



# Higher Education and Research Act 2017

## 2017 CHAPTER 29

### PART 4

#### GENERAL

#### 112 Cooperation and information sharing between the OfS and UKRI

- (1) The OfS and UKRI may cooperate with one another in exercising any of their functions.
- (2) The OfS and UKRI must, if required to do so by the Secretary of State, cooperate with one another in exercising any of their functions.
- (3) The OfS may provide information to UKRI if the disclosure is made for the purposes of the exercise of any function of UKRI.
- (4) UKRI may provide information to the OfS if the disclosure is made for the purposes of the exercise of any function of the OfS.
- (5) Provision of information which is authorised by this section does not breach—
  - (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the provision of information (however imposed).
- (6) But nothing in this section authorises the OfS or UKRI to provide information where doing so contravenes [<sup>F1</sup>the data protection legislation] .

[<sup>F2</sup>(7) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

#### Textual Amendments

- F1** Words in s. 112(6) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\), s. 212\(1\), Sch. 19 para. 214\(2\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F2** S. 112(7) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\), s. 212\(1\), Sch. 19 para. 214\(3\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

*Status: Point in time view as at 31/10/2018.*

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#### Commencement Information

**I1** S. 112 in force at 1.4.2018 by S.I. 2018/241, reg. 2(m)

### 113 Joint working

- (1) A relevant authority may exercise any of its functions jointly with another relevant authority if the condition in subsection (2) is met.
- (2) The condition is that it appears to the relevant authorities concerned that exercising the function jointly—
  - (a) will be more efficient, or
  - (b) will enable them more effectively to exercise any of their functions.
- (3) In this section “relevant authority” means—
  - (a) the OfS,
  - (b) UKRI, but only in relation to functions exercisable by Research England pursuant to arrangements made under section 97,
  - (c) the Higher Education Funding Council for Wales,
  - (d) the Scottish Further and Higher Education Funding Council,
  - (e) the Secretary of State to the extent that the Secretary of State is exercising functions under section 14 of the Education Act 2002 (power to give financial assistance for purposes related to education or children etc),
  - (f) the Welsh Ministers to the extent that they are exercising their functions under Part 2 of the Learning and Skills Act 2000 (further and sixth form education in Wales), or
  - (g) the Department for the Economy in Northern Ireland, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, in relation to funding higher education, or research, in Northern Ireland but only to the extent that the Department is exercising functions in connection with such funding.
- (4) For the purposes of subsection (3)(g), “higher education” has the same meaning as in Article 2(2) of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).

#### Commencement Information

**I2** S. 113 in force at 1.4.2018 by S.I. 2018/241, reg. 2(m)

### 114 Advice to Northern Ireland departments

- (1) The OfS and UKRI may provide such advisory services as the Department for the Economy in Northern Ireland or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland may require in connection with the discharge of the Department's functions relating to higher education in Northern Ireland.
- (2) The services may be provided on such terms as may be agreed.
- (3) For the purposes of this section “higher education” has the same meaning as in Article 2(2) of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).

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#### **Commencement Information**

**I3** S. 114 in force at 1.4.2018 by S.I. 2018/241, reg. 2(m)

### **115 Transfer schemes**

Schedule 10 contains provision about schemes for the transfer of staff and property, rights and liabilities in connection with—

- (a) the establishment of the OfS or UKRI by this Act, or
- (b) a body or office ceasing to exist by virtue of this Act.

### **116 Power to make consequential provision etc**

- (1) The Secretary of State may by regulations make such provision as appears to the Secretary of State to be appropriate in consequence of any provision made by or under this Act.
- (2) The power conferred by subsection (1) includes power to amend, repeal, revoke or otherwise modify—
  - (a) primary or secondary legislation passed or made before this Act or in the same Session as this Act, or
  - (b) subject to subsections (3) and (4), a Royal Charter granted before this Act is passed or in the same Session as this Act.
- (3) Provision may be made under subsection (1) by virtue of subsection (2)(b) only if such provision appears to the Secretary of State to be appropriate in consequence of provision made by or under any of sections 42 to 60 (degree awarding powers and university title).
- (4) Provision made under subsection (1) by virtue of subsection (2)(b) may not revoke a Royal Charter in its entirety.

