

## EXPLANATORY MEMORANDUM TO

### THE HIGHER EDUCATION AND RESEARCH ACT 2017 (COOPERATION AND INFORMATION SHARING) REGULATIONS 2018

2018 No. 607

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education ('the Department') and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument prescribes persons with whom, and functions for which, the Office for Students ("OfS") may cooperate and share information under the Higher Education and Research Act 2017 ("the Act"). The Act requires relevant persons and their relevant functions to be set out in regulations where the purpose of the information sharing is predominantly for the performance of a function of another person, rather than of the OfS. This instrument does not impose a duty on the OfS to cooperate or share information.

#### 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 The OfS was created to be the main regulator of higher education providers in England by the Act. Section 63(1) and (3) of the Act allow the OfS to cooperate and share information, where it considers it appropriate to do so, with other bodies for the performance of functions of the OfS. Under section 63 (2)(a) and (4), the OfS may also cooperate and share information, where it considers it appropriate to do so, with other 'relevant' persons for the performance of those persons' 'relevant' functions. Under section 63(2)(b) the OfS must cooperate with a 'relevant' person in the performance of a 'relevant' function if required to do so by the Secretary of State. Section 63(7) provides that "relevant persons" and "relevant functions" are to be prescribed by regulations.

#### 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 and Wales.

## **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 predecessors of the OfS were the Higher Education and Funding Council for England (“HEFCE”) and the Office for Fair Access (“OFFA”). These bodies ceased to exist when the OfS came into being on 1 April 2018. The enabling legislation for HEFCE did not restrict cooperation or information sharing in the same way as the Act does for the OfS. Under the Act, it is necessary to prescribe the persons with whom the OfS might cooperate and share information where this is predominantly for the other person’s functions, and also to prescribe those functions. The reasons for the information sharing may include (but are not limited to) instances where the OfS may have information, for example around potential wrongdoing, but the other body has the power to take action, or where sharing information will improve data quality, avoid duplication, promote cooperation and collaborative working practices or improve mutual understanding of the HE sector.
- 7.2 We have reviewed where this is the case both in terms of a) cooperation participated in, and information shared by, HEFCE or OFFA which the OfS will wish to continue and b) new cooperation and information sharing that the OfS wishes to be able to participate in or undertake, respectively.
- 7.3 Where the cooperation or information sharing is predominantly for the purposes of the OfS, there is no requirement to prescribe the other persons involved.
- The Regulations will be supported by collaboration and data sharing agreements, where appropriate or helpful.
- 7.4 The relevant bodies and their relevant functions are set out in the table in the Schedule to the Regulations. The relevant bodies are the Competition and Markets Authority (CMA) and Trading Standards bodies (the latter being referred to in the table as local weights and measures authorities), Health Education England, a number of Higher Education validating and awarding organisations (Pearson Education Limited, Vocational Training Charitable Trust, Gateway Qualifications Company Limited and Scottish Qualifications Authority), Her Majesty’s Revenue and Customs (HMRC), the Office for Standards in Education, Children’s Services and Skills and its Chief Inspector (Ofsted), the Office for the Independent Adjudicator (OIA), the Board of the Pension Protection Fund (PPF) and the Student Loans Company Limited (SLC)
- 7.5 Under section 63(8), it is expressly permitted to prescribe all functions of a relevant person. Where the Regulations prescribe all functions of a person in a particular Act of Parliament or other document, a policy analysis of those functions has been undertaken and it has been concluded that all the functions are, or may be, relevant. It is of note that the information sharing is self-limiting in that the OfS will only be sharing information about English higher education providers. It is also of note that the OfS is not obliged to share information with a person: the power in section 63 is permissive rather than mandatory.
- 7.6 For certain prescribed bodies, the Regulations refer to the company’s Memorandum and Articles of Association. In those cases the relevant functions are the functions of

the company pursuant to its objects, which are set out in its Memorandum and Articles of Association. The reference to the Memorandum and Articles of Association is a reference to the most recent version of that document registered with the registrar of companies (Companies House) as at the date these Regulations were made. The date of registration with Companies House can be found in the filing history for the company on the Companies House website ([www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)), or by contacting Companies House.

