

## **EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT**

- **THE TRINITY COLLEGE, CARMARTHEN (DESIGNATED INSTITUTIONS IN HIGHER EDUCATION) (WALES) ORDER 2007**

### **Outline**

**The Trinity College, Carmarthen (Designated Institutions in Higher Education) (Wales) Order 2007 will designate Trinity College, Carmarthen as a higher education institution in its own right. This is necessary as a result of the restructuring of the University of Wales and the subsequent change in relationship between its members.**

1. This Memorandum is in relation to **The Trinity College Carmarthen (Designated Institutions in Higher Education) (Wales) Order**.
2. A copy of the Instrument is submitted with this Memorandum.

### **Enabling Power**

3. The power enabling this instrument to be made is contained in section 129(1) (a) of the Education Reform Act 1988 (ERA 1988). In accordance with sub-sections (1) and (4)(b) of section 232 ERA 1988, this would be done by statutory instrument under the negative procedure.

### **Background**

4. You are aware that the University of Wales (UoW) have asked for formal Privy Council approval of the final changes to their Charter and Statutes, intended to take effect from 1<sup>st</sup> September 2007, to put in place a non-membership-based confederation in line with the Wigley Report. As the Privy Council Office's (PCO) advisers, the Welsh Assembly Government has been involved in this process for some time and offered final comments on the UoW drafts in January this year (MB JD 0047/07 relates).
5. We noted that both the UoW and its members would need to check whether their own Charters and Statutes would need amendment to reflect the creation of the confederal UoW. These amendments have now moved from the informal to the formal stage of the process and officials have submitted formal comments to the Privy Council Office - the changes to all Charters and Statutes will come into effect on 1<sup>st</sup> September.

## **Effect**

6. It is now necessary to designate Trinity College, Carmarthen in order for it to continue to be part of the higher education sector in Wales and operate as an HEI from 1st September 2007, when it will no longer be a constituent member of the University of Wales.
7. Section 91(5) of the Further and Higher Education Act 1992 (FHEA 1992) sets out that for the purposes of the Education Acts, references to **institutions within the higher education sector** are to:
  - (a) universities receiving financial support under section 65 of the FHEA 1992
  - (b) institutions conducted by HE corporations
  - (c) designated institutions (designated under section 129 of the ERA 1988)
8. This means that the previous constituent member institutions of the UoW will not remain in the higher education sector simply by providing higher education courses.. They must fall within one of the three categories of institutions set out under section 91(5) FHEA 1992, outlined at paragraph 7.
9. Therefore, in order for the previous member institutions of UoW to remain within the higher education sector, they must be either a university, a higher education corporation or a designated institution. Once the reorganisation of the sector, resulting from the restructuring of the UoW and the university title applications of Swansea, Bangor and Aberystwyth, take effect on 1<sup>st</sup> September, all institutions with the exception of Trinity College, Carmarthen, will either be classified as 'universities' or 'higher education corporations'.

## **Target Implementation**

10. The Order must be brought into force on 1<sup>st</sup> September 2007 to coincide with the restructuring of the University of Wales and the higher education sector.

## **Consultation**

11. It has not been necessary to consult formally on the making of this Order as it is technical in nature.

## **Financial Implications**

12. Any work associated with the preparation of this order will be accommodated within existing DRC budgets in 07-08. The implementation of this order will not lead to any additional financial implications for the Assembly or to any other organisation.

## **Regulatory Impact Assessment**

13. There is no policy consideration related to this Order - it is a technical Order, required to ensure that Trinity College, Carmarthen continues to operate as a higher education institution. Paragraphs 16 - 18 below details the consequences if this Order was not made.

### **Option 1: Do Nothing**

14. We do not consider this an option. If we did not designate Trinity College, this institution, post 1<sup>st</sup> September, would fall outside of the higher education sector in Wales. The effect will be that much of the legislation intended to apply to HEIs, would not apply to it, including the references to higher education institutions at section 65 of the Further and Higher Education Act 1992, which sets out the power of Higher Education Funding Council for Wales to fund HE.

15. The term 'higher education institution', or 'institution within the higher education sector' is also used in a number of other places on the statute book. For example, section 28R of the Disability Discrimination Act 1995 renders it unlawful for a body responsible for an educational institution to discriminate against disabled persons. This provision would not apply to Trinity College, Carmarthen, as an educational institution is defined as an institution within the higher or further education sector.

16. Another example is section 120 of the Education Reform Act 1988 that requires LEAs to have regard to the HE facilities provided by HE institutions in their area when exercising their own power to secure facilities for HE. The relevant LEA would not be required to have regard to the HE facilities provided by Trinity College, Carmarthen, as it would not be an HE institution, unless it is designated.

### **Option 2: Make the Legislation**

17. By making this legislation, we will be ensuring that Trinity College, Carmarthen continues to operate as an HEI when the restructuring of the University of Wales comes into force on 1<sup>st</sup> September 2007.

### **Benefits**

18. Established in 1848, Trinity College is a provider of quality bilingual higher education and training, making an effective contribution to the economic, social and cultural prosperity of Wales. It adds value to the higher education sector in Wales and plays its part in benefiting students, employers and the public at large.

### **Procedure**

19. These regulations will follow the negative resolution procedure. This means that they are made and laid before the Assembly but should not be

brought into force until 21 (calendar) days from the date of laying. However, in addition, there is a 40 (calendar) day annulment period which commences from the date of laying (and does not include recesses) whereby a Member or Members may table a motion seeking the annulment of an instrument made under this procedure. Unless an annulment motion is tabled, subordinate legislation under this procedure will not be debated by the Assembly in plenary.

### **Summary**

20. There are no costs associated with this Order in terms of compliance. The higher education sector, students and society in general will benefit from this Order.
  
21. The information in this Memorandum has been cleared with the Legal Services Department (LS).
  
22. Drafting lawyer Rosalind Sullivan on ext 6873.
  
23. Head of Division Dr David Bacon on ext 5851.
  
24. Policy division contact Lisa Newberry on ext 1286.