



# Tertiary Education and Research (Wales) Act 2022

2022 asc 1

## PART 1

### STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH

#### *The Commission*

#### **1 Establishment of the Commission for Tertiary Education and Research**

- (1) The Commission for Tertiary Education and Research (“the Commission”) is established as a body corporate.
- (2) Schedule 1 contains further provision about the Commission.

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#### **Commencement Information**

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| <b>11</b> | S. 1 not in force at Royal Assent, see <b>s. 148(2)</b>         |
| <b>12</b> | S. 1 in force at 15.12.2022 by S.I. 2022/1318, <b>art. 2(a)</b> |

#### *The Commission’s strategic duties*

#### **2 Promoting life-long learning**

- The Commission must promote tertiary education for the people of Wales that—
- (a) provides opportunities for people to participate in tertiary education throughout their lives from the age of 16;
  - (b) includes a variety of levels of study and types of qualification;
  - (c) includes a variety of educational settings and modes of study;

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**Changes to legislation:** There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1. (See end of Document for details)

- (d) is organised coherently to facilitate movement of learners through different stages of tertiary education and into employment or business;
- (e) otherwise meets the different requirements of those who may wish to undertake tertiary education.

**Commencement Information**

- I3** S. 2 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I4** S. 2 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(a\)](#)

### 3 Promoting equality of opportunity

- (1) The Commission must promote—
- (a) increased participation in Welsh tertiary education by persons who are members of under-represented groups;
  - (b) increased participation in the carrying out of research and innovation in Wales by persons who are members of under-represented groups;
  - (c) retention of students who are members of under-represented groups to the end of courses of Welsh tertiary education;
  - (d) reduction of any gaps in attainment in Welsh tertiary education between different groups of students where the differences arise from social, cultural, economic or organisational factors;
  - (e) the provision of support for students finishing courses of Welsh tertiary education who are members of under-represented groups to continue their tertiary education, find employment or start a business.
- (2) In this section, “under-represented groups” are—
- (a) in relation to tertiary education, groups that are under-represented in Welsh tertiary education as a result of social, cultural, economic or organisational factors, and
  - (b) in relation to research and innovation, groups that are under-represented in the carrying out of research and innovation in Wales as a result of social, cultural, economic or organisational factors.

**Commencement Information**

- I5** S. 3 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I6** S. 3 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(b\)](#)

### 4 Encouraging participation in tertiary education

The Commission must—

- (a) encourage individuals who are ordinarily resident in Wales, in particular those who have additional learning needs, to participate in tertiary education, and
- (b) encourage employers in Wales to participate in the provision of tertiary education.

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#### Commencement Information

- I7** S. 4 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I8** S. 4 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(c\)](#)

## 5 Promoting continuous improvement in tertiary education

- (1) The Commission must promote continuous improvement in the quality of Welsh tertiary education.
- (2) In discharging this duty, the Commission must have regard (among other things) to—
- the importance of ensuring that members of the tertiary education workforce are capable of providing tertiary education of a high quality;
  - the reasonable requirements of members of the tertiary education workforce for continuous professional development;
  - the importance of the views of learners about the quality of the tertiary education they receive.
- (3) In this section, “members of the tertiary education workforce” are—
- teachers of persons receiving tertiary education,
  - persons who provide support to such teachers, and
  - persons who provide support to learners to participate in tertiary education.

#### Commencement Information

- I9** S. 5 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I10** S. 5 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(d\)](#)

## 6 Promotion of research and innovation

- (1) The Commission must promote—
- the carrying out of research and innovation in Wales;
  - 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;
  - collaboration on research and innovation, both in Wales and elsewhere in the world between—
    - relevant persons;
    - relevant persons and others;
  - the carrying out by relevant persons of research and innovation and of activities related to research and innovation through the medium of Welsh.
- (2) In subsection (1), “relevant person” means—
- a provider specified in regulations under section 105(4);
  - a collaborating body within the meaning given by section 105(4) when carrying out research and innovation in respect of which consent given by the Commission under section 105(5) is in effect.

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**Changes to legislation:** *There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1. (See end of Document for details)*

#### **Commencement Information**

- I11** S. 6 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I12** S. 6(1)(a) in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(e\)](#)

### **7 Promoting collaboration and coherence in tertiary education and research**

The Commission must promote—

- (a) collaboration between tertiary education providers in Wales, schools in Wales and employers;
- (b) coherence in the provision of tertiary education by tertiary education providers in Wales and the alignment of such provision with research and innovation priorities.

#### **Commencement Information**

- I13** S. 7 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I14** S. 7 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(f\)](#)

### **8 Contributing to a sustainable and innovative economy**

- (1) The Commission must promote tertiary education and research in a way that contributes to the development of a sustainable and innovative economy in Wales.
- (2) In discharging this duty, the Commission must have regard (among other things) to the reasonable requirements of industry, commerce, finance, the professions, other employers and workers.
- (3) For the purpose of subsection (1), a sustainable economy is an economy in which the needs of the present are met without compromising the ability of future generations to meet their own needs.

