

TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Strategic Framework for Tertiary Education and Research

The Commission

Section 1: Establishment of the Commission for Tertiary Education and Research & Schedule 1: Commission for Tertiary Education and Research

35. This section provides for the establishment of the Commission. The Commission will be a body corporate with its own legal personality and specific powers and duties.
36. This section also introduces Schedule 1, which makes provision about the Commission's membership, committees and operational arrangements.
37. The Commission's members will comprise of a chair, deputy chair and between four and fourteen ordinary members, appointed by the Welsh Ministers. The chief executive is also a member. The Welsh Ministers will appoint the first chief executive for a period of up to 4 years, with future appointments being made by the Commission, subject to approval of the Welsh Ministers.
38. The Commission will also have associate members who will represent the tertiary education workforce (both academic and non-academic), the Commission's staff and learners in tertiary education.
39. [Paragraph 5](#) sets out the appointments process for the associate workforce members. This includes a requirement for the Welsh Ministers to publish lists of trade unions who will nominate representatives of the academic tertiary education workforce and non-academic tertiary education workforce. To be eligible to be an associate workforce member, a person must be employed by a provider of tertiary education in Wales and be a member of a trade union on the most recently published relevant list. It is expected that the consultation process for compiling the list of trade unions will lead to a position where the trade unions listed will be recognised by the tertiary education providers.
40. [Paragraph 6](#) sets out the process for the appointment of an associate Commission staff member. A staff member appointment committee (established under paragraph 11(5)) must appoint a person from candidates nominated by each trade union recognised by the Commission. To be eligible to be an associate Commission staff member, a person must be employed by the Commission and be a member of a trade union recognised by the Commission.
41. [Paragraph 7](#) sets out the appointment process for the associate learner member. This includes a requirement for the Welsh Ministers to publish a list of bodies representing the interests of learners undertaking tertiary education in Wales. The associate learner member will be appointed by the Welsh Ministers from nominations made by bodies on

the list. It is anticipated this list will include the National Union of Students Wales along with other representative bodies. To be eligible to be an associate learner member, a person must have been a learner undertaking tertiary education in the 3 years before being appointed and must hold an office or membership of a body on the published list.

42. The Commission will have a committee called the Research and Innovation Committee for the purpose of advising it about matters relating to research and innovation. The chair of the Research and Innovation Committee is appointed by the Welsh Ministers and will also be the deputy chair of the Commission (and a person who ceases to hold one position or who is suspended from that position will also cease to hold the other position or be suspended from it). The Commission must also establish a committee called the Quality Committee to advise it on the quality of tertiary education funded or secured by it, and a staff member appointment committee. It can establish other committees and joint committees and can delegate functions to its committees.
43. [Schedule 1](#) also contains provision about the Commission's audit and accounts, annual reports, procedures, register of interests and supplementary powers.

The Commission's strategic duties

44. [Sections 2 to 12](#) are broadly framed strategic duties of an aspirational nature, which require the Commission to promote or encourage outcomes specified in the sections. The provisions do not specify the extent or nature of the activity the Commission must undertake in any detail and the open-ended nature of the outcomes specified gives the Commission wide discretion as to the nature and extent of the action it takes to achieve them.

Section 2: Promoting life-long learning

45. This section requires the Commission to promote life-long learning for the people of Wales. Life-long learning is not a defined term in the section, but is encapsulated by its provisions, which describe tertiary education that—
- provides opportunities for people to participate throughout their lives from the age of 16,
 - includes variety of levels and qualifications,
 - includes a variety of settings and modes of study,
 - is organised coherently to facilitate movement through different stages of education and into employment or business,
 - otherwise meets the different requirements of those who wish to undertake tertiary education.

Section 3: Promoting equality of opportunity

46. This section requires the Commission to promote increased participation by, and retention of, members of under-represented groups in Welsh tertiary education and increased participation in the carrying out of research and innovation by under-represented groups in Wales.

Section 4: Encouraging participation in tertiary education

47. This section requires the Commission to encourage individuals, including those who have additional learning needs (as defined by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018), and employers in Wales to participate in the provision of tertiary education.

Section 5: Promoting continuous improvement in tertiary education

48. This section requires the Commission to promote continuous improvement in the quality of Welsh tertiary education. The section also specifies matters to which the Commission must have regard when discharging the duty.

Section 6: Promotion of research and innovation

49. This section requires the Commission to promote the carrying out of research and innovation in Wales, and the carrying out of research and innovation, and related activities, through the medium of Welsh by relevant persons.
50. The Commission must promote collaboration on research and innovation, both in Wales and elsewhere in the world, between relevant persons, and between relevant persons and others. The Commission must also promote continuous improvement in the quality of research and innovation carried out by relevant persons, and the competitiveness of that research and innovation compared to research and innovation carried out by other persons.
51. Subsection (2) defines a relevant person for the purpose of this section.

Section 7: Promoting collaboration and coherence in tertiary education and research

52. This section requires the Commission to promote collaboration between providers of tertiary education in Wales, schools in Wales, and employers, as well as coherence in the provision of tertiary education by providers in Wales and the alignment of this provision with research and innovation.

Section 8: Contributing to a sustainable and innovative economy

53. This section requires the Commission to promote tertiary education and research in Wales that contributes to the development of a sustainable and innovative economy. The section also specifies matters to which the Commission must have regard when discharging the duty and defines sustainable economy.

Section 9: Promoting tertiary education through the medium of Welsh

54. This section imposes a duty on the Commission to encourage demand for and participation in Welsh medium tertiary education. The Commission must also take all reasonable steps to ensure there is sufficient Welsh medium tertiary education provided in Wales to meet demand.
55. The Welsh Ministers must designate a person to provide advice to the Commission for the purpose of assisting it in the discharge of its duties under this section. The Commission must have regard to any relevant advice given to it by that person.
56. A person may only be designated if the Welsh Ministers consider them to be suitable to give advice on the matters listed in subsection (4). The duty to designate a person does not apply if the Welsh Ministers consider there is no person suitable to give advice on the listed matters, or if no one agrees to be designated.

Section 10: Promoting a civic mission

57. This section places a duty on the Commission to promote the pursuit of a civic mission by institutions in Wales within the further education sector and higher education sector. The Commission is also given the power to promote the pursuit of a civic mission by other persons who are funded by the Commission. “Civic mission” is defined in subsection (3) 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 in section 4 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2))”.

Section 11: Promoting a global outlook

58. This section requires the Commission to promote opportunities for people in Wales to teach and study tertiary education elsewhere in the world and for people outside Wales to study or teach in Wales. The Commission must promote opportunities for the benefits of such exchanges to be used for the well-being of Wales. It must also promote collaboration between providers of tertiary education in Wales and those elsewhere in the world.

Section 12: Promoting collaboration between providers of tertiary education and trade unions

59. This section requires the Commission to promote collaboration between providers of tertiary education in Wales and trade unions, where the Commission considers the collaboration would likely help in the discharge of the Commission’s strategic duties (sections 2 to 11 of the Act).
60. A trade union must either be represented by Wales TUC Cymru, or the Commission must consider that it represents members of the tertiary education workforce, that is:
- teachers providing tertiary education,
 - people providing support to those teachers, and
 - people providing support to learners to participate in tertiary education.

Strategy for tertiary education and research

Section 13: Statement of strategic priorities

61. This section places the Welsh Ministers under a duty to publish a statement setting out their strategic priorities for tertiary education and research and innovation. The statement may be amended or replaced by the Welsh Ministers. Any amendments must be published.

Section 14: Strategic plan for the Commission

62. This section places the Commission under a duty to prepare a strategic plan setting out how it intends to discharge its strategic duties and to address the priorities in the statement of strategic priorities published by the Welsh Ministers (subsection (1)). In preparing the plan, the Commission must consult such persons it considers appropriate (subsection (2)).

Section 15: Approval, publication and implementation of strategic plan

63. A strategic plan prepared under section 14 must be sent to the Welsh Ministers for approval within six months of the publication of the Welsh Ministers’ statement of priorities under section 13 (subsection (1)).
64. The Welsh Ministers have the power to approve the plan with or without modifications, although they must seek the agreement of the Commission for each modification they propose making to the plan before they modify the plan (subsections (2) and (3)).
65. The Welsh Ministers may approve a plan with modifications that have not been agreed by the Commission, however they must provide the Commission with the reasons for the modifications and the Commission must publish those reasons when it publishes the plan as required by subsection (5).

66. Subsection (6) provides that the Commission may discharge its duty to publish its statement about well-being objectives under section 7 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2) by including the statement in its approved strategic plan.
67. Subsection (7) places a duty on the Commission to take all reasonable steps to implement the strategic plan.

Section 16: Review of strategic plan

68. This section outlines the process to be followed by the Commission in reviewing and revising its strategic plan.
69. The Commission must review its strategic plan if the Welsh Ministers publish amendments to its statement of strategic priorities under section 13 after the Commission has published its approved strategic plan. The Commission also has the power to review its strategic plan at any other time.
70. Where any review of the strategic plan leads to the plan being revised, section 14 applies to any revision of the plan as it applies to preparation of the plan.
71. A revised strategic plan must be sent to the Welsh Ministers for approval within six months where the revision is in consequence of the Welsh Ministers publishing amendments to their statement under section 14(2); or where the revision is in consequence of the Commission reviewing its strategic plan at any other time, as soon as reasonably practicable. The provisions of section 15(2) to (6) apply to a revised plan.

Academic freedom and institutional autonomy

Section 17: Academic freedom of higher education providers and staff

72. This section requires the Welsh Ministers and the Commission to have regard to the need to protect the academic freedom of tertiary education providers in Wales that provide higher education or research and innovation and of academic staff at those providers (subsection (1)).
73. “Academic freedom” in relation to tertiary education providers is defined in subsection (2) as the freedom to determine the content, teaching, supervision and assessment of higher education courses, the criteria for admission to higher education courses, and the criteria for selecting and appointing academic staff (subsection (2)).
74. “Academic freedom” in relation to academic staff is defined in subsection (2) as their freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, without jeopardising their employment or privileges at the provider.

Section 18: Institutional autonomy of tertiary education providers

75. This section requires the Welsh Ministers and the Commission when exercising their functions under this Act to have regard to protecting the freedom of tertiary education providers in Wales within the law to conduct their day to day management in an effective and competent manner.

Compatibility with charity law

Section 19: Compatibility with charity law and governing documents of tertiary education providers

76. The effect of this section is that any requirements that the Commission or the Welsh Ministers may impose on the governing bodies of tertiary education providers under this Act (e.g. registration conditions or directions) cannot require those governing bodies to

act in breach of their obligations as charity trustees, nor require governing bodies to act in a manner incompatible with their governing documents.

