

Tertiary Education and Research (Wales) Bill: Bill Summary (Stage 2)

14 June 2022



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The Tertiary Education and Research (Wales) Bill was laid before the Senedd on 1 November 2021. The Member in Charge is the Minister for Education and Welsh Language.

The Bill dissolves the Higher Education Funding Council for Wales (HEFCW) and creates a new Welsh Government sponsored body to be known as the Commission for Tertiary Education and Research.

This body will be responsible for the funding, oversight and regulation of tertiary education and research in Wales. Tertiary education encompasses post-compulsory education and includes higher education, further education, apprenticeships, sixth forms and adult community learning.

The **[Bill and Explanatory Memorandum](#)** are published on the Senedd website. Our **[Bill Summary](#)**, published on the Bill's introduction, explains what the Bill does and how it came about.



Contents

1. Introduction	1
2. Stage 1 scrutiny	2
3. Stage 2 amendments	3
Group 1: Welsh Government relationship with the Commission	4
Group 2: Establishment of the Commission & appointment and terms of its members	5
Group 3: Trade unions	6
Group 4: Research and Innovation	6
Group 5: Equality of Opportunity	6
Group 6: Additional Learning Needs	6
Group 7: Learner voice, well-being and protection	7
Group 8: Apprenticeships, vocational education and adult community learning	7
Group 9: Welsh medium	8
Group 10: Drafting, technical and general interpretation amendments	8
Group 11: Institutional autonomy, academic freedom and freedom of speech	8
Group 12: Charity protections	9
Group 13: Senedd procedure and process for making Regulations	9
Group 14: Registration	10

Group 15: Quality Assurance	10
Group 16: Welsh Ministers' intervention powers, reports on financial sustainability, financial support directions	10
Group 17: Outcome agreements, funding controls and transparency	11
Group 18: Welsh Ministers' funding powers.....	12
Group 19: Information	12
Group 20: Dissolution of higher education corporations	12
Group 21: Sixth forms	13
4. Next steps: stage 3 and beyond	14

1. Introduction

The Tertiary Education and Research (Wales) Bill will bring together the funding, oversight and regulation of post-16 education and research in Wales under a single body, the Commission for Tertiary Education and Research.

1. The Minister for Education and Welsh Language, Jeremy Miles MS, introduced the **Tertiary Education and Research (Wales) Bill** ('the Bill') to the Senedd on 1 November 2021. The Bill is currently at Stage 3 of the **Senedd's legislative process**.
2. If passed by the Senedd, the Bill will provide the statutory foundation for a new public body, the Commission for Tertiary Research and Education ('the Commission').
3. Tertiary education covers post-compulsory education and includes higher education, further education, apprenticeships, sixth forms and adult community learning. At the moment, the Higher Education Funding Council for Wales (HEFCW) regulates and provides funding for higher education, while the Welsh Government does so for the other tertiary education sectors.
4. In 2015, the Welsh Government commissioned **Professor Ellen Hazelkorn** to review the oversight of post-compulsory education in Wales. The review published its recommendations in a final report, **Towards 2030: A Framework for Building a World-Class Post-Compulsory Education System for Wales**. In its response to the report, the then Welsh Government identified its two '**primary recommendations**':
 - Develop an overarching vision for the post-compulsory education and training (PCET) sector, and;
 - Establish a new arms-length body responsible for the oversight, strategic direction and leadership of the sector.
5. The Bill takes forward these recommendations. The **Bill Summary** we published on the Bill's introduction has more information on the Bill itself and what it does. This paper focuses on changes to the Bill at Stage 2.

2. Stage 1 scrutiny

The Senedd's legislative process includes four stages. The Bill completed Stage 1 on 15 March 2022, when the Senedd passed a motion to agree its general principles. Three Senedd committees have also conducted detailed scrutiny of the Bill's provisions.

