

*Draft Regulations laid before Parliament under section 119(2)(h) of the Higher Education and Research Act 2017, section 24(9) of the Legislative and Regulatory Reform Act 2006, and section 349(1)(a) and (2) of the Charities Act 2011, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2019 No. 0000**

**EDUCATION**

**CHARITIES**

**The Higher Education and Research Act 2017 (Further  
Implementation etc.) Regulations 2019**

*Made* - - - - *\*\*\**

*Coming into force* - - *1st August 2019*

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The Secretary of State, in exercise of the powers conferred by section 116(1) and (2)(a) of the Higher Education and Research Act 2017(a), section 24(2) of the Legislative and Regulatory Reform Act 2006(b), and section 23(1) of the Charities Act 2011(c), makes the following Regulations.

In so far as Part 4 of this instrument makes provision to secure that, in so far as they are charities, institutions of a particular description become exempt charities, the Secretary of State is satisfied, in accordance with section 23(2) of the Charities Act 2011, that Part 4 of this instrument is desirable in the interests of ensuring appropriate or effective regulation of the charities concerned in connection with compliance by the charity trustees of the charities with their legal obligations in exercising control and management of the administration of the charities.

In accordance with section 24(6) of the Legislative and Regulatory Reform Act 2006, the Secretary of State has consulted the persons whose functions are specified in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(d) under Part 5 of this instrument and such other persons as the Secretary of State considered appropriate.

In accordance with section 119(2) of the Higher Education and Research Act 2017, section 24(9) of the Legislative and Regulatory Reform Act 2006, and section 349(1)(a) and (2) of the Charities Act 2011, a draft of this instrument was laid before, and approved by a resolution of, each House of Parliament.

## PART 1

### Introductory provision

#### **Citation and commencement**

1. These Regulations may be cited as the Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019 and come into force on 1st August 2019.

## PART 2

### Consequential amendments to primary legislation

#### **Employment and Training Act 1973**

2.—(1) Section 8(4) of the Employment and Training Act 1973(e) (duty of Secretary of State to ensure provision of careers services for school and college students) is amended as follows.

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- (a) 2017 c. 29.  
(b) 2006 c. 51.  
(c) 2011 c. 25.  
(d) S.I. 2007/3544.  
(e) 1973 c. 50. Section 8 was substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 45.

(2) Before paragraph (a), insert—

“(za) as respects England, as references to a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, other than a provider which is also an institution within the further education sector within the meaning given by section 91(3) of the Further and Higher Education Act 1992.”

(3) In paragraph (a), omit “England and”.

### **Education Reform Act 1988**

**3.**—(1) Section 135 of the Education Reform Act 1988(a) (inspection of accounts) is amended as follows.

(2) In subsection (1)(b)—

(a) in paragraph (b), at the end, omit “or”;

(b) at the end of paragraph (c), insert—

“or

(d) any registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;”

(3) In subsection (2)(c)—

(a) for “subsection (1)(a) or (c)”, substitute “subsection (1)(a), (c) or (d)”;

(b) after “Further and Higher Education Act 1992”, insert “or section 39 or 97 of the Higher Education and Research Act 2017”.

### **Further and Higher Education Act 1992**

**4.** In section 91 of the Further and Higher Education Act 1992(d) (interpretation of Education Acts)—

(a) in subsection (5)(e) —

(i) before paragraph (a), insert—

“(za) registered higher education providers of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;”;

(ii) in paragraph (b), after “institutions”, insert “in Wales”;

(b) after subsection (5), insert—

“(5ZA) For the purposes of subsection (5)(b), the reference to institutions in Wales is to be read in accordance with section 62(7).”

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(a) 1988 c. 40.

(b) There is an amendment to section 135(1), but it is not relevant to these Regulations.

(c) Section 135(2) was amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 36(b). By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999/672, article 2 and Schedule 1, the power in section 135 is exercisable only in relation to England.

(d) 1992 c. 13.

(e) Section 91(5)(aa) was inserted by the Higher Education (Wales) Act 2015 (anaw 1), Schedule, Part 1, paragraph 4(1) and (2).