77. For these purposes, the governing documents of tertiary education providers are defined in subsection (2) in relation to providers established by Royal Charter, providers conducted by higher education corporations or further education corporations, providers that are institutions designated under section 129 of the Education Reform Act 1988 or section 28 of the Further and Higher Education Act 1992, schools and providers conducted by companies.

Welsh Ministers' guidance and directions

Section 20: Guidance

78. This section provides that the Commission must have regard to guidance given to it by Welsh Ministers.

Section 21: The Welsh Ministers' power to give general directions

79. Subsection (1) enables the Welsh Ministers to issue general directions to the Commission about the exercise of any of its functions. A direction issued by the Welsh Ministers under this section is subject to the limitations that are set out in subsections (2), (3) and (5).
80. The limitations set out under subsections (2) and (3) do not prevent any direction issued under this section from being framed by reference to a course of study, or parts of courses of study, being provided and assessed through the medium of Welsh (subsection (4)). The purpose of the limitations 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 to individual providers.
81. Subsection (6) requires the Welsh Ministers to consult the Commission before issuing a general direction. Subsection (7) requires the Welsh Ministers to keep any general direction given to the Commission under review. The Welsh Ministers must also publish any general direction given to the Commission under this section and report any such directions to the Senedd.
82. Subsection (8) requires the Commission to comply with a general direction given by the Welsh Ministers.

Additional functions

Section 22: Additional functions of the Commission

83. Subsection (1) enables the Welsh Ministers to confer supplementary functions on the Commission by way of regulations. A supplementary function conferred on the Commission under these powers must relate to tertiary education, or research and innovation, and be exercisable by the Welsh Ministers (subsection (2)).
84. Subsections (3) and (4) enable the Welsh Ministers to direct that their functions in relation to the land or other property of an institution in Wales within the higher or further education sector, may be exercised by the Commission. The Welsh Ministers' functions arise where they are entitled to a right or interest in respect of that property. The Commission is required to exercise these functions in accordance with directions given by the Welsh Ministers (subsection (5)).

Dissolution of Higher Education Funding Council for Wales

Section 23: Dissolution of the Higher Education and Funding Council for Wales

85. This section dissolves HEFCW.

Section 24 and Schedule 2: Transfer schemes

86. This section introduces Schedule 2 which makes provision about schemes for the transfer of staff, property, rights and liabilities as a result of establishing the Commission and dissolving HEFCW.

Part 2: Registration and Regulation of Tertiary Education Providers

Chapter 1: Registration of Tertiary Education Providers

The register and registration procedure

Section 25: The register

87. Subsection (1) requires the Commission to set up and maintain a register of tertiary education providers in Wales. The Commission must register those providers that apply to be registered and which satisfy the conditions for registration (subsection (4)). The making of a registration application is voluntary.
88. The register, through the use of registration conditions (see sections 27 to 35), provides a means of regulating such providers. In combination with revised student support regulations made by the Welsh Ministers under section 22 of the Teaching and Higher Education Act 1998, registration will also determine a provider's eligibility for automatic designation for Welsh Government student support.
89. The register is to be divided into different categories of registration specified in regulations made by the Welsh Ministers (subsection (2)). It is intended that the categories of registration will allow appropriate variance in the conditions of registration required for different types of registered providers in receipt of different forms of public funding. Regulations may prohibit a provider from registering in one category whilst it is registered in one or more other categories (subsection (5)).
90. Providers, once registered, must meet the general and any specific ongoing registration conditions applicable to them in the relevant category of registration. Provision for these conditions, and the process for determining them, is set out in sections 28, 29, 31, 32 and 33.
91. The procedure for and form of applications for registration is a matter for the Commission to determine (subsection (7)). Information contained in the register must be publicly available (subsection (11)), and the Welsh Ministers may specify in regulations the information that is to be contained in a registered provider's entry in the register (subsection (8)).

Section 26: Registration procedure

92. This section sets out the procedure to be followed in the event that the Commission intends to refuse an application for registration, or where the Commission intends to refuse an application from a registered provider to change categories.
93. The Commission must notify the governing body of the provider where it intends to refuse the provider's application. In doing so, the Commission must specify its reasons and the period within which a provider may make representations to the Commission about the Commission's proposal (subsection (2)). The period must not be less than 28 days (subsection (3)).

94. The Commission may, at the conclusion of the specified notice period, either decide to register the provider in the category to which it has applied, or refuse to do so. The Commission must notify the governing body of its decision (subsection (5)) and a notice of refusal to register a provider must set out the grounds of refusal and information as to the right of review of the Commission's decision (subsection (7)).

Registration conditions

Section 27: Initial registration conditions

95. A provider applying to register with the Commission must satisfy initial registration conditions. This section sets out four mandatory initial registration conditions, which apply to all registration categories. The Commission must be satisfied as to—
- the quality of education provided by the applicant tertiary education provider, or provided on its behalf,
 - the effectiveness of the governance and management of the applicant,
 - the financial sustainability of the applicant,
 - the effectiveness of the applicant provider's arrangements for supporting and promoting the welfare of students and staff, and
 - where applicable, the effectiveness of arrangements in place to satisfy the applicant provider of the quality of education delivered by an external provider under a validation arrangement.
96. For further information regarding the Commission's functions in respect of quality assessment and assurance, see Chapter 2 of this Part.
97. The standard required for providers to satisfy initial registration conditions, and the information required to demonstrate this, will be determined by the Commission. The Commission is required to publish a document specifying the requirements for satisfying such conditions (subsection (2)). The Commission is enabled to revise these requirements and if it does so it must publish an updated document (subsection (4)). Before publishing either an initial or a revised document, the Commission is under a duty, if it appears appropriate to do so, to consult such persons as it considers appropriate (subsection (5)), for example tertiary education providers who may wish to make a registration application.
98. The Welsh Ministers may, by regulations, specify further initial registration conditions and different conditions may be specified for different categories of registration. The list provided in subsection (7)(b) indicates the kind of conditions that may be specified in these regulations, but it is not an exhaustive list and not all of these categories may be appropriate initial conditions of registration for all categories of the register.

Section 28: General ongoing registration conditions

99. As stated in section 25(9), a registered provider must continue to satisfy ongoing registration conditions in order to maintain its registration. A general ongoing registration condition is a condition determined by the Commission, which applies to one or more categories of registration.
100. The Commission must publish the general ongoing conditions and any revisions to those conditions. Before determining or revising the general ongoing conditions, the Commission is under a duty, if it appears appropriate to do so, to consult such persons as it considers appropriate, for example those registered providers which will be subject to the registration conditions.
101. The Commission may determine different conditions for different categories or descriptions of registered provider (subsection (2)). Under subsection (8), the

Commission may decide that a general ongoing registration condition is not applicable to a particular registered provider. In such instances, the Commission may dis-apply the condition in relation to that provider and must inform the provider of its decision (subsection (9)).

Section 29: Specific ongoing registration conditions

102. This section sets out when the Commission can impose, vary, or remove an ongoing registration condition that applies to a specific registered provider, as opposed to all registered providers or a category of providers.
103. Before imposing, varying or removing a specific ongoing registration condition, the Commission must notify the governing body of the provider affected (subsection (3)). The notice must inform the provider of the Commission’s reasons for proposing the specific ongoing registration condition and of the provider’s right to make representations about the proposal within a specific period (subsection (4)).
104. The Commission must have regard to any representations made by the governing body of the provider in deciding whether to impose, vary, or remove the specific ongoing registration condition (subsection (6)), and must notify the provider of its decision (subsection (7)).
105. A notice relating to the imposition or variation of a specific ongoing registration condition must set out the grounds of the decision and be accompanied with information as to the right of review (subsection (9)). The new specific ongoing registration condition cannot have effect until the period of review has passed. In addition, the new specific ongoing registration condition cannot have effect while an application for review has been made and, until any review conducted is concluded. The Commission must subsequently determine a date on which the specific ongoing registration condition will take effect, at which point the notice must be published.

Section 30: Proportionate conditions etc.

106. This section requires the Commission to ensure that its ongoing registration conditions, and the requirements published regarding satisfaction of initial registration conditions (see section 27), are proportionate to its assessment of any risks posed. These may include, for example, risks to safeguarding of public funds, students’ interests, and any other risks related to the Commission’s functions in respect of tertiary education providers.
107. In order that registration conditions and requirements continue to be proportionate, the Commission is required to keep its ongoing registration conditions under review.

Section 31: Mandatory ongoing registration conditions for each registered provider

108. In addition to any other general ongoing registration conditions determined by the Commission under section 28, the Commission must ensure that all providers registered in each category of the register are subject to the conditions listed in this section. These may be imposed as part of the general ongoing registration conditions or by way of a specific ongoing registration condition.

Section 32: Mandatory ongoing registration condition on fee limits

109. This section requires the Commission to ensure that each provider registered in a category specified by the Welsh Ministers in regulations is subject to a fee limit condition. A fee limit condition requires the provider to have an approved fee limit statement and to ensure that regulated course fees do not exceed the applicable fee limit. More information on the fee limit statement is outlined in sections 46 to 48.
110. A “qualifying course” is a course described in regulations made by the Welsh Ministers, subject to the conditions set out in subsection (5). “Regulated course fees” are fees

payable by a qualifying person to a provider in order to undertake a qualifying course (subsections (6) and (7)). Subsection (8) provides that a “qualifying person” is a person described in regulations made by the Welsh Ministers who is not an international student within the meaning of subsection (9).

111. Subsection (10) also allows the Welsh Ministers to make regulations specifying when fees paid for a course at an external provider (i.e. on behalf of a registered provider) are to be treated as regulated course fees and therefore subject to a fee limit.

Section 33: Mandatory ongoing registration conditions on equal opportunity

112. The Commission is under a duty to ensure that a mandatory ongoing registration condition relating to equal opportunity is applied to each registered tertiary education provider.
113. Conditions on equal opportunity require the registered provider to demonstrate delivery of measurable outcomes which further the aims listed in subsection (2). These aims relate to increasing participation, improving retention, reducing attainment gaps, and improving employment and further study outcomes for students from under-represented groups.
114. Under-represented groups are defined in subsection (3) as groups of students that are under-represented in relevant tertiary education in Wales as a result of social, cultural, economic or organisational factors. Relevant tertiary education is defined as tertiary education courses provided wholly or mainly in Wales of a kind that relates to the category of the register in which the provider is registered. This means that registered providers will be concerned with delivering equality of opportunity outcomes in respect of the kind of tertiary education which relates to their registration category.

Section 34: Power to provide for further mandatory ongoing registration conditions

115. In addition to the mandatory ongoing registration conditions provided for in sections 31, 32 and 33, the Welsh Ministers may specify in regulations further mandatory ongoing registration conditions that the Commission must apply to one or more categories of registration.