6. The **Children, Young People and Education (CYPE) Committee** scrutinised the general principles of the Bill at Stage 1. The **Finance Committee** and the **Legislation, Justice and Constitution Committee** also scrutinised the Bill.
7. The CYPE Committee supported the general principles of the Bill, hoping it would “bring greater coherence and a clearer strategic vision to the sector”. The Committee made 37 recommendations, including changes to:
 - Ensure the Commission's governance “reflects the breadth of education provision and research, and the diversity of Wales”, for example by increasing worker and learner representation on the Commission;
 - Strengthen the Commission's duty to promote Welsh medium tertiary education and research and “reflect the ambition of Cymraeg 2050”;
 - Define what the Bill means by “parity of esteem”, with specific recommendations for the Bill to include a duty to be balanced in the funding it distributes to ensure certain parts of the post-16 sector are not “lost”;
 - Protect learner and student welfare, putting the voice of learners and students at the heart of the Commission's decision making;
 - Include a strategic duty to promote collaboration and competitiveness in research and innovation;
 - Safeguard the Commission's independence from the Welsh Government, through amendments to ensure the Minister cannot change the Commission's strategic plan without its agreement.
8. Members of the Committee also noted concerns from HEFCW about the Bill's implementation and called for further information from the Minister about the regulations that will contain much of the implementation detail of the Bill before Stage 2 proceedings.
9. The Welsh Government's responses to the three committees' reports are published on the **[Bill page on the Senedd website](#)**.

10. The Senedd agreed the general principles of the Bill during the **Stage 1 debate on 15 March 2022**.

3. Stage 2 amendments

The Children, Young People and Education Committee met on 12 May 2022 to consider and dispose of the Stage 2 amendments to the Bill.

11. Stage 2 began on 16 March 2022, and concluded on 12 May 2022, when the CYPE Committee met to dispose of the Stage 2 amendments. A total of 200 amendments were tabled at Stage 2. The Minister, Jeremy Miles MS, brought forward 50 amendments and Committee Members tabled the remaining 150 amendments (Laura Anne Jones MS tabled 148, and Sioned Williams MS tabled 2).
12. The 50 amendments tabled by the Minister were all agreed. Of the remaining 150 amendments:
- 146 were rejected
 - 4 were withdrawn/not moved
13. The **minutes** and **transcript** of the CYPE Committee's meeting on 12 May set out the proceedings in detail.
14. Significant agreed amendments included those relating to:
- Research and innovation: amendments added a strategic duty for the Commission to promote research and innovation in Wales, and to promote Welsh medium research and innovation;
 - Learner engagement: amendments required the Commission to have regard to "the importance of the views of learners about the quality of the tertiary education they receive";
 - Welsh medium education: amendments required the Commission to encourage both demand for, and participation in, Welsh medium tertiary education;
 - Collaboration: amendments added a strategic duty for the Commission to promote collaboration between providers and trade unions;
 - Relationship with the Welsh Government: amendments changed the Welsh Ministers' power to unilaterally alter the Commission's strategic plan, so that Ministers must seek the agreement of the Commission to each modification

they propose;

- Higher Education Corporations: amendments altered the powers of the Welsh Ministers to dissolve a higher education corporation in Wales. Ministers may only dissolve a higher education corporation if the corporation either consents to, or requests, that such an order be made (although Ministers may make an order if they feel that consent has been unreasonably withheld or delayed).

15. The Minister made commitments during the Stage 2 procedure, saying that he:

- Supported the intention behind Member amendments that would have required providers funded by the Commission (but not themselves registered) to deliver outcomes relating to equality of opportunity. He did not support the amendments, but was exploring options for amendments at Stage 3;
- Would offer to work with the Committee on an amendment[s] at Stage 3 to reflect the importance of learner well-being in the Bill;
- Acknowledged that the Bill's provisions for controls on funding passing from directly funded providers to other bodies are "more bureaucratic than it was intended". He did not support an amendment to remove the provisions, but explained that he is working on an amendment at Stage 3 to address concerns from stakeholders;
- Agreed with the idea behind an amendment on funding transparency, and said he would welcome the views of the Committee on developing an amendment[s] for Stage 3;
- Intended to "review and revise the school organisation code" in light of amendments that make changes to the *School Standards and Organisation (Wales) Act 2013*. He added that the review of the code would ensure that it continues to provide "necessary protections and safeguards" with regards to school sixth forms, Welsh language provision and provision in schools with a religious character.

16. Amendments were grouped together to facilitate debate.

Group 1: Welsh Government relationship with the Commission

17. Amendments were rejected which would have required the Welsh Ministers to write an annual remit letter to the Commission and remove a section in the Bill that provides for the Welsh Ministers to give general directions to the Commission to exercise its functions in relation to particular courses or areas of research. Laura Anne Jones MS, who tabled the amendments, said they addressed HEFCW's

concerns about the Commission's arms-length role as a strategic leader.