### **117 Transitional, transitory or saving provision**

The Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

### **118 Pre-commencement consultation**

- (1) Subsections (2) and (3) apply in relation to a provision of this Act under or by virtue of which the OfS has a function of consulting another person.
- (2) At any time before the provision comes into force (and whether before or after the passing of this Act), the Secretary of State, the DFA or HEFCE or any of them acting jointly—
  - (a) may carry out any consultation that the OfS would have power or a duty to carry out after the provision comes into force, and
  - (b) for that purpose, may prepare drafts of any documents to which the consultation relates.

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- (3) At any time after the provision comes into force, the OfS may elect to treat any consultation carried out or other thing done under subsection (2) by the Secretary of State, the DFA or HEFCE (or any of them acting jointly) as carried out or done by the OfS.
- (4) Where the OfS has a consultation function involving registered higher education providers, references to registered higher education providers in the provisions describing the consultees are to be read as references to English higher education providers—
- (a) for the purposes of applying subsection (2) at any time when there are no registered higher education providers, and
  - (b) for the purposes of applying subsection (3) in relation to any thing done under subsection (2) in reliance upon paragraph (a) of this subsection.
- (5) For the purposes of subsection (4), “a consultation function involving registered higher education providers” is a function of consulting—
- (a) registered higher education providers (whether generally or a description of such providers), or
  - (b) persons with a connection (however described) to such providers.
- (6) In subsections (4) and (5), “English higher education provider” and “registered higher education provider” have the same meaning as in Part 1 (see sections 83 and 85).
- (7) Subsections (8) and (9) apply in relation to a provision of this Act under or by virtue of which UKRI has a function of consulting another person.
- (8) At any time before the provision comes into force (and whether before or after the passing of this Act), the Secretary of State or HEFCE or the Secretary of State and HEFCE acting jointly—
- (a) may carry out any consultation that UKRI would have power or a duty to carry out after the provision comes into force, and
  - (b) for that purpose, may prepare drafts of any documents to which the consultation relates.
- (9) At any time after the provision comes into force, UKRI may elect to treat any consultation carried out or other thing done under subsection (8) by the Secretary of State or HEFCE (or the Secretary of State and HEFCE acting jointly) as carried out or done by UKRI.
- (10) In this section—
- “the DFA” means the Director of Fair Access to Higher Education;
- “HEFCE” means the Higher Education Funding Council for England.

#### Commencement Information

**I4** [S. 118](#) in force at 1.1.2018 by [S.I. 2017/1146](#), [reg. 2\(o\)](#)

## 119 Regulations

- (1) Any power to make regulations under this Act is exercisable by statutory instrument.

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- (2) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 9(1) (prescribed description of providers for whom a transparency condition is mandatory);
  - (b) regulations under section 15(2) (power to impose monetary penalties);
  - (c) regulations under section 29(5) (regulations regarding the OfS's approval of access and participation plans);
  - (d) regulations under section 32(1) (content of such a plan: equality of opportunity);
  - (e) regulations under section 39(3) (prescribed description of providers eligible for financial support);
  - (f) regulations under section 92(2) (regulations changing the structure of UKRI's Councils);
  - (g) regulations under section 95(5) (regulations in connection with changes made to structure of UKRI's Councils or changing the fields of activity of the Councils);
  - (h) regulations under section 116(1) (power to make consequential provision) which include provision that amends, repeals or revokes a provision of primary legislation or of a Royal Charter;
  - (i) regulations under paragraph 2 or 3 of Schedule 2 (regulations prescribing the higher amount, basic amount or floor amount), except regulations to which paragraph 5(2)(b) of that Schedule applies (regulations increasing the higher amount to an amount greater than that required to maintain its value in real terms).
- (3) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) But subsection (3) does not apply to regulations under Schedule 2 to which paragraph 5(2)(b) of that Schedule applies (regulations increasing the higher amount to an amount greater than that required to maintain its value in real terms).
- (5) Regulations under this Act may—
  - (a) make different provision for different purposes, cases or areas,
  - (b) make provision generally or only in relation to specified cases,
  - (c) make incidental, consequential, supplementary, transitional, transitory or saving provision, and
  - (d) include provision framed by reference to matters determined or published by the OfS (whether before or after the regulations are made).
- (6) Nothing in this Act is to be regarded as affecting the generality of subsection (5).
- (7) This section does not apply to regulations made under section 124 (commencement).