Section 35: Commission duty to give guidance about ongoing registration conditions

116. This section requires the Commission to publish guidance for registered providers concerning the ongoing registration conditions.

Monitoring and enforcement of registration conditions

Section 36: Commission duty to monitor compliance with ongoing registration conditions

117. This section requires the Commission to monitor each registered provider’s compliance with their ongoing registration conditions.

Section 37: Advice and assistance in respect of compliance with ongoing registration conditions

118. The Commission may provide advice and assistance to registered providers in order to aid compliance with registration conditions.

Section 38: Reviews relevant to compliance with ongoing registration conditions

119. The Commission may, if it deems appropriate, carry out a review of matters relevant to a registered provider’s compliance with registration conditions. The Commission may also arrange for such a review to be carried out by another appropriate body; for

example, by Her Majesty's Chief Inspector or the designated quality body (see Chapter 2 of this Part) for matters in respect of the mandatory ongoing registration condition concerning quality.

Section 39: Directions in respect of failure to comply with ongoing registration conditions

120. Where the Commission is satisfied that a provider has failed (or is likely to fail) to comply with an ongoing registration condition, this section allows the Commission to direct the provider to take certain actions to comply with the condition. This might follow on from previous steps taken by the Commission to ensure compliance with registration conditions, such as advice and assistance (section 37) and reviews (section 38).
121. In respect of a failure to comply with a fee limit condition, the Commission may also direct a provider to repay to students any fee monies which have exceeded the fee limit ("excess fees"), and the manner in which it must do so (subsections (3), (4) and (5)).
122. Any directions issued to providers by the Commission must be published and a copy provided to the Welsh Ministers (subsection (6)).
123. The Commission must comply with the procedures set out in sections 75 to 78 when giving directions under section 39.

Section 40: Supplementary provision about directions under section 39

124. The Commission may issue guidance about how providers should comply with any directions issued under section 39 and must first consult registered providers and other appropriate providers regarding the content of this guidance.

De-registration

Section 41: De-registration

125. The Commission has both a power and a duty to remove a provider from the register or from a category of the register in circumstances provided for in this section.
126. If a registered provider is no longer an 'tertiary education provider in Wales', or ceases to provide the type of tertiary education that is relevant to its category of registration (for example higher education, or further education), the Commission must remove that provider from either that particular category of the register, or from the register entirely. This is because the provider would no longer satisfy the conditions set out in section 25.
127. The Welsh Ministers may make regulations to specify other circumstances in which the Commission must remove providers from either a particular category of the register, or from the register entirely.
128. The Commission may remove a provider from the register or a category of the register if it appears to the Commission that the provider has breached one of its ongoing registration conditions and:
 - the Commission has previously issued a direction to that provider in relation to any breach of an ongoing registration condition, or
 - the Commission considers that issuing a direction under section 39 would be insufficient to deal with the breach.
129. Under subsections (6) and (7), the Welsh Ministers may make regulations establishing transitional arrangements where a provider is to be removed from the register or from a category of the register. This might involve temporarily treating the provider as a registered provider in a particular category, for example, in order to enable existing students at the provider to continue to receive student support.

130. The Commission must publish a list of any provider removed from the register or a category of the register, including reference to any regulations made under subsection (6).

Section 42: De-registration: procedure

131. This section establishes the process the Commission must follow when removing a provider from the register or a category of the register under section 41.
132. The Commission must notify the governing body of a registered provider of its intention to de-register the provider and its reasons for doing so. Providers will have a specified period to make representations to the Commission about the proposal. The Commission must have regard to any representations made during the specified period before deciding whether or not to remove the provider from the register or from a category of the register.
133. If the Commission decides to proceed with the de-registration decision, then the governing body of the provider may request a review (see section 45) of that decision by the decision reviewer (see section 79). Any notice of a decision by the Commission to de-register a provider must be accompanied with information as to the right of review.
134. A de-registration under section 41 cannot take effect while a review of the decision could be requested or is being undertaken, unless the provider notifies the Commission that it does not intend to apply for a review.

Section 43: Voluntary de-registration and de-registration with consent

135. Registered providers may apply, in a form determined by the Commission, to be removed from the register or a category of the register or may give consent to a proposal from the Commission to remove the provider from the register or a category of the register.
136. If a provider applies for de-registration in accordance with subsection (6), the Commission is obliged to accept the application and must specify a date for removal from the register or category of the register. The governing body of the provider is able to apply for a review by the decision reviewer of the decision regarding the date for removal (see section 45).
137. Where a provider applies to be removed from a category of the register, it may specify in its application that it is, at the same time, applying for registration in a different category. Where such an application to change categories is made, the effect of subsections (2) to (4) is that the Commission is not obliged to remove the provider from its existing category unless it is also able to register it in the new category.
138. As in section 41, the Welsh Ministers may make regulations establishing transitional arrangements (subsection (13)). This might involve temporarily treating the provider as a registered provider, for example, to enable existing students at the provider to continue to receive student support.
139. The Commission must publish a list of any providers removed from the register or a category of the register and of any regulations made under subsection (13).

Section 44: Change of registration category without application

140. Where a provider is removed from a category of the register under section 41(3) or 43(5), the Commission may register the provider in another category of the register if—
- the governing body consents,
 - it continues to fall within the definition of “tertiary education provider in Wales” (see section 144(1)),

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

- it provides, or has provided on its behalf, the tertiary education relevant to the registration category,
- it satisfies the relevant initial registration conditions (see section 27), and
- registration is not prohibited under section 25(5).

Registration decision reviews

Section 45: Registration decision reviews

141. Whenever the Commission notifies a provider of a decision to:
- refuse registration in a category under section 25;
 - impose or vary a specific condition of registration under section 29;
 - remove a provider from a category of the register under section 41; or
 - determine the date upon which any de-registration will take effect under section 43(7) or (8);
- the provider in question may request a review of that decision.
142. Decision reviews will be carried out by the person or panel appointed by the Welsh Ministers under section 79 and in accordance with the review process established by regulations under that section.

Fee limit statements

Section 46: Requirements of a fee limit statement

143. This section sets out what a fee limit statement is and what it must include. When a registered provider is subject to a fee limit condition under section 32, the provider's fee limit statement must specify the fee limit, or provide for the determination of the fee limit, in relation to each qualifying course. This fee limit must not exceed the "maximum amount".
144. The "maximum amount" is the amount specified by the Welsh Ministers that a fee limit for a qualifying course may not exceed in any academic year.
145. Fee limits for different courses may vary and may also vary from year to year. Where there is a process or formula for determining a fee limit, this must be specified in the fee limit statement.
146. A fee limit statement has effect from the date which is specified in the fee limit statement.

Section 47: Approval of fee limit statement

147. Where the governing body of a provider applies to the Commission for approval of a fee limit statement, the Commission may approve or reject the statement and must give notice of that decision. This also applies where a provider applies for approval of a variation or replacement of the fee limit statement.
148. Where the Commission rejects a proposed fee limit statement, or a variation or replacement of a fee limit statement, it must follow the procedures outlined in sections 75 to 78.

Section 48: Publication of approved fee limit statement

149. A provider with an approved fee limit statement must publish that statement, and any approved variations or replacements. Published fee limit statements should be easily accessible to students and prospective students.

Section 49: Validity of contracts

150. This section applies where a contract between a provider and a qualifying person in respect of that person undertaking a qualifying course provides for the payment of fees by the person which exceed the applicable fee limit.
151. “Qualifying person” and “qualifying course” have the meaning given to those terms in section 32.
152. Subsection (2) provides that such a contract is to be treated as providing for the payment of fees which are equivalent to the applicable fee limit. So where a student refuses to pay any excess fees specified in a contract the provider will not be able to recover the excess fees. But the contract will remain otherwise enforceable in terms of the provider’s duty to provide education to the student, despite the contract providing for the payment of fees which exceed the applicable fee limit (subsection (3)).

Chapter 2 – Quality Assurance and Improving Quality

General quality assurance functions

Section 50: Quality assurance frameworks

153. Subsection (1) gives a power to the Commission to produce and publish a quality assurance framework or frameworks. A quality assurance framework is a document setting out information and guidance on policy and practice relating to the criteria and arrangements for assessing or inspecting the quality of tertiary education and training. It may outline the roles and responsibilities of Estyn and the designated quality assessment body in conducting quality assurance, as well as the roles and responsibilities of tertiary education providers and others regarding the quality of tertiary education, and consideration of the views of students about the quality of tertiary education they receive.
154. Frameworks may also set out guidance and information regarding the professional development of the tertiary education workforce and provide information and guidance on any other relevant matters related to quality assurance.
155. The Commission is required to consult with registered tertiary education providers, Estyn and any other stakeholders as the Commission sees fit before publishing, revising or withdrawing a quality assurance framework document (subsection (4)).
156. Estyn, the designated quality assurance body and the Commission will be required to take account of the quality assurance framework in their work (subsections (5) and (6)).

Section 51: Duty to monitor and promote improvement in the quality of regulated tertiary education

157. This section imposes a duty on the Commission to monitor and promote improvement in the quality of education and training across registered and funded tertiary education providers.

Section 52: Advice and assistance in respect of quality of tertiary education

158. This section gives the Commission the power to issue advice and guidance to any funded or registered provider to support quality improvement of the education, course or training provided. In particular, the Commission may provide advice and guidance

to tertiary education providers to improve the quality of the education provided, or to prevent the quality of the education, course or training from becoming inadequate. This would be the case where the quality of the education, course or training does not meet the reasonable needs of the learners.

Section 53: Reviews relevant to quality of tertiary education

159. This section gives the Commission the power to carry out a review of any matter relevant to the quality of tertiary education and training. The Commission may arrange for these reviews to be carried out on its behalf.

Assessment of quality in higher education

Section 54: Assessment of quality of higher education

160. Subsection (1) 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. The duty applies to the assessment of higher education relating to the provider's category of registration (subsection (2)). In addition, subsection (3) gives the Commission the power to assess, or make arrangements to assess, the quality of higher education provided by any tertiary education provider.
161. The Commission must publish the reports of these assessments (subsection (4)).
162. The Welsh Ministers may by regulations require assessments to be carried out at specified intervals and to publish the reports of these assessments within a specified period (subsection (5)). The Welsh Ministers must consult with the Commission before making such regulations (subsection (6)).
163. In this Part of the Act, references to an external provider relate to those providers who are responsible for providing all or part of a course of higher education on behalf of registered providers, but who are not registered providers in their own right (subsection (7)). The Welsh Minister may make regulations about who should be treated as an external provider (subsection (8)).