## **Value Added Tax Act 1994**

**5.** In Schedule 9 to the Value Added Tax Act 1994(a) (exemptions), in Part 2 (the groups), in Group 6 (education), under the heading “Notes”, in note (1)(c)(i)(b), after “section 91(5)”, insert “(za),”.

## **Education Act 1994**

**6.—**(1) Section 21 of the Education Act 1994(c) (establishments to which Part II applies) is amended as follows.

(2) In subsection (1)—

(a) before paragraph (a), insert—

“(za) any registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;”;

(b) in paragraph (b), after “institution”, insert “in Wales”.

(3) After subsection (2), insert—

“(2A) For the purposes of subsection (1)(b), institution in Wales has the meaning given by section 62(7) of the Further and Higher Education Act 1992.”.

## **Education Act 1996**

**7.—**(1) The Education Act 1996(d) is amended as follows.

(2) In section 4 (schools: general)(e)—

(a) in subsection (1), after “and the”, insert “wider”;

(b) for subsection (4), substitute—

“(4) For the purposes of this Act an institution is outside the wider higher education sector if —

(a) in relation to England, it is not a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, or

(b) in relation to Wales, it is not an institution within the higher education sector within the meaning given by section 91(5) of the Further and Higher Education Act 1992;

and references to institutions within the wider higher education sector are to be construed accordingly.”.

(3) In section 508F (local authorities in England: provision of transport etc for adult learners)(f)—

(a) in subsection (3)(g), for “and higher education sectors”, substitute “education sector and the wider higher education sector”;

(b) in subsection (7), for “and higher education sectors”, substitute “education sector and the wider higher education sector”.

(4) In section 580 (index)(h), in the entry “institution outside (or within) the higher education sector”, before “higher”, insert “wider”.

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(a) 1994 c. 23.

(b) Note (1)(c)(i) was amended by S.I. 2010/1080, Schedule 1, Part 2, paragraph 94.

(c) 1994 c. 30. There are amendments to section 21 but these are not relevant to these Regulations.

(d) 1996 c. 56.

(e) Section 4(4)(d) was inserted by the Higher Education (Wales) Act 2015 (anaw 1), Schedule, paragraph 5.

(f) Section 508F was inserted by the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 57(2).

(g) Section 508F(3) was amended by S.I. 2010/1158, Schedule 2, paragraph 7.

(h) There are amendments to section 580, but they are not relevant to these Regulations.

## Education Act 2002

8.—(1) The Education Act 2002(a) is amended as follows.

(2) In section 14 (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or children etc), in subsection (3), for the definition of “teacher”, substitute—

““teacher” does not include a teacher at an institution within the wider higher education sector, unless, in relation to a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, the institution is also an institution within the further education sector.”.

(3) In section 16 (terms on which assistance under section 14 is given), in subsection (2A)(b)—

(a) in paragraph (a)—

(i) after “within the”, insert “wider”;

(ii) after “sector”, insert “unless the institution is also an institution within the further education sector.”;

(b) in paragraph (b), for “such an institution”, substitute “an institution within the wider higher education sector, unless, in relation to a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, the institution is also an institution within the further education sector”.

## Income Tax (Earnings and Pensions) Act 2003

9. In section 457(1) of the Income Tax (Earnings and Pensions) Act 2003(c) (meaning of research institution), for paragraph (a), substitute—

“(a) any university or other institution receiving a grant (including a recurrent grant towards its costs), loan, financial support, financial assistance, financial resources or payment under—

(i) section 65 of the Further and Higher Education Act 1992,

(ii) regulations made under section 485 of the Education Act 1996,

(iii) section 34 of the Learning and Skills Act 2000,

(iv) section 14 of the Education Act 2002,

(v) section 86 of the Education Act 2005,

(vi) section 100 of the Apprenticeships, Skills, Children and Learning Act 2009,  
or

(vii) section 39 or 97 of the Higher Education and Research Act 2017,

(aa) any institution maintained by a local authority in England or Wales in the exercise of their further and higher education functions,

(ab) any institution within the higher education sector for the purposes of the Further and Higher Education (Scotland) Act 1992,

(ac) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992,

(ad) any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980,

(ae) the Queen’s University of Belfast or the University of Ulster,

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(a) 2002 c. 32. There have been amendments to section 14, but they are not relevant to these Regulations.

