

Explanatory Memorandum to:

- The Commission for Tertiary Education and Research (Registration and De-registration of Tertiary Education Providers in Wales) Regulations 2024,
- The Tertiary Education and Research (Wales) Act 2022 (Designation of Providers) Regulations 2024

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation 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 Commission for Tertiary Education and Research (Registration and De-registration of Tertiary Education Providers in Wales) Regulations 2024,
- The Tertiary Education and Research (Wales) Act 2022 (Designation of Providers) Regulations 2024.

I am satisfied that the benefits justify the likely costs.

Vikki Howells MS
Minister for Further and Higher Education
1 October 2024

PART 1

1. Description

- 1.1 This Explanatory Memorandum (“EM”) provides information covering two related pieces of subordinate legislation which are being made under the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”).
- 1.2 The 2022 Act provides for the establishment of the Commission for Tertiary Education and Research (“the Commission”) and the dissolution of the Higher Education Funding Council for Wales (“HEFCW”). The Commission was established as a legal entity on 15th December 2022¹ and HEFCW was dissolved on the 1st August 2024². Once the relevant provisions of the 2022 Act are commenced, the Commission will be responsible for promoting, funding, and regulating tertiary education and research in Wales.
- 1.3 Part 2 of the 2022 Act makes provision for a register of tertiary education providers in Wales (“the register”). The register will provide the legal mechanism for regulatory oversight of registered tertiary education providers in Wales, in receipt of public funds, including grant funding from the Commission and Welsh Government student support. The register will replace the higher education regulatory oversight regime previously operated by HEFCW under the Higher Education (Wales) Act 2015 (“the 2015 Act”) and now operated by the Commission for a transitional period.
- 1.4 The 2022 Act both requires, and enables, the Welsh Ministers to make subordinate legislation to specify matters relating to the establishment and operation of the register.
- 1.5 This EM relates to:
 - the Commission for Tertiary Education and Research (Registration and De-registration of Tertiary Education Providers in Wales) Regulations 2024 (“the registration Regulations”), and
 - the Tertiary Education and Research (Wales) Act 2022 (Designation of Providers) Regulations 2024 (“the designation Regulations”)
- 1.6 The registration Regulations make provision in respect of the categories of registration, registered providers eligibility to receive financial support from the Commission for the purposes of higher education, research or innovation, further initial conditions of registration, further mandatory ongoing registration conditions, information that must be included in a provider’s entry in the register and further circumstances in which the

¹ By virtue of the coming into force of section 1 of the 2022 Act by article 2(a) of the Tertiary Education and Research (Wales) Act 2022 (Commencement No.1) Order 2022 SI 2022/1318.

² By virtue of the coming into force of section 23 of the 2022 Act by article 2(b) of the Tertiary Education and Research (Wales) Act 2022 (Commencement No.4 and Transitory and Transitional Provisions) Order 2024 SI 2024/806.

Commission must remove a registered provider from a category of the register.

- 1.7 The registration Regulations, along with provision within Part 2 of the 2022 Act (once brought into force), will enable the Commission to invite, and determine registration applications, establish and maintain the register, and impose further initial conditions of registration and ongoing registration conditions.
- 1.8 The registration Regulations will also enable the Commission to provide financial resources to specified categories of registered providers for the purposes of higher education, research or innovation – once the Commission’s funding powers in section 88(1) (financial support to specified providers for higher education) and 105(1) (financial support for research and innovation) of the 2022 Act are brought into force.
- 1.9 The designation Regulations make provision about the Welsh Ministers’ power to designate a provider of tertiary education in Wales as an institution, setting out the procedure to be followed by a provider when applying for designation as an institution, along with the decision-making process and procedure for withdrawing a designation.
- 1.10 Both the registration Regulations and the designation Regulations are being laid before the Senedd under the affirmative procedure and will come into force on 11 November 2024 (if approved by a resolution of Senedd Cymru).

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

- 2.1 None.

3. Legislative background

- 3.1 The powers enabling the registration Regulations to be made are contained within the below sections of the 2022 Act:
 - Section 25(2) requires the Welsh Ministers to specify one or more categories of registration for which the Commission must make provision in the register, and section 25(3) stipulates that a category of registration specified must relate to the provision of one or more kinds of tertiary education
 - Section 25(5) enables the Welsh Ministers to prohibit the registration of a tertiary education provider in one category of the register at the same time that it is registered in one or more of the other categories
 - Section 25(8) enables the Welsh Ministers to prescribe the information that must be contained in a provider’s entry in the register

- Section 27(6) enables the Welsh Ministers to prescribe further initial conditions of registration for any category of registration and section 27(7)(b)(i) and (ii) indicates the kind of conditions that may be specified
- Section 32(2)(b) enables the Welsh Ministers to specify a fee limit category
- Section 34 enables the Welsh Ministers to provide for further mandatory ongoing registration conditions applicable to one or more of the categories of registration
- Section 41(2) enables the Welsh Ministers to specify other circumstances in which a registered provider must be removed from one or more categories or all categories of the register
- Section 88(3) enables the Welsh Ministers to specify categories of registered provider to which the Commission may provide financial support in respect of expenditure incurred for the purposes of the provision of higher education and facilities or activities connected with the provision of higher education
- Section 105(4) enables the Welsh Ministers to specify categories of registered provider to which the Commission may provide financial support in respect of expenditure incurred for the purpose of, or in connection with, research or innovation
- Section 143(2)(a) enables regulations made under the 2022 Act to make different provision for different purposes or areas

3.2 The powers enabling the designation Regulations to be made are contained within section 83(4) of the 2022 Act. Section 83(4) enables the Welsh Ministers to make provision about:

- the making of applications for designation;
- the making of designations under section 83 of the 2022 Act including provision about matters to be taken into account in determining whether to make a designation;
- the withdrawal of a designation including provision about matters to be taken into account when determining whether to withdraw a designation;
- the effect of a withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be treated as an institution for prescribed purposes)

3.3 Section 143(5) of the 2022 Act provides that the negative resolution procedure will apply to regulations made under section 25(5) and section 25(8) of the 2022 Act.

3.4 Section 143(3), (4)(b) and (c) of the 2022 Act provides that the draft affirmative resolution procedure will apply to regulations made under sections 25(2), 27(6), 32(2)(b), 34, 41(2), 83(4), 88(3) and 105(4) of the 2022 Act.

3.5 Under section 40 of the Legislation (Wales) Act 2019, provision subject to the negative procedure may be combined in the same instrument as

provision subject to the draft affirmative procedure. As a result, the draft affirmative procedure applies to the registration Regulations.

4. Purpose and intended effect of the legislation

Background

- 4.1 One of the Welsh Government's initial policy objectives for implementation of the 2022 Act is to establish an effective, robust, and sustainable legislative basis for regulating tertiary education providers.
- 4.2 Providers whose higher education provision is primarily funded by tuition fees cannot be regulated through the Commission's terms and conditions of funding alone, as tuition fee payments are a contractual undertaking between providers and their students. Robust regulatory oversight of providers whose courses are designated as eligible for student support is therefore essential to protect the interests of students, the Welsh Government, and taxpayers.
- 4.3 The register, as provided for by the 2022 Act, will replace the current higher education regulatory oversight regime operated under the 2015 Act.
- 4.4 The policy intention is that the register will deliver a single regulatory gateway, with common baseline requirements applicable to the full range of providers of higher education in Wales, including universities, further education colleges and other providers of higher education courses.
- 4.5 The register and associated regulatory arrangements will provide the statutory framework within which the Commission oversees the activities of registered providers.
- 4.6 The Welsh Government's policy objectives for the establishment of the register are to:
 - ensure robust and proportionate regulation of tertiary education providers in Wales, whose courses are supported by Welsh Government higher education grants and loans,
 - safeguard the contribution made to the public good from the Welsh Government's financial subsidy of higher education,
 - preserve and protect the institutional autonomy and academic freedom of higher education providers,
 - establish an approach capable of adaptation, should the need arise, due to changes to the tertiary education funding and regulatory environment,
 - enable future expansion of the registration categories to encompass a wider range of tertiary education should a policy need arise.

- 4.7 Tertiary education providers in Wales may apply to the Commission to become registered providers, with the Commission required to register the provider in a category of the register, if the provider meets the conditions set out in section 25(4) of the 2022 Act. The conditions are that:
- a. its governing body applies for it to be registered in the category,
 - b. it is a “tertiary education provider in Wales”,
 - c. it provides, or has provided on its behalf, the kind of tertiary education that relates to the category,
 - d. it satisfies the relevant initial registration conditions for the category of registration being sought, as set in section 27(1) and the registration Regulations (along with any further regulations made under section 27(6) of the 2022 Act),
 - e. registration is not prohibited by provision made in the registration Regulations (along with any further regulations made under section 25(5) of the 2022 Act), and
 - f. the application submitted by the provider complies with any requirements imposed by the Commission under section 25(7) of the 2022 Act.
- 4.8 Further provision in respect of the matters listed at bullets c to e is made in the registration Regulations, with further explanation provided later in this EM.
- 4.9 Section 144 of the 2022 Act defines “tertiary education provider in Wales” as an institution providing tertiary education, including tertiary education provided on its behalf, whose activities are wholly or mainly carried on in Wales. “Institution” isn’t defined for the purposes of the 2022 Act, and it therefore takes its ordinary meaning. Section 144(1) does, however, confirm that “institution” for the purposes of the 2022 Act includes any training provider (whether or not the training provider would otherwise be regarded as an institution). “Training provider” is defined in section 144(9) of the 2022 Act as a person who provides training for members of the school workforce.