Section 55: Action plans following assessments under section 54

164. Following a quality assessment and published report, the registered provider providing the higher education, or the registered provider on behalf of which the higher education is provided, must—
- prepare a written statement of its planned actions to respond to the report and the timescales to address these planned actions, and
 - send the action plan statement to the Commission and to the designated body (if the designated body carried out the assessment) (subsection (2)).
165. The provider must also publish the action plan statement (subsection (3)).
166. Compliance with the requirements in this section to write and publish the action plan statement is to be treated as an ongoing registration condition for registered providers for the purpose of the enforcement powers of the Commission in section 39 (directions) and section 41 (de-registration).

Section 56: Exercise of higher education assessment functions by a designated body and Schedule 3 - Assessing higher education: designated body

167. **Schedule 3**, introduced by subsection (1), sets out further detail as regards:
- the designation of a body to conduct the assessment functions under section 54 on behalf of the Commission,

- oversight of the body by the Commission, and
 - provision for the body to charge fees.
168. The Commission will not normally be expected to conduct the assessment functions if it has designated a body to conduct these assessments on its behalf but will retain the power to do so (subsection (3)).

Part 1 of Schedule 3: Designation

169. **Paragraph 1** provides for the Commission to designate a body to conduct the higher education quality assessment functions under section 56(2) on the Commission's behalf.
170. The Commission may only designate the body if they consider that the body is suitable to exercise the assessment functions, and that in so designating, the effective assessment of the quality of higher education would be ensured.
171. The Commission must obtain the consent of the Welsh Ministers in order to designate a body, and it must consult registered providers providing higher education, as well as any other appropriate persons.
172. A decision to designate must be accompanied by a published notice which states the name of the body designated and the date on which designation becomes effective.
173. If the Welsh Ministers refuse to give their consent to designate the recommended body, then the Welsh Ministers must publish the reasons for this decision.
174. **Paragraph 2** outlines the criteria a body must meet to be considered suitable to exercise the assessment functions. These are:
- the body can exercise the assessment functions effectively;
 - the body's governing or strategic oversight is determined by people representing a broad range of registered higher education providers;
 - the body can command general confidence from a broad range of registered higher education providers;
 - the body is independent of any particular higher education provider; and
 - the body consents to being designated.
175. **Paragraph 3** allows the Commission to remove a designation. In order to remove a designation, the Commission must issue a notice specifying the date on which the designation will conclude and the reasons for withdrawing the designation.
176. A designation may be removed if the Commission consider that doing so would ensure effective assessment of quality in higher education in Wales, or if the designated body consents or requests to have its designation removed.
177. Unless the designated body consents to the removal of designation, removal of the designation must be with the consent of the Welsh Ministers and after consultation with registered higher education providers, and other appropriate persons.

Part 2 of Schedule 3: Oversight by the Commission

178. The Commission—
- may make payments to the designated body in order to enable it to carry out its assessment functions (paragraph 5), and
 - must make arrangements for holding the body to account (paragraph 6).

179. [Paragraph 7](#) requires the designated body to prepare an annual report on the performance of its assessment functions and send it to the Commission.
180. [Paragraph 8](#) provides for the Commission to give directions to the designated body regarding performance of the assessment functions. The designated body must comply with any directions from the Commission. This may be done, for example, to ensure that certain aspects of a Commission quality assurance framework (see section 50) are given due regard in respect of higher education assessments, or where the Commission has more general concerns regarding the designated body's conduct of its assessment functions.
181. When giving a direction to the designated body the Commission must nonetheless have regard to the designated body's own expertise and its ability to ensure effective and impartial assessment of quality in higher education.
182. A direction given by the Commission can only relate to registered higher education providers in Wales, or a subsection of these providers.
183. [Paragraph 9](#) requires the Commission to inform the Welsh Ministers if it has concerns regarding the designated body's performance and its suitability for carrying out its statutory functions.

Part 3 of Schedule 3: Power to charge fees

184. [Paragraph 10](#) allows the designated body to charge fees to registered higher education providers in respect of the costs it will incur when performing its assessment functions. When doing so, it must publish a scheme setting out the fees it will charge and the basis upon which these are calculated, which must be approved by the Commission. The scheme can be revised and re-approved by the Commission.
185. [Paragraphs 10\(3\) to \(5\)](#) allow for the fees paid by providers to cover general costs incurred by the designated body in performance of assessments across all registered higher education providers, but prevents the total fees paid by all providers from exceeding the total costs incurred by the designated body once any funding provided by the Commission under paragraph 5 is taken into account.

Part 4 of Schedule 3: Interpretation

186. [Paragraph 11](#) defines certain terms used in this Schedule.

Inspection of further education or training etc.

Section 57: Duty of the Chief Inspector to inspect and report

187. Subsection (1) sets out different kinds of education and training that must be inspected by Her Majesty's Chief Inspector of Education and Training for Wales.
188. The Chief Inspector, the other inspectors appointed by Her Majesty to form part of the inspectorate with the Chief Inspector, the Chief Inspector's staff and additional inspectors appointed by the Chief Inspector form a body known as 'Estyn'.
189. Estyn is not a body corporate with legal personality, which is why statutory functions are conferred on the office of Chief Inspector. Although the functions are conferred on the Chief Inspector by the Act, the functions may be exercised in practice by other inspectors and staff at Estyn by virtue of provision in paragraph 5 of Schedule 2 to the Education Act 2005, which is why these notes refer to 'Estyn'.
190. Estyn must inspect:
 - further education or training funded or secured by the Commission (this would include further education in colleges and apprenticeship training);

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

- further education or training funded or secured by the Welsh Ministers;
 - further education or training funded by a local authority in Wales (this would include mainstream sixth form provision in maintained schools and community-based adult learning partnership provision);
 - further education or training where the Commission or a local authority in Wales is contemplating giving funding to the provider of the further education or training;
 - education or training for compulsory school age learners in a further education or higher education provider in Wales;
 - any education or training provided in Wales that is specified by the Welsh Ministers in regulations.
191. The requirement to inspect under subsection (1) does not apply to education inspected under Part 1 of the Education Act 2005, or if the funding is given for a specific purpose, to education or training at which that support is not directed (subsection (2)).
192. Estyn must publish a report for each inspection to include, but not limited to, views on:
- the quality of the education or training inspected;
 - the standards achieved by the learners receiving the education and training;
 - whether the financial resources given to the provider are managed efficiently and used in a way which provides value for money (subsection (3)).
193. The Welsh Ministers may, by regulations, require inspections to be carried out at specified intervals and require reports to be completed within a specified period (subsection (4)). Before making such regulations, the Welsh Ministers must consult the Commission and Estyn (subsection (5)).

Section 58: Power of the Chief Inspector to inspect and report

194. Subsection (1) gives Estyn the power to inspect and report on any education and training described in section 57(1). If it does undertake such an inspection, it must publish a report (by virtue of the application of section 57(3) by subsection (4) of this section).
195. Estyn also has the power to inspect and report on any education or training which is not described in section 57(1), but the provision would be if it was funded by the Commission or the Welsh Ministers, if the provider asks Estyn to do so (subsection (2)). In the latter case, Estyn may charge the provider for the cost of the inspection and may publish the report (subsection (3)).

Section 59: Duty to provide information and advice to the Commission

196. Estyn must keep the Commission informed about inspections and reports carried out under section 57(1) in relation to provision funded or secured by the Commission (subsections (1) and (2)). When asked to do so by the Commission, Estyn must give the Commission advice on matters relating to education or training under section 57, inspect such provision and report on the result of inspections conducted under this section (subsections (1) and (3)).

Section 60: Duty to provide information and advice to the Welsh Ministers

197. Estyn must keep the Welsh Ministers informed about inspections and reports carried out under section 57(1) in relation to provision that is not funded or otherwise secured by the Commission (subsections (1) and (2)). When asked to do so by the Welsh Ministers, Estyn must give the Welsh Ministers advice on matters relating to education or training under section 57, inspect such provision and report on the result of inspections conducted under this section (subsections (1) and (2)).

Section 61: Additional functions of the Chief Inspector

198. Through regulations, the Welsh Ministers may confer additional functions on Estyn in relation to the education or training described in section 57(1) (subsection (1)). These may, amongst other things, include inspection functions related to training for teachers, lecturers, trainers or others providing such education or training (subsection (2)).

Section 62: Action plans following inspections by the Chief Inspector

199. Following the publication of an inspection report, the provider must prepare a written statement of the planned actions it will take in response to the report and the timescales to address those planned actions (subsection (3)). The provider must publish the action plan statement (subsection (4)). This section does not apply to those inspections conducted as a result of a request under section 58(2) or an area inspection under section 63 (subsection (2)).
200. Compliance with the duty to prepare an action plan statement is a requirement of the terms and conditions of funding by the Commission or the Welsh Ministers under this Act (subsections (7) and (8)).
201. Compliance with the duty to prepare and publish an action plan statement is to be treated as an ongoing registration condition for registered providers who provide education or training described in section 57(1) for the purpose of section 39 (directions) and section 41 (de-registration).

Section 63: Area inspections

202. Estyn must carry out an area inspection if requested to do so by the Commission or the Welsh Ministers and publish a report for each area inspection (subsection (2)). It may also conduct such an inspection without being asked (subsection (1)).
203. An area inspection is an inspection of:
- the quality and availability of an aspect of education or training in a specified area of Wales for learners aged 15 or over;
 - the standards achieved by the learners receiving the education or training;
 - whether the financial resources made available to those providing that education or training are managed efficiently and used in a way which provides value for money.
204. The aspect of education or training to be inspected through an area inspection is any education or training described in section 57 or within Estyn's remit as provided for in any other primary or subordinate legislation (subsection (3)).
205. The power to require Estyn to carry out an area inspection may only be used by the Commission with regard to any education or training it funds or secures (subsection (4) (a)). The Welsh Ministers may require Estyn to carry out an area inspection in regard to any other provision which meets the definitions set out in this section (subsection (4) (b)).
206. The focus of an area inspection may extend to the manner in which financial resources have been allocated to the education or training being inspected by Estyn, and whether this provides value for money, if funding has been applied by the Commission or a local authority in Wales (subsection (5)).
207. Information related to the area inspection must be provided to Estyn by any provider of education or training who is subject to the area inspection, any local authority in Wales within the area that is the focus of the area inspection, the Commission, and the Welsh Ministers (subsection (7)).

208. The Welsh Ministers may, by regulations, make further provision in regard to the requirement to provide information and the time scales in which the reports of area inspections must be published (subsection (9)).