(b) Section 16(2A) was inserted by the Education Act 2011 (c. 21), section 15(3)(c).

(c) 2003 c. 1. Section 457 as originally enacted was repealed by the Finance Act 2003 (c. 14), Schedule 22, paragraph 9(1), subject to savings. The existing Section 457(1) was inserted by the Finance Act 2005 (c. 7), section 20(1).

- (af) a college of education in Northern Ireland within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)), or
- (ag) any institution providing in Northern Ireland further education as defined in Article 3 of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)), or”.

### **Licensing Act 2003**

**10.** In section 16(3) of the Licensing Act 2003(**a**) (applicant for premises licence), in the definition of “educational institution”—

- (a) in paragraph (a)—
  - (i) omit “or higher”;
  - (ii) at the end, omit “or”;
- (b) after paragraph (a), insert—
  - “(aa) an institution within the higher education sector, within the meaning given by section 91(5) of the Further and Higher Education Act 1992, or”;
- (c) in paragraph (b), at the end, insert “or section 39 or 97 of the Higher Education and Research Act 2017”.

### **Education and Skills Act 2008**

**11.** In section 132(2) of the Education and Skills Act 2008(**b**) (providers of independent education or training for 16 to 18 year olds)—

- (a) in paragraph (b)(**c**)—
  - (i) in sub-paragraph (iii), at the end, omit “or”;
  - (ii) after sub-paragraph (iii), insert—
    - “(iiia) an institution solely or principally concerned with the provision of higher education, or”;
- (b) in paragraph (c), for “and higher education sectors”, substitute “sector”.

### **Equality Act 2010**

**12.** In Schedule 22 to the Equality Act 2010(**d**) (statutory provisions), after paragraph 3(6)(c) (educational appointments, etc: religious belief), insert—

- “(ca) a registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;”.

### **Children and Families Act 2014**

**13.** In section 83(2) of the Children and Families Act 2014(**e**) (interpretation of Part 3), in paragraph (b) of the definition of “post-16 institution”, for “or which provides only”, substitute “and which is solely or principally concerned with the provision of”.

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(a) 2003 c. 17.

(b) 2008 c. 25.

(c) There are amendments to paragraph (b), but they are not relevant to these Regulations.

(d) 2010 c. 15. There are amendments to Schedule 22, but they are not relevant to these Regulations.

(e) 2014 c. 6.

## **Digital Economy Act 2017**

**14.**—(1) Schedule 8 to the Digital Economy Act 2017(a) (specified persons for the purposes of the fraud provisions) is amended as follows.

(2) In paragraph 27, for “The Higher Education Funding Council for England”, substitute “The Office for Students”(b).

(3) After paragraph 32, insert—

“**32A.** United Kingdom Research and Innovation.”(c).

(4) Omit paragraphs 33 to 40.

## **PART 3**

### **Consequential amendments to secondary legislation**

#### **Income Support (General) Regulations 1987**

**15.** In regulation 61(1) of the Income Support (General) Regulations 1987(d) (interpretation), in the definition of “access funds”, in paragraph (a), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

#### **Income Support (General) Regulations (Northern Ireland) 1987**

**16.** In regulation 61(1) of the Income Support (General) Regulations (Northern Ireland) 1987(e) (interpretation), in the definition of “access funds”, in paragraph (b), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

#### **Social Security (Disability Living Allowance) Regulations 1991**

**17.** In regulation 9(3)(c) of the Social Security (Disability Living Allowance) Regulations 1991(f) (persons in care homes), after “1992”, insert “, sections 39 or 40 of the Higher Education and Research Act 2017”.

