



Department
for Education

Guidance for Further Education Corporations:

**Process and Criteria for transfer out of
the Further Education sector and
becoming a Higher Education
Corporation**

April 2019

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Summary

This publication provides non-statutory guidance from the Department for Education. This guidance sets out the criteria and process for Further Education Corporations (FECs) who are seeking to transfer out of the further education sector (FE sector) and become a Higher Education Corporation (HEC).

Expiry or review date

This guidance will be reviewed before August 2020.

Who is this publication for?

This guidance is for Further Education Corporations considering making an application to transfer out of the FE sector and become a HEC.

Main points

This guidance:

- explains the pre-application requirements which must be met before an application to transfer out of the FE sector and become a HEC can be made;
- explains the application process and criteria; and,
- provides detail on the evidence requirements to demonstrate the criteria.

Introduction

1. This guidance sets out the criteria and process for Further Education Corporations (FECs) who are seeking to transfer out of the statutory Further Education Sector and become a Higher Education Corporation (HEC) under section S122ZA of the Education Reform Act 1988. It updates and supersedes the “Guidance for Further Education Corporations: Criteria and process for applying to transfer from the Further Education to the Higher Education Sector” published by the Department for Business, Innovation, and Skills in September 2015. In particular it:

- explains the pre-application requirements which must be met before an application can be made;
- explains the application process and criteria; and,
- provides detail on the evidence requirements to demonstrate the criteria.

2. This guidance takes effect from 1st April 2019. Applications may be made in accordance with its process and requirements from this date. However, the Secretary of State will only begin approving formal orders granting HEC status to applications that are successful under this process from 1st August 2019, to align with the commencement of provisions within the Higher Education and Research Act 2017 (HERA) affecting HECs.

3. For an English FEC to be eligible for HEC status under these new arrangements it must continue to meet the same Higher Education (HE) student ratio criteria as before. However, as from 1 August 2019, this will be an administrative rather than a statutory requirement. The methodology for calculating the student ratios has also changed.

4. The full-time equivalent (FTE) enrolment number of students for higher education courses¹ must still exceed 55 per cent of the total full-time equivalent enrolment number. However the previous method of calculating the FTE number (calculated in accordance with [section 161](#) and [Schedule 9 of the Education Reform Act 1988](#)) was based on assumptions and weightings by mode of study. There will, however, be a [new calculation methodology \(created by the OfS and also to be used in UT applications from 1 April 2019\)](#) which will better reflect the evolving nature of Higher Education in England. In particular, it will reflect the wide variety of part-time and distance-learning pathways and

¹ Higher education courses are programmes leading to qualifications, or credits which can be counted towards qualifications, which are above the standard of GCE A-levels or other Level 3 qualifications. They include degree courses, postgraduate courses and sub-degree courses such as those leading to HNCs or HNDs. For the full details of courses of higher education please refer to [section 235\(2\)\(e\)](#) of and [Schedule 6](#) to the Education Reform Act 1988.

the existence of accelerated degrees, and so calculate the study time by students in a way that more accurately reflects their actual activity during the year.

5. Other provisions, also due to commence from 1st August 2019, will allow the FEC itself to appoint the first members of the HEC's governing body (the Secretary of State will no longer be required to do this); and also to approve the HECs new Instrument and Articles of Government (there will no longer be a Privy Council approval process required).

6. The other HERA provisions affecting HECs, aim to deregulate the statutory requirements which apply to HECs in England, allowing HECs enhanced flexibility and autonomy; and to set them on a more level playing field with other types of higher education provider ([section 90](#) and [Schedule 8 of HERA](#), and [paragraphs 488 to 506 of HERA's Explanatory Notes](#) give more detail on all of the changes). It is intended and envisaged that this deregulation will empower HECs to innovate and better respond to changes in the new environment of the [OfS's Regulatory Framework](#).

7. Registered Higher Education Providers in England, including HECs that are registered, are regulated as set out in the Office for Students' (OfS) [Regulatory Framework](#).

8. Registration with the OfS (and so OfS regulation) is voluntary and organisations/companies may provide higher education courses without registering. However, those providers that do not register cannot access any of the benefits of registration listed in the link above. Unregistered providers are not regulated by the OfS, and so the OfS will not be ordinarily assess an unregistered provider's quality, and their students cannot receive government loans.

9. As part of the process to become a HEC, a FEC will need to be assessed by the OfS and therefore must first be registered with the OfS as a provider of Higher Education.

10. The process of application for English HEC status is administered by the OfS on behalf of the Secretary of State for Education (DfE). Following receipt of advice from the OfS, the Secretary of State will make the decision and arrangements for making the Order to create the new HEC will be taken forward by DfE.

