



# Tertiary Education and Research (Wales) Act 2022

2022 asc 1

## PART 7

### MISCELLANEOUS AND GENERAL

PROSPECTIVE

#### *Higher education corporations*

#### **137 Instruments of government of higher education corporations in Wales**

(1) Section 124A of the [Education Reform Act 1988 \(c. 40\)](#) is amended as follows.

(2) In subsection (9), for the words “3 to 5 and” substitute “2 to”.

(3) After subsection (9) insert—

“(9A) Before making an order under subsection (9) the Welsh Ministers must consult—

- (a) the Commission for Tertiary Education and Research, and
- (b) any other persons they think appropriate.

(9B) An order made under subsection (9) may, where it is necessary in consequence of amendments made to Schedule 7A to this Act, repeal or amend the following provisions of this Act—

- (a) subsection 122A(3);
- (b) in subsection (4) of this section, the words “any provision authorised to be made by that Schedule and”;
- (c) in section 124C—

(i) in subsection (1), the words beginning with “and, in determining” to the end;

*Status: Point in time view as at 04/09/2023. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 7. (See end of Document for details)*

(ii) subsection (2).”

#### Commencement Information

**II** S. 137 not in force at Royal Assent, see [s. 148](#)

### 138 Articles of government of higher education corporations in Wales

- (1) The [Education Reform Act 1988 \(c. 40\)](#) is amended as follows.
- (2) In section 125, after subsection (7) insert—
- “(8) The Welsh Ministers may by order amend or repeal any of subsections (2) to (4) of this section.
- (9) Before making an order under subsection (8) the Welsh Ministers must consult—
- (a) the Commission for Tertiary Education and Research, and
  - (b) any other persons they think appropriate.”
- (3) In section 232—
- (a) in subsection (1), after the words “Secretary of State” insert “or the Welsh Ministers”;
  - (b) after subsection (4) insert—
 

“(4ZA) A statutory instrument containing any order or regulations made by the Welsh Ministers under this Act, other than an order under section 124A, 125, 214 or 216, shall be subject to annulment in pursuance of a resolution of Senedd Cymru.

(4ZB) A statutory instrument containing an order made by the Welsh Ministers under section 124A or 125 of this Act may not be made unless a draft of the instrument has been laid before, and approved by resolution of, Senedd Cymru.

(4ZC) For the purposes of subsection (4ZA) above, any order or regulations made by the Welsh Ministers under this Act includes any order or regulations made under a power that is expressed as a power of the Secretary of State and has been transferred to the Welsh Ministers.”;
  - (c) in subsection (5), for the word “thinks” substitute “or the Welsh Ministers think”.

#### Commencement Information

**I2** S. 138 not in force at Royal Assent, see [s. 148](#)

### 139 Dissolution of higher education corporations in Wales

- (1) Section 128 of the [Education Reform Act 1988 \(c. 40\)](#) is amended as follows.

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- (2) In subsection (1), in sub-paragraph (b)(iii), for the words “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research (“the Commission”)”.
- (3) After subsection (1) insert—
- “(1A) An order under 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 under subsection (1)(b)—
- (a) may, in relation to any property or rights of the corporation transferred under the order, make provision about the effect of such transfer on any right of pre-emption, right of return or other similar right that may apply in respect of such property or rights (including provision about the calculation and payment of any just compensation);
  - (b) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) of any enactment or any rule of law, which would otherwise prevent, penalise or restrict the transfer of the property rights or liabilities.”
- (4) In subsection (4), in paragraph (b), for the words “the Higher Education Funding Council for Wales” substitute “the Commission”.
- (5) For subsection (5), substitute—
- “(5) In this section—
- “charitable purposes” has the meaning given by section 11 of the [Charities Act 2011 \(c. 25\)](#);
  - “right of return means any right under a provision for the return or reversion of property in specified circumstances.”
- (6) After subsection (6), insert—
- “(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.”

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*Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 7. (See end of Document for details)*

#### Commencement Information

**I3** S. 139 not in force at Royal Assent, see [s. 148](#)

PROSPECTIVE

### *Consultation about careers services*

#### **140 Duty to consult the Commission on careers services**

In the [Employment and Training Act 1973 \(c.50\)](#), after section 9 insert—

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

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

#### Commencement Information

**I4** S. 140 not in force at Royal Assent, see [s. 148](#)

### *General*

#### **141 Data Protection**

- (1) This section applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under any provision of this Act.
- (2) A duty or power to which this section applies does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation; but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation.
- (3) In this section, “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

#### Commencement Information

**I5** S. 141 not in force at Royal Assent, see [s. 148](#)

**I6** [S. 141](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(s\)](#)

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## 142 Publication

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

### Commencement Information

- I7** S. 142 not in force at Royal Assent, see [s. 148](#)  
**I8** S. 142 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(t\)](#)

## 143 Regulations

- (1) A power to make regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make regulations under this Act includes power to make—
  - (a) different provision for different purposes or different areas;
  - (b) incidental, supplementary, consequential, transitory, transitional or saving provision.
- (3) A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (4) Subsection (3) applies to a statutory instrument containing regulations under any of the following provisions—
  - (a) from Part 1, section 22(1);
  - (b) from Part 2, sections 25(2), 27(6), 32(2)(b), 34, 41(2), 46(6), 80(1)(c) and (2) and 83(4);
  - (c) from Part 3, sections 88(3), 94(3) and (7)(b), 98(2), 99(6), 104(5) and 105(4);
  - (d) from Part 4, sections 111(4), 112(1)(c) and 113(1);
  - (e) from this Part—
    - (i) section 145;
    - (ii) section 146, but only where the regulations amend, repeal or otherwise modify a provision of an Act of Parliament, a Measure of the National Assembly for Wales or an Act of Senedd Cymru.
- (5) A statutory instrument containing regulations made by the Welsh Ministers under this Act to which subsection (4) does not apply is subject to annulment in pursuance of a resolution of Senedd Cymru.

