Welsh apprenticeship in relation to an apprenticeship framework if—~~ ~~(a) the standard Welsh completion conditions are met, or~~ ~~(b) the alternative Welsh completion conditions are met.~~ ~~(3) The standard Welsh completion conditions are—~~ ~~(a) that the person has entered into an apprenticeship agreement in connection with the apprenticeship framework,~~ ~~(b) that at the date of that agreement the framework was a recognised Welsh framework,~~ ~~(c) that the person has completed a course of training for the competencies qualification identified in the framework,~~ ~~(d) that, throughout the duration of the course, the person was working under the apprenticeship agreement, and~~ ~~(e) that the person meets the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate.~~ ~~(4) In subsection (3)(d)—~~ ~~(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;~~ ~~(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.~~ ~~(5) The alternative Welsh completion conditions are conditions which—~~ ~~(a) apply in cases where a person works otherwise than under an apprenticeship agreement, and~~ ~~(b) are specified in regulations made by the Welsh Ministers.~~ ~~(6) The kinds of working in relation to which provision may be made under subsection (5) include—~~ ~~(a) working as a self-employed person;~~ ~~(b) working otherwise than for reward.~~ **~~3 [repealed]~~** **~~4 [repealed]~~** **~~5 [repealed]~~** **~~6 [repealed]~~**	Schedule 4 Paragraph 24

Section	Amended by
7 Duty to issue: Wales (1) The Welsh certifying authority must issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if— (a) it appears to the authority that the person has completed a Welsh apprenticeship in relation to the apprenticeship framework, (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 (c) the person— (i) provides the authority with such information and evidence as the authority requires the person to provide, and (ii) pays any fee charged by the authority for the issue of the certificate (see section 9). (2) The "prescribed manner" is the manner prescribed by regulations made by the Welsh Ministers. **8 Power to issue: Wales** (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— (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, (b) the framework is, or has been, a recognised Welsh framework, (c) the person— (i) provides the authority with such information and evidence as the authority requires the person to provide, and (ii) pays any fee charged by the authority for the issue of the certificate (see section 9). (2) The "prescribed manner" for the purposes of subsection (1), is the manner prescribed by regulations made by the Welsh Ministers. **9 Issue by the Welsh certifying authority: supplementary** (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. (2) Regulations made by the Welsh Ministers may make provision about the supply of copies of apprenticeship certificates issued under section 7 or 8. (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. **10 The Welsh certifying authority** (1) In this Chapter, the "Welsh certifying authority", in relation to an apprenticeship certificate of any description, means—	

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(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. (2) A person designated under this section to issue apprenticeship certificates must, in exercising functions under this Chapter— (a) comply with directions given by the Welsh Ministers, and (b) have regard to guidance given by the Welsh Ministers. (3) "Designated" means designated by an order made by the Welsh Ministers. **11 Contents of apprenticeship certificate** (1) An apprenticeship certificate must state— (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. (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. **12 Apprenticeship frameworks: interpretation** (1) In this Chapter, "apprenticeship framework" means a specification of requirements, for the purpose of the issue of apprenticeship certificates, that satisfies subsection (2). (2) The requirements specified must— (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. (3) [repealed] (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). (5) For the purposes of this Chapter— (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. **13 [repealed]** **14 [repealed]** **15 [repealed]**	

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~~16 [repealed]~~ **~~17 [repealed]~~** **~~18 Welsh issuing authority~~** ~~(1) The Welsh Ministers may designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector.~~ ~~(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.~~ ~~(3) A person designated under this section must, in exercising functions under this Chapter—~~ ~~(a) comply with directions given by the Welsh Ministers;~~ ~~(b) have regard to guidance given by the Welsh Ministers.~~ ~~(4) A designation under this section may be amended or revoked by the Welsh Ministers.~~ ~~(5) In this Chapter, the "Welsh issuing authority", in relation to an apprenticeship framework, means—~~ ~~(a) the person (if any) designated under this section to issue frameworks of that description;~~ ~~(b) if there is no-one so designated, the Welsh Ministers.~~ **~~19 Issue: Wales~~** ~~(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.~~ ~~(2) Recognition of a recognised Welsh framework may be withdrawn by the Welsh issuing authority—~~ ~~(a) [repealed]~~ ~~(b) [repealed].~~ **~~20 Recognised Welsh frameworks: notification and publication~~** ~~(1) On issuing an apprenticeship framework under section 19(1), the Welsh issuing authority must—~~ ~~(a) publish the framework;~~ ~~(b) if the issuing authority is not the Welsh Ministers, notify the Welsh Ministers of the issue of the framework.~~ ~~(2) A notice given under subsection (1)(b) must be accompanied by a copy of the framework.~~ ~~(3) A Welsh issuing authority which withdraws recognition of an apprenticeship framework under section 19(2) must—~~ ~~(a) publish a notice stating that recognition of the framework has been withdrawn;~~	

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(b) in the case where the issuing authority are not the Welsh Ministers, notify the Welsh Ministers of the withdrawal. (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. **21 Submission of draft framework for issue: Wales** (1) This section applies if a person— (a) submits a draft of an apprenticeship framework to the Welsh issuing authority, and (b) requests that the authority issue a framework in the form of the draft. (2) The authority may require the person to provide such information and evidence in connection with the draft as the authority thinks appropriate. (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. **22 Transitional provision: Wales** (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. (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. (3) An order under subsection (1) must— (a) specify a date on which the deemed framework is to be treated as being issued under section 19(1); (b) specify a date on which recognition of the deemed framework is to be treated as having been withdrawn under section 19(2); (c) specify a qualification that the deemed framework is to be treated as identifying as the competencies qualification; (d) specify the level and apprenticeship sector that are to be treated as being stated in the deemed framework. (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. (5) In this section— "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); "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. (6) Nothing in this section limits the powers conferred by section 262.	

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~~23 [repealed]~~ **~~24 [repealed]~~** **~~25 [repealed]~~** **~~26 [repealed]~~** **~~27 [repealed]~~** **~~28 Specification of apprenticeship standards for Wales~~** ~~(1) The Welsh Ministers may prepare a draft specification of apprenticeship standards.~~ ~~(2) In preparing the draft, the Welsh Ministers must consult such persons as they think appropriate.~~ ~~(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—~~ ~~(a) in the form of the draft, or~~ ~~(b) in that form with such modifications as the Welsh Ministers think appropriate.~~ ~~(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.~~ ~~(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.~~ ~~(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.~~ **~~29 Modification: Wales~~** ~~(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.~~ ~~(2) The Welsh Ministers may not make an order under this section unless satisfied that the specification, as so modified, complies with section 31.~~ **~~30 Replacement or modification: recognised Welsh frameworks~~** ~~(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.~~ ~~(2) An order under section 28 may provide for an apprenticeship framework which—~~ ~~(a) immediately before the making of the order is a recognised Welsh framework, but~~	

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(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,	

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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 competencies qualification identified in the relevant framework, (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 (d) at the date of the earlier agreement, the relevant framework was a qualifying apprenticeship framework. (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. (6) An apprenticeship framework is a "qualifying apprenticeship framework", for the purposes of this section, if it is— (a) [repealed]	

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(b) a recognised Welsh framework. **33 Ineffective provisions** (1) To the extent that provision included in an apprenticeship agreement conflicts with the prescribed apprenticeship provisions, it has no effect. (2) In this section, the "prescribed apprenticeship provisions", in relation to an apprenticeship agreement, means those provisions— (a) that are included in the agreement, and (b) without the inclusion of which the agreement would not satisfy section 32(2)(b). **34 Variation** (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). (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. (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. **35 Status** (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. (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. (3) This section applies for the purposes of any enactment or rule of law. **36 Crown servants and Parliamentary staff** (1) Sections 32 to 35 apply in relation to— (a) an agreement under which a person undertakes Crown employment, (b) an agreement under which a person undertakes service as a member of the naval, military or air forces of the Crown, and (c) an agreement under which a person undertakes employment as— (i) a relevant member of the House of Lords staff, or (ii) a relevant member of the House of Commons staff, as they apply in relation to any other agreement under which a person undertakes to work for another. (2) Subsection (1) is subject to subsection (3) and to any modifications which may be prescribed under subsection (5). (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). (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	

