



Further and Higher Education Act 1992

1992 CHAPTER 13

PART I

FURTHER EDUCATION

CHAPTER I

RESPONSIBILITY FOR FURTHER EDUCATION

The new funding councils

1 The Further Education Funding Councils

- (1) There shall be established—
 - (a) a body corporate to be known as the Further Education Funding Council for England to exercise in relation to England the functions conferred on them, and
 - (b) a body corporate to be known as the Further Education Funding Council for Wales to exercise in relation to Wales the functions conferred on them.
- (2) The Further Education Funding Council for England shall consist of not less than twelve nor more than fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) The Further Education Funding Council for Wales shall consist of not less than eight nor more than twelve members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (4) In appointing the members of a council the Secretary of State—
 - (a) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, the provision of education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of education and, in appointing such persons,

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- he shall have regard to the desirability of their being currently engaged in the provision of further education or in carrying responsibility for such provision, and
- (b) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (5) In this Part of this Act any reference to a council is to a further education funding council.
- (6) References in the Education Acts to the appropriate further education funding council, in relation to any educational institution—
- (a) where the institution mainly serves the population of England, are to the Further Education Funding Council for England and, where the institution mainly serves the population of Wales, are to the Further Education Funding Council for Wales, and
- (b) where the institution receives financial support from a further education funding council, are to that council also (if different).
- (7) Any dispute as to whether any functions are exercisable by one of the councils shall be determined by the Secretary of State.
- (8) Schedule 1 to this Act has effect with respect to each of the councils.

The new further education sector

2 Full-time education for 16 to 18 year-olds

- (1) It shall be the duty of each council to secure the provision for the population of their area of sufficient facilities for education to which this subsection applies, that is, full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years.
- (2) That duty extends to all persons among that population who may want such education and have not attained the age of nineteen years.
- (3) A council shall discharge that duty so as—
- (a) to secure that the facilities are provided at such places, are of such character and are so equipped as to be sufficient to meet the reasonable needs of all persons to whom the duty extends, and
- (b) to take account of the different abilities and aptitudes of such persons.
- (4) A council may secure the provision of facilities for education to which subsection (1) above applies for persons to whom that duty does not extend.
- (5) A council shall discharge their functions under this section so as to make the most effective use of the council's resources and, in particular, to avoid provision which might give rise to disproportionate expenditure.
- (6) In discharging those functions a council shall have regard to any education to which subsection (1) above applies provided by schools maintained by local education authorities, grant-maintained schools, special schools not maintained by local education authorities, city technology colleges or city colleges for the technology of the arts.

3 Part-time education, and full-time education for those over 18

- (1) It shall be the duty of each council to secure the provision for the population of their area of adequate facilities for education to which this subsection applies, that is—
 - (a) part-time education suitable to the requirements of persons of any age over compulsory school age, and
 - (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years,where the education is provided by means of a course of a description mentioned in Schedule 2 to this Act.
- (2) A council shall discharge that duty so as—
 - (a) to secure that facilities are provided at such places, are of such character and are so equipped as to meet the reasonable need for education to which subsection (1) above applies, and
 - (b) to take account of the different abilities and aptitudes of persons among that population.
- (3) A council may secure the provision of facilities for education to which subsection (1) above applies where they are not under a duty to do so.
- (4) A council shall discharge their functions under this section so as to make the most effective use of their resources and, in particular, to avoid provision which might give rise to disproportionate expenditure.
- (5) In discharging those functions a council shall have regard to any education to which subsection (1) above applies provided by institutions outside the further education sector or higher education sector.
- (6) The Secretary of State may by order amend Schedule 2 to this Act.

4 Persons with learning difficulties

- (1) In exercising their functions under sections 2 and 3 of this Act, each council shall (subject to the provisions of those sections) do so in accordance with subsections (2) to (4) below.
- (2) Each council shall have regard to the requirements of persons having learning difficulties.
- (3) A council shall, if they are satisfied in the case of any person among the population of their area who has a learning difficulty and is over compulsory school age but has not attained the age of twenty-five years, that—
 - (a) the facilities available in institutions within the further education sector or the higher education sector are not adequate for him, and
 - (b) it is in his best interests to do so,secure provision for him at an institution outside those sectors.
- (4) A council shall, if they are satisfied that they cannot secure such provision for a person as they are required to secure under subsection (3) above unless they also secure the provision of boarding accommodation for him, secure the provision of boarding accommodation for him.