The designation Regulations

- 4.10 Section 83 of the 2022 Act and the designation Regulations provide the basis on which a provider of tertiary education in Wales, who is not an institution, can make an application to the Welsh Ministers to be designated as one, for the purpose of the 2022 Act.
- 4.11 Designation as an “institution” will not in itself confer any benefits on a provider of tertiary education in Wales other than enabling them to satisfy the requirement to be a “tertiary education provider in Wales” as defined in section 144(1) and as required by section 25(4)(b) of the 2022 Act, in order for them to make an application for registration. Any registration applicant will need to satisfy the Commission’s expectations as to the initial conditions of registration (section 25(4)(d)) together with the other registration requirements set out in section 25(4).

4.12 Most tertiary education providers who deliver higher education in Wales are likely to be deemed institutions, for example, universities and further education colleges. Those institutions will therefore be eligible to make a registration application if they deliver the type of tertiary education relevant to a category of registration to which they wish to apply and they satisfy the criteria in section 25(4) of the 2022 Act (as set out in paragraph 4.7 above).

4.13 However, there may also be providers of tertiary education in Wales which may not be considered to be an institution in the traditional sense (for example, a company established to provide higher education), yet wishes to seek registration with the Commission.

4.14 The designation Regulations (regulation 3) specify that an application to be designated as an institution must be made in writing and contain:

- the provider's name and principal address, along with any other names under which it operates,
- a copy of the provider's governing documents,
- where the provider is a charity, its charity registration number, and the regulator(s) with whom it is registered (or the reason why such registration is not required),
- a description of the tertiary education being provided in Wales, including the levels of courses (by reference to the Credit and Qualifications Framework for Wales), and a description of the awards that may be conferred on persons undertaking courses with the provider,
- the number of persons undertaking the applicant's tertiary education on the date of the application, and how many of them are doing so in Wales,
- the locations where the applicant provides tertiary education,
- the address of any website maintained by the applicant in connection with its provision of tertiary education, and
- a copy of any prospectus published by the applicant in connection with its provision of tertiary education.

4.15 The specified information forms the core details required to allow the Welsh Ministers to check the status of the provider and establish whether it would otherwise satisfy the definition of being a "tertiary education provider in Wales" (set out in section 144(1) of the 2022 Act) prior to making a decision on the provider's designation as an "institution".

- 4.16 The designation Regulations also set out, at regulation 4, the decision-making process and procedure for withdrawing a designation as an “institution”. In deciding whether to withdraw a designation, the Welsh Ministers must take into account any request the provider has made to have its designation withdrawn.
- 4.17 If the Welsh Ministers do withdraw a provider’s designation, they must give the provider written notice containing the reasons for the decision and the date on which the withdrawal of designation has effect.
- 4.18 However, regulation 5 of the designation Regulations provides that the Welsh Ministers may not withdraw a designation of a provider while the provider is registered with the Commission, or if it is no longer registered but continues to be treated as being registered for any reason. Such a situation may arise if transitional arrangements were to be put in place following the de-registration of a provider where there are students completing their studies.
- 4.19 If the designation Regulations are not made there will not be a procedure to be followed by a provider seeking designation as an “institution” for the purpose of making a registration application. This could have an adverse impact on a non-institutional provider of tertiary education in Wales who wishes to make an application for registration with the Commission.

The registration Regulations

- 4.20 The registration Regulations will provide the basis for the intended operation of the register and regulatory oversight by the Commission. The operational detail, in particular the expectations that providers applying for registration must satisfy, and the ongoing compliance requirements to be applied to registered providers, will be matters for the Commission to determine. Consequently, those matters are not considered in this EM. The sections below set out the purpose and intended effect of the matters included in the Regulations.
- 4.21 If the registration Regulations are not made to specify the categories of registration the Welsh Ministers will not fulfil their statutory duty in section 25(2) of the 2022 Act and the Commission will not be able to establish the register. If the other matters provided for in the Regulations are not made, then the register will not function as intended.

Categories of registration

- 4.22 Section 25(2) of the 2022 Act places the Welsh Ministers under a duty to specify one or more categories of registration for which the Commission must make provision in the register. The Statement of Policy Intent published alongside the Act at its introduction to the Senedd, set out proposals for there to be two categories of registration applicable to higher education providers only in the first instance. Whilst the Act provides for the possibility of expanding the registration categories to encompass a

wider range of tertiary education, this will be a matter for future consideration once the register is established for higher education providers.

4.23 The registration Regulations (regulation 3) make provision for two registration categories as follows:

- **Higher Education Core (“Core”)** – Providers registered in this category will be eligible for automatic course designation for Welsh Government student fee and maintenance support for higher education courses at the higher fee level, currently £9250 p.a. (subject to satisfying any other requirements in the relevant student support regulations). They will also be eligible for grant funding from the Commission for the purposes of higher education, research or innovation, and will be subject to conditions relevant to the category.
- **Higher Education Alternative (“Alternative”)** – Providers registered in this category will be eligible for automatic course designation for Welsh Government student fee and maintenance support for higher education courses at the lower fee level, currently £6165 p.a. (subject to satisfying any other requirements in the relevant student support regulations). They will not be eligible for higher education, research or innovation funding from the Commission, and will be subject to conditions relevant to the category.

4.24 The two registration categories will enable tertiary education providers in Wales, who provide higher education or who have higher education provided on their behalf, to seek registration with the Commission.

4.25 The 2022 Act does not make provision in respect of higher education student support in relation to tuition fees or maintenance costs.

4.26 The Welsh Ministers intend to make regulations under the Teaching and Higher Education Act 1998, for the automatic designation of the relevant higher education courses of registered providers, for the purpose of Welsh Government statutory student support.

Prohibition on registering in more than one category

4.27 The registration Regulations (regulation 4) provide that the Commission must not register a provider in more than one category of the register at the same time.

4.28 This prohibition of simultaneous registration in the Core and Alternative categories is necessary as certain of the obligations and benefits arising from the two registration categories will differ. Allowing providers to register in both categories simultaneously would prevent the register from working as intended.

- 4.29 It will be for individual providers to determine whether they wish to register with the Commission and in which category, depending on their circumstances. Providers will wish to consider the obligations and benefits of registration before making a registration application.
- 4.30 In accordance with section 27(2) of the 2022 Act, the Commission is required to publish a document specifying the requirements that must be met for it to be satisfied of the initial registration conditions in section 27(1). The Commission may revise those requirements and if so, it must publish a revised document specifying the requirements as revised. Before publishing the document or revised document, the Commission must, if it appears to it appropriate to do so, consult such persons as it considers appropriate.
- 4.31 Section 28(1) of the 2022 Act requires the Commission to determine and publish general ongoing conditions of registration. The Commission may revise the conditions and if so, publish them as revised. Before determining or revising the conditions the Commission must consult such persons as it considers appropriate, if it appears to it appropriate to do so (section 28(5) to (7) of the 2022 Act).
- 4.32 Section 35 of the 2022 Act creates a duty for the Commission to publish guidance for registered providers about ongoing registration conditions.

Category to which a fee limit applies

- 4.33 The registration Regulations (regulation 5) specify that the Core category is the category to which a fee limit is to apply. Providers registering in this category will be required to comply with an ongoing fee limit condition and to produce a fee limit statement, if they offer courses which are subject to regulated course fees. Further regulations will be made in due course to specify the fee limit.
- 4.34 This approach ensures that providers who benefit from having their full-time undergraduate courses automatically designated for tuition fee support at the higher rate, will be required to comply with a tuition fee limit. This arrangement is similar to that currently operated by HEFCW under the 2015 Act.

Eligibility to receive financial support from the Commission

- 4.35 Part 3 of the 2022 Act provides for a link between the register and the Commission's powers to fund a range of tertiary education, as well as research or innovation.
- 4.36 The 2022 Act enables the Commission to fund categories of registered providers specified in regulations for the purpose of supporting higher education provided by or on behalf of such providers (section 88(1) of the 2022 Act), as well as to carry out research or innovation (section 105(1) of

the 2022 Act).

- 4.37 The registration Regulations specify that providers registered in the Core category will be eligible to receive financial support from the Commission for the purposes of higher education (regulation 6), or research or innovation (regulation 7).
- 4.38 The funding of both higher education and research or innovation activities will be a matter for the Commission to determine. The Commission may, for example, elect to provide funding in respect of courses which are expensive to deliver, to ring fence funds for specified initiatives or to incentivise the delivery of particular courses.

Further initial conditions of registration

4.39 The initial conditions of registration applicable to both categories of registration are specified on the face of the 2022 Act in section 27(1) and relate to the following matters:

- quality of the kind of tertiary education provided by, or on behalf of, the applicant to which the category of the register relates
- effectiveness of the governance and management of the applicant (including its financial management)
- financial sustainability of the applicant
- effectiveness of the applicant's arrangements for supporting and promoting the welfare of its students and staff
- effectiveness of any validation arrangements in enabling the applicant to satisfy itself as to the quality of the education leading to the award of a qualification under those arrangements

4.40 The 2022 Act sets out an extensive set of initial conditions that must be satisfied by providers seeking to register with the Commission. The Welsh Government's approach to specifying further initial conditions of registration has been to minimise additional statutory requirements, specifying only those additional conditions of registration which are necessary to ensure that the regulatory oversight operates as intended, or to protect the interests of students.

4.41 The registration Regulations provide for the below matters to also be initial conditions of registration:

- **a condition requiring the applicant to be a charity**, applicable to the Core category only (regulation 8(a)). This is a continuation of the Welsh Government's current policy under the 2015 Act.
- **a condition relating to the information provided to prospective students about the provider, its courses and its terms and conditions of contracts with students**, applicable to both the Core category (regulation 8(b)) and the Alternative category (regulation 9).