#### **Jobseeker’s Allowance Regulations 1996**

**18.** In regulation 130 of the Jobseeker’s Allowance Regulations 1996(g) (interpretation), in the definition of “access funds”, in paragraph (a), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

- 
- (a) 2017 c. 30.
- (b) The Office for Students was established by the Higher Education and Research Act 2017, section 1. The Higher Education Funding Council for England ceased to exist as a result of section 81 of that Act.
- (c) United Kingdom Research and Innovation was established by the Higher Education and Research Act 2017, section 91.
- (d) S.I. 1987/1967; regulation 61 was renumbered regulation 61(1) by S.I. 2000/1981, regulation 5(3). The definition of “access funds” was inserted by S.I. 2000/1922, regulation 2(2); the definition was amended by S.I. 2009/2655, regulation 2(13)(a) and (b). There are other amendments but they are not relevant to these Regulations.
- (e) S.R. 1987/459; the definition “access funds” was inserted by S.R. 2000 No. 242, regulation 2(2)(a); it was amended by S.R. 2001 No. 278, regulation 2(1)(b) and (2)(b); S.R. 2002 No. 222, regulation 2(1)(a); S.R. 2008 No. 498, regulation 2(5); and S.R. 2009 No. 338, regulation 2(12). There are other amendments, but they are not relevant to these Regulations.
- (f) S.I. 1991/2890.
- (g) S.I. 1996/207. The definition of “access funds” was inserted by S.I. 2000/1922, regulation 3(4); the definition was amended by S.I. 2009/2655, regulation 4(12). There are other amendments to the definition but they are not relevant to these Regulations.



### **Jobseeker’s Allowance Regulations (Northern Ireland) 1996**

19. In regulation 130 of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(a) (interpretation), in the definition of “access funds”, in paragraph (b), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

### **Housing Renewal Grants Regulations 1996**

20. In regulation 41 of the Housing Renewal Grants Regulations 1996(b) (interpretation), in the definition of “access funds”, in paragraph (a), after “that Act”, insert “or section 74 of the Higher Education and Research Act 2017”.

### **Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000**

21. In article 2 of the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000(c) (interpretation), in the definition of “specified education institution”, in paragraph (a)—

- (a) before “higher education sector”, insert “wider”;
- (b) for “91(5) of the Further and Higher Education Act 1992 (interpretation of Education Acts)”, substitute “4(4) of the Education Act 1996 (schools: general)”.

### **School Companies Regulations 2002**

22. In regulation 2(1) of the School Companies Regulations 2002(d) (interpretation), in the definition of “a higher education institution”, for paragraphs (a) to (c), substitute—

- “(a) a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017; or
- (b) a university which does not fall within paragraph (a) above;”.

### **School Companies (Private Finance Initiative Companies) Regulations 2002**

23. In regulation 2(1) of the School Companies (Private Finance Initiative Companies) Regulations 2002(e) (interpretation), in the definition of “a higher education institution”, for paragraphs (a) to (c), substitute—

- “(a) a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017; or
- (b) a university which does not fall within paragraph (a) above;”.

### **Housing Benefit Regulations 2006**

24. In regulation 53(1) of the Housing Benefit Regulations 2006(f) (interpretation), in the definition of “access funds”, in paragraph (a), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

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(a) S.R. 1996/198. The definition “access funds” was inserted by S.R. 2000 No. 242, regulation 3(4)(a); the definition was amended by S.R. 2001 No. 278, regulation 2(1)(b)(i); S.R. 2002 No. 222, regulation 2(3)(b)(i); S.R. 2008 No. 498, regulation 3(5); and S.R. 2009 No. 338, regulation 4(12)(a) and (b). There are other amendments to the definition but they are not relevant to these Regulations.

(b) S.I. 1996/2890. The definition “access funds” was inserted in relation to England by S.I. 2001/739, regulations 2, 12(a), and in relation to Wales by S.I. 2001/2073, regulations 2, 12(a). Paragraph (a) was amended in relation to England by S.I. 2002/530, regulation 12(b)(i) and in relation to Wales by S.I. 2002/2798, regulation 12(b)(i). There are other amendments to the definition but they are not relevant to these Regulations.

(c) S.I. 2000/706.

(d) S.I. 2002/2978.

(e) S.I. 2002/3177.

(f) S.I. 2006/213.

### **Housing Benefit Regulations (Northern Ireland) 2006**

**25.** In regulation 50(1) of the Housing Benefit Regulations (Northern Ireland) 2006(a) (interpretation), in the definition of “access funds”, in paragraph (b), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

### **Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007**

**26.** In regulation 3 of the Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007(b) (prescribed education and training)—

- (a) in paragraph (1)(a), for “HEFCE”, substitute “OfS”;
- (b) in paragraph (2)—
  - (i) for “HEFCE”, substitute “OfS”;
  - (ii) for “Higher Education Funding Council for England”, substitute “Office for Students”.