#### **Commencement Information**

- I15** S. 8 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I16** S. 8 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(g\)](#)

### **9 Promoting tertiary education through the medium of Welsh**

(1) The Commission must—

- (a) encourage demand for, and participation in, Welsh tertiary education provided through the medium of Welsh;
- (b) take all reasonable steps to ensure that there is sufficient Welsh tertiary education provided through the medium of Welsh to meet demand;
- (c) encourage the provision of tertiary education through the medium of Welsh by—
  - (i) registered providers in Wales, and
  - (ii) other persons providing tertiary education funded or otherwise secured by the Commission.

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*Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1. (See end of Document for details)*

- (2) The Welsh Ministers must designate a person to give relevant advice to the Commission.
- (3) In this section, “relevant advice” means advice given for the purpose of assisting the Commission in the discharge of its duties under subsection (1).
- (4) A person may be designated under subsection (2) only if the Welsh Ministers consider the person is suitable to give advice on the following—
  - (a) the promotion, maintenance, development and planning of tertiary education provided in Wales through the medium of Welsh,
  - (b) the promotion of the acquisition and improvement of Welsh language skills,
  - (c) the maintenance, development, planning and provision of activities to support the acquisition and improvement of Welsh language skills, and
  - (d) collaboration between tertiary education providers in Wales in relation to the matters mentioned in paragraphs (a) to (c).
- (5) The duty in subsection (1) does not apply if—
  - (a) the Welsh Ministers consider there is no person suitable to give advice on the matters mentioned in subsection (4), or
  - (b) there is no person who consents to be designated.
- (6) The Commission must have regard to any relevant advice given to it by a person designated under subsection (2).
- (7) The Commission must publish a designation made by the Welsh Ministers under subsection (2).
- (8) A designation under subsection (2) may be removed.

#### Commencement Information

**I17** S. 9 not in force at Royal Assent, see [s. 148\(2\)](#)

**I18** S. 9(1) in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(h\)](#)

**I19** S. 9(2)-(5)(7)(8) in force at 15.12.2022 by [S.I. 2022/1318](#), [art. 2\(b\)](#)

## 10 Promoting a civic mission

- (1) The Commission must promote the pursuit of a civic mission by tertiary education providers in Wales that are institutions within the further education sector and the higher education sector.
- (2) The Commission may exercise its functions under this Act to promote the pursuit of a civic mission by other persons (other than the tertiary education providers mentioned in subsection (1)) who are funded by the Commission under this Act.
- (3) In this section, a “civic mission” means 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](#))).
- (4) In subsection (3) and in section 11, “well-being of Wales” includes the well-being of—
  - (a) the whole or any part of Wales;
  - (b) all or any persons resident or present in Wales.

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**Changes to legislation:** There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1. (See end of Document for details)

**Commencement Information**

- I20** S. 10 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I21** S. 10 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(i\)](#)

**11 Promoting a global outlook**

The Commission must promote—

- (a) opportunities in tertiary education for persons ordinarily resident in Wales to study or teach elsewhere in the world;
- (b) opportunities to study or teach in tertiary education in Wales for persons ordinarily resident outside Wales;
- (c) opportunities for the benefits gained from study and teaching of the kind mentioned in paragraphs (a) and (b) to be used for the economic, social, environmental or cultural well-being of Wales;
- (d) collaboration in tertiary education between tertiary education providers in Wales and those elsewhere in the world;
- (e) opportunities for persons ordinarily resident in Wales and tertiary education providers in Wales to carry out research and innovation elsewhere in the world.

**Commencement Information**

- I22** S. 11 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I23** S. 11 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(j\)](#)

**12 Promoting collaboration between providers of tertiary education and trade unions**

- (1) The Commission must promote collaboration between tertiary education providers in Wales and relevant trade unions.
- (2) A trade union is a relevant trade union for the purpose of this section if the Commission considers that collaboration between it and tertiary education providers in Wales is likely to assist the discharge of the Commission’s duties under sections 2 to 11, and it is—
  - (a) represented by the body known as Wales TUC Cymru, or
  - (b) if not so represented, the Commission considers it represents members of the tertiary education workforce (within the meaning given by section 5(3)) in Wales.

**Commencement Information**

- I24** S. 12 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I25** S. 12 in force at 4.9.2023 for specified purposes by [S.I. 2023/919](#), [art. 3\(k\)](#)

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### *Strategy for tertiary education and research*

#### **13 Statement of strategic priorities**

- (1) The Welsh Ministers must publish a statement setting out their strategic priorities for and in connection with tertiary education and research and innovation.
- (2) The Welsh Ministers may at any time amend the statement published under subsection (1) (including by replacing it entirely).
- (3) The Welsh Ministers must publish any amendments they make to the statement.