- 7.7 A PDF of a company's Memorandum and Articles of Association can be obtained free of charge by visiting the Companies House website and searching the filing history of the company by its registered company number. Alternatively, a paper copy can be obtained for a nominal fee by telephoning Companies House on 0303 1234500, or by visiting any of its offices (in Belfast, Cardiff, Edinburgh and London). The address of the London office is Companies House, 4 Abbey Orchard Street, Westminster, London SW1P 2HT.
- 7.8 The relevant parts of the Memoranda and Articles of Association of the incorporated companies listed in paragraph 7.4 are submitted with this Explanatory Memorandum.

## **8. Consultation outcome**

- 8.1 Consultation took place widely within DfE and with HEFCE during Autumn 2017 to ascertain the bodies that HEFCE had historically shared information with and any new types of information sharing which would be needed by the OfS in future. The purpose of the information sharing, and whether it would be primarily for OfS functions or the functions of the other body was then determined through a further round of consultations within both the Department for Education and the bodies themselves between January and March 2018.

## **9. Guidance**

- 9.1 The OfS will operate information sharing in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. These regulations do not require further guidance to be issued.

## **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.
- 10.4 Consideration was given to whether a Privacy Impact Assessment ("PIA") was required for these Regulations. It was concluded that it was not appropriate for the Department of Education to conduct a PIA, as the data controller is the OfS. As the data controller, it will be the responsibility of the OfS to determine the need for, and timing of, a Data Privacy Impact Assessment before sharing information that could impact upon personal privacy.

## **11. Regulating small businesses**

- 11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The OfS cooperating and sharing information with the other relevant bodies listed in these regulations will not create an additional regulatory cost for higher education providers.

## **12. Monitoring & review**

12.1 We have considered the requirement under Section 28 of the Small Business, Enterprise and Employment Act 2015 regarding the inclusion of a review provision in secondary legislation that regulates business. Cooperation and information sharing by the OfS under these Regulations has been estimated to have minimal additional impact on business. As such, the Department has concluded that it would be disproportionate on cost grounds to include a review provision within the instrument.

12.2 These Regulations, however, will be reviewed at a future date if the OfS should wish to begin to cooperate and share information with a body or bodies in addition to those listed in 7.4 above.

## **13. Contact**

13.1 Tom Worthington at the Department for Education, Telephone: 07388372223 or email: [Thomas.Worthington@education.gov.uk](mailto:Thomas.Worthington@education.gov.uk), can answer any queries regarding the instrument.

Articles and Memoranda of Association for the incorporated companies listed in paragraph 7.4 above.

1. Pearson Education Ltd

MEMORANDUM OF ASSOCIATION

OF

PEARSON EDUCATION LIMITED

Company Number 00872828

COMPANY LIMITED BY SHARES

1. The name of the Company is "LONGMAN PUBLICATIONS LIMITED"<sup>1</sup>
- 2 The registered office of the company will be situate in England
- 3 The objects for which the company is established are.
  - a) To carry on in the United Kingdom or elsewhere, all or any of the following trades or businesses in all or any of their branches viz,, the business of publishers, printers, booksellers, book binders, lithographrs, engravers, die sinkers, print sellers, magazine and newspaper proprietors, advertisers and advertising agents, paper makers, stationers and manufacturers and dealers in all materials and things whatsoever used or employed for or in connection with any of such businesses
  - b) To carry on in the United Kingdom or elsewhere, all or any of the following trades or businesses in all or any of their branches, the business of educational consultancy, acting as advisors and consultants to governments, local authorities, schools, colleges and other educational establishments, corporations, professional bodies and other parties on all education related matters, including, but not limited to, educational materials, technologies, assessments, learning programmes, test development, processing and scoring services, including course assessments, skills and competency tests and clinical tests for educational needs, and related services, developing programmes for and providing all types of technical and professional training including training on the development of personal competencies, development and delivery of courses and training on all subjects, developing and designing computer systems and software, developing and dealing in software applications and solutions and providing training on such systems and software and other technologies, and, carrying on all things incidental to such businesses
  - c) To purchase, acquire, rent, build, construct, equip, execute, carry out, improve, work, develop, administer, maintain, manage or control works and conveniences of all kinds, whether for the purposes of the Company or for sale or hire to or in return for any consideration from any other company or persons, and to contribute to or assist in the working, control, or superintendence thereof respectively

