

Explanatory Memorandum to the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 7, Transitory, Transitional and Savings Provisions) Order 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 alongside the Tertiary Education and Research (Wales) Act 2022 (Commencement No.7, Transitory, Transitional and Savings Provisions) Order 2026. This is 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 (Commencement No.7, Transitory, Transitional and Savings Provisions) Order 2026.

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Minister for Further and Higher Education
6 March 2026

1. Purpose and overview

- 1.1. The Tertiary Education and Research (Wales) Act 2022 (Commencement No.7, Transitory, Transitional and Savings Provisions) Order 2026 ('the Order') brings into force certain provisions of the Tertiary Education and Research (Wales) Act 2022 ('the 2022 Act') on a series of dates between 1 April 2026 and 1 April 2027.
- 1.2. The 2022 Act established the Commission for Tertiary Education and Research (now known as 'Medr') which became operational on 1 August 2024. The 2022 Act also provides for Medr's functions in the respect of the funding, regulation and oversight of the tertiary education sector, repealing and re-making much of the legislative framework for the tertiary education sector in Wales.
- 1.3. Further explanation of the provisions of the 2022 Act, including those commenced through the Order can be found in the explanatory notes which accompany the Act.
- 1.4. A phased approach has been taken to the implementation of the 2022 Act to enable a smooth transition from the existing legislative framework for tertiary education as set out in the Higher Education (Wales) Act 2015 ('the 2015 Act'), the Further and Higher Education Act 1992 ('the 1992 Act') and the Learning and Skills Act 2000 ('the 2000 Act') to the new framework provided for by the 2022 Act.
- 1.5. The Order is the seventh commencement order made in respect of the 2022 Act. It brings certain provisions into force in full, and others are brought into force for specified purposes. The Order also makes temporary modifications, transitional and savings provisions to facilitate the transition to the new framework established by the 2022 Act and to ensure that tertiary education providers are subject to only one regulatory regime during that transition.
- 1.6. Please refer to the 'Notes to earlier commencement orders table' found within the Order for further information in respect of the provisions brought into force by previous commencement orders.
- 1.7. The purpose of the Order is to bring into force functions of Medr and the Welsh Ministers in relation to:
 - the registration, regulation, and quality assurance of tertiary education providers (Part 2 of and Schedule 3 to the 2022 Act)
 - the inspection of further education and training (Part 2 of the 2022 Act)
 - securing and funding tertiary education (Part 3 of the 2022 Act)
 - approved Welsh apprenticeships (Part 4 of the 2022 Act)
 - learner complaints (Part 5 of the 2022 Act)
 - information, advice, and guidance (Part 6 of the 2022 Act)
 - instruments and articles of governance of higher education corporations (Part 7 of the 2022 Act)

- 1.8. The Order also brings into force provisions within Schedule 1 to the 2022 Act in respect of the preparation of an annual report by Medr, along with relevant paragraphs in Schedule 4 to the 2022 Act which provide for consequential and minor amendments to existing legislation arising from the coming into force of the functions detailed above.
- 1.9. The provisions of the 2022 Act brought into force through the Order are set out below. The explanatory notes which accompany the Order provide further details in relation to the effect of individual provisions and how they are brought into force.

Registration, intervention, and quality assurance of tertiary education providers (Part 2 of the 2022 Act)

1.10. The following provisions come into force in full on 1 April 2026:

- a. requirement that Medr, Her Majesty's Chief Inspector of Education and Training in Wales ("the Chief Inspector") and the body designated under Schedule 3 to the 2022 Act to have regard to quality assurance frameworks published by Medr under section 50 (section 50(5) and (6))
- b. Medr's duty to monitor, and promote improvement in, the quality of regulated tertiary education (section 51) subject to the transitory provisions set out in paragraph 1.14 below.
- c. requirement for Medr's annual report to include an assessment of the quality of tertiary education that it must monitor under section 51 (paragraph 16(1)(d) of Schedule 1 to the 2022 Act)
- d. Medr's ability to issue advice and assistance in respect of quality of tertiary education and undertake reviews relevant to quality of tertiary education (sections 52 and 53) subject to the transitory provisions set out in paragraph 1.15 below.
- e. the grounds on which the Welsh Ministers may exercise their functions to intervene in Further Education Institutions in Wales as set out in section 70 of the 2022 Act (section 69)
- f. the Welsh Ministers' duty to publish a statement setting out how they propose to exercise their intervention powers in section 70 of the 2022 Act (section 72)
- g. Medr's duty to monitor and report on financial sustainability (section 80)

1.11. Alongside the coming into force in full of section 72, the Order also brings sections 70 and 71 into force on 1 April 2026 for the purposes of enabling the Welsh Ministers to publish their statement on intervention powers as required under section 72.

