

2018 No. 245

EDUCATION

SCIENTIFIC RESEARCH

**The Higher Education and Research Act 2017 (Consequential,
Transitional, Transitory and Saving Provisions) Regulations
2018**

<i>Made</i> - - - -	<i>26th February 2018</i>
<i>Laid before Parliament</i>	<i>28th February 2018</i>
<i>Coming into force</i> - -	<i>1st April 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 116, 117 and 119 of the Higher Education and Research Act 2017(a).

Part 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018 and come into force on 1st April 2018.

(2) In these Regulations—

“the 1992 Act” means the Further and Higher Education Act 1992(b);

“the 2004 Act” means the Higher Education Act 2004(c);

“the 2005 Act” means the Education Act 2005(d);

“the 2011 Act” means the Education Act 2011(e);

“the 2017 Act” means the Higher Education and Research Act 2017;

“the Director” means the Director of Fair Access to Higher Education(f);

“HEFCE” means the Higher Education Funding Council for England(g);

(a) 2017 c. 29.

(b) 1992 c. 13.

(c) 2004 c. 8.

(d) 2005 c. 18.

(e) 2011 c. 21.

(f) The office of Director was established under section 31 of the Higher Education Act 2004.

(g) HEFCE was established under Part 2 of the Further and Higher Education Act 1992.

“NERC” means the Natural Environment Research Council(a);

Part 2

General

2.—(1) Paragraphs (2) to (6) are subject to Parts 3 to 5 of these Regulations.

(2) Anything done (or having effect as if done) before the coming into force of these Regulations by, or in relation to, HEFCE or the Director in connection with a function to be performed by the OfS(b) by virtue of these Regulations is to have effect, so far as necessary for continuing its effect after their coming into force, as if done by, or in relation to, the OfS.

(3) Anything done (or having effect as if done) before the coming into force of these Regulations by, or in relation to, HEFCE in connection with a function to be performed by UKRI(c) by virtue of these Regulations is to have effect, so far as necessary for continuing its effect after their coming into force, as if done by, or in relation to, UKRI.

(4) Anything which, immediately before the coming into force of these Regulations, is in the process of being done by, or in relation to, HEFCE or the Director in connection with a function to be performed by the OfS by virtue of these Regulations may, after their coming into force, be continued by, or in relation to, the OfS.

(5) Anything which, immediately before the coming into force of these Regulations, is in the process of being done by, or in relation to, HEFCE in connection with a function to be performed by UKRI by virtue of these Regulations may, after their coming into force, be continued by, or in relation to, UKRI.

(6) Any enactment, instrument or other document passed or made before the coming into force of the Regulations is to have effect, so far as necessary for the purposes or in consequence of, or in connection with, paragraphs (2) to (5) or for giving full effect to these Regulations, as if any references (however expressed) to HEFCE or the Director were references to the OfS or, as applicable, UKRI.

Part 3

Matters relating to the OfS and UKRI

Applicability

3. This Part applies for the period which begins with 1st April 2018 and ends with 31st July 2019.

Provisions relating to the 1992 Act

4.—(1) Sections 62(5), (6), (7), (7A) and (9) (and the heading to that section), 65(1) to (4) (and the heading to that section), 66 and 68(1) and (2) (and the heading to that section) of the 1992 Act continue to apply as if paragraphs 14(6) to (10) and 15 to 17 of Schedule 11 to the 2017 Act had not been commenced, but as if the reference to “matters within the responsibility of the Higher Education Funding Council for England” in section 62(6)(a) were a reference to “matters within the responsibility of the OfS and, where applicable, UKRI”.

(2) Pursuant to paragraph (1), any reference in the Education Acts to a higher education funding council in relation to such matters expressed to be matters within the responsibility of the Higher

(a) NERC was established as a research council under section 1(3) of the Science and Technology Act 1965 (c. 4).

(b) The Office for Students (OfS) was established as a body corporate under section 1 of the Higher Education and Research Act 2017.

(c) United Kingdom Research and Innovation was established as a body corporate under section 91 of the Higher Education and Research Act 2017.

Education Funding Council for England are accordingly references to such matters within the responsibility of the OfS and, where applicable, UKRI.

(3) In this regulation, “the Education Acts” has the meaning given in section 578 of the Education Act 1996(a).

