

EXPLANATORY MEMORANDUM TO

THE EDUCATION (DESIGNATED INSTITUTIONS) (ENGLAND) (No. 3) ORDER 2016

2016 No. 869

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 the institutions specified in its Schedule as institutions eligible to receive funding administered by the Higher Education Funding Council for England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative 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 129 of the Education Reform Act 1988, as amended by the Further and Higher Education Act 1992, makes provision for the Secretary of State to designate institutions to be eligible for funding from a higher education funding council.
- 4.2 The Higher Education Funding Council for England (HEFCE) was established by the Further and Higher Education Act 1992 to provide, in part, funding to higher education institutions.

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 only.

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 purpose of section 129 of the Education Reform Act 1988 is to enable the Secretary of State to designate certain additional providers of higher education that meet the legislative criterion as institutions eligible to receive public funding from a higher education funding council.
- 7.2 HEFCE has recommended to the then Department for Business, Innovation and Skills (BIS) and the Department for Education (DfE) that the colleges of the University of London (the Colleges) be formally designated under section 129 as institutions eligible for HEFCE support. The purpose of the order is to ensure that the basis of the Colleges' funding arrangements with HEFCE is suitably clear and transparent.
- 7.3 The only legislative criterion for designation under section 129 is that an institution's full-time equivalent (FTE) enrolment number for courses of higher education must exceed 55% of its total FTE enrolment number. Institutions that meet the legislative criterion must also demonstrate that they meet the other criteria as set out in guidance published by the BIS and now relied upon by DfE.
- 7.4 The usual process for designation requires an applicant to work closely with HEFCE to develop its business case against all the criteria before formally submitting an application to HEFCE. Following HEFCE's assessment of the evidence received, HEFCE will then advise DfE on the applicant's suitability for designation to inform DfE's recommendation to the Secretary of State.
- 7.5 However, HEFCE with agreement from BIS (as it was then) and DfE, has not required the Colleges to go through the application process as they are not new applicants for funding, are already receiving funding, and are also currently complying with all of the requirements for funding. The Colleges include City, University of London, which joined the university as a college on 1st September 2016. City, University of London has previously been receiving funding as City University and complying with all of the requirements for funding and, as such, is also not a new applicant for funding.
- 7.6 HEFCE's advice is that, as all of the Colleges set out in the Schedule are already fully complying with the assurance and accountability requirements for funding, and are already demonstrating the requirements for designation, that they should be formally designated as soon as possible.
- 7.7 The Secretary of State, having considered all the advice received, and the most appropriate basis on which to fund these institutions going forward, is satisfied that the Colleges set out in the Schedule meet the criteria for designation.

8. Consultation outcome

- 8.1 It has not been necessary to consult formally on the making of this Order. However, in considering this application, advice was sought from HEFCE.

9. Guidance

- 9.1 This Order is specific to the Colleges of the University of London set out in the Schedule, and does not, therefore, require any guidance to be published.

10. Impact

- 10.1 There is no impact on business, charities 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 as there is no impact on the private or voluntary sector.
- 10.4 As a public authority the Department for Education is required to give due regard to the aims of the public sector equality duty when making decisions and when setting policies. As service providers and employers the Colleges of the University of London set out in the Schedule, are already required to meet the main provisions of the Equality Act 2010 and, as such, to provide protection for its students and staff against discrimination, harassment and victimisation. As institutions designated under section 129 of the Education Act 1988, these Colleges of the University of London, if they did not already, will come within the education provisions of the Equality Act 2010, the public sector equality duty and the specific duties. As such these Colleges of the University of London will be required to take additional actions under these requirements, which could be beneficial in terms of eliminating discrimination, advancing equality of opportunity, and fostering good relations.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The outcome of this Order will be the clarification of the basis for the ongoing funding by HEFCE of the Colleges in the Order's Schedule.
- 12.2 HEFCE has a regulatory duty to ensure that institutions in receipt of public funds provide value for money and are responsible in their use of these funds. HEFCE is also responsible for ensuring that the quality of learning and teaching is assessed in each institution and for assessing the quality of research and to fund research selectively by supporting excellence. Consequently, as designated institutions, the Colleges of the University of London will be required to continue to comply with Memorandums of Assurance and Accountability with HEFCE which will set out the terms and conditions for the payment of HEFCE grants as well as conditions specific to the institutions, the funds available to the institutions and the educational provision the institutions have agreed in return for those funds.

13. Contact

- 13.1 Martin Courbet at the Department for Education Telephone: 020 7215 3435 or email: Martin.Courbet@bis.gsi.gov.uk can answer any queries regarding the instrument.