



# Tertiary Education and Research (Wales) Act 2022

2022 asc 1

## PART 3

### SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH

#### *Funding the Commission*

#### **85 Power of the Welsh Ministers to fund the Commission**

- (1) The Welsh Ministers may provide such funding to the Commission as they consider appropriate for the exercise of the Commission's functions.
- (2) The Welsh Ministers may make funding under subsection (1) subject to terms and conditions which may (among other things)—
  - (a) enable the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period during which a sum due to the Welsh Ministers in accordance with any of the terms and conditions remains unpaid;
  - (c) enable the Welsh Ministers to require the Commission to enter into an outcome agreement with a person to whom the Commission proposes to provide financial resources.
- (3) In subsection (2)(c), “an outcome agreement” means an agreement between—
  - (a) the Commission, and
  - (b) the person to whom the Commission proposes to provide financial resources, that sets out the activities to be carried out by that person for the purposes of contributing to the implementation of the Commission's strategic plan approved under section 15.

- (4) An outcome agreement may be required under subsection (2)(c)—
- (a) in all cases where the Commission proposes to provide financial resources;
  - (b) in all cases where the Commission proposes to provide financial resources subject to specified exceptions;
  - (c) in those cases where the Commission proposes to provide financial resources to specified persons or to persons of a specified description;
  - (d) in those cases where the Commission proposes to provide financial resources for specified purposes or for purposes of a specified description;
  - (e) in those cases where the Commission proposes to provide financial resources above or below a specified amount.
- (5) In subsection (4), “specified” means specified in the terms and conditions.

## **86 Funding the Commission: limitations on terms and conditions**

- (1) Terms and conditions under section 85 relating to the provision of financial resources by the Commission to a person under section 88 or 89 (higher education), section 97 (further education or training) or section 105 (research and innovation) must not relate to activities carried on by a particular person unless they impose requirements that must be complied with—
- (a) in respect of every person, or every person of a specified class or description, and
  - (b) before financial resources of a specified amount or specified description are provided by the Commission in respect of activities carried on by a person.
- (2) In subsection (1), “specified” means specified in the terms and conditions.
- (3) Terms and conditions under section 85 relating to the provision of financial resources by the Commission must not be framed by reference to—
- (a) the criteria for the selection, appointment or dismissal of academic staff, and how they are applied, or
  - (b) the criteria for the admission of students, or how they are applied.
- (4) Terms and conditions under section 85 relating to the provision of financial resources by the Commission under section 105 (research and innovation) 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.
- (5) Terms and conditions under section 85 relating to the provision of financial resources by the Commission under section 88 or 89 (higher education) 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.
- (6) Terms and conditions under section 85 relating to the provision of financial resources by the Commission under section 88 or 89 (higher education) or section 105 (research and innovation) must not be framed by reference to—
- (a) particular parts of courses of study;
  - (b) particular programmes of research or innovation projects;
  - (c) the content of courses of study, programmes of research or innovation projects;

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- (d) the manner in which such courses, programmes or projects are taught, supervised or assessed.
- (7) Subsections (5) and (6) do not prevent terms and conditions being framed by reference to courses of study or parts of courses of study being provided and assessed through the medium of Welsh.

#### *Commission's funding policy*

### **87 Policy on funding powers**

- (1) The Commission must publish a statement of its policy on how it intends to exercise its funding powers.
- (2) In preparing the statement, the Commission must have regard to the principle that decisions about the provision or securing of financial resources should be made in a way that is transparent.
- (3) The Commission must keep the statement under review and may revise it.
- (4) Before publishing the statement or a revised statement, the Commission must consult such persons as it considers appropriate.
- (5) The Commission's funding powers are its powers to provide or secure financial resources under sections 88, 89, 97, 101, 103, 104 and 105.