##### **Commencement Information**

- I26** S. 13 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I27** [S. 13](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(a\)](#)

#### **14 Strategic plan for the Commission**

- (1) The Commission must prepare a strategic plan setting out how it intends to—
  - (a) discharge its strategic duties under sections 2 to 12, and
  - (b) address the priorities in the Welsh Ministers' statement under section 13.
- (2) In preparing the plan, the Commission must consult such persons as it considers appropriate.

##### **Commencement Information**

- I28** S. 14 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I29** [S. 14](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(b\)](#)

PROSPECTIVE

#### **15 Approval, publication and implementation of strategic plan**

- (1) The Commission must send a strategic plan prepared under section 14 to the Welsh Ministers for their approval before the end of a period of 6 months beginning with the day on which the statement is published under section 13(1).
- (2) The Welsh Ministers may—
  - (a) approve the plan, or
  - (b) approve the plan with modifications.
- (3) The Welsh Ministers must seek the agreement of the Commission to each modification they propose making to a plan before they modify it under subsection (2)(b).
- (4) If the Welsh Ministers approve a plan containing a modification that is not agreed by the Commission—
  - (a) the Welsh Ministers must give reasons for that modification to the Commission, and

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- (b) the Commission must publish the reasons given by the Welsh Ministers when it publishes its approved strategic plan.
- (5) The Commission must publish its approved strategic plan.
- (6) The Commission may publish its statement about well-being objectives under section 7 of the [Well-being of Future Generations \(Wales\) Act 2015 \(anaw 2\)](#) by including it in its approved strategic plan.
- (7) The Commission must take all reasonable steps to implement its approved strategic plan.

#### Commencement Information

**I30** S. 15 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

## 16 Review of strategic plan

- (1) If the Welsh Ministers amend their statement under section 13(2) after the Commission has published its approved strategic plan under section 15(5), the Commission must review its strategic plan.
- (2) The Commission may review its strategic plan at any other time.
- (3) The Commission may revise its strategic plan after a review under subsection (1) or (2) if it considers it appropriate to do so.
- (4) If the Commission revises its strategic plan, section 14 applies in relation to the revision of the plan as it applies in relation to the preparation of a plan.
- (5) The Commission must send its revised strategic plan to the Welsh Ministers for their approval—
  - (a) where the revision is in consequence of a review under subsection (1), before the end of a period of 6 months beginning with the day on which the Welsh Ministers publish the amendments to their statement, or
  - (b) where the revision is in consequence of a review under subsection (2), as soon as is reasonably practicable.
- (6) Subsections (2) to (7) of section 15 apply to a plan revised under this section as they apply to a plan prepared under section 14.

#### Commencement Information

**I31** S. 16 not in force at Royal Assent, see [s. 148\(2\)](#)



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### *Academic freedom and institutional autonomy*

## **17 Academic freedom of higher education providers and staff**

- (1) In exercising their functions under this Act, the Welsh Ministers and the Commission must have regard to the importance of protecting the academic freedom of—
- (a) tertiary education providers in Wales that provide higher education (so far as the freedom relates to higher education or research and innovation), and
  - (b) academic staff at those providers.
- (2) In this section, “academic freedom” means—
- (a) in relation to tertiary education providers, their freedom to determine—
    - (i) the contents of particular higher education courses and the manner in which they are taught, supervised or assessed,
    - (ii) the criteria for admission of students to higher education courses and to apply those criteria in particular cases, and
    - (iii) the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases;
  - (b) in relation to academic staff, their freedom within the law—
    - (i) to question and test received wisdom, and
    - (ii) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the tertiary education providers.

#### **Commencement Information**

- I32** S. 17 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I33** S. 17 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(c\)](#)

## **18 Institutional autonomy of tertiary education providers**

In exercising their functions under this Act, the Welsh Ministers and the Commission must have regard to the importance of protecting the freedom within the law of tertiary education providers in Wales to conduct their day to day management in an effective and competent way.

#### **Commencement Information**

- I34** S. 18 not in force at Royal Assent, see [s. 148\(2\)](#)  
**I35** S. 18 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(d\)](#)

### *Compatibility with charity law*

## **19 Compatibility with charity law and governing documents of tertiary education providers**

- (1) Nothing in this Act confers power on the Commission or on the Welsh Ministers to require the governing body of a tertiary education provider to do anything that is incompatible with—

