

Explanatory Memorandum to the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments and Transitory Provision) Regulations 2026

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above regulations and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments and Transitory Provision) Regulations 2026.

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Minister for Further and Higher Education
3 February 2026

1. Description

1.1 The Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments and Transitory Provision) Regulations 2026 (“the Regulations”) make necessary amendments to primary and secondary legislation as a consequence of the coming into force of provisions in the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”) which:

- repeal the Welsh Ministers’ funding functions in Part 2 of the Learning and Skills Act 2000 (“the LSA 2000”) and which confer funding functions on the Commission for Tertiary Education and Research (“Medr”) in Part 3 of the 2022 Act;
- make amendments to sections 33A – 33Q of the LSA 2000 (local curricula provisions) with current functions of the Welsh Ministers becoming functions of Medr;
- have repealed the Welsh Ministers’ functions relating to the restructuring of local authority maintained sixth form education and which confer functions on Medr (Chapter 3A of Part 3 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”).

1.2 Amendments to primary legislation are also required as a consequence of the register of tertiary education providers to be established by Medr under section 25 of the 2022 Act and related amendments to the Further and Higher Education Act 1992 (“the FHEA 1992”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 The powers enabling the Regulations to be made are contained in section 146(1) and (2) of the 2022 Act. Section 146(1)(a) and (b) confers power on the Welsh Ministers to make regulations containing (amongst other things) consequential and transitory provision if the Welsh Ministers consider it appropriate for the purposes of, or in consequence of, any provision of the 2022 Act.

3.2 Section 146(2) provides that such regulations may amend, modify, repeal or revoke any enactment (including an enactment contained in the 2022 Act).

3.3 Section 143(3) and (4)(e)(ii) of the 2022 Act, read with section 37C of and paragraph 3 of Schedule 1A to the Legislation (Wales) Act 2019 (“the 2019 Act”) provides for the Regulations to be subject to the Senedd approval procedure and to be made by Welsh statutory instrument (section 37A of the 2019 Act).

3.4 Subject to their being approved by resolution of the Senedd, the Regulations will be made alongside the making of the proposed Tertiary Education and Research (Wales) Act 2022 (Commencement No.7, Transitory, Transitional and Savings Provisions) Order 2026.

4. Purpose and intended effect of the legislation

Amendments consequential to the repeal of the Welsh Ministers' funding functions in Part 2 of the LSA 2000

4.1 Paragraph 14(2), (18) and (20) of Schedule 4 to the 2022 Act provides for the repeal of the Welsh Ministers' functions in respect of the securing and funding of further education and training as set out within Part 2 of the LSA 2000, with the repealed functions broadly being replaced by functions of Medr within Part 3 of the 2022 Act.

4.2 Paragraph 14(2), (18) and (20) of Schedule 4 to the 2022 Act come into force on 1 April 2026. The amendments set out below are primarily consequential to the repeal of section 34 of the LSA 2000 by paragraph 14(18).

School Standards and Framework Act 1998 ("the 1998 Act")

4.3 Section 82(1) of the 1998 Act provides that the Welsh Ministers (in relation to Wales) may by order modify any trust deed or other instrument relating to certain schools, or relating to property held on trust for the purposes of such a school, where it appears necessary or expedient in connection with the operation of (amongst others) the LSA 2000, the Education Act 2002 or the 2013 Act.

4.4 The Regulations (regulation 2) amend the list of enactments within section 82(1) of the 1998 Act so as to include reference to the 2022 Act. Regulation 2 comes into force on 1 April 2026.

4.5 The reference to the LSA 2000 in section 82(1) is not repealed, nor replaced, as there will remain functions within the LSA 2000 which may be relevant to the making of an Order under section 82(1) by the Welsh Ministers.

Saint David's Catholic College Incorporation Order 2005 (S.I. 2005/2293 (W.171)) ("the 2005 Order")

4.6 The 2005 Order provides for the incorporation of the governing body of St. David's Catholic College, which is a further education institution designated under section 28 of the FHEA 1992. The 2005 Order provides for (amongst other things) the name and seal of the governing body, its powers and charitable status.

