

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

2018 No. 247

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.

2. Purpose of the instrument

- 2.1 The Order designates the institution of Bolton College (“the College”) as falling within the further education sector. It is being made following the programme of area based reviews of post-16 education and training provision, which made a number of recommendations for further education colleges and higher education institutions to merge. The College is currently conducted by a further education corporation. The higher education corporation that conducts the University of Bolton (“the University”) and the further education corporation that conducts the College intend to come together and form a group structure; whereby upon dissolution of the further education corporation, 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 designates the institution conducted by the Company. The institution conducted by the Company will continue to be known as Bolton College.

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 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 the 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(1) 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 therefore ensures that 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)).

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 are 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 and local authorities, the Further Education and Sixth Form College Commissioners, Local Enterprise Partnerships (LEPs) and Regional Schools Commissioners.
- 7.2 In some areas, mergers between FE colleges and Higher Education Institutions ("HEIs") have been recommended. This included the recommendation from the Greater Manchester area review carried out in 2016, for Bolton College and Bury College to merge with the University of Bolton. Following the decision of Bury College not to be part of the merger, Bolton College and the University of Bolton have continued to develop plans for the integration of their two organisations, with the support of local stakeholders.
- 7.3 In certain cases where mergers of HEIs and FE colleges have been recommended, the parties involved have asked whether the Secretary of State would agree to use the power to designate a FE institution conducted by a subsidiary under section 28 of the Act. As this would be a new form of structure for the further education sector, the Secretary of State decided to undertake a limited trial of the use of the designation power to gather evidence about the educational and financial benefits of a designated subsidiary model.

- 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 this is a good application, with strong potential to improve the overall effectiveness of operations, strengthen financial resilience and provide better education for learners; and therefore that the request for designation is justified in this case. This is the first such application in respect of which a decision has been reached.
- 7.5 The parties have requested that the institution of the College is designated using section 28 of the Act in order for the College to continue to fall within the statutory further education sector. The institution will be operated by a subsidiary company which is wholly owned by the University. The corporations of the institutions believe that this structure will provide better financial sustainability, more effective use of estates and facilities, and clearer routes of progression for learners from further to higher education.
- 7.6 The advantages of this organisational model are that it ring-fences the further education provision, giving it a separate identity and potentially allows for clearer accountability to funding agencies by keeping funding streams separate between further and higher education.
- 7.7 It will also allow teaching staff employed by the subsidiary to remain in the Teachers' Pension Scheme. Designation will also bring the 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.
- 7.8 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 merger and the designation model. The FE 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 Greater Manchester Area Review, which led to the development of this proposal, was led and overseen by a steering group consisting of stakeholders from the area and chaired by Greater Manchester Combined Authority. This included the chair of governors and principal of each college, the Greater Manchester LEP, Greater Manchester Chamber of Commerce, the Roman Catholic Dioceses, and the Regional Schools Commissioner. A consultation was undertaken on the proposal for a formal merger of Bolton College with the University of Bolton, and there was strong support for the plans.

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 interested parties and discussed in detail with them. Officials have worked closely with the University and the College to ensure that the case 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 group and subsidiary model 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 college at varying intervals depending on the institution's past performance.

13. Contact

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