



Higher Education and Research Act 2017

2017 CHAPTER 29

PART 1

THE OFFICE FOR STUDENTS

Powers in relation to “university” title

56 Use of “university” in title of institution

(1) Section 77 of the Further and Higher Education Act 1992 (use of “university” in title of institution) is amended as follows.

(2) Before subsection (1) insert—

“(A1) Where—

- (a) power is conferred by any enactment or instrument to change the name of any educational institution or any body corporate carrying on such an institution,
- (b) the educational institution is a registered higher education provider, and
- (c) the power is exercisable with the consent of the Privy Council,

then, the power may be exercised so as to include the word “university” in the name of the institution and, if it is carried on by a body corporate, in the name of the body, but only if the Office for Students (instead of the Privy Council) consents to that exercise of the power.”

(3) In subsection (1)—

- (a) in paragraph (b), after “institution” insert “is in Wales and”, and
- (b) omit “(whether or not the institution would apart from this section be a university)”.

(4) After subsection (1) insert—

“(1A) Subsections (A1) and (1) apply whether or not the educational institution would, apart from this section, be a university.”

(5) In subsection (2)—

- (a) after “in subsection” insert “(A1) or”, and
- (b) for “that subsection” substitute “subsections (A1) and (1)”.

(6) In subsection (3), after “name” insert “the Office for Students and”.

(7) After subsection (3) insert—

“(3A) In exercising its power to give consent under subsection (A1), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.

(3B) Before giving guidance under subsection (3A), the Secretary of State must consult—

- (a) bodies representing the interests of English higher education providers,
- (b) bodies representing the interests of students on higher education courses provided by English higher education providers, and
- (c) such other persons as the Secretary of State considers appropriate.”

(8) In subsection (4), after “subsection” insert “(A1) or”.

(9) After subsection (4) insert—

“(5) In this section, “English higher education provider”, “higher education course” and “registered higher education provider” have the same meaning as in Part 1 of the Higher Education and Research Act 2017 (see sections 83 and 85 of that Act).

(6) For the purposes of subsection (1), an educational institution is in Wales if the institution’s activities are carried on, or principally carried on, in Wales.”

(10) The amendments made by this section do not affect the continuing validity of any consents given by the Privy Council under section 77 of the Further and Higher Education Act 1992 before the coming into force of this section.

57 Unauthorised use of “university” in title of institution etc

(1) Section 39 of the Teaching and Higher Education Act 1998 (unauthorised use of “university” in title of institution etc) is amended as follows.

(2) Before subsection (1) insert—

“(A1) A relevant institution in England must not, when making available (or offering to make available) educational services, do so under a name which includes the word “university” unless the inclusion of that word in that name is—

- (a) authorised by or by virtue of any Act or Royal Charter, or
- (b) approved by the Office for Students for the purposes of this section.”

(3) In subsection (1), omit “England or”.

(4) In subsection (2)—

Status: This is the original version (as it was originally enacted).

- (a) for “such an institution” substitute “a relevant institution in England or a relevant institution in Wales”, and
 - (b) after “subsection” insert “(A1) or”.
- (5) In subsection (3), after “Subsection” insert “(A1),”.
- (6) In subsection (4), after “subsection” insert “(A1),”.
- (7) In subsection (5), after “this section” insert “the Office for Students and”.
- (8) After subsection (5) insert—
- “(5A) In exercising its power to give approval under subsection (A1) or (2), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.
 - (5B) Before giving guidance under subsection (5A), the Secretary of State must consult—
 - (a) bodies representing the interests of English higher education providers,
 - (b) bodies representing the interests of students on higher education courses provided by English higher education providers, and
 - (c) such other persons as the Secretary of State considers appropriate.
 - (5C) The power of the Office for Students under subsection (A1) or (2) is not exercisable in a case where the inclusion of the word “university” in the name in question may be authorised by virtue of any other Act or any Royal Charter.
 - (5D) But that does not prevent the power of the Office for Students under subsection (A1) or (2) being exercisable where the inclusion of the word “university” in the name in question has approval, or may require approval, under section 55 or 1194 of the Companies Act 2006.
 - (5E) Where approval is given by the Office for Students under subsection (A1) or (2) in such a case, that does not affect any requirement for approval under section 55 or 1194 of the Companies Act 2006.”
- (9) In subsection (7), before the definition of “relevant institution” insert—
- ““English higher education provider” and “higher education course” have the same meaning as in Part 1 of the Higher Education and Research Act 2017 (see section 83 of that Act);”.
- (10) In subsection (7), for the definition of “relevant institution” substitute—
- ““relevant institution in England” means a registered higher education provider as defined by section 85 of the Higher Education and Research Act 2017;
 - “relevant institution in Wales” means—
 - (a) an institution in Wales within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992, or
 - (b) an institution in Wales within the higher education sector as defined by section 91(5) of that Act;”.
- (11) After subsection (7) insert—

“(8) For the purposes of this section, an institution is in England or is in Wales if the institution’s activities are carried on, or principally carried on, in England or, as the case may be, in Wales.”