1.12. The Order subsequently provides for the coming into force in full of sections 70 and 71 on 1 April 2027. At the same time, paragraph 6(3)(a) of Schedule 4 comes into force and repeals section 57 of the 1992 Act which provides for the Welsh Ministers' current functions to intervene in the conduct of further education institutions in Wales.

- 1.13. Saving provision is made in connection with the repeal of section 57 of the 1992 Act, for any orders made by the Welsh Ministers under section 57(4) before 1 April 2027 to continue to have effect following the repeal of that section.
- 1.14. Article 4(1) to (4) of the Order includes transitory provision in relation to section 51 of the 2022 Act to exclude from Medr's duty to monitor and promote improvement in the quality of tertiary education, education that is:
- a. funded under section 65 of the 1992 Act. This modification will remain in effect until section 65 is repealed by para 6(3)(c) of Schedule 4 to the 2022 Act, and
 - b. provided by, or on behalf of, regulated institutions that are not registered providers. "Regulated institutions" are defined in section 7(5)(b) of the 2015 Act, and "registered providers" are defined in section 144(1) of the 2022 Act. This modification will remain in effect until the 2015 Act is repealed by paragraph 31 of Schedule 4 to the 2022 Act.
- 1.15. The transitory provisions detailed above are intended to ensure that providers of tertiary education are subject to only one regulatory regime during the transition from the existing legal framework to the new legal framework established by the 2022 Act. Transitory provision is also made in article 4(5) of the Order in respect of section 52 and 53 to exclude tertiary education provided by, or on behalf of, regulated institutions that are not registered providers from the scope of Medr's powers to provide advice and assistance in respect of the quality of tertiary education and to carry out reviews. This modification will remain in effect until the 2015 Act is repealed by paragraph 31 of Schedule 4 to the 2022 Act.
- 1.16. Section 25(1) of the 2022 Act creates a duty for the Commission to establish and maintain a register of tertiary education providers in Wales. Article 10 of the Tertiary Education and Research (Wales) Act 2022 (Commencement No.5 and Transitory and Transitional Provisions) Order S.I. 2025/432 provides for section 25(1) to come into force in full on the 31 July 2026. The following provisions come into force in full on 31 July 2026, in line with the duty for Medr to establish and maintain the register:
- a. provision in respect of the validity of a contract between a tertiary education provider and a qualifying person (section 49)
 - b. Medr's duty to assess the quality of higher education provided by, or on behalf of, a registered provider and Medr's powers to assess the quality of higher education provided in Wales by any tertiary education provider to the extent that duty and those powers are not in force (section 54). Article 18(2) and (3) of the Order provides that Medr's power to assess the quality of higher education in section 54(3) does not include higher education provided in Wales by, or on behalf of, a regulated institution that is not a registered provider. This transitional provision applies until the 2015 Act is repealed.

- c. requirements relating to the preparation of action plans following assessments conducted under section 54(1)(a) and (b) and published under section 54(4) (section 55)
- d. provisions in respect of Medr's oversight of a body designated under Schedule 3 to the 2022 Act to exercise its quality assessment functions in section 54 of the 2022 Act (paragraph 4 – 9 of Schedule 3 to the 2022 Act)
- e. provisions in respect of the ability of a body designated under Schedule 3 to the 2022 Act to charge fees (paragraph 10 of Schedule 3 to the 2022 Act)
- f. requirement for Medr's annual report to include details of how a body designated under Schedule 3 to the 2022 Act has exercised its functions during the academic year (paragraph 16(1)(i) and 17(2) of Schedule 1 to the 2022 Act)

1.17. Amendments consequential to the establishment of the register by Medr, and as provided for within Schedule 4 to the 2022 Act, are brought into force on 31 July 2026.

1.18. Transitory provision is made in articles 19 to 21 of the Order in respect of certain amendments to ensure the enactments being amended continue to operate as intended during the transition from the existing legislative framework (as provided for by the 1992 Act and the 2015 Act) to the new legislative framework provided for by the 2022 Act.

1.19. On 1 January 2027 provision requiring Medr to subject registered providers to mandatory ongoing registration conditions in respect of equal opportunity (section 33) will come into force.

1.20. Section 33 comes into force at this later date as the regulation of matters relating to equality of opportunity will be addressed through fee and access plans¹ under the 2015 Act during academic year 2026/27, with the registration conditions under the 2022 Act in respect of equal opportunity applying from academic year 2027/28 onwards. Prior to this date regulation in respect of equality of opportunity will be addressed under the 2015 Act regime.