- 4.42 The Welsh Government anticipates that providers may, as part of satisfying the above condition in respect of the provision of information to prospective students, demonstrate they have given due regard to complying with consumer protection law, and to the Competition and Markets Authority's advice.
- 4.43 As detailed at para 4.31, the Commission must, if it appears to it appropriate to do so, consult such persons as it considers appropriate prior to publishing or revising a document under section 27(2), specifying the requirements that must be met for it to be satisfied as to the initial registration conditions listed in section 27(1).
- 4.44 The Welsh Government expects the Commission to consult all relevant stakeholders on the development of, and any future revisions to its expectations for satisfaction of the initial registration conditions. This will ensure that prospective registration applicants are aware of the requirements they must satisfy, and stakeholders will have an opportunity to comment on the Commission's proposals. Those expectations will not be known until the Commission undertakes the necessary work with stakeholders.

Further mandatory ongoing conditions of registration

- 4.45 In addition to the mandatory ongoing registration conditions set out on the face of the 2022 Act, the Welsh Ministers may specify further mandatory ongoing registration conditions in regulations made pursuant to section 34 of the 2022 Act.
- 4.46 The mandatory ongoing registration conditions, which must be applied to all registered providers registered in any category, are specified in sections 31 and 33 of the 2022 Act. These registration conditions relate to all the matters specified in the initial conditions of registration and require registered providers to:
- notify the Commission of any changes which affects the accuracy of the information contained in the provider's entry in the register
 - if given notice by the Commission, have a learner protection plan approved by the Commission on or before the date specified in the condition and to give effect to the plan
 - comply with the requirements contained in the Learner Engagement Code published by the Commission
 - have measurable outcomes in respect of equality of opportunity concerned with increasing participation, increasing retention, reducing attainment gaps and provision of support in respect of learners who are members of under-represented groups
 - have regard to advice or guidance given by the Commission in the exercise of its functions
 - provide the Commission, or a person authorised by the Commission, with such information, assistance and access to the

provider's facilities, systems and equipment as the Commission may reasonably require for the purpose of exercising its regulatory oversight functions

- 4.47 The Welsh Government considers that the above matters offer a comprehensive and firm foundation for the Commission's ongoing oversight of registered providers.
- 4.48 As with the further initial conditions of registration (detailed at para 4.40), the Welsh Government's approach to specifying further mandatory ongoing registration conditions has been to minimise any additional statutory requirements, only specifying additional conditions which are necessary to ensure that the regulatory oversight operates as intended, or to protect the interests of students.
- 4.49 The following mandatory ongoing registration condition, as set out in regulation 10(a), will apply to the Core category:

- **a condition requiring a provider to be a charity**

- 4.50 As the registration Regulations do not provide for a separate definition of 'charity', the definition of charity as provided for in the Charities Act 2011 applies for the purposes of the Regulations. Section 1 of the Charities Act 2011 provides:

- (1) For the purposes of the law of England and Wales, "charity" means an institution which—
 - (a) is established for charitable purposes only, and
 - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.
- (2) The definition of "charity" in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment.

- 4.51 The registration Regulations (regulation 10(b) & (c) and regulation 11(a) & (b)) provide for the following ongoing conditions of registration to apply to both categories:

- **a condition relating to the information provided to prospective students about a provider, its courses, and its terms and conditions of contracts with students**

- 4.52 As with the equivalent initial condition of registration, the Welsh Government anticipates that providers would, as part of satisfying the above condition, demonstrate they have given due regard to complying with consumer protection law, and to the Competition and Markets Authority's advice.

- **a condition requiring a provider to notify the Commission of**

any changes that affect the provider's status as a tertiary education provider in Wales

- 4.53 A provider must be a tertiary education provider in Wales in order to register with the Commission, as set out in section 25(4)(b). Subjecting registered providers to an ongoing registration condition, requiring them to notify the Commission of any changes that affect a provider's status as a tertiary education provider in Wales, will ensure registered providers are under an obligation to make the Commission aware of all matters which may impact on this aspect of their registration.
- 4.54 The Welsh Government considers the registration conditions detailed above to address additional key matters necessary to enable the regulatory oversight system to operate as intended. The intention is to protect the interest of students while also minimising the additional regulatory burdens placed on providers beyond the mandatory ongoing conditions specified on the face of the 2022 Act.
- 4.55 When determining and publishing general ongoing registration conditions under section 28(1) of the 2022 Act, the Commission will be able to introduce further ongoing registration conditions should it consider any to be necessary (subject to the relevant consultation requirements provided for in section 28(7) the 2022 Act).

Mandatory de-registration should charitable status no longer be met

- 4.56 Section 41 of the 2022 Act provides the Commission with both a power and a duty to remove a provider from a category of the register, in certain circumstances. A registered provider may also apply for voluntary de-registration in accordance with section 43 of the 2022 Act.
- 4.57 Section 41(3) of the 2022 Act provides that the Commission may remove a registered provider from a category of the register if it appears to the Commission that the provider has breached one of its ongoing registration conditions and:
- the Commission has previously issued a direction under section 39 (directions in respect of failure to comply with ongoing registration conditions) of the 2022 Act to that provider in relation to a breach of an ongoing registration condition and it appears to the Commission that there is again a breach, or a continuing breach of that condition, or there is or has been a breach of a different condition, or
 - the Commission considers that issuing a direction under section 39 would be insufficient to deal with the breach
- 4.58 In accordance with section 41(1) of the 2022 Act the Commission must remove a provider from a category of the register if it is no longer a 'tertiary education provider in Wales', or it ceases to provide, or have provided on its behalf, the kind of tertiary education that is relevant to its

category of registration. This is because the provider would no longer satisfy the conditions set out in section 25(4)(b) or (c) of the 2022 Act.

- 4.59 In addition to the circumstances set out on the face of the 2022 Act, the Welsh Ministers may, in Regulations made under section 41(2) of the 2022 Act, specify further circumstances in which a registered provider must be removed from one or more, or all, categories of the register.
- 4.60 Current policy, as provided for through the regulatory oversight regime set out in the 2015 Act, is for the higher rate of student support to only be available to those pursuing courses at providers who hold charitable status. This remains the policy position, hence the inclusion of the further initial and ongoing conditions in respect of a provider registered in the Core category being a charity.
- 4.61 The registration Regulations (regulation 13) require the Commission to remove a registered provider from the Core category if the Commission is satisfied that the provider is not a charity.
- 4.62 The use of the wording ‘not a charity’ in regulation 13, as opposed to, for example, ‘no longer a charity’, is intended to capture circumstances where a provider loses charitable status or where a provider was deemed to be charity in error at the time of registration with the Commission.
- 4.63 The most likely circumstance for a provider to lose its charitable status is in the case of mistaken registration. This may apply when a provider, which has never been a charity, has been placed on the register of charities in error. This could happen because the Charity Commission was provided with incorrect information at the point of registration, because the provider is shown to be a sham, or simply because of an error during the process.
- 4.64 This change was made to avoid the risk of any inequity in the system. If a provider’s removal from the Core category of registration on loss of charitable status was not mandatory, and the Commission chose not to exercise its discretionary power, a provider could remain in the Core category and therefore continue to have its courses designated for the higher amount of student fee support and eligible for funding from the Commission.
- 4.65 This would be discriminating to those providers registered in the Alternative category who were not able to register in the Core category – and therefore benefit from being designated for the higher amount of student fee support – due to not having charitable status.
- 4.66 A provider de-registered from the Core category, due to loss of charitable status, could still opt to apply for registration in the Alternative category thereby being designated for the lower rate of student support.
- 4.67 The Charity Commission has publicly stated that its principal role is to protect charitable assets and secure their application for charitable

purposes; meaning that even mismanagement or misconduct will not automatically lead to an organisation losing its charitable status. Their stated approach is that it will attempt to apply its wide range of powers, such as freezing assets, suspending or removing trustees and making directions, to help the charity to get back on track and continue its charitable mission, rather than simply dismissing an organisation from the register.

4.68 Consequently, it is unlikely that an institution would lose their charitable status without considerable warning nor opportunities to address any issues. Requiring the removal of a provider from the Core category, if they no longer meet the specified conditions and have not taken the necessary steps to rectify the situation, therefore seems to be a reasonable approach.

Information to be contained in the register

4.69 The registration Regulations specify the information which must be included in a provider's entry in the register. The Welsh Government does not wish to be overly prescriptive in specifying the mandatory information requirements, and considers the requirements set out in regulation 12 to be the minimum information which must be included in a provider's entry in the register.

4.70 The register is intended to be a public source of information relating to the Commission's regulatory oversight of registered providers. It is not intended to be a course directory or include information that is likely to be subject to frequent change.

4.71 Regulation 12 requires the following information to be included in a provider's entry of the register for the purposes of section 25(8) of the 2022 Act:

- **the provider's name, contact details, principal place of business and website** - this information will allow users of the register to contact the provider by post, e-mail or telephone, find out information about what the provider offers and identify its location. By including the address of the place of business there is a service address which will enable the Commission, or others, to serve proceedings on the provider.
- **the category of registration and the date of registration** – this information is essential for users of the register to understand the regulatory assurance the Commission has in relation to a provider, including the conditions placed upon it, and the provider's eligibility for course designation for the purpose of student support and grant funding from the Commission.
- **the type of tertiary education provided by or on behalf of the provider** – this information will allow users of the register to find out

the type of tertiary education offered by the provider.