5. Section 69(1) and (2) of the 1992 Act is to continue to apply as if paragraph 18(2) to (4) of Schedule 11 to the 2017 Act had not been commenced.

6. Section 70 of the 1992 Act is to continue to apply as if paragraph 19 of Schedule 11 to the 2017 Act had not been commenced.

7. Section 79 of the 1992 Act is to continue to apply as if paragraph 20 of Schedule 11 to the 2017 Act had not been commenced.

8. Section 79A of the 1992 Act is to continue to apply as if paragraph 21 of Schedule 11 to the 2017 Act had not been commenced, but as if the reference to “The Higher Education Funding Council for England” were a reference to “The OfS”.

9. Section 81 of the 1992 Act is to continue to apply as if paragraph 22 of Schedule 11 to the 2017 Act had not been commenced.

10. Section 82 of the 1992 Act is to continue to apply as if paragraph 23 of Schedule 11 to the 2017 Act had not been commenced.

11. Section 83(1B) of the 1992 Act is to continue to apply as if paragraph 24 of Schedule 11 to the 2017 Act had not been commenced.

12. Section 91(4) of the 1992 Act is to continue to apply as if paragraph 25 of Schedule 11 to the 2017 Act had not been commenced, but as if the reference to section 62(6) were a reference to that provision as it is to be read pursuant to regulation 4 of these Regulations.

Provisions relating to the 2004 Act

13.—(1) Sections 22 to 30, 32 to 36, 38, 39 and 41 of, and Schedule 5 to, the 2004 Act are to continue to apply as if paragraph 30(2) of Schedule 11 to the 2017 Act had not been commenced.

(2) Section 31 of the 2004 Act is to continue to apply as if paragraph 30(2) of Schedule 11 to the 2017 Act (insofar as it applies to that section) had not been commenced, but as if references to “Director” (however expressed) in that section (and accordingly, throughout the 2004 Act) were references to “the OfS”.

14. Section 37 of the 2004 Act is to continue to apply as if paragraph 30(2) of Schedule 11 to the 2017 Act (insofar as it applies to that section) had not been commenced, but as if subsection (1)(a) of that section said—

“(a) impose specified financial requirements on the governing body under section 24(3) or direct the Secretary of State to do so;”.

15. Section 47(3)(a) and (c) and (4) of the 2004 Act is to continue to apply as if paragraph 30(3) of Schedule 11 to the 2017 Act had not been commenced.

16. In section 48 of the 2004 Act, the definition of “the 2005 Act” is to continue to apply as if paragraph 30(4) of Schedule 11 to the 2017 Act had not been commenced.

Provisions relating to the 2005 Act

17. Section 92(5) of the 2005 Act is to continue to apply as if paragraph 31(2)(b) of Schedule 11 to the 2017 Act had not been commenced.

(a) 1996 c. 56.

18. Paragraphs 26 to 35 of Schedule 14 to the 2005 Act are to continue to apply as if paragraph 31(3) of Schedule 11 to the 2017 Act had not been commenced.

Provisions relating to the 2011 Act

19. The following provisions of the 2011 Act continue to apply as if paragraph 33 of Schedule 11 to the 2017 Act had not been commenced—

- (a) section 77;
- (b) Schedule 5, paragraphs 18 to 29;
- (c) Schedule 16, paragraph 22.

Matters relating to higher education providers

20. In the 2017 Act references to “registered higher education providers”(a) in—

- (a) section 64(1)(a) and (8)(a);
 - (b) section 65(1), (7)(a) and (c), (8)(a) and (c), (9), (10)(a) and (b), (11)(a) and (14),
- are to be read as references to “English higher education providers”(b).

Part 4

Final Accounts

Interpretation

21. In this Part—

“cessation date” means the 1st April 2018;

“financial year” means the period of 12 months ending with 31st March in any year.

HEFCE: final accounts

22.—(1) As soon as possible after the cessation date, the OfS must prepare a statement of accounts for HEFCE in respect of the financial year to end before the cessation date.

(2) A statement of accounts under paragraph (1) must be prepared in accordance with the last direction given by the Secretary of State to HEFCE under paragraph 16(2) of Schedule 1 to the 1992 Act.