4.7 Articles 9 and 10 of the 2005 Order provide for the discontinuance of the College and the dissolution of the governing body. Article 10 also makes provision for the disposal by the governing body of 'publicly funded property' where either the College is to be discontinued or the order designating the College under section 28 of the FHEA 1992 has been revoked. For these purposes, 'publicly funded property' includes property acquired or enhanced in value wholly or partly by means of financial assistance given under section 34 of the LSA 2000 since 1 April 2006.

4.8 The Regulations (regulation 4) amend the reference to section 34 of the LSA 2000 so that it applies from 1 April 2006 until 31 March 2026, which will align with the repeal of that section on 1 April 2026. To reflect the coming into force of the funding functions within Part 3 of the 2022 Act, the definition of 'publicly funded property' is also amended to include property acquired or enhanced in value with financial assistance from the Welsh Ministers or Medr under section 97 or 103 of the 2022 Act from 1 April 2026.

Education (Fees and Awards) (Wales) Regulations 2007 (S.I. 2007/2310 (W.181))
(“the 2007 Regulations”)

4.9 Regulation 8 of the 2007 Regulations provides that it is lawful for the Welsh Ministers and institutions funded by them under section 34 of the LSA 2000 to adopt rules of eligibility for awards which limit eligibility to certain persons mentioned in the Schedule to the 2007 Regulations.

4.10 The Regulations (regulation 5) amend regulation 8 of the 2007 Regulations to reflect the repeal of section 34 of the LSA 2000 and the coming into force of Medr’s funding functions within the 2022 Act, by replacing the reference to section 34 of the LSA 2000 with a reference to section 97 of the 2022 Act.

4.11 This amendment will come into force on 1 April 2026.

Learner Travel (Wales) Measure 2008 (“the Measure”)

4.12 The Measure makes provision about the travel of persons receiving education or training to and from their places of learning (referred to as ‘relevant places’ in the Measure). The definition of ‘relevant places’ in section 1(4) of the Measure includes places where education or training funded by the Welsh Ministers under section 34(1) of the LSA 2000 is provided.

4.13 Given the repeal of section 34 of the LSA 2000, paragraph 23(2) of Schedule 4 to the 2022 Act will replace that reference with a reference to the Welsh Ministers’ and Medr’s funding functions under section 97 of the 2022 Act.

4.14 To ensure section 1(4) of the Measure reflects all relevant functions of the 2022 Act that are equivalent to section 34 of the LSA 2000, the Regulations (regulation 6) will insert a reference to section 103 of the 2022 Act in the definition of ‘relevant places’.

4.15 This amendment will come into force on 1 April 2026.

The Education Workforce Council (Registration of Youth Workers, Youth Support Workers and Work Based Learning Practitioners) Order 2016 (S.I. 2016/1183 (W.288))
(“the 2016 Order”)

4.16 The Education (Wales) Act 2014 (“the 2014 Education Act”) requires the Education Workforce Council (“the EWC”) to establish and maintain of a register of practitioners. Schedule 2 to the 2014 Education Act lists the categories of registration.

- 4.17 The 2016 Order amends the categories described and set out in Schedule 2 to the 2014 Education Act by inserting a category of ‘work based learning practitioner’. The 2016 Order provides that a person must not provide work based learning practitioner services for, or on behalf of, a ‘work based learning body’ unless that person is registered in the category of work based learning practitioner. For these purposes, the 2016 Order defines ‘work based learning body’ as a body to which financial resources are provided pursuant to section 34(1) of the LSA 2000 in respect of the provision of work-based learning.
- 4.18 The Regulations (regulation 10) amend article 2 of the 2016 Order by replacing the reference to section 34(1) of the LSA 2000 with a reference to sections 97 and 103 of the 2022 Act. This amendment will come into force on 1 April 2026.