### Commencement Information

- I9** S. 143 in force at 9.9.2022, see [s. 148\(1\)\(a\)](#)

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## 144 General interpretation

(1) In this Act—

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

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

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

“facilities for Wales” (“*cyfleusterau i Gymru*”) includes—

- (a) facilities in Wales, and
- (b) other facilities available to persons ordinarily resident in Wales;

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

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

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

- (a) in relation to a training provider who but for this section would not be regarded as an institution, means any persons responsible for the provider’s management;
- (b) in relation to a school, means its proprietor within the meaning given by section 579(1) of the [Education Act 1996 \(c. 56\)](#);
- (c) in relation to a provider designated under section 83, means any persons responsible for the provider’s management;
- (d) in relation to any other institution, has the meaning given by section 90(1) of the [Further and Higher Education Act 1992 \(c. 13\)](#), but subject to any provision made by virtue of section 90(2) of that Act;

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

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

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

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

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

“the register” (“*y gofrestr*”) means the register established and maintained under section 25;

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

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

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

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

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

“trade union” has the meaning given by the [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#);

“Welsh tertiary education” (“*addysg drydyddol Gymreig*”) means tertiary education—

- (a) provided by, or on behalf of, a tertiary education provider in Wales, or
- (b) funded or otherwise secured by the Commission.

- (2) References in this Act to further education are to education (other than higher education) suitable to the requirements of persons who are over compulsory school age and organised leisure-time occupation connected with such education.
- (3) Accordingly for the purposes of this Act, further education includes education suitable to the requirements of pupils over compulsory school age but under 19 which is provided at a school at which secondary education is also provided.
- (4) References in this Act to training are to training suitable to the requirements of persons who are over compulsory school age and organised leisure-time occupation connected with such training.
- (5) For the purposes of subsections (2) and (4)—
  - (a) education includes both full-time and part-time education;
  - (b) training includes both full-time and part-time training;
  - (c) training includes vocational, social, physical and recreational training.
- (6) In this Act—
  - (a) references to institutions within the further education sector are references to institutions falling within section 91(3) of the [Further and Higher Education Act 1992 \(c. 13\)](#), and
  - (b) references to institutions within the higher education sector are references to institutions falling within section 91(5) of the [Further and Higher Education Act 1992](#).
- (7) Subsections (2) and (3) of section 8 of the [Education Act 1996 \(c. 56\)](#) apply to determine, for the purposes of this Act, whether a person is of compulsory school age, so far as that section applies in relation to Wales.
- (8) References in this Act (however expressed) to the provision of tertiary education by, or on behalf of, a tertiary education provider in Wales (including a registered provider or specified provider) include courses of tertiary education provided—
  - (a) at one or more places in Wales or elsewhere,
  - (b) by means of correspondence, equipment or other facility that enables persons who are not in the same place (whether in Wales or elsewhere) to participate in the tertiary education, or
  - (c) by a combination of the ways described in paragraphs (a) and (b).
- (9) In subsection (1), “training provider” means a person who provides training for members of the school workforce (within the meaning given by section 100 of the [Education Act 2005 \(c. 18\)](#)).

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- (10) For the purposes of this Act, tertiary education provided outside Wales is to be treated as provided in Wales if it is provided as part of a course that is provided mainly in Wales.

**Commencement Information**

**I10** S. 144 in force at 9.9.2022, see [s. 148\(1\)\(a\)](#)

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

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

**Commencement Information**

**I11** S. 145 in force at 9.9.2022, see [s. 148\(1\)\(a\)](#)

**146 Power to make consequential and transitional provision etc.**

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

**Commencement Information**

**I12** S. 146 in force at 9.9.2022, see [s. 148\(1\)\(a\)](#)

**147 Minor and consequential amendments**

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

**Commencement Information**

**I13** S. 147 not in force at Royal Assent, see [s. 148](#)

**I14** [S. 147](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(u\)](#)



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## 148 Coming into force

- (1) The following provisions of this Act come into force on the day after the day on which this Act receives Royal Assent—
  - (a) sections 143 to 146;
  - (b) this section;
  - (c) section 149.
- (2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (3) An order under subsection (2) may—
  - (a) appoint different days for different purposes;
  - (b) make transitory, transitional or saving provision in connection with the coming into force of a provision brought into force by the order.

### Commencement Information

**I15** S. 148 in force at 9.9.2022, see [s. 148\(1\)\(b\)](#)

## 149 Short title

- (1) The short title of this Act is the Tertiary Education and Research (Wales) Act 2022.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the [Education Act 1996 \(c. 56\)](#).

### Commencement Information

**I16** S. 149 in force at 9.9.2022, see [s. 148\(1\)\(c\)](#)

**Status:**

Point in time view as at 04/09/2023. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 7.