#### *Funding of higher education*

### **88 Financial support to specified providers for higher education**

- (1) The Commission may provide financial resources to the governing body of a specified provider in respect of expenditure incurred, or to be incurred, by the governing body or by a collaborating body for the purposes of—
  - (a) the provision of higher education by, or on behalf of, the specified provider;
  - (b) the provision of facilities, and the carrying on of other activities, by or on behalf of the specified provider which its governing body considers it necessary or desirable to provide or carry on for the purposes of or in connection with higher education it provides or has provided on its behalf.
- (2) The Commission may also provide financial resources to any person in respect of expenditure incurred, or to be incurred, by the person for the purpose of the provision by any person of services for the purposes of, or in connection with, the provision of higher education by, or on behalf of, a specified provider.
- (3) In this section—
  - “collaborating body” (“*corff sy'n cydlafurio*”), in relation to a specified provider, means a person—
    - (a) to whom the governing body of the specified provider proposes to pay all or some of the financial resources provided to it under subsection (1), and
    - (b) who is providing, is proposing to provide or has provided higher education on behalf of the specified provider, or who is working, is

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proposing to work or has worked in collaboration with the provider for the purpose for which the financial resources are provided;  
 “specified provider” (“*darparwr penodedig*”) means a registered provider registered in a category specified for the purposes of this section in regulations made by the Welsh Ministers.

- (4) The Commission must give its consent before the governing body of the specified provider makes a payment to a collaborating body (see section 109 for further provision about the Commission’s consent).
- (5) The Welsh Ministers may, by regulations, provide that financial resources may not be provided under this section in respect of expenditure incurred or to be incurred by a person for the purposes of the provision of a course of initial teacher training unless the course satisfies requirements set out in the regulations.

## **89 Financial support for higher education courses specified in regulations**

- (1) The Welsh Ministers may, by regulations, specify a particular course of higher education or description of course of higher education for the purposes of this section (“an eligible course”).
- (2) Regulations under subsection (1) may describe a course by reference to (among other things)—
  - (a) requirements to be met by the course;
  - (b) the description of person providing the course;
  - (c) the qualification to which the course leads.
- (3) The Commission may provide financial resources to a person (“a provider”) in respect of expenditure incurred, or to be incurred, by the provider or by a collaborating body for the purpose of—
  - (a) the provision of an eligible course wholly or mainly in Wales;
  - (b) the provision of an eligible course to persons who are ordinarily resident in Wales.
- (4) In subsection (3), “collaborating body”, in relation to a provider, means a person—
  - (a) to whom the provider proposes to pay all or some of the financial resources provided to it under subsection (3), and
  - (b) who is providing, is proposing to provide or has provided an eligible course (or part of such a course) on behalf of the provider, or who is working, is proposing to work or has worked in collaboration with the provider for the purpose for which the financial resources are provided.
- (5) The Commission must give its consent before the provider makes a payment to a collaborating body (see section 109 for further provision about the Commission’s consent).

## **90 Financial support under sections 88 and 89: terms and conditions**

- (1) Financial resources may be provided by the Commission under section 88 or 89 on the terms and conditions that the Commission considers appropriate.
- (2) The terms and conditions may (among other things)—

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- (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (3) The terms and conditions must not relate to the application of any sums derived otherwise than from the Commission.
- (4) The terms and conditions in relation to financial resources provided under section 89(3)(a) to a person who is not a registered provider, must include a requirement that the person—
- (a) if given notice under section 126(1), has in place a learner protection plan approved by the Commission (under section 126(3) or (5)) on or before the date specified in the terms and conditions, and gives effect to the plan,
  - (b) if the person is a tertiary education provider in Wales, complies with the requirements contained in the Learner Engagement Code published under section 129(1) or any revised code published under section 129(3), and
  - (c) has regard to advice or guidance given by the Commission to the person (either specifically or to persons generally) in exercise of the Commission’s functions in this Act.

## **91 Financial support under sections 88 and 89: supplementary**

- (1) In exercising its functions under section 88 or 89 to provide financial resources to a person, the Commission must have regard to the desirability of not discouraging that person from maintaining or developing funding from other sources.
- (2) In exercising its functions under section 88 or 89 to provide financial resources to a person, the Commission must have regard (so far as it considers it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any tertiary education provider for whose activities financial resources are provided.

## **92 Financial support by Welsh Ministers for certain higher education courses**

- (1) The Welsh Ministers may secure the provision of financial resources to a person (“a provider”) in respect of expenditure incurred, or to be incurred, by the provider or by a collaborating body for the purpose of—
- (a) the provision of a relevant higher education course wholly or mainly in Wales;
  - (b) the provision of a relevant higher education course to persons who are ordinarily resident in Wales.
- (2) The Welsh Ministers may secure the provision of financial resources under subsection (1)—
- (a) by providing resources themselves;
  - (b) by making arrangements for the provision of resources by another person;
  - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Welsh Ministers).

