

TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Securing and Funding Tertiary Education and Research

Funding the Commission

Section 85: Power of the Welsh Ministers to fund the Commission

264. This section allows the Welsh Ministers to provide funding to the Commission. It allows the Welsh Ministers to attach terms and conditions to such funding as they consider appropriate (including in relation to repayment of sums and payment of interest) subject to the limitations specified in section 86.
265. Terms and conditions applied to funding by the Welsh Ministers may require the Commission to enter into an “outcome agreement” with persons whom it proposes to fund. An outcome agreement is defined by this section. Outcome agreements are a means by which the Commission, through its funding decisions, will contribute to the discharge of its strategic duties (under sections 2 to 12) and the achievement of the Welsh Ministers’ strategic priorities for tertiary education and research.
266. The Commission’s strategic plan will set out how it intends to discharge its strategic duties and how it will address the Welsh Ministers’ priorities in the statement published by the Welsh Ministers under section 14. Outcome agreements will set out the activities that a provider agrees it will carry out in return for funding which will contribute to the implementation of the Commission’s approved strategic plan.
267. The Welsh Ministers may impose terms and conditions requiring the Commission to enter into outcome agreements in all cases where it provides funding. Alternatively, the Welsh Ministers may require the Commission to enter into an outcome agreement where the Commission proposes to fund particular activities, types of provider or specified amounts of financial support. For example, the Welsh Ministers may require that outcome agreements apply to all courses of higher and further education, or only to certain specified courses but not in cases where the volume of provision is small and funding falls below a specified amount.

Section 86: Funding the Commission: limitations on terms and conditions

268. This section includes a number of requirements and restrictions in relation to the terms and conditions that may be imposed by the Welsh Ministers. The purpose of the requirements and restrictions is to protect the institutional autonomy of tertiary education and research providers, the academic freedom of higher education providers and the ability of the Commission to determine funding allocations.
269. In particular, this section provides that the terms and conditions imposed by the Welsh Ministers in relation to funding for higher education, further education and training, and

research and innovation must not relate to activities carried on by individual providers (unless they apply to all providers or those falling within a particular class or description and are a pre-condition of funding).

270. This section also provides that terms and conditions must not be framed by reference to criteria for the appointment, dismissal or selection of academic staff or criteria for the admission of students. This provision protects providers' freedom to select staff and admit students as they see fit.
271. Further, this section provides that terms and conditions relating to funding for research and innovation may only be framed by reference to an area of research or innovation if that is included in the Commission's approved strategic plan. The terms and conditions may not refer to particular programmes of research or innovation projects.
272. In addition, the terms and conditions for higher education may apply to particular courses but must not apply to particular parts of courses nor must they require the Commission to either provide or prohibit the provision of particular courses. These provisions enable the Welsh Ministers to ring-fence funding to support particular courses of higher education and to require the Commission to have regard to the desirability of funding them. By way of example the Welsh Ministers may give funding to the Commission to support the provision of a particular course or courses leaving it to the Commission to determine how the funding is to be used. The Welsh Ministers can require the funding to be repaid if not used for the specified course(s). This provision protects providers' freedom to elect to offer particular higher education courses.
273. Additionally, this section provides that terms and conditions in respect of higher education or research and innovation must not apply to the content of courses or programmes of research and innovation nor how they are taught, supervised or assessed. This provision protects providers' freedom to teach and admit students as they see fit.
274. Subsection (7) dis-applies the limitations of subsections (5) and (6) for courses or parts of courses being provided and assessed through the medium of Welsh. This provision enables the Welsh Ministers to allocate funding to the Commission to support the provision or assessment of higher education courses or part of such courses through the medium of Welsh.

Commission's funding policy

Section 87: Policy on funding powers

275. **Section 87** imposes a duty on the Commission to publish a statement about how it proposes to exercise its funding powers under the Act, which are:
 - section 88 (financial support to specified providers for higher education);
 - section 89 (financial support for higher education courses specified in regulations);
 - section 97 (financial support for further education or training);
 - section 101 (financial support for education provided by school sixth forms maintained by local authorities);
 - section 103 (financial support for provision of information, advice or guidance and to form links with employers and financial support for the provision of further education or training through the medium of Welsh or for the purpose of teaching Welsh);
 - section 104 (financial support for apprenticeships);
 - section 105 (financial support for research and innovation).

