

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL COLLEGE FOR ADVANCED TRANSPORT AND**  
**INFRASTRUCTURE (DESIGNATED INSTITUTION IN FURTHER EDUCATION**  
**AND REVOCATIONS) ORDER 2021**

**2021 No. 446**

**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 This Order designates the institution of the National College for Advanced Transport and Infrastructure as an institution within the further education sector as per section 91(3) of the Further and Higher Education Act 1992 (“the Act”). This Order also revokes the Order incorporating the National College for High Speed Rail (also known as ‘NCHSR’) as a further education corporation and the Regulations setting out its instrument of government and articles of government.

2.2 Designation as an institution within the further education sector as per section 91(3) of the Act ensures that the institution remains under the regulatory control of the Secretary of State and places a range of legal duties on the institution. The further education corporation of the name of National College for High Speed Rail is to be dissolved. A subsidiary company of the University of Birmingham is to conduct the designated institution. The assets, rights and liabilities of NCHSR will transfer via a commercial arrangement to the subsidiary company of the University.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*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)*

3.2 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 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. This power has been used in a small number of cases to date to facilitate the merger of an existing further education college into a university group structure.
- 6.2 Section 28(1) and (2) of the Act sets out the criteria that need to be satisfied for an institution to be designated. According to those criteria, the Secretary of State may designate an educational institution which is principally concerned with the provision of one or both of (i) full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years; and (ii) courses of further or higher education (as is relevant to this instrument). Further, the institution must be: (i) a voluntary aided school, (ii) an institution which is grant-aided or eligible to receive aid by way of grant or (iii) an institution established for the purpose of being principally concerned with either or both types of provision mentioned in this paragraph (as is relevant to this instrument).
- 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 (as is relevant to the present Order); and (c) sixth form colleges.
- 6.4 The Secretary of State has concluded that the existing further education college meets the legislative criteria for designation. This instrument ensures that the designated institution, its staff and students, will continue to operate within the further education sector after dissolution of the further education corporation. 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 This designation is made in the context of a merger of an existing further education college (known as the National College for Advanced Transport and Infrastructure) into the group structure of the University of Birmingham, with the designated institution being a subsidiary of the University. The designated institution will be conducted by the company of the name of The National College for Advanced Transport and Infrastructure with company registration number 13219816 and having its principal address at The Finance Office, The University of Birmingham, Edgbaston, Birmingham, B15 2TT and which company is a wholly owned subsidiary of the University and is a company limited by guarantee. The existing further education college of the same name, National College for Advanced Transport and Infrastructure ("the College"), is currently conducted by a further education corporation of the name of the National College for High Speed Rail (NCHSR). That further education corporation currently owns the shares in a company of the name of The National College for High Speed Rail Limited with company registration number

10722829 and having its principal address at 2 Lister Street, Birmingham B7 4AG. The company with company registration number 10722829 is the employer of the staff of the College. Upon the dissolution of the further education corporation, the shares in that company will transfer, along with all other assets, rights and liabilities of the further education corporation, to the company in the name of the National College for Advanced Transport and Infrastructure with company registration number 13219816.

- 7.2 The College opened in September 2017 to provide the skills, training and qualifications required to design, build and maintain HS2. The College was originally known as the National College for High Speed Rail. The College has 2 sites – one in Birmingham and one in Doncaster. It was part of a wider £80m capital programme announced by Government in May 2015, to establish a small network of National Colleges to meet a gap in the delivery of specialist higher level technical training in sectors identified as critical to national economic growth and productivity. A core rationale for the establishment of the National Colleges was the need to have in place strong providers with the teaching staff and industry-standard facilities needed to deliver the high-quality technical education required by employers within the sector.
- 7.3 The College has struggled financially despite an attempt to improve its long-term sustainability by widening its offer in October 2019 to include transport infrastructure and which resulted in the change of its name. The College was subsequently judged as inadequate by Ofsted in a report published in February 2020.
- 7.4 Options for the future of the College were considered by a Further Education Commissioner led Structure and Prospects Appraisal (SPA) conducted in 2020. This confirmed the need for significant change in the structure and governance of the College and recommended a merger with the University of Birmingham as the best option for securing the long-term financial sustainability of the College.
- 7.5 An application was submitted to the Secretary of State requesting that the institution be designated using the power under section 28 of the Act in order for the institution, its staff and students to remain within the further education sector. The Secretary of State is satisfied that the proposal meets the legislative criteria for designation and has approved the application. As per the legislative criteria for designation, the institution is principally concerned with the provision of courses of further or higher education and is established for the provision of same. This is the fourth such application to be approved in respect of this type of subsidiary model, the other three being the designation of Bolton College, Hartpury College of Further Education and Lambeth College.
- 7.6 The further education corporation of National College for High Speed Rail will dissolve on 29th April 2021. That further education corporation was established by National College for High Speed Rail (Incorporation) Order 2015 and its instrument of government and the articles of government are set out in Schedules to the National College for High Speed Rail (Government) Regulations 2015. This instrument also revokes the Order incorporating the National College for High Speed Rail and the Regulations setting out its instrument of government and articles of government.
- 7.7 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. As compared to institutions outside the further education sector, it means that the