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- (3) If the Welsh Ministers themselves provide financial resources under this section, they may impose such terms and conditions as they consider appropriate.
- (4) The terms and conditions may (among other things)—
- (a) enable the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period during which a sum due to the Welsh Ministers in accordance with any of the terms and conditions remains unpaid.
- (5) In this section—
- “collaborating body” (*“corff sy’n cydlafurio”*), in relation to a provider, means a person—
- (a) to whom the provider proposes to pay, with the consent of the Welsh Ministers, all or some of the financial resources provided to it under subsection (1), and
  - (b) who is providing, is proposing to provide or has provided a relevant higher education course (or part of such a course) on behalf of the provider, or who is working, is proposing to work or has worked in collaboration with the provider for the purpose for which the financial resources are provided;
- “relevant higher education course” (*“cwrs addysg uwch perthnasol”*) means a course within paragraph 1(g) or (h) of Schedule 6 to the [Education Reform Act 1988 \(c. 40\)](#) (courses in preparation for professional examinations at a higher level or providing education at a higher level).

#### *Further education and training*

### **93 Education and training for persons aged 16 to 19**

- (1) The Commission must secure the provision of proper facilities for Wales for—
- (a) further education suitable to the requirements of persons who are over compulsory school age but have not attained the age of 19, and
  - (b) training suitable to the requirements of such persons.
- (2) Facilities are proper if they are—
- (a) of a quantity sufficient to meet the reasonable needs of individuals,
  - (b) of a quality adequate to meet those needs, and
  - (c) sufficient to satisfy the entitlements conferred under section 33F of the [Learning and Skills Act 2000 \(c. 21\)](#).

### **94 Education and training for eligible persons over 19**

- (1) The Commission must secure the provision of proper facilities for Wales for relevant education and training for eligible persons that is suitable to their requirements.
- (2) Facilities are proper if they are—
- (a) of a quantity sufficient to meet the reasonable needs of individuals, and
  - (b) of a quality adequate to meet those needs.

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- (3) The Welsh Ministers must, by regulations, specify as relevant education and training for the purpose of subsection (1) a description of further education or training.
- (4) Regulations under subsection (3) may describe further education or training by reference to (among other things)—
  - (a) subject;
  - (b) level of study, including by reference to—
    - (i) the level of attainment which, in the opinion of the Welsh Ministers, is demonstrated by a qualification falling within level 1, 2 or 3 of the Credit and Qualifications Framework for Wales, or
    - (ii) another document specified in the regulations that sets out descriptions of levels of qualifications;
  - (c) type of qualification.
- (5) In subsection (4), "the Credit and Qualifications Framework for Wales" means the document with that title published by the Welsh Ministers (as updated from time to time) and which includes descriptions of levels of qualifications.
- (6) In forming an opinion for the purposes of subsection (4)(b)(i) and before specifying a document under subsection (4)(b)(ii), the Welsh Ministers may have regard, in particular, to advice or information relating to qualifications which is provided by Qualifications Wales.
- (7) An eligible person is a person who—
  - (a) has attained the age of 19, and
  - (b) falls within a description specified in regulations made by the Welsh Ministers (if any).
- (8) Regulations under subsection (7)(b)—
  - (a) may describe an eligible person by reference to (among other things)—
    - (i) age;
    - (ii) qualifications or other educational attainment;
    - (iii) status;
    - (iv) income;
  - (b) may specify different descriptions of eligible person in relation to different descriptions of further education or training.

## **95 Education and training for persons over 19**

- (1) The Commission must secure the provision of reasonable facilities for Wales for—
  - (a) further education suitable to the requirements of persons who have attained the age of 19, and
  - (b) training suitable to the requirements of such persons.
- (2) Facilities are reasonable if (taking account of the Commission's resources) the facilities are of such a quantity and quality that the Commission can reasonably be expected to secure their provision.

