

WELSH STATUTORY INSTRUMENTS

2023 No. 919 (W. 144) (C. 52)

EDUCATION, WALES

The Tertiary Education and Research (Wales) Act 2022
(Commencement No. 2 and Transitory Provision) Order 2023

Made - - - - 21 August 2023

The Welsh Ministers, in exercise of the powers conferred by section 148(2) and (3) of the Tertiary Education and Research (Wales) Act 2022(1), make the following Order:

Title and interpretation

1.—(1) The title of this Order is the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023.

(2) In this Order “the Act” means the Tertiary Education and Research (Wales) Act 2022, and other words and expressions have the same meaning as they have in the Act.

Commencement Information

II Art. 1 in force at made date

Provisions coming into force on 4 September 2023

2. The following provisions of the Act come into force on 4 September 2023—
- (a) section 13 (statement of strategic priorities);
 - (b) section 14 (strategic plan for the Commission);
 - (c) section 17 (academic freedom of higher education providers and staff);
 - (d) section 18 (institutional autonomy of tertiary education providers);
 - (e) section 19 (compatibility with charity law and governing documents of tertiary education providers);
 - (f) section 20 (guidance);
 - (g) section 21 (Welsh Ministers’ power to give general directions);
 - (h) section 22 (additional functions of the Commission);

- (i) section 24 (transfer schemes);
- (j) section 25(7) (the register);
- (k) section 30(1) (proportionate conditions);
- (l) section 34 (power to provide for further mandatory ongoing registration conditions);
- (m) section 46 (requirements of a fee limit statement);
- (n) section 85(1), (2)(a) and (b) (power of the Welsh Ministers to fund the Commission);
- (o) section 87(2) (policy on funding powers);
- (p) section 89(1) and (2) (financial support for higher education courses specified in regulations);
- (q) section 130 (information and advice from the Commission and information from the Welsh Ministers);
- (r) section 132(1)(a) to (e), (g) to (k) and (2) (powers to share information);
- (s) section 141 (data protection);
- (t) section 142 (publication);
- (u) section 147 (minor and consequential amendments);
- (v) in Schedule 1 (Commission for Tertiary Education and Research)—
 - (i) paragraph 5 in so far as not already in force;
 - (ii) paragraph 7 in so far as not already in force;
 - (iii) paragraph 8(1) to (3), (6) to (8) and (10);
 - (iv) paragraph 9(1) to (3) and (4)(a);
 - (v) paragraph 10 in so far as not already in force;
 - (vi) paragraph 11(1) in so far as not already in force, (3), (4) and (6) to (10);
 - (vii) paragraph 13;
 - (viii) paragraph 14;
 - (ix) paragraph 15(1)(a);
 - (x) paragraph 18;
 - (xi) paragraph 19;
 - (xii) paragraph 20;
 - (xiii) paragraph 21;
 - (xiv) paragraph 22;
- (w) Schedule 2 (transfers of property and staff to the Commission);
- (x) in Schedule 4 (minor and consequential amendments)—
 - (i) paragraph 20(1);
 - (ii) paragraph 20(2)(a);
 - (iii) paragraph 28(a).

Commencement Information

I2 Art. 2 in force at made date

Provisions coming into force on 4 September 2023 to the extent specified

3. The following provisions of the Act come into force on 4 September 2023 to the extent specified in relation to each such provision—