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~~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.~~ ~~(5) Regulations may provide for any provision of this Chapter to apply with modifications in relation to—~~ ~~(a) an agreement within paragraph (a), (b) or (c) of subsection (1), or~~ ~~(b) a person working, or proposing to work, under such an agreement.~~ ~~(6) In subsection (1)—~~ ~~"Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision (but does not include service as a member of the naval, military or air forces of the Crown);~~ ~~"relevant member of the House of Commons staff" has the meaning given by section 195(5) of the Employment Rights Act 1996 (c 18);~~ ~~"relevant member of the House of Lords staff" has the meaning given by section 194(6) of that Act.~~ ***Duty to participate in education or training: England*** **37 Duty to participate in education or training: apprenticeship agreements** (1) Part 1 of the Education and Skills Act 2008 (c 25) (duty to participate in education or training: England) is amended as follows. (2) In section 2 (duty to participate), in subsection (1)(b) after "contract of apprenticeship" insert "or an apprenticeship agreement". (3) In section 66 (interpretation of Part 1), in subsection (1)— (a) at the appropriate place insert— ""apprenticeship agreement" has the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009;"; (b) in the definition of "contract of employment" after "contract of apprenticeship" insert "or an apprenticeship agreement". **~~38 Apprenticeship sectors~~** ~~(1) The Welsh Ministers must by order specify sectors of skill, trade or occupation for the purposes of this Chapter.~~ ~~(2) The sectors specified under subsection (1) must in the opinion of the Welsh Ministers encompass the full range of skills, trades and occupations.~~ **~~39 Interpretation of Chapter~~** ~~(1) In this Chapter—~~ ~~"apprenticeship agreement" has the meaning given by section 32(1);~~ ~~"apprenticeship certificate" means a certificate issued under section 7 or 8;~~ ~~"apprenticeship framework" has the meaning given by section 12(1);~~ ~~"apprenticeship sector" means a sector specified under section 38;~~	

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~~"the competencies qualification", in relation to an apprenticeship framework, means the qualification identified in the framework as being the competencies qualification;~~ ~~"recognised Welsh framework" has the meaning given by section 12(4);~~ ~~"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;~~ ~~"Welsh certifying authority", in relation to an apprenticeship certificate of any description, has the meaning given by section 10(1);~~ ~~"Welsh issuing authority", in relation to an apprenticeship framework, has the meaning given by section 18(5).~~ ~~(2) References in this Chapter—~~ ~~(a) to the level of an apprenticeship framework, or~~ ~~(b) to the apprenticeship sector to which an apprenticeship framework relates,~~ ~~are to be construed in accordance with section 12(5).~~ ~~(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.~~	
262 Orders and regulations (1) A power to make an order or regulations under Chapter 1 of Part 1, or Part 3 or 4, or section 253A— (a) so far as exercisable by the Secretary of State, the Welsh Ministers or the Scottish Ministers, is exercisable by statutory instrument; (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)). (2) Any other power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument. (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— (a) to make different provision for different purposes (including different areas); (b) to make provision generally or in relation to specific cases; (c) to make incidental, consequential, supplementary, transitional, transitory or saving provision. (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. (4) [repealed] (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. (6) A statutory instrument which contains (whether alone or with other	Schedule 4 Paragraph 24

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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— (za) the first regulations under section A9; (zb) the first regulations under section A10; (aa) regulations under section 1(5); (aza) regulations under section 40AA; (aaa) regulations under section 40B; (aab) regulations under section ZA5; (ab) an order under section 83A(12); (b) an order under section 88 or paragraph 9 of Schedule 5; (c) [repealed] (d) an order under section 130(5); (e) an order under section 141(1); (ea) an order under section 151B(2); (f) [repealed] (g) an order under section 252(5); (h) an order under section 265 which amends or repeals any provision of an Act. (7) Subsections (5) and (6) do not apply to a statutory instrument which contains only— (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. (8) A statutory instrument within subsection (7) must be laid before Parliament. (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. (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. (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. (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. (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	

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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.	

Learning and Skills (Wales) Measure 2009

Section	Amended by
~~**21. Education and training for persons aged 16 to 18**~~ ~~(1) Section 31 of the Learning and Skills Act 2000 (c 21) is amended in accordance with subsection (2).~~ ~~(2) In section 31(2) —~~ ~~(a) in paragraph (a) delete "and";~~ ~~(b) at the end of paragraph (b) insert "and";~~ ~~(c) following paragraph (b) insert —~~ ~~"(c) sufficient to satisfy the entitlements conferred under section 33F".~~	Schedule 4, Paragraph 25
43 The learning pathway document (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"). (2) In subsection (1), a pupil's or student's "learning pathway" means— (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 (b) the learner support services (if any) to be provided to a pupil or student by virtue of section 40 of this Measure. The learning pathway document— (c) 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 (d) must subsequently be amended or re-issued within a reasonable period of time following— (i) a variation in such an entitlement or decision; or (ii) such an entitlement arising or such a decision being taken. (4) The duty to provide a learning pathway document under subsection (3)(a) is a duty of— (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 (b) in the case of a relevant student, the principal of the student's institution when an event described in subsection (3)(a) occurs. (5) The duty to amend or re-issue a learning pathway document under subsection (3)(b) is a duty of— (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 (b) in the case of a relevant student, the principal of the pupil's institution when an event described in subsection (3)(b) occurs. (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.	Schedule 4, Paragraph 25

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(7) The Welsh Ministers must consult the Commission for Tertiary Education and Research before giving guidance under subsection (6).	
Schedule Minor and Consequential Amendments **Learning and Skills Act 2000 (c 21)** ~~1~~ ~~Amend the Learning and Skills Act 2000 as follows.~~ ~~2~~ ~~In the sections mentioned in paragraph 3 replace each reference to "National Assembly" with "Welsh Ministers".~~ ~~3~~ ~~The sections are 32(1), 33, 34, 35(2) and (5), 36(1), 37, 38(1), . . ., 40 and 41(1).~~ ~~4~~ ~~In section 31—~~ ~~(a) in subsection (1) replace "National Assembly for Wales (the National Assembly)" with "Welsh Ministers";~~ ~~(b) in subsection (3) replace "on it" with "on them";~~ ~~(c) in subsection (3) replace the first reference to "National Assembly" with "Welsh Ministers"; and~~ ~~(d) in subsection (3)(d) replace "National Assembly thinks" with "Welsh Ministers think".~~ ~~5~~ ~~In section 32(3) replace—~~ ~~(a) "on it" with "on them";~~ ~~(b) the first reference to "National Assembly" with "Welsh Ministers"; and~~ ~~(c) "National Assembly thinks" with "Welsh Ministers think".~~ ~~6~~ ~~In section 34—~~ ~~(a) in subsection (2)(a) replace "itself" with "themselves"; and~~ ~~(b) in subsection (3) replace "its power" with "their power".~~ ~~7~~ ~~In section 35—~~ ~~(a) in subsection (1) replace—~~ ~~(i) "National Assembly itself provides" with "Welsh Ministers themselves provide"; and~~ ~~(ii) "it may impose" with "they may impose";~~ ~~(b) in subsection (2) replace—~~	Schedule 4, Paragraph 25

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~~(i) "by it" with "by them";~~ ~~(ii) "it requests" with "they request"; and~~ ~~(iii) "its functions" with "their functions".~~ ~~8~~ ~~In section 37—~~ ~~(a) in subsection (2) replace "its powers" with "their powers"; and~~ ~~(b) in subsection (4) replace "its power" with "their power".~~ ~~9~~ ~~In section 40(5) replace "its decisions" with "their decisions"~~. 10 In section 41— (a) in subsections (2) to (4) replace— (i) each reference to "National Assembly is" with "Welsh Ministers are"; (ii) each reference to "it cannot" with "they cannot"; and (iii) each reference to "it also secures" with "they also secure"; (b) in subsections (2) and (3) replace each reference to "National Assembly must" with "Welsh Ministers must"; and (c) in subsection (4) replace "National Assembly may" with "Welsh Ministers may".	