## **96 Requirements on Commission when securing further education and training**

- (1) In discharging the duties imposed on it by sections 93 to 95, the Commission must—

- (a) have regard to the places where facilities are provided, the character of facilities and the way they are equipped;
  - (b) have regard to the different abilities and aptitudes of different persons;
  - (c) have regard to the requirements of employers, employees and potential employees in relation to the education and training required in different sectors of employment;
  - (d) have regard to the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
  - (e) have regard to the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;
  - (f) have regard to facilities whose provision the Commission thinks might reasonably be secured by other persons (including provision secured by local authorities under Part 2 of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#));
  - (g) make the best use of the Commission’s resources and in particular avoid provision which might give rise to disproportionate expenditure.
- (2) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.

## **97 Financial support for further education or training**

- (1) The Commission or the Welsh Ministers may secure the provision of financial resources to—
- (a) persons for the purpose of the provision or proposed provision by them or by a collaborating body (within the meaning given by subsection (3)) of further education or training wholly or mainly in Wales;
  - (b) persons for the purpose of the provision or proposed provision by them or by a collaborating body (within the meaning given by subsection (3)) of further education or training to persons who are ordinarily resident in Wales;
  - (c) persons for the purpose of the provision or proposed provision by them of goods or services in connection with the provision by them or others of further education or training wholly or mainly in Wales;
  - (d) persons who are ordinarily resident in Wales and who are receiving or proposing to receive further education or training;
  - (e) persons who are not ordinarily resident in Wales and who are receiving or proposing to receive further education or training in Wales;
  - (f) tertiary education providers in Wales that are institutions within the further or higher education sector for the purpose of the provision or proposed provision by them of secondary education to persons of compulsory school age;
  - (g) persons carrying out means tests under arrangements made under section 100.
- (2) The Commission or the Welsh Ministers may secure the provision of financial resources under subsection (1)—
- (a) by providing resources itself or themselves;
  - (b) by making arrangements for the provision of resources by another person;
  - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Commission or the Welsh Ministers).



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- (3) A person (“a provider”) may pay all or some of the financial resources provided to the provider under subsection (1)(a) or (b) to another person (“a collaborating body”) if subsection (4) applies.
- (4) This subsection applies if the collaborating body is providing, is proposing to provide or has provided further education or training on behalf of the provider, or is working, is proposing to work or has worked in collaboration with the provider for the purpose for which the financial resources are secured.
- (5) The Commission (in the case of financial resources secured by it) or the Welsh Ministers (in the case of financial resources secured by them) must give their consent before the provider makes a payment to a collaborating body (see section 109 for further provision about the Commission’s consent).
- (6) The Commission may not provide its financial resources under subsection (1)(a) or (b), or make arrangements for a local authority to provide such resources under subsection (2)(b), to the governing body of a maintained school in Wales for the purpose of, or for a purpose connected with, the provision by the school of education suitable to the requirements of persons over compulsory school age (for provision as to the funding of school sixth-forms, see section 101).
- (7) But the Commission may provide its financial resources under this subsection, or make arrangements for a local authority to provide such resources, to the governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age for the purpose of innovative activities.
- (8) An innovative activity is an activity that—
  - (a) in the Commission’s opinion will contribute to the raising of standards of tertiary education, and
  - (b) is described in a document prepared by the Commission and approved by the Welsh Ministers.

## **98 Financial support for further education or training: further provision**

- (1) In exercising the power under section 97(1)(d) or (e), the Commission or the Welsh Ministers may secure the provision of financial resources by reference to any fees or charges payable by the person receiving or proposing to receive the education or training or to any other matter (such as transport or childcare).
- (2) The Welsh Ministers may, by regulations, provide that the provision of financial resources for specified purposes must only be secured under section 97(1)(a) or (b) to registered providers in specified categories.
- (3) Regulations under subsection (2) may provide for exceptions for specified courses of further education or training or specified descriptions of such courses; and a course may be described by reference to (among other things)—
  - (a) requirements to be met by the course;
  - (b) the description of person providing the course;
  - (c) the qualification to which the course leads.
- (4) In subsections (2) and (3), “specified” means specified in the regulations.