University and University College title

11. As FECs are part of the statutory Further Education Sector (as defined at [section 91\(3\) FHEA 1992](#)) they are not eligible to receive University or University College title status. This is because FECs and the institutions they conduct are principally concerned with the delivery of Further Education (FE); whereas universities are primarily providers of Higher Education (HE). Although FECs do provide some HE provision, it would be misleading if an FEC that delivers mainly FE were to be given a title which suggested that the majority of their courses are HE.

12. However, a FEC that is eligible to apply for HEC status under this guidance, may also wish later to apply for University or University College status, and may find it helpful to refer to the University and University College title eligibility criteria and application requirements set out in [guidance](#) issued by the OfS.

Section 1: Before making an application

13. If you are considering making an application to transfer out of the Further Education Sector and to become a Higher Education Corporation, you should contact the OfS at the earliest stage at: regulation@officeforstudents.org.uk, to discuss eligibility, evidence requirements, likely timescales and advice on how to proceed (see Sections 2 and 3), before beginning the necessary pre-application consultation..
14. You should also contact the relevant ESFA Territorial Team to discuss the most appropriate approach to a consultation.

Consultation process

15. If you are considering transferring out of the Further Education Sector to become a HEC (and potentially moving towards a further expansion of your HE provision), you must undertake a full consultation. This must include a consultation on the proposal with key stakeholders and local interested parties. The consultation should consider carefully and thoroughly the impact of this change on the local community and on the overall further education and training offer for learners and employers, consulting widely and transparently on your proposals, and taking explicit account of the views of learners, employers and the broader community that you serve. The process for consulting will be dependent on the individual circumstances of the applicant. In all cases you will be required to provide evidence of who has been consulted and a summary of the responses, including the level of support and/or any concerns raised.

16. In particular, you must provide evidence demonstrating support for the benefits that the proposal is expected to achieve. For example:

- Evidence of the demand for a new or highly distinctive HE offer, and how the proposal will support this (primarily in terms of subject, but possibly also in terms of learning environment or approach), that would add to the quality or diversity of the HE offer to students, but in an area which has academic credibility as a suitable subject or specialism for an HE provider; and/or
- If you have HE provision which, in subject coverage or delivery, is already available to students, how the proposal would enhance the offer to students overall and/or add to the skills, growth or economy of your locality; and,
- Demonstrate strong demand from students and a strong employment record.

17. Before making your application, you will want to be aware of the factors that DfE will consider in deciding whether a transfer out of the Further Education sector may be appropriate, and to take these into account both in your consultation and in the evidence that you subsequently include within your application. In particular, DfE will consider whether the consultation responses and other supporting evidence demonstrates that HEC status would better enable you to:

- address a HE 'cold spot';
- offer provision that is otherwise not available locally, regionally or nationally;
- offer a model of delivery which provides students with a choice of study not available locally or regionally;
- support the delivery of higher or degree apprenticeships;
- offer HE provision which meets your local enterprise partnership priorities;
- support an increase in HE students from low participation areas;
- make other contributions to the enhancement of HE; and,
- bring wider benefits to the local economy.

18. You will need to demonstrate that becoming a HEC will make a contribution to all of these areas, unless you can provide an adequate justification, with supporting evidence of why the transfer to a HEC will not make a contribution to a particular area, and why it is nonetheless appropriate for the order to be made.

19. If the recommendation of the consultation is that you should transfer out of the Further Education sector, you should formally confirm agreement of that decision with DfE, ESFA and the OfS with whom you should have been working closely throughout the process.

Other issues

20. The evidence that you are required to submit to the OfS will depend on the evidence that it may already hold on you. You are therefore advised to discuss the application requirements with the OfS before submitting your application.

21. In all cases the application process is rigorous and thorough and you should expect it to take up to 12 months from initial contact with the OfS through to formal notification by the Secretary of State of the outcome (Section 5). This timeframe is dependent on a number of factors, such as quality of the evidence provided at application and the extent of additional evidence required during the assessment. You may ask the OfS about progress of your application at any time, however, it is likely that you will be in close contact with the OfS throughout the process.

Section 2: Who is eligible to apply?

22. You are eligible to apply to become a Higher Education Corporation in England if:

- you are a FEC in England;
- you have successfully demonstrated through the consultation process that an application to transfer out of the Further Education Sector is appropriate;
- you are registered with the OfS and are complying fully with your conditions of registration; and,
- your full time equivalent (FTE) Higher Education students exceed 55 per cent of the total number of FTE students (see the OfS student number technical specification for the detailed methodology).

