



# Skills and Post-16 Education Act 2022

## 2022 CHAPTER 21

### PART 4

#### MISCELLANEOUS AND GENERAL

### CHAPTER 2

#### MISCELLANEOUS PROVISIONS

*16 to 19 Academies: designation as having a religious character*

#### **31 16 to 19 Academy: designation as having a religious character**

After section 8 of the Academies Act 2010 insert—

*“16 to 19 Academies designated as having a religious character*

#### **8A Designation of 16 to 19 Academy as having a religious character**

- (1) The Secretary of State may by order designate a 16 to 19 Academy as having a religious character.
- (2) The Secretary of State may designate an Academy under this section only if the proprietor of the Academy is a qualifying Academy proprietor within the meaning given by section 12(2).
- (3) The order must specify the religion or religious denomination in relation to which the Academy is designated.
- (4) The Secretary of State may make regulations about the procedure to be followed in connection with—
  - (a) the designation of an Academy in an order under this section, and

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- (b) the inclusion in such an order of the specification required by subsection (3).
- (5) Despite section 568(3) of EA 1996 (orders to be made by statutory instrument subject to the negative procedure), as applied by section 17(4) of this Act, a statutory instrument containing an order under this section is not subject to annulment in pursuance of a resolution of either House of Parliament.

### **8B Constitution of Academy proprietor, collective worship and religious education**

- (1) The articles of association of the proprietor of an Academy designated under section 8A must provide for a majority of the directors of the proprietor to be persons appointed for the purposes of securing, so far as practicable, that—
  - (a) the character of the designated Academy reflects the tenets of the religion or religious denomination in relation to which the Academy is designated, and
  - (b) in a case where there is a trust deed affecting the designated Academy, the Academy is conducted in accordance with it.
- (2) The proprietor of an Academy designated under section 8A may (accordingly) conduct the Academy in a way that secures that the character of the Academy reflects the tenets of the religion or religious denomination in relation to which the Academy is designated (and, in particular, in a way that is in accordance with any trust deed affecting the Academy).
- (3) The proprietor of an Academy designated under section 8A must ensure that at an appropriate time on at least one day in each week during which the Academy is open an act of collective worship is held at the Academy which pupils at the Academy may attend.
- (4) The act of collective worship must—
  - (a) be in such form as to comply with the provisions of any trust deed affecting the Academy, and
  - (b) reflect the traditions and practices of the religion or religious denomination in relation to which the Academy is designated.
- (5) The proprietor of an Academy designated under section 8A must ensure that religious education is provided at the Academy for all pupils who wish to receive it.
- (6) The proprietor of an Academy is to be treated as complying with subsection (5) if religious education is provided at a time or times at which it is convenient for the majority of full-time pupils to attend.
- (7) For the purposes of this section religious education may take the form of a course of lectures or classes, or of single lectures or classes provided on a regular basis, and may include a course of study leading to an examination or the award of a qualification.
- (8) The form and content of religious education provided under this section—
  - (a) must be in accordance with the provisions of any trust deed affecting the Academy, and

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(b) must not be contrary to the traditions of the religion or religious denomination in relation to which the Academy is designated, but is otherwise to be determined from time to time by the proprietor of the Academy.

(9) Notwithstanding section 17(4), in this section—

- (a) “pupil” means a person receiving education at the 16 to 19 Academy;
- (b) “trust deed” includes any instrument (other than the articles or memorandum of association) regulating the constitution of the proprietor of the Academy or the maintenance, management or conduct of the Academy.”

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**Commencement Information**

**II** [S. 31](#) in force at 28.6.2022, see [s. 36\(2\)](#)

*Institutions within the further education sector: procedure for designation*

## **32 Institutions within the further education sector: designation**

(1) The Further and Higher Education Act 1992 is amended in accordance with subsections [\(2\)](#) and [\(3\)](#).

(2) In section 28 (designated institutions)—

- (a) in subsections (1) and (3A), for “The Secretary of State” substitute “The appropriate authority”;
- (b) after subsection (3A) insert—

“(3B) In this section “the appropriate authority”—

- (a) in relation to an educational institution in England, means the Secretary of State;
- (b) in relation to an educational institution in Wales, means the Welsh Ministers.”