(3) The OfS must, as soon as possible after preparing the statement of accounts referred to in paragraph (1), send a copy of it to the Secretary of State and the Comptroller and Auditor General.

(4) The Comptroller and Auditor General must—

- (a) examine, certify and report on that statement, and
- (b) make arrangements for a copy of the report and certified statement to be laid before Parliament.

(5) Paragraph (1) does not apply if HEFCE has already sent a copy of the statement in respect of the financial year referred to in that paragraph to the Comptroller and Auditor General.

(6) Where paragraph (5) applies, the Comptroller and Auditor General must take the steps specified in paragraph 16(3) of Schedule 1 to the 1992 Act if the Comptroller has not already done so.

(a) For the meaning of “registered higher education provider” see sections 3(10) and 85(1) of the Higher Education and Research Act 2017.

(b) For the meaning of “English higher education provider” see section 83(1) of the Higher Education and Research Act 2017.

Director: final accounts

23.—(1) As soon as possible after the cessation date, the OfS must prepare a statement of accounts for the Director in respect of the financial year to end before the cessation date.

(2) A statement of accounts under paragraph (1) must be prepared in accordance with the last direction given by the Secretary of State to the Director under paragraph 8(1)(b) of Schedule 5 to the 2004 Act.

(3) The OfS must, as soon as possible after preparing the statement of accounts referred to in paragraph (1), send a copy of it to the Secretary of State and the Comptroller and Auditor General.

(4) The Comptroller and Auditor General must—

- (a) examine, certify and report on that statement, and
- (b) make arrangements for a copy of the report and certified statement to be laid before Parliament.

(5) Paragraph (1) does not apply if the Director has already sent a copy of the statement in respect of the financial year referred to in that paragraph to the Comptroller and Auditor General.

(6) Where paragraph (5) applies, the Comptroller and Auditor General must take the steps specified in paragraph 8(2) of Schedule 5 to the 2004 Act if the Comptroller has not already done so.

Part 5

Other Matters

Matters relating to investigations by the Parliamentary Commissioner for Administration

24. A complaint made to the Parliamentary Commissioner for Administration in relation to HEFCE or the Director before 1st April 2018, may continue to be investigated by the Commissioner as if it were a complaint against the OfS, or, as applicable, UKRI.

Matters relating to the Charities Act 2006

25. The Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2010(a) are amended as follows—

- (a) in regulation 1 (citation, commencement and interpretation), in paragraph (2)—
 - (i) omit the definition of “HEFCE”;
 - (ii) at the appropriate place in the alphabetical order, insert—

““OfS” means the Office for Students which was established as a body corporate by section 1 of the Higher Education and Research Act 2017.”;
- (b) in regulation 2 (appointment of principal regulators of exempt charities: higher education institutions, Kew institutions and museum and gallery institutions), in paragraph (1), for “HEFCE” substitute “the OfS”;
- (c) in regulation 4 (definition of “responsible person”), for “HEFCE” (six times) substitute “the OfS”.

(a) S.I. 2010/501.

Part 6

Provisions relating to NERC

Consultation of NERC in relation to seals

26.—(1) Any consultation with NERC before 1st April 2018 in respect of a provision specified in paragraph (2) and regarding an authorisation given, or a licence to be granted or varied, a designation to be made, or a review to be undertaken (as the case may be), is to have effect from that date as if it were a consultation with UKRI.

(2) The provisions are—

- (a) in the Conservation of Seals Act 1970(a)—
 - (i) section 3(1) (order prohibiting the killing, injuring or taking of seals);
 - (ii) section 10(3)(a) (power to grant licences);
 - (iii) section 11(1)(a) (authorisation of a person to enter land to obtain information about seals); or
 - (iv) section 11(1)(b) (authorisation of a person to enter land to kill or take seals);
- (b) paragraph 9(a) of Part 2 of Schedule 5 to the Natural Environment and Rural Communities Act 2006(b) (application of enforcement provisions for the purposes of the conservation of seals); or
- (c) in the Marine (Scotland) Act 2010(c)—
 - (i) section 116(1) (power to grant a seal licence);
 - (ii) section 117 (designation of a haul-out site);
 - (iii) section 118(2) (designation of a seal conservation area);
 - (iv) section 120(1) (authorisation of a person to enter land to obtain information about seals);
 - (v) section 121(1) (authorisation of a person to enter land to kill or take seals); or
 - (vi) section 129(2)(b) (review of seal licensing regime).