- **whether the provider is a charity and charity registration number (where applicable)** – users of the register will be able to check if a registered provider is a charity.
- **whether the provider is a company, if so it's company registration number (where applicable)** – users of the register will be able to check if a registered provider is a company.
- **whether a fee limit condition applies to the provider's registration, if so, details of how to access the provider's fee limit statement** – this information will inform users of the register whether a provider is required to comply with a tuition fee limit and if so, will signpost users to the provider's fee limit statement.
- **whether the provider has university title** – this information will allow users of the register to check if the provider is entitled to use the term “university” in its title. Not all higher education providers are universities. “University” is a protected term and any organisation wishing to use the term in its title must be authorised to do so.
- **whether the provider has degree awarding powers and if so which type of powers** – the register will include information regarding whether a provider is authorised to grant taught awards or research awards, or both, as well as the power under which it was so authorised, a description of the awards and when the power to award degrees was authorised. Users of the register will be able to check if a provider is authorised to award taught degrees, research degrees or both as well as when a provider was authorised to award degrees.
- **whether the provider has entered into validation arrangements** – providers which offer courses that lead to degrees, but do not have their own degree awarding powers, will have a validation agreement with a provider which does. The register will specify whether a provider has entered into validation arrangements. Users of the register will be able to check which providers are authorised to offer courses that lead to degrees.
- **whether the provider has entered into franchise arrangements** - registered providers may enter into partnership arrangements with other providers who deliver courses on their behalf or alternatively registered providers may also provide courses on behalf of another provider. Having this information in the register will enable users of the register to identify whether a registered provider has entered into franchise arrangements.

4.72 The matters specified in the registration Regulations do not limit the

Commission's ability to include further information in the register should the Commission consider it appropriate to do so.

- 4.73 This approach balances the interests of stakeholders who wish to access regulatory information about registered providers, with the administrative burdens placed on providers and on the Commission in keeping the information in the register up to date.

5. Consultation

- 5.1 A 14-week public consultation was undertaken on the draft registration Regulations and draft designation Regulations between 31 October 2023 and 5 February 2024.
- 5.2 The consultation was drawn to the attention of a wide audience of key stakeholders with an interest in post-compulsory education and training. Two online stakeholder briefing sessions were held in November 2023 to support the consultation.
- 5.3 The main objective of these sessions was to assist stakeholders' understanding of the purpose of the consultation and to enable stakeholders to consider the information included in the consultation document and respond to the consultation.
- 5.4 Respondents were invited to review the consultation document and supporting information online and respond to the consultation questions via e-mail, postal questionnaire or an online form. A total of 21 consultation responses were received.
- 5.5 The consultation sought stakeholders' views on the draft registration Regulations with a series of questions. The consultation did not include any specific questions in respect of the designation Regulations and none of the responses received referenced these Regulations.
- 5.6 In relation to the registration Regulations, most respondents either agreed or neither agreed nor disagreed with the names proposed for the two registration categories. Therefore, no changes have been made to the titles of the registration categories.
- 5.7 Most respondents agreed with the inclusion of the two proposed further initial registration conditions as being necessary and appropriate. Additionally, the majority of respondents agreed with the inclusion of the three proposed further mandatory ongoing registration conditions.
- 5.8 The consultation also sought views on the sufficiency of the further initial and further mandatory ongoing conditions. Respondents put forward a variety of suggestions for further conditions of registration.
- 5.9 As detailed in this EM, in identifying further initial conditions of registration and mandatory ongoing registration conditions to be included in the

Regulations, the guiding principles have been to ensure that any additional statutory requirements are limited to those conditions necessary to ensure the regulatory oversight operates as intended, and that the interests of students are protected. It has also been a key policy intention to afford the Commission discretion to apply further ongoing registration conditions as it considers to be appropriate.

- 5.10 Having considered the areas suggested by respondents against these guiding principles, the Welsh Government concluded there were insufficient grounds to warrant the inclusion in the Regulations of further initial conditions of registration or mandatory ongoing registration conditions, beyond those outlined in this EM.
- 5.11 The consultation sought views on the sufficiency of information to be included in a provider's entry in the register. Most respondents agreed with the proposed information and with the Welsh Government's approach not to be overly prescriptive, enabling the Commission to determine further requirements and to minimise the administrative burden on providers.
- 5.12 The consultation also included a series of questions, intended to help inform the development of the regulatory impact assessment, which sought the views of respondents on any anticipated resource implications arising from the regulations or registration system; any evidence which would support the assessment of the costs and benefits of implementing the registration system; and the identification of any other stakeholders likely to face costs arising from the registration system, either directly or indirectly.
- 5.13 The consultation documents and a summary of the responses are available at: [Register of tertiary education providers: initial regulations](#)

Change to the registration Regulations following the consultation

- 5.14 Following the conclusion of the consultation, one further matter was deemed as appropriate for inclusion within the registration Regulations, namely the mandatory removal of a registered provider from the Core category of the register should charitable status no longer be met.
- 5.15 As this additional requirement was not included in the consultation process, Welsh Government officials, and the Commission, will engage with key stakeholders to ensure they are aware of this provision and the reason for its inclusion.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Summary

- 6.1 This Regulatory Impact Assessment ("RIA") sets out the options available for the establishment of the register of tertiary education providers as

required under Part 2 of the 2022 Act, and considers the scope, costs and benefits of making the necessary regulations under the 2022 Act.

6.2 A series of regulations are required to enable the register to operate as intended. These are necessary for the Commission to establish and operate the register but allow it the operational freedom to develop its own expectations of providers to satisfy regulatory requirements.

6.3 The registration Regulations and the designation Regulations are the first two sets of these regulations to be made under the 2022 Act.

6.4 In preparing this RIA, three options have been considered, as follows:

Option 1: Do nothing – the Welsh Ministers do not make the registration Regulations, nor the designation Regulations, and the Commission does not establish a register of providers of tertiary education.

Option 2: the Welsh Ministers make the registration Regulations, specifying categories of registration in respect of higher education, along with the designation Regulations, so as to enable the Commission to establish the register for the regulation of providers of higher education only (preferred option).

Option 3: the Welsh Ministers make the registration Regulations, specifying categories of registration in respect of higher and further education, along with the designation Regulations, so as to enable the Commission to establish the register for the regulation of both providers of higher and further education.

6.5 **Option 2** was the stated policy intent when the 2022 Act was passed by the Senedd on the 28th June 2022 and was included in the Statement of Policy Intent which accompanied the Act on its introduction to the Senedd.

6.6 **Option 2** will allow the register to form a regulatory gateway for the automatic designation of higher education courses for Welsh Government student support (subject to the Welsh Ministers making the necessary regulations under the Teaching and Higher Education Act 1998 - see paras 4.25 and 4.26 of the EM). In addition, option 2 will enable the Commission to exercise the range of regulatory intervention functions and also funding functions, provided for in the 2022 Act and intended to support the regulatory regime.

6.7 As detailed in section 5 of the EM, the Welsh Government consulted in February 2024 on the policy proposals and draft registration and designation Regulations. The consultation focused upon **option 2** (make regulations to implement the register for the regulation of higher education providers only). This was the intent as only providers of higher education will be eligible to apply to be registered with the Commission, and, as such, this will initially be the only group of providers who will be subject to the conditions of registration.

- 6.8 This RIA includes costings and benefits for **option 2** (Make regulations to implement the register for the regulation of higher education providers only in Wales). However, it must be noted that although categories of costs can be identified, precise and specific costings are limited at this time as the register of tertiary education providers has yet to be established and the Commission's expectations about satisfaction of the conditions of registration have yet to be developed or consulted on.
- 6.9 Establishment of the register is dependent on the making of the registration Regulations, along with further subordinate legislation to made under the 2022 Act, and decisions to be undertaken by the Commission.
- 6.10 Higher Education providers were not able to provide cost estimates as part of their consultation responses because of the uncertainty around the precise registration requirements. Therefore, costs included within this RIA are associated with the work to be undertaken by the Commission in establishing the new register and the benefits that have been identified.
- 6.11 This information to inform the development of these costs has been established through the consideration of the obligations arising under the 2022 Act, along with the consultation responses, initial engagement with HEFCW and the Commission and consideration of international literature transferable to the context of Wales (which is embedded throughout this RIA).
- 6.12 Further research was considered for this RIA (which included a survey to higher education providers and interviews with sectors and umbrella organisations); however, based on the consultation responses, and since the operational detail about the regulatory requirements higher education providers will need to satisfy has yet to be developed; it was deemed more valuable to undertake further research once the regulations have been made and expectations for the conditions of registration has been developed by the Commission.
- 6.13 Information around evidence requirements for the satisfaction of the initial conditions of registration and expectations about compliance with the ongoing registration conditions is yet to be developed by the Commission. However, there are regulatory requirements on the face of the 2022 Act, which the Commission will need to consider, and therefore benefits arising from those requirements are considered as part of this RIA. These are:
- **The Learner Engagement Code** (section 129 of 2022 Act) - This Code is intended to ensure learners' interests are represented, that learners can give their views to providers about the quality of education they receive, and to participate in the making of decisions by those providers.
 - **The Learner Protection Plan** (section 126 of 2022 Act) - This aims to set out how a provider will protect learners' interests in the event

of a relevant course (as defined in section 126(10)) ceasing to be provided, and how providers might facilitate the transfer of learners undertaking relevant courses who wish to transfer to other courses or providers.

- **Ongoing registration conditions in respect of equal of Opportunity** (section 33 of the 2022 Act)- This relates to an introduction of measurable outcomes in respect of equality of opportunity, ensuring increasing participation, increasing retention, reducing attainment gaps and provision of support in respect of learners who are members of underrepresented groups.
- **Initial and ongoing registration conditions in respect of the welfare of students and staff** (section 27(1)(d) and 31(1)(d) of the 2022 Act) - This relates to the effectiveness of provider's arrangements for supporting and promoting the welfare of its students and staff.

