EXPLANATORY MEMORANDUM TO

THE OFFICE FOR STUDENTS (REGISTER OF ENGLISH HIGHER EDUCATION PROVIDERS) REGULATIONS 2017

2017 No. 1196

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 This instrument sets out the key information that must be contained, as a minimum, in an English higher education provider's entry on the Office for Students (OfS) register when it goes live in April 2018. The OfS register will provide details on the English higher education providers that have satisfied the OfS's initial registration requirements, and are therefore registered with the OfS. These Regulations enable the OfS to setup and operate the register; and to ensure some key information is included.

2.2 This instrument does not set out how providers should register with the OfS, what conditions they need to meet to be able to be registered or how the categories of the register are defined.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Higher Education and Research Act (HERA) 2017 establishes the OfS as the regulator for English higher education providers. The OfS has a number of functions relating to, amongst other things, access and participation plans, the grant and variation of degree awarding powers, authorisation of university title, grant funding, maintaining the register and setting registration conditions. In the exercise of its functions, the OfS has a legal duty to have regard to a number of factors including the need to promote greater choice and opportunities for students, equality of opportunity, quality and value for money, and to promote competition for the benefit of students. In performing its functions, the OfS must also have regard to the need to protect the institutional autonomy of English higher education providers.

4.2 Section 3 of HERA provides that the OfS must establish and maintain a register of English higher education providers. This requires the OfS to register providers that are, or intend to become, English higher education providers, as long as they satisfy the initial conditions of registration and meet ongoing registration conditions. Only

providers whose names are entered on this register will be officially recognised as providers of higher education.

4.3 Section 3(6) sets out that the Secretary of State may, by regulations, make provision about the information which must be contained in an institution's entry in the register. This section necessarily leaves the OfS the power to include information on a provider's entry in addition to the information required by these Regulations. This means that the Government can ensure what it considers essential information is contained in the register, should this be different to that included on the register entry (and requested from the provider) by the OfS.

5. Extent and Territorial Application

5.1 The extent of this instrument is England.

5.2 The territorial application of this instrument is England.

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 To register with the OfS, providers will have to demonstrate that they meet a set of initial registration conditions to ensure they meet the high bar for entry and will be subject to a risk assessment as to the level of risk of a provider not continuing to meet each of its general and specific ongoing registration conditions. The assessment of providers will focus on whether they can achieve outcomes rather than their processes, and will be designed to be able to be applied to providers without a track record.

7.2 The purpose of the register is to represent a single "point of truth" for students, businesses, providers or any member of the public to see a provider's regulatory status and any key information that is pertinent for public. These Regulations set out information that the OfS should publish on its register as a minimum.

7.3 We have kept these Regulations to a minimum to reduce mandatory administrative burdens on the OfS and to allow time to consult on publishing other information, such as when a monetary penalty is imposed, about which the sector may have stronger views.

Consolidation

7.4 <u>The provider's name, contact details, address of their place of business and website address</u>: This information will allow users of the register to contact the provider, find out more information about what it offers and can identify its location. By including the address of the place of business on the register there is then a service address which will enable the OfS, students or staff to serve proceedings.

7.5 <u>The provider's registration category</u>: As proposed in the 2016 White Paper: Higher Education – Success as a Knowledge Economy providers can choose to register in one the below categories: Registered Basic: for providers who want to be officially recognised as offering higher education courses; Approved: for those accessing

student finance without eligibility for grant and no fee cap obligations; and Approved (fee cap): with eligibility for grant and access to student finance in return for a fee cap and access and participation plan (where charging the higher fee amount).

7.6 This information is essential for understanding the level of regulatory assurance the OfS has in relation to a provider, the expectations of the provider including the conditions placed on it, and the provider's eligibility for student support and grant funding.