Children and Families (Wales) Measure 2010

Section	Amended by
6. The Welsh authorities (1) For the purposes of this Measure, each of the following is a "Welsh authority"- (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 (c21) 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~~ the Commission for Tertiary Education and Research; (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. (2) The Welsh Ministers may by order - (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). (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. (4) The Welsh Ministers must not exercise their power under subsection (2) so as to include any of the following within subsection (1)— (a) a person who does not have functions of a public nature; (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. (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.	Schedule 4, Paragraph 27

Section	Amended by
Schedule 6 Public Bodies etc: Standards	Schedule 4, Paragraph 28

Column 1 Person / Category	Column 2 Potentially applicable standards
GENERAL	
Aberystwyth University ("*Prifysgol Aberystwyth*")	Service delivery standards Policy making standards Operational standards Record keeping standards
Agricultural Land Tribunal (Wales) ("*Tribiwnlys Tir Amaethyddol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Agriculture and Horticulture Development Board ("*Bwrdd Datblygu Amaethyddiaeth a Garddwriaeth*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Alcohol Education and Research Fund ("*Cronfa Addysgu ac Ymchwilio Alcohol*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Arts Council of Wales ("*Cyngor Celfyddydau Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Arts and Humanities Research Council ("Y Cyngor Ymchwil i'r Celfyddydau a'r Dyniaethau")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Auditor General for Wales ("*Archwilydd Cyffredinol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards
Bangor University ("*Prifysgol Bangor*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Bank of England ("*Banc Lloegr*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Big Lottery Fund ("*Y Gronfa Loteri Fawr*")	Service delivery standards Policy making standards Operational standards Record keeping standards
The Biotechnology and Biological Sciences Research Council *("Cyngor Ymchwil Biotechnoleg a Gwyddorau Biolegol")*	Service delivery standards Policy making standards Operational standards Record keeping standards
The Board of Community Health Councils in Wales *("Bwrdd Cynghorau Iechyd Cymuned Cymru")*	Service delivery standards Policy making standards Operational standards Record keeping standards
The British Broadcasting Corporation ("*Y Gorfforaeth Ddarlledu Brydeinig*")	Service delivery standards Policy making standards Operational standards

Section		Amended by
	Record keeping standards	
The British Council ("*Y Cyngor Prydeinig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The British Film Institute ("*Y Sefydliad Ffilm Prydeinig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
British Transport Police Authority ("*Awdurdod Heddlu Trafnidiaeth Prydain*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The British Wool Marketing Board ("*Bwrdd Marchnata Gwlân Prydain*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Canal & River Trust ("*Glandŵr Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Carbon Trust ("*Yr Ymddiriedolaeth Garbon*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Cardiff University ("*Prifysgol Caerdydd*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Social Care Wales ("G*ofal Cymdeithasol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Career Choices Dewis Gyrfa Limited ("*Career Choices Dewis Gyrfa Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Charities Commission for England and Wales ("*Comisiwn Elusennau Cymru a Lloegr*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Child Maintenance and Enforcement Commission ("*Comisiwn Trefnu a Gorfodi Cynhaliaeth Plant*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Children's Commissioner for Wales ("*Comisiynydd Plant Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Citizen Voice Body for Health and Social Care, Wales ("*Corff Llais y Dinesydd ar gyfer Iechyd a Gofal Cymdeithasol, Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Civil Nuclear Police Authority ("*Awdurdod Heddlu Niwclear Sifil*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Coleg Ceredigion	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
Coleg Sir Gâr	Service delivery standards Policy making standards Operational standards Record keeping standards	
Colleges Wales Limited ("*Colegau Cymru Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Commission for Equality and Human Rights ("*Comisiwn Cydraddoldeb a Hawliau Dynol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Commission for Tertiary Education and Research ("Y Comisiwn Addysg Drydyddol ac Ymchwil")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Commissioner for Older People in Wales ("*Comisiynydd Pobl Hŷn Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Community Development Foundation ("*Sefydliad Datblygu Cymunedol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Consumer Council for Water ("*Y Cyngor Defnyddwyr Dŵr*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Professional Standards Authority for Health and Social Care ("*Yr Awdurdod Safonau Proffesiynol ar gyfer Iechyd a Gofal Cymdeithasol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Criminal Injuries Compensation Authority ("*Yr Awdurdod Digolledu am Anafiadau Troseddol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Disabled Persons Transport Advisory Committee ("*Pwyllgor Ymgynghorol Trafnidiaeth i'r Anabl*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Economic and Social Research Council ("Y Cyngor Ymchwil Economaidd a Chymdeithasol")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Electoral Commission ("*Y Comisiwn Etholiadol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Energy Saving Trust Limited ("*Yr Ymddiriedolaeth Arbed Ynni Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Engineering and Physical Sciences Research Council ("Cyngor Ymchwil Peirianneg a Gwyddorau Ffisegol")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Engineering Construction Industry Training Board ("*Bwrdd Hyfforddi'r Diwydiant Adeiladu Peiriannol*")	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
The Environment Agency ("*Asiantaeth yr Amgylchedd*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Finance Wales plc ("*Cyllid Cymru ccc*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Financial Conduct Authority *("Awdurdod Ymddygiad Ariannol")*	Service delivery standards Policy making standards Operational standards Record keeping standards	
Further education corporations ("*Corfforaethau addysg bellach*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Gambling Commission ("*Y Comisiwn Hapchwarae*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Chiropractic Council ("*Y Cyngor Ceiropractig Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Dental Council ("*Y Cyngor Deintyddol Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Medical Council ("*Y Cyngor Meddygol Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Optical Council ("*Y Cyngor Optegol Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Osteopathic Council ("*Y Cyngor Osteopathig Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The General Pharmaceutical Council ("*Y Cyngor Fferyllol Cyffredinol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Education Workforce Council ("*Cyngor y Gweithlu Addysg*")	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 ("*Cyrff llywodraethu ysgolion*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The governing body of Saint David's Catholic College (*"Corff llywodraethu Coleg Catholig Dewi Sant"*)	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
Hafal	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Health, Education and Social Care Chamber ("*Y Siambr Iechyd, Addysg a Gofal Cymdeithasol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Health and Care Professions Council ("*Y Cyngor Proffesiynau Iechyd a Gofal*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Her Majesty's Chief Inspector of Education and Training in Wales ("*Prif Arolygydd ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Higher education corporations ("*Corfforaethau addysg uwch*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
~~The Higher Education Funding Council for Wales ("*Cyngor Cyllido Addysg Uwch Cymru*")~~	~~Service delivery standards~~ ~~Policy making standards~~ ~~Operational standards~~ ~~Record keeping standards~~	
The Human Fertilisation and Embryology Authority ("*Yr Awdurdod Ffrwythloni ac Embryoleg Dynol*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Human Tissue Authority ("*Yr Awdurdod Meinweoedd Dynol*")	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 ("*Comisiwn Cwynion Annibynnol yr Heddlu*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Information Commissioner's Office ("*Swyddfa'r Comisiynydd Gwybodaeth*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Investors in People UK ("*Buddsoddwyr mewn Pobl y DU*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Leonard Cheshire Disability	Service delivery standards Policy making standards 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 ("*Uned Ddata Llywodraeth Leol—Cymru*")	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
The Medical Research Council *("Y Cyngor Ymchwil Meddygol")*	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Mental Health Review Tribunal for Wales ("*Tribiwnlys Adolygiad Iechyd Meddwl Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Merthyr Tydfil College Limited (*"Coleg Merthyr Tudful Cyfyngedig"*)	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 ("*Cymdeithas Genedlaethol Cyngor ar Bopeth*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
National Botanic Garden of Wales ("*Gardd Fotaneg Genedlaethol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
National Endowment for Science, Technology and the Arts ("*Y Gwaddol Cenedlaethol ar gyfer Gwyddoniaeth, Technoleg a'r Celfyddydau*")	Service delivery standards Policy making standards 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	
The Nursing and Midwifery Council ("*Y Cyngor Nyrsio a Bydwreigiaeth*")	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
The Office of Communications ("*Y Swyddfa Gyfathrebiadau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Office of Rail and Road ("*Y Swyddfa Rheilffyrdd a Ffyrdd*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Open University ("*Y Brifysgol Agored*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Transport Focus	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Pensions Advisory Service ("*Gwasanaeth Cynghori ar Bensiynau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Pensions Ombudsman ("*Yr Ombwdsmon Pensiynau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Pensions Regulator ("*Y Rheoleiddiwr Pensiynau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Police and Crime Commissioners ("*Comisiynwyr Heddlu a Throseddu*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Providers of career services ("*Darparwyr gwasanaethau gyrfaoedd*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Prudential Regulation Authority *("Awdurdod Rheoleiddio Darbodus")*	Service delivery standards Policy making standards Operational standards Record keeping standards	
Qualifications Wales ("*Cymwysterau Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Quality Assurance Agency for Higher Education ("*Asiantaeth Sicrwydd Ansawdd Addysg Uwch*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Rent Assessment Committees for Wales ("*Y Pwyllgorau Asesu Rhenti i Gymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Residential Property Tribunal Wales ("*Tribiwnlys Eiddo Preswyl Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Royal Commission on the Ancient and Historical Monuments of Wales ("*Comisiwn Brenhinol Henebion Cymru*")	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
Royal Mail Group plc ("*Grŵp y Post Brenhinol ccc*")	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 ("*Coleg Brenhinol Cerdd a Drama Cymru Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Sector Skills Councils ("*Y Cynghorau Sgiliau Sector*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Security Industry Authority ("*Awdurdod y Diwydiant Diogelwch*")	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 *("Cyngor Cyfleusterau Gwyddoniaeth a Thechnoleg")*	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Education Tribunal for Wales ("*Tribiwnlys Addysg Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Sports Council for Wales ("*Cyngor Chwaraeon Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Statistics Board ("*Y Bwrdd Ystadegau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Student Loans Company Limited ("*Cwmni Benthyciadau Myfyrwyr Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Swansea University ("*Prifysgol Abertawe*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Theatr Genedlaethol Cymru	Service delivery standards Policy making standards Operational standards Record keeping standards	
Trustees of the National Heritage Memorial Fund (*"Ymddiriedolwyr Cronfa Goffa'r Dreftadaeth Genedlaethol"*)	Service delivery standards Policy making standards Operational standards Record keeping standards	
UFI Ltd ("*UFI Cyf*")	Service delivery standards Policy making standards Operational standards	