Section 64: Rights of entry and offences

209. When conducting inspections under Chapter 2 of the Act, Estyn has a right of entry at all reasonable times to premises on which the education or training being inspected is provided; and to premises of a provider of education and training used in connection with the provision (subsections (1)(a) and (b)).
210. Estyn also has a right to inspect and take copies of any records and documents containing information relating to education or training, which the inspector requires for the purposes of the inspection (subsection (1)(c)).
211. The right of entry for Estyn to premises for education or training provided by an employer in the workplace may only be used if the employer has been given reasonable notice in writing (subsection (2)). The powers under this section do not include the right to enter premises that are a dwelling without the consent of the occupier (subsection (7)). And “premises” includes premises in England as well as Wales (subsection (8)).
212. The right to inspect and take copies includes having access to computers and any other device used to access records or documents, and assistance as reasonably required from those who use or have charge of the equipment (subsection (3)).
213. It is a criminal offence to wilfully obstruct Estyn when conducting inspections, and anyone found guilty of this offence is liable to be fined up to level 4 on the standard scale (subsections (4) and (5)).

Section 65: Surveys and studies

214. The Commission may direct Estyn to carry out a survey related to further education or training policy for Wales or for a specified area of Wales (subsection (1)(a)). The Commission may also direct Estyn to carry out a comparative study of education or training outside of Wales (subsection (1)(b)). Estyn may also carry out such surveys or studies itself, without being directed to do so (subsection (2)).

Section 66: Annual reports

215. Section 21(1)(a) of the Education Act 2005 requires Estyn to produce an annual report. Subsection (1) requires the annual report to include details of the exercise by Estyn of its functions under Chapter 2.
216. Section 21 of the Education Act 2005 also includes a power for Estyn to produce other reports. Subsection (2) provides for that power to include power to make reports with respect to matters relating to the education or training described in section 57(1) of the Act.

Section 67: Annual plan of the Chief Inspector

217. Estyn must prepare an annual plan for each financial year setting out estimates of income and expenditure necessary to carry out its work effectively (subsection (1)). The plan must include proposals for managing funds provided to Estyn from the Commission (under section 68) and from the Welsh Ministers (under section 104(4) of the Government of Wales Act 1998) (subsection (2)).
218. Estyn must submit the plan to the Commission and the Welsh Ministers for consultation and approval, by such date before the beginning of the financial year as the Commission and the Welsh Ministers may jointly direct (subsection (3)). Estyn may publish the plan after it has been approved by the Commission and the Welsh Ministers (subsection (4)).

Section 68: Funding of inspections and reports on further education and training etc.

219. The Commission must provide such funding to Estyn as the Commission considers appropriate so that Estyn is able to carry out its work in relation to the education or training that is funded by the Commission (subsection (1)).
220. In determining how much funding is appropriate for Estyn, the Commission must have regard to what the Commission considers Estyn needs to spend to exercise its functions (subsection (2)). The Commission must consult with Estyn before the beginning of each financial year in relation to the funding it is going to provide for that year (subsection (3)).
221. The Commission must approve the parts of Estyn’s annual plan which relate to Estyn’s work in respect of education or training funded by the Commission and determine the amount of funding it will provide according to the activities outlined in the annual plan (subsection (4)). The Commission may ask Estyn to modify the annual plan before it is approved (subsection (5)).
222. Section 104 of the Government of Wales Act 1998 is amended to provide that the Welsh Ministers are not responsible for the provision of funding to Estyn for education or training funded or secured by the Commission (subsection (6)(a)). Section 104 of that Act is also amended so that the Welsh Ministers are only responsible for approving such parts of Estyn’s annual plan as relate to functions in respect of which the Welsh Ministers provide funding (subsection (6)(b)).

Chapter 3: Further Enforcement and Procedural Provisions

Intervention in the conduct of further education institutions

Section 69: Grounds for intervention and Section 70: Powers to intervene

223. **Sections 69 and 70** replace the provisions previously set out in section 57 of the Further and Higher Education Act 1992 relating to the Welsh Ministers’ powers of intervention for institutions in the further education sector in Wales.
224. **Section 69** specifies the grounds that must be met in order for the Welsh Ministers to intervene in the conduct of a tertiary education provider in Wales that is an institution in Wales within the further education sector. See section 144 for an interpretation of these terms.
225. **Section 70** makes provision for the way that the Welsh Ministers may intervene if one or more of the grounds for intervention set out in section 68 are met. The Welsh Ministers must consult with the Commission before exercising their intervention powers under this section.
226. Directions issued by the Welsh Ministers under section 70 are enforceable by injunction (see section 82).

Section 71: Notification by the Commission of grounds for intervention

227. This section places the Commission under a duty to notify the Welsh Ministers if it is of the view that any of the grounds for intervention specified in section 69 have been met (subsection (1)). The Welsh Ministers must have regard to the Commission’s view in deciding whether or not to exercise any of their intervention powers under section 70 (subsection (2)).

Section 72: Welsh Ministers’ statement on intervention powers

228. This section requires the Welsh Ministers to publish and keep under review a statement on how they propose to exercise their intervention functions under section 70

(subsection (1)). The Welsh Ministers must consult such persons as they consider appropriate before publishing the statement, or revised statement, and lay a copy before the Senedd as soon as possible after it is published.

Access to information and facilities

Section 73: Duty to co-operate

229. **Section 73** requires governing bodies of external providers (see section 54) to co-operate with persons who are exercising, on behalf of the Commission, functions under the following sections of the Act:
- section 51 - duty to monitor, and promote improvement in, the quality of regulated tertiary education;
 - section 53 - reviews relevant to the quality of tertiary education;
 - section 54(1) - assessment of the quality of higher education.
230. This section also requires governing bodies of unregistered providers in Wales that provide further education and are funded under section 96, to co-operate with persons who are exercising, on behalf of the Commission, functions under the following sections of the Act:
- section 51 - duty to monitor, and promote improvement in, the quality of regulated tertiary education;
 - section 53 - reviews relevant to the quality of tertiary education
231. The duty to co-operate requires such governing bodies to ensure the provision of information, assistance and access to facilities, systems or equipment that might be required by the person for the purposes of those functions.
232. Examples of persons that might act on the Commission's behalf in respect of these functions include Estyn and a body designated to conduct higher education assessments under Schedule 3.
233. The duty imposed on governing bodies to co-operate under section 73 also applies in respect of powers of entry and inspection under section 74.
234. The Commission may give a direction to a governing body if the Commission is satisfied that the body has failed to comply with its duty to co-operate. The direction may require a governing body to take or not take steps to secure the provision of information, assistance or access to facilities, systems or equipment (subsection (4)). The procedural requirements in sections 75 to 78 apply to decisions to give directions.

Section 74: Powers of entry and inspection

235. This section provides for a right of entry and inspection for a person authorised in writing by the Commission, an "authorised person".
236. Subsection (1) provides that an authorised person may enter the premises of a registered provider and inspect, copy and take documents found on the premises of a registered provider for the purposes of the following functions:
- monitoring compliance with ongoing registration conditions (section 36);
 - reviews relevant to compliance with ongoing registration conditions (section 38);
 - monitoring and promoting improvement in the quality of tertiary education (section 51);
 - conducting reviews relevant to the quality of tertiary education (section 53); or

- assessing the quality of higher education (section 54(1)).
237. Subsection (2) states that an authorised person may enter premises and inspect, copy and take documents found on the premises of external providers for the purposes of the following functions:
- monitoring and promoting improvement in the quality of tertiary education (section 51);
 - conducting reviews regarding the quality of tertiary education (section 53); or
 - assessing the quality of higher education (section 54(1)).
238. The term “documents” in this section includes information in any form and documents stored on or accessible by computers on the premises (subsection (3)).
239. The power to inspect, copy or take away documents includes the power to require a person to provide documents, and to require the documents be provided in a certain form or format, and to inspect any electronic storage systems where documents have been created or stored (subsection (4)).
240. Before exercising a power under this section, reasonable notice must be given to the governing body of the registered provider or external provider in relation to whose premises the powers will be exercised, and the governing body of any registered provider on whose behalf the provider or external provider provides education to which the exercise of the entry and inspection functions relate (subsection (5)). However, notice does not need to be given if the power needs to be exercised urgently, or if giving notice would defeat the purpose of exercising the power (subsection (6)).
241. If required to do so, an authorised person must, before exercising a power under this section, produce a copy of the written authorisation from the Commission (subsection (8)).
242. The powers conferred by this section must be exercised at reasonable times and not so that anyone has to do anything other than at a reasonable time (subsection (9)). They do not constitute a power to enter a residential dwelling without the agreement of the occupier (subsection (10)). “Premises” for the purposes of this section means premises in Wales or England (subsection (11)).

Warning and review procedure

Section 75: Application of sections 76 to 78

243. **Sections 76 to 78** set out the process which the Commission must follow when issuing a direction or notice. The notices and directions to which those sections apply are listed in subsection (1) and include—
- directions in respect of failure to comply with ongoing registration conditions;
 - notices about the rejection of a proposed fee limit statement;
 - notices of rejection of a proposed variation or replacement of a fee limit statement;
 - directions in respect of a failure to co-operate.
244. The Commission is not required to follow the process set out in sections 76 to 78 if it issues a direction which solely revokes a previous direction (subsection (2)).

Section 76: Proposed notices and directions: requirement to give warning notice

245. Before giving a governing body, a notice or direction listed in section 75(1), this section requires the Commission to give the governing body a warning notice. The

warning notice must set out the proposed notice or direction, the reasons for giving it, the means by which the governing body may make representations regarding the notice or direction, and the period during which such representations can be made (subsection (2)). The period for making representations may not be less than 28 days beginning with the date of the notice (subsection (3)).

246. The Commission must have regard to any representations made by the governing body in the specified period in deciding whether to give the notice or direction and must then notify the governing body of its decision (subsections (4) and (5)).

Section 77: Information to be given with notices and directions and effect pending review

247. When giving a governing body a notice or direction listed in section 75(1), the Commission must include a date on which the notice or direction will take effect (subsection (1)). At the same time, the Commission must also give the governing body a statement setting out the reasons for the notice or direction being given, information regarding the right to review (see sections 78 and 79) and the period within which an application for review may be made (subsection (2)).

248. A notice or direction to which this section applies may not come into effect while a review process is ongoing nor during the period within which the governing body affected could apply for a review under section 78, unless the governing body concerned notifies the Commission that it does not intend to apply for a review (subsections (3) and (4)).

249. As a result, the notice or direction may be unable to come into effect on the date specified by the Commission under subsection (1). In this case, subject to the outcome of any review, the Commission must determine a new date on which the notice or direction will take effect (subsections (5) and (6)).

Section 78: Review of notices and directions

250. This section provides that a governing body given a notice or direction listed in section 75(1) has the right to apply for a review of the notice or direction by the decision reviewer.

Section 79: Decision reviewer

251. The Welsh Ministers must appoint a person or panel to be the “decision reviewer” and may pay remuneration and allowances to that person or panel (subsection (1)). The decision reviewer is responsible for the review of decisions under this Part.