Authorisations granted by NERC under the Geological Survey Act 1845

27. Any authorisation or order of NERC under section 1 of the Geological Survey Act 1845(d) before 1st April 2018 is to have effect from that date as an authorisation or order of UKRI.

Appointments by NERC under the Mining Industry Act 1926

28. Any appointment by NERC of an officer under section 23(1), (3) or (5) of the Mining Industry Act 1926(e) before 1st April 2018 is to have effect from that date as an appointment by UKRI.

Mineral Exploration and Investment Grants Act 1972

29. Any geological information supplied to NERC under section 1(3) of the Mineral Exploration and Investment Grants Act 1972(f) before 1st April 2018 is to have effect from that date as if supplied to UKRI.

(a) 1970 c. 30.
(b) 2006 c. 16.
(c) 2010 asp 5.
(d) 1845 c. 63.
(e) 1926 c. 28.
(f) 1972 c. 9.

Water Resources Act 1991

30.—(1) Any notice given, or particulars of any test sent, to NERC under section 198(1) and (2)(b) or, as the case be, section 205(1) of the Water Resources Act 1991(a) before 1st April 2018, is to have effect from that date as given or sent to UKRI.

(2) Any authorisation by NERC of a person under section 198(2)(c) of the Water Resources Act 1991 before 1st April 2018 is to have effect from that date as an authorisation by UKRI.

(3) Any notice given by the NERC under section 205(4) of the Water Resources Act 1991 before 1st April 2018, is to have effect from that date as given by UKRI.

Signed by authority of the Secretary of State for Education

Sam Gyimah
Minister of State
Department for Education

26th February 2018

EXPLANATORY NOTE

(This Note is not part of the Regulations)

This instrument makes consequential, transitional, transitory and saving provisions in consequence of the commencement of certain provisions of the Higher Education and Research Act 2017 (c. 29). Under that Act, the Higher Education Funding Council for England (“HEFCE”) and the Director of Fair Access to Higher Education (“the Director”) are abolished and replaced by the Office for Students (“the OfS”). That Act also abolishes the research body known as the Natural Environment Research Council (“NERC”) and establishes a new research body – United Kingdom Research and Innovation (“UKRI”).

Part 1 (regulation 1) deals with general matters including interpretation.

Part 2 (regulation 2) provides for the continuation and treatment, after the coming into force of this instrument, of things done or being done by HEFCE and the Director immediately before its coming into force.

Part 3 (regulations 3 to 20) deals with consequential, transitory and saving provisions concerning specified sections of particular Education Acts as a result of the commencement of certain provisions of the Higher Education and Research Act 2017 relating to HEFCE and the Director as they impact on roles the OfS and UKRI. The Education Acts in question are the Further and Higher Education Act 1992 (c. 13), the Higher Education Act 2004 (c. 8), the Education Act 2005 (c. 18) and the Education Act 2011 (c. 16). The instrument commencing the provisions of the Higher Education and Research Act 2017 referred to in Part 3 is the Higher Education and Research Act 2017 (Commencement No.3) Regulations 2018 (S.I. 2018/241 (C.23)).

Part 4 (regulations 21 to 23) deals with the final accounts of HEFCE and the Director following their cessation.

Part 5 (regulations 24 and 25) makes transitional provision for the continuation of investigations of complaints against HEFCE and the Director by the Parliamentary Commissioner for Administration and consequential provision to the legislation concerning regulators of exempt charities.

Part 6 (regulations 26 to 30) makes transitional provision in respect of a number of Acts which facilitated the scientific research work of NERC. The provisions provide for the continuation and treatment of that work following the coming into force of this instrument and the abolition of NERC and the establishment of UKRI.

(a) 1991 c. 57.

A full impact assessment on the effect the higher education reforms will have on the costs of business and the voluntary sector was published on 7th June 2016 alongside the Higher Education and Research Bill (available from www.gov.uk/government/collections/higher-education-and-research-bill). That impact assessment has been updated and the updated version is available electronically at www.gov.uk/government/publications/higher-education-and-research-act-impact-assessments with hard copies available on request from Department for Education, Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT.

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