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- (5) In exercising their functions under sections 2 and 3 of this Act in the case of any person who has a learning difficulty and is over compulsory school age, a council may—
- (a) if they are satisfied that the facilities available in institutions within the further education sector or the higher education sector are not adequate for him, secure provision for him at an institution outside those sectors, and
 - (b) secure the provision of boarding accommodation for him.
- (6) Subject to subsection (7) below, for the purposes of this section a person has a “learning difficulty” if—
- (a) he has a significantly greater difficulty in learning than the majority of persons of his age, or
 - (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions within the further education sector for persons of his age.
- (7) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

Finance

5 Administration of funds by councils

- (1) A council may give financial support to the governing body of any institution within the further education sector or the higher education sector in respect of—
- (a) the provision of facilities for further education, or
 - (b) the provision of facilities, and the carrying on of any activities, which the governing body of the institution consider necessary or desirable to be provided or carried on for the purpose of or in connection with the provision of facilities for further education.
- (2) A council may give financial support to the governing body of any institution within the further education sector in respect of—
- (a) the provision of facilities for higher education, or
 - (b) the provision of facilities, and the carrying on of any activities, which the governing body of the institution consider necessary or desirable to be provided or carried on for the purpose of or in connection with the provision of facilities for higher education.
- (3) A council may give financial support to a further education corporation for the purposes of any educational institution to be conducted by the corporation, including the establishment of such an institution.
- (4) For the purposes of section 4(3) to (5) of this Act, a council may give financial support to any person other than a local education authority, the governing body of a grant-maintained school or a person maintaining or carrying on a city technology college or city college for the technology of the arts.
- (5) A council may give financial support to any person in respect of—
- (a) the provision of training or advice, or
 - (b) the carrying on of research or other activities, relevant to the provision of facilities for further education.

- (6) Financial support under this section—
- (a) shall take the form of grants, loans or other payments, and
 - (b) may be given on such terms and conditions as the council think fit.
- (7) The terms and conditions on which a council make any grants, loans or other payments under this section may in particular—
- (a) enable the council to require the repayment, in whole or in part, of sums paid by the council if any of the terms and conditions subject to which the sums were paid is not complied with, and
 - (b) require the payment of interest in respect of any period during which a sum due to the council in accordance with any of the terms and conditions remains unpaid,
- but shall not relate to the application by the person to whom the financial support is given of any sums derived otherwise than from the council.
- (8) A council may not give any financial support except in accordance with this section.

6 Administration of funds: supplementary

- (1) Before exercising their discretion under section 5(1) to (4) of this Act with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, a council shall consult such of the following bodies as appear to the council to be appropriate to consult in the circumstances—
- (a) such bodies representing the interests of institutions within the further education sector as appear to the council to be concerned, and
 - (b) the governing body of any particular institution within that sector which appears to the council to be concerned.
- (2) In exercising their functions in relation to the provision of financial support under section 5 of this Act a council shall have regard to the desirability of not discouraging any institution in respect of which such support is given from maintaining or developing its funding from other sources.
- (3) In exercising those functions a council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to them to be an appropriate balance in the support given by them as between institutions of a denominational character and other institutions.
- (4) For the purposes of subsection (3) above an institution is an institution of a denominational character if it appears to the council that either—
- (a) at least one quarter of the members of the governing body of the institution are persons appointed to represent the interests of a religion or religious denomination,
 - (b) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination, or
 - (c) any of the property held for the purposes of the institution is held upon trust for or in connection with—
 - (i) the provision of education, or
 - (ii) the conduct of an educational institution,

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in accordance with the tenets of a religion or religious denomination.

(5) Where—

- (a) the governing body of an institution within the further education sector to which this subsection applies (“the sponsoring body”) receive from the governing body of an institution outside that sector (“the external institution”) a request for the sponsoring body to apply to a council for financial support in respect of the provision of facilities for part-time, or adult, further education by the external institution in any academic year, and
- (b) there are no arrangements for the provision in that year of any facilities of the kind specified in the application for the population of the sponsoring body’s locality by any other institutions or the arrangements for such provision for that population in that year by other institutions are inadequate,

the sponsoring body shall apply to the council specified in the request for financial support to be given to the sponsoring body on terms requiring it to be applied in respect of the provision of the facilities specified in the application by the external institution in that year.

(6) In subsection (5) above—

- (a) references to part-time, or adult, further education are to education provided by means of courses of any description mentioned in Schedule 2 to this Act, and
- (b) references to the provision of facilities for such education by any institution in any academic year include the provision of facilities, and the carrying on of any activities, which the governing body of the institution consider necessary or desirable to be provided or carried on for the purpose of or in connection with the provision of facilities for such education by them in that year,

and that subsection applies to an institution within the further education sector if the institution is for the time being specified in an order, or for the time being falls within a description specified in an order, made by the Secretary of State.

