

EXPLANATORY MEMORANDUM TO

THE EDUCATION (DESIGNATED INSTITUTIONS) (ENGLAND) ORDER 2018

2018 No. 654

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 Order designates Leeds College of Music (LCoM) as eligible to receive funding from funds administered by a higher education funding council.

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, as well as the company number for the legal entity that conducts the institution being designated.

Other matters of interest to the House of Commons

- 3.3 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, as amended by the Further and Higher Education Act 1992 and the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, makes provision for the Secretary of State to designate institutions as 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, in part to provide funding to higher education institutions. For this purpose 'higher education institutions' means universities, institutions conducted by higher education corporations and institutions designated under section 129(1) of the Education Reform Act 1988.

- 4.3 However, The Higher Education and Research Act 2017, as commenced in part by The Higher Education and Research Act 2017 (Commencement No. 3) Regulations 2018 (the “Commencement No. 3 Regulations”), caused HEFCE to cease to exist from the 1 April 2018. The Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018 (the “Transitional Regulations”) came into force on 1 April 2018, and transferred to the Office for Students (OfS) certain statutory functions of the Higher Education Funding Council for England.
- 4.4 Regulation 4(2) of the Transitional Regulations provides that any reference to the higher education funding council, in relation to any matters that were expressed to be within the responsibility of HEFCE is accordingly a reference to the OfS. This includes the functions of HEFCE to administer funds under s65 of the Further and Higher Education Act 1992. The order to which this EM relates is an order designating LCoM as eligible to receive such funding for the rest of academic year 2017/18 and the whole of the academic year 2018/19.
- 4.5 From and including 1 August 2019, the OfS will use its own powers of funding under the Higher Education and Research Act 2017, section 129(1) of the Education Reform Act 1988 will cease to apply to providers in England, and this order will lapse.

5. Extent and Territorial Application

- 5.1 This 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 purpose of section 129(1) of the Education Reform Act 1988 is to enable certain providers of higher education to receive public funding from a higher education funding council, provided they meet the legislative criterion that 55% of their full time equivalent students are on courses of higher education.
- 7.2 In considering an application for designation the Secretary of State has regard to all relevant advice, including from HEFCE, on the legislative criterion and the non-statutory criteria in the published guidance [‘Guidance for Higher Education Providers: Criteria and process for applying for designation as an institution eligible to receive funding from the Higher Education Funding Council for England \(HEFCE\)’](#).
- 7.3 The Secretary of State must have regard to whether the institution appears to him to satisfy the legislative criterion; and the non-statutory criteria set out in the above guidance that focusses on quality, financial sustainability, management and governance.
- 7.4 Having considered LCoM’s application and the detailed advice received from HEFCE, the Secretary of State is satisfied that LCoM meets 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, detailed advice was sought from HEFCE.

9. Guidance

9.1 This Order is specific to LCoM 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 because this Order only applies to LCoM and therefore no impact on business is foreseen.

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 outcome of this Order will be that LCoM can receive funding directly from the OfS.

12.2 The OfS has a duty to have regard to the need to use its resources in an efficient, effective, and economic way, and to promote value for money in the provision of higher education by English higher education providers. Consequently, OfS will require LCoM, as a designated institution, to agree the terms and conditions of funding, which will include terms and conditions for the payment and repayment of OfS's grant as well as conditions specific to the institution such as the educational provision the institution has agreed in return for the grant.

13. Contact

13.1 Martin Courbet at the Department for Education. Telephone: 0739 101 8322 or email: Martin.Courbet@education.gov.uk can answer any queries regarding the instrument.