18. The Minister did not support these amendments, saying that the suggestion of an annual remit letter would be “bureaucratic”, and that powers to give general directions were a backstop and necessary in case Ministers need the Commission to take “timely and specific action”.

19. The Minister's amendments related to a recommendation made by the CYPE Committee in its report. Amendments require the Welsh Ministers to “consult the Commission” before modifying its strategic plan, or to give a reason if they modify the plan and it is not possible to obtain the Commission's agreement. The Minister's amendments were agreed.

Group 2: Establishment of the Commission & appointment and terms of its members

20. Backbench amendments sought to make the appointment of the Commission's members, and members of the Research and Innovation Committee, subject to a Senedd appointment process. Laura Anne Jones MS, who tabled these amendments, said that “there is a case that members of the Commission should be questioned and evaluated by a Committee such as ours”. Laura Anne Jones MS also tabled an amendment to delay the commencement date of the Bill until 1 January 2024. Sioned Williams MS brought two amendments, seeking to provide for associate members of the Commission to have voting rights, and to create a process to follow should a conflict of interest arise in a matter on which an associate member might vote.

21. The Minister said that amendments to change the appointment process for Commission members “effectively undermine the long-standing practice of ministerial appointments to public bodies”. He also argued that it would not be appropriate for associate members of the Commission to have voting rights, due to the potential for conflicts of interest, and said that backbench amendments did not “deal with the fundamental issue” of possible conflicts of interest.

22. The Minister's amendment required the Welsh Ministers to have regard to the desirability of the Commission's members having experience of Welsh medium education or training. The Minister's amendment was agreed, all Member amendments were rejected.

Group 3: Trade unions

23. All amendments in this group were agreed, and all were brought forward by the Minister. Amendments introduced a new strategic duty for the Commission to promote collaboration between providers of tertiary education and trade unions, and alter the definition of trade union given in the Bill.

Group 4: Research and Innovation

24. All the Minister's amendments in this group were agreed. Amendments introduced a "single cohesive strategic duty" for the Commission to promote research and innovation, and placed a duty on the Commission to have regard to the desirability of maintaining any distinctive characteristics of a provider when providing research and innovation funding.

25. Backbench amendments in this group were brought by Laura Anne Jones MS, and sought to remove a requirement that the Commission's decisions on research and innovation proposals are best taken "following an evaluation of the quality and likely impact of the proposals". The Member said that the amendment reflected concerns from HEFCW that the Bill represented a "level of operational detail too far in legislation". The Minister disagreed that the requirement in the Bill was overly detailed, and the amendment was rejected.

Group 5: Equality of Opportunity

26. The Minister's amendments amended the Commission's strategic duties to require the Commission to encourage increased participation in research and innovation in Wales by under-represented groups. The Minister's amendments were agreed.

27. Amendments tabled by Members other than the Minister in this group were brought by Laura Anne Jones MS. These included amendments to introduce a requirement for the terms and conditions of funding from the Commission to include the delivery of outcomes to widen access and participation in Welsh tertiary education. The Minister supported the intention behind these amendments, but did not support them "in their current form". Although Member amendments were rejected, the Minister committed to exploring options for Stage 3 to meet the intention behind them.

Group 6: Additional Learning Needs

28. Laura Anne Jones MS brought the only amendment in this group, which sought to introduce a strategic duty for the Commission to encourage

increased participation in tertiary education in Wales by people with additional learning needs.

29. The amendment was withdrawn following debate within the Committee. The Minister said that he understood the intention, and the need to “ensure absolutely clarity on the commission’s role in encouraging increased participation in tertiary education for all learners, including those with additional learning needs”. He said he would explore “options for capturing this aspect of the amendment within the strategic duties”. However, he said that the Bill deals with “determining facilities at a population level, rather than an individual level”, and that Bill already makes reference to the *Additional Learning Needs and Education Tribunal (Wales) Act 2018*.

