

EXPLANATORY MEMORANDUM TO
THE TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022
(CONSEQUENTIAL AMENDMENTS) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order makes provision in consequence of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”).

2.2 The 2022 Act establishes the Commission for Tertiary Education and Research (“the Commission”), dissolves the Higher Education Funding Council for Wales (“HEFCW”), and makes other provision about tertiary education and research.

2.3 Tertiary education is defined in section 144 of the 2022 Act as:

- Higher education; meaning education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988,
- Further education; meaning 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, and including sixth form education provided at a school at which secondary education is also provided, or
- Training suitable to the requirements of persons who are over compulsory school age and organised leisure-time occupation connected with such training.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the same as the provision amended.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is in Wales.

5. European Convention on Human Rights

5.1 The Secretary of State for Wales, Rt Hon David TC Davies MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Order 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This Order is made under section 150 of the Government of Wales Act 2006 which enables the making of consequential provision on legislation made by the Senedd Cymru/Welsh Parliament (“the Senedd”) where those amendments are outside the Senedd’s legislative competence. It makes amendments to legislation in consequence of the 2022 Act. The Senedd passed the 2022 Act on 28 June 2022 and it received Royal Assent on 8 September 2022.
- 6.2 Articles within this Order are scheduled to come into force on two dates:
- The day after the day on which the Order is made;
 - The later of the day on which section 23 of the 2022 Act is brought into force by the making of a commencement Order by the Welsh Ministers under section 148 of the 2022 Act, and the day after the day on which the Order is made.

7. Policy background

What is being done and why?

- 7.1 This Order seeks to make the following amendments to legislation in consequence of the establishment of the Commission and dissolution of HEFCW, as provided for in the 2022 Act:

House of Commons Disqualification Act 1975

- 7.2 Article 2 amends Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975, removing the reference to members of HEFCW in receipt of remuneration and inserting reference to members of the Commission for Tertiary Education and Research in receipt of remuneration.
- 7.3 Article 2(1) and (3) comes into force on the day after the day on which the Order is made and article 2(2) comes into force on the later of the day on which section 23 of the 2022 Act comes into force and the day after the day on which the Order is made.

Further and Higher Education Act 1992

- 7.4 Article 3 amends section 82(3) of the Further and Higher Education Act 1992, substituting references to HEFCW, and to the Welsh Ministers to the extent that they are discharging their functions under Part 2 of the Learning and Skills Act 2000, with a reference to the Commission.
- 7.5 Article 3 comes into force on the later of the day on which section 23 of the 2022 Act comes into force, and the day after the day on which the Order is made.

Freedom of Information Act 2000

- 7.6 Article 4(2) amends paragraph 53 of Schedule 1 to the Freedom of information Act 2000 by substituting paragraph 53(2)(c) so that a reference to an institution in Wales is to an institution whose activities are carried on, or principally carried on, in Wales, but includes the Open University.
- 7.7 Article 4(2) comes into force on the later of the day on which section 23 of the 2022 Act comes into force, and the day after the day on which the Order is made.

- 7.8 Article 4(3) amends Part 6 of Schedule 1 to the Freedom of Information Act 2000, removing the reference to HEFCW and adding a reference to the Commission.
- 7.9 Articles 4(3)(a) comes into force on the later of the day on which section 23 of the 2022 Act comes into force, and the day after the day on which the Order is made. Article 4(3)(b) comes into force on the day after the day on which the Order is made.

Counter-Terrorism and Security Act 2015

- 7.10 Article 5 amends section 32(5)(b) of the Counter-Terrorism and Security Act 2015, substituting the reference to HEFCW with a reference to the Commission.
- 7.11 Article 5 comes into force on the later of the day on which section 23 of the 2022 Act comes into force, and the day after the day on which the Order is made.

Higher Education and Research Act 2017

- 7.12 Article 6 amends section 113(3) of the Higher Education and Research Act 2017 substituting the reference to HEFCW with a reference to the Commission.
- 7.13 Article 6 comes into force on the later of the day on which section 23 of the 2022 Act comes into force, and the day after the day on which the Order is made.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.14 Prior to the amendments made by this Order:
- Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 provides that, amongst others, any member of HEFCW in receipt of remuneration is disqualified for membership of the House of Commons.
 - Section 82(3) of the Further and Higher Education Act 1992 defines a “relevant authority” for the purposes of the operation of section 82 as including “the HEFCW, the Welsh Ministers to the extent that they are discharging their functions under Part 2 of the Learning and Skills Act 2000”. Section 82(1) of the Learning and Skills Act 2000 provides that a relevant authority must, if directed to do so by the Secretary of State, make provision jointly with another relevant authority or with the Secretary of State in relation to quality assessment in higher education.
 - Schedule 1 of the Freedom of Information Act 2000 specifies which bodies are public authorities for the purpose of that Act, including HEFCW and the governing body of an institution in Wales conducted by a higher education corporation. The reference to an institution in Wales is defined to be construed in accordance with section 62(7) of the Further and Higher Education Act 1992, and “higher education corporation” has the meaning given by section 90(1) of that Act.
 - Section 32 of the Counter-Terrorism and Security Act 2015 makes provision about the monitoring of the performance of further and higher education bodies in discharging their duty to prevent people from being drawn into terrorism (as provided at section 26(1) of the 2015 Act). Monitoring is undertaken by a “monitoring authority” which is defined at section 32(4) as the Secretary of State, or the person to whom that function is delegated by the Secretary of State. Section 32(5)(b) provides that such delegation must be made by giving notice in writing to the person to whom the delegation is made