23. Please note that where you have already satisfied some aspects of the Criteria in this guidance during the process of registration with the OfS, by relying on evidence from the Education and Skills Funding Agency (ESFA), you must now, to become a HEC, be able to satisfy the OfS conditions directly yourself.

Section 3: Submitting an application

24. To apply for transfer you must submit to the OfS:
- a letter from the Chair of your governing body (or equivalent) stating that your organisation considers that it meets the criteria for transfer; and
 - the full Case for transfer out of the Further Education Sector and to become a HEC setting out all the evidence to demonstrate that you meet all of the criteria in Section 2, and the benefits that the proposal is expected to achieve.
 - evidence gathered through the consultation on your proposal including who has been consulted and a summary of the responses, the level of support and/or any concerns raised. Where possible, you are encouraged to use documentation that has been produced in the normal course of your business or that is publicly available.
25. Please note that the responsibility for the content of and submission of the case for transfer rests wholly with you, but that OfS will provide advice to clarify criteria and suitability of evidence as required throughout the preparation of your case.
26. The OfS is subject to the Freedom of Information Act 2000, Data Protection legislation and the Environmental Information Regulations 2004. Should the OfS receive a request for information related to your application then it will ensure any information that falls within an exemption is protected. Where appropriate the OfS will consult with you.
27. Following its detailed consideration of your application and approval by the Provider Risk Committee, the OfS will submit its formal advice against the criteria set out in Section 2 to DfE to inform the Secretary of State's decision.

Section 4: OfS's assessment of your application

28. The OfS will carry out a detailed assessment of your application against the criteria set out in Section 2. In doing so it will consider all relevant information including advice received from other interested parties as appropriate, for example, ESFA.
29. You must be prepared to engage with the OfS during its assessment and to submit such other information as the OfS may reasonably request in connection with your application.
30. The assessment process is thorough and rigorous and checks, for example with ESFA and through web searches, will be performed to verify the information provided in the application. Further reports will not normally be commissioned during the process, but reference may be made during the assessment process to information published by organisations such as the ESFA, the Office of the Independent Adjudicator for Higher Education, and the Higher Education Statistics Agency (HESA) and the National Student Survey (NSS).

OfS's advice to DfE

31. Following its detailed consideration of your application and approval by the Provider Risk Committee, the OfS will submit its formal advice on all aspects of your application to DfE to inform the Secretary of State's decision.

DfE's consideration of OfS's advice

32. If, having considered all the advice received, DfE has any concerns about your application you will be informed of the outcome of the assessment and given the opportunity to provide further clarification and explanation before advice is submitted to the Secretary of State and a final decision made.
33. On the basis of all the advice received, including, as appropriate, any additional clarification and explanation as above, the Secretary of State will take a view as to whether you meet all the criteria to become a HEC.

Section 5: Notification of decision and next steps

Successful application

34. If the Secretary of State approves your application DfE will write to you to confirm that you meet the criteria and, as appropriate, setting out any conditions.

35. The Secretary of State will lay an Order before Parliament which will usually come into force 21 days after laying². It is only at this point that becoming a HEC takes legal effect. The decision letter will confirm the process and timing for laying the Order.

Reincorporation as a Higher Education Corporation

36. Section 122ZA of the Education Reform Act 1988³ provides for a Further Education Corporation in England to become a Higher Education Corporation.

37. On the date that the Order comes into force the new HEC should appoint the first members of its governing body, and then the governing body proceed to approve and adopt the new HEC's Instrument and Articles of Government.

Unsuccessful application

38. If the Secretary of State considers that the criteria for becoming a HEC have not been met, DfE will write to you confirming that the application has been unsuccessful and setting out the reasons for the decision.

² The Order is subject to negative resolution procedure and must be laid before Parliament for a minimum of 21 days before it comes into force. It is also subject to possible annulment for a total of 40 days. Annulment means that the Order can be revoked if either House passes a resolution annulling it within 40 days. Any member of either House can put down a motion that an instrument can be annulled. You are therefore advised to delay making a formal announcement on transfer until the full 40 days has expired.

³ [As amended by the Higher Education and Research Act 2017](#) (HERA), with effect from 1 August 2019.

Section 6: Rights and obligations upon becoming a HEC

Subsequent change of legal status, delivery model or control/ownership

39. As a HEC, if at any point you are considering a change to your legal status, delivery model or control/ownership (including where a merger is being considered) you should contact the OfS as soon as possible to discuss the possible implications. As appropriate, this may also have implications if you hold Degree Awarding Powers or University or University College title and these should be discussed with the OfS at the same time.



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Reference: DFE-00070-2019



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