## 120 Directions

Any power conferred by this Act to give directions includes power, exercisable in the same manner and subject to the same conditions or limitations, to vary or revoke directions previously given.

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## 121 General interpretation

In this Act—

“notice” means written notice (and to “notify” means to give written notice);

“the OfS” has the meaning given by section 1;

“primary legislation” means—

- (a) an Act of Parliament;
- (b) an Act of the Scottish Parliament;
- (c) a Measure or Act of the National Assembly for Wales;
- (d) Northern Ireland legislation;

“secondary legislation” means an instrument made under primary legislation;

“UKRI” has the meaning given by section 91.

## 122 Minor and consequential amendments

(1) Schedule 11 contains minor and consequential amendments relating to Part 1.

(2) Schedule 12 contains minor and consequential amendments relating to Part 3.

### Commencement Information

**I5** [S. 122\(1\)](#) in force at 1.4.2018 for specified purposes by [S.I. 2018/241](#), [reg. 2\(n\)](#)

**I6** [S. 122\(2\)](#) in force at 1.4.2018 for specified purposes by [S.I. 2018/241](#), [reg. 2\(o\)](#)

**I7** [S. 122\(2\)](#) in force at 31.10.2018 for specified purposes by [S.I. 2018/1054](#), [reg. 2\(c\)](#)

## 123 Extent

(1) Subject to the rest of this section, this Act extends to England and Wales only.

(2) The following provisions also extend to Scotland and Northern Ireland—

- (a) section 25 (rating the quality of, and the standards applied to, higher education);
- (b) sections 79 and 80 (powers to obtain and use application-to-acceptance information);
- (c) section 83 (meaning of “English higher education provider” etc);
- (d) Part 3 (research);
- (e) this Part.

(3) Section 86(9)—

- (a) so far as it relates to section 22(4B)(e) of the Teaching and Higher Education Act 1998, also extends to Scotland and Northern Ireland;
- (b) so far as it relates to section 22(4B)(f), (g) and (h) of that Act, also extends to Northern Ireland.

(4) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the enactment amended or repealed.

(5) Subsection (4) does not apply to the amendment made by section 86(4) (power to make alternative payments) which—

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- (a) so far as it inserts subsection (4B)(e) into section 22 of the Teaching and Higher Education Act 1998, extends to England and Wales, Scotland and Northern Ireland,
  - (b) so far as it inserts subsection (4B)(f), (g) and (h) into that section, extends to England and Wales and Northern Ireland, and
  - (c) otherwise extends to England and Wales only.
- (6) Subsection (4) does not apply to the amendments and repeals made by paragraph 13 of Schedule 12 to section 41 of the Patents Act 1977 which have the same extent as that section.

## 124 Commencement

- (1) The following provisions of this Part come into force on the day on which this Act is passed—
- (a) sections 115 to 117;
  - (b) sections 119 to 121;
  - (c) section 123;
  - (d) this section;
  - (e) section 125.
- (2) Sections 86, 87 and 88 come into force, so far as relating to a matter specified in an entry in column 1 of the following table, on such day as the person specified in the corresponding entry in column 2 of the table may by regulations made by statutory instrument appoint, after consulting the person (if any) specified in the corresponding entry in column 3 of the table.

TABLE

<i>1. Matters:</i>	<i>2. Commencement by:</i>	<i>3. After consulting:</i>
Powers exercisable by the Welsh Ministers	The Welsh Ministers	
Powers exercisable by the Secretary of State concurrently with the Welsh Ministers	The Secretary of State	The Welsh Ministers
Powers exercisable by the Secretary of State in relation to Wales	The Secretary of State	The Welsh Ministers
Other matters	The Secretary of State.	

- (3) Section 89(2)(h)(ii) and (4) come into force, in relation to Wales, on such day as the Welsh Ministers may by regulations made by statutory instrument appoint.
- (4) Section 110 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (5) The remaining provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.

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- (6) Regulations under this section may appoint different days for different purposes or areas.

**125 Short title**

- (1) This Act may be cited as the Higher Education and Research Act 2017.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.



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