

EXPLANATORY MEMORANDUM TO
THE HARTPURY COLLEGE OF FURTHER EDUCATION (DESIGNATED
INSTITUTION IN FURTHER EDUCATION) ORDER 2018

2018 No. 738

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument designates an institution named the “Hartpury College of Further Education” as falling within the further education sector. The institution will be conducted by a newly established company limited by guarantee (“the Company”), wholly owned by the current Further Education Corporation (“FEC”), Hartpury College (“the College”). The provision of the College is to be split, with the further education provision transferring to the Company. The higher education provision will remain in the FEC which will then transfer to the higher education sector (becoming a Higher Education Corporation (“HEC”)) under a separate Order made under Section 122A of the Education Reform Act 1988. The HEC will then apply for University Title for its higher education provision, and is proposing to become Hartpury University. This follows from the Gloucestershire, Swindon and Wiltshire area review, which concluded in 2017 and recommended that Hartpury College “remain a stand-alone specialist land based college, exploring options to secure higher education title through a higher education and further education group structure”.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Joint Committee on Statutory Instruments, in their Nineteenth Report of the 2017-19 Session, reported the Bolton College (Designated Institution in Further Education) Order 2018 (S.I. 2018/247) for defective drafting for failing to include a suitable identifier for the institution being designated as within the further education sector.
- 3.2 The Department, in order to address the JCISI’s concern going forward, has included in this Order the full address of the further education institution and a company number for the legal entity that will conduct that institution, i.e. the Company.
- 3.3 For completeness, we note that that the Company intends to change its name from “Hartpury College” to “Hartpury College of Further Education” in the near future.

Other matters of interest to the House of Commons

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 28 of the Further and Higher Education Act 1992 (“the Act”) gives the Secretary of State the power to designate, by means of an order, an educational institution providing further education for the purposes of that section, bringing that institution within the further education sector.
- 4.2 Section 28 of the Act sets out the criteria which need to be satisfied for an institution to be designated. In summary, the Secretary of State may designate an educational institution which is principally concerned with the provision of one or both of (a) full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years; and (b) courses of further or higher education.
- 4.3 Section 91(3) of the Act provides a definition of which institutions are within the further education sector. In summary these are (a) institutions conducted by further education corporations; (b) institutions designated under section 28 (which is relevant for present purposes); and (c) sixth form colleges.
- 4.4 The instrument ensures that the institution conducted by the Company falls within the further education sector as defined, thereby ensuring that the institution, and the staff and students that transfer to it, remain within the statutory further education sector following the transfer to the Company. Whether an institution is within the further education sector has a number of legal implications; for instance, various legal duties are applied to the governing body of the institution, the Secretary of State has intervention powers in respect of the governing body of the institution, and teaching staff remain eligible to be members of the Teachers’ Pension Scheme (see the Teachers’ Pensions Regulations 2010 (SI 2010/990) and the Teachers’ Pension Scheme Regulations 2014 (SI 2014/512).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Government announced plans in July 2015 for a programme of area based reviews of post-16 education and training provision to be carried out in all areas of the country. The aim was to ensure that all areas would be able to meet the needs of students and employers with institutions that are financially stable and able to deliver high quality provision. Each review was led by a steering group involving a range of stakeholders from the area, including college chairs of governors, local authorities, the Further Education Commissioner, Local Enterprise Partnerships (LEPs) and Regional Schools Commissioners.
- 7.2 In some cases recommendations for structural change were made. This included the recommendation from the Gloucestershire, Swindon and Wiltshire area review for the

College to “remain a stand-alone specialist land based college, exploring options to secure higher education title through a higher education and further education group structure”.

- 7.3 In some cases where new structural arrangements have been recommended the party or parties involved have asked whether the Secretary of State would agree to use the power to designate an institution providing further education, conducted by a subsidiary, under section 28 of the Act. The designated subsidiary model would be a new form of structure for the further education sector. The Secretary of State therefore decided to undertake a limited trial of the use of the designation power to gather evidence about the educational and financial benefits of this model. This designation order forms part of that trial.
- 7.4 Guidance on the application process and eligibility criteria was issued to the FEC which made an application under this process. The Secretary of State is satisfied that the new structure meets the criteria, and that the request for designation is justified in this case. This is the second such successful application in respect of which a decision has been reached (the first being the designation of Bolton College).
- 7.5 The College currently delivers both further and higher education, and gained taught degree awarding powers in July 2017. The FEC has requested that designation powers under section 28 of the Act be used in order for the further education part of the College to continue to fall within the statutory further education sector. The institution will be conducted by the Company, which will be wholly owned by the HEC once the process of transferring the FEC to the higher education sector, by means of an order under section 122A of the Education Reform Act 1988, has been completed. It is intended that the HEC will then apply for University Title. This will enable the FEC to establish separate identities for its further and higher education provisions. The FEC believes that this is essential for the long-term future of its further and higher education provisions, bringing operational efficiencies and a range of benefits to learners.
- 7.6 Under this model the funding streams for the further and higher education institutions will be separate, allowing clear accountability for funding. It will also allow the teaching staff employed by the Company to remain in the Teachers’ Pension Scheme. Designation will also bring the further education institution under tighter regulatory control compared to a non-designated model. Designated institutions are subject to intervention by the Secretary of State under section 56A of the Act, and may have their accounts inspected by the Comptroller and Auditor General (section 53 of the Act). They also have a range of other legal duties, including to comply with the duty to safeguard pupils receiving secondary education.
- 7.7 A review will be undertaken around 6 to 9 months after the designation to assess progress and early outcomes. This will be followed by a more detailed evaluation 2 years after the designation, which will look at outcomes against the designation criteria and the success or otherwise of the new structure. The Further Education Commissioner will be engaged in this process.

8. Consultation outcome

- 8.1 There is no legal requirement to undertake a consultation in respect of decisions to designate an institution. However, the Gloucestershire, Swindon and Wiltshire area review, which led to the development of this proposal, was overseen by a steering group consisting of stakeholders from the area and chaired by the Further Education

Commissioner. Membership of the steering group included the chair of governors and principal of each college, representatives from Wiltshire Council, Swindon Borough Council, Gloucestershire County Council, Gloucestershire First Local Enterprise Partnership (LEP), Swindon and Wiltshire LEP, the Regional Schools Commissioner, and representatives from the then Skills Funding Agency (SFA) and Education Funding Agency (EFA), and the Department for Education (DfE).

9. Guidance

- 9.1 It is not proposed to issue further guidance as to the effect of this instrument.
- 9.2 However, guidance on the criteria for applications for designation was issued to the FEC by the Department for Education. Officials have worked the FEC to ensure that the proposal addressed all the criteria.

10. Impact

- 10.1 There is no impact on businesses or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The effectiveness of the use of designation to facilitate the new group structure in this case will be evaluated by the Department for Education in 2019/20.
- 12.2 Designated institutions, like further education corporations, are also subject to financial oversight by the Education and Skills Funding Agency, which funds the further education sector under agreements that set out conditions for accounting, reporting and audit. In line with the inspection arrangements for the further education sector as a whole, Ofsted will inspect the designated institution at varying intervals depending on the past performance of the institution.

13. Contact

- 13.1 Valerie Kenton or David Rawlins of the Department for Education, email: val.kenton@education.gov.uk; david.rawlins@education.gov.uk can answer any queries regarding the instrument.