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- (a) any legal obligation or legal restriction that applies to the governing body by virtue of the provider being a charity, or
  - (b) the governing documents of the provider.
- (2) For the purposes of subsection (1), the governing documents of a tertiary education provider are—
- (a) in the case of a provider established by Royal Charter—
    - (i) the provider’s Charter, and
    - (ii) any instrument relating to the conduct of the provider the making or amendment of which requires the approval of the Privy Council;
  - (b) in the case of a provider conducted by a higher education corporation (within the meaning given by section 90(1) of the [Further and Higher Education Act 1992 \(c. 13\)](#)), the corporation’s instrument of government and articles of government;
  - (c) in the case of a provider conducted by a further education corporation (within the meaning given by section 17(1) of the Further and Higher Education Act 1992), the corporation’s instrument of government and articles of government;
  - (d) in the case of a provider that is an institution designated under section 129 of the [Education Reform Act 1988 \(c. 40\)](#) or section 28 of the Further and Higher Education Act 1992, the provider’s instrument of government and articles of government;
  - (e) in the case of a provider that is a school, the school’s instrument of government (if any);
  - (f) in the case of a provider that is conducted by a company, the company’s memorandum and articles of association.

**Commencement Information**

**I36** S. 19 not in force at Royal Assent, see [s. 148\(2\)](#)

**I37** [S. 19](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(e\)](#)

*Welsh Ministers’ guidance and directions*

**20 Guidance**

In exercising its functions, the Commission must have regard to guidance given to it by the Welsh Ministers.

**Commencement Information**

**I38** S. 20 not in force at Royal Assent, see [s. 148\(2\)](#)

**I39** [S. 20](#) in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(f\)](#)

**21 The Welsh Ministers’ power to give general directions**

- (1) The Welsh Ministers may give the Commission general directions about the exercise of any of its functions.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1. (See end of Document for details)*

- (2) Directions under this section may be framed by reference to a particular course of study, but must not require the Commission to exercise a function in a way which prohibits or requires the provision of a particular course of study.
- (3) The directions must not be framed by reference to—
  - (a) a particular registered provider,
  - (b) a particular person other than a registered provider in receipt of financial resources provided or secured by the Commission under Part 3,
  - (c) particular parts of courses of study,
  - (d) particular programmes of research or innovation projects,
  - (e) the content of courses of study, programmes of research or innovation projects,
  - (f) the manner in which such courses, programmes or projects are taught, supervised or assessed,
  - (g) the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
  - (h) the criteria for the admission of students, or how they are applied.
- (4) Subsections (2) and (3) do not prevent directions under this section being framed by reference to courses of study or parts of courses of study being provided and assessed through the medium of Welsh.
- (5) Directions under this section may be framed by reference to an area of research or innovation but only if that area is specified in the Commission’s strategic plan approved under section 15.
- (6) Before giving a direction under this section, the Welsh Ministers must consult the Commission.
- (7) If the Welsh Ministers give a direction under this section, they must—
  - (a) publish the direction,
  - (b) report to Senedd Cymru that a direction has been given and lay a copy of the direction before the Senedd, and
  - (c) keep the direction under review.
- (8) The Commission must comply with a direction given under this section.

#### Commencement Information

**I40** S. 21 not in force at Royal Assent, see [s. 148\(2\)](#)

**I41** S. 21 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(g\)](#)

#### *Additional functions*

## 22 Additional functions of the Commission

- (1) The Welsh Ministers may, by regulations, confer on the Commission supplementary functions.
- (2) A “supplementary function” is a function that—
  - (a) is exercisable for the purposes of a function of the Welsh Ministers, and

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- (b) relates to—
- (i) the provision, or proposed provision, of tertiary education, or
  - (ii) the carrying out, or proposed carrying out, of research and innovation.
- (3) Subsections (4) and (5) apply where—
- (a) land or other property is or was used or held for the purposes of a tertiary education provider in Wales that is an institution within the higher education sector or the further education sector, and
  - (b) the Welsh Ministers are entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of an event.
- (4) The Welsh Ministers may direct that all or any of the Welsh Ministers’ functions in respect of the property are exercisable on their behalf by the Commission.
- (5) The Commission must exercise those functions in accordance with directions given by the Welsh Ministers.

**Commencement Information**

**I42** S. 22 not in force at Royal Assent, see [s. 148\(2\)](#)

**I43** S. 22 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(h\)](#)

*Dissolution of Higher Education Funding Council for Wales*

PROSPECTIVE

**23 Dissolution of the Higher Education Funding Council for Wales**

The Higher Education Funding Council for Wales ceases to exist.

**Commencement Information**

**I44** S. 23 not in force at Royal Assent, see [s. 148\(2\)](#)

**24 Transfer schemes**

Schedule 2 makes provision about schemes for the transfer of staff and property, rights and liabilities from the Higher Education Funding Council for Wales and the Welsh Ministers to the Commission.

**Commencement Information**

**I45** S. 24 not in force at Royal Assent, see [s. 148\(2\)](#)

**I46** S. 24 in force at 4.9.2023 by [S.I. 2023/919](#), [art. 2\(i\)](#)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 1.