276. The purpose of the funding policy statement is to make the Commission's proposed approach to the exercise of its funding powers transparent to those potentially affected by them and the public generally. 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.
277. The Commission is also required to consult such persons as it considers appropriate prior to publishing its funding policy statement, and must keep the statement under review.

Funding of higher education

Section 88: Financial support to specified providers for higher education

278. This section allows the Commission to fund certain categories of providers who are registered with the Commission under Part 2 of the Act, for the purpose of supporting higher education provided by or on behalf of such providers.
279. The categories of registered providers eligible to receive funding from the Commission under this section will be specified in regulations made by the Welsh Ministers.
280. A registered provider receiving funding under this section may pass funds to a collaborating body. The passage of funds will allow the funded provider to work collaboratively with a range of partner organisations (including those outside Wales) engaged in the provision of higher education.
281. A provider funded by the Commission who is collaborating, has collaborated or who proposes to collaborate with another organisation to provide higher education needs the consent of the Commission to pass funds to the collaborating organisation. The Commission will not have a direct relationship with the collaborating organisation and therefore the provider funded by the Commission remains responsible for the funding. Section 108 contains procedures to be followed when the Commission is deciding whether or not to give consent.
282. The Welsh Ministers are enabled to make regulations about the circumstances in which funding must not be provided in respect of courses of initial teacher training. Such regulations could, for example, require that such courses must not be funded by the Commission unless they are accredited by a specified body.

Section 89: Financial support for higher education courses specified in regulations

283. This section makes provision about courses of higher education which may be funded by the Commission in addition to higher education supported by the Commission under section 88.
284. The Welsh Ministers may make regulations to specify particular courses or descriptions of courses which may be funded by the Commission; "eligible courses". The regulations may specify courses by way of reference to, amongst other matters, the requirements to be met by the course; the description of the person providing the course; and the qualification to which the course leads. The ability for the Commission to fund eligible courses would permit gaps in provision for particular subjects or locations to be addressed.
285. Gaps in provision may arise due to a lack of specified providers (as defined in 88(1)) being able to fulfil an identified need. For example, a need for a specialist course to be delivered in Wales or to be undertaken by small numbers of students ordinarily resident in Wales, which may not be cost effective for specified providers to deliver.
286. This section provides that the Commission is able to fund providers to deliver eligible courses wholly or mainly in Wales and courses provided to students who are ordinarily resident in Wales. A provider receiving funding under this section may pass some or all

of those funds to a collaborating body including providers outside Wales, for example, funding to support an eligible course where the majority of the course is provided by a provider in Wales, but particular modules are delivered by a provider in England, where the provider in England is working in partnership with the provider in Wales.

287. A provider funded by the Commission who is collaborating, has collaborated or who proposes to collaborate with another organisation to deliver a particular higher education course or courses needs the consent of the Commission to pass funds to the collaborating organisation. The Commission will not have a direct relationship with the collaborating organisation and therefore the provider funded by the Commission remains responsible for the funding. Section 108 contains procedures to be followed when the Commission is deciding whether or not to give consent.

Section 90: Financial support under sections 88 and 89: terms and conditions

288. This section provides that the Commission may impose such terms and conditions as it considers appropriate to funding it allocates for the purpose of supporting higher education. In particular, such terms and conditions may require the repayment of funds (including with interest) if the purposes for which the funding is allocated are not complied with. However the Commission may not impose conditions that relate to funding derived from other sources, for example income generated from providers' own activities including tuition fees, funds from industry or donations from benefactors.
289. Where the Commission allocates funding to providers for higher education courses specified in regulations under section 89(1), who are not included in the register (i.e. unregistered providers) then the Commission must impose terms and conditions that require such providers to:
- have a learner protection plan approved by the Commission in place (subject to the Commission having given notice of this requirement) and to give effect to the plan;
 - comply with the requirements of the extant Learner Engagement Code published by the Commission under section 129 if they are a tertiary education provider in Wales; and
 - have regard to advice or guidance given by the Commission to the provider.