## **99 Financial resources for further education or training: terms and conditions**

- (1) If the Commission itself, or the Welsh Ministers themselves, provide financial resources under section 97, they may impose such terms and conditions as they consider appropriate.
- (2) The terms and conditions may (among other things)—
  - (a) enable the Commission or the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period in which a sum due to the Commission or the Welsh Ministers in accordance with any of the terms and condition remains unpaid;
  - (c) require a person providing or proposing to provide education or training (“the provider”) to make arrangements providing for all or any of the following—
    - (i) for the provider to charge fees by reference to specified criteria;
    - (ii) for the provider to make awards by reference to specified criteria;
    - (iii) for the provider to recover amounts from persons receiving education or training or from employers (or from both);
    - (iv) for amounts to be determined by reference to specified criteria where provision is made under sub-paragraph (iii);
    - (v) for specified exemptions to operate where provision is made under sub-paragraph (iii).
- (3) In subsection (2), “specified” means specified in the terms and conditions.
- (4) The terms and conditions must prohibit a person providing, or proposing to provide, further education or training suitable to the requirements of persons who are over compulsory school age but have not attained the age of 19 from charging persons of that age who are receiving the further education or training.
- (5) The terms and conditions must also prohibit a person providing, or proposing to provide, relevant education and training suitable to the requirements of eligible persons from charging eligible persons who are receiving that education or training; in this subsection “relevant education and training” and “eligible persons” have the same meaning as in section 94.
- (6) The Welsh Ministers may, by regulations, provide for exceptions to the requirement in subsection (4) or (5).
- (7) Terms and conditions imposed by the Commission in relation to financial resources provided under section 97(1)(a) to a person who is not a registered provider, must—
  - (a) require the person, if given notice under section 126(1), to have in place a learner protection plan approved by the Commission (under section 126(3) or (5)) on or before the date specified in the terms and conditions, and to give effect to the plan;
  - (b) require the person, if the person is a tertiary education provider in Wales, to comply with the requirements contained in the Learner Engagement Code published under section 129(1) or any revised code published under section 129(3);
  - (c) require the person to have regard to advice or guidance given by the Commission (either specifically or to persons generally) in exercise of the Commission’s functions in this Act.

- (8) If the Commission has made arrangements under section 97(2)(b) for another person to provide the Commission’s financial resources, the Commission—
- (a) may require that person to provide the resources subject to such terms and conditions that the Commission considers appropriate (including terms and conditions of a kind that could be imposed under subsection (2)), and
  - (b) must require that person to provide the resources subject to the terms and conditions described in subsections (4) to (7).

## **100 Means tests**

- (1) The Commission or the Welsh Ministers may—
- (a) carry out means tests;
  - (b) arrange for other persons to carry out means tests.
- (2) The Commission and the Welsh Ministers may take the results of means tests carried out under subsection (1) into account in exercising the power under section 97(1)(d) or (e).

## **101 School sixth-forms**

- (1) The Commission may make a grant to a local authority—
- (a) on the condition that the grant be applied as part of the authority’s schools budget for a funding period, and
  - (b) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons over compulsory school age.
- (2) A grant made under this section may be made on terms and conditions in addition to the condition mentioned in subsection (1)(a) (including terms and conditions of a kind which could be imposed under section 99(2)).
- (3) The governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age must comply with the requirements contained in the Learner Engagement Code published under section 129(1) or any revised code published under section 129(3).
- (4) The following must have regard to advice or guidance given by the Commission (either specifically or to persons generally) in exercise of the Commission’s functions in this Act—
- (a) a local authority in receipt of a grant under this section, and
  - (b) the governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age.
- (5) In this section—

“funding period” (“*cyfnod cyllido*”) means a financial year or, if some other period is prescribed in relation to Wales under subsection (1B) of section 45 of the [School Standards and Framework Act 1998 \(c. 31\)](#) (maintained schools to have budget shares), that other period;

“schools budget” (“*cyllideb ysgolion*”) has the same meaning as in section 45A(2) of the [School Standards and Framework Act 1998](#) (determination of specified budgets of local authority).

## 102 Persons with additional learning needs

- (1) In exercising its functions under the provisions set out in subsection (2), the Commission must have regard to—
- (a) the needs of persons with additional learning needs;
  - (b) the desirability of facilities being available which would assist the discharge of duties under the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#).
- (2) The provisions are—
- (a) section 93 (education and training for persons aged 16 to 19);
  - (b) section 94 (education and training for eligible persons over 19);
  - (c) section 95 (education and training for persons over 19);
  - (d) section 97(1)(a) to (e) and (7) (financial support for further education or training);
  - (e) section 103(1) (financial support for provision of information, advice, guidance and to form links with employers);
  - (f) section 103(2) (financial support for Welsh medium education and teaching Welsh) except in so far as the provision of tertiary education and the teaching referred to in that subsection consists of higher education.