6.14 The legislative framework provided by the 2022 Act, and the subordinate legislation made under that Act, will give the Commission the operational freedom it needs, as an arms-length body, to develop its own expectations of providers to satisfy the regulatory requirements, and to establish its distinct approach to monitoring and intervention.

6.15 The section below sets out the key elements of each option together with an analysis of the advantages and disadvantages associated with them.

Option 1: Do nothing

6.16 Under this option the Welsh Ministers would not make regulations, as required under section 25(2) of the 2022 Act, to prescribe the categories of registration, nor make regulations in respect of the designation of providers as an institution for the purpose of applying to the register. This would in turn mean the Commission could not to establish the register.

6.17 This option would require the Commission to continue to operate the higher education regulatory oversight system, as provided for by the 2015 Act and previously operated by HEFCW.

6.18 In the short term, and for a transitional period, the Commission will exercise a number of HEFCW's functions under the 2015 Act to ensure continued regulatory oversight of higher education providers following the dissolution of HEFCW. This is provided for in the Tertiary Education and Research (Wales) Act 2022 (Commencement No.4 and Transitory and Transitional Provisions) Order 2024 ("the fourth TERA Order"), made by the Cabinet Secretary for Education on 17 July 2024, which modified relevant provisions within the 2015 Act thereby enabling those functions to be exercised by the Commission.

- 6.19 Paragraph 31 of Schedule 4 to the 2022 Act provides for the repeal of the 2015 Act, and as such the legislative framework which underpins the existing higher education regulatory system will eventually be repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to provide for the commencement, in full, of paragraph 31).
- 6.20 Part 3 of the 2022 Act enables the Commission to fund tertiary education, including higher education (section 88), and research or innovation (section 105). The Commission may only provide funding in respect of higher education (other than certain courses as defined in Regulations the Welsh Ministers may make under section 89) or in respect of research to registered providers registered in a category specified in regulations. Regulations 6 and 7 of the registration Regulations specify the relevant categories.
- 6.21 In the short term, and for a transitional period, the Commission will exercise what were previously HEFCW's functions under section 65 of the Further and Higher Education Act 1992 ("the 1992 Act"), in order to fund higher education and research. As with the 2015 Act, the modification of the 1992 Act was provided for in the fourth TERA Order.
- 6.22 Paragraph 6 of Schedule 4 to the 2022 Act provides for the repeal of section 65 (along with other associated provisions) of the 1992 Act, and as such the legislative framework which currently enables the funding of higher education and research will eventually be repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to provide for the commencement, in full, of paragraph 6).
- 6.23 This means the 'do nothing' option is not viable as a long-term solution. It would involve the Commission adopting the current arrangements for regulatory oversight of higher education providers which do not include a register of providers.

Key Advantages of Option 1

- 6.24 There would be little development and implementation work to be undertaken by the Commission.
- 6.25 There would not be any additional regulatory burdens placed on higher education providers arising from conditions of registration.
- 6.26 There would be no additional costs under this option as it reflects the current position.

Key Disadvantages of Option 1

- 6.27 The Welsh Ministers would not fulfil their statutory duty to make regulations, as required by section 25(2) of the 2022, to specify one or more categories of registration.

- 6.28 The Commission could not fulfil its statutory duty, as set out in section 25(1) of the 2022 Act, to establish and maintain a register of tertiary education providers.
- 6.29 It is not viable in the long term, as a replacement for the current, higher education regulatory system is needed as the underpinning legislative framework, as provided by the 2015 Act, is due to be repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to provide for the commencement, in full, of paragraph 31 of Schedule 4 to the 2022 Act).
- 6.30 This option is also not viable, as a replacement for the current powers to fund higher education and research is required due to the underpinning legislative framework, as provided by the 1992 Act, being repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to provide for the commencement, in full, of paragraph 6 of Schedule 4 to the 2022 Act).
- 6.31 In addition, if the designation Regulations were not made there would not be a specified procedure for providers to apply for designation as an institution, and for that designation to be withdrawn.
- 6.32 It would not address the concerns of the Children, Young People and Education Committee about the limitations of the 2015 Act³, or provide a single regulatory oversight system, applicable to all higher education providers in Wales.

Option 2: Make the registration Regulations and the designation Regulations and establish the register for tertiary education for regulation of providers of higher education only (Preferred option)

- 6.33 This option has been the stated policy intent since the 2022 Act was introduced into the Senedd (as set out in the Statement of Policy Intent which accompanied the then Bill), and remained the stated policy intent when the 2022 Act was passed by the Senedd on the 28th June 2022.
- 6.34 This option would involve the Welsh Ministers making regulations to specify the categories of registration which apply to providers of higher education, along with all other relevant matters which would require provision in regulations. This option would also involve the making of regulations in respect of the designation of providers as an institution for the purpose of applying to the register
- 6.35 The Commission would in turn be required to establish a register of providers of higher education only.
- 6.36 Providers of further education would continue to be primarily regulated through the Commission's terms and conditions attached to its funding.

³ [Post legislative scrutiny of the Higher Education \(Wales\) Act 2015 \(senedd.wales\)](https://www.senedd.wales)

6.37 Section 108 of the 2022 Act requires the Commission, when determining the terms and conditions to be imposed on its funding to a non-registered provider under sections 89(3), 97(1)(a) or (b) or 104(1)(a) of that Act, to consider imposing requirements relating to a number of the mandatory ongoing conditions of registration, as set out the face of the 2022 Act, which are applicable to all registered providers.

Key advantages of Option 2

6.38 The Welsh Ministers would comply with their duty, as provided for in section 25(2) of the 2022 Act, to make regulations to specify the one or more categories of registration.

6.39 The Commission would be able to comply with its statutory duty, as set out in section 25(1) of the 2022 Act, to establish and maintain a register of tertiary education providers.

6.40 This option focuses resource where there is a clear policy need, as it will provide consistent regulatory oversight of providers whose higher education courses are automatically designated for Welsh Government student support. This is because regulatory oversight of such providers cannot be achieved through terms and conditions of funding alone, as tuition fee payments are a contractual undertaking between providers and their students.

6.41 This approach will also allow parity and coherence of regulatory oversight in respect of the different types of tertiary education providers, where terms and conditions of funding can achieve the necessary regulatory oversight.

6.42 This option presents less resource and capacity issues for the Commission than option 3 and places fewer administrative burdens on providers of further education, as they would continue to be regulated in a way which they are familiar with.

6.43 This option would deliver a replacement for the current higher education regulatory system, as provided for by the 2015 Act. This is a priority as paragraph 31 of Schedule 4 to the 2022 Act provides for the repeal of the 2015 Act (once the Welsh Ministers make an Order under section 148 of the 2022 Act to bring paragraph 31 fully into force).

6.44 This option would also provide a replacement to the current powers to fund higher education and research, as provided for by the 1992 Act. This is again a priority as paragraph 6(3)(c) of Schedule 4 to the 2022 Act provides for the repeal of section 65 of the 1992 Act (once the Welsh Ministers make an Order under section 148 of the 2022 Act to provide for the commencement of paragraph 6(3)(c) of Schedule 4 to the 2022 Act).

6.45 This option would also provide for a specified procedure for providers to apply for designation as an institution, and for that designation to be withdrawn.

Key Disadvantages of Option 2

6.46 There would not be a single regulatory oversight mechanism for the whole of the post-16 sector.

6.47 While the 2022 Act is future-proofed to allow the register to encompass other types of tertiary education if a policy need arises, further regulations would be needed to implement such a change.

Option 3: Make the registration Regulations and the designation Regulations and establish the register for tertiary education for regulation of providers of higher education and further education.

6.48 This option would involve making the necessary regulations to prescribe both higher education and further education and training categories of registration, along with all other relevant matters which would require provision in regulations.

6.49 This option involves the Commission establishing a register of tertiary education providers and would enable providers of both further education and training, and higher education to register

6.50 This would be the primary mechanism used by the Commission for regulatory oversight of all providers in receipt of public funds, including funding from the Commission, and Welsh Government student support.

6.51 It is possible, under the 2022 Act, to provide for a register of both providers of higher education and providers of further education and training, however a replacement for the current higher education regulatory system is a priority, as the 2022 Act provides for the repeal of the 2015 Act (once the Welsh Ministers make an Order under section 148 of the 2022 Act to bring paragraph 31 of Schedule 4 to the 2022 Act fully into force).

6.52 At present, it is unnecessary for the register to apply to providers of further education and training as they can be regulated by way of terms and conditions of funding.

Key Advantages of Option 3:

6.53 The Welsh Ministers would comply with their duty, as set out in section 25(2) of the 2022 Act, to make regulations to specify one or more categories of registration.

- 6.54 The Commission would comply with its statutory duty, as set out in section 25(1) of the 2022 Act, to establish and maintain a register of tertiary education providers.
- 6.55 All post-16 providers would be regulated with the same oversight mechanism offering greater consistency and coherence across the sector.
- 6.56 As with option 2, this option would deliver a replacement for the current higher education regulatory system, which is a priority as the 2015 Act due to be repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to bring paragraph 31 of Schedule 4 to the 2022 Act fully into force).
- 6.57 Again, as with option 2, this option would provide a replacement to the current powers to fund higher education and research, as provided for by the 1992 Act. This option would also provide for a specified procedure for providers to apply for designation as an institution, and for that designation to be withdrawn.

