



Llywodraeth Cymru  
Welsh Government

PUBLICATION, DOCUMENT

# Amendments to the Digital Economy Act 2017

We want your views on amendments to the Digital Economy Act 2017 replacing reference to the Higher Education Funding Council for Wales (HEFCW) with one to the Commission for Tertiary Education and Research.

**First published:** 2 October 2023

**Last updated:** 2 October 2023

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# Overview

This consultation seeks your views on the amendment to Part 2 of Schedule 8 to the Digital Economy Act 2017 to replace the existing reference to the Higher Education Funding Council for Wales with one to the Commission for Tertiary Education and Research.

## Background

The Tertiary Education and Research (Wales) Act 2022 ('the TER Act'), provides for the establishment of a new Commission for Tertiary Education and Research ('the Commission') and for the dissolution of the Higher Education Funding Council for Wales ('HEFCW') once the Commission is operational.

The Commission will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales. Tertiary education encompasses post-16 education including further and higher education, adult community learning and work-based education, apprenticeships, and local authority-maintained school sixth forms.

The establishment of the Commission is a critical step towards realising the Welsh Government's goals, as set out in the Programme for Government, in respect of post-16 education reform.

The TER Act confers powers on the Commission enabling it to shape tertiary education and research in Wales to better meet the needs of learners and employers, helping to build a stronger future economy, and promote greater cohesion across the sector and between compulsory and post-compulsory education. One of the principal aims in establishing the Commission is to create a body which is able to deal with the strategic planning and funding across the

whole of the tertiary education sector, and research and innovation sector in relation to Wales.

Work is continuing, in liaison with key stakeholders, to establish the Commission ahead of it becoming operational in Spring 2024.

## The Digital Economy Act 2017

The Digital Economy Act ('DEA') creates powers to share data among public authorities for the purposes of:

- improving the delivery of public services
- disclosure by civil registration officials
- reducing debt owed to the public sector
- combating fraud against the public sector
- research
- disclosure by Revenue authorities
- the creation of official statistics

For a public body to be able to share information under the public service delivery, fraud and debt powers in the DEA, they need to be named in the relevant its Schedule.

## The current position

Chapter 4 of Part 5 of the DEA sets out powers to allow specified public bodies to share information for the purposes of preventing, detecting, investigating, and prosecuting incidents of fraud against the public sector. The DEA also regulates when the fraud data sharing powers can be used, only authorising data sharing

where the public authority can justify this in line with the purposes set out in Part 5 of the Act.

Schedule 8 to the DEA consists of a list of persons specified for the purposes of provisions relating to information sharing for the purposes of preventing fraud against the public sector. Welsh bodies need to be listed in Part 2 of Schedule 8 to be able to share data under these powers with other persons who are also listed in the relevant Schedule. HEFCW is currently listed at paragraph 49 of Part 2 of Schedule 8. The Welsh Ministers have powers under section 56(6) of the DEA to add Welsh Bodies to Schedule 8 of the DEA by making Regulations subject to the affirmative procedure in the Senedd. This ensures that the Senedd is able to scrutinise and vote on any changes made.

The DEA authorises public bodies specified in Schedule 8 to share information with other specified bodies for the purposes of “taking action” in connection with fraud against the public sector. “Taking action” includes preventing, detecting, investigating, and prosecuting fraud, bringing civil proceedings and taking administrative action as a result of fraud. The DEA does not compel public authorities to share information. The power to share information under the DEA is additional to any other data sharing powers held by the specified bodies.

The DEA creates criminal offences for unauthorised disclosure of personal information received under the fraud powers. Additionally, public authorities must ensure that data sharing is compliant with the Human Rights Act 1998 and they must not act in a way that would be incompatible with rights under the European Convention on Human Rights. Public authorities must also ensure that any data sharing is compliant with the requirements of the Data Protection Act 2018.

Public authorities sharing data under the fraud powers must have regard to the **Code of Practice** for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017. The Code of Practice requires that public authorities

wishing to share data using the fraud powers seek approval from the relevant 'Review Board', which considers and approves new proposals. New uses of the fraud powers must be first established as pilots in the first instance, which are monitored by the Review Board. Pilots that are successful may be expanded for further testing and may eventually become part of an organisation's 'business as usual' processes.

The nature of the Commission's role in overseeing the tertiary education sector means that it will have the power to collect, analyse and report on data in relation to the tertiary education sector. Its functions mean that it could capture or generate data which other public authorities could use to identify fraud against them.

## Proposed amendments

We are consulting on whether the reference to HEFCW should be replaced with a reference to the Commission in the list of specified persons in Part 2 of Schedule 8.

It would allow the Commission to share data with other public authorities for the prevention and detection of fraud against the public sector. The Commission would be able, if it so chose, to share data with information from other public sector bodies in order to identify fraudulent activity.

## Consultation questions

### Question 1

Do you agree that the reference to HEFCW should be replaced with a reference

to the Commission for Tertiary Education and Research in the list of specified persons in Part 2 of Schedule 8 of the Digital Economy Act 2017?

## Question 2

We would like to know your views on the effects that the reference to HEFCW being replaced with a reference to the Commission for Tertiary Education and Research in the list of specified persons in Part 2 of Schedule 8 of the Digital Economy Act 2017, would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

## Question 3

Please also explain if and how you believe that the reference to HEFCW being replaced with a reference to the Commission for Tertiary Education and Research in the list of specified persons in Part 2 of Schedule 8 of the Digital Economy Act 2017, could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please use the consultation response form to respond to the above questions.

## UK General Data Protection Regulation (UK

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## GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (for example, a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.



# Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ

Email: [dataprotectionofficer@gov.wales](mailto:dataprotectionofficer@gov.wales).

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Telephone: 0303 123 1113

Website: [Information Commissioner's Office](#)

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