EXPLANATORY MEMORANDUM TO

THE TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022 (CONSEQUENTIAL AMENDMENTS) (NO. 2) ORDER 2024

2024 No. 670

1. Introduction

1.1 This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon David TC Davies MP, Secretary of State at the Wales Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Geth Williams, Deputy Director for Union at the Wales Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Harries at the Wales Office Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order makes provision in consequence of the Tertiary Education and Research (Wales) Act 2022 ("the 2022 Act").

4.2 The 2022 Act establishes the Commission for Tertiary Education and Research ("the Commission"), dissolves the Higher Education Funding Council for Wales ("HEFCW") and makes other provision about tertiary education and research.

4.3 Tertiary education is defined in section 144 of the 2022 Act as:

- Higher education; meaning education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988,
- Further education; meaning education, other than higher education, suitable to the requirements of persons who are over compulsory school age and organised leisure-time occupation connected with such education, and including sixth form education provided at a school at which secondary education is also provided, or
- Training suitable to the requirements of persons who are over compulsory school age and organised leisure-time occupation connected with such training.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the same as the provision amended.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is in Wales.

5. Policy Context

What is being done and why?

5.1 Section 1 of the 2022 Act establishes the Commission, and section 23 of the 2022 Act dissolves HEFCW. The Commission takes on the functions formerly performed by HEFCW. Section 23 of the Act is intended to come into force on 1 August 2024.

5.2 This Order seeks to make the following amendments to legislation in consequence of the establishment of the Commission and dissolution of HEFCW:

The Charities (Accounts and Reports) Regulations 2008

5.3 Article 2 amends the definition of "special case charity" in regulation 2 of the Charities (Accounts and Reports) Regulations 2008, substituting reference to HEFCW with a reference to the Commission.

The Charities (Exception from Registration) Regulations 2010

5.4 Article 3 amends regulation 3 of the Charities (Exception from Registration) Regulations 2010, substituting reference to HEFCW with a reference to the Commission.

What was the previous policy, how is this different?

5.5 Prior to the amendments made by this Order:

- The Charities (Accounts and Reports) Regulations 2008 ("the 2008 Regulations") make provision in respect of the preparation and scrutiny of accounts prepared by charities and the preparation of annual reports by charities. Regulation 2 of the 2008 Regulations defines the term "special case charity" as including a charity which has during the financial year in question received financial support from funds administered by HEFCW in respect of expenditure incurred or to be incurred by the charity in connection with an institution that falls within sub-paragraph (b)(i) of that definition.
- Regulation 3 of the Charities (Exception from Registration) Regulations 2010 lists categories of institutions that are exempted from the duty to register with the Charity Commission. This includes those institutions who are eligible to receive support from funds administered by HEFCW.

5.6 The amendments are being made as a consequence of the dissolution of HEFCW and the establishment of the Commission.

6. Legislative and Legal Context

How has the law changed?

The Charities (Accounts and Reports) Regulations 2008

6.1 The amendment to regulation 2 of the Charities (Accounts and Reports) Regulations 2008 will ensure that charities which fall under the definition of "special case charity" will include charities who received financial support from funds administered by the

Commission in respect of expenditure incurred or to be incurred by the charity in connection with an institution that falls within sub-paragraph (b)(i) of that definition during the financial year in question.

The Charities (Exception from Registration) Regulations 2010

6.2 The amendment to regulation 3 of the Charities (Exception from Registration) Regulations 2010 will ensure that institutions that previously fell under the categories outlined in regulation 3 will continue to be exempt from the duty to register with the Charity Commission.

Why was this approach taken to change the law?

6.3 The 2022 Act establishes the Commission, dissolves HEFCW and makes other provision about tertiary education and research. This instrument makes consequential amendments to reflect the provisions of the 2022 Act, by replacing references to HEFCW with references to the Commission. It does not make policy changes. This Order is made under section 150 of the Government of Wales Act 2006 ("the 2006 Act") which enables the making of consequential provision on legislation made by the Senedd Cymru/Welsh Parliament ("the Senedd"), including where those amendments are outside the Senedd's legislative competence. An Order under section 150 of the 2006 Act was identified as the most suitable vehicle for making these amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Welsh Government has undertaken a series of public consultations to put in place the legal framework which underpins the creation of the Commission. This has included working closely with the post-compulsory education sector in Wales. This engagement identified the need to make the consequential amendments provided for by this Order.

8. Applicable Guidance

8.1 As this Order makes only minor consequential amendments to legislation, no guidance is thought to be necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. The Welsh Government produced a regulatory impact assessment[1] to accompany the 2022 Act which assessed the potential costs and benefits associated with establishing the Commission.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument only makes consequential amendments to secondary legislation.

[1] https://www.gov.wales/sites/default/files/publications/2022-12/tera-2022-explanatory-memorandum_0.pdf

9.3 The legislation does not impact small or micro businesses. The instrument makes only consequential amendments to secondary legislation, none of which will result in a change of policy.

9.4 There is no, or no significant, impact on the public sector because this instrument only makes consequential amendments to secondary legislation.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State for Wales has made the following statement regarding Human Rights:

"In my view the provisions of the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) (No. 2) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").