Amendments consequential to the amendment of local curricula provisions in Part 2 of the LSA 2000

- 4.19 The local curricula provisions in Part 2 of the LSA 2000 (sections 33A to 33Q) currently impose duties and confer related powers on the Welsh Ministers in relation to the formation of local curricula for students aged 16 to 18.
- 4.20 Paragraph 14(3) – (17) of Schedule 4 to the 2022 Act comes into force on 1 April 2026 and will provide for a range of amendments to these sections. From that date, the formation of local curricula will become a function of Medr.

Further and Higher Education (Governance and Information) (Wales) Act 2014 (“the 2014 Act”)

- 4.21 The 2014 Act makes provision about the governance of institutions within the further education sector in order to enhance their autonomy and decision-making abilities by removing and modifying legislative controls on them.
- 4.22 Section 6(1) of the 2014 Act amends section 33J(3) and (4) of the LSA 2000. Section 33J(3) and (4) will be repealed by paragraph 14(10) of Schedule 4 to the 2022 Act on 1 April 2026, meaning that section 6(1) of the 2014 Act becomes obsolete.
- 4.23 Regulation 8, which comes into force on 1 April 2026, omits section 6(1) of the 2014 Act.

The Education Workforce Council (Main Functions) (Wales) Regulations 2015 (S.I. 2015/140 (W.8)) (“the 2015 Regulations”)

- 4.24 The 2015 Regulations are made under the 2014 Education Act. Part 3 of the 2015 Regulations specifies the work that may be carried out in schools by qualified teachers and persons who satisfy requirements which are set out in Schedule 3 to the 2015 Regulations.
- 4.25 Paragraph 6 of Schedule 3 to the 2015 Regulations makes provision in relation to certain further education teachers. Those teachers may carry out work

specified in regulation 17 of the 2015 Regulations in a school where the work comprises the delivery of vocational courses that form a part or the whole of a local curriculum formed by (amongst others) the Welsh Ministers pursuant to section 33A of the LSA 2000.

- 4.26 Given the amendment to section 33A of the LSA 2000 by paragraph 14(3) of Schedule 4 to the 2022 Act, the Regulations (regulation 9) amend paragraph 6 of Schedule 3 to the 2015 Regulations, so that the reference to the Welsh Ministers is replaced by a reference to Medr. This amendment will come into force on the 1 April 2026.

Amendments consequential to the repeal of sections 71 – 76 of the 2013 Act

- 4.27 Sections 71 to 76 of the 2013 Act were repealed by paragraph 29(8) of Schedule 4 to the 2022 Act on 5 April 2025 (article 2(II) of the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 5 and Transitory and Transitional Provisions) Order 2025, S.I. 2025/432 (W.83)(C.17), refers). Those provisions concerned the restructuring of local authority maintained sixth-form education and included provisions which conferred functions on the Welsh Ministers.

Schedules 2 and 5 to the 2013 Act

- 4.28 Currently, references to section 72 of the 2013 Act remain in paragraphs 10 and 19 of Schedule 2 to the 2013 Act, whilst a reference to section 75 remains in paragraph 19 of Schedule 5 to the 2013 Act. These obsolete references are repealed by regulation 7, which comes into force on 1 April 2026.

Amendments consequential to amendments to section 91(5) of the FHEA 1992

- 4.29 Section 25 of the 2022 Act requires Medr to establish and maintain a register of providers of tertiary education in Wales (“the register”) that will provide the legal mechanisms for regulatory oversight of registered tertiary education providers in Wales in receipt of public funds.
- 4.30 The register will be established by Medr on 31 July 2026 (section 25 of the 2022 Act comes into force in full on that date and article 10 of S.I. 2025/432 (W.83)(C.17) refers).
- 4.31 Paragraph 6(5) of Schedule 4 to the 2022 Act amends section 91(5) of the FHEA 1992. Currently, section 91(5)(a) contains a reference to section 65 of the FHEA 1992. Section 65 of the FHEA 1992 is due to be repealed by paragraph 6(3)(c) of Schedule 4 to the 2022 Act. The new text for section 91(5)(a) will refer to providers registered with Medr in a category specified in regulations made for the purposes of section 88 or 105 of the 2022 Act.