Section		Amended by
	Record keeping standards	
The UK Commission For Employment and Skills ("*Comisiwn y DU dros Gyflogaeth a Sgiliau*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The UK Sports Council ("*Cyngor Chwaraeon y DU*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
United Kingdom Research and Innovation ("*Ymchwil ac Arloesedd y Deyrnas Unedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The University of Wales ("*Prifysgol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
University of Wales: Trinity St David ("*Prifysgol Cymru: Y Drindod Dewi Sant*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Valuation Tribunal for Wales (*"Tribiwnlys Prisio Cymru"*)	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Wales Audit Office ("*Swyddfa Archwilio Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Wales Council for Voluntary Action ("*Cyngor Gweithredu Gwirfoddol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Wales Millennium Centre ("*Canolfan Mileniwm Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Welsh Books Council ("*Cyngor Llyfrau Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Welsh Local Government Association ("*Cymdeithas Llywodraeth Leol Cymru*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
Welsh National Opera Limited ("*Opera Cenedlaethol Cymru Cyfyngedig*")	Service delivery standards Policy making standards Operational standards Record keeping standards	
WJEC CBAC Limited (*"WJEC CBAC Cyfyngedig"*)	Service delivery standards Policy making standards Operational standards Record keeping standards	
The Youth Justice Board for England and Wales ("*Bwrdd Cyfiawnder Ieuenctid Cymru a Lloegr*")	Service delivery standards Policy making standards Operational standards Record keeping standards	

School Standards and Organisation (Wales) Act 2013

Section	Amended by
1 Overview of this Act (1) This Act has 6 Parts. (2) Part 2 is divided into 3 Chapters containing provisions concerned with maintaining and improving standards— (a) in maintained schools, and (b) in the exercise of education functions by local authorities. (3) Chapter 1 of Part 2 (including Schedule 1)— (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 (b) provides a range of intervention powers to enable local authorities and the Welsh Ministers to deal with the causes of concern. (4) Chapter 2— (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 (b) provides a range of intervention powers to enable the Welsh Ministers to deal with the causes of concern. (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. (6) Part 3 is divided into 6 Chapters containing provision about the organisation of maintained schools. (7) Chapter 1 of Part 3 provides for a School Organisation Code about the exercise of functions under Part 3. (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. (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 education in maintained schools. <u>(9A) Chapter 3A provides for powers for the Commission for Tertiary Education and Research to restructure sixth form education</u> (10) Chapter 4 provides for the making of regional provision for special educational needs. ~~(11) Chapter 5 provides for powers for the Welsh Ministers to re-structure sixth form education.~~ (12) Chapter 6 provides for miscellaneous and supplemental matters relating to school organisation. (13) Part 4 makes provision for Welsh in education strategic plans, which are to be—	Schedule 4 Paragraph 29

(a) prepared by local authorities, (b) approved by the Welsh Ministers, and (c) published and implemented by local authorities (sections 84, 85 and 87). (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). (15) Part 5 makes provision about miscellaneous functions relating to maintained schools, including provision— (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— (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); (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); (e) repealing the Welsh Ministers' duty to issue a code of practice for securing effective relationships between local authorities and maintained schools (section 96). (16) Part 6— (a) introduces Schedule 5, which makes minor and consequential amendments to other legislation arising from the provisions of this Act; (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); (c) contains other provisions which apply generally for the purposes of this Act.	
38 School Organisation Code (1) The Welsh Ministers must issue, and may from time to time revise, a code on school organisation (“the Code”). (2) The Code is to contain provision about the exercise of the functions of the following persons under this Part— (a) the Welsh Ministers; (b) local authorities; (c) governing bodies of maintained schools; <u>(ca) the Commission for Tertiary Education and Research;</u> (d) other persons in connection with proposals made (or to be made) by them under this Part.	Schedule 4 Paragraph 29

(3) The Code may impose requirements, and may include guidelines setting out aims, objectives and other matters. (4) The persons referred to in subsection (2) must, when exercising functions under this Part— (a) act in accordance with any relevant requirements contained in the Code, and (b) have regard to any relevant guidelines contained in it. (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— (a) the Welsh Ministers, (b) a local authority, (c) the governing body of a maintained school~~, or~~ (ca) the Commission for Tertiary Education and Research, or (d) other persons in connection with proposals made (or to be made) by them under this Part. (6) The Welsh Ministers must publish the Code for the time being in force on their website. (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). (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.	
39 Making and approval of School Organisation Code (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)— (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~~ (ca) the Commission for Tertiary Education and Research, and (d) any other person the Welsh Ministers consider appropriate. (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. (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. (4) If no such resolution is made before the end of that period— (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. (5) The 40 day period—	Schedule 4 Paragraph 29

(a) begins on the day on which the draft is laid before the National Assembly for Wales, and (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days. (6) Subsection (3) does not prevent a new draft of a proposed code from being laid before the National Assembly. (7) References in this section to a proposed code include a proposed revised code. (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.	
50 Approval by Welsh Ministers (1) Proposals published under section 48 require approval under this section if— (a) the proposals affect sixth form education and an objection has been made to the proposals 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, or (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. (2) Proposals affect sixth form education if— (a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or (b) they are proposals to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases. (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. (4) The documents are— (a) the report published under section 48(5), (b) the published proposals, (c) any objections made in accordance with section 49(2) (and not withdrawn), and (d) where objections have been so made (and not withdrawn), the response published under section 49(3). (5) 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 proposer to the modifications, and	Schedule 4 Paragraph 29

(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. (6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified. (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. (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. (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). (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.	
54 Referral to the Welsh Ministers (1) This section applies if a local authority has— (a) determined to approve or reject proposals under section 51(4), or (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 end of the objection period). (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— (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— (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 to which the proposals relate; (f) an institution within the further education sector which is likely to be affected by the proposals. (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. (4) The Welsh Ministers must consider proposals referred to them under this section afresh and subsections (5) to (8) of section 50 apply as if the proposals required their approval under that section.	Schedule 4 Paragraph 29

(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. (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. (7) Proposals approved in accordance with this section are to be treated for the purposes of section 55 as proposals approved under section 50. (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.	
61 Local inquiry into proposals (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. (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. (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). (4) Proposals referred to a local inquiry under this section are to be determined under section 62, and sections 50, 51, 53, 54, 63F, 63G and 70 ~~70 and 73~~ do not apply to them. (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— (a) have not been determined before the proceedings on the inquiry begin, and (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. (6) The proposals to be referred are— (a) any other proposals published under section 59 in relation to the area of the local authority (and not withdrawn); (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); (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); (d) any proposals made under section 63C or 68 ~~68 or 71~~ (and not withdrawn). (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— (a) the proceedings on the inquiry are concluded, or	Schedule 4 Paragraph 29

(b) (if earlier) the proposals are determined. (8) It is not open to the inquiry to question the principles specified in ~~the direction under section 57(2)~~ a direction under section 57(2) or 63A(1). (9) References in this section to the determination of proposals are to— (a) a determination whether or not to adopt or approve the proposals under section 50, 51, 62, 63F or 70 ~~70 or 73~~; (b) a determination whether or not to implement the proposals under section 53 or 63G; (c) a determination whether or not to approve proposals referred to the Welsh Ministers under section 54.	
63 Implementation of proposals (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— (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or (b) in the case of proposals to alter a foundation or voluntary school, by the governing body under its powers to make proposals to alter its school. (2) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals adopted or approved under section 62 which have effect as mentioned in subsection (1)(b).	Schedule 4 Paragraph 29
CHAPTER 3A PROPOSALS FOR RESTRUCTURING SIXTH FORM PROVISION **63A Directions by the Commission to make sixth form proposals** (1) The Commission may, in accordance with the Code— (a) direct a local authority to exercise its powers to make proposals to— (i) establish or discontinue a school providing education suitable only to the requirements of persons over compulsory school age, or (ii) make an alteration described in Schedule 2 to a school, the effect of which would be that provision of education suitable to the requirements of persons over compulsory school age at the school increases or decreases. (b) direct the governing body of a foundation or voluntary school to exercise its powers to make an alteration described in Schedule 2 to a school, the effect of which would be that provision of education suitable to the requirements of persons over compulsory school age at the school increases or decreases. (2) A direction under subsection (1) must— (a) require the proposals to be published no later than the date specified in the direction, and (b) require the proposals, in giving effect to the direction, to apply any principles specified in it.	Schedule 4 Paragraph 29

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

(1) Proposals made in accordance with a direction under section 63A(1) may not be withdrawn without the consent of the Commission.