(12) The amendments made by this section do not affect the continuing validity of any approvals given by the Privy Council under section 39 of the Teaching and Higher Education Act 1998 before the coming into force of this section.

58 Revocation of authorisation to use “university” title

- (1) The OfS may by order revoke any authorisation, consent or other approval given by or by virtue of—
 - (a) an Act (other than the Companies Act 2006), or
 - (b) a Royal Charter,
 to an institution in England to include the word “university” in its name.
- (2) That is the case even if the authorisation, consent or other approval was granted for an indefinite period.
- (3) The OfS may make an order under subsection (1) only if condition A, B or C is satisfied.
- (4) Condition A is satisfied if—
 - (a) in the case of consent or approval given by the OfS under section 77 of the Further and Higher Education Act 1992 or section 39 of the Teaching and Higher Education Act 1998, the institution ceases to be a registered higher education provider, or
 - (b) in any other case, the institution is not a registered higher education provider.
- (5) Condition B is satisfied if, disregarding any transitional or saving provision made by an order under section 42(1) or 45(1)—
 - (a) the institution is neither authorised to grant taught awards nor authorised to grant research awards, or
 - (b) foundation degrees are the only degrees which the institution is authorised to grant.
- (6) Condition C is satisfied if, due to a change in circumstances since the authorisation, consent or other approval was given, it appears to the OfS to be no longer appropriate for the institution to include the word “university” in its name.
- (7) The OfS’s power to make an order under subsection (1) is exercisable by statutory instrument; and the Statutory Instruments Act 1946 is to apply to such an instrument as if the order had been made by a Minister of the Crown.
- (8) An order under subsection (1) may make incidental, supplementary, transitional or saving provision.
- (9) Any power to revoke an authorisation, consent or other approval mentioned in subsection (1), which is a power which exists immediately before the coming into force of this section, ceases to exist on that coming into force.

59 Revocation of authorisation: procedure

- (1) Before making an order under section 58(1) revoking the authorisation, consent or other approval given to an institution to include the word “university” in its name, the OfS must notify the governing body of the institution of its intention to do so.
- (2) The notice must—
 - (a) specify the OfS’s reasons for proposing to take the step in question,
 - (b) specify the period during which the governing body may make representations about the proposal (“the specified period”), and
 - (c) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the governing body of the institution during the specified period in deciding whether to take the step in question.
- (5) Having decided whether or not to take the step in question, the OfS must notify the governing body of the institution of its decision.
- (6) If the OfS decides to revoke the authorisation, consent or other approval given to an institution to include the word “university” in its name, the notice of the decision must specify the date on which the revocation takes effect under the order to be made under section 58(1).
- (7) The notice must also contain information as to—
 - (a) the rights of appeal, and
 - (b) the period within which an appeal may be made.
- (8) The order under section 58(1) implementing the decision to revoke the authorisation, consent or other approval may not be made, and the revocation may not take effect, at any time when—
 - (a) an appeal under section 60(1)(a) or (b), or a further appeal, could be brought in respect of the decision to revoke, or
 - (b) such an appeal is pending.
- (9) But that does not prevent the order under section 58(1) being made, or the revocation taking effect, if the governing body of the institution notifies the OfS that it does not intend to appeal.
- (10) Where subsection (8) ceases to prevent a revocation taking effect on the date specified under subsection (6), the OfS is to determine a future date on which the revocation takes effect under the order to be made under section 58(1).
- (11) But that is subject to what has been determined on any appeal under section 60(1)(a) or (b), or any further appeal, in respect of the decision to revoke.

60 Appeals against revocation of authorisation

- (1) The governing body of an institution may appeal to the First-tier Tribunal against either or both of the following—
 - (a) a decision of the OfS to revoke, by an order under section 58(1), an authorisation, consent or other approval given to the institution to include the word “university” in its name;

- (b) a decision of the OfS as to the date specified under section 59(6) as the date on which the revocation takes effect.
- (2) On an appeal under subsection (1)(a), the Tribunal—
 - (a) must consider afresh the decision appealed against, and
 - (b) may take into account evidence that was not available to the OfS.
- (3) An appeal under subsection (1)(b) may be on the grounds—
 - (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.
- (4) On an appeal under subsection (1), the Tribunal may—
 - (a) withdraw the decision;
 - (b) confirm the decision;
 - (c) vary the date on which the revocation takes effect under the order to be made under section 58(1);
 - (d) remit the decision whether to confirm the decision, or any matter relating to that decision (including the date on which the revocation takes effect), to the OfS.
- (5) In the case of an appeal under subsection (1)(a), the Tribunal also has power to substitute for the decision any other decision that the OfS could have made.
- (6) An appeal under subsection (1)(a) against a decision to revoke an approval may include an appeal against the decision mentioned in subsection (1)(b) regarding the date when the revocation takes effect; and in the case of such an appeal, references in subsections (2), (4) and (5) to the decision appealed against are to be read accordingly.