Care Standards Act 2000 (“the 2000 Act”)

- 4.32 Schedule 2B to the 2000 Act specifies the persons whose arrangements are subject to review by the Children’s Commissioner for Wales (“the Commissioner”)

under section 73 of that Act. Section 73 of the 2000 Act enables the Commissioner to review and monitor the operation of certain arrangements (such as complaints and whistleblowing procedures), to ascertain whether those arrangements are effective in safeguarding and promoting the rights and welfare of children. The arrangements include services provided in Wales by, or on behalf of, persons described in Schedule 2B to the 2000 Act.

- 4.33 Currently, paragraph 8 of Schedule 2B to the 2000 Act specifies institutions in Wales falling within section 91(5)(a) of the FHEA 1992.
- 4.34 Paragraph 6(5) of Schedule 4 to the 2022 Act substitutes a new section 91(5)(a) of the FHEA 1992. It is proposed that paragraph 6(5) of Schedule 4 will come into force on 31 July 2026 which will coincide with the establishment by Medr of the register of providers under section 25 of the 2022 Act.
- 4.35 The Regulations (regulation 3) substitute a new paragraph 8 in Schedule 2B to the 2000 Act which will refer directly to the relevant provisions of the 2022 Act, rather than cross-refer to section 91(5)(a) of the FHEA 1992. This amendment reflects the amendments being made by paragraphs 13(2)(a) and 19(2)(b) and (3) of Schedule 4 to the 2022 Act to, respectively, Schedule 2A to the 2000 Act and Schedules 2 and 3 to the Commissioner for Older People (Wales) Act 2006.
- 4.36 The extant paragraph 8 in Schedule 2B to the 2000 Act refers to ‘institutions’, whereas the substituted section 91(5)(a) of the FHEA 1992 refers to ‘providers’. As such, the new text for paragraph 8 reflects the language of the 2022 Act. As with the amendments made by paragraphs 13(2)(a) and 19(2)(b) and (3) of Schedule 4 to the 2022 Act, the amendment to paragraph 8 of Schedule 2B avoids the need for readers to consult a provision on the FHEA 1992 only to be directed to a provision in the 2022 Act.
- 4.37 The extant reference to section 91(5)(a) of the FHEA 1992 in paragraph 8 of Schedule 2B to the 2000 Act is a reference to universities receiving funding under section 65 of the FHEA 1992. Medr is temporarily exercising this funding function (by virtue of article 18 of the Tertiary Education and Research (Wales) Act 2022 (Commencement No.4 and Transitory and Transitional Provisions) Order 2024, S.I. 2024/806 (W.130) (C.51)). Medr will continue to do so for a period after 31 July 2026, with section 65 of FHEA 1992 being repealed by paragraph 6(3)(c) of Schedule 4 to the 2022 Act through a future commencement Order (to be made under section 148 of the 2022 Act).
- 4.38 As such, regulation 3 also provides for a temporary modification to Schedule 2B (a temporary paragraph 8A), so that the Schedule is to be read as if it continues to capture universities receiving financial support under section 65 of the FHEA 1992 (other than a university falling within paragraph 7 or 8 of that Schedule) until section 65 of the FHEA 1992 is repealed.
- 4.39 Regulation 3 comes into force on 31 July 2026.

5. Consultation

- 5.1 No formal consultation has taken place as the Regulations make only consequential amendments and one (non-textual) temporary modification which relates to one of those consequential amendments.

6. Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact assessment has not been prepared in respect of these Regulations as they make consequential amendments to existing legislation (together with one related temporary modification) and do not impose or reduce costs for business, charities or voluntary bodies or the public sector. This is in line with the policy set out in the Welsh Ministers' Code of Practice for carrying out Regulatory Impact Assessments for subordinate legislation.