Section 91: Financial support under sections 88 and 89: supplementary

290. This section places the Commission under a duty, in the exercise of its higher education funding functions, to have regard to the desirability of not doing anything which would discourage providers from seeking or maintaining funding from other sources (for example from industry, commerce, benefactors, alumni, or other funding sources).
291. The Commission is also required, in exercising its higher education funding functions, to have regard to the desirability of maintaining any distinctive characteristics of any provider to which it provides financial support. It is a matter for the Commission to determine what it considers to be an appropriate balance of support in light of any other relevant considerations. Such characteristics may include, for example, the religious character of a provider or the specialist nature of its provision.

Section 92: Financial support by Welsh Ministers for certain higher education courses

292. This section enables the Welsh Ministers to fund a limited range of "relevant higher education courses". Such courses must fall within the definition of paragraph 1(g) or 1(h) of Schedule 6 to the Education Reform Act 1988. Courses which may be funded include those in preparation for professional examinations, for example courses which are not degrees and lead to qualifications accredited by professional bodies. The Welsh Ministers may make financial support available from their resources or arrange for others to provide resources on their behalf, or their own resources.

Further education and training

Section 93: Education and training for persons aged 16 to 19

293. **Section 93** sets out the Commission’s duty to secure facilities for education and training for those above the compulsory school age. The duties in this section and sections 95 and 96 are similar to the duties in sections 31 and 32 of the Learning and Skills Act 2000 (“the 2000 Act”).
294. The section requires the Commission to secure the provision of ‘proper’ facilities for Wales for the education and training of people who are above compulsory school age but have not yet reached the age of 19. Facilities are ‘proper’ if they are of sufficient quantity and adequate quality to meet the reasonable needs of young people. Additionally such facilities must satisfy students’ entitlements to follow courses of study within the local curriculum formed under section 33A of the 2000 Act. “Facilities for Wales” includes facilities in Wales, and other facilities available to persons ordinarily resident in Wales (see section 144(1)).
295. Amendments are made to sections 33A – 33E, 33G, 33I - 33-K, 33N – 33Q of the 2000 Act (see Schedule 4). These confer functions on the Commission which include, amongst other things, responsibilities for forming the local curriculum, the planning and delivery of local curriculum entitlements for learners (including Welsh language provision), and the arrangements for joint working. Other minor and consequential amendments include placing a duty on the Welsh Ministers to consult the Commission when exercising their power to amend the local curricula learning domains and the making of regulations and issuing of guidance.
296. The facilities to be secured for education and training include both full-time and part-time further education and training as well as vocational, social, physical and recreational training (see the definitions in section 144(2) to (5)).
297. The Commission’s duties under this section do not extend to higher education (see paragraphs 277 to 280 for an explanation of the Commission’s powers to fund higher education).

Section 94: Education and training for eligible persons over 19

298. This section requires the Commission to secure proper facilities for Wales for relevant education and training for eligible persons. Facilities are ‘proper’ if they are of sufficient quantity and adequate quality to meet the reasonable needs of eligible individuals. “Facilities for Wales” includes facilities in Wales, and other facilities available to persons ordinarily resident in Wales (see section 144(1)).
299. Welsh Ministers must make regulations describing the relevant further education or training for which the Commission must secure proper facilities. The regulations can, for example, refer to the subjects to be studied or the level of study or the type of qualification to be pursued.
300. An eligible person is one who has attained the age of 19 and falls within a description specified in regulations made by Welsh Ministers. These regulations may, for example, refer to a person’s age, the qualifications they already possess, their income levels, whether they are employed, unemployed, self-employed, etc. The regulations could specify that persons falling within a particular description are eligible in relation to a particular description of further education or training.
301. The facilities to be secured for education and training include both full-time and part-time further education and training as well as vocational, social, physical and recreational training (see the definitions in section 144(2) to (5)).

302. The Commission's duties under this section do not extend to higher education (see paragraphs 277 to 280 for an explanation of the Commission's powers to fund higher education).