if that person is the Office for Students or the HEFCW, and the function is delegated in relation to relevant higher education bodies.

- Section 113 of the Higher Education and Research Act 2017 enables HEFCW in respect of any of its functions to exercise those functions jointly with another relevant authority, where exercising the function jointly would be more efficient, or would enable them more effectively to exercise their functions.

Why is it being changed?

- 7.15 The following amendments are being made as a consequence of the dissolution of HEFCW and the establishment of the Commission:
- Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975;
 - Section 32(5)(b) of the Counter-Terrorism and Security Act 2015.
- 7.16 Section 82(3) of the Further and Higher Education Act 1992 is being amended as a consequence of the dissolution of HEFCW, the repeal of Part 2 of the Learning and Skills Act 2000 by Schedule 4 to the 2022 Act, the establishment of the Commission, and the duties of the Welsh Ministers under Part 2 of the Learning and Skills Act 2000 being replaced by duties of the Commission in sections 93 and 95 of the 2022 Act.
- 7.17 Part 6 of Schedule 1 to the Freedom of Information Act 2000 is being amended as a consequence of the dissolution of HEFCW and establishment of the Commission, whilst paragraph 53(2)(c) of Schedule 1 to that Act is being amended to reflect the repeal of section 62 of the Further and Higher Education Act 1992 by paragraph 6(3)(b) of Schedule 4 to the 2022 Act.
- 7.18 Section 113 of the Higher Education and Research Act 2017 is being amended as a consequence of the dissolution of HEFCW.

What will it now do?

- 7.19 The amendment to Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 will insert a new entry for any member of the Commission in receipt of remuneration into Part 3 of Schedule 1 to that Act with the effect of disqualifying a member of the Commission in receipt of remuneration from membership of the House of Commons.
- 7.20 The amendment to section 82(3) of the Further and Higher Education Act 1992 adds the Commission to the definition of a relevant authority for the purposes of section 82, thereby providing it must, if directed to do so by the Secretary of State, make provision jointly with another relevant authority or with the Secretary of State in relation to quality assessment in higher education. The Welsh Ministers and HEFCW will no longer be defined as a relevant authority in section 82(3) of that Act.
- 7.21 Paragraph 53(2)(c) of Schedule 1 to the Freedom of Information Act 2000 is amended so that a reference to an institution in Wales is to an institution whose activities are carried on, or principally carried on, in Wales, but includes the Open University. The amendment to Part 6 of Schedule 1 to that Act will specify the Commission as a public authority for the purpose of the Act.
- 7.22 The amendment to section 32(5)(b) of the Counter-Terrorism and Security Act 2015 will enable the Secretary of State, through the issuing of a notice, to delegate the

function under subsection (2) in relation to relevant higher education bodies to the Commission.

- 7.23 The amendment to section 113 of the Higher Education and Research Act 2017 will enable the Commission to exercise its functions jointly with another relevant authority, where exercising the function jointly would be more efficient, or would enable them more effectively to exercise their functions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This Order makes amendments to primary legislation. Consolidation is therefore not necessary.

10. Consultation outcome

- 10.1 The Welsh Government has undertaken a series of public consultations to put in place the legal framework which underpins the creation of the Commission. This has included working closely with the post-compulsory education sector in Wales. This engagement identified the need to make the consequential amendments provided for by this Order.

11. Guidance

- 11.1 As this Order makes only minor consequential amendments to legislation as regards their extent, no guidance is thought to be necessary.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument. The Welsh Government produced a regulatory impact assessment¹ to accompany the 2022 Act which assessed the potential costs and benefits associated with establishing the Commission.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause.

15. Contact

- 15.1 David Harries at the Wales Office Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.

¹ https://www.gov.wales/sites/default/files/publications/2022-12/tera-2022-explanatory-memorandum_0.pdf

- 15.2 Geth Williams, Deputy Director for Union, at the Wales Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon David TC Davies MP, Secretary of State at the Wales Office can confirm that this Explanatory Memorandum meets the required standard.