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<sup>1</sup> Name changed to  
Longman Green & Company on 30<sup>th</sup> March 1966  
Longman Group Limited on 2<sup>nd</sup> September 1969  
Longman Group UK Limited on 7<sup>th</sup> July 1986  
Longman Group Limited on 3<sup>rd</sup> May 1994  
Addison Wesley Longman Limited on 29<sup>th</sup> December 1995  
Pearson Education Limited on 31<sup>st</sup> December 1998



## 2. Vocational Training Charitable Trust

THE COMPANIES ACT 1985

COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF

VOCATIONAL TRAINING CHARITABLE TRUST

1 The name of the Company is "VOCATIONAL TRAINING CHARITABLE TRUST"

2 The registered office of the Company will be situate in England and Wales

3 "The Company's objects are for the public benefit

(1) the advancement of education, research and the public dissemination of knowledge in  
a) the art and technology of health and beauty therapy  
b) the skills and knowledge required for other vocational employments including those in the well-being, public and service industries  
c) the impact and treatment of physical disfigurement and all kindred arts and sciences

and, as and when the trustees think fit,

(2) the relief of sickness or poor health caused by physical disfigurement and the assistance of those with physical disfigurements, and their families and carers, to overcome any social, physical, psychological, emotional or other disadvantage "

4 In furtherance of the above objects, but not otherwise the Company shall do all or any of the following things -

(1) To organise, hold and conduct from time to time either alone or through, or in conjunction with, any appropriate body, such tests and examinations that shall be deemed necessary to test or determine the skill and efficiency of persons presenting themselves for such tests and examinations

(2) To record the names of the candidates who shall have satisfied the examiners at such tests and examinations and to provide every such candidate with a certificate to that effect

(3) To undertake the inspection and approval of educational establishments, their staffing and syllabi in connection with courses leading to examinations and to publish for public use lists of such approved establishments

(4) To foster, promote and endow research and education therefor and to communicate the results of such research to all interested persons

(5) To promote or join in the promotion of any charitable Company or Companies for the purpose of carrying on any School or Schools devoted in whole or in part to the provision of education

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### 3. Gateway Qualifications Company Ltd

The Companies Acts 1985 and 2006

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COMPANIES HOUSE

#### COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

#### Articles of Association

OF

#### GATEWAY QUALIFICATIONS LIMITED (05502449)

Adopted pursuant to a Special Resolution dated 24 February 2016

#### 1. Interpretation

1.1 In these Articles

"the Act"	means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force,
"Adult and Community Learning Provider"	means an institution or organisation other than a General Further Education College delivering community learning funded directly or indirectly by the Skills Funding Agency or successor body. Community Learning includes a range of community based and outreach learning opportunities, primarily managed and delivered by local authorities, General Further Education Colleges or Third Sector (e.g. charities/voluntary sector) organisations,
"the Articles"	means the Articles of Association of the Charity,
"the Charity"	means the company intended to be regulated by these Articles,
"clear days"	in relation to the period of a notice means the period excluding both the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect,
"executed"	includes any mode of execution,
"Further Education College"	means a Further Education Corporation (FEC) formed under s18 and 19 of the Further and Higher Education Act 1992,
"Higher Education Institution"	means an institution in receipt of funding from and regulated by the Higher Education Funding Council for England (HEFCE),
"the Memorandum"	means the Memorandum of Association of the Charity,
"office"	means the registered office of the Charity,
"Private Training Provider"	means a profit-making organisation involved in training,
"the Seal"	means the common seal of the Charity if it has one,