- (a) section 2 (promoting life-long learning), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 2 into force);
- (b) section 3 (promoting equality of opportunity), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duties under section 3 into force);
- (c) section 4 (encouraging participation in tertiary education), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duties under section 4 into force);
- (d) section 5 (promoting continuous improvement in tertiary education), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 5 into force);
- (e) section 6(1)(a) (promotion of research and innovation), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 6(1)(a) into force);
- (f) section 7 (promoting collaboration and coherence in tertiary education and research), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duties under section 7 into force);
- (g) section 8 (contributing to a sustainable and innovative economy), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 8 into force);
- (h) section 9(1) (promoting tertiary education through the medium of Welsh), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duties under section 9(1) into force);
- (i) section 10 (promoting a civic mission), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 10 into force);
- (j) section 11 (promoting a global outlook), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duties under section 11 into force);
- (k) section 12 (promoting collaboration between providers of tertiary education and trade unions), for the purposes of preparing a strategic plan under section 14 (but not so as to bring the duty under section 12 into force);
- (l) section 25, for the purposes of making regulations under that section;
- (m) section 25(1), (4), (6)(a) and (6)(b) (in so far as it relates to subsections (4) and (5)), for the purposes of section 25(7) (but not so as to bring any duties under those subsections into force);
- (n) section 25(4)(d), for the purposes of section 27(2) (initial registration conditions) (but not so as to bring the duty under section 25(4)(d) into force);
- (o) section 25(9)(a) and (10) (in so far as subsection (10) relates to subsection (9)(a));
- (p) section 27 (initial registration conditions), for the purposes of making regulations under that section;
- (q) section 27(1), (2) and (8), for the purposes of enabling the Commission to prepare the document referred to in section 27(2) (but not so as to bring the duty under section 27(2) into force);
- (r) section 28(1) to (3) (general ongoing registration conditions), for the purposes of enabling the Commission to take steps towards determining the general ongoing registration

- conditions pursuant to section 28(1) (but not so as to bring the duties under section 28(1) into force);
- (s) section 31(1)(a) to (f), (i), (j) and (2) (mandatory ongoing registration conditions for each registered provider), for the purposes of enabling the Commission to take steps towards determining the general ongoing registration conditions pursuant to section 28(1) (but not so as to bring the duty under section 31(1) into force);
 - (t) section 32 (mandatory ongoing registration condition on fee limits), for the purposes of making regulations under that section;
 - (u) section 32 and section 33 (mandatory ongoing registration conditions on equal opportunity), for the purposes of enabling the Commission to take steps towards determining the general ongoing registration conditions pursuant to section 28(1) (but not so as to bring any duties under sections 32 and 33 into force);
 - (v) section 35 (Commission duty to give guidance about ongoing registration conditions), for the purposes of enabling the Commission to prepare guidance for registered providers about ongoing registration conditions (but not so as to bring the duty under that section into force);
 - (w) section 36 (Commission duty to monitor compliance with ongoing registration conditions), for the purposes of enabling the Commission to take steps towards determining how it will monitor compliance with ongoing registration conditions by registered providers (but not so as to bring the duty under that section into force);
 - (x) section 41 (de-registration), for the purposes of making regulations under that section;
 - (y) section 43 (voluntary de-registration and de-registration with consent), for the purposes of making regulations under that section;
 - (z) section 47(1) to (5) (approval of fee limit statement), for the purposes of enabling the Commission to take steps towards determining the fee limit condition pursuant to section 32(3)(a) and the general ongoing registration conditions pursuant to section 28(1) (but not so as to bring any duties under section 47(2) or (4) into force);
 - (aa) section 54 (assessment of quality of higher education), for the purposes of making regulations under that section;
 - (bb) section 57 (duty of the Chief Inspector to inspect and report), for the purposes of making regulations under that section;
 - (cc) section 83 (designation of other providers of tertiary education), for the purposes of making regulations under that section;
 - (dd) section 84 (interpretation of Part 2), except for the definition of “excess fees”;
 - (ee) section 87(1) and (5), except for the references to sections 88 and 105 in subsection (5), for the purposes of preparing a statement under section 87(1) (but not so as to bring the duty under that section into force);
 - (ff) section 88 (financial support to specified providers for higher education), for the purposes of making regulations under that section;
 - (gg) section 89(3) to (5), for the purposes of preparing a statement under section 87;
 - (hh) section 97 (financial support for further education or training), for the purposes of preparing a statement under section 87;
 - (ii) section 101 (school sixth-forms), for the purposes of preparing a statement under section 87;
 - (jj) section 103 (financial support for other activities connected to tertiary education), for the purposes of preparing a statement under section 87;

- (kk) section 104 (financial support for apprenticeships), for the purposes of preparing a statement under section 87;
- (ll) section 105 (financial support for research and innovation), for the purposes of making regulations under that section;
- (mm) in Schedule 1, paragraph 9(5), except in so far as it refers to paragraph 6(5).

Commencement Information

I3 Art. 3 in force at made date

Provisions coming into force on 1 April 2024

4. The following provisions of the Act come into force on 1 April 2024—
- (a) sections 2 to 5 and 7 to 12 in so far as not already in force;
 - (b) section 16 (review of strategic plan);
 - (c) section 85 in so far as not already in force;
 - ^{F1}(d)
 - ^{F2}(e)

Textual Amendments

- F1** Art. 4(d) omitted (15.3.2024) by virtue of [The Tertiary Education and Research \(Wales\) Act 2022 \(Commencement No. 2 and Transitory Provision\) \(Amendment\) Order 2024 \(S.I. 2024/217\)](#), arts. 1(2), 3
- F2** Art. 4(e) omitted (15.3.2024) by virtue of [The Tertiary Education and Research \(Wales\) Act 2022 \(Commencement No. 2 and Transitory Provision\) \(Amendment\) Order 2024 \(S.I. 2024/217\)](#), arts. 1(2), 3

Commencement Information

I4 Art. 4 in force at made date

Provisions coming into force on 1 April 2024 to the extent specified

5. Section 94 (education and training for eligible persons over 19) comes into force on 1 April 2024 for the purposes of making regulations under that section.

Commencement Information

I5 Art. 5 in force at made date

Provisions coming into force on 1 April 2024 subject to transitory arrangements

6.—(1) Section 15 (approval, publication and implementation of strategic plan) comes into force on 1 April 2024 subject to the modification set out in paragraph (2) which applies during the period beginning with 1 April 2024 and ending on 16 December 2024.

(2) Section 15(1) is to be read as if the words “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

Changes to legislation: There are currently no known outstanding effects for the The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023. (See end of Document for details)

on which the statement is published under section 13(1)” read as “the first strategic plan it prepares under section 14 to the Welsh Ministers for their approval by 15 December 2024”.

Commencement Information
I6 Art. 6 in force at made date

21 August 2023

Jeremy Miles
Minister for Education and Welsh Language, one
of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made by the Welsh Ministers and brings into force provisions of the Tertiary Education and Research (Wales) Act 2022 (“the Act”). This is the second commencement order made under the Act.

This Order brings into force the provisions listed in articles 2 and 3 on 4 September 2023 and the provisions listed in articles 4 to 6 on 1 April 2024.

The provisions listed in articles 2 and 4 are brought into force in full and those in articles 3 and 5 are brought into force to the extent specified. Article 6 brings into force section 15 of the Act, which is subject to transitory provision.

Articles 2(v)(i) to (xiv), 3(mm) and 4(d)(i) to (v) bring into force most provisions of Schedule 1 to the Act that are not already in force. Schedule 1 makes provision about the Commission for Tertiary Education and Research (“the Commission”). That is provision such as membership, proceedings, and supplementary powers. The majority of those provisions come into force on 4 September 2023 but provisions relating to the associate Commission staff member are brought into force on 1 April 2024.

Article 3(a) to (k) brings into force the Commission’s strategic duties set out in sections 2 to 5, 6(1)(a), 7, 8, 9(1) and 10 to 12 of the Act for the purposes only of enabling the Commission to prepare a strategic plan under section 14.

Article 4(a) brings into force the Commission’s strategic duties in sections 2 to 5 and 7 to 12 of the Act in so far as they are not already in force.

Article 2(a) brings into force section 13 of the Act, which places the Welsh Ministers under a duty to publish a statement setting out their strategic priorities for and in connection with tertiary education and research and innovation.

Article 2(b) brings into force section 14 of the Act, which places the Commission under a duty to prepare a strategic plan setting out how it intends to discharge its strategic duties under sections 2 to 12 of the Act and address the priorities set out in the Welsh Ministers’ statement published under section 13.

Article 6 brings into force section 15 of the Act, which places the Commission under a duty to send a strategic plan prepared under section 14 to the Welsh Ministers for their approval. However, section 15 is brought into force subject to a modification in respect of the timing for submission of the first strategic plan so that it must be sent to the Welsh Ministers for their approval by 15 December 2024.

Article 4(b) brings into force section 16 of the Act, which places the Commission under a duty to review its published strategic plan if the Welsh Ministers amend their statement of priorities. The section enables the Commission to review its plan at any other time.

Article 2(c) brings into force section 17 of the Act, which places the Welsh Ministers and the Commission under a duty to have regard to the importance of protecting the academic freedom of providers of higher education and their academic staff.

Article 2(d) brings into force section 18 of the Act, which places the Welsh Ministers and the Commission under a duty to have regard to the importance of protecting the institutional autonomy of tertiary education providers.

Changes to legislation: *There are currently no known outstanding effects for the The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023. (See end of Document for details)*

Article 2(e) brings into force section 19 of the Act, which provides that nothing in the Act enables the Commission or the Welsh Ministers to require the governing body of a tertiary education provider to do anything incompatible with its charity law obligations or its governing documents.

Article 2(f) brings into force section 20 of the Act, which places the Commission under a duty to have regard to guidance given to it by the Welsh Ministers.

Article 2(g) brings into force section 21 of the Act, which enables the Welsh Ministers to give general directions to the Commission about the exercise of any of its functions.

Article 2(h) brings into force section 22 of the Act, which enables the Welsh Ministers to make regulations conferring supplementary functions on the Commission.

Article 2(i) and (w) brings into force section 24 of, and Schedule 2 to, the Act. Schedule 2 enables the Welsh Ministers to make schemes providing for the transfer to the Commission of staff, property, rights and liabilities.

Articles 2(j) to (m) and 3(l) to (z) bring provisions of Chapter 1 of Part 2 of the Act into force to enable the Commission to undertake preparatory work in respect of the registration of tertiary education providers.

Article 2(j) brings into force section 25(7) of the Act, which relates to applications for registration with the Commission. Article 3(m) also brings into force section 25(1), (4) and (6)(a) and (b) (so far as it relates to subsections (4) and (5)) for the purposes of section 25(7).

Article 3(l) brings into force section 25 of the Act to enable the Welsh Ministers to make regulations relating to categories of registration and to specify the information that must be contained in a provider's entry in the register.

The Commission must register a tertiary education provider in a category of the register if it satisfies the conditions in section 25(4) of the Act. The conditions include, at paragraph (d), a requirement to satisfy relevant initial registration conditions. Section 27(2) of the Act obliges the Commission to publish a document specifying the requirements to be met in relation to the initial conditions of registration. Article 3(n) and (q) brings into force, respectively, section 25(4)(d) and section 27(1), (2) and (8) for the purposes of enabling the Commission to prepare that document.

Article 3(p) brings into force section 27 of the Act to enable the Welsh Ministers to make regulations relating to further initial conditions of registration.

Article 3(r) brings into force section 28(1) to (3) of the Act to enable the Commission to take steps towards determining the general ongoing registration conditions.

Article 3(o) brings into force section 25(9)(a) and (10) (so far as subsection (10) relates to subsection (9)(a)) to provide for the meaning of "ongoing registration conditions" for the purposes of Part 2 of the Act.

Article 3(s) and (u) brings into force, respectively, section 31(1)(a) to (f), (i), (j) and (2) and sections 32 and 33 for the purposes of enabling the Commission to take steps towards determining the general ongoing registration conditions. Sections 31 to 33 of the Act provide for mandatory ongoing registration conditions. Section 32 relates to fee limits and section 33 relates to equal opportunity.

Article 3(t) brings into force section 32 of the Act to enable the Welsh Ministers to make regulations in respect of fee limits. Articles 2(m) and 3(z) bring into force, respectively, related provision in section 46 in respect of fee limit statements and section 47(1) to (5) of the Act in respect of the approval of those statements.

Article 2(l) brings into force section 34 of the Act, which enables the Welsh Ministers to make regulations to provide for further mandatory ongoing registration conditions.