Group 7: Learner voice, well-being and protection

30. The Minister’s amendments required the Commission to have regard to the importance of the views of learners about the quality of education they receive. The Minister noted that this amendment responded to the Committee’s report at Stage 1, and his amendments were agreed.
31. Laura Anne Jones MS brought forward amendments to add an “overarching” duty for the Commission to support students’ mental health and wellbeing; to require learner protection plans to take account of learner welfare; and to ensure that students can continue to learn in the medium of Welsh. Amendments also sought to remove the Commission’s ability to make “unilateral” changes to a provider’s learner protection plan. The Minister did not support the amendments, but offered to work with the Committee on an amendment at stage 3 to reflect the importance of learner wellbeing in the Bill.
32. The backbench amendment relating to a new duty to support students’ mental health and wellbeing was withdrawn as the Member who tabled it was “happy with the Minister’s response” in the debate. Other backbench amendments were rejected.

Group 8: Apprenticeships, vocational education and adult community learning

33. All amendments in this group were brought by Laura Anne Jones MS. Amendments sought to:
- Expand the Commission’s duty to contribute to the economy by referring to apprenticeships, traineeships and employability programmes;
 - Allow Ministers to give specific details about the content of apprenticeship frameworks;

- Set targets for widening participation in apprenticeships.

34. The Minister said that he felt the Bill already captured the inclusion of apprenticeships within the definition of tertiary education. Amendments in this group were rejected.

Group 9: Welsh medium

35. The Minister's amendments addressed the Committee's recommendations at Stage 1. Amendments expanded a strategic duty for the Commission to encourage demand for Welsh medium provision. The Minister also brought an amendment to require the Welsh Ministers to designate a person to give advice to the Commission on its duties with regard to Welsh medium education, explaining that he believed the Coleg Cymraeg Cenedlaethol would meet the requirements of such a person. Amendments from the Minister were agreed.

36. Laura Anne Jones MS brought an amendment in this group to add a requirement for the Commission to provide resources to increase the number of people participating in Welsh medium tertiary education. The Minister said that the matters that the amendment addressed were covered by his own amendments. The Member's amendment was withdrawn following the debate.

Group 10: Drafting, technical and general interpretation amendments

37. The Minister brought "minor and technical" amendments in this group to ensure consistency in the drafting of the Bill and respond to recommendations from the Legislation, Justice and Constitution Committee's report at Stage 1. Amendments in this section added clarity of phrasing, and made consequential amendments to the *Education (Fees and Awards) Act 1983* and the *Education Act 1997*.

38. Backbench amendments sought to insert adult community learning on the face of the Bill. The Minister said that he did not support the amendment as adult community learning is "already captured within the existing definitions". The Minister's amendments were agreed, and the Member's amendment was rejected.

Group 11: Institutional autonomy, academic freedom and freedom of speech

39. The Minister brought amendments that responded to the CYPE Committee's recommendations. Amendments confirmed and ensured that the Bill "provides appropriate protections in relation to the academic freedom of higher education

providers and their staff, together with the institutional autonomy of tertiary education providers”. Amendments also introduced a duty for the Commission and the Welsh Ministers to have regard to institutional autonomy of tertiary education providers. The Minister’s amendments were agreed.

40. The Minister did not support backbench amendments in this group, which sought to introduce a specific duty for higher education providers to take steps to secure freedom of speech and introduce a code of practice relating to freedom of speech. The Minister said that there is already a legal duty on education institutions to protect freedom of speech, and that the Member’s amendments risked “stifling ... free speech under a fear of litigation and bureaucracy”. Backbench amendments in this group were rejected.

Group 12: Charity protections

41. Amendments in this group were all bought by the Minister. These amendments refined the general protection duty in respect of compatibility with charity law and the governing documents of tertiary education providers, and extended the duty so that it applies to Minister’s functions as well as the Commission’s. The Minister’s amendments were agreed.

Group 13: Senedd procedure and process for making Regulations

42. Backbench amendments sought to require the Welsh Ministers to exercise their powers to give general directions by statutory instrument, and that the statutory instrument may not be made without consulting the relevant Senedd Committee. Amendments altered some powers for the Welsh Ministers’ to make regulations under the Bill, introducing a requirement for the Welsh Ministers to publish draft regulations at least four weeks before the regulations are laid before the Senedd, consult with relevant stakeholders, and publish a report with the details of the consultation exercise. Laura Anne Jones MS, who tabled the amendments, expressed concern over “the lack of oversight built into the Bill”, and said that the Senedd has a responsibility to oversee the “significant powers” held by the Welsh Government.
43. The Minister’s amendments in this group altered the procedure through which the Welsh Ministers would be able to exercise their powers under specific sections of the Bill. The Minister did not support backbench amendments, saying that he considered “all the delegated powers in the Bill have been considered carefully, and the appropriate Senedd procedure applied”.
44. One backbench amendment was withdrawn, and the others were rejected. The Minister’s amendments were agreed.