<b>"Secretary"</b>	means the secretary of the Charity or any other person appointed to perform the duties of the secretary of the Charity including a joint assistant or deputy secretary,
<b>"the trustees"</b>	means the directors of the Charity (and "trustee" has a corresponding meaning),
<b>"the United Kingdom"</b>	means Great Britain and Northern Ireland,
<b>"Voluntary Organisation"</b>	means a non-profit-making organisation or an organisation registered as a charity with the Charity Commissioners

- 1 2 Words importing the masculine gender only shall include the feminine gender
- 1 3 Subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Act
- 1 4 Reference to the singular include the plural and vice versa

**2. Objects**

- 2 1 The objects ("the Objects") for which the Charity is established are the advancement of learning and education of the public by in particular, but not exclusively, one or more of the following ways -
- 2 1 1 by promoting and widening participation in education and training, particularly by those who have benefited least from existing provision,
- 2 1 2 by improving the quality and flexibility of education and training provision for the public benefit, primarily for those learners who have previously been excluded from educational opportunities,
- 2 1 3 by improving the educational welfare and access to learning opportunities and facilitating progression to further learning, employment and higher education particularly through the award of credits and credit-based qualifications,
- 2 1 4 by supporting the arrangements of Ofqual, and the Quality Assurance Agency for Higher Education or the appropriate agency acting on behalf of the Department for Education and the Department for Business Innovation and Skills or relevant government departments to monitor the terms of their licences,
- 2 1 5 improving access to higher education by establishing, carrying on and conducting the principles of the award of credits and credit-based learning through licensing arrangements with Ofqual, and operating as an Access Validating Agency under licence from The Quality Assurance Agency for Higher Education or the appropriate agency acting on behalf of the Department for Education,
- 2 1 6 by encouraging and assisting organisations within its operational area to provide a wider range of quality assured accredited learning opportunities,
- 2 2 In furtherance of the Objects, but not otherwise, the Charity will -
- 2 2 1 satisfy regulatory requirements in the advancement of education, learning and training available to the public,

- 2 2 2 develop, monitor and evaluate strategy and policy in pursuance of the Objects to improve the quality and flexibility of education provision for the public benefit,
- 2 2 3 ensure that it meets the licence requirements of Ofqual, the Quality Assurance Agency for Higher Education or the appropriate agency,
- 2 2 4 ensure quality enhancement and continuous improvements in the quality and flexibility of education opportunities to the public benefit,
- 2 2 5 act openly and mutually with its members in enabling them to support the Charity in pursuance of the Objects;
- 2 2 6 support national and local equality strategies and engage in initiatives, which will widen participation of all learners in the education system,
- 2 2 7 foster collaboration and partnership arrangements within and between sectors
- 2 3 In furtherance of the Objects but not otherwise the Charity may exercise the following powers -
  - 2 3 1 liaise with all appropriate bodies involved in, or interested in, improving opportunities for learners, including Higher Education and Further Education institutions, Adult and Community Learning Providers, Private Training Providers, Schools, national and local government agencies, employers, local authorities, voluntary, community organisations with other consortia and other relevant agencies,
  - 2 3 2 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank and building society accounts,
  - 2 3 3 to raise funds and invite and receive contributions by way of donation, sponsorship, covenant, grant, loan, subscription, legacy, bequest or otherwise provided that in raising funds the Charity shall conform to any relevant statutory regulations and shall not undertake any substantial permanent trading activity,
  - 2 3 4 to buy, take on, lease, exchange, hire or otherwise acquire any property necessary directly or indirectly for the achievement of the Objects and to maintain and equip it for use,
  - 2 3 5 subject to any consents required by law, to sell, lease, repair, improve or otherwise dispose of and generally manage and deal with all or any part of the land comprised in the Charity,
  - 2 3 6 subject to any consents required by law to borrow money and to charge the whole or any part of the Charity's assets with repayment of the money so borrowed,
  - 2 3 7 to construct, maintain, improve or alter any buildings or works (so far as necessary for carrying out the purposes of the Charity) on land comprised in the Charity,
  - 2.3 8 to co-operate with other charities, voluntary bodies, persons and statutory authorities operating in furtherance of the Objects or of similar charitable purposes and to exchange information and advice with them,
  - 2 3 9 to establish or support directly or indirectly any charitable trusts, associations or institutions formed for the Objects or any of them,
  - 2 3 10 to appoint and constitute such advisory committees as may be thought fit,