Inspection of further education and training (Part 2 of the 2022 Act)

1.21. The following provisions come into force in full on 1 April 2026:

- a. the functions of the Chief Inspector and Medr in respect of the inspection of further education and training (sections 58 – 68)
- b. paragraph 14(23) of Schedule 4 is also brought into force on this date to repeal the Chief Inspector's current functions, within Part 4 of the 2000 Act, in respect of the inspection of further education and training including school sixth forms.

1.22. Article 13 of the Order makes transitional provision in connection with the repeal of the Chief Inspector's functions within Part 4 of the 2000 Act, as

¹ As defined in section 7 of the Higher Education (Wales) Act 2015

provided for by paragraph 14(23) of Schedule 4 to the 2022 Act. Inspections being undertaken under specified sections within Part 4 of the 2000 Act will continue under the specified sections within Part 2 the 2022 Act as set out in the Schedule to the Order.

- 1.23. Transitional provision is also made by article 14 of the Order requiring the annual report of the Chief Inspector made under section 21(1)(a) of the Education Act 2005 in respect of 1 September 2025 to 31 March 2026 to include an account of the exercise of Chief Inspector's functions under Part 4 of the 2000 Act during that period.
- 1.24. Furthermore, article 15 of the Order provides that the annual plan prepared by the Chief Inspector under section 87 of the 2000 Act in respect of financial year 2026/27 (i.e. ending on 31 March 2027) and approved under section 104(4A) of the Government of Wales Act 1998 may be published by the Chief Inspector under section 67(4) of the 2022 Act. This is required as section 87 of the 2000 Act (which includes powers for the Chief Inspector at section 87(5) to publish the approved plan) will have been repealed on 1 April 2026, with the annual plan anticipated to be published after this date.

Securing and funding tertiary education (Part 3 of the 2022 Act)

1.25. The following provisions come into force in full on 1 April 2026:

- a. duties on Medr to secure education and training for persons aged 16 – 19 and over 19 (sections 93, 95 and 96)
- b. financial support by Medr or the Welsh Ministers for further education or training (sections 97 – 99), and other activities connected to tertiary education (section 103)
- c. financial support by Medr for higher education courses specified in regulations (sections 89 – 91)
- d. financial support by the Welsh Ministers for certain higher education courses (section 92)
- e. means test (section 100)
- f. school sixth forms (section 101)
- g. persons with additional learning needs (section 102)
- h. financial support by Medr under sections 89, 97 and 104: further provision about terms and conditions (section 108)
- i. consent for payments to collaborating bodies (section 109)
- j. financial support directions (section 110)
- k. Medr's duties and functions in relation to the development of local curricula for learners aged 16-19 as set out in the 2000 Act (paragraph 14(3) – (17) of Schedule 4)
- l. provision within Schedule 4 is also brought into force on this date to repeal:
 - the Welsh Ministers' functions, within Part 2 of the 2000 Act, in respect of the securing of funding of further education and sixth forms (by paragraph 14(18) of Schedule 4 to the 2022 Act)
 - section 81 of the Further and Higher Education Act 1992 (by paragraph 6(3)(h) of Schedule 4 to the 2022 Act).

- 1.26. Article 5 of the Order includes transitory provision in respect of section 110 of the 2022 Act. Section 110 enables the Welsh Ministers to direct Medr in respect of the provision of financial support provided to relevant persons under the powers specified in section 110(3) if it appears to the Welsh Ministers that the financial affairs of the relevant person have been or are being mismanaged. “Relevant person” is defined in section 110(4) of the 2022 Act.
- 1.27. Article 5(2) of the Order modifies section 110(3) to insert a reference to the Commission’s funding powers in section 65 of the 1992 Act and article 5(3) amends the definition of “relevant person” to include persons (other than a registered provider or the governing body of a maintained school) in receipt of funding under section 65 of the 1992 Act. These modifications will remain in effect until section 65 is repealed by para 6(3)(c) of Schedule 4 to the 2022 Act.
- 1.28. The reference to section 65 of the 1992 Act is required as Medr has been exercising what were previously HEFCW funding functions within this section since it became operational on 1 August 2024. Article 18 of the Commission for Tertiary Education and Research Act 2022 (Commencement No.4 and Transitory and Transitional Provisions) Order 2024 made provision to modify section 65 of the 1992 Act to enable Medr to exercise HEFCW’s functions from the date it became operational on 1 August 2024 until section 65 is repealed.
- 1.29. Transitional provision is also made in respect of the local curricula provisions of the 2000 Act in articles 8 to 10 of the Order. Article 8 provides that any local curriculum formed by the Welsh Ministers under section 33A of the 2000 Act and which has effect immediately prior to 1 April 2026 continues to have effect as if the curriculum had been formed by Medr. Article 10 of the Order provides that any guidance that was published by the Welsh Ministers under section 33J of the 2000 Act prior to 1 April 2026 continues to have effect after that date and is treated as if published by Medr under its guidance functions in section 135(1) of the 2022 Act.
- 1.30. Section 87 of the 2022 Act requires Medr to publish a statement of its policy on how it intends to exercise its funding powers in section 87(5) of the 2022 Act. On 1 April 2027, section 87(5) comes into force in so far as not already in force by virtue of article 25(c) of the Order. This means that from 1 April 2027, the requirement for Medr to publish a statement of its policy on how it intends to exercise its funding powers will extend to the exercise of its funding powers under sections 88 and 105 of the 2022 Act.