*Financial support for other activities connected to tertiary education*

## 103 Financial support for other activities connected to tertiary education

- (1) The Commission or the Welsh Ministers may secure the provision of financial resources for the purpose of, or in connection with—
- (a) the provision or proposed provision of information, advice or guidance about relevant education or connected matters;
  - (b) the provision or proposed provision of information, advice or guidance to persons ordinarily resident in Wales about education or training outside Wales or connected matters;
  - (c) the provision or proposed provision of facilities designed to form links between (on the one hand) employers and (on the other) persons who provide or receive relevant education.
- (2) The Commission may secure the provision of financial resources for—
- (a) the purpose of providing, through the medium of Welsh, relevant education that is tertiary education;
  - (b) the purpose of teaching Welsh by means of relevant education that is tertiary education;
  - (c) other purposes connected to those in paragraphs (a) and (b).
- (3) In subsections (1) and (2), “relevant education” means—
- (a) Welsh tertiary education, or
  - (b) other education or training provided wholly or mainly in Wales or to persons who are ordinarily resident in Wales.
- (4) The Commission or the Welsh Ministers may secure the provision of financial resources under subsection (1), and the Commission may secure the provision of financial resources under subsection (2)—

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- (a) by providing resources itself or themselves;
  - (b) by making arrangements for the provision of resources by another person;
  - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Commission or the Welsh Ministers).
- (5) The Commission may not provide its financial resources under subsection (2), or make arrangements for a local authority to provide such resources under subsection (4)(b), to the governing body of a maintained school in Wales for the purpose of, or for a purpose connected with, the provision by the school of education suitable to the requirements of persons over compulsory school age (for provision as to the funding of school sixth-forms, see section 101).
- (6) If the Commission itself, or the Welsh Ministers themselves, provide financial resources under subsection (1) or (2), they may impose such terms and conditions as they consider appropriate.
- (7) The terms and conditions may (among other things)—
- (a) enable the Commission or the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period in which a sum due to the Commission or the Welsh Ministers in accordance with any of the terms and condition remains unpaid.
- (8) If the Commission has made arrangements under subsection (4) 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 (including terms and conditions of a kind that could be imposed under subsection (7)).

#### *Financial support for apprenticeships*

### **104 Financial support for apprenticeships**

- (1) The Commission may provide financial resources to a person in respect of expenditure incurred, or to be incurred—
- (a) by the person or by a collaborating body (within the meaning given by subsection (2)) for or in connection with the provision of an approved Welsh apprenticeship;
  - (b) by the person for or in connection with the preparation of an apprenticeship framework.
- (2) A person (“a provider”) may pay all or some of the financial resources provided to the provider under subsection (1)(a) to another person (“a collaborating body”) if subsection (3) applies.
- (3) This subsection applies if the collaborating body is providing, is proposing to provide or has provided an approved Welsh apprenticeship on behalf of the provider, or is working, is proposing to work, or has worked in collaboration with the provider for the purpose for which the financial resources are provided.

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- (4) The Commission must give its consent before the provider makes a payment to a collaborating body (see section 109 for further provision about the Commission’s consent).
- (5) The Welsh Ministers may, by regulations, provide that the Commission must only provide financial resources under subsection (1)(a) to tertiary education providers registered in categories specified in the regulations.
- (6) Regulations under subsection (5) may provide for exceptions to the requirement to be registered; and an exception may be framed by reference to (among other things)—
  - (a) requirements to be met by an approved Welsh apprenticeship;
  - (b) the description of person providing an approved Welsh apprenticeship;
  - (c) qualifications which form part of an approved Welsh apprenticeship.
- (7) Financial resources may be provided by the Commission under this section on the terms and conditions that it considers appropriate.
- (8) The terms and conditions may (among other things)—
  - (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (9) Terms and conditions imposed by the Commission in relation to financial resources provided under subsection (1)(a) to a person who is not a registered provider, must—
  - (a) require the person, if given notice under section 126(1), to have in place a learner protection plan approved by the Commission (under section 126(3) or (5)) on or before the date specified in the terms and conditions, and to give effect to the plan;
  - (b) require the person, if the person is a tertiary education provider in Wales, to comply with the requirements contained in the Learner Engagement Code published under section 129(1) or any revised code published under section 129(3);
  - (c) require the person to have regard to advice or guidance given by the Commission (either specifically or to persons generally) in exercise of the Commission’s functions in this Act.
- (10) When providing financial resources to a person under subsection (1)(a) the Commission must have regard—
  - (a) to the desirability of not discouraging that person from maintaining or developing funding from other sources, and
  - (b) (so far as it considers it appropriate to do so in light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any tertiary education provider for whose activities financial resources are provided.
- (11) In this section—