4. The Office of the Independent Adjudicator for Higher Education

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**THE COMPANIES ACT 1985  
PRIVATE COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL  
MEMORANDUM OF ASSOCIATION  
OF**



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**THE OFFICE OF THE INDEPENDENT ADJUDICATOR FOR HIGHER  
EDUCATION**

1. The Company's name is "The Office of the Independent Adjudicator for Higher Education".
2. The Company's registered office is to be situated in England and Wales.
- 3.
- 3.1 The objects ("the Objects") for which the Company is established are the provision of a non-binding scheme to commence on a date selected by and otherwise to be on terms approved by the Board of Directors of the Company for the independent review of complaints brought by students which:
  - (a) are in respect of a complaint about a course on which that student is registered or enrolled, run by or giving rise to a right of access to the internal complaints procedure of a HEI (as defined in 3.2 below); and
  - (b) involves a breach or non observance of any obligation or legal duty towards that student by a HEI in respect of such course but excluding any aspect of any complaint that relates solely to matters of academic judgment; and
  - (c) are brought by the student under the scheme within three months of the final determination of the subject matter of the complaint by the said HEI by virtue of the HEI's internal procedures having been exhausted;
- 3.2 A HEI shall be defined as one or more of the following and which in each case either voluntarily submits to the scheme or is required by law to use the scheme:
  - (a) an institution as defined in section 91(5) of the Further and Higher Education Act 1992 or any successor thereto;
  - (b) an institution otherwise having degree awarding powers approved by the Privy Council;
  - (c) a constituent college of the Universities of Cambridge, Durham or Oxford; or
  - (d) any other institution approved by the Board of Directors of the Company) ("HEI").

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## 5. The Student Loans Company Ltd

THE COMPANIES ACTS 1985 - 2006

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

- of -

STUDENT LOANS COMPANY LIMITED

(as amended by Special Resolution dated 20<sup>th</sup> November, 1989 and  
Special Resolution dated 30 September 2008)

- 1 The Company's name is "PERCHLANE LIMITED"
- 2 The Company's registered office is to be situated in England and Wales
- 3 The Company's objects are
  - (A) To establish, operate, administer and in any other way which the Company may consider expedient to participate in any scheme or schemes for the making of loans or the provision of credit or the provision of any financial service to any person undertaking or proposing to undertake any course of study, including, without limitation, upon terms whereby such loan, credit or financial service may continue to be outstanding or available to such person after he or she has completed or ceased to undertake such course of study
  - (B) To carry on in any part of the world any or all of the businesses of the lending of money, banking and any other business that may lawfully be carried on by an institution authorised to carry on a deposit-taking business (as defined in the Banking Act 1987 or any statutory re-enactment or modification thereof) and to transact and do all matters and things incidental or conducive thereto, or which may at any time hereafter, at any place where the Company shall carry on business, be usually carried on or be capable of being carried on as part of or in connection with, or which may conduce to or be calculated to facilitate the carrying on of, any such business and in particular, (but without prejudice to the generality of the foregoing)
    - (1) To advance or lend money and to provide credit or other financial service, in each case with or without security
    - (2) To promote, effect, insure, guarantee, underwrite, become liable to secure the subscription or placing of, agree to subscribe for or procure the subscription of, participate in, manage or carry out any issue, public or private, of any loans or bonds, or of shares, stock, debentures, debenture stock or bonds of any company
    - (3) To receive money or securities on current account, deposit or on loan or otherwise and to employ money and securities in any manner which the Company may consider expedient