### **Education (Fees and Awards) (England) Regulations 2007**

**27.**—(1) The Education (Fees and Awards) (England) Regulations 2007(c) are amended as follows.

(2) In regulation 2(1) (interpretation)(d)—

- (a) omit the definition of “HEFCE”;
- (b) in the appropriate places, insert—
  - ““OfS” means the Office for Students;”;
  - ““UKRI” means United Kingdom Research and Innovation;”.

(3) In regulation 4(4) (fee charging), for “condition imposed under section 24 of the Higher Education Act 2004”, substitute “fee limit condition imposed under section 10 of the Higher Education and Research Act 2017”.

(4) In regulation 6 (awards by research councils and others)(e)—

- (a) in the heading, after “research councils”, insert “, UKRI”;
- (b) in paragraph (1), after “Schedule 2”, insert “, or UKRI,”.

(5) In regulation 8 (payments by HEFCE)(f)—

- (a) in the heading, for “HEFCE”, substitute “the OfS”;
- (b) for “HEFCE”, each time it appears, substitute “OfS”;
- (c) in paragraph (1), for “65 of the Further and Higher Education Act 1992”, substitute “39 or 40 of the Higher Education and Research Act 2017”.

### **Education (Information About Children in Alternative Provision) (England) Regulations 2007**

**28.** In regulation 8 of the Education (Information About Children in Alternative Provision) (England) Regulations 2007(g) (other persons to whom individual information supplied may be passed in addition to information collators), for paragraph (l), substitute—

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- (a) S.R. 2006/405.
  - (b) S.I. 2007/464.
  - (c) S.I. 2007/779.
  - (d) There are amendments to regulation 2(1), but they are not relevant to these Regulations.
  - (e) Regulation 6 makes reference to Schedule 1, to which there are amendments, including amendments that have not yet come into force, but they are not relevant to these Regulations.
  - (f) Regulation 8 makes reference to Schedule 1, to which there are amendments, including amendments that have not yet come into force, but they are not relevant to these Regulations.
  - (g) S.I. 2007/1065.

“(l) the Office for Students;”.

### **Employment and Support Allowance Regulations (Northern Ireland) 2008**

**29.** In regulation 131(1) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(a) (interpretation), in the definition of “access funds”, in paragraph (b), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

### **Charities (Accounts and Reports) Regulations 2008**

**30.** In regulation 2(1) of the Charities (Accounts and Reports) Regulations 2008(b) (interpretation), in the definition of “special case charity”, in paragraph (b)—

- (a) in sub-paragraph (i), after “has effect”, insert “or, in relation to an English higher education provider within the meaning of section 83(1) of the Higher Education and Research Act 2017, had effect on 31st July 2019”;
- (b) in sub-paragraph (ii)—
  - (i) before “funds”, insert “the Office for Students, or”;
  - (ii) for “a higher education funding council within the meaning of the Further and Higher Education Act 1992”, substitute “the Higher Education Funding Council for Wales”(c).

### **Employment and Support Allowance Regulations 2008**

**31.—**(1) The Employment and Support Allowance Regulations 2008(d) are amended as follows.

(2) In regulation 131(1) (interpretation), in the definition of “access funds”, in paragraph (a), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

(3) In regulation 137(2) (treatment of student loans and postgraduate master’s degree loans), for sub-paragraph (a), substitute—

“(a) in relation to England, a loan made by the Office for Students under section 39 or 40 of the Higher Education and Research Act 2017;”.

### **Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009**

**32.** In regulation 3 of the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009(e) (prescribed persons)—

- (a) for paragraph (5)(c), substitute—

“(c) the Office for Students;”;
- (b) in paragraph (6)(f), before “higher education sector”, insert “wider”.

### **Teachers’ Pensions Regulations 2010**

**33.** In Schedule 2 to the Teachers’ Pensions Regulations 2010(f) (pensionable employment), in Part 1 (employments pensionable without election), in paragraph 6, for sub-paragraph (a), substitute—

- “(a) which is—
  - (i) in Wales, within the further or the higher education sector (as defined in section 91 of that Act); or

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(a) S.R. 2008/280.