“apprenticeship framework” (*“fframwaith prentisiaeth”*) has the meaning given by section 114;

“approved Welsh apprenticeship” (“*prentisiaeth Gymreig gymeradwy*”) has the meaning given by section 111.

### *Research and innovation*

## **105 Financial support for research and innovation**

- (1) The Commission may provide financial resources to the governing body of a specified provider in respect of expenditure incurred, or to be incurred, by the governing body or by a collaborating body for the purposes of, or in connection with, research or innovation.
- (2) The Commission may also provide financial resources to any person in respect of expenditure incurred, or to be incurred, by the person for the purpose of the provision by any person of services for the purposes of, or in connection with, the carrying out of research or innovation by a specified provider.
- (3) In exercising its functions under this section to provide financial resources to a specified provider, the Commission must have regard—
  - (a) to the desirability of not discouraging that provider from maintaining or developing funding from other sources, and
  - (b) (so far as it considers it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of the provider.
- (4) In this section—

“collaborating body” (“*corff sy’n cydlafurio*”), in relation to a specified provider, means a person—

  - (a) to whom the governing body of the specified provider proposes to pay all or some of the financial resources provided to it under subsection (1), and
  - (b) who is carrying out, is proposing to carry out or has carried out research or innovation on behalf of the specified provider, or who is working, is proposing to work or has worked, in collaboration with the provider for the purpose for which the financial resources are provided;

“specified provider” (“*darparwr penodedig*”) means a registered provider registered in a category specified for the purposes of this section in regulations made by the Welsh Ministers.
- (5) The Commission must give its consent before the governing body of the specified provider makes a payment to a collaborating body (see section 109 for further provision about the Commission’s consent).

## **106 Financial support for research and innovation: terms and conditions**

- (1) Financial resources may be provided by the Commission under section 105 on the terms and conditions that the Commission considers appropriate.
- (2) The terms and conditions may (among other things)—
  - (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;

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- (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (3) The terms and conditions must not relate to the application of any sums derived otherwise than from the Commission.
- (4) When—
  - (a) deciding to provide financial resources under section 105, and
  - (b) determining any terms and conditions of financial resources provided under that section,
 the Commission must have regard to the principle that decisions on individual research or innovation proposals are best taken following an evaluation of the quality and likely impact of the proposals (such as a peer review process).

#### **107 The Commission’s other functions in relation to research and innovation**

- (1) The Commission must—
  - (a) promote awareness and understanding in Wales of the research and innovation activities it funds;
  - (b) disseminate in Wales the results of the research and innovation activities it funds;
  - (c) facilitate the practical application in Wales of the results of research and innovation activities it funds.
- (2) The Commission must monitor how financial resources provided under section 105 are used.
- (3) The Commission must include in its annual report (prepared under paragraph 16 of Schedule 1) the conclusions it reaches from that monitoring as to the extent to which the activities it funds, for the financial year to which the report relates—
  - (a) are achieving successful results,
  - (b) are being delivered effectively, and
  - (c) represent value for money.

