

EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO
THE HIGHER EDUCATION AND RESEARCH ACT 2017 (COOPERATION AND
INFORMATION SHARING) REGULATIONS 2018

2018 No. 607

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education ('the Department') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument prescribes persons with whom, and functions for which, the Office for Students ("OfS") may cooperate and share information under the Higher Education and Research Act 2017 ("the Act"). The Act requires relevant persons and their relevant functions to be set out in regulations where the purpose of the information sharing is predominantly for the performance of a function of another person, rather than of the OfS. This instrument does not impose a duty on the OfS to cooperate or share information.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies to England and Wales only.
- 3.3 The provisions of the instrument relate to information sharing by the OfS, which has remit only in relation to institutions that are, or are applying to become, registered higher education providers within the meaning of section 3(10) of the Act. Section 3(3)(b) provides that an institution can only be registered on the OfS register (and thereby become a registered higher education provider) if it is, or intends to become, an English higher education provider. An English higher education provider is defined in section 83(1) of the Act as a higher education provider whose activities are carried on, or principally carried on, in England. The instrument applies to Wales because the OfS may wish to share information about a provider based in Wales that is, for the purposes of the Act, an English higher education provider.
- 3.4 In the view of the Department, this instrument may have minor and consequential effects outside England and Wales. This is because, as explained above, English higher education providers as defined in the Act may include providers of higher education that carry on some activities outside England, provided that their activities are principally carried on in England.
- 3.5 As a result, in the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent

provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

- 3.6 The Department has reached this view because it considers that the primary purpose of the instrument relates to education which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of the Act); the primary purpose of the subject matter of the instrument is not a reserved matter listed within Schedule 7A to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Legislative Context

- 4.1 The OfS was created to be the main regulator of higher education providers in England by the Act. Section 63(1) and (3) of the Act allow the OfS to cooperate and share information, where it considers it appropriate to do so, with other bodies for the performance of functions of the OfS. Under section 63 (2)(a) and (4), the OfS may also cooperate and share information, where it considers it appropriate to do so, with other ‘relevant’ persons for the performance of those persons’ ‘relevant’ functions. Under section 63(2)(b) the OfS must cooperate with a ‘relevant’ person in the performance of a ‘relevant’ function if required to do so by the Secretary of State. Section 63(7) provides that “relevant persons” and “relevant functions” are to be prescribed by regulations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The predecessors of the OfS were the Higher Education and Funding Council for England (“HEFCE”) and the Office for Fair Access (“OFFA”). These bodies ceased to exist when the OfS came into being on 1 April 2018. The enabling legislation for HEFCE did not restrict cooperation or information sharing in the same way as the Act does for the OfS. Under the Act, it is necessary to prescribe the persons with whom the OfS might cooperate and share information where this is predominantly for the other person’s functions, and also to prescribe those functions. The reasons for the information sharing may include (but are not limited to) instances where the OfS may have information, for example around potential wrongdoing, but the other body has

the power to take action, or where sharing information will improve data quality, avoid duplication, promote cooperation and collaborative working practices or improve mutual understanding of the HE sector.