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- 1.31. The remainder of Part 3 of the 2022 Act will be brought into force through a future commencement Order.

Approved Welsh apprenticeships (Part 4 of the 2022 Act)

1.32. The following provisions come into force in full on 1 April 2026:

- a. definition of approved Welsh apprenticeship, approved Welsh apprenticeship agreement, alternative Welsh apprenticeship, and apprenticeship framework (sections 111, 112, 113, and 114)
- b. Welsh Ministers' ability to specify requirements in relation to approved Welsh apprenticeships including the requirement on the Welsh Ministers to consult in relation to the specification of such requirements (sections 115 and 116)
- c. interpretation of Part 4 (section 125)

1.33. The remainder of Part 4 of the 2022 Act will be brought into force through a future commencement Order.

Learner complaints (Part 5 of the 2022 Act)

1.34. The following provisions come into force in full on 1 April 2026:

- a. the requirement for Medr to take such steps as appear appropriate to ensure that relevant tertiary education providers (as defined in section 126(10) of the 2022 Act) have complaints procedures in place (section 127).
- b. amendments to sections 11 and 12 of the Higher Education Act 2004 (the 2004) in relation to the student complaints scheme under that Act (section 128).

Information, advice, and guidance (Part 6 of the 2022 Act)

1.35. The following provisions come into force in full on 1 April 2026:

- a. provision enabling Medr to, by notice, require specified providers (those in receipt of funding from Medr under Part 3 of the 2022 Act and registered providers) to provide it with such information as it requests for the purposes of the exercise of any of its functions (section 131).
- b. provision enabling a body designated under Schedule 3 to the 2022 Act to give information to Medr for the purposes of the exercise of any of Medr's functions (section 132(1)(f)).

1.36. The Order includes transitory provisions providing for two modifications to section 131 of the 2022 Act to:

- a. include providers funded under section 65 of the 1992 Act within the scope of section 131(2)(b), which will remain in effect until section 65 is repealed by para 6(3)(c) of Schedule 4 to the 2022 Act (article 23 of the Order), and
- b. provide for the reference within section 131(2)(a) to 'a registered provider' to be read as if it were a reference to 'a regulated institution' until 31 July 2026 (article 6 of the Order)

- 1.37. Provision enabling the Welsh Ministers to require, by notice, “application-to-acceptance information” from bodies providing admissions services to Welsh higher education providers for use for “qualifying research” (sections 133 and 134) come into force on 1 August 2026.

Instruments and articles of governance of higher education corporations (Part 7)

- 1.38. On 1 April 2026 amendments to sections 124A, 125 and 232 of the Education Reform Act 1988 which concern instruments and articles of government of higher education corporations in Wales (sections 137 and 138) come into force in full.

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

- 2.1. None.

3. Legislative background

- 3.1. This commencement order is made under section 148(2) and (3) of the Tertiary Education and Research (Wales) Act 2022.
- 3.2. Section 148(2) of the 2022 Act enables the Welsh Ministers to appoint, by order, a day when provisions come into force. Section 148(3) of the 2022 Act enables such an order to appoint different days for different purposes and to make transitory, transitional or saving provision in connection with the coming into force of a provision brought into force by the order.
- 3.3. Whilst the Order does not follow a Senedd procedure, it is required to be laid before Senedd Cymru under section 37F of the Legislation (Wales) Act 2019.

4. Regulatory Impact Assessment

- 4.1. A Regulatory Impact Assessment (RIA) has not been completed for the Order. This is in line with the exemption in section 3.2 of the Welsh Ministers code of practice for conducting regulatory impact assessments for subordinate legislation.