*Terms and conditions: quality, governance etc., welfare and equal opportunities*

#### **108 Financial support under sections 89, 97 and 104: further provision about terms and conditions**

- (1) When determining the terms and conditions to be imposed in relation to financial resources provided under section 89(3), 97(1)(a) or (b) or 104(1)(a) to a provider who is not a registered provider, the Commission must consider whether to impose terms and conditions relating to—
  - (a) the quality of the relevant education provided by or on behalf of the provider;
  - (b) the effectiveness of the governance and management of the provider (including its financial management);
  - (c) the financial sustainability of the provider;
  - (d) the effectiveness of the provider’s arrangements for supporting and promoting the welfare of its students and staff;



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- (e) the delivery of measurable outcomes to further each of the aims in subsection (2).
- (2) The aims are—
- (a) increasing participation in relevant education provided by or on behalf of the provider by persons who are members of under-represented groups;
  - (b) retention of students who are members of under-represented groups to the end of courses of relevant education provided by or on behalf of the provider;
  - (c) reduction of any gaps of attainment in relevant education provided by or on behalf of the provider between different groups of students specified in the terms and conditions where the differences arise from social, cultural, economic or organisational factors;
  - (d) provision of support for students finishing courses of relevant education provided by or on behalf of the provider who are members of under-represented groups to continue their tertiary education, find employment or start a business.
- (3) In this section—
- “relevant education” (“*addysg berthnasol*”) means—
- (a) where financial resources are provided under section 89(3)(a) or (b), the eligible course (within the meaning given by section 89(1)) in respect of which the resources are provided;
  - (b) where financial resources are provided under section 97(1)(a) or (b), the further education or training in respect of which the resources are provided;
  - (c) where financial resources are provided under section 104(1)(a), the approved Welsh apprenticeship (within the meaning given by section 111) in respect of which the resources are provided;
- “under-represented groups” (“*grwpiau sydd heb gynrychiolaeth ddigonol*”) are groups specified in the terms and conditions that are under-represented in relevant education as a result of social, cultural, economic or organisational factors.

#### *Collaborating bodies: consent*

### **109 Consent for payments to collaborating bodies**

- (1) The Commission may give consent for the purpose of section 88(4), 89(5), 97(5), 104(4) or 105(5) generally or in relation to a specific payment or a specific collaborating body.
- (2) The Commission may give consent for the purpose of any of those provisions subject to conditions.
- (3) The conditions must include a requirement that the person to whom financial resources are being provided or secured under section 88, 89, 97, 104 or 105 (as the case may be) makes arrangements for the purpose of ensuring that the resources paid to a collaborating body are managed efficiently and used in a way that provides value for money.

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- (4) The Commission may withdraw, suspend or vary consent given for the purpose of any of those provisions, and where consent has been given generally, it may do so generally or in relation to a specific payment or a specific collaborating body.
- (5) Before withdrawing, varying or suspending consent, the Commission must give notice to the person to whom financial resources are being provided or secured under section 88, 89 97, 104 or 105 (as the case may be).
- (6) The notice must state—
  - (a) the reasons for proposing to withdraw, vary or suspend consent,
  - (b) the period during which representations about the proposed action may be made, and
  - (c) the way in which those representations may be made.
- (7) The Commission must have regard to any representations made in accordance with the notice in deciding whether to withdraw, vary or suspend consent.
- (8) The requirements in subsections (5) to (7) do not apply if the Commission is satisfied that it is necessary to withdraw, vary or suspend consent before it would be practicable to comply with those requirements.
- (9) The Commission must keep consent given for the purpose of section 88(4), 89(5), 97(5), 104(4) or 105(5) under review.

#### *Financial support directions*

### **110 Financial support directions**

- (1) The Welsh Ministers may give the Commission financial support directions in relation to a relevant person.
- (2) Financial support directions may be given only if it appears to the Welsh Ministers that the financial affairs of the relevant person have been or are being mismanaged.
- (3) “Financial support directions” are such directions about the provision or securing of financial resources under section 88, 89, 97, 101, 103, 104 or 105 to a relevant person as the Welsh Ministers consider necessary or expedient because of the mismanagement.
- (4) In this section, “relevant person” means—
  - (a) a registered provider;
  - (b) a person (other than a registered provider or the governing body of a maintained school) in receipt of financial resources provided or secured by the Commission under section 88(2), 89, 97, 101, 103, 104 or 105(2).
- (5) Before giving a financial support direction, the Welsh Ministers must consult the Commission and the relevant person unless the Welsh Ministers are satisfied that—
  - (a) it is necessary to give the direction before it would be practicable to consult the Commission and the relevant person, or
  - (b) consultation would defeat the object of giving the direction.
- (6) If the Welsh Ministers give a financial support direction, they must—
  - (a) publish the direction,

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- (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.
- (7) The Commission must comply with a financial support direction given under this section.