(b) S.I. 2008/629.

(c) The Higher Education Funding Council for Wales was established by the Further and Higher Education Act 1992, section 62(1)(b).

(d) S.I. 2008/794; as amended by S.I. 2009/2655 and S.I. 2016/743.

(e) S.I. 2009/1563.

(f) S.I. 2010/990.

- (ii) in England, within the further education sector (as defined in section 91 of that Act), or the higher education sector (as defined in section 91 of that Act as at 31st July 2019)(a), and”.

### **Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012**

**34.** In article 12(3)(a) of the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012(b) (payments under the FHEC scheme)—

- (a) for “section 24(6) of the Higher Education Act 2004”, substitute “paragraph 2(5) of Schedule 2 to the Higher Education and Research Act 2017”;
- (b) for “sub-section”, substitute “paragraph”.

### **Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012**

**35.**—(1) The Schedule to the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012(c) (Council Tax Reduction Scheme (Default Scheme) 2013) is amended as follows.

(2) In Part 11 (students), in paragraph 73(1) (interpretation), in the definition of “access funds”, in paragraph (a), after “1992”, insert “or section 74 of the Higher Education and Research Act 2017”.

### **Social Security (Personal Independence Payment) Regulations 2013**

**36.** In regulation 28(2) of the Social Security (Personal Independence Payment) Regulations 2013(d) (care home residents)—

- (a) in sub-paragraph (f)(iv), for “councils”, substitute “HEFCW”;
- (b) after sub-paragraph (f)(vi), insert—
  - “(vii) section 39 of the Higher Education and Research Act 2017 (financial support for registered higher education providers) or section 40 of that Act (financial support for certain institutions);”.

### **Teachers’ Pension Scheme Regulations 2014**

**37.** In Schedule 1 to the Teachers’ Pension Scheme Regulations 2014(e) (eligible employment), in Part 2 (service pensionable without election), in paragraph 14, for sub-paragraph (a), substitute—

- “(a) which is—
  - (i) in Wales, within the further or the higher education sector (as defined in section 91 of that Act); or
  - (ii) in England, within the further education sector (as defined in section 91 of that Act), or the higher education sector (as defined in section 91 of that Act as at 31st July 2019)(f); and”.

- 
- (a) Section 91(5) as at 31st July 2019, is as follows:
    - “References to institutions within the higher education sector are to—
    - (a) universities receiving financial support under section 65 of this Act,
    - (aa) universities that are regulated institutions,
    - (b) institutions conducted by higher education corporations, and
    - (c) designated institutions for the purposes of Part II of this Act (defined in section 72(3) of this Act), and references to institutions outside the higher education sector are to be read accordingly.”
  - (b) S.I. 2012/1796. There are amendments to article 12 but they are not relevant to these Regulations.
  - (c) S.I. 2012/2886. There are amendments to Schedule 1 but they are not relevant to these Regulations.
  - (d) S.I. 2013/377.
  - (e) S.I. 2014/512.
  - (f) Section 91(5) as at 31st July 2019, is as follows:

### **Education (Student Information) (England) Regulations 2015**

**38.** In Schedule 2 to the Education (Student Information) (England) Regulations 2015(a) (prescribed persons and prescribed categories of person), in Part 1 (information provided by the Secretary of State or an information collator), in Chapter 1 (prescribed persons), in paragraph 1(4), for “Higher Education Funding Council for England”, substitute “Office for Students”.

### **Economic Growth (Regulatory Functions) Order 2017**

**39.** In the Schedule to the Economic Growth (Regulatory Functions) Order 2017(b), in Part 1—

- (a) omit “Director of Fair Access to Higher Education” and “Higher Education Funding Council for England”;
- (b) in the appropriate place, insert “Office for Students”.

### **Trade Union (Facility Time Publication Requirements) Regulations 2017**

**40.**—(1) Schedule 1 to the Trade Union (Facility Time Publication Requirements) Regulations 2017(c) (public authorities) is amended as follows.