- 7.2 We have reviewed where this is the case both in terms of a) cooperation participated in, and information shared by, HEFCE or OFFA which the OfS will wish to continue and b) new cooperation and information sharing that the OfS wishes to be able to participate in or undertake, respectively.
- 7.3 Where the cooperation or information sharing is predominantly for the purposes of the OfS, there is no requirement to prescribe the other persons involved.
- The Regulations will be supported by collaboration and data sharing agreements, where appropriate or helpful.
- 7.4 The relevant bodies and their relevant functions are set out in the table in the Schedule to the Regulations. The relevant bodies are the Competition and Markets Authority (CMA) and Trading Standards bodies (the latter being referred to in the table as local weights and measures authorities), Health Education England, a number of Higher Education validating and awarding organisations (Pearson Education Limited, Vocational Training Charitable Trust, Gateway Qualifications Company Limited and Scottish Qualifications Authority), Her Majesty's Revenue and Customs (HMRC), the Office for Standards in Education, Children's Services and Skills and its Chief Inspector (Ofsted), the Office for the Independent Adjudicator (OIA), the Board of the Pension Protection Fund (PPF) and the Student Loans Company Limited (SLC)
- 7.5 Under section 63(8), it is expressly permitted to prescribe all functions of a relevant person. Where the Regulations prescribe all functions of a person in a particular Act of Parliament or other document, a policy analysis of those functions has been undertaken and it has been concluded that all the functions are, or may be, relevant. It is of note that the information sharing is self-limiting in that the OfS will only be sharing information about English higher education providers. It is also of note that the OfS is not obliged to share information with a person: the power in section 63 is permissive rather than mandatory.
- 7.6 For certain prescribed bodies, the Regulations refer to the company's Memorandum and Articles of Association. In those cases the relevant functions are the functions of the company pursuant to its objects, which are set out in its Memorandum and Articles of Association. The reference to the Memorandum and Articles of Association is a reference to the most recent version of that document registered with the registrar of companies (Companies House) as at the date these Regulations were made. The date of registration with Companies House can be found in the filing history for the company on the Companies House website (www.companieshouse.gov.uk), or by contacting Companies House.
- 7.7 A PDF of a company's Memorandum and Articles of Association can be obtained free of charge by visiting the Companies House website and searching the filing history of the company by its registered company number. Alternatively, a paper copy can be obtained for a nominal fee by telephoning Companies House on 0303 1234500, or by visiting any of its offices (in Belfast, Cardiff, Edinburgh and London). The address of the London office is Companies House, 4 Abbey Orchard Street, Westminster, London SW1P 2HT.
- 7.8 The relevant parts of the Memoranda and Articles of Association of the incorporated companies listed in paragraph 7.4 are submitted with this Explanatory Memorandum.

8. Consultation outcome

- 8.1 Consultation took place widely within DfE and with HEFCE during Autumn 2017 to ascertain the bodies that HEFCE had historically shared information with and any new types of information sharing which would be needed by the OfS in future. The purpose of the information sharing, and whether it would be primarily for OfS functions or the functions of the other body was then determined through a further round of consultations within both the Department for Education and the bodies themselves between January and March 2018.

9. Guidance

- 9.1 The OfS will operate information sharing in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. These regulations do not require further guidance to be issued.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.
- 10.4 Consideration was given to whether a Privacy Impact Assessment (“PIA”) was required for these Regulations. It was concluded that it was not appropriate for the Department of Education to conduct a PIA, as the data controller is the OfS. As the data controller, it will be the responsibility of the OfS to determine the need for, and timing of, a Data Privacy Impact Assessment before sharing information that could impact upon personal privacy.

11. Regulating small businesses

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The OfS cooperating and sharing information with the other relevant bodies listed in these regulations will not create an additional regulatory cost for higher education providers.

12. Monitoring & review

- 12.1 We have considered the requirement under Section 28 of the Small Business, Enterprise and Employment Act 2015 regarding the inclusion of a review provision in secondary legislation that regulates business. Cooperation and information sharing by the OfS under these Regulations has been estimated to have minimal additional impact on business. As such, the Department has concluded that it would be disproportionate on cost grounds to include a review provision within the instrument.
- 12.2 These Regulations, however, will be reviewed at a future date if the OfS should wish to begin to cooperate and share information with a body or bodies in addition to those listed in 7.4 above.

13. Contact

- 13.1 Tom Worthington at the Department for Education, Telephone: 07388372223 or email: Thomas.Worthington@education.gov.uk, can answer any queries regarding the instrument.

Articles and Memoranda of Association for the incorporated companies listed in paragraph 7.4 above.

1. Pearson Education Ltd

MEMORANDUM OF ASSOCIATION
OF

PEARSON EDUCATION LIMITED
Company Number 00872828

COMPANY LIMITED BY SHARE

1. The name of the Company is "LONGMAN PUBLICATIONS LIMITED"

2. The registered office of the company will be situated in England

3. The objects for which the company is established are.

a) To carry on in the United Kingdom or elsewhere, all or any of the following businesses in all or any of their branches viz., the business of booksellers, book binders, lithographers, engravers, die sinkers, newspaper proprietors, advertisers and advertising agents, publishers, manufacturers and dealers in all materials and things whatsoever in connection with any of such businesses

b) To carry on in the United Kingdom or elsewhere, all or any of the following businesses in all or any of their branches, the business of educational advisors and consultants to governments, local authorities, schools, educational establishments, corporations, professional bodies, and other persons or bodies in connection with education related matters, including, but not limited to, educational assessments, learning programmes, test development, process development, including course assessments, skills and competency tests and related services, developing programmes for and providing professional training including training on the development and delivery of courses and training on all subjects, computer systems and software, developing and dealing in solutions and providing training on such systems and software

2. Vocational Training Charitable Trust

THE COMPANIES ACT 1985

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF
VOCATIONAL TRAINING CHARITABLE TRUST

1 The name of the Company is "VOCATIONAL TRAINING
TRUST"

2 The registered office of the Company will be situated in

3 "The Company's objects are for the public benefit

(1) the advancement of education, research and the public dissemination of
knowledge in

a) the art and technology of health and beauty therapy

b) the skills and knowledge required for other vocational employment
in the well-being, public and service industries

c) the impact and treatment of physical disfigurement and all related
sciences

and, as and when the trustees think fit,

(2) the relief of sickness or poor health caused by physical disability
assistance of those with physical disfigurements, and their families
overcome any social, physical, psychological, emotional or other

4 In furtherance of the above objects, but not otherwise than
or any of the following things -

(1) To organise, hold and conduct from time to time either
in conjunction with, any appropriate body, such tests and examinations

3. Gateway Qualifications Company Ltd

The Companies Acts 1985 and 2006

**COMPANY LIMITED BY GUARANTEE AND
NOT HAVING A SHARE CAPITAL**

Articles of Association

OF

GATEWAY QUALIFICATIONS LIMITED (0551

Adopted pursuant to a Special Resolution dated 24 Fe

1. Interpretation

1 1 In these Articles

"the Act"	means the Companies Act 2006 includ or re-enactment thereof for the time b
"Adult and Community Learning Provider"	means an institution or organisation Education College delivering commun indirectly by the Skills Funding A Community Learning includes a ran outreach learning opportunities, prim by local authorities, General Further Sector (e g. charities/voluntary sector
"the Articles"	means the Articles of Association of th
"the Charity"	means the company intended to be re
"clear days"	in relation to the period of a notice m

"Secretary"	means the secretary of the Charity or perform the duties of the secretary (assistant or deputy secretary,
"the trustees"	means the directors of the Charity (corresponding meaning),
"the United Kingdom"	means Great Britain and Northern Ireland
"Voluntary Organisation"	means a non-profit-making organisation registered as a charity with the Charity Commission

1 2 Words importing the masculine gender only shall include the female

1 3 Subject as aforesaid, words or expressions contained in this Order, in the absence of context requires otherwise, bear the same meaning as in the Act

1 4 Reference to the singular include the plural and vice versa

2. Objects

2 1 The objects ("the Objects") for which the Charity is established are the learning and education of the public by in particular, but not exclusively, the following ways -

2 1 1 by promoting and widening participation in education and training, particularly for those who have benefited least from existing provision

2 1 2 by improving the quality and flexibility of education and training for the public benefit, primarily for those learners who have limited educational opportunities,

2 1 3 by improving the educational welfare and access to education and training, facilitating progression to further learning, employment and training, particularly through the award of credits and credit-based learning

2 1 4 by supporting the arrangements of Ofqual, and the Higher Education or the appropriate agency acting or

-
- 2 2 2 develop, monitor and evaluate strategy and policy in improve the quality and flexibility of education provision
 - 2 2 3 ensure that it meets the licence requirements of O Agency for Higher Education or the appropriate agency,
 - 2 2 4 ensure quality enhancement and continuous improv flexibility of education opportunities to the public benefi
 - 2 2 5 act openly and mutually with its members in enabling t pursuance of the Objects;
 - 2 2 6 support national and local equality strategies and en widen participation of all learners in the education syste
 - 2 2 7 foster collaboration and partnership arrangements withi
 - 2 3 In furtherance of the Objects but not otherwise the Charity powers -
 - 2 3 1 liaise with all appropriate bodies involved in, or interest for learners, including Higher Education and Further Ed Community Learning Providers, Private Training Provide government agencies, employers, local authorit organisations with other consortia and other relevant ag
 - 2 3 2 to draw, make, accept, endorse, discount, execute and cheques and other instruments and to operate bank and
 - 2 3 3 to raise funds and invite and receive contributions by covenant, grant, loan, subscription, legacy, bequest (raising funds the Charity shall conform to any relevant not undertake any substantial permanent trading activit
 - 2 3 4 to buy, take on, lease, exchange, hire or otherwise ac directly or indirectly for the achievement of the Object: for use,
 - 2 3 5 subject to any consents required by law, to sell, lease, dispose of and generally manage and deal with all or a
-

103465

THE COMPANIES ACT 1985
PRIVATE COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL
MEMORANDUM OF ASSOCIATION
OF
THE OFFICE OF THE INDEPENDENT ADJUDICATOR FOR HIGHER
EDUCATION

1. The Company's name is "The Office of the Independent Adjudicator for Higher Education".
2. The Company's registered office is to be situated in England.
3.
 - 3.1 The objects ("the Objects") for which the Company is established are:
 - (a) to provide a non-binding scheme to commence on a date selected by the Board of Directors of the Company, for the review of complaints brought by students which:
 - (a) are in respect of a complaint about a course on which the student has been admitted or enrolled, run by or giving rise to a right of access to a HEI (as defined in 3.2 below); and
 - (b) involves a breach or non observance of any obligation imposed on that student by a HEI in respect of such course but excluding a complaint that relates solely to matters of academic judgment;
 - (c) are brought by the student under the scheme within a period of six months from the date of the determination of the subject matter of the complaint;

5. The Student Loans Company Ltd

THE COMPANIES ACTS 1985 - 2006

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

- of -

STUDENT LOANS COMPANY LIMITED

(as amended by Special Resolution dated 20th November, 1989 and
Special Resolution dated 30 September 2008)

- 1 The Company's name is "PERCHLANE LIMITED"
- 2 The Company's registered office is to be situated in England and Wales
- 3 The Company's objects are
 - (A) To establish, operate, administer and in any other way which the Company expedient to participate in any scheme or schemes for the making of provision of credit or the provision of any financial service to any person who proposing to undertake any course of study, including, without limitation, whereby such loan, credit or financial service may continue to be outstanding to such person after he or she has completed or ceased to undertake such course
 - (B) To carry on in any part of the world any or all of the businesses of the lending, banking and any other business that may lawfully be carried on by a company authorised to carry on a deposit-taking business (as defined in the Banking Act 1985 or any statutory re-enactment or modification thereof) and to transact and do all things incidental or conducive thereto, or which may at any time hereafter, where the Company shall carry on business, be usually carried on or be capable of being carried on as part of or in connection with, or which may conduce to or be conducive to the carrying on of, any such business and in particular, (but without prejudice to the generality of the foregoing)
 - (1) To advance or lend money and to provide credit or other financial services in any case with or without security
 - (2) To promote, effect, insure, guarantee, underwrite, become liable for or procure the subscription or placing of, or agree to subscribe for or procure the subscription of, any shares in any company