Section 95: Education and training for persons over 19

303. **Section 95** sets out the duty of the Commission to secure the provision of 'reasonable' facilities for Wales for the education and training of people 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the Commission can reasonably be expected to provide taking account of the resources available to it. "Facilities for Wales" includes facilities in Wales, and other facilities available to persons ordinarily resident in Wales (see section 144(1)).
304. The facilities to be secured for education and training include both full-time and part-time further education and training as well as vocational, social, physical and recreational training (see the definitions in section 144(2) to (5)). This includes organised activities offering opportunities for non-formal learning which may not lead to a qualification. For example, adult learning opportunities in community settings including education engagement activities.
305. The Commission's duties under this section do not extend to higher education (see paragraphs 277 to 280 for an explanation of the Commission's powers to fund higher education).

Section 96: Requirements on Commission when securing further education and training

306. This section sets out various requirements on the Commission when it is discharging its duties under sections 93, 94 and 95.
307. In performing the duties under those sections, the Commission must take into account a number of factors, including the education and training required in different sectors of employment, the needs of employees and potential employees, and the need to provide additional learning provision and assessment of additional learning needs through the medium of Welsh.
308. The Commission must also bear in mind circumstances where it might reasonably expect education and training to be secured by other bodies without drawing on its own resources, for example additional learning needs provision secured by local authorities under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
309. The Commission must make best use of its resources and in particular avoid provision which might give rise to disproportionate expenditure. Provision is not to be considered as giving rise to disproportionate expenditure solely because it is more expensive than comparable provision.

Section 97: Financial support for further education or training

310. This section sets out powers for the Welsh Ministers and the Commission to fund further education or training. (See section 144(2) to (5) for the definition of further education and training).
311. The Commission and the Welsh Ministers are able to fund any person to provide further education or training wholly or mainly in Wales and further education or training to learners ordinarily resident in Wales. Additionally they may fund any person to provide goods or services in connection with such further education or training.
312. The Welsh Ministers and the Commission are also able to provide financial support directly to learners and prospective learners who are ordinarily resident in Wales or who are undertaking or proposing to undertake further education or training in Wales. For

example, such support could be to assist with transport or childcare costs or to provide incentives to address skills shortages in particular employment sectors in Wales.

313. The Welsh Ministers and the Commission may make financial support available from their resources or arrange for others to provide resources on behalf of the Welsh Ministers or the Commission, or their own resources.
314. Providers of further education who are in receipt of funding from the Commission or the Welsh Ministers may pass funds to a collaborating body. This could include funding for provision outside Wales, for example funding to support further education or training where the learner is ordinarily resident in Wales but elements of their further education or training are delivered by a collaborating organisation in England. A provider funded by the Commission who is collaborating, has collaborated or who proposes to collaborate with another organisation to deliver a particular further education course or courses needs the consent of the Commission to pass funds to the collaborating organisation. The Commission will not have a direct relationship with the collaborating organisation and therefore the provider funded by the Commission remains responsible for the funding. The same applies to funding from the Welsh Ministers under this section. Section 108 contains procedures to be followed when the Commission is deciding whether or not to give consent.
315. The Commission may not fund school sixth forms under subsection (1)(a) or (b) (or make arrangements for a local authority to provide the Commission's resources to do so). School sixth form provision will be funded by the Commission under section 101.
316. But the Commission may fund (or make arrangements for a local authority to provide the Commission's resources to fund) innovative activities in maintained schools with sixth forms. An 'innovative activity' is an activity that in the Commission's opinion will contribute to the raising of standards of tertiary education and is described in a document prepared by the Commission and approved by the Welsh Ministers.

Section 98: Financial support for further education or training: further provision

317. If they provide financial support directly to learners under section 97(1)(d) or (e), the Welsh Ministers and the Commission can do so by reference to fees or charges payable by those learners, or by reference to other matters connected with the provision of that further education or training (such as transport or childcare costs).
318. The Welsh Ministers may make regulations requiring providers to be registered in a specified category on the register established under section 25 in order to be eligible for funding under section 97(1)(a) or (b) (provision or proposed provision of further education or training).
319. Those regulations may make exceptions for certain courses or courses of a certain description. The regulations could, for example, describe a course by referring to requirements to be met by it or to the person providing it, or to the qualification to which the course leads.
320. These arrangements would permit gaps in provision for particular subjects or locations to be addressed which may arise due to a lack of registered providers able to fulfil an identified need, for example a need for a specialist course to be delivered in Wales or to be undertaken by small numbers of students ordinarily resident in Wales, which may not be cost effective for registered providers to deliver.