Group 14: Registration

45. The Minister's amendments related to ensuring consistency in the consultation requirements for initial and general registration conditions. They required the Commission (where appropriate) to consult before publishing a document with its initial registration conditions requirements. Amendments also provided a more consistent approach to the Commission's equal opportunities and widening access duties. The Minister's amendments were accepted.
46. Backbench amendments sought to limit the Commission's ability to vary conditions of registration after the registration had been confirmed. The Minister did not support these amendments, saying that they would restrict the Commission's ability to apply specific ongoing conditions of registration. Member amendments were rejected.

Group 15: Quality Assurance

47. Amendments brought by the Minister in this group added "consideration of the views of learners about the quality of the tertiary education they receive" to the list of matters to be included in quality assurance frameworks. The Minister's amendments were agreed.
48. Amendments brought by Laura Anne Jones MS sought to introduce a responsible body and a procedure for the inspection of degree apprenticeships in Wales. Laura Anne Jones MS described these as "probing amendments", and said that she was seeking clarity about degree apprenticeships. The Minister did not support the amendments, and said that the Bill was clear about "the arrangements for the quality assurance of both further education and higher education, with responsibility for both sitting with the commission", and that degree apprenticeships sat under higher education for these purposes. He said that the expansion of degree apprenticeships would be a matter for the Commission once established. Member amendments were rejected.

Group 16: Welsh Ministers' intervention powers, reports on financial sustainability, financial support directions

49. Amendments brought by Laura Anne Jones MS in this group sought to remove sections of the Bill relating to:
- Grounds for intervention in the conduct of a tertiary education provider;
 - Powers to intervene;
 - The requirement to notify of grounds for intervention;

- The Welsh Ministers' statement on intervention powers.
50. Amendment 87 would have removed requirements for the Commission to send a separate report, alongside its annual report, summarising the financial outlook for persons that the Commission is responsible for monitoring.
51. The Minister did not support these amendments, which were rejected. The Minister said that the intervention powers that the amendments would have removed “are not new; they are a continuation of existing arrangements under section 57 of the *Further and Higher Education Act 1992*”, and that they will:
- “... play a vital role in protecting and assuring the provision of further education in Wales and in ensuring that the commission is able to discharge its duties in respect of further education and training”.
52. The Minister brought forward one amendment, to require the Welsh Ministers to publish how they propose to exercise their powers of intervention under section 68 of the Bill. It placed a duty on the Welsh Ministers to lay a copy of the statement of intervention before the Senedd as soon as possible after publication. The Minister's amendment was agreed.

Group 17: Outcome agreements, funding controls and transparency

53. Amendments in this group were brought by Laura Anne Jones MS. Amendments sought to remove the Welsh Ministers' power to require the Commission to enter into an outcome agreement where the Commission proposes to provide financial resources to a person, and section 105 of the Bill which related to consent for payments to collaborating bodies.
54. The Member noted that evidence to the CYPE Committee raised concerns about the “impact of outcome agreements”, particularly for providers who currently receive funding from Welsh Government or local authorities. The Member also brought an amendment to introduce a new requirement around transparency of funding.
55. The Minister said that outcome agreements are a “core component of the strategic funding system that the commission will be operating”, and that they establish a “clear and public line of sight between the Welsh Government's priorities and how the Commission envisages providers will contribute towards them”. The Minister did not support an amendment to introduce a new requirement around transparency of funding, but committed to developing an amendment at stage 3 to set out “the principles the commission would be required to act in accordance with when exercising their funding powers”.
56. All amendments in this group were rejected.

Group 18: Welsh Ministers' funding powers

57. Amendments in this group were brought by Laura Anne Jones MS. The Member explained that amendments addressed concerns raised by HEFCW about the “hard-wiring of existing legislation” allowing the Welsh Ministers to fund particular higher education courses. The concern was that this would “undermine the concept of a single tertiary education sector”. Amendments sought to remove powers that would allow the Welsh Ministers to fund further education and training in the same way as the Commission.
58. The Minister called for Members to reject all amendments in this group. He said that the Bill’s provisions only allow for the Welsh Ministers to fund a “very limited range of higher education courses, in line with their existing powers”. All amendments in the group were rejected.

