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Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
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22 August 2023

Dear Jayne

Tertiary Education and Research (Wales) Act 2022

Having made the Tertiary Education and Research (Wales) Act 2022 (Commencement No.2 and Transitory Provision) Order 2023 ('the Order') this week I wanted to take the opportunity to update the Committee on the purpose of the Order, and how it supports the implementation of the Tertiary Education and Research (Wales) Act 2022 (TERA) and the establishment of the Commission for Tertiary Education and Research ('the Commission').

The Order makes provision in respect of the two key dates:

- 4 September 2023 – the establishment date of the Commission, this will be the date all core members take up their posts and the Commission becomes fully established.
- 1 April 2024 - this is the date when the Commission will become operational and assume responsibility for its core functions following the dissolution of HEFCW.

The purpose of the Order is two-fold: enabling the Commission to take the necessary steps to ensure the required operational and governance arrangements are in place to support a smooth transition to it becoming operational, and enabling it to start developing certain deliverables required to support the implementation of key reforms.

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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.

Between September and April 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.

Commencement in respect of the establishment Period

The Order provides for the coming into force of the following provisions of Part 1 of TERA on 4 September 2023:

- Academic freedom of higher education providers and staff (section 17);
- Institutional autonomy of tertiary education providers (section 18);
- Compatibility with charity law and governing documents of tertiary education providers (section 19);
- Duty on Commission to have regard to guidance published by the Welsh Ministers. (section 20);
- Provision enabling the Welsh Ministers to give the Commission general directions about the use of any of its functions (section 21);
- Provision enabling the Welsh Ministers to confer supplementary functions on the Commission by way of regulations (section 22);
- Provision enabling the Welsh Ministers to make schemes for the transfer of staff and property, rights and liabilities from HEFCW and the Welsh Ministers to the Commission (section 24 and Sch. 2).

Provisions of Schedule 1 are also brought into force on the same date. Schedule 1 sets out the status of the Commission; makes provision about membership of the Commission including some terms and conditions; imposes a duty on the Commission to have a Research and Innovation Committee, a Quality Committee and a staff member appointment committee.

This Schedule also enables the Commission to establish other committees including joint committees; makes provision about membership of the Commission (including workforce and learner representation), audit and accounts, a duty to ensure good value, annual reporting requirements as well as other operational requirements such as delegations, proceedings, register of interests and the exercise of functions.

The Order does not include provision in respect of the following aspects of Schedule 1, these will be commenced from April 2024 through a future commencement Order:

- The appointment of the associate Commission staff member and the establishment of the staff member appointment committee;
- The Commission's duty to prepare an annual report and an annual statement of accounts.

To ensure the Welsh Ministers are able to provide funding to the Commission from its establishment date, section 85(1), (2)(a) and (2)(b) of TERA is brought into force on 4 September 2023. The remainder of section 85 makes provision in respect of outcome agreements and is brought into force on 1 April 2024.

Section 86, which places limitations on the terms and conditions the Welsh Minister can attach to funding provided to the Commission in respect of the funding of higher

education, research and innovation and further education, is not commenced through the Order. These limitations are not required during the establishment period as the relevant funding powers of the Commission will not be in force at that time.

The Order also brings relevant functions in respect of information, data and advice into force on 4 September 2023.

Section 130 of TERA, which is commenced in full, requires the Commission to provide information and advice, in relation to its functions, to the Welsh Ministers where the Ministers request such information. The Commission may also give the Welsh Ministers any information or advice it considers appropriate. This section also allows the Welsh Ministers to provide the Commission with any information relating to the exercise of its functions.

The provision of information by either the Welsh Ministers or the Commission is limited to those functions of the Commission that are in force at that time.

Section 132 of TERA enables the Commission to share information, for the purpose of the exercise of any of its functions, with the bodies and persons listed on the face of the Act (or made in Regulations under section 132(1)(k)). The Order commences, on 4 September, this section with the exception of subsection (1)(f) which relates to the body to be designated by the Commission in respect of the assessment of quality of higher education.

As with section 130, the sharing of information under section 132 will be limited to matters relating to those functions of the Commission that are in force at the point in time the information is being shared.

Strategic planning cycle and strategic duties

The duty of the Welsh Ministers to publish a statement of their priorities for and in connection with tertiary education and research will be brought into force on 4 September 2023, with my intention remaining to publish the first statement in December 2023.

The Order also commences, on the same date, section 14 of TERA thereby requiring the Commission to prepare a strategic plan setting out how it intends to discharge its strategic duties and address the Welsh Ministers' statement of priorities.

Subjecting the Commission to the duty in section 14 will not mean it is required to finalise its strategic plan during the establishment period, as the duty in that section is simply to prepare the plan. Rather it is section 15 which specifies the date by which the Commission must submit their draft strategic plan to the Welsh Ministers.

The Order commences section 15 of TERA on 1 April 2024 with transitory provision requiring the submission of the first draft strategic plan by 15 December 2024.

To support the development of the strategic plan the Order also commences sections 2 to 12 of TERA which set out the strategic duties. The commencement of the strategic duties is limited to the purpose of enabling the Commission to prepare its

strategic plan. This limited commencement, for the specified purpose, means the Commission will not be subject to those duties during the establishment period. The strategic duties will come into force in April 2024, with provision to be made in a future Order.

Section 16, which requires the Commission to review its published strategic plan if the Welsh Ministers amend the statement of priorities, is also brought into force on 1 April 2024.

Provisions being partially brought into force to support the implementation of the registration system and financial transparency

The Order provides for the partial commencement, on the 4 September 2023, of the provisions necessary to enable the Commission to undertake the following preparatory activities in respect of the registration system:

- Start developing the document specifying the requirements providers must satisfy in order to meet the initial conditions of registration (section 27(1) and (2));
- Start determining the general ongoing registration conditions to be applied to providers when they are added to the register (section 28(1) to (3), section 31(1)(a) to (f), (i), (j) and (2) and sections 32 and 33);
- Start preparing guidance relating to the ongoing registration conditions (sections 35 and 36);
- Undertake preparatory work to determine how it will monitor registered providers' compliance with the ongoing registration conditions (sections 35 and 36);
- Start preparing a statement on its funding policy (section 87).

The partial commencement of these provisions does not subject the Commission to associated duties, these will be brought into force at the necessary future date through another commencement Order. Certain of the functions are commenced in full where doing so does not subject the Commission to duties it will not be able to fulfil during the establishment period.

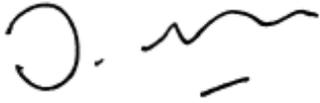
In addition to commencing the provisions which specifically provide for each of the above functions, associated provisions are also commenced to provide additional context where required and to ensure any cross references within the provisions function as intended.

Welsh Ministers Regulation making powers

In addition to the functions of the Commission being brought into force, either in full or partially, the Order also brings into force the required powers to enable the Welsh Ministers to make the subordinate legislation necessary to support the establishment of the Commission and the implementation of TERA.

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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