Key Disadvantages of Option 3:

- 6.58 Development and establishment of the register will be a far greater undertaking for the Commission if it encompasses all types of post-16 providers, particularly at such an early stage of its operation. The volume of applications that would need to be assessed and approved would likely have capacity and resource implications for the Commission.
- 6.59 Further education providers can continue to be primarily regulated through the Commission's grant funding, and the terms and conditions attached to this funding.
- 6.60 Section 108 of the 2022 Act requires the Commission, when determining the terms and conditions to be imposed on its funding to a non-registered provider under sections 89(3), 97(1)(a) or (b) or 104(1)(a) of that Act, to consider imposing requirements relating to a number of the mandatory ongoing conditions of registration, as set out the face of the 2022 Act, which are applicable to all registered providers. .
- 6.61 This approach is intended to ensure parity of regulatory oversight in respect of different types of tertiary education and therefore, there is not a clear policy need currently to regulate all types of providers through a register as an alternative, equally robust approach is already provided for under the 2022 Act.
- 6.62 There is a need to prioritise efforts. There is potential that this form of oversight may cause unnecessary burden on those further education providers who are not familiar with regulation in this way, risking financial instability if registration is not approved by the Commission.

Conclusion

- 6.63 **Option 1** is not viable as a long-term solution; the Welsh Ministers would not fulfil their duty to make regulations to specify one or more categories of registration and the Commission would not be able to fulfil its statutory duty to establish and maintain a register of tertiary education providers.
- 6.64 **Option 2** is the preferred, viable option because a replacement for the current higher education regulatory system, is needed, as the underpinning legislative framework, as provided for in the 2015 Act is due to be repealed (once the Welsh Ministers make an Order under section 148 of the 2022 Act to bring paragraph 31 of Schedule 4 to the 2022 fully into force).
- 6.65 Option 2 was the stated policy intent since the 2022 Act was introduced into the Senedd (as set out in the Statement of Policy Intent which accompanied the then Bill), and remained the stated policy intent when the 2022 Act was passed by the Senedd on the 28th June 2022.
- 6.66 **Option 2**, instead of **option 3**, is the preferred approach because, at present, there is a need to prioritise the regulatory oversight of higher education, as providers of further education and training can continue to be primarily regulated through the Commission's funding, and the terms and conditions attached to this funding, which is not possible for providers of higher education. Option 2 will allow parity of regulatory oversight for providers of further education via terms and conditions.
- 6.67 The consultation, as detailed in section 5 of the EM, addressed option 2 (to make regulations to enable the implementation of the register for the regulation of providers of higher education only).
- 6.68 The register of tertiary education providers has yet to be implemented. Its establishment will be dependent on the making of the relevant subordinate legislation, including the registration Regulations and the designation Regulations, along with decisions to be taken by the Commission. It will be reviewed once the registration system has been implemented by the Commission.
- 6.69 To register, providers will need to satisfy the requirements of section 25(4) of the 2022 Act which includes the Commission's expectations as to the initial conditions of registration. Those expectations and the detail of the registration conditions will not be known until the Commission has had opportunity to consult on its proposals.

7. Costs and Benefits of the preferred option (option 2)

- 7.1 The proposed reforms relate to the registration and regulation of providers of higher education under the 2022 Act, as well as from relevant subordinate legislation made under that Act. The register provided for by the 2022 Act will replace the current higher education regulatory system under the 2015 Act.

- 7.2 Costs and benefits of **option 2**, and the registration Regulations is explored as part of this RIA. Types of costs can be identified but quantifiable costings are limited at this time as the register of tertiary education providers has yet to be implemented.
- 7.3 Whilst option 2 includes the making of the designation Regulations, there are no costings associated with these Regulations included in this RIA. This is on the basis that there will be limited administrative costs to non-institutional providers associated with making an application for designation as an institution.
- 7.4 Those costs are expected to be minimal as an applicant will only need to provide information about its governance arrangements and the delivery of tertiary education in Wales in order to make an application to the Welsh Ministers to be designated as an institution. There are no other current costs associated with the designation Regulations. The provision of the information necessary to make a designation application is not considered to be onerous to providers. The information is necessary to identify the applicant provider and to ensure that it delivers tertiary education relevant to the category for which registration is to be sought.
- 7.5 As detailed earlier in this RIA, the establishment of the register will be dependent on the making of the registration Regulations, along with future subordinate legislation to be made under the 2022 Act, and decisions to be undertaken by the Commission.
- 7.6 Costs included within this RIA are associated with establishing the new register and the benefits that have been identified through the development of the 2022 Act, the consultation and further engagement on clarification from HEFCW; and a review of international literature transferable to the context of Wales.
- 7.7 The analysis of the consultation responses and engagement with stakeholders on the responses revealed a consensus view that it is difficult to know the extent of resource implications at this stage until details around requirements are developed. Thus, a decision was made to delay additional planned research with key stakeholders at this time. It was anticipated that interviews with stakeholders would be more valuable and timelier once the details around the requirements are established and understood.
- 7.8 It was anticipated that a baseline would be conducted from up-to-date estimated costings incurred by Universities Wales (who represent the interests of universities in Wales and is a National Council of Universities), universities on their behalf, and HEFCW in relation to the delivery of the regulatory system provided under the 2015 Act. This was to make a comparison with the 2022 Act.

- 7.9 From the consultation responses and further engagement with stakeholders regarding the responses, it was established that there were no current costings available to establish a baseline and that the requirements under the 2022 Act are not directly comparable to the activities and costings arising from the 2015 Act.
- 7.10 This is because the new requirements and activities which will be expected of registered providers, are still to be developed by the Commission. What has been included within the costing section includes the staffing costs associated with HEFCW as the previous regulatory body, anticipated additional staff costs required for the Commission, along with estimated capital delivery costs for the register.
- 7.11 A survey was developed to go out to higher education providers regulated by HEFCW (regulated institutions under the 2015 Act). The main purpose for this was to understand the costs incurred by regulated institutions from activities directly involved in HEFCW's regulatory functions. The survey aimed to also capture the perceived benefits and disbenefits of the new registration system from the perspective of these providers.
- 7.12 However, initial engagement and further exploration of the current requirements undertaken by regulated institutions, which centre on activities relating to fee and access plans, highlighted that it would be difficult for these providers to determine costings in a way which would be comparable amongst all the regulated institutions in Wales. It also became apparent that although activities relating to fee and access plans feature as part of the compliance requirements associated with the 2015 Act; fee and access plan applications will not be required under the TER Act and registered providers will instead need to comply with a range of ongoing conditions of registration.
- 7.13 The survey was also anticipated to capture the perceived benefits and disbenefits of the new registration system from the perspective of regulated institutions. This was proposed for the purpose of ensuring that regulated institutions, the majority of who are expected to seek registration with the Commission, were able to provide their perceptions of the benefits and disbenefits of the new activities associated with registration e.g. from the Learner Engagement Code for both the providers and also learners as well.
- 7.14 However, since the operational detail relating to registration requirements is yet to be developed; it was deemed more valuable to undertake further research once more information is available and developed by the Commission. This information will be captured as part of the wider evaluation of the 2022 Act.
- 7.15 In comparison with the regulatory system under the 2015 Act, there are new requirements set out on the face of the 2022 Act, which the Commission will need to address when establishing the register; therefore, within this RIA the initial benefits are considered:

- The Learner Engagement Code
- The Learner Protection Plans
- The ongoing registration condition in respect of equal Opportunity
- The initial and ongoing registration conditions in respect of the welfare of students and Staff

Costings

7.16 Currently, the Commission has not established the register, nor defined its regulatory expectations of providers for the conditions of registration as set out in the 2022 Act and in the registration Regulations; therefore, estimated costings for registered providers are yet to be determined.

7.17 At present institutions in Wales, who wish to have their relevant full-time higher education courses to be automatically designated for the purpose of Welsh Government student support, are subject to regulatory oversight under the 2015 Act. The registration system provided for by the 2022 Act will replace the current higher education regulatory system.

Staff Costs

7.18 Comparison of staff costs have been based on the permanent regulatory roles that were included in the HEFCW structure, to deliver the requirements under the 2015 Act, and the initial staffing structure of the Commission. No Welsh Government staff have been included in these costs.

7.19 An increase in the number of posts will be required by the Commission as its regulatory role will be broader than that of HEFCW. However, much of the current non-higher education regulatory work supported by Welsh Government is anticipated not to transfer into the Commission.

7.20 It has been estimated that at least seven additional permanent posts are needed for the Commission's structure compared to the previous HEFCW structure, estimating an increase in staff cost from the £646,000 for HEFCW to £954,000 for the Commission. The figures are per annum costs based on the 23/24 pay scales and do not include oncosts.

7.21 If an estimated 40% for oncosts is added to these, the figures for the system, as operated by HEFCW, and new system, to be operated by the Commission, would be **£904,000** and **£1,335,000** respectively. This represents an additional cost of approximately **£431,000**.

7.22 However, there are two additional temporary posts considered necessary to assist with the setting up of the register (not included within the seven detailed above). This is an additional staff cost of approximately **£95,000**, excluding oncosts, based on the initial Commission staff structure. If an estimated 40% is added for oncosts this figure would be **£133,000**.

Legal costs

7.23 It is likely that legal advice costs will be incurred in respect of the development of the register and regulatory regime. The legal costs for HEFCW, associated with the implementation of the 2015 Act were at least **£60,000**. It is to be expected that, given the breadth of provisions covered by the 2022 Act, and considering wage inflation in the interim, the legal advice costs relating to the implementation of the new regulatory regime will exceed this level. A more realistic estimate of legal costs may be provided once the Commission has scoped implementation of the registration system.

Delivery costs of the Register

7.24 The Commission has estimated the capital delivery costs for the register to be in the region of £700,000 over two years. This estimate has been based on the capital delivery costs that have been incurred for the HR and Finance systems, however, as the registration system is yet to have any functional scope undertaken to determine the approach these costs are our best guess assumptions.

