

CYPE(6)-20-23 – Paper to note 6

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Llywodraeth Cymru
Welsh Government

21 June 2023

Dear Jayne

Tertiary Education and Research (Wales) Act 2022

Following my statement to the Senedd yesterday I wanted to take the opportunity to provide the Committee with further details of the steps being taken to support the implementation of the Tertiary Education and Research (Wales) Act 2022 ('TERA') and the resultant establishment of the Commission for Tertiary Education and Research ('the Commission').

As I stated when I previously wrote to the Committee, I am adopting a phased approach to the implementation of the Act on the basis of the following principles:

- Ensuring continuity of provision for the sector with no discernible disruption for providers or learners during the establishment of the Commission,
- Avoiding undue burden on providers during the implementation phase, for example managing and synchronising the volume and timing of engagement and formal consultation,
- The strategic duties, as set out in Part 1 of the Act, to form the core foundation for the Commission's work from the outset, including the preparation and publication of the Welsh Ministers' statement of priorities.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Establishment of the Commission

In line with the high level implementation timeline I set out in my previous letter, the Commission will be established in September following Simon Pirotte taking up his post as CEO and the ordinary Board members taking up their posts.

During the summer recess period I shall be making the second commencement Order in respect of the Act, which will enable the Commission to exercise certain functions between September 2023 and April 2024, we are referring to this period as the establishment period.

The functions the Commission will be able to exercise during this time will be either corporate or operational in nature, such as those in Schedule 1 to the Act in relation to, for example, the appointment of staff or the establishment of committees, or be functions partially commenced for the purpose of enabling the Commission to start developing certain deliverables required to support the implementation of key reforms.

I will write to the Committee once the commencement Order is made setting out the provisions of TERA I am bringing into force and how the Commission may choose to exercise those functions during the establishment period.

During this time HEFCW will retain responsibility for the funding, quality and regulation of higher education, whilst the Welsh Government will retain responsibility for further education, apprenticeships, sixth forms etc. The Commission is then intended to become operational in April 2024 following the dissolution of HEFCW.

Subordinate legislation

As I stated during scrutiny, the implementation of TERA will require the making of a range of subordinate legislation; the first of which, the Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023, I laid before the Senedd earlier this month.

Annex A sets out the statutory instruments I intend to consult on, and subsequently make, over the coming months, with the policy intention in respect of these largely remaining as set out in the statement of policy intent, which was published alongside the Act when it was introduced to the Senedd.

Annex A also summarises the intended purpose of each statutory instrument, although this is of course subject to our consideration of any responses received to the relevant consultations.

In addition to the substantive subordinate legislation set out in Annex A, it will also be necessary to make Regulations to reflect the required consequential amendments to existing legislation, alongside the making of the necessary commencement Orders.

The implementation of TERA is a significant undertaking, which, in line with the principle of avoiding undue burden on providers, I anticipate will continue through to the end of this Senedd term; I will continue to provide updates to the Commission as the work progresses.

If you, or the members of your Committee have any specific questions in the meantime I will be pleased to provide additional information where possible.

I have copied this letter to the Legislation, Justice and Constitution Committee and will be sharing with our stakeholders for information.

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

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Minister for Education and Welsh Language

Annex A – TERA Implementation – Subordinate Legislation

Statutory Instrument	Purpose	Anticipated timeframe for consulting on the draft SI	Anticipated timeframe for making the SI
Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations	<p>Intended to make provision in respect of the registration of tertiary education providers in Wales, in relation to:</p> <ul style="list-style-type: none"> • Categories of registration • Specifying the category to which the fee limit condition applies • A limited number of additional initial and ongoing conditions of registration • Specifying which category a provider must be registered in to be eligible for funding for higher education or research & innovation 	<p style="text-align: center;">Autumn 2023</p> <p style="text-align: center;"><i>A combined consultation on each of these SIs and the policy intention in respect of the future SIs necessary to complete the implementation of the registration system</i></p>	<p style="text-align: center;">Spring 2024</p>
Commission for Tertiary Education and Research (Designation of Providers) (Wales) Regulations	Intended to make provision about the Welsh Ministers' power to designate a provider of tertiary education as an institution under section 83(4) of TERA		
Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations	Intended to make provision in relation to reviews of decisions made by the Commission under sections 45 and 78 of TERA		
Regulations to be made under section 56 of the Digital Economy Act to amend Schedule 8 to that Act	Intended to provide for the removal of HEFCW and addition of the Commission to the list of persons who may share information for the purposes of taking action to combat fraud against the public sector	<p style="text-align: center;">Autumn 2023</p>	<p style="text-align: center;">February 2024</p>

Statutory Instrument	Purpose	Anticipated timeframe for consulting on the draft SI	Anticipated timeframe for making the SI
Regulations to be made under section 57(4) of TERA	Intended to replace the Inspection of Education and Training (Wales) Regulations 2001 (as amended), as the enabling power under which those Regulations were made is being repealed as part of the implementation of the TER Act.	Autumn / Winter 2023	February 2024
Official Statistics (Wales) (Amendment) Order	Provides for the Commission to be an official statistical body	It is not intended to issue the draft SI for formal consultation as the proposal the Commission be designated an official statistical body was set out in the EM-RIA which accompanied the Bill. However, the intention is to consult the UK Statistics Authority prior to making the Amendment Order.	March 2024
Regulations to be made under section 94 of TERA	Intended to specify 'relevant education and training' for the purpose of the Commission's duty to secure the provision of proper facilities in Wales for relevant education and training for eligible persons over 19	Early 2024	Late summer 2024