(3) In section 89 (orders, regulations and directions)—

- (a) in subsection (2), after “the excepted provisions are” insert “sections 28 and 29(1)(b) so far as the power under each of those provisions is exercisable by the Secretary of State, and”;
- (b) after subsection (3B) insert—

“(3C) An order made by the Secretary of State under section 28 or 29(1)(b) is to be published in such manner as the Secretary of State considers appropriate.”;

- (c) after subsection (5) insert—

“(6) This section applies in relation to an order made by the Secretary of State under section 28 or 29(1)(b) that revokes or varies an order under those provisions made before the coming into force of section [32\(3\)](#) of the Skills and Post-16 Education Act 2022 as if—

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- (a) in subsection (2), the words “sections 28 and 29(1)(b) so far as the power under each of those provisions is exercisable by the Secretary of State, and” were omitted, and
- (b) subsection (3C) were omitted.”

#### Commencement Information

**I2** [S. 32](#) in force at 28.6.2022, see [s. 36\(2\)](#)

#### *Publication by the Office for Students*

### **33 Office for Students: publication and protection from defamation**

In the Higher Education and Research Act 2017, after section 67 insert—

#### *“Publication*

##### **67A Power for the OfS to publish notices, decisions and reports**

- (1) The OfS may publish notices, decisions and reports given or made in the performance of its functions.
- (2) Subsection (1) does not affect any other power of the OfS to publish such a matter.
- (3) Publication under this section does not breach—
  - (a) an obligation of confidence owed by the OfS, or
  - (b) any other restriction on the publication or disclosure of information (however imposed).
- (4) But nothing in this section authorises the OfS to publish information where doing so contravenes the data protection legislation.

For this purpose “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

- (5) In deciding whether to publish a notice, decision or report under subsection (1), the OfS must, in particular, consider—
  - (a) the interests of—
    - (i) students on higher education courses provided by English higher education providers,
    - (ii) people thinking about undertaking, or who have undertaken, such courses, and
    - (iii) English higher education providers,
  - (b) the need for excluding from publication, so far as practicable, any information which relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the OfS, seriously and prejudicially affect the interests of that body or individual, and
  - (c) the public interest.

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- (6) For the purposes of this section and sections 67B and 67C—
- (a) a reference to a decision includes a reference to the reasons for it, and
  - (b) any decision made in the course of exercising, or for the purposes of enabling the OfS to exercise, any of the OfS's functions (including making any other decision) is made “in the performance of its functions”.

### **67B Publication of decision to conduct or terminate investigation**

- (1) This section applies where under section 67A(1) the OfS publishes a decision to conduct an investigation.
- (2) If the publication identifies a higher education provider or other body or individual whose activities are being, or to be, investigated, and—
- (a) the OfS terminates the investigation without making any finding, or
  - (b) the findings of the investigation, so far as they relate to the higher education provider, body or individual, do not result in the OfS taking any further action,
- the OfS must publish a notice stating that fact.
- (3) Section 67C does not apply to the publication of the decision to conduct the investigation to the extent that it includes information other than—
- (a) a statement of the OfS's decision to conduct the investigation,
  - (b) a summary of the matter being, or to be, investigated, and
  - (c) a reference to the identity of any higher education provider or other body or individual whose activities are being, or to be, investigated.
- (4) See section 67A(6) for the meaning of references to decisions.

### *Defamation*

### **67C Protection from defamation claims**

- (1) For the purposes of the law of defamation, publication by the OfS of any notice, decision or report given or made in the performance of its functions is privileged unless the publication is shown to have been made with malice.

This is subject to section 67B.

- (2) See section 67A(6) for the meaning of references to decisions.”

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#### **Commencement Information**

**I3** [S. 33](#) in force at 28.6.2022, see [s. 36\(2\)](#)

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*Higher education course fee limits: administration*

**34 Relevant date for purposes of fee limit for certain higher education courses**

In paragraph 3(3) of Schedule 2 to the Higher Education and Research Act 2017 (the fee limit where the provider has no access and participation plan), omit “before the calendar year”.

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**Commencement Information**

**I4** [S. 34](#) in force at 28.6.2022, see [s. 36\(2\)](#)

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