252. The Welsh Ministers must make regulations in relation to decision reviews and the regulations may include, but are not limited to:

- grounds for review;
- recommendations to be made by the decision reviewer;
- the period within which a request for a review may be made, and the form in which the request must be made;
- the procedures and steps to be taken; and
- steps to be taken by the Commission or the Welsh Ministers following a review (subsections (3) and (4)).

Miscellaneous duties

Section 80: Duty to monitor and report on financial sustainability

253. This section requires the Commission to monitor and report on the financial sustainability of certain providers. Under subsection (1) the Commission must monitor the financial sustainability of:
- registered providers,
 - tertiary education providers in Wales that are institutions in the further education sector, are not registered and are funded by the Commission.
254. Subsection (2) allows the Welsh Ministers to make regulations to make exceptions in the application of the monitoring duty under subsection (1) for providers or types of providers in these categories. Subsection (1) also allows the Welsh Ministers, via regulations, to extend the monitoring duty to other kinds of tertiary education provider.
255. Subsection (3) requires the Commission to provide information in respect of the financial position of the persons it monitors under this subsection (1) in the annual report that it submits (see Schedule 1, paragraph 16) to the Welsh Ministers each year.
256. This section also sets out that the Commission must, at the same time it submits its annual report, submit a separate report to the Welsh Ministers which summarises the financial outlook of persons that it monitors under subsection (1). This report will provide a summary of conclusions drawn by the Commission from its monitoring activity on relevant emerging trends, patterns or other matters that the Commission considers it appropriate to bring to the attention of the Welsh Ministers. This report will relate to the financial years following the financial year to which the annual report relates.

Section 81: Commission’s statement on intervention functions

257. This section provides that the Commission must publish and keep under review a statement setting out its approach to exercising the functions listed in subsection (4). Before publishing or revising the statement, the Commission must consult the governing body of each registered provider and any other persons it considers appropriate.

Directions

Section 82: Effect and enforcement of directions

258. The governing body of a provider must comply with any direction given to them by the Commission or the Welsh Ministers under this Part. Subsection (2) gives the Commission and the Welsh Ministers a power to apply to the court for an injunction to enforce a direction that they have given. When requested to do so by the governing body concerned, the person who gave the direction must notify the governing body whether they are satisfied that a direction or a particular requirement of a direction has been complied with.
259. Subsection (4) provides that directions given under this Part must be given in writing.

Chapter 4: General

Section 83: Designation of other providers of tertiary education

260. This section enables the Welsh Ministers to designate a provider of tertiary education who would not otherwise be regarded as an institution for the purposes of this Part to be treated as such. “Tertiary education providers in Wales” must be “institutions” (see

the definitions in section 144(1)). The designation will be made on the application of the provider concerned.

261. A provider designated as an “institution” under this section may be treated as an “institution” for the purposes of registration, quality assurance and quality assessment functions under this Part, but will still need to meet all other criteria in section 25(5) to be able to register with the Commission; and its activities must be wholly or mainly carried on in Wales in order to fall within the definition of a “tertiary education provider in Wales”.
262. Subsection (4) allows the Welsh Ministers to make regulations providing for the manner in which applications for designation under this section are made and the making of designation decisions, including criteria for confirming and withdrawing designation and the effect of withdrawal of designation.

Section 84: Interpretation of Part 2

263. This section provides the definitions of certain terms which are used in Part 2 of this Act.

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

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

Part 4: Apprenticeships

Introductory

Section 111: Meaning of “approved Welsh apprenticeship”

360. This section defines an “approved Welsh apprenticeship” and allows the Welsh Ministers to make regulations setting out the conditions to be satisfied by an approved Welsh apprenticeship (subsection (4)).
361. An approved Welsh apprenticeship takes place either:
- under an approved Welsh apprenticeship agreement; or
 - under an alternative Welsh apprenticeship (subsection (2)).
362. An approved Welsh apprenticeship requires the work to take place wholly or mainly in Wales (subsection (3)).

Section 112: Meaning of “approved Welsh apprenticeship agreement”

363. This section outlines the meaning of an “approved Welsh apprenticeship agreement”.
364. Subsection (1) provides that it is an agreement which—
- provides for a person to work for another for payment in an occupation which has an apprenticeship framework,
 - provides for the apprentice to receive training to allow the apprentice to meet the requirements of the apprenticeship framework, and
 - satisfies any other conditions specified in regulations made by the Welsh Ministers.

Section 113: Meaning of “alternative Welsh apprenticeship”

365. This section allows the Welsh Ministers to make regulations defining the conditions of an “alternative Welsh apprenticeship”, to allow arrangements that would not fall within the definition of an approved Welsh apprenticeship agreement to be treated as approved Welsh apprenticeships.
366. Examples of alternative working arrangements could include, but are not limited to, the following circumstances:
- where a person works as a self-employed person while following a recognised Welsh apprenticeship framework,
 - where a person works otherwise than for reward, or
 - where the apprentice who was working under an apprenticeship agreement has been made redundant during the course of the apprenticeship and satisfies the conditions set out in the regulations.

Section 114: Meaning of “apprenticeship framework”

367. This section outlines the meaning of an “apprenticeship framework”. An apprenticeship framework is a document that specifies requirements for the completion of approved Welsh apprenticeships in an occupation or a group of occupations, which may include (but are not limited to) requirements relating to—
- standards of attainment;

- qualifications;
- the type or amount of training undertaken.

Functions of the Welsh Ministers

Section 115: Specification of requirements in relation to approved Welsh apprenticeships

368. Subsection (1) gives the Welsh Ministers a power to specify requirements in relation to approved Welsh apprenticeships and the development of apprenticeship frameworks.
369. Requirements may relate to—
- the content of apprenticeship frameworks, including, but not limited to, the standards of attainment required, the qualification needed and the type and amount of training needed to complete an approved Welsh apprenticeship (subsection (2)),
 - the preparation, revision, withdrawal or publication of an apprenticeship framework (subsection (3)),
 - approved Welsh apprenticeships generally or approved Welsh apprenticeships in one or more occupations.
370. The Welsh Ministers must publish specified requirements and may revise or withdraw a requirement by issuing a replacement specification requirement or by issuing a notice of withdrawal (subsections (5) and (6)). The published requirements and notices must state the date on which the specification requirement, or withdrawal notice, comes into force (subsection (7)).

Section 116: Consultation by Welsh Ministers about specifications

371. This section requires that the Welsh Ministers must first consult the Commission and any other persons they think appropriate before specifying, revising or withdrawing any requirements under section 114.

Functions of the Commission

Section 117: Preparation and publication of apprenticeship frameworks

372. Subsection (1) allows the Commission to prepare apprenticeship frameworks. The Commission may also secure preparation of apprenticeship frameworks by other persons.
373. The Commission may publish apprenticeship frameworks that meet the specification requirements under section 114, even where the apprenticeship framework was not prepared by the Commission or secured by the Commission, for example an apprenticeship framework which has been prepared by an occupational sector body. An apprenticeship framework may specify requirements for different levels under the same occupation or group of occupations, such as intermediate (level 2)¹, advanced (level 3), higher (level 4 - 5) or degree (level 6-7).
374. The Commission must keep apprenticeship frameworks under review and must determine whether a framework should be revised or withdrawn (subsection (6)).
375. A published apprenticeship framework must state the coming into force date of the framework or revised framework (subsection (8)).

¹ Qualification levels under the Credit and Qualifications Framework for Wales (CQFW).

<https://gov.wales/sites/default/files/publications/2019-01/cqfw-brochure.pdf>

Section 118: Register of apprenticeship frameworks

376. The Commission must maintain and publish a register of apprenticeship frameworks published under section 117 (subsections (1) and (5)). The register must include the coming into force date of each apprenticeship framework or revised framework and a description of any revised apprenticeship framework and its application (subsection (3)).
377. Where an apprenticeship framework is withdrawn, the register must include information on the date of withdrawal and a description of the application of the withdrawal (subsection (4)). The Welsh Ministers may make regulations to require the Commission to include other information in the register (subsection (6)).

Section 119: Power to issue apprenticeship certificates

378. This section allows the Commission to issue “an apprenticeship certificate” or a copy of an apprenticeship certificate to an apprentice who has completed an approved Welsh apprenticeship. The Commission may charge a fee for issuing an apprenticeship certificate or copy of a certificate only if the regulations made by the Welsh Ministers allow for a fee.

Section 120: Delegation of Commission functions

379. Subsection (1) allows the Commission to delegate to another person its power to publish apprenticeship frameworks under section 117(2) or its power to issue apprenticeship certificates under section 119. The designated person must comply with directions given by the Commission and must have regard to any guidance issued by the Commission (subsection (3)). The Commission may continue to exercise any functions it has delegated to another person and it remains responsible for the exercise of the functions (subsection (5)).
380. The Commission may make payments for expenditure incurred or pay remuneration to the designated person in relation to the exercise of the delegated functions (subsection (6)).

Supplementary provisions about apprenticeship agreements

Section 121: Ineffective provisions of approved Welsh apprenticeship agreements

381. Subsection (1) provides that if an agreement contains provision that satisfies the conditions in section 112(1)(a) to (c), but also contains provision inconsistent with those conditions, that provision is to be treated as having no effect.
382. Subsections (2) and (3) provide that where an employer makes changes to the apprenticeship agreement which would mean the apprenticeship agreement no longer complies with the apprenticeship framework or requirements of an approved Welsh apprenticeship, the employer must notify the apprentice in writing of the variation and explain that the variation will mean the apprentice is no longer on an approved Welsh apprenticeship. If this is not done the variation will have no effect (subsection (4)).

Section 122: Status of approved Welsh apprenticeship agreements

383. This section provides that an approved Welsh apprenticeship agreement is not to be treated, for common law or statutory purposes, as being a contract of apprenticeship (as recognised at common law) but is instead to be treated as being a contract of service.

Section 123: Transfer of copyright in apprenticeship frameworks

384. This section makes provision for the transfer of copyright to the Commission where an apprenticeship framework is prepared by another person and published with the agreement of that person by the Commission.

Section 124: Crown servants

385. This section provides that a person who is employed as a Crown servant may undertake an approved Welsh apprenticeship agreement. The Welsh Ministers may make regulations in relation to an approved Welsh apprenticeship agreement and Crown servants.

General

Section 125: Interpretation of Part 4

386. This section provides the definitions of certain terms which are used in this Part by reference to the relevant sections in this Part.

Part 5: Learner Protection, Complaints Procedures and Learner Engagement

Section 126: Learner protection plans

387. This section enables 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.
388. A learner protection plan is defined by subsection (2) as a document that sets out the provider's arrangements to protect the interests of its students who are on courses that cease to be provided or who wish to transfer to another course.
389. Where notice has been given under this section, the requirement to have a learner protection plan in place and to give effect to it will be enforced (in the case of registered providers) through conditions of registration (see section 31), and otherwise through the terms and conditions of funding (see sections 90, 99 and 104).
390. This section also enables the Commission to approve the learner protection plan with or without modifications. It requires a tertiary education provider that wishes to amend its approved learner protection plan to send a revised plan to the Commission and allows the Commission to approve the revised learner protection plan with or without modifications.
391. The Commission is required to issue guidance on the preparation and revision of learner protection plans and is required to consult with such persons as it considers appropriate before issuing this guidance.
392. The Commission is required to monitor the effectiveness of learner protection plans and must include its conclusion in its annual report (prepared under paragraph 16 of Schedule 1).
393. Subsection (10) defines a "relevant course" and a "tertiary education provider" for the purposes of sections 126 and 127.

Section 127: Complaints procedures

394. This section requires the Commission to take such steps as appear to it appropriate to ensure that a tertiary education provider (as defined) 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 (as defined), and to take reasonable steps to make the procedure known to persons undertaking relevant courses. The Commission might, for example, consider that an appropriate step was the issuing of guidance about complaints procedures, or the imposition of a registration condition or a condition of funding relating to complaints procedures.

Section 128: Qualifying institutions for student complaints scheme

395. This section makes amendments to Part 2 of the Higher Education Act 2004 (“the 2004 Act”) in relation to the student complaints scheme. Under Part 2 of the 2004 Act a body designated by the Welsh Ministers operates a student complaints scheme, which must provide for the review of qualifying complaints against qualifying institutions made by their students or former students. Section 11 of the 2004 Act sets out the qualifying institutions that are subject to the scheme.
396. This section amends section 11 of the 2004 Act so as to allow the Welsh Ministers, by regulations, to specify additional qualifying institutions. The regulations will be able to specify registered providers or other providers in receipt of funding from the Commission under certain provisions of the Act. Section 12 of the 2004 Act is also amended so as to extend the definition of qualifying complaint to those made by persons who are undertaking, or have undertaken, courses funded by the Commission under certain provisions of the Act, and to enable the designated operator to determine as qualifying complaints ones made by those persons on a particular course or particular description of course.

Section 129: Learner Engagement Code

397. This section requires the Commission to prepare and publish “the Learner Engagement Code” about the engagement of learners in the making of decisions. “Relevant decision” and “relevant provider” are defined in subsection (9). An illustrative list of what the Learner Engagement Code may include provisions about is found at subsection (2).
398. The Commission must keep the Learner Engagement Code under review and if appropriate must prepare and publish a revised code. The Learner Engagement Code may take the form of a requirement or guidance. The Commission must consult with any persons they think appropriate when preparing the Learner Engagement Code or revised code.
399. The Learner Engagement Code may make different provisions for different purposes.
400. Compliance with the requirements of the Learner Engagement Code will be enforced (in the case of registered providers) through conditions of registration (see section 31), and otherwise through the terms and conditions of funding (see sections 90, 99, 101 and 104).
401. The Commission must monitor compliance with the Learner Engagement Code and include conclusions as to how effective the Learner Engagement Code has been, as part of its annual report.

Part 6: Information, Advice and Guidance

Section 130: Information and advice from the Commission and information from the Welsh Ministers

402. This section requires the Commission to provide the Welsh Ministers with such information and advice on matters related to its functions as the Welsh Ministers may request, in the format and manner requested. The Commission may also give the Welsh Ministers any information or advice it considers appropriate.
403. This section also allows the Welsh Ministers to provide the Commission with any information relating to the exercise of its functions.

Section 131: Persons required to provide information to the Commission

404. This section allows the Commission to issue a notice to request information for the purposes of the exercise of the Commission’s functions from those listed in

subsection (2), which include persons that it funds and/or regulates, such as higher education and further education institutions.

405. This section places restrictions on the information the Commission can require, to ensure the information requested by the Commission is relevant to the Commission's functions.
406. This section sets out what a notice may require including, but not limited to, the time within which the person must provide the information. Further, the Commission may enforce a request for such information by application for an injunction.
407. The Commission may also give information to those listed in this section, and any other person it considers appropriate, about any matter related to its functions.

Section 132: Powers to share information

408. This section lists the other government departments, bodies and organisations that may share information with the Commission, for the purposes of the exercise of any of the Commission's functions. For example, the Commission may wish to receive information on qualifications awarded in Wales.
409. The Commission may also give information, about any matter in relation to its functions, to those listed in this section and any other person it considers appropriate. For instance, the Commission may wish to share information with education bodies in England, such as the Office for Students.
410. The Welsh Ministers may by regulations specify other bodies or organisations that are allowed to share information with the Commission under this section. These could include any newly created public bodies or organisations.

Section 133: Power to require application-to-acceptance information

411. This section makes provision for the Welsh Ministers to require, by notice, "application-to-acceptance information" from bodies providing admissions services to Welsh higher education providers for use for "qualifying research". The Welsh Ministers may direct this information is to be provided either to themselves or to the Commission. This section also defines "application-to-acceptance" information and "qualifying research".
412. This section sets out what a notice may require including, but not limited to, the time within which the person must provide the information. Further, the Welsh Ministers may enforce a request for such information by application for an injunction.

Section 134: Use of application-to-acceptance information for research purposes

413. This section makes provision for how the Welsh Ministers may use the information obtained under section 133 and with whom the information may be shared. This section also makes provision for the circumstances in which a product of research using information obtained under section 133 may be published.
414. The Welsh Ministers must publish guidance setting out the factors that will be taken into account when approving a body or individual with whom the information may be shared. This section also defines what is meant by an "approved person".

Section 135: Other information, advice and guidance

415. This section allows the Commission to give advice or issue guidance, as the Commission considers appropriate, to any persons, so long as it relates to the provision of tertiary education, or any matter connected with its functions. The Commission is required to identify good practice, give advice and issue guidance in relation to the sharing of information among those that it funds or regulates; for example, by issuing guidance dealing with IT systems and information security.

416. The Commission must publish all guidance issued under this section and it is envisaged that the Commission should review and update or replace its guidance as and when it considers necessary. The Commission must establish systems to collect information to inform its decisions on tertiary education and training.

Section 136: Research by the Commission or the Welsh Ministers

417. This section allows the Welsh Ministers or the Commission to carry out research or secure the provision of financial resources to undertake research and sets out the subject matters into which this research can be undertaken. Any outcomes may then be published, provided that no individual can be identified from the publication.
418. This section provides that the Commission may impose such terms and conditions as it considers appropriate to funding it allocates under this section. 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.
419. This section also sets out the terms and conditions that the Commission may and must impose where it makes arrangements for another person to provide the Commission's financial resources.

Part 7: Miscellaneous and General

Higher education corporations

Section 137: Instruments of government of higher education corporations in Wales

420. [Section 137](#) amends section 124A of the Education Reform Act 1988 (“the 1988 Act”). Among other things section 124A of the 1988 Act requires a higher education corporation in Wales to have in place an instrument of government which provides for the constitution of the corporation (and such other provision as is required under section 124A).
421. The Privy Council has certain functions, under section 124A(2) and (3) of the 1988 Act to prescribe, make or modify the instruments of government of higher education corporations.
422. Instruments of government must comply (among other things) with Schedule 7A to the 1988 Act. Schedule 7A sets out statutory requirements for the content of instruments of government of higher education corporations made by the Privy Council.
423. Under section 124A(9) of the 1988 Act, the Welsh Ministers² are able to amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A by order. These paragraphs relate to membership of the higher education corporation and in particular the size, constitution and appointment of members of the corporation.
424. Subsection (2) of section 137 of the Act makes provision for the Welsh Ministers' existing order-making powers under section 124A(9) of the 1988 Act to be extended. The extended power allows the Welsh Ministers to amend or repeal the whole of Schedule 7A to the 1988 Act with the exception of paragraph 1. Paragraph 1 enables a higher education corporation's instrument of government to empower the corporation to change its name with the consent of the Privy Council. The additional paragraphs of Schedule 7A covered by the extended power relate to tenure of office for members, officers and committees of the corporation, allowances paid to the members and the seal of the corporation.

² The function was originally vested in the Secretary of State but by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) that function was transferred in relation to Wales to the National Assembly for Wales (established under the Government of Wales Act 1998). By virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 functions of the National Assembly for Wales were transferred to the Welsh Ministers.

425. Subsection (3) inserts a new subsection (9A) into section 124A of the 1988 Act which requires the Welsh Ministers to consult with the Commission and any other persons they think appropriate before exercising the extended order-making powers. It also inserts a new subsection (9B) which makes provision for such an order made by the Welsh Ministers to make consequential amendments or repeals to certain specified provisions in the 1988 Act if those are necessary as a result of any amendments or repeals made under the order-making power to Schedule 7A.

Section 138: Articles of government of higher education corporations in Wales

426. Section 125 of the 1988 Act requires an institution conducted by a higher education corporation to have articles of government, approved by the Privy Council, relating to the conduct of the institution. Section 126 of that Act also makes provision relating to the content of the articles of government together with its amendment and revocation.
427. Subsection (2) of section 138 of the Act inserts new subsections (8) and (9) into section 125 of the 1988 Act enabling the Welsh Ministers, by order, to amend or repeal section 125(2) to (4) of the 1988 Act, which relate to certain content of articles of government of higher education corporations.
428. Among other things, section 125(2) to (4) of the 1988 Act make provision for the articles to determine the distribution of functions between the board of governors, the principal of the institution and the academic board and regulate the constitution and functions of committees of the corporation. Those provisions also require the articles to make provision in respect of the procedures for meetings of the board of governors, the academic board, the corporation's committees and for the appointment of members of the corporation. In addition, they enable the articles to make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution.
429. The new subsection (9) will place the Welsh Ministers under a duty to consult with the Commission and any other persons they think appropriate before exercising the new order-making powers.
430. Subsection (3) amends section 232 of the 1988 Act.
431. The amendment to section 232 of the 1988 Act (orders and regulations) is to ensure that subsection (1) of that section (which requires orders and regulations under the 1988 Act to be made by statutory instrument) catches the new powers of the Welsh Ministers to make orders conferred by sections 137 and 138 of the Act.
432. Subsections (4ZA), (4ZB) and (4ZC), which will be inserted into section 232 of the 1988 Act by section 138(3)(b) of the Act, make provision relating to the Senedd procedure attached to the order and regulation making powers of the Welsh Ministers under the 1998 Act, as inserted by this Act.