7.25 The costs for the development of the IT system for the register will be a separate revenue budget to cover further ongoing IT costs which include maintenance/support contracts, security audits, licencing, cloud costs, replacement kit (laptops, mobile phones etc) currently these are yet to be determined.

	2024-25 (£)	2025-26 (£)	2026-27 (£)	2027-28 (£)	2028-29 (£)
IT (capital)	350,000	350,000			
Temporary staff	133,000	133,000			
Permanent staff	431,000	431,000	431,000	431,000	431,000
Total	914,000	914,000	431,000	431,000	431,000

Benefits

Legal mechanism for regulatory oversight of HE Providers

7.26 The Welsh Government's initial policy objectives⁴ for implementation of the 2022 Act is to establish **an effective, robust, and sustainable legislative basis for regulating tertiary education providers**. Providers whose higher education provision is primarily funded by tuition fees cannot be regulated through the Commission's terms and conditions of funding alone, as tuition fee payments are a contractual undertaking between providers and their students. Therefore, an early priority for the

⁴ [Regulation of higher education providers in Wales \[HTML\] | GOV.WALES](#)

Commission will be to develop a regulatory oversight system for these providers.

- 7.27 Under the 2022 Act, the Commission must establish a register of tertiary education providers. The register will create a single clear gateway into the regulated higher education sector in Wales. Section 25(2) of the 2022 Act requires the Welsh Ministers to make regulations specifying one or more categories of registration for which the Commission must make provision in the register.
- 7.28 As detailed in the EM, the registration Regulations provide for two categories of registration, both of which relate to providers of higher education. All providers of higher education ('higher education' is defined in section 144(1) of the 2022 Act), whose activities are undertaken wholly or mainly in Wales, and who wish to benefit from the automatic designation of their relevant higher education courses for the purpose of Welsh Government student support will be able to seek registration with the Commission (subject to meeting the required conditions as set out in section 25(4) of the 2022 Act).
- 7.29 Creating a single regulatory gateway should help **streamline** the approach to higher education course designation and allow the full range of higher education providers to come under the regulatory oversight of the Commission.
- 7.30 Additionally, the 2022 Act enables the **regulatory oversight of unregistered providers**, who rely on funding from the Commission for delivery of their tertiary education provision, by way of terms and conditions of funding. Providers of further education or training will initially be regulated through this mechanism. However, providers of further education who wish their higher education courses to be automatically designated for student support will need to register with the Commission.
- 7.31 The overall policy intention for the register is to **enable appropriate and proportionate regulation of higher education providers in receipt of public funds**, including grant funding from the Commission and Welsh Government student support. This will provide a clear link with the benefits arising from access to such funding and **ensure that higher education providers are publicly accountable and can contribute to the Commission's strategic priorities**.

Register of tertiary education providers: initial regulations consultation.

- 7.32 As detailed in section 5 of the EM, the consultation undertaken in respect of the registration Regulations included a series of questions seeking stakeholder views on a range of matters intended to support the development of the RIA.
- 7.33 In terms of anticipated resource implications for higher education providers arising from the establishment of the register; the consensus

based on stakeholder responses to the consultation on the draft Regulations (as detailed in section 5 of the EM), is that it is **difficult to know the extent of resource implications at this stage**. It is likely that significant change will add resource burden to providers however, some respondents anticipated that **regulated institutions will incur minimal cost** and bureaucracy when registering with the Commission.

7.34 Furthermore, it was highlighted that additional reporting may lead to an increase in cost already due to temporary **staffing and upgrading data management systems**, especially for smaller organisations. The current processes are well developed, understood, and have reduced in burden over time; however, **change is likely to add resource burden**.

7.35 When asked about evidence to use to help assess the costs and benefits of implementing the register; overall it was reported that the situation is currently **too vague** and it's not possible to provide evidence without **additional operational information**, which should come in future consultations.

7.36 When asked whether there are other stakeholders likely to face costs arising from the establishment of the register, either directly or indirectly, it was again reported that it is **unclear at this stage** until the details of the registration system are known. However, it was suggested costs could develop for **delivery partners of higher education, through conducting a quality review cycle**.

7.37 The Commission will be expected to undertake its own consultation and impact assessments as part of the development process.

International evidence relevant to TERA regulations in Wales

Australia's Tertiary Education Quality and Standards Agency (TEQSA)

7.38 The Tertiary Education Quality and Standards Agency Act 2011⁵ (TEQSA Act) established the Tertiary Education Quality and Standards Agency (TEQSA) in 2011 to provide national regulatory and quality assurance for Australian higher education. The aim was to establish a national system of regulation to assure the quality of all higher education providers.

7.39 A Review of the impact of the TEQSA Act on the higher education sector was published in March 2017⁶. The findings of the review are based on the experiences and perceived benefits to providers operating both before and following the establishment of TEQSA. The Review also draws on findings from a sector-wide survey of providers undertaken for the TEQSA Regulator Performance Framework⁷ (Regulators that administer, monitor or enforce regulation are required to implement the Framework).

⁵ [Federal Register of Legislation - Tertiary Education Quality and Standards Agency Act 2011](#)

⁶ [Review of the impact of the TEQSA Act - Final Report - Department of Education, Australian Government](#)

⁷ [TEQSA's Regulator Performance Framework 2015-16](#)

- 7.40 The review of the TEQSA Act reported that providers that had prior experience of multiple regulators reported a **reduction in compliance burden** in moving to a single national regulator that **streamlined registration and accreditation processes**.
- 7.41 The review has also considered how the TEQSA Act has affected the quality of existing providers. The Threshold Standards⁸ (which is a main aspect of TEQSA's approach to regulation) was reported to generate benefits by providing a level of guidance on **best practice** and therefore Australia was seen to have a **consistent level of quality in relation** to the provision of higher education.
- 7.42 Furthermore, it was suggested that the TEQSA Act has **improved international perceptions of quality in Australian higher education** providing **confidence to international students regarding the quality of Australian higher education providers**. While a rough indicator only, international student numbers have grown since the TEQSA Act commenced, and this may in part reflect this perception of quality.

Office for Students (OfS) for universities in England 2023

- 7.43 Regulatory burden was a key topic discussed at the House of Lords' Industry and Regulators Committee's inquiry into the work of the Office for Students (OfS) in 2023⁹. The OfS acknowledged the concerns of the sector about regulatory burden, leading to the Universities UK (UUK) commissioned research to understand the extent of regulatory burden faced by UUK members registered with Office for Students (OfS) in England¹⁰.
- 7.44 The findings highlighted that respondents agree that regulation is **necessary and understood the positive elements** of the regulatory approach. However, concerns were raised about some conditions **perceived cost outweighed benefit**. Respondents also highlighted that there was significant resource required to understand and meet regulatory requirements as well as opportunity costs of the regulatory burden.
- 7.45 A recommendation of the research highlighted the need to **adopt a consistent approach to assessing the burden** when changes are proposed to ensure that potential benefits and actions for mitigation are considered. The Commission will need to monitor and review the regulatory system to ensure that regulatory burden is minimised.
- 7.46 As the Commission will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales; it will be important for the Commission to take note of the development and

⁸ [Federal Register of Legislation - Higher Education Standards Framework \(Threshold Standards\) 2021](#)

⁹ [committees.parliament.uk/publications/42319/documents/210422/default/](#)

¹⁰ [Moorhouse-regulatory-burden-report.pdf \(universitiesuk.ac.uk\)](#)

implementation of international tertiary education reforms especially ones like TEQSA that have been established.

New Requirements

7.47 At present institutions in Wales, who wish to have their relevant full-time higher education courses automatically designated for the purpose of Welsh Government student support, are subject to regulatory oversight under the 2015 Act. The registration regime under the 2022 Act will replace the current higher education regulatory system as provided for by the 2015 Act.

7.48 The regulatory regime provided for by the 2022 Act, and subordinate legislation made under that Act, differs in a number of areas from the 2015 Act. To understand the initial benefits of the register it is firstly necessary to understand the approach taken in respect of the regulatory system, as provided for in the 2015 Act.

7.49 For the purposes of this RIA, the approach taken by HEFCW in relation to the 2015 Act has been considered, rather than the approach the Commission may take when exercising the provisions within that Act that have been modified so as to be exercisable by the Commission.

7.50 The following details the activities which formed the key parts of the 2015 Act¹¹ regulatory system, operated by HEFCW, and which were expected of regulated institutions. A number of these activities relate to matters which are not necessarily required under the 2015 Act, but which are matters that HEFCW considered necessary to enable it to form a fully rounded picture of the manner in which regulated institutions were operating and being governed:

- **Application for approval of Fee and Access Plans** – The 2015 Act specifies (section 4) that the period to which a fee and access plan applies cannot exceed 2 years. As such the application process was either an annual or two yearly process under which institutions apply for the approval of a fee and access plan. On approval of its fee and access plan, a provider is considered a regulated institution, which results in automatic designation of its relevant higher education courses for student support purposes.
- **Variation of Fee and Access Plan** – This is a process, as provided for in section 9 of the 2015 Act and regulation 9 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 made pursuant to that section, under which regulated institutions may apply to amend an aspect of an approved fee and access plan. For example, this might include changes to delivery sites or fee levels.