designated institution is subject to further regulatory controls. Designated institutions are subject to intervention by the Secretary of State as per section 56A of the Act and may have their accounts inspected by the Comptroller and Auditor General as per 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.

## **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) Act.

## **9. Consolidation**

9.1 None.

## **10. Consultation outcome**

10.1 The further education corporation ('FEC') has consulted on its plans to dissolve. A Statutory Notice to Dissolve was published on 19 December 2020 and a public consultation was launched on the same day. The consultation ended on 29 January 2021, and the FEC published a summary of the consultation and its outcome on 24 February 2021. The full consultation report can be [found here](#).

10.2 There is no legal requirement to undertake a consultation in respect of decisions to designate an institution. However, to ensure openness and transparency the FEC's consultation on its proposal to dissolve also included details of the plans for the institution to become a subsidiary of the University.

10.3 A link to the online consultation proposal was sent to over four hundred stakeholders, including local MPs; the governing bodies of local schools, academies, and other further education colleges, staff and learners at the existing College, apprentice employers and industry stakeholders including the Local Economic Partnerships and the combined authorities for the two areas in which the College is based, Birmingham City Council and Doncaster Metropolitan Borough Council. The College also hosted six consultation events with key stakeholders.

10.4 Seventy-four responses were received in total from a wide range of stakeholders. Sixty-seven (90.5%) responses supported the proposal, six (8.1%) did not support the proposal and 1 (1.4%) was unsure. Of the 6 responses that did not support the proposal, objections included a perceived lack of industry engagement and a concern about whether the University was a suitable partner for the delivery of technical education.

10.5 The proposal is supported by a number of key stakeholders, including the National Skills Academy for Rail (NSAR), National Training Academy for Rail (NTAR), Unipart Rail, the Railway Industry Association (RIA) and Rail Alliance (RA), and the parties have confirmed that sector employers will be actively engaged in the governance of the college as well as in the development and delivery of provision. The University is one of the few universities in England to offer undergraduate and post-graduate degrees in railway systems and engineering and has established links with employers and sector representative bodies. The University also has its own Centre for Railway Research and Education which was awarded a Queen's Anniversary Prize for Higher Education in 2017 for its contribution to making

railways around the world safer and more efficient. The University has experience of operating subsidiaries, having a structure that includes four trading companies and two charitable trusts. The new subsidiary company that will be established to conduct the college will have its own governing board which will include experts in further education, rail and advanced infrastructure as well as individuals with expertise in financial management and other areas.

## **11. Guidance**

- 11.1 The Order is specific to the institution of the “National College for Advanced Transport and Infrastructure” and does not therefore require guidance to be published as to the effect of this instrument.

## **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 of the National College for Advanced Transport and Infrastructure only. An assessment of the likely impact of this model on the future sustainability of the College was included in an Independent Business Review carried out alongside the Structure and Prospects Appraisal.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The changes which will be implemented through this Statutory Instrument are not subject to formal review. However Designated institutions, like further education corporations, are 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 performance.

## **15. Contact**

- 15.1 Jason Hogarth, section 28 designations policy lead, at the Department for Education, email: [jason.hogarth@education.gov.uk](mailto:jason.hogarth@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rizwana Parveen, Deputy Director for Post 16 Provider Strategy and Delivery Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Gillian Keegan, Parliamentary Under Secretary of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.