(2) The Commission may give consent for the purposes of subsection (1) subject to conditions.

(3) A local authority must reimburse expenditure reasonably incurred by a governing body of a school maintained by it in making proposals in accordance with a direction under section 63A(1).

(4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), a local authority must meet the cost of implementing proposals made by a governing body of a school maintained by it in accordance with a direction under section 63A(1) which have been approved or determined to be implemented.

63C Making of proposals by the Commission

(1) This section applies where—

(a) the Commission has made a direction under section 63A(1), and

(b) either—

(i) proposals have been published in accordance with the direction, or

(ii) the time allowed under the direction for the publication of the proposals has expired.

(2) The Commission may make any proposals that could have been made in accordance with the direction.

(3) But the Commission must obtain the consent of the Welsh Ministers before making a proposal to make an alteration described in paragraph 6 of Schedule 2 (opening or closing a school's sixth form) to a voluntary or foundation school.

(4) Where the Commission makes proposals under this section, any proposals that have been made by a local authority or governing body and published in accordance with the direction are to be treated as having been withdrawn.

63D Publication of Commission's proposals and consultation

(1) The Commission must publish proposals made under section 63C in accordance with the Code.

(2) Before publishing proposals made under section 63C, the Commission must consult on its proposals in accordance with the Code.

(3) The requirement to consult does not apply to proposals to discontinue a school which is a small school within the meaning given by section 56.

(4) Before the end of 7 days beginning with the day on which they were published, the Commission must send copies of the published proposals to—

(a) the Welsh Ministers,

(b) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate, and

(c) the governing body (if any) of the school to which the proposals relate.

(5) The Commission must publish a report on the consultation it has carried out in accordance with the Code.

63E Objections to the Commission's proposals

(1) Any person may object to proposals published under section 63D.

(2) Objections must be sent in writing to the Commission before the end of 28 days beginning with the day on which the proposals were published ("the objection period").

(3) The Commission must publish a summary of all objections made in accordance with subsection (2) (and not withdrawn) and its response to those objections before the end of 28 days beginning with the end of the objection period.

63F Approval by Welsh Ministers

(1) Proposals published by the Commission under section 63D require approval under this section if an objection has been made in accordance with section 63E(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

(2) Where proposals require approval under this section, the Commission must send a copy of the documents listed in subsection (3) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.

(3) The documents are—

(a) the report published under section 63D(5),

(b) the published proposals,

(c) any objections made in accordance with section 63E(2) (and not withdrawn), and

(d) where objections have been so made (and not withdrawn), the response published under section 63E(3).

(4) Where proposals require approval under this section, the Welsh Ministers may—

(a) reject the proposals,

(b) approve them without modification, or

(c) approve them with modifications—

(i) after obtaining the consent of the Commission to the modifications, and

(ii) after consulting the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate and the governing body (if any) of the school to which the proposals relate.

(5) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.

(6) The Welsh Ministers may, at the request of the Commission, specify a later date by which the event referred to in subsection (5) is to occur.

(7) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the Commission to the Welsh Ministers at any time before they are approved under this section.

(8) No approval is required under this section for proposals to discontinue a school which is a small school within the meaning given by section 56.

63G Determination

(1) Where proposals published under section 63D do not require approval under section 63F, the Commission must determine whether the proposals should be implemented.

(2) If a determination under subsection (1) is not made before the end of 16 weeks beginning with the end of the objection period, the Commission is to be taken to have withdrawn the proposals. (3) Before the end of 7 days beginning with the day of its determination under subsection (1), the Commission must notify the following of the determination— (a) the Welsh Ministers; (b) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate; (c) the governing body (if any) of the school to which the proposals relate. **63H Implementation of proposals** (1) Proposals approved by the Welsh Ministers under section 63F or determined to be implemented by the Commission under section 63G have effect as if they had been approved by the Welsh Ministers under section 50 after having been made— (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or (b) in the case of proposals to alter a foundation or voluntary school, by the governing body under its powers to make proposals to alter its school. (2) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals approved under section 63F or determined to be implemented under section 63G which have effect as mentioned in subsection (1)(b). **63I Interpretation of Chapter 3A** In this Chapter— "the Code" ("*y Cod*") means the code on school organisation issued under section 38(1); "the Commission" ("*y Comisiwn*") means the Commission for Tertiary Education and Research	
Making and determining proposals ~~**71 Welsh Ministers' powers to restructure sixth form education**~~ ~~(1) The Welsh Ministers may make proposals under this section for—~~ ~~(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);~~ ~~(b) an alteration described in paragraph 6 of Schedule 2 to one or more maintained schools;~~ ~~(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).~~ ~~(2) A "sixth former" is a person who is above compulsory school age but below the age of 19.~~	Schedule 4 Paragraph 29

72 Consultation, publication and objections

(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.

(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.

(3) Any person may object to the proposals.

(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.

73 Determination by Welsh Ministers

(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.

(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.

(3) Before adopting proposals subject to modifications, the Welsh Ministers must consult such persons as they consider appropriate.

(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.

(5) If the event does not occur by the specified date the Welsh Ministers must reconsider their determination under subsection (1).

(6) The Welsh Ministers may withdraw their proposals at any time before they make a determination under subsection (1).

Implementation of proposals for restructuring sixth form education

74 Form of implementation

(1) This section applies to proposals which have been adopted by the Welsh Ministers under section 73.

(2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were adopted.

(3) At the request of a specified body, the Welsh Ministers—

(a)may modify proposals adopted under section 73 after consulting the specified bodies, and

(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.

(4) The Welsh Ministers may determine that subsection (2) does not apply to the proposals if they are satisfied, after consulting the specified bodies—

(a)that implementation of the proposals would be unreasonably difficult, or

(b)that circumstances have so altered since the proposals were adopted that implementation of the proposals would be inappropriate.

(5) Each of the following is a “specified body” for the purposes of subsections (3) and (4)—

(a)the governing body of the school to which the proposals relate;

(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;

(c)the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;

(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 in respect of a registered pupil at the school.

75 Responsibility for implementation

(1) Proposals to establish a school must be implemented by the local authority that it is proposed will maintain the school.

(2) Proposals to make an alteration described in paragraph 6 of Schedule 2 must be implemented—

(a) in the case of proposals relating to a community school, by the local authority that maintains the school;

(b) in the case of proposals relating to a voluntary aided school—

(i) so far as relating to the provision of any relevant premises, by the local authority that maintains the school, and

(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;

(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.

(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.

(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.

(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)).

76 Further provision as to implementation

(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.

