EXPLANATORY MEMORANDUM TO

THE HARTPURY COLLEGE (TRANSFER TO THE HIGHER EDUCATION SECTOR) ORDER 2018

2018 No. 927

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order transfers Hartpury College corporation ("the College"), a Further Education Corporation ("FEC"), to the higher education sector. On transfer, it will become a Higher Education Corporation ("HEC").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Joint Committee on Statutory Instruments, in their Nineteenth Report of the 2017-19 Session (available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtstatin/121/121.pdf) , reported the Bolton College (Designated Institution in Further Education) Order 2018 (S.I. 2018/247) for defective drafting for failing to include a suitable identifier for the institution being designated as within the further education sector.

3.2 The Department, so as to address this concern in respect of this Order, has included in this Order the full address of, and reference to the instrument that incorporated, the further education corporation that is being transferred to the higher education sector.

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)

3.3 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 this instrument 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 Section 122A of the Education Reform Act 1988 makes provision for the Secretary of State, by Order, to transfer a FEC to the higher education sector, if it appears to him or her that the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent of its total full-time equivalent enrolment number.

6.2 Having considered the application from the College to transfer to the higher education sector, the Secretary of State has concluded that it meets the legislative criterion and this Order gives effect to the transfer.

7. Policy background

What is being done and why?

7.1 The purpose of section 122A of the Education Reform Act is to provide a mechanism for FECs that meet the legislative criterion to transfer to the higher education sector, becoming HECs and to receive public funding from a higher education funding council.

7.2 At the time of making this Order, the College is a FEC, which delivers both further and higher education. The College was authorised to grant taught degrees in July 2017. The College is currently undergoing structural changes to enable it to apply for university title, whilst retaining a distinct identity for its further education provision within the new structure. The College believes that this is essential for the long-term future of its further and higher education provision, bringing operational efficiencies and a range of benefits to learners. To achieve this, an Order[1] was made under section 28 of the Further and Higher Education Act 1992 to designate an institution as being within the further education sector in order to allow the College's further education provision to stay within the statutory further education sector. The College is now applying for a transfer to the higher education sector, by means of this order made under section 122A of the Education Reform Act 1988. This will complete the structural change needed to enable the College to apply for University Title.

7.3 Once the structural change has been achieved, the HEC will then apply for University Title for its higher education provision, and is proposing to become Hartpury University. This follows from the Gloucestershire, Swindon and Wiltshire area review, which concluded in 2017 and recommended that Hartpury College "remain a stand-alone specialist land based college, exploring options to secure higher education title through a higher education and further education group structure". This Order is linked to "The Hartpury College of Further Education (Designated Institution in Further Education) Order 2018" under which a further education institution, to be conducted by a wholly owned subsidiary company of the College, has been designated. The company which conducts the designated institution is a wholly owned subsidiary of the College, and upon the transfer of the College to the higher education sector, the subsidiary company will become a wholly owned subsidiary of the HEC.

7.4 In considering an application for transfer the Secretary of State has regard to whether the institution appears to him or her to satisfy the legislative requirement that more than 55% of its total full-time equivalent enrolment number is for courses of higher

[1] The Hartpury College of Further Education (Designated Institution in Further Education) Order 2018 (S.I. 2018/738)

education; and also to the requirements and criteria set out in the Departmental guidance: "Transfer of a Further Education Corporation to the Higher Education Sector". To inform his decision the Secretary of State took advice from the Higher Education Funding Council for England (HEFCE), who in accordance with the process within the published guidance, scrutinised the application against the legislative and administrative criteria.

7.5 The Secretary of State has considered the College's application and the detailed advice received on it from HEFCE and is satisfied that it meets the legislative and guidance criteria. In doing so he is satisfied that the College: meets the legislative student numbers' requirement of having more than 55% FTE students studying courses of higher education; and satisfies all the guidance criteria requirements relating to distinctive provision, strong demand and employment, quality assurance, academic standards and performance, financial sustainability, management, and, corporate governance.

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).

9. Consolidation

9.1 None. This instrument does not amend or supplement existing legislation.

10. Consultation outcome

10.1 There is no legal requirement to consult formally on the making of this Order. However, in considering this application, detailed advice was sought from HEFCE. In addition, the Gloucestershire, Swindon and Wiltshire area review, which led to the development of this proposal, was overseen by a steering group consisting of stakeholders from the area and chaired by the Further Education Commissioner. Membership of the steering group included each college's chair of governors and principal, representatives from Wiltshire Council, Swindon Borough Council, Gloucestershire County Council, Gloucestershire First Local Enterprise Partnership (LEP), Swindon and Wiltshire LEP, the Regional Schools Commissioner, and representatives from the then Skills Funding Agency (SFA) and Education Funding Agency (EFA), and the Department for Education (DfE).

11. Guidance

11.1 This Order is specific to Hartpury College and does not therefore require any guidance to be published.

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 An impact assessment has not been prepared for this Order as it has no, or no significant, impact on the private or voluntary sector.

13. Regulating small business

13.1 This Order is specific to Hartpury College. It does not therefore apply to small business.

14. Monitoring & review

14.1 We do not consider a review clause to be proportionate. The instrument transfers the further education corporation to the higher education sector, and the likely impact and burden of this instrument, which is low, is limited to the College.

15. Contact

15.1 Martin Courbet at the Department for Education Tel: 0739 101 8322 or email Martin.Courbet@education.gov.uk can answer any queries regarding this Order.

15.2 Jenny Bradley at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Sam Gyimah at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.