Article 2(k) brings into force section 30(1) of the Act, which relates to the proportionality of conditions.

Article 3(v) and (w) brings into force, respectively, sections 35 and 36 of the Act for the purposes of enabling the Commission to prepare guidance relating to ongoing registration conditions and to undertake preparatory work towards determining how it will monitor registered providers' compliance with ongoing registration conditions.

Article 3(x) and (y) brings into force, respectively, sections 41 and 43 of the Act for the purposes of enabling the Welsh Ministers to make regulations in respect of deregistration.

Article 3(aa) brings into force section 54 of the Act for the purposes of making regulations relating to higher education quality assessments.

Article 3(bb) brings into force section 57 of the Act for the purposes of making regulations relating to inspections by His Majesty's Chief Inspector of Education and Training in Wales.

Article 3(cc) brings into force section 83 of the Act for the purposes of making regulations relating to the designation of providers of tertiary education.

Article 2(n) brings into force section 85(1), (2)(a) and (b) of the Act from 4 September 2023, which gives the Welsh Ministers power to fund the Commission. Article 4(c) brings section 85 into force for all remaining purposes from 1 April 2024.

Articles 2(o) and 3(ee) bring into force, respectively, section 87(2), and 87(1) and (5) of the Act (except for the reference to sections 88 and 105 of the Act in subsection (5)), for the purposes of enabling the Commission to prepare a statement under section 87(1). Section 87(1) places the Commission under a duty to publish a statement on how it intends to exercise its funding powers.

Article 3(gg), (hh), (ii), (jj) and (kk) brings into force, respectively, sections 89(3) to (5), 97, 101, 103 and 104 of the Act (those sections contain funding powers) for the purposes of preparing a statement under section 87.

Article 3(ff) brings into force section 88 of the Act for the purposes of making regulations relating to specified providers and financial support from the Commission.

Article 2(p) brings into force section 89(1) and (2) of the Act to allow regulations relating to financial support for certain higher education courses to be made.

Article 3(ll) brings into force section 105 of the Act for the purposes of making regulations relating to specified providers and financial support from the Commission.

Article 5 brings into force section 94 of the Act for the purposes of making regulations relating to education and training for eligible persons over 19.

Article 2(q) and (r) brings into force, respectively, section 130 of the Act, which relates to information and advice from the Commission and information from the Welsh Ministers, and certain provisions of section 132 of the Act, which relates to powers to share information.

Article 2(s) brings into force section 141 of the Act, which provides that no provision made by the Act requiring, or enabling, the disclosure or use of information disapplies, in any way, existing data protection legislation.

Article 2(t) brings into force section 142 of the Act, which relates to duties to publish under the Act.

Article 2(u) and (x) brings into force, respectively, section 147 of the Act, and consequential amendments to section 148 of the Government of Wales Act 2006 and to Schedule 6 to the Welsh Language (Wales) Measure 2011.

Article 4(e) brings into force consequential amendments to Schedule 6 to the Welsh Language (Wales) Measure 2011 and to regulation 3(4) of the Welsh Language Standards (No. 6) Regulations 2017 (S.I. 2017/90 (W. 33)).

Changes to legislation: There are currently no known outstanding effects for the The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023. (See end of Document for details)

NOTE AS TO EARLIER COMMENCEMENT ORDER

(This note is not part of the Order)

The following provisions of the Act have been brought into force by a Commencement Order before the date of this Order.

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. Number</i> |
|-----------------------|-----------------------------|----------------------------------|
| Section 1 | 15 December 2022 | S.I. 2022/1318 (W. 267) (C. 106) |
| Section 9 (partially) | 15 December 2022 | S.I. 2022/1318 (W. 267) (C. 106) |
| Schedule 1 | 15 December 2022 | S.I. 2022/1318 (W. 267) (C. 106) |

Paragraphs 1; 2; 3; 4(1)(a) and (c); 5(1) and (2); 7(1) and (2); 10(1), (3), (4) and (7); 11(1) (partially) and (2); 12

Changes to legislation:

There are currently no known outstanding effects for the The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023.