~~(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.~~ ~~(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.~~	
80 Notice by governing body to discontinue foundation or voluntary school (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. (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)— (a) by the Welsh Ministers, or (b) by any local authority. (3) The governing body must consult ~~the Welsh Ministers~~ the Commission for Tertiary Education and Research 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. (4) If, while a notice under this section is in force, the governing body informs the local authority that it is unable or unwilling to carry on the school until the notice expires, the authority— (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and (b) is entitled to use the school premises free of charge for that purpose. (5) While the school is being so conducted— (a) the authority must keep the school premises in good repair, and (b) any interest in the premises which is held for the purposes of the school is to be treated, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, as vested in the authority. (6) Despite subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if it had continued to carry on the school during the unexpired period of the notice. (7) A notice under subsection (1) may not be withdrawn without the consent of the local authority. (8) If a foundation or voluntary school is discontinued under this section, the duty of the local authority to maintain the school as a foundation or voluntary school ceases. (9) Nothing in section 43 applies in relation to the discontinuance of a foundation or voluntary school under this section.	Schedule 4 Paragraph 29

(10) Subsection (11) applies where— (a) land occupied by the school is held by any trustees for the purposes of the school, (b) the trustees (being entitled to do so) intend to give notice to the governing body of the school to terminate the school's occupation of that land, and (c) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site. (11) The notice given by the trustees to the governing body to terminate the school's occupation of the land must be at least two years; but if, during the first twelve months of that notice period, the governing body gives notice under subsection (1), the trustees' notice does not have the effect of terminating the school's occupation of the land until the expiry of the governing body's notice. (12) A copy of the trustees' notice must also be given to the Welsh Ministers and the local authority at the time when the notice is given to the governing body. (13) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(c) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them. (14) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(c) (including a question as to whether subsection (13) applies in any particular circumstances), it is to be determined by the Welsh Ministers.	

Well-being of Future Generations (Wales) Act 2015

Section	Amended by
6 Meaning of "public body" (1) 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; (b) a local authority; (c) a Local Health Board; (d) the following NHS Trusts— (i) Public Health Wales; (ii) Velindre; (e) a National Park authority for a National Park in Wales; (f) a Welsh fire and rescue authority; (g) the Natural Resources Body for Wales; (h) ~~the Higher Education Funding Council for Wales~~ the Commission for Tertiary Education and Research; (i) the Arts Council of Wales; (j) the Sports Council for Wales; (k) the National Library of Wales; (l) the National Museum of Wales. (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.	Schedule 4, Paragraph 32
32 Other partners (1) A public services board's other partners are— (a) a community council for a community in an area which (or any part of which) falls within the local authority area (but see also section 40); (b) the Public Health Wales NHS trust; (c) a Community Health Council for an area which (or any part of which) falls within the local authority area; (d) a National Park authority for a National Park in Wales any part of which falls within the local authority area; ~~(e) the Higher Education Funding Council for Wales~~; (e) the Commission for Tertiary Education and Research; (f) an institution in the further education sector or the higher education sector situated in whole or in part within the local authority area; (g) the Arts Council of Wales; (h) the Sports Council for Wales;	Schedule 4, Paragraph 32

Section	Amended by
(i) the National Library of Wales; (j) the National Museum of Wales. (2) In exercising its functions, a board— (a) must seek advice from its other partners, and (b) must otherwise involve them in such manner and to such extent as it considers appropriate. (3) In subsection (1)(f), “further education sector” and “higher education sector” have the same meaning as in the Further and Higher Education Act 1992 (c.13).	

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

Section	Amended by
10 Guidance to further and higher education institutions (1) ~~The Welsh Ministers~~ The Commission for Tertiary Education and Research ("the Commission") may issue guidance to the governing bodies of institutions in Wales within the further education sector on how the bodies may contribute to the pursuit of the purpose of this Act. (2) ~~The Higher Education Funding Council for Wales ("HEFCW")~~ The Commission may issue guidance to the governing bodies of institutions in Wales within the higher education sector on how the bodies may contribute to the pursuit of the purpose of this Act. (3) But ~~the Welsh Ministers and HEFCW~~ The Commission may not issue guidance under this section— (a) which is directed at a particular institution, (b) in respect of courses or programmes of research (including the contents of such courses or programmes or the manner in which they are taught, supervised or assessed), (c) in respect of the criteria for admission of students, or (d) in respect of the criteria for the selection and appointment of academic staff. (4) A governing body to which guidance is issued under this section must have regard to it. (5) Before issuing guidance under this section ~~the Welsh Ministers and HEFCW~~ the Commission must consult such persons as ~~they consider~~ it considers appropriate. (6) Guidance issued under this section must be published. (7) For the purposes of this section, an institution— (a) is in Wales if its activities are carried on wholly or principally in Wales, (b) is within the further education sector if it falls within section 91(3) of the Further and Higher Education Act 1992 (c.13) ("the 1992 Act"), and (c) is within the higher education sector if it falls within section 91(5) of the 1992 Act. ~~(8) Until 31 August 2017, "institution within the higher education sector" also includes a university which is treated as being a regulated institution for the purpose of the transitional provision made by Part 2 of the Schedule to the Higher Education (Wales) Act 2015 (anaw 1).~~ (9) In this section "governing body" has the meaning given by section 90 of the 1992 Act.	Schedule 4, Paragraph 33

Section	Amended by
34 Restriction on funding and provision of certain courses (1) Unless a requirement set out in subsection (3) or (5) is met, a course of education or training that leads to the award of a form of a qualification and is within subsection (2) must not be— (a) funded by an authorised body, or (b) provided by or on behalf of a maintained school in Wales. (2) A course of education or training is within this subsection if it is provided, or proposed to be provided— (a) by or on behalf of a school or institution or employer, and (b) for pupils who are of compulsory school age, or above compulsory school age but under 19. (3) The requirement is that— (a) the form of qualification to which the course leads is awarded by a recognised body as an approved qualification, and (b) if the form of the qualification is subject to an award limitation condition, the provision of the course is not such that it leads to the award of the qualification to a person otherwise than in accordance with that condition. (4) In subsection (3)(b), an award limitation condition is a condition to which approval of the form of qualification under Part 4 is subject and which relates to the person or description of person to whom the qualification may be awarded. (5) The requirement is that— (a) the form of the qualification to which the course leads is awarded by a recognised body and is designated under section 29, and (b) if Qualifications Wales has specified purposes under section 30(6) for which the designation is to have effect, the provision of the course is not such that it leads to the award of the qualification otherwise than in accordance with those purposes. (6) In relation to a maintained school, the local authority and governing body must carry out their functions with a view to securing that subsection (1)(b) is not contravened. (7) The restriction imposed by this section does not apply in respect of the provision of a course of education or training to a person with a learning difficulty. (8) Nor does the restriction apply in respect of a course of education or training designated by the Welsh Ministers for the purpose of this section. (9) A designation under subsection (8) may make provision— (a) generally in respect of a course or description of course, or (b) in respect of a course or description of course provided in circumstances, or to a person or description of person, specified in the designation. (10) A designation under subsection (8)— (a) must be in writing;	Schedule 4, Paragraph 34

Section	Amended by
(b) may be varied or revoked. (11) In this section, references to a course leading to a form of a qualification include references to a course that is one of two or more components leading to a form of the qualification. (12) In this section— "authorised body" ("corff awdurdodedig") means— (a) the Welsh Ministers; (b) a local authority in Wales; (c) the Commission for Tertiary Education and Research; "maintained school" ("ysgol a gynhelir") means— (a) a community, foundation or voluntary school; (b) a community special school.	

Deregulation Act 2015

Section	Amended by
3 Apprenticeships: simplification (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 simplify the provision made by that Part about English apprenticeships. (3) Part 2 of the Schedule contains further amendments of the 2009 Act in consequence of the amendments made by Part 1. ~~(4) Part 3 of the Schedule contains minor amendments of the provision made by Part 1 of the 2009 Act about Welsh apprenticeships.~~ (5) Part 4 of the Schedule contains transitional provision.	Schedule 4 Paragraph 35
Schedule 1: Approved English Apprenticeships **~~PART 3~~** **~~Apprenticeships: Wales~~** ~~24~~ ~~Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.~~ ~~25~~ ~~(1) Section 18 (Welsh issuing authority) is amended as follows.~~ ~~(2) For subsection (2) substitute—~~ ~~"(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."~~ ~~(3) For subsection (5) substitute—~~ ~~"(5) In this Chapter, the "Welsh issuing authority", in relation to an apprenticeship framework, means—~~ ~~(a) the person (if any) designated under this section to issue frameworks of that description;~~ ~~(b) if there is no-one so designated, the Welsh Ministers."~~ ~~26~~ ~~In section 19 (issue: Wales), in subsection (2) -~~ ~~(a) after "withdrawn" insert "by the Welsh issuing authority";~~ ~~(b) omit paragraphs (a) and (b).~~ ~~27~~ ~~(1) Section 20 (recognised Welsh frameworks: notification and publication) is amended as follows.~~ ~~(2) In subsection (1)(b), at the beginning insert "if the issuing authority is not the Welsh Ministers,".~~ ~~(3) In subsection (3)—~~ ~~(a) for "A person who" substitute "A Welsh issuing authority which";~~	Schedule 4 Paragraph 35