Section 139: Dissolution of higher education corporations in Wales

433. This section amends section 128 of the 1988 Act which relates to the dissolution of higher education corporations.
434. Section 128(2) as amended contains a power for the Welsh Ministers by order to provide for the dissolution of a higher education corporation in Wales and the transfer of its property, rights and liabilities to any one or more of the following—
- any person appearing to the Welsh Ministers to be wholly or mainly engaged in the provision of educational facilities or services of any description;
 - any body corporate established for purposes which include the provision of such facilities or services;
 - the Commission;

- the Welsh Ministers.
435. The Welsh Ministers may only make an order under section 128(2) of the 1988 Act if the higher education corporation to be dissolved has requested an order be made, or has consented to an order being made. An order may be made without the consent of the higher education corporation, if the Welsh Ministers consider that consent has been unreasonably withheld or unreasonably delayed.
436. Section 128(4) of the 1988 Act, as amended by section 139(4) of the Act, requires the Welsh Ministers to consult the higher education corporation to be dissolved and the Commission before making an order under subsection (1).
437. [Section 139](#) of the Act makes amendments to section 128 of the 1988 Act in consequence of the creation of the Commission, replacing references to HEFCW with references to the Commission.
438. Subsection (3) makes new provision about the power under section 128(1)(b) to make provision by order for the transfer of the property, rights and liabilities of the higher education corporation being dissolved. A new subsection (1A) is inserted into section 128 which provides that orders—
- may make provision about the effect of a 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);
 - have effect in relation to property, rights or liabilities to which they apply 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.
439. Subsection (6) inserts new subsection (7) into section 128 of the 1988 Act requiring the Welsh Ministers to publish and keep under review a statement setting out the circumstances in which they propose to exercise the power under this section to make an order. The Welsh Ministers must consult such persons as they consider appropriate before publishing the statement, or revised statement, and lay a copy before the Senedd as soon as possible after it is published.

Consultation about careers services

Section 140: Duty to consult the Commission on careers services

440. This section inserts a new section 9A after section 9 of the Employment and Training Act 1973 (“the 1973 Act”).
441. The new section 9A will place Welsh Ministers under a duty to consult the Commission each year on strategic priorities for the next financial year for their performance of their duty in section 8 and the exercise of their power in section 9 of the 1973 Act. Section 8 of the 1973 Act places a duty on the Welsh Ministers to ensure the provision of careers services to pupils in schools and students in further education and training. Section 9 of the Act gives the Welsh Ministers a power to provide careers services for others.
442. For the purpose of this section financial year is defined as a period of 12 months ending on 31 March.

General

Section 141: Data Protection

443. This section clarifies that no provision made by the Act requiring, or enabling, the disclosure or use of information disapplies, in any way, existing data protection legislation.

Section 142: Publication

444. **Section 142** makes provision relating to every duty under the Act (but not a duty imposed by amending another enactment) to publish something. Throughout this Act, wherever there is a duty to publish a report or plan, these must be published electronically, on the provider or organisation's website, and be accessible free of charge.
445. The provider or organisation under the duty to publish may also chose to publish in any way they consider appropriate. Copies of the reports or plans published may be supplied free of charge, or on payment of a fee which does not exceed the cost of making the copy.

Section 143: Regulations

446. This section makes general provision about how the various regulations that may be made under the Act are to be made. This includes provision about the procedures of the Senedd that apply in relation to the regulations, and the ancillary provision (that is, supplemental, incidental, consequential, transitional, transitory or saving provision) that may be made in these regulations.

Section 144: General interpretation

447. This section defines specific terms used in this Act and is self-explanatory. In particular subsection (8) provides that tertiary education provided by or on behalf of a tertiary education provider in Wales (as defined in subsection (1)) includes education provided face-to-face, by distance learning or by a combination of those means.

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

448. This section allows the Welsh Ministers to make regulations to apply the provisions under this Act to the Open University. The Open University does not fall within the definition of "tertiary education provider in Wales" because its activities do not take place "wholly or mainly in Wales". This power in this section will allow the Welsh Ministers to treat the Open University as a tertiary education provider in Wales. This may be to apply the registration conditions; learner protection plans and other provisions to the Open University in order to ensure funding and protection for learners in Wales undertaking courses of study with the Open University.

Section 146: Power to make consequential and transitional provision etc.

449. This section provides that the Welsh Ministers may, by regulations, make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Act, including in relation to the provisions contained in this Act.

Section 147 and Schedule 4: Minor and consequential amendments

450. **Schedule 4** (introduced by section 147) sets out the minor and consequential amendments to existing legislation as affected by the Act.
451. Where a description as to the effect of the amendment is considered helpful it is included. Where an amendment has been described elsewhere in these explanatory notes, it is not described here; similarly, minor amendments such as changes in existing legislation from "the Higher Education Funding Council for Wales" to "the Commission for Tertiary Education" are not described.
452. **Paragraph 1** amends section 8(4) of the Employment and Training Act 1973. It replaces reference to an institution falling within scope of section 91(5) of the Further and Higher

Education Act 1992 with reference to a tertiary education provider registered with the Commission to provide higher education, other than an institution which is also within the further education sector. It means that tertiary education providers registered with the Commission for the purpose of higher education (excluding institutions within the further education sector) are excluded from the Welsh Ministers' duty to secure the provision of careers services for school and college students.

453. [Paragraph 3](#) amends section 43(5)(aa) of the Education (No 2) Act 1986. It replaces “any institution other than a university within the higher education sector” with a reference to tertiary education providers registered with the Commission to provide higher education. It ensures that the duty to secure freedom of speech applies to universities, further education institutions and other tertiary education providers registered with the Commission for the purpose of providing higher education.
454. [Paragraph 6](#), amongst other things, replaces subsections (5)(a) and (5)(aa) of section 91 of the Further and Higher Education Act 1992 with a new subsection which amends the definition of what constitutes “an institution within the higher education sector” in relation to Wales. The effect is that tertiary education providers registered in a category specified in regulations for the purposes of being eligible to receive funding from the Commission for higher education or research or innovation (other than institutions within the further education sector) fall within the definition of being an institution within the higher education sector in relation to Wales.
455. [Paragraph 13](#) amends the Care Standards Act 2000 so that tertiary education providers eligible for funding from the Commission for the purposes of higher education or research or innovation, and the Commission itself fall within scope of the Children’s Commissioner for Wales reviewing functions.
456. [Paragraph 14\(2\)](#) repeals sections 31 – 33 of the Learning and Skills Act 2000, which are the main duties on the Welsh Ministers in relation to post-16 education and training.
457. [Paragraphs 14\(3\) to 14\(17\)](#) amend sections 33A– 33E, 33G, and 33I – 33Q of that Act to give responsibility for the formation of local curricula for learners aged 16 – 19 to the Commission instead of the Welsh Ministers and make related amendments in consequence of this. The Welsh Ministers’ regulation and order-making powers and most of their guidance and direction powers related to local curricula are retained, but the amendments subject the exercise of those powers (other than the giving of directions) to a requirement to consult the Commission.
458. These amendments are as a consequence of the Commission’s responsibility for securing the provision of proper facilities for education and training for learners aged 16 to 19 (see section 93).
459. [Paragraph 19](#) amends Schedules 2 and 3 to the Commissioner for Older People (Wales) Act 2006 so that tertiary education providers eligible for funding from the Commission for the purposes of higher education or research or innovation and the Commission itself fall within scope of the reviewing functions of the Commissioner for Older People under sections 3 and 5 of the Commission for Older People (Wales) Act 2006.
460. [Paragraph 21\(2\)](#) amends Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 so that inspections conducted by the Chief Inspector under the Tertiary Education and Research (Wales) Act 2022 are considered a regulated activity related to children for the purposes of the Safeguarding Vulnerable Groups Act 2006.
461. [Paragraph 25\(3\)](#) amends section 43 of the Learning and Skills (Wales) Measure 2009 so as to require the Welsh Ministers to consult the Commission before giving guidance to head teachers of local authority maintained schools and principals of further education institutions about the exercise of their functions in respect of the provision of a learning pathways document to relevant students.

462. [Paragraph 28](#) amends the Welsh Language (Wales) Measure 2011 to replace the reference to the Higher Education Funding Council for Wales in Schedule 6 to the Measure with a reference to the Commission for Tertiary Education and Research.
463. [Paragraph 29](#) makes amendments to provisions of the School Standards and Organisation (Wales) Act 2013 concerned with school reorganisations.
464. These amendments include the Commission as a body whom the Welsh Ministers must consult on the draft of the Code (or revised Code) on school organisation and places a duty on the Commission, when exercising functions under Part 3 of that Act (school organisation) to act in accordance with any relevant requirements in the Code and have regard to any relevant guidelines in it.
465. The amendments remove the automatic requirement for approval by the Welsh Ministers of school organisation proposals affecting maintained school sixth form education, instead only requiring the approval of the Welsh Ministers where an objection to the proposals has been sent, in writing, to the proposer during the objection period (28 days beginning on the day the proposals were published) and has not been withdrawn in writing within 28 days following the end of the objection period.
466. The amendments also take away the Welsh Ministers' powers to make proposals to restructure local authority maintained school sixth form education, instead giving the Commission powers to restructure school sixth form education (new Chapter 3A of Part 3 on school organisation).
467. Those powers involve the Commission being able to direct, in certain circumstances, and in accordance with the Code, 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.
468. The Commission will have power to make its own proposals following a direction by it, if the time for the local authority or governing body to make proposals has expired or they have published proposals. In the event of objections to proposals from the Commission, the matter has to be decided by the Welsh Ministers. Otherwise the Commission must determine whether they should be implemented.
469. These amendments are as a consequence of the Commission's responsibility for securing the provision of proper facilities for education and training for learners aged 16 - 19 (see section 93).
470. [Paragraph 30](#) amends section 162 of the Social Services and Well-being (Wales) Act 2014 which provides that a local authority must make arrangements to promote co-operation between the local authority, each of the authority's 'relevant partners' and other bodies who are engaged in activities relevant to adults in need of care and support.
471. The Commission, and the Welsh Ministers, are each defined as a relevant partner to the extent they are exercising their functions under section 92, 93, 94, 95, 97 or 103(1) of the Act.
472. [Paragraph 40](#) amends the Welsh Language Standards (No 6) Regulations 2017, replacing the reference to the Higher Education Funding Council for Wales in regulation 3(4) with the Commission for Tertiary Education and Research.

Section 148: Coming into force

473. Subsection (1) brings sections 140 to 146 of the Act into force the day after the day of Royal Assent.
474. All other provisions of the Act come into force by order made by the Welsh Ministers (subsection (1)). Subsection (3) allows orders that bring provisions into force to appoint different days for different purposes and to make transitory, transitional and saving provision in connection with bringing provisions into force.

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

Section 149: Short title

475. [Section 149](#) provides that the short title of the Act is the Tertiary Education and Research (Wales) Act 2022.
476. This section also adds the Act to the list of Education Acts set out in section 578 of the Education Act 1996.