Section 99: Financial resources for further education or training: terms and conditions

321. Where the Welsh Ministers or the Commission provide funding under section 97, this section allows them to impose terms and conditions as they consider appropriate. The Welsh Ministers or the Commission are able to require providers of further education or training to charge fees, make awards, and to recover sums of money against specified

criteria. However, learners between the ages of 16 to 19 and eligible learners receiving education and training under section 94 must not be charged a fee for further education or training (unless there is an exception set out in regulations).

322. Where funding for the purpose of providing further education or training is allocated by the Commission to providers that are not on the register, the terms and conditions must require that the provider has an approved learner protection plan in place (where the Commission has given the appropriate notice); complies with the Learner Engagement Code (if it is a tertiary education provider in Wales); and has regard to advice and guidance issued by the Commission.
323. Where the Commission has made arrangements for another person to provide the Commission's financial resources it may require the person to impose the terms and conditions outlined in paragraph 321 and must require the person to impose those outlined in paragraph 322.

Section 100: Means tests

324. **Section 97(1)(g)** allows the Commission or the Welsh Ministers to fund the cost of means tests.
325. **Section 100** allows the Commission or the Welsh Ministers to carry out such tests themselves or arrange for others to do so on their behalf.
326. The Commission or the Welsh Ministers are able to take into account the outcomes of such tests when allocating financial support under section 97(1)(d) or (e) for persons who are ordinarily resident in Wales who are receiving or proposing to receive further education or training and for persons not ordinarily resident in Wales who are receiving or proposing to receive further education or training in Wales.

Section 101: School sixth-forms

327. This section provides the Commission with the power to fund education provided by school sixth forms maintained by local authorities and impose appropriate terms and conditions similar to those permissible under section 99. Funding under this section is to be made to local authorities and must be applied as part of the authority's schools budget.
328. The governing body of a maintained school with a sixth form in Wales must comply with the requirements contained in the Learner Engagement Code. A local authority in receipt of funding under this section and the governing body of a maintained school with a sixth form in Wales must also have regard to advice or guidance given by the Commission.

Section 102: Persons with additional learning needs

329. This section requires the Commission to have regard to the needs of people with additional learning needs and the desirability of the availability of facilities that may aid the requirements of the Additional Learning Needs and Education Tribunal (Wales) Act 2018. The Commission must take these matters into account when it is discharging functions under the following provisions:
- section 93 (education and training for persons aged 16 to 19);
 - section 94 (education and training for eligible persons over 19);
 - section 95 (education and training for persons over 19);
 - section 97(1)(a) to (e) and (7) (financial support for further education or training);
 - section 103(1) (financial support for provision of information, advice, guidance and to form links with employers); and

- section 103(2) (financial support for the provision of further education or training through the medium of Welsh or for the purpose of teaching Welsh).
330. If the Commission funds the provision of information, advice and guidance about education or training, it will need to take into account additional learning needs. It could, for example, require the inclusion of information about additional learning needs assessments and how learners may obtain support, as well as making information, advice and guidance accessible to those with additional learning needs. If the Commission provides financial support to learners, for example to assist with transport costs to access particular courses leading to professions where there is a skills shortage, then it must take into account additional learning needs when doing so. For example, this could mean considering the transport costs of those with additional learning needs.
331. A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
332. [Schedule 4](#) makes amendments to the Additional Learning Needs and Education Tribunal Act 2018. The Welsh Ministers and the Commission will be required, when exercising functions under Part 2 of the 2018 Act, to have regard to any guidance that may be contained in the Additional Learning Needs Code. Additionally, the Welsh Ministers must consult the Commission before issuing or revising the Additional Learning Needs Code. Both the Welsh Ministers and the Commission are to be required to exercise their functions so as to provide information and other help to a local authority if it requests such assistance.