Section	Amended by
~~(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,".~~	

Environment (Wales) Act 2016

Section	Amended by
10 Meaning of public body in sections 11 to 15 (1) In sections 11 to 15, "public body" means any one of the following— (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~~ the Commission for Tertiary Education and Research; (g) the Arts Council of Wales; (h) the Sports Council for Wales; (i) the National Library of Wales; (j) the National Museum of Wales. (2) The Welsh Ministers may by regulations amend subsection (1) by— (a) adding a person, (b) removing a person, or (c) amending a description of a person. (3) But the regulations— (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. (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. (5) Before making regulations under subsection (2), the Welsh Ministers must consult— (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.	Schedule 4 Paragraph 36

Public Health (Wales) Act 2017

Section	Amended by
110 Meaning of "public body" (1) For the purposes of sections 108 and 109, each of the following persons is a "public body"— (a) the Welsh Ministers; (b) a local authority; (c) a Local Health Board; (d) the following National Health Service Trusts— (i) Public Health Wales; (ii) Velindre; (e) a National Park authority for a National Park in Wales; (f) a Welsh fire and rescue authority; (g) the Natural Resources Body for Wales; (h) ~~the Higher Education Funding Council for Wales~~ the Commission for Tertiary Education and Research".; (i) the Arts Council of Wales; (j) the Sports Council for Wales; (k) the National Library of Wales; (l) the National Museum of Wales. (2) Regulations may amend subsection (1) by— (a) adding a person, (b) removing a person, or (c) amending a reference to a person. (3) But the regulations may not amend subsection (1) by adding a person unless that person exercises functions of a public nature. (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. (5) In this section— "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); "Welsh fire and rescue authority" ("awdurdod tân ac achub yng Nghymru") means 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.	Schedule 4, Paragraph 37

Section	Amended by
Public Records Act 1958 1 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), omit— (a) "Director of Fair Access to Higher Education.", and (b) "Higher Education Funding Council for England. **Parliamentary Commissioner Act 1967** 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit— (a) "The Director of Fair Access to Higher Education.", and (b) "Higher Education Funding Council for England. **Superannuation Act 1972** 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— (a) "Employment by the Director of Fair Access to Higher Education.", and (b) "Higher Education Funding Council for England." **House of Commons Disqualification Act 1975** 4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices), omit— (a) "Director of Fair Access to Higher Education.", and (b) "Any member of the Higher Education Funding Council for England in receipt of remuneration. **Education (No 2) Act 1986** 5 (1) Section 43 of the Education (No 2) Act 1986 (freedom of speech in universities etc) is amended as follows. (2) After subsection (4) insert— "(4A) The establishments in England to which this section applies are— (a) any registered higher education provider; (b) any establishment of higher or further education which is maintained by a local authority; (c) any institution within the further education sector." (3) In subsection (5), after "The establishments" insert "in Wales". (4) In subsection (6), in the definition of "governing body", for "in relation to any university" substitute "— (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;	Schedule 4, Paragraph 38

Section	Amended by
(b) in relation to a university in Wales,". (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;". (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." (7) In subsection (7)(a), after "subsection" insert "(4A)(b) or". **Education Reform Act 1988** 6 The Education Reform Act 1988 is amended as follows. 7 ~~In section 124B(2)(b) (accounts), for "the higher education funding council" substitute "the Higher Education Funding Council for Wales".~~ 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".~~ 9 In section 129(1) (designation of institutions), for "a higher education funding council" substitute "the Higher Education Funding Council for Wales". 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". 11 ~~In Schedule 7 (higher education corporations), in paragraph 18(2)(b), for "higher education funding council" substitute "Higher Education Funding Council for Wales".~~ **Further and Higher Education Act 1992** 12 The Further and Higher Education Act 1992 is amended as follows. 13	

Section	Amended by
In section 61 (interpretation of Part 1), omit subsection (3)(b). 14 ~~(1) Section 62 (establishment of the Higher Education Funding Councils) is amended as follows.~~ ~~(2) In the heading, for "The Higher Education Funding Councils" substitute "The Higher Education Funding Council for Wales".~~ ~~(3) In subsection (1)—~~ ~~(a) omit paragraph (a), and~~ ~~(b) in paragraph (b), after "them" insert "(referred to in this Act as "the HEFCW")".~~ ~~(4) Omit subsection (2).~~ ~~(5) In subsection (4), for "a council" substitute "the HEFCW".~~ ~~(6) Omit subsections (5) and (6).~~ ~~(7) In subsection (7)—~~ ~~(a) omit "institutions in England or",~~ ~~(b) in paragraph (a), omit "England or, as the case may be,", and~~ ~~(c) in paragraph (b), omit ", in both cases,".~~ ~~(8) In subsection (7A), for "each council" substitute "the HEFCW".~~ ~~(9) In subsection (8), for "one of the councils" substitute "the HEFCW or the Office for Students".~~ ~~(10) In subsection (9), for "each of the councils" substitute "the HEFCW".~~ 15 ~~(1) Section 65 (administration of funds by councils) is amended as follows.~~ ~~(2) In the heading, for "councils" substitute "the HEFCW".~~ ~~(3) In subsection (1)—~~ ~~(a) for "Each council" substitute "The HEFCW", and~~ ~~(b) for "the council" substitute "the HEFCW".~~ ~~(4) In subsection (2)(a), for "the council's" substitute "the HEFCW's".~~ ~~(5) In subsection (3)—~~ ~~(a) for "A council" substitute "The HEFCW", and~~ ~~(b) for "the council" substitute "the HEFCW".~~ ~~(6) In subsection (3A)—~~ ~~(a) for "a Council" substitute "the HEFCW", and~~ ~~(b) for "the Council" substitute "the HEFCW".~~ ~~(7) In subsection (3B), for "the Council in question" substitute "the HEFCW".~~ ~~(8) In subsection (4)—~~ ~~(a) for "a council" substitute "the HEFCW", and~~ ~~(b) for "the council", in each place, substitute "the HEFCW".~~ 16	

Section	Amended by
~~(1) Section 66 (administration of funds: supplementary) is amended as follows.~~ ~~(2) In subsection (1) —~~ ~~(a) for "a council" substitute "the HEFCW", and~~ ~~(b) for "the council", in each place, substitute "the HEFCW".~~ ~~(3) In subsections (2) and (3), for "a council" substitute "the HEFCW".~~ ~~(4) In subsection (4), for "the council" substitute "the HEFCW".~~ 17 ~~(1) Section 68 (grants to councils) is amended as follows.~~ ~~(2) In the heading, for "councils" substitute "the HEFCW".~~ ~~(3) In subsection (1), for "each of the councils" substitute "the HEFCW".~~ ~~(4) In subsection (2) —~~ ~~(a) for "either of the councils" substitute "the HEFCW", and~~ ~~(b) for "the council", in each place, substitute "the HEFCW".~~ 18 ~~(1) Section 69 (supplementary functions) is amended as follows.~~ ~~(2) In subsection (1), for "Each council" substitute "The HEFCW".~~ ~~(3) Omit subsections (1A) and (1B).~~ ~~(4) In subsection (2), for "Each council" substitute "The HEFCW".~~ ~~(5) In subsection (3), for "A council" substitute "The HEFCW".~~ ~~(6) In subsection (4) —~~ ~~(a) in paragraph (a), for "an institution" substitute "an institution in Wales", and~~ ~~(b) for "the council" substitute "the HEFCW".~~ ~~(7) In subsections (5) and (6), for "a council" substitute "the HEFCW".~~ 19 Omit section 70 (England: assessment of quality of education provided by institutions). 20 ~~(1) Section 79 (duty to give information to funding councils) is amended as follows.~~ ~~(2) In the heading, for "the funding councils" substitute "the HEFCW".~~ ~~(3) For "a council" substitute "the HEFCW".~~ 21 Omit section 79A (Higher Education Funding Council for England's power to request information from institutions that are exempt charities). 22 ~~(1) Section 81 (directions) is amended as follows.~~ ~~(2) In subsection (1), for "each council" substitute "the HEFCW".~~ ~~(3) In subsection (2), for "a council" substitute "the HEFCW".~~ ~~(4) In subsection (3), for "the council", in each place, substitute "the HEFCW".~~ 23	