(2) In Part 3 (maintained schools and other educational institutions), in paragraph 36, after subparagraph (c), insert—

“(d) a registered higher education provider of a description prescribed by regulations made by the Secretary of State for the purposes of section 39(1) of the Higher Education and Research Act 2017;”.

(3) In Part 5 (other bodies)—

- (a) omit paragraph 91;
- (b) in paragraph 110, for “Higher Education Funding Council for England”, substitute “The Office for Students”.

### **Business Impact Target (Relevant Regulators) Regulations 2017**

**41.** In the Schedule to the Business Impact Target (Relevant Regulators) Regulations 2017(d)—

- (a) omit “Director of Fair Access to Higher Education”;
- (b) omit “Higher Education Funding Council for England”;
- (c) in the appropriate place, insert “The Office for Students”.

### **Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017**

**42.** In Schedule 2 to the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017(e) (public authorities required to publish information), under the heading “Education”, for “The Higher Education Funding Council for England”, substitute “The Office for Students”.

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“References to institutions within the higher education sector are to—

(a) universities receiving financial support under section 65 of this Act,

(aa) universities that are regulated institutions,

(b) institutions conducted by higher education corporations, and

(c) designated institutions for the purposes of Part II of this Act (defined in section 72(3) of this Act), and references to institutions outside the higher education sector are to be read accordingly.”

(a) S.I. 2015/1567. There are amendments to Schedule 2 but they are not relevant to these Regulations.

(b) S.I. 2017/267. There are amendments to Part 1 but they are not relevant to these Regulations.

(c) S.I. 2017/328.

(d) S.I. 2017/344.

(e) S.I. 2017/353. There are amendments to Schedule 2 but they are not relevant to these Regulations.

## PART 4

### Amendments to the Charities Act 2011

#### Amendments to Schedule 3 to the Charities Act 2011

**43.**—(1) Schedule 3 to the Charities Act 2011(a) (exempt charities) is amended as follows.

(2) For paragraph 2, substitute—

“**2.** Any of the following if it is a relevant higher education provider—

- (a) the university of Oxford;
- (b) the university of Cambridge;
- (c) the university of London;
- (d) the university of Durham;
- (e) the university of Newcastle upon Tyne;
- (f) the university of Manchester.”.

(3) For paragraph 3, substitute—

“**3.** Any of the following if it is a relevant higher education provider—

- (a) King’s College London;
- (b) Queen Mary University of London.”.

(4) In paragraph 4(1), after “if”, insert “it is a relevant higher education provider and”.

(5) In paragraph 5(1), after “corporation”, insert “if it is a relevant higher education provider”.

(6) In paragraph 6—

- (a) in sub-paragraph (1), for the words from “institution” to “England”, substitute “company or institution conducted by the company is a relevant higher education provider”;
- (b) for sub-paragraph (2), substitute—

“(2) In this paragraph, “successor company”, in relation to a higher education corporation, has the meaning given by section 129(5) of the Education Reform Act 1988.”.

(7) After paragraph 11 (before the heading preceding paragraph 12), insert—

“**11A.**—(1) A relevant higher education provider not otherwise listed in paragraphs 2 to 11 if Her Majesty declares it by Order in Council to be an exempt charity for the purposes of this Act.

(2) Sub-paragraph (1) does not include—

- (a) any college in the university of Oxford;
- (b) any college or hall in the university of Cambridge or Durham; or
- (c) any students’ union.

**11B.** In paragraphs 2 to 11A—

“higher education corporation” has the meaning given by section 90(1) of the Further and Higher Education Act 1992;

“relevant higher education provider” means an institution which is registered in the register of higher education providers established and maintained by the Office for Students pursuant to the Higher Education and Research Act 2017 (“the 2017 Act”) and—

- (a) which is funded wholly or partly by a grant, loan or other payment from the Office for Students under section 39 or 40 of the 2017 Act,

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(a) 2011 c. 25.

- (b) which is not so funded but is eligible to receive such funding under section 39 or 40 of the 2017 Act, or
  - (c) which provides higher education courses which are designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 by or under regulations made under that section.”.
- (8) In paragraph 28, in sub-paragraph (2), after paragraph (c), insert—
- “(d) an institution included in any of paragraphs 1 to 11A.”.

