

Explanatory Memorandum to the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2024

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above regulations and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2024.

Lynne Neagle MS
Cabinet Secretary for Education
25 June 2024

1. Description

The Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2024 (“the Regulations”) make necessary amendments to primary and secondary legislation as a consequence of commencing section 23 of, and provisions within Schedule 4 to, the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”) and the subsequent dissolution of the Higher Education Funding Council for Wales (“HEFCW”).

These provisions are to be commenced on 1 August 2024, through the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 4 and Transitory and Transitional Provisions) Order 2024.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 146 of the 2022 Act which provides the Welsh Ministers with a power to make regulations containing supplementary, incidental or consequential provisions (amongst others) for the purposes of, in consequence of, or for giving full effect to, any provision of that Act. Section 146(2) provides that such regulations may amend, modify, repeal or revoke any enactment.

Section 143(3) and (4)(e)(ii) of the 2022 Act provides that any Regulations made under section 146 of that Act, which amend primary legislation, cannot be made unless they have been laid in draft before, and approved by a resolution of, Senedd Cymru.

Subject to approval by the Senedd, the Regulations will be made by the Cabinet Secretary for Education and come into force on 1 August 2024.

3. Purpose and intended effect of the legislation

The 2022 Act provides for the establishment of the Commission for Tertiary Education and Research (“the Commission”) and the dissolution of HEFCW. Section 23 of the 2022 Act dissolves HEFCW. The amendments contained in these regulations are necessary in consequence of, and for giving full effect to, section 23 of the 2022 Act.

The Commission will be responsible for promoting, funding, and regulating tertiary education and research in Wales. 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.

Part 2 of the 2022 Act makes provision for a register of tertiary education providers, to be established by the Commission, that will provide the framework for regulatory

oversight of registered tertiary education providers in Wales in receipt of public funds, including grant funding from the Commission and Welsh Government student support.

The register is intended to be established on 31 July 2026, with the associated regulatory arrangement fully implemented by 31 July 2027. In order to ensure the ongoing regulation of the higher education sector in Wales, the relevant provisions of the Higher Education (Wales) Act 2015 will be modified from 1st August 2024, so as to allow for these functions to be exercised by the Commission. These modified provisions will remain in place for the duration of the transitional period of 1st August 2024 to 31st July 2027.

These Regulations make consequential amendments to primary and secondary legislation arising from the commencement of section 23 of, and provisions within Schedule 4 to, the 2022 Act, as well as the transitional arrangements being put in place in relation to implementation of the registration system, as provided for by the 2022 Act.

The amendments primarily remove references to HEFCW and replace them with references to the Commission where appropriate.

There are also amendments that are consequential on the repeal of section 86 of the Education Act 2005 and section 18C(12)(b) of the Education Act 1994, by Schedule 4 to the 2022 Act, as well as tidying up amendments.

The amendments within these Regulations:

- (a) amend enactments to remove reference to “Higher Education Funding Council for Wales”, “the Council” and “a funding agency” and replace those references with a reference to the “Commission for Tertiary Education and Research” where appropriate;
- (b) amend enactments to reflect the modified provisions during the translational period in relation to the register;
- (c) amend enactments to remove references to repealed provisions; and
- (d) amend enactments to remove obsolete provisions.

4. Consultation

No formal consultation has taken place as the Regulations make only consequential technical amendments.

The Department for Education have been made aware of the amendments being made to the Education (Student Support) Regulations 2011, the Education (Postgraduate Master’s Degree Loans) Regulations 2016 and the Education (Student Information) (England) Regulations 2015.

5. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been prepared in respect of these Regulations as they make consequential and technical amendments to existing

legislation and do not impose or reduce costs for business, charities or voluntary bodies or the public sector. This is in line with the policy set out in the Welsh Ministers' Code of Practice for carrying out Regulatory Impact Assessments for subordinate legislation.