Financial support for other activities connected to tertiary education

Section 103: Financial support for other activities connected to tertiary education

333. This section allows the Commission or Welsh Ministers to fund the provision of information, advice or guidance about education or training as well as facilities that are designed to forge links between providers of education or training and employers. The Welsh Ministers or the Commission may disburse the funding or arrange for others to do so, for example through collaborative arrangements. The Commission or the Welsh Ministers are able to impose appropriate terms and conditions to the funding and recover sums of money where specified criteria are not met.
334. This section also enables the Commission to fund tertiary education through the medium of Welsh and the teaching of Welsh to learners over the age of 16. The Commission may disburse the funding itself or arrange for others to do so, for example through collaborative arrangements. The Commission is able to impose terms and conditions to the funding as it considers appropriate and recover sums of money where specified criteria are not met.
335. The Commission may not fund school sixth forms under subsection (2) (or make arrangements under subsection (3) for a local authority to provide the Commission's resources to do so). School sixth form provision will be funded by the Commission under section 101.
336. If the Commission has made arrangements under subsection (3) for another person to provide the Commission's financial resources, the Commission may require that person to provide the resources subject to such terms and conditions that the Commission considers appropriate.

Financial support for apprenticeships

Section 104: Financial support for apprenticeships

337. The Commission may provide funding to providers of an approved Welsh apprenticeship and may also provide funding for the preparation of an apprenticeship framework.
338. The Welsh Ministers may make regulations requiring the recipient of funding for approved Welsh apprenticeships to be registered in a specified category on the register established under section 25.
339. A provider funded by the Commission who is collaborating, has collaborated or who proposes to collaborate with another organisation to deliver an approved Welsh apprenticeship needs the consent of the Commission to pass funds to the collaborating organisation. The Commission will not have a direct relationship with the collaborating organisation and therefore the provider funded by the Commission remains responsible for the funding. Section 108 contains procedures to be followed when the Commission is deciding whether or not to give consent.
340. This section allows the Commission to impose terms and conditions as it considers appropriate. In particular, the terms and conditions may require the repayment of funds (including with interest) if the purposes for which the funding is allocated are not complied with. Where funding for approved Welsh apprenticeships is allocated by the Commission to providers that are not on the register, the Commission must require that the provider has an approved learner protection plan in place (where the Commission has given the appropriate notice); complies with the Learner Engagement Code (if it is a tertiary education provider in Wales); and has regard to advice and guidance issued by the Commission.

Research and innovation

Section 105: Financial support for research and innovation

341. This section allows the Commission to provide funding to registered providers, specified in regulations, to carry out research and innovation. It is envisaged that the registered providers may be higher education institutions, further education institutions or other providers.
342. A registered provider receiving funding will be able to pass the funding to collaborating bodies in connection with the research and innovation with the Commission's consent. This will allow the provider to work collaboratively with a broad range of partners that may be engaged in research and innovation. The registered provider will be accountable to the Commission for the expenditure of public funding and for accounting for funding which is passed on to a collaborating body. Section 108 contains procedures to be followed when the Commission is deciding whether or not to give consent.
343. The Commission can also make grants, loans or other payments to a person who is providing services for or in connection with research or innovation by a specified provider.
344. The Commission must when providing financial support, have regard to ensuring that it does not do anything which would discourage providers from seeking or maintaining funding from other sources (for example from industry, commerce, benefactors, alumni, UKRI, Horizon Europe or other eligible funding sources).
345. The Commission is also required, in exercising its research and innovation funding functions, to have regard to the desirability of maintaining any distinctive characteristics of any provider to which it provides financial support. It is a matter for the Commission to determine what it considers to be an appropriate balance of support in light of

any other relevant considerations. Such characteristics may include, for example, the specialist nature of its provision.

Section 106: Financial support for research and innovation: terms and conditions

346. This section enables the Commission to impose terms and conditions on funding to a registered provider as it considers appropriate. If the funding is passed onto a collaborating body the Commission could, for instance, as a condition of funding, in turn require the recipient provider to impose conditions on any funding it passes to a collaborating body. The Commission cannot impose terms and conditions on funding received by a provider which comes from other sources.
347. This section also makes provision for how funding decisions under section 105 should be made by the Commission. The Commission is required to have regard to what is generally known as the Haldane principle (namely that decisions on individual proposals are best taken following an evaluation of their quality and likely impact).
348. The concept will apply to all funding decisions under section 105 made by the Commission. Therefore the provision allows that the general direction on funding should be led by the Commission, but also expects decisions regarding the research to be made by experts in the field, outside of the Commission, for example ensuring that research proposals benefit from competitive tendering exercises might be one way of meeting the requirement to have regard to the principle. The purpose of the requirement to have regard to this principle is to ensure that academic freedom is not compromised during the process.