## PART 5

### Amendment to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

#### **Amendment to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007**

**44.**—(1) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007(a) is amended as follows.

- (2) In Part 1 of the Schedule, in the appropriate place, insert—
- “Office for Students”.

## PART 6

### Savings

#### **Saving of section 91(5) of the Further and Higher Education Act 1992 for the purposes of section 77(1) of that Act and section 39 of the Teaching and Higher Education Act 1998**

**45.**—(1) The coming into force of regulation 4(a)(ii) of these Regulations is of no effect in relation to an application that falls within paragraph (2).

- (2) An application falls within this paragraph if it is an application—
- (a) for the Privy Council to exercise its power to give consent under section 77(1) of the Further and Higher Education Act 1992(b) or approval under section 39(1) or (2) of the Teaching and Higher Education Act 1998(c);
  - (b) that was made on or before 31st March 2019.

#### **Saving of orders made under section 129 of the Education Reform Act 1988**

**46.** An order made under section 129 of the Education Reform Act 1988 before commencement of paragraph 9 of Schedule 11 to the Higher Education and Research Act 2017 shall continue to have effect in respect of:

- (a) an application that falls within regulation 45(2) of these Regulations,
- (b) paragraph 6(a)(ii) of Part 1 (employments pensionable without election) of Schedule 2 (pensionable employment) to the Teachers’ Pensions Regulations 2010(d),
- (c) paragraph 14(a)(ii) of Part 2 (service pensionable without election) of Schedule 1 (eligible employment) to the Teachers’ Pension Scheme Regulations 2014(e), and

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(a) S.I. 2007/3544. There are amendments to the Order, but they are not relevant to these Regulations.  
(b) 1992 c. 13.  
(c) 1998 c. 30.  
(d) S.I. 2010/990.  
(e) S.I. 2014/512.

- (d) paragraph 4 of Part 2 of Schedule 2 (scheme employers) to the Local Government Pension Scheme Regulations 2013(a).

Date *Name*  
Minister of State  
Department for Education

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

This instrument makes provision for the further implementation of the Higher Education and Research Act 2017 (c. 29) (“HERA”).

Parts 2 and 3 (regulations 2 to 42) make amendments to primary and secondary legislation (respectively) in consequence of the commencement of certain provisions of HERA (in particular the abolition of the Higher Education Funding Council for England (“HEFCE”) and the Director of Fair Access to Higher Education and the assumption of their functions by the Office for Students (“OfS”)), and repeal of a number of provisions relating to the old regime.

Part 4 (regulation 43) makes amendments to Schedule 3 to the Charities Act 2011 in relation to exempt charities that are regulated by the OfS as their Principal Regulator. The amendments enable any registered higher education provider that is a charity to become exempt by an Order in Council, and remove exempt charity status from a provider that ceases to be registered with the OfS. Exempt charities are, with some exceptions, charities within Schedule 3 to the Charities Act 2011. They are exempt from registration with, and direct regulation by, the Charity Commission for England and Wales. They are instead regulated by a principal regulator with which they usually have a pre-existing regulatory relationship. The principal regulator of an exempt charity must do all it reasonably can to meet the compliance objective specified in section 26(3) of the Charities Act 2011 in relation to that charity.

Part 5 (regulation 44) amends the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, which specifies the regulatory functions to which the duties in sections 21 and 22 of the Legislative and Regulatory Reform Act 2006 (c. 51) (“LRRRA”) apply.

Section 21 of LRRRA imposes a duty on any person exercising a specified regulatory function to have regard to the five principles of good regulation. Section 22 of LRRRA imposes a duty on any person exercising a specified regulatory function to have regard to the Regulators’ Code. Regulation 44 makes these duties applicable to all of the regulatory functions exercised by the Office for Students.

A copy of the Regulators’ Code is available at: <https://www.gov.uk/government/publications/regulators-code>.

Part 6 (regulations 45 and 46) makes savings provision for the continuation of Orders made under section 129 of the Education Reform Act 1988 (c. 40) for certain purposes including in relation to the Teachers’ Pension Scheme and the Local Government Pension Scheme.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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(a) S.I. 2013/2356.









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