¹¹ [Higher Education \(Wales\) Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

- **Institutional Risk Review** – In order to address the requirements of the 2015 Act, and other aspects it considered as necessary to form a full picture of the way in which regulated institutions were operating, HEFCW implemented a twice-yearly process under which it assessed the overall risk at regulated institutions. These risks reviews considered the areas of finances, governance and management, students and quality, estates, research and knowledge transfer, and strategic direction. HEFCW issued letters to regulated institutions, typically on an annual basis, setting out the overall risk rating and any areas where actions are required to reduce the risk. Follow up was undertaken with regard to monitoring the delivery of those actions.
- **Annual Assurance Returns** – As with the institutional risk reviews, the annual assurance returns process was implemented by HEFCW to help it address the requirements of the 2015 act. This was an annual returns process used to gain assurance from regulated institutions across a range of areas including fee and access plan delivery/compliance, oversight of quality, financial sustainability, and governance and management.
- **Financial Forecasts and Monitoring** – In addition to the Annual Assurance Return process through which HEFCW received a range of financial returns, including audited financial statements, HEFCW requested detailed financial forecasts from regulated institutions on at least an annual basis. HEFCW also engaged with Finance Directors on at least a quarterly basis, and requested information on institutional borrowing, in order to gain assurance regarding financial sustainability.
- **Institutional Assurance and Quality Assurance visits** – This was a process through which visits were held at regulated institutions, normally on a three-year cycle, to gain more a detailed understanding of how the institution assured itself on a range of compliance matters.
- **Quality Enhancement Reviews** - This was the cyclical review process (normally at least every six years) by which HEFCW gained assurance over the quality of provision at regulated institutions. The process was operated by QAA on behalf of HEFCW, under arrangements made by HEFCW by virtue of section 17 of the 2015 Act.
- **Serious incident reporting** – This was a process by which real-time notifications were provided on serious incidents and failures, including, for example: financial control issues, governance and management failures and non-compliance with the requirements of other regulators. This process could trigger actions to resolve any issues.

- **Complaints about institutions** – This was a process by which individuals or groups of individuals could complain about suspected non-compliance with HEFCW's regulatory requirements. Institutions' engagement with this process would have been when HEFCW received a complaint and sought information from an institution regarding the issue, in some cases, potentially triggering an investigation by the institution or HEFCW leading to actions to resolve any issues.

7.51 There are new requirements on the face of the 2022 Act, and in the subordinate legislation made under that Act, that underpin the regulatory regime the Commission will need to develop. The main changes, when compared to the requirements of the 2015 Act, are considered to be the registration conditions relating to:

- The Learner Engagement Code
- The Learner Protection Plans
- The ongoing registration conditions in respect of equal Opportunity
- The Initial and ongoing registration conditions in respect of the welfare of students and Staff

7.52 The register, and regulatory regime, as provided for by the 2022 Act require new registration conditions to be implemented. Fee and Access plans will no longer be required and registered providers will instead need to comply with a range of ongoing registration conditions. This approach is anticipated to reduce the degree of burden on currently regulated higher education providers in the longer term, however the Commission will need to monitor and review the regulatory regime to ensure that regulatory burden is minimised.

7.53 **Learner Protection Plans**, as provided for in section 126 of the 2022 Act, aim to set out how a provider will protect learners' interests where learners are studying relevant courses (as defined in section 126(10) of the 2022 Act) that cease to be provided or where learners wish to transfer to another course. It is anticipated that the plans will provide clarity for learners if they are unable to continue to study at a provider if it ceases to operate or is unable to continue to teach learners (e.g. international students in the event of the loss of a UKVI Student Visa Licence or particular relevant courses in the event of the unforeseen loss of facilities).

7.54 All registered providers will be subject to a mandatory ongoing registration condition (section 31(1)(g)) whereby, if it has been given notice under section 126(1), it must have in place (on or before the date specified in the condition) a learner protection plan, approved by the Commission, and to give effect to that plan.

- 7.55 As part of the Australian Higher Education Standards Framework (Threshold Standards) 2021¹² the threshold standards¹³ contain obligations for providers to ensure there are credible business continuity plans and adequately resourced financial and tuition safeguards to mitigate disadvantage to students who are unable to progress in a course of study due to unexpected changes to the higher education provider's operations. When developing the requirements of the learner protection plans, the Commission may consider drawing upon other examples of tertiary education reforms.
- 7.56 Compliance with the requirements contained in the **Learner Engagement Code** is a mandatory ongoing registration condition, applicable to all registered providers, by virtue of section 31(1)(h) of the 2022 Act¹⁴ which is intended to ensure learners' interests are represented, that learners can give their views to providers about the quality of education they receive, and to participate in the making of decisions by those providers. It is anticipated that the code will benefit learners by setting out expectations in respect of how providers should engage learners and take account of the 'learner voice'. This should enable providers to better understand the needs of learners.
- 7.57 The initial condition of registration, and mandatory ongoing registration condition, regarding the effectiveness of the provider's arrangements for supporting and promoting the **welfare of its students and staff**, will underpin the retention of, and attainment by, learners and contribute to a range of the Wellbeing of Future Generations goals including "A Healthier Wales", "A More Equal Wales", and "A Prosperous Wales".
- 7.58 The Office for Students (OfS), which regulates higher education in England, provided a revised statement of expectations¹⁵ covering staff and student training, and policies to facilitate the reporting and disclosing of harassment and sexual misconduct. OfS commissioned an evaluation on the initial impact of the publication of the statement of expectations¹⁶. The results from this evaluation highlighted that the 'statement of expectations' had not been a sufficient substance for change in its current form. The report recommended that OfS make **prevention of and response to harassment and sexual misconduct** a mandatory duty and as part of their regulatory framework. The report also highlighted **there is inadequate data at sector and individual provider level to inform and assess the effectiveness of interventions**. This has led to OfS consulting¹⁷ on a proposed new approach to the regulation of harassment

¹² [Federal Register of Legislation - Higher Education Standards Framework \(Threshold Standards\) 2021](#)

¹³ [Higher Education Standards Framework \(Threshold Standards\) 2021 | Tertiary Education Quality and Standards Agency \(teqsa.gov.au\)](#)

¹⁴ [Tertiary Education and Research \(Wales\) Act 2022 \(legislation.gov.uk\)](#)

¹⁵ [Statement of expectations - Office for Students](#)

¹⁶ [Evaluation of the Impact of the Statement of Expectations final report \(officeforstudents.org.uk\)](#)

¹⁷ [Consultation on a new approach to regulating harassment and sexual misconduct in English higher education - Office for Students](#)

and sexual misconduct affecting students in registered higher education providers.

- 7.59 *Both the Australian and New Zealand Governments have provided a framework which forefronts the welfare of their students and staff within the Tertiary Education sector. Australian Government TEQSA *Higher Education Standards Framework (Threshold Standards)* includes details of organisational responsibilities for the wellbeing of staff, supporting the wellbeing and promoting the safety of students¹⁸. This requires **providers to deliver timely and accurate advice** on access to student support services and to **promote and foster a safe environment on campus and online**. It also requires providers to stipulate evidence on how they are achieving this. The New Zealand Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021¹⁹ makes sure that tertiary and international learners enrolled with New Zealand education providers are safe and supported. The Commission may wish to consider reviewing other examples of tertiary education reforms in order to drive best practice in Wales.*
- 7.60 The mandatory ongoing registration conditions in respect of **Equal Opportunity** (section 33 of the 2022 Act) will help to drive improvement in respect of access, retention, attainment and progression for under-represented groups.
- 7.61 As detailed previously (see para 6.37), section 108 of the 2022 Act requires the Commission to consider imposing terms and conditions to funding provided to non-registered providers in respect of a number of the mandatory ongoing conditions of registration, including equality of opportunity. As such, it is anticipated that the requirements will be applicable to a broader range of providers than the current Fee and Access Plan requirements, therefore impact a greater number of learners.
- 7.62 Ultimately, this condition will benefit learners by improving employment and further study outcomes and contribute to the Wellbeing of Future Generations goal of 'A More Equal Wales'²⁰
- 7.63 The new requirements on the face of the 2022 Act, and within regulations made under that Act, are part of the strategic framework which the Commission will need to develop in order to establish the register and implement the associated regulatory arrangements.
- 7.64 The 2002 Act requires the Commission to provide information and guidance to higher education providers in respect of a range of matters in relation to the register and the associated regulatory arrangements. It is anticipated the Commission will also provide information about the

¹⁸ [Guidance note: Wellbeing and safety | Tertiary Education Quality and Standards Agency \(teqsa.gov.au\)](https://teqsa.gov.au)

¹⁹ [pastoral-care-code-of-practice-2021-english.pdf \(nzqa.govt.nz\)](https://www.nzqa.govt.nz/pastoral-care-code-of-practice-2021-english.pdf)

²⁰ [Well-being of Future Generations \(Wales\) Act 2015: the essentials \[HTML\] | GOV.WALES](https://www.gov.wales/well-being-of-future-generations-wales-act-2015-the-essentials)

regulatory arrangements and their implications and benefits for learners, the wider tertiary education sector and other representatives.

8. Integrated Impact Assessment

- 8.1 The Integrated Impact Assessment produced following the public consultation, can be found [here](#).

9. Competition Assessment

- 9.1 The competition filter test has been completed. These regulations are not expected to have a significant impact on competition in Wales or the competitiveness of Welsh businesses.

10. Post implementation review

- 10.1 As the register is yet to be implemented, this information will be used to develop and refine the registration system.
- 10.2 The Commission will be expected to undertake its own consultation and impact assessments as part of the development process. It is anticipated that the Commission will need to focus on developing its expectations for providers' activities related to the new registration conditions of the 2022 Act e.g. Learner Engagement Code etc. It is also anticipated that costings for the introduction of these activities be costed to ensure a baseline.
- 10.3 There will be a post-implementation evaluation undertaken by Welsh Government and similarly to the approach taken in respect of the 2015 Act, the Welsh Government will continue to work with the Commission, providers, and representative bodies.
- 10.4 A long-term plan to gather evidence of costs and benefits will be needed to provide a value for money assessment when the register, and associated regulatory arrangements, have been embedded. It is intended that these are reviewed at a three year and a five year interval.