7.7 The provider's authorisation to Grant Degrees: Providers that wish to award their own degrees (as opposed to delivering courses that lead to a degree from another provider) must first apply for and obtain degree awarding powers, commonly referred to as DAPs. The register will include information regarding whether a provider is authorised to grant taught awards or research awards, the power under which it was so authorised, a description of the awards, whether the authorisation is indefinite or for a limited period (and if so, what period), and, if granted or varied under HERA, the date of authorisation or variation.

7.8 If a provider has a validation agreement: Providers which offer courses that lead to degrees, but do not have their own DAPs, will have a validation agreement with a provider which does. The register will include whether a provider is validated or if a provider is validating degrees for another provider. Having this information and the information above on the register will enable users of the register to check which providers are authorised to offer courses that lead to degrees.

7.9 A Provider's entitlement to University or University College Title: Not all higher education providers are universities. "University" is a protected term, and anyone wishing to use it in their title must be authorised to use it. For providers, which are universities, the register will include information about when and under which mechanism this authorisation was given, allowing users of the register to check whether a provider is authorised to use such title.

7.10 If a provider has a fee limit, and details on how to access the most recent fee limits published by the OfS: Providers within the Approved (fee cap) category will need to operate within a fee limit, which means they cannot charge fees over that limit. Under section 11 of the Higher Education and Research Act 2017 the OfS must annually publish a list of registered providers who have a fee limit condition and the level of that limit. Having this information on the register will enable users of the register to check that the provider is charging the correct fees according to its limit.

7.11 If a provider has an access and participation plan, and details on how to access the plan: An approved access and participation plan will be a condition of registration for an Approved (fee cap) provider that wants to charge the higher fee amount. An access and participation plan (for providers in England) sets out how a provider will sustain or improve access, and student success, which includes retention, attainment and employability for students from disadvantaged and under-represented groups in higher education. The Director for Fair Access and Participation will approve access and participation plans. Having this information on the register enables users of the register to find further details on a provider's access and participation activities if it has a plan.

8. Consultation outcome

8.1 As HEFCE (Higher Education Funding Council for England) manage the current register of higher education providers we have engaged and consulted with them and taken their advice on the key information the OfS will need for regulation of higher education providers.

8.2 Legislation does not require consultation on this set of Regulations and we do not consider the information requirements laid out in this regulation to be controversial.

9. Guidance

9.1 The OfS will publish guidance following the close = of the 'Delivering for students – the new risk-based approach to regulation in higher education' consultation and analysis of responses in early 2018. The guidance will set out how higher education providers can register with the OfS and the full list of information that will be published on its register.

9.2 This guidance is not required in time for the laying of these Regulations as we will have already set out the key information in the 'Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education 'consultation, and the guidance is only needed at the point the register goes live, which is April 2018.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal. This instrument sets out the information which must be included on the OfS register. This is basic information that the OfS will collect as part of how providers register and through the conditions of registration they must meet, which is not covered as part of this instrument.

10.2 The impact on the public sector is expected to be minimal. The OfS will collect the information which is required to be provided on the register as part of the initial and ongoing conditions of registration, which are not covered as part of this instrument.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 Higher Education Providers which are small business have been consulted on the new regulatory framework, and made aware of the information that will be required to be included on the register. Higher Education providers which are small businesses will be able to choose whether they subject themselves to these requirements in return for the benefits that being registered provides. It will be for such providers to decide whether to accept that impact.

12. Monitoring & review

12.1 We do not consider a review clause to be proportionate. This is because HEFCE has already required substantially similar information from HEFCE-funded providers for some years, so we already understand that the likely impact and burden will be low. Information required by these Regulations is the bare minimum required for the OfS

to be able to regulate and enforce its regulatory powers, and this minimum information is not likely to change unless there is a significant change in how the OfS regulates. We do not anticipate such change in the near future, and it would therefore be disproportionate to review the Regulations unless and until the point at which there is significant change.

13. Contact

13.1 Tom Worthington at the Department for Education, telephone: 07388 372223 or email: Thomas.worthington@education.gov.uk, can answer any queries regarding the instrument.