
EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument makes provision for the further implementation of the Higher Education and Research Act 2017 (c. 29) (“HERA”).

Parts 2 and 3 (regulations 2 to 42) make amendments to primary and secondary legislation (respectively) in consequence of the commencement of certain provisions of HERA (in particular the abolition of the Higher Education Funding Council for England (“HEFCE”) and the Director of Fair Access to Higher Education and the assumption of their functions by the Office for Students (“OfS”)), and repeal of a number of provisions relating to the old regime.

Part 4 (regulation 43) makes amendments to Schedule 3 to the Charities Act 2011 in relation to exempt charities that are regulated by the OfS as their Principal Regulator. The amendments enable any registered higher education provider that is a charity to become exempt by an Order in Council, and remove exempt charity status from a provider that ceases to be registered with the OfS. Exempt charities are, with some exceptions, charities within Schedule 3 to the Charities Act 2011. They are exempt from registration with, and direct regulation by, the Charity Commission for England and Wales. They are instead regulated by a principal regulator with which they usually have a pre-existing regulatory relationship. The principal regulator of an exempt charity must do all it reasonably can to meet the compliance objective specified in section 26(3) of the Charities Act 2011 in relation to that charity.

Part 5 (regulation 44) amends the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, which specifies the regulatory functions to which the duties in sections 21 and 22 of the Legislative and Regulatory Reform Act 2006 (c. 51) (“LRRRA”) apply.

Section 21 of LRRRA imposes a duty on any person exercising a specified regulatory function to have regard to the five principles of good regulation. Section 22 of LRRRA imposes a duty on any person exercising a specified regulatory function to have regard to the Regulators’ Code. Regulation 44 makes these duties applicable to all of the regulatory functions exercised by the Office for Students.

A copy of the Regulators’ Code is available at: <https://www.gov.uk/government/publications/regulators-code>.

Part 6 (regulations 45 and 46) makes savings provision for the continuation of Orders made under section 129 of the Education Reform Act 1988 (c. 40) for certain purposes including in relation to the Teachers’ Pension Scheme and the Local Government Pension Scheme.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.