Group 19: Information

59. Backbench amendments in this group were brought by Laura Anne Jones MS. These sought to remove a requirement for the Commission to provide the Welsh Ministers with information, and the power for the Welsh Ministers to require application-to-acceptance information (information relating to applications to higher education, and any offers or rejections given in response by providers). The Minister did not support the amendments, and all were rejected.
60. The Minister described his amendment in this group as “technical”, saying that it added a cross-reference previously missing from the Bill. The amendment was agreed.

Group 20: Dissolution of higher education corporations

61. Backbench amendments sought to remove the ability of the Welsh Ministers to dissolve a higher education corporation (HEC). Laura Anne Jones MS, who tabled the amendments, said that the power “threatens the independence of higher education corporations without a royal charter, which would have a particular negative impact in Wales as it covers half of our universities”. She added that the powers would put Welsh universities in the “weakest position across the entire UK”.
62. The Minister did not support the Member’s amendments, saying that the Welsh Ministers needed to retain the power to dissolve a HEC to ensure that in exceptional circumstances the Government can take appropriate action to protect learners and public money. The Member’s amendments were rejected.
63. Amendments brought by the Minister amended the power of the Welsh

Ministers to dissolve a HEC, so that they would first need a HEC to request, or consent to, such an order being made. Where no such request or consent is obtained, the Welsh Ministers would be required to publish a statement explaining the circumstances in which they exercised their function to dissolve a HEC (in the case that Ministers believe that consent had been unreasonably withheld or delayed). The Minister's amendments were agreed.

Group 21: Sixth forms

64. Backbench amendments in this group sought to remove a section of the Bill relating to the rationalisation of sixth form provision. Laura Anne Jones MS, who brought forward the amendments, said that "sixth forms are often the lifeblood of their local communities and offer a strong link between 11 to 16 education and adulthood". She added that stakeholders expressed concerns about the proposed powers to "reorganise sixth forms". The Member's amendments were rejected.
65. Amendments brought by the Minister rephrased language in the Bill around sixth forms, replacing "rationalise" with "restructure", and required the Welsh Ministers to approve proposals affecting sixth-form education where a written objection has been made. The Minister's amendments were agreed.

4. Next steps: stage 3 and beyond

The Bill began Stage 3 of the legislative process on 13 May 2022. During this stage, Members of the Senedd (including the Minister) can table amendments to the Bill as amended at Stage 2. Amendments that have been tabled can be found on the [Bill page](#).

66. The Senedd will dispose of the amendments tabled at Stage 3 in Plenary on Tuesday 21 June 2022. The Senedd will then be asked to vote on whether or not to pass the Bill at Stage 4, which is scheduled for 28 June 2022. The Senedd's [Standing Orders](#) make provision for the Minister to prepare a revised explanatory memorandum, taking account of amendments agreed at Stage 2. The revised memorandum must be laid at least five working days before Stage 3 proceedings.
67. If passed by the Senedd at Stage 4, a Bill must receive Royal Assent from the monarch before formally becoming a piece of law.
68. Before the Stage 2 proceedings, the [Minister wrote to the CYPE Committee with additional information on his tabled amendments](#). In the letter, he explained that he intends to bring amendments at Stage 3, in response to the Committee's recommendations at Stage 1. These include amendments to:
- Provide a more consistent and wide-ranging approach to the equal opportunity and widening access duties for all parts of the post-16 sector, and not just those providers that have to register;
 - To place duties on the Commission to publish the details of at least its funding allocations, methodologies, formulas and financial outturns, and to be transparent in its funding decisions;
 - To delete section 105 and set out a different approach when managing due diligence when funding is passed on to third parties.
69. According to the Bill's original [Explanatory Memorandum](#), the new Commission is expected to be "operational by 2023-24", with a Chief Executive Officer "in post from 1 January 2023". In a letter to the Chair of the CYPE Committee in [February 2022](#), the Minister explained that there will be a "phased approach to the implementation of the functions provided for in the Bill, from its establishment in 2023 and into 2024 and 2025". He also noted that the recruitment process for the CEO of the Commission will begin during the "latter stages of scrutiny".