Section 107: The Commission's other functions in relation to research and innovation

349. This section sets out the Commission's duty to promote the awareness and understanding of research and innovation carried out in Wales, to ensure it reaches a wide audience in Wales and to disseminate the results of research and innovation.
350. The Commission is required to monitor the performance of its funding programmes to ensure maximum success, effectiveness of delivery and value for money. This information must be included in the annual report as required by paragraph 16 of Schedule 1.

Terms and conditions: quality, governance etc., welfare and equal opportunities

Section 108: Financial support under sections 89, 97 and 104: further provision about terms and conditions

351. This section requires the Commission, when determining the terms and conditions to be imposed on its funding to a non-registered provider under the specified sections, to consider whether to impose requirements relating to:
- the quality of the tertiary 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, and
 - the delivery of measurable outcomes in respect of equality of opportunity aims set out in subsection (2).
352. The aims set out in subsection (2) relate to increasing participation, improving retention, reducing attainment gaps, and improving employment and further study outcomes for students from under-represented groups.

353. Subsection (3) defines under-represented groups as groups of students that are under-represented in relevant education in Wales as a result of social, cultural, economic or organisational factors. Relevant education is defined as eligible courses of higher education funded by the Commission under section 89(3)(a) or (b), further education or training funded by the Commission under section 97(1)(a) or (b) and approved Welsh apprenticeships funded by the Commission under section 104(1)(a). This means that providers will be concerned with delivering equality of opportunity outcomes in respect of the tertiary education which relates to the funding they receive from the Commission.

Collaborating bodies: consent

Section 109: Consent for payments to collaborating bodies

354. This section 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. 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. The Commission will not have a direct regulatory or funding relationship with collaborating bodies.
355. Subsection (1) enables the Commission to give its consent generally, or in relation to a specific payment or a specific collaborating body. Subsection (2) allows the Commission to attach terms and condition to any consents that it gives. It 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. Subsection (9) requires the Commission to keep all active consents under review.
356. Subsections (4) to (7) make provision for the Commission to be able to withdraw, suspend or vary its consent once given and set out the procedural arrangements that the Commission must follow before taking such action. This includes a requirement for the Commission to give notice to the directly funded bodies to whom such consents apply and to have regard for any representations received before deciding whether to withdraw, vary or suspend consent. Where the Commission has given its consent generally, the Commission may withdraw, suspend or vary its consent in general, or in respect of a specific payment or a specific collaborating body. Subsection (8) makes provision for these procedural arrangements not to apply in circumstances where the Commission needs to take more urgent action and it would not be practicable to comply with the requirements.

Financial support directions

Section 110: Financial support directions

357. This section enables the Welsh Ministers to direct the Commission in respect of the provision of financial support provided to a relevant person under the specified funding powers, where it appears to the Welsh Ministers that the financial affairs of the relevant person have been, or are being, mismanaged. Subsection (3) defines a financial support direction and set outs the funding powers to which such a direction can relate. Subsection (4) defines a relevant person for the purposes of financial support directions.
358. Before issuing a financial support direction to the Commission, subsection (5) requires the Welsh Ministers to consult the Commission and the relevant person to which the direction relates unless the Welsh Ministers are satisfied that it is not practical to do so because of the urgency with which the direction needs to be given, or the specific circumstances mean that consultation would defeat the object of the direction.
359. Any financial support direction given to the Commission under this section must be kept under review. Additionally, the Welsh Ministers must publish a financial support direction given to the Commission and report any such directions to the Senedd. The

*These notes refer to the Tertiary Education and Research (Wales)
Act 2022 (c.1) which received Royal Assent on 8 September 2022*

Commission is required to comply with a financial support direction given by the Welsh Ministers.