

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

2018 No. 1059

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 “Lambeth College” as falling within the further education sector. The need for the designation arises from the Central London Area Review, which published its report in February 2017. The report recommended that Lambeth College (“the College”), which is currently conducted by a Further Education Corporation (“FEC”), form a partnership with London South Bank University (“the University”) or merge with another college or grouping within the area. The University and the FEC that conducts the College intend to form a group structure, whereby upon dissolution of the FEC, the College, including its property, rights and liabilities will be transferred to a wholly owned subsidiary company of the University, which is to be a company limited by guarantee (“the Company”). The University and the College have requested that the Secretary of State designate the institution to be conducted by the Company. The institution will continue to be known as Lambeth College. The name of the Company is South Bank Colleges.

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 (available at: <https://publications.parliament.uk/pa/jt201719/jtselect/jtstatin/121/121.pdf>) 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, so as to address this concern in respect of this Order, has included in this Order the full address of the institution being designated and a company number for the legal entity that will conduct the institution, that is, the Company.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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.

6.2 Section 28 of the Act sets out the criteria that 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.

6.3 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.

6.4 The Secretary of State has concluded that the College meets the legislative criteria for designation. The instrument ensures that, after the transfer to the Company, the institution conducted by the Company falls within the further education sector as defined, thereby ensuring that the institution, its staff and students 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).

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, such as 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 Central London Area Review for the College to form a partnership with London South Bank University or merge with another college or grouping within the area.
- 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 under section 28 of the Act, ensuring that the institution, its staff and students remain within the statutory further education sector. 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 proposing parties, and the College and the University have made an application under this process. The Secretary of State is satisfied that the proposal meets the criteria and that the request for designation is justified in this case. This is the third such successful application in respect of which a decision has been reached (the first being the designation of Bolton College and the second being the designation of Hartpury College of Further Education).
- 7.5 The parties believe that this structure will provide better financial sustainability for the institution.
- 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 6-9 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 merger and the designation model. The FE Commissioner will be engaged in this process.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal).
- 9. Consolidation**
- 9.1 None.

10. Consultation outcome

- 10.1 There is no legal requirement to undertake a consultation in respect of decisions to designate an institution. However, the Central London Area Review, from which this proposal has arisen, was led by a local steering group consisting of stakeholders from the area. The steering group met on 6 occasions between March and November 2016. The steering group was chaired by the leader of the London Borough of Southwark. Membership included the chair of governors and principal of each college in the area, representatives from the Greater London Authority (GLA), Central London Forward and local authorities, business representatives, the Further Education (FE) Commissioner, the Deputy FE Commissioner, the Sixth Form College Commissioner, the Regional Schools Commissioner, representatives from the Skills Funding Agency (SFA), the Education Funding Agency (EFA), and the Department for Education.
- 10.2 The FEC has consulted on its plans to dissolve. A Statutory Notice to Dissolve was published on 27 March 2018 and a public consultation was launched on the same day. The consultation ended on 8 May 2018. The FEC published a summary of the consultation and its outcome on 15 June 2018. A summary of the consultation responses can be found at:
<https://www.lambethcollege.ac.uk/images/documents/consultation-summary-document.pdf>

11. Guidance

- 11.1 This Order is specific to the institution named “Lambeth College” and does not therefore require guidance to be published as to the effect of this instrument.
- 11.2 Guidance on the criteria for applications for designation was issued by the Department for Education to the interested parties. Officials have worked closely with the University and the College to ensure that the proposal addressed all the criteria.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it relates to the institution named Lambeth College only.

13. Regulating small business

- 13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this instrument will be through an evaluation by the Department for Education of the effectiveness of the use of designation to facilitate the new group structure. This process will involve the Further Education Commissioner. 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 institutions past performance.

15. Contact

- 15.1 Valerie Kenton of the Department for Education, email: val.kenton@education.gov.uk can answer any queries regarding the instrument.
- 15.2 Elisabeth Cuthbertson at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Anne Milton, Minister of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.