

## **Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024**

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above Order 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 Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024.

Lynne Neagle MS  
Cabinet Secretary for Education  
21 May 2024

## **1. Description**

- 1.1 The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024 (“the Order”) updates the list of devolved Welsh authorities in Schedule 9A (Devolved Welsh Authorities) to the Government of Wales Act 2006 (“GoWA”).
- 1.2 The Order removes the reference to “The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru” and inserts a reference to “The Commission for Tertiary Education and Research or Comisiwn Addysg Drydyddol ac Ymchwil”.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

- 2.1 The Order in Council is UK Government legislation, consequently the draft Order is being laid in English only.

## **3. Legislative background**

- 3.1 S.157A(5) of GoWA provides that His Majesty may by Order in Council amend Schedule 9A of GoWA:
  - (a) so as to remove or revise an entry, or
  - (b) so as to add or substitute a public authority whose functions—
    - (i) are exercisable wholly or mainly in relation to Wales, and
    - (ii) are wholly or mainly functions that do not relate to reserved matters.
- 3.2 S.157A(6) provides that no recommendation can be made to His Majesty in Council to make an Order in Council under section 157A unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Senedd. Section 157A(7) sets out that subsection (6) does not apply to a statutory instrument containing an Order in Council that only makes provision for:
  - (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry in consequence of a change of name or transfer of functions.
- 3.3 Section 1 of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”), as commenced by the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 1) Order 2022, established the Commission for Tertiary Education and Research (“the Commission”) on 15 December 2022. Section 23 of that 2022 Act provides for the dissolution of the Higher Education Funding Council for Wales (“HEFCW”) and will be commenced in line with the Commission becoming operational, on 1 August 2024.
- 3.4 This Order follows the procedure for amendments to Schedule 9A of GoWA set out in section 157A(5) and (6) of that Act, and will be laid before, and approved

by a resolution of, each House of Parliament and the Senedd. Although this Order provides for the omission of a body that has ceased to exist (HEFCW), section 157A(7) does not apply. The Commission is an entirely new body with a wider remit, so this is not a simple renaming or transfer of functions.

#### **4. Purpose & intended effect of the legislation**

4.1 Section 157A of GoWA defines “devolved Welsh authority” for the purposes of that Act. This includes a public authority whose functions are:

- (a) exercisable only in relation to Wales, and
- (b) wholly or mainly functions that do not relate to reserved matters.

4.2 Public authorities are also devolved Welsh authorities by virtue of being named in Schedule 9A to GoWA which performs a partly confirmatory role to increase transparency by naming authorities which meet the conditions outlined above.

4.3 Schedule 9A currently includes reference to the “The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru”.

4.4 The Commission will exercise functions similar to those formerly performed by HEFCW, along with certain functions formerly undertaken by the Welsh Government, when it becomes operational, and this Order is required to update the list of devolved Welsh authorities accordingly.

#### **5. Consultation**

5.1 As the Order makes a consequential amendment to update a list of devolved Welsh authorities and therefore makes no further changes to Welsh Government’s policy, a formal public consultation did not take place. This approach is in line with standard Welsh Government practice in relation to consulting on draft subordinate legislation.

#### **6. Regulatory Impact Assessment (RIA)**

6.1 A separate regulatory impact assessment has not been prepared in respect of this Order. However, the regulatory impact assessment to accompany the TERA at its introduction to the Senedd assessed the potential costs and benefits associated with establishing the Commission.