Section	Amended by
(1) Section 82 (joint exercise of functions) is amended as follows. (2) Omit subsections (1) to (1B). (3) In subsection (2), for “Great Britain” substitute “Wales and Scotland”. (4) In subsection (2A), after “Scottish” insert “Further and”. (5) In subsection (3)(a)— (a) for “a higher education funding council” substitute “the HEFCW”, (b) for “the National Assembly of Wales” substitute “the Welsh Ministers”, (c) for “it is discharging its” substitute “they are discharging their”, and (d) after “Scottish” insert “Further and”. 24 ~~In section 83 (efficiency studies), in subsection (1B), for “A higher education funding council” substitute “The HEFCW”.~~ 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.~~ 26 (1) Section 92 (index) is amended as follows. (2) Omit the entry for “council (in Part 2), or higher education funding council”. ~~(3) After the entry for “governing body” insert—~~ ~~“the HEFCW | section 62(1)”~~ ~~(4) For “institution in England or in Wales (in relation to higher education funding councils)” substitute “institution in Wales (in relation to the HEFCW)”.~~ **Education Act 1994** 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. (2) In subsection (1), for “A higher education funding council” substitute “The Office for Students or the Higher Education Funding Council for Wales”. (3) In subsection (4)— (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 (b) for “the council” substitute “they”. **Education Act 1996** 28 In section 13 of the Education Act 1996 (local authorities' general responsibility for education), for subsection (2)(b) substitute— “(b) the Higher Education Funding Council for Wales, or (c) the Office for Students.” **Freedom of Information Act 2000** 29	

Section	Amended by
(1) Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies) is amended as follows. (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).	

Section	Amended by
(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). **Equality Act 2010** 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. **Education Act 2011** 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)— (a) section 77; (b) paragraphs 18 to 29 of Schedule 5; (c) paragraph 22 of Schedule 16. **Charities Act 2011** 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). **Counter-Terrorism and Security Act 2015** 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”.	

Additional Learning Needs and Education Tribunal (Wales) Act 2018

Section	Amended by
4 Additional learning needs code (1) The Welsh Ministers must issue, and may from time to time revise, a code on additional learning needs ("the code"). (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. (3) The following persons must, when exercising functions under this Part, have regard to any relevant guidance contained in the code— (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; (ca) the Commission for Tertiary Education and Research; (cb) the Welsh Ministers; (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. (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). (5) The code may impose requirements— (a) on a local authority in respect of arrangements it must make under sections 9 (advice and information), 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services); (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— (i) decisions as to whether a child or young person has additional learning needs, (ii) the preparation, content, form, review and revision of individual development plans, or (iii) ceasing to maintain individual development plans; (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.	Schedule 4, Paragraph 39

Section	Amended by
(6) The code must include the following requirements on governing bodies and local authorities— (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; (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; (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. (7) The code may make— (a) different provision for different purposes or cases, and (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). (8) The duty imposed by subsection (3) and a duty imposed 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). (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; . . .. (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). (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. (11) The Welsh Ministers must publish the code for the time being in force on their website.	
5 Procedure for making the code (1) Before issuing or revising a code under section 4, the Welsh Ministers must consult the following persons on a draft of the code— (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;	Schedule 4, Paragraph 39

Section	Amended by
(da) the Commission for Tertiary Education and Research (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. (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. (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. (4) If the National Assembly for Wales resolves to approve a draft of the code— (a) the Welsh Ministers must issue the code in the form of the draft, and (b) the code comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. (5) An order under subsection (4)(b) may— (a) appoint different days for different purposes; (b) make transitory, transitional or saving provision in connection with the coming into force of a provision in the code. (6) References in this section to a code include a revised code. (7) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part.	
50 Welsh Ministers' duties to secure post-16 education and training (1) The Learning and Skills Act 2000 (c 21) is amended as follows. ~~(2) In section 31(3) (education and training for persons aged 16 to 19), after paragraph (c) insert—~~ ~~"(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;".~~ ~~(3) In section 32(3) (education and training for persons over 19), after paragraph (c) insert—~~ ~~"(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;".~~ ~~(4) In section 41 (persons with learning difficulties)—~~ ~~(a) in the heading, for "learning difficulties" substitute "additional learning needs";~~	Schedule 4, Paragraph 39

Section	Amended by
~~(b) in subsection (1)—~~ ~~(i) in paragraph (a), for "learning difficulties, and" substitute "additional learning needs;";~~ ~~(ii) for paragraph (b) substitute—~~ ~~"(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.";~~ ~~(c) omit subsections (2), (3) and (4);~~ ~~(d) for subsection (5) substitute—~~ ~~"(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.";~~ ~~(e) omit subsection (6).~~ (5) Omit section 140 (assessments relating to learning difficulties).	
65 Duties to provide information and other help (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. (2) The person must comply with the request unless the person considers that doing so would— (a) be incompatible with the person's own duties, or (b) otherwise have an adverse effect on the exercise of the person's functions. (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. (4) The persons are— (a) another local authority; (b) a local authority in England; (c) the governing body of a maintained school in Wales or England; (d) the governing body of an institution in the further education sector in Wales or England; <u>(da) the Commission for Tertiary Education and Research;</u> <u>(db) the Welsh Ministers; (e) the proprietor of an Academy;</u> (f) a youth offending team for an area in Wales or England; (g) a person in charge of relevant youth accommodation in Wales or England; (h) a Local Health Board; (i) an NHS trust; (j) the National Health Service Commissioning Board;	Schedule 4, Paragraph 39

Section	Amended by
(k) a clinical commissioning group; (l) an NHS foundation trust; (m) a Special Health Authority. (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.	

Public Services Ombudsman (Wales) Act 2019

Section	Amended by
Schedule 3 - Listed Authorities **(introduced by section 31)** *Government of Wales* The Welsh Government. The National Assembly for Wales Commission. *Local government, fire and police* A local authority in Wales. A joint board the constituent authorities of which are all local authorities in Wales. 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. A police and crime commissioner for a police area in Wales. A corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021. *Environment* The Committee on Climate Change. A National Park authority for a National Park in Wales. The Natural Resources Body for Wales. The Environment Agency. The Forestry Commissioners. The Flood and Coastal Erosion Committee. *Health and social care* Social Care Wales. *The Board of Community Health Councils in Wales.* A Local Health Board. An NHS trust managing a hospital or other establishment or facility in Wales. A Special Health Authority not discharging functions only or mainly in England. *A Community Health Council.* An independent provider in Wales. A family health service provider in Wales. 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). The Welsh Health Specialised Services Committee. The Citizen Voice Body for Health and Social Care, Wales. *Housing* A social landlord in Wales.	Schedule 4 Paragraph 41

Section	Amended by
Education and training 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. ~~The Higher Education Funding Council for Wales~~The Commission for Tertiary Education and Research. 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). 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). An exclusion appeal panel constituted in accordance with regulations under section 52 of the Education Act 2002 (c 32). Qualifications Wales. *Arts and leisure* The Arts Council of Wales. The Sports Council for Wales. *Tax* The Welsh Revenue Authority. *Miscellaneous* The Building Regulations Advisory Committee for Wales. Coity Walia Board for Conservators. Comisiynydd y Gymraeg (The Welsh Language Commissioner). 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 is no such authority, the person having control of the operation of the port)— (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. The Local Democracy and Boundary Commission for Wales. Towyn Trewan Board for Conservators.	

The Welsh Language Standards (No. 6) Regulations 2017

Regulation	Amended by
Standards that are specifically applicable 3. The Welsh Ministers authorise the Welsh Language Commissioner to give a compliance notice to— (1) Career Choices Dewis Gyrfa Limited requiring it to comply with the following standards specified under regulation 2 and the Schedules— (a) 94 to 162; (b) 169 to 182; (2) Coleg Ceredigion, Coleg Sir Gâr, Further Education Corporations in Wales, Merthyr Tydfil College Limited, the governing body of Saint David's Catholic College and WEA YMCA CC Cymru requiring them to comply with the following standards specified under regulation 2 and the Schedules— (a) 1 to 136; (b) 138 to 182; (3) Aberystwyth University, Bangor University, Cardiff University, Higher Education Corporations in Wales, the Open University, the Royal Welsh College of Music and Drama Limited, Swansea University, the University of Wales and the University of Wales: Trinity St David requiring them to comply with the standards specified under regulation 2 and the Schedules; (4) ~~The Higher Education Funding Council for Wales~~ <u>The Commission for Tertiary Education and Research</u> requiring it to comply with the following standards specified under regulation 2 and the Schedules— (a) 1 to 24B; (b) 27 to 27D; (c) 30 to 59; (ch) 61 to 91; (d) 94 to 103; (dd) 105 to 136; (e) 138 to 182.	Schedule 4 Paragraph 40