

EXPLANATORY MEMORANDUM TO

THE HIGHER EDUCATION AND RESEARCH ACT 2017 (TRANSITIONAL AND SAVING PROVISIONS) (UNIVERSITY TITLE) REGULATIONS 2018

2018 No. 1225

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 Currently the Privy Council determines applications made under section 77 of the Further and Higher Education Act 1992 (FHEA) and section 39 of the Teaching and Higher Education Act 1998 (THEA) to include the word “university” in an institution’s title. Sections 56 and 57 of the Higher Education and Research Act 2017 (HERA) amend these sections so that the Office for Students (OfS) will assume the Privy Council powers in relation to applications made by registered higher education providers. In practice this means that once sections 56 and 57 are in force the OfS will determine an application made by a higher education provider whose activities are carried on, or principally carried on, in England and such a provider may only apply if it is registered with the OfS. The Privy Council will continue to determine applications from institutions in Wales. Sections 56 and 57 will commence on 1st April 2019 (see the Higher Education and Research Act 2017 (Commencement No. 5) Regulations, S.I. 2018/1226). The purpose of these Regulations is to provide for all applications for university title submitted on or before 31 March 2019 to be considered and determined by the Privy Council, whether or not the determination is made after 1 April 2019. This allows for a smooth transition to the new system by avoiding the need for any application made before 1st April 2019 to be terminated on that date and then re-started as a result of the transfer of powers to the OfS.

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 regulations 1 and 3 is England and Wales and Scotland and Northern Ireland; the territorial extent of regulation 2 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 This instrument is one of a number required to implement HERA. Section 1 of HERA establishes the OfS as the new regulator for English higher education providers. These are higher education providers whose activities are carried on, or principally carried on in England. Section 3 of HERA requires the OfS to establish and maintain a register of English higher education providers. There are certain benefits that will only be available to registered higher education providers once HERA is fully implemented and these include the right to apply to use the word “university” in a title. This is achieved by amending section 77 of FHEA and section 39 of the THEA under which the Privy Council can grant authority to an institution to use the word ‘University’ in its title. Sections 56 and 57 of HERA amend these provisions so that the OfS will determine applications made by registered higher education providers and when doing so the OfS must have regard to factors set out in guidance given by the Secretary of State. These factors are set out in “Degree Awarding Powers (DAPs) and University Title (UT) Secretary of State for Education Guidance to the Office for Students (OfS)” issued in February 2018¹. The Privy Council will retain its powers in relation to institutions in Wales.

7. Policy background

- 7.1 As part of the new regulatory system under HERA, English higher education providers apply to be registered by the OfS. For a provider’s registration application to be successful, it must meet the ‘initial registration conditions’ in the OfS Regulatory Framework. In order to remain ‘registered’ providers are required to meet the ‘ongoing conditions’ set out in the OfS Framework. A key benefit of being on the OfS register is the ability (provided that certain other criteria are also met) to obtain permission to use the word ‘university’ in the registered provider’s title.
- 7.2 With the commencement of sections 56 and 57 of HERA from 1st April 2019, the OfS will have the power to receive and assess new university title applications having regard to its Regulatory Framework and relevant Secretary of State guidance.
- 7.3 This instrument allows for applications for university title made before the changes introduced by HERA come into force on 1st April 2019 to be assessed and awarded by the Privy Council regardless of where the applicant’s activities are carried on. Without this transitional provision applicants would need to start a new application to the OfS under HERA if a decision had not been reached by 1 April 2019. This would be costly and time-consuming for applicants.

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.

¹ <https://www.officeforstudents.org.uk/media/1114/guidance-on-daps-and-ut.pdf>

9. Consultation outcome

- 9.1 The Government published a consultation document entitled “Securing Student Success: Risk Based Regulation for Teaching Excellence, Social Mobility and Informed Choice in Higher Education” on 19 October 2017² on behalf of the OfS, the response to which was published in February 2018³. Pages 78 – 81 of this consultation document discussed proposed changes to the criteria for awarding university title. These changes were discussed in more detail in Parts 2 and 3 of a second consultation document entitled “Simplifying Access to the Market: degree awarding powers and university title”. This was also published on 19 October 2017 and the response was published in February 2018⁴.
- 9.2 These consultations focussed on the new guidance for obtaining university title rather than the timescale for introducing the new system. The majority of stakeholders did not object to the principles of the reforms proposed.

10. Guidance

- 10.1 The Department for Business Innovation and Skills published in September 2015 guidance entitled “University Title and University College Title guidance for higher education providers: criteria and process for university title and university college title”.⁵ This guidance will remain relevant for applications that continue to be processed by the Privy Council after 31 March 2019 in accordance with these Regulations. The Secretary of State published “Degree Awarding Powers and University Title: Secretary of State Guidance to the Office for Students”⁶ in February 2018. This guidance relates to the new system introduced by HERA and was informed by the consultation discussed at paragraph 9 above. This guidance is principally concerned with factors to be taken into account when granting university title although it is stated on page 11 that the new system will come into force on 1st April 2019. The OfS has published Guidance⁷ on obtaining university title on its website. This guidance anticipates that the Privy Council will continue to determine applications made before 31 March 2019 and that the DfE guidance referred to above will be used in making these determinations.

11. Impact

- 11.1 There is no, or no significant, impact on business, charities or voluntary bodies.

² https://consult.education.gov.uk/higher-education/higher-education-regulatory-framework/supporting_documents/HE%20reg%20framework%20condoc%20FINAL%2018%20October%20FINAL%20FINAL.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683616/Regulatory_Framework_DfE_government_response.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683916/DAPs_UT_consultation_factual_response.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/459763/BIS-15-523-university-title-and-university-college-title.pdf

⁶ <https://www.officeforstudents.org.uk/media/1114/guidance-on-daps-and-ut.pdf>

⁷ <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/degree-awarding-powers-and-university-title/apply-for-university-title-or-university-college-title/>

- 11.2 There is no, or no significant, impact on the public sector.
- 11.3 An Impact Assessment has not been prepared for this instrument. The impact of changes to grant of university title were assessed as part of the Impact Assessment published in December 2017 for the Higher Education and Research Act 2017 [pp52-54]⁸. These Regulations disapply the new system for the small number of applications that are expected to be made under section 77 of FHEA or section 39 of THEA before 31 March 2019 and that otherwise would be determined by the OfS after that date.

12. Regulating small business

- 12.1 The legislation applies to activities that are undertaken by small businesses.
- 12.2 This legislation does not impose any regulatory burden on small businesses; it is designed to make the transition to a new system of approval for university title work smoothly.

13. Monitoring & review

- 13.1 We have considered the requirement under section 28 of the Small Business, Enterprise and Employment Act 2015 regarding the inclusion of a review in secondary legislation that regulates small business. The transitional provisions in these regulations will cease to have effect once the Privy Council has considered all applications within their scope and we anticipate that it is likely to do so within 2 years. As a consequence we consider that, in accordance with section 28(3)(d) the requirements of section 28 do not apply.

14. Contact

- 14.1 Sophie Breach at the Department for Education email: Sophie.breach@education.gov.uk can be contacted with any queries regarding the instrument.
- 14.2 Jenny Bradley, Deputy Director for Higher Education Regulatory & Provider Policy at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 14.3 Minister Sam Gyimah at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

⁸ http://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf