

EXPLANATORY MEMORANDUM TO
THE EDUCATION (DESIGNATED INSTITUTIONS IN FURTHER EDUCATION)
(AMENDMENT) ORDER 2023

2023 No. 825

1. Introduction

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

2. Purpose of the instrument

- 2.1 This Order removes The International Co-operative College, Loughborough, commonly known as “the Co-operative College” (“the Co-operative College”) as a designated institution for the purposes of section 28 of the Further and Higher Education Act 1992 (“the 1992 Act”). This means it will no longer fall within the statutory further education sector (see section 91(3) of the 1992 Act), it will no longer be subject to public sector control and it will not be under the regulatory control of the Secretary of State.
- 2.2 This Order also makes minor amendments to the [Education \(Designated Institutions in Further Education\) Order 1993 \(S.I. 1993/435\)](#) (“the 1993 Order”) to update it, following other legislative changes.
- 2.3 Following the reclassification of the statutory FE sector in November 2022 by the Office for National Statistics as subject to public sector control, additional reporting requirements and increased statutory intervention powers apply to institutions in that sector. After discussions between the Department for Education and the Co-operative College on the implications of these new requirements, the Co-operative College requested that it be removed from the Schedule of institutions designated by the 1993 Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England. The 1993 Order originally applied to England and Wales. However, the relevant education powers under the 1992 Act were devolved to the Welsh Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and the current application of the 1993 Order is therefore 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 Section 28 of the 1992 Act gives the Secretary of State the power to designate, by means of an Order, an educational institution providing further education for the purposes of that section, bringing the institution within the further education sector, as defined by section 91(3) of the 1992 Act.
- 6.2 In 1993 the Secretary of State, in exercise of the powers conferred by the 1992 Act made the 1993 Order to designate the institutions specified in Schedule 1 of the Order which included the Co-operative College.

7. Policy background

What is being done and why?

Background of the Co-operative College

- 7.1 The Co-operative College was designated, along with a further 12 adult education institutions in 1993, following the introduction of the 1992 Act which moved FE colleges and adult education institutions out of local authority control. In 1993 the College was a larger organisation with a training centre in Loughborough and received funding to deliver free adult education courses. The Co-operative College has since become a much smaller organisation which charges fees for online courses. The Co-operative College has not had a funding agreement with the Department for Education or the Education and Skills Funding Agency for adult education delivery since 2003.

Removal of the Co-operative College as a Designated Institution

- 7.2 There are a number of statutory and other obligations imposed on designated institutions. Designated institutions are subject to intervention by the Secretary of State under section 56A of the 1992 Act. They are also required by section 52B of the Act to review how well their education and training provision meets local needs and consider what action to take to meet those needs better. Further education institutions are classified as part of the public sector for accounting purposes, therefore designated institutions must seek approval from HM Treasury for borrowing and submit annual accounts for assessment and consolidation into the Government's accounts. Their accounts are also open to inspection by the Comptroller and Auditor General under section 53(1)(b) of the 1992 Act.
- 7.3 The Co-operative College has not received any public funds from the Education and Skills Funding Agency since 2003; therefore, the Co-operative College is being removed from the statutory further education sector as the statutory and other requirements and duties that apply to institutions within the sector and are no longer appropriate or proportionate for the Co-operative College.

Minor Amendments

- 7.4 Article 2 of this Order also contains minor amendments to make it consistent with changes to other legislation. Firstly, article 2 of the 1993 Order reflected the original wording of section 28 of the 1992 Act, which stated that educational institutions could be designated "as eligible to receive support from funds administered by the

councils”. However, in 2000 the wording of section 28 of the Act was amended, and those words were removed. Amending the 1993 Order to reflect the updated wording of section 28 is therefore appropriate.

- 7.5 Secondly, article 4 of the 1993 Order gives effect to the provisions of section 32 and section 33 of the 1992 Act in relation to designated institutions. Section 32 stated that where a voluntary aided school or other institution assisted by a local authority became a designated institution, the land and property which the local authority used for the institution would transfer to the designated institution. Section 33 made supplementary provision, regarding the transferred land or other property being held on trust. Schedule 2 of the 1993 Order specified exactly to whom the land or property would be transferred on behalf of the designated institution. However, sections 32 and 33 of the Act were repealed by the Deregulation Act 2015. It is therefore appropriate to amend the 1993 Order to remove reference to Article 4 and Schedule 2 as they no longer have any effect.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 There is no legal requirement to undertake a consultation in respect of decisions to designate or remove designation from an institution, and no stakeholders or learners will be impacted by this change.

11. Guidance

- 11.1 The Order relates principally to the Co-operative College and does not therefore require guidance to be published as to the effect of this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it relates principally to the Co-operative College.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The changes which will be implemented through this Statutory Instrument are not subject to formal review.

15. Contact

- 15.1 Jessica Richardson at the Department for Education email: Jessica.richardson@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Deonne Rowland, Deputy Director for Post-16 Regions and FE Provider Oversight Directorate at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Halfon, Minister for Skills, Apprenticeships and Higher Education and the Department for Education can confirm that this Explanatory Memorandum meets the required standard.