7 Grants to councils

- (1) The Secretary of State may make grants to each of the councils of such amounts and subject to such terms and conditions as he may determine.
- (2) The terms and conditions subject to which grants are made by the Secretary of State to either of the councils—
 - (a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the council in respect of activities carried on by the institution, but
 - (b) shall not otherwise relate to the provision of financial support by the council in respect of activities carried on by any particular institution or institutions.
- (3) Such terms and conditions may in particular—
 - (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with, and

- (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

Further functions

8 Supplementary functions

- (1) Each council—
 - (a) shall provide the Secretary of State with such information or advice relating to the provision for the population of their area of further education as he may from time to time require, and
 - (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit,and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.
- (2) Each council shall keep under review the matters in respect of which they have power under this Part of this Act to give financial support.
- (3) Where in the case of an institution within the further education sector or which provides any facilities for further education, the Secretary of State has, before the date on which the councils were established, made any grant, loan or other payment to the institution subject to any terms or conditions—
 - (a) all the functions of the Secretary of State in relation to the grant, loan or other payment shall, if the Secretary of State so directs, be exercisable on his behalf by a council in accordance with such directions as he may give from time to time,
 - (b) the council shall keep the Secretary of State informed of any action they take or propose to take in the exercise of those functions, and
 - (c) the council shall immediately pay to the Secretary of State any sums received by them in the exercise of those functions.
- (4) The Secretary of State may by order confer or impose on a council such supplementary functions relating to the provision of education as he thinks fit.
- (5) For the purposes of subsection (4) above a function is a supplementary function in relation to a council if it is exercisable for the purposes of—
 - (a) the exercise by the Secretary of State of functions of his under any enactment, or
 - (b) the doing by the Secretary of State of anything he has power to do apart from any enactment,and it is relevant to the provision of facilities for further education for the population of the council's area.

9 Assessment of quality of education provided by institutions

- (1) Each council shall—
 - (a) secure that provision is made for assessing the quality of education provided in institutions within the further education sector, and

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- (b) establish a committee, to be known as the “Quality Assessment Committee”, with the function of giving them advice on the discharge of their duty under paragraph (a) above and such other functions as may be conferred on the committee by the council.
- (2) The majority of the members of the committee—
 - (a) shall be persons falling within subsection (3) below, and
 - (b) shall not be members of the council.
- (3) Persons fall within this subsection if they appear to the council to have experience of, and to have shown capacity in, the provision of further education and, in appointing such persons, the council shall have regard to the desirability of their being currently engaged in the provision of further education or in carrying responsibility for such provision.
- (4) Her Majesty’s Chief Inspector of Schools in Wales shall, if asked to do so by the Further Education Funding Council for Wales, assess the quality of education provided in any institutions within the further education sector or any other institutions for which the council give, or are considering giving, financial support under this Part of this Act.
- (5) Schedule 1 to this Act shall apply to a committee established under this section as it applies to committees established under paragraph 8 of that Schedule.

Adjustment of local education authority sector

10 Functions of local education authorities in respect of secondary education

- (1) In section 8 of the Education Act 1944 (duties of local education authorities) for subsection (1)(b) (secondary education) there is substituted—
 - “(b) for providing full-time education suitable to the requirements of pupils of compulsory school age, being either senior pupils or junior pupils who have attained the age of ten years and six months and whom it is expedient to educate together with senior pupils of compulsory school age.”
- (2) After subsection (1) of that section there is inserted—
 - “(1A) A local education authority shall have power to secure the provision for their area of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, including provision for persons from other areas.”
- (3) In subsection (2) of that section (subsidiary obligations) for “fulfilling their duties” there is substituted “exercising their functions”.

11 Functions of local education authorities in respect of further education

For section 41 of the Education Act 1944 (functions of local education authorities in respect of further education) there is substituted—

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“41 Functions of local education authorities in respect of further education

- (1) It shall be the duty of every local education authority to secure the provision for their area of adequate facilities for further education.
- (2) Subsection (1) above does not apply to education to which section 2(1) or 3(1) of the Further and Higher Education Act 1992 applies, but in respect of education to which section 3(1) of that Act applies a local education authority may—
 - (a) secure the provision for their area of such facilities as appear to them to be appropriate for meeting the needs of the population of their area; and
 - (b) do anything which appears to them to be necessary or expedient for the purposes of or in connection with such provision.
- (3) Subject to subsection (4) below and section 14(1) to (4) of the Further and Higher Education Act 1992, in this Act “further education” means—
 - (a) full-time and part-time education suitable to the requirements of persons over compulsory school age (including vocational, social, physical and recreational training); and
 - (b) organized leisure-time occupation provided in connection with the provision of such education.
- (4) In this Act “further education” does not include higher education or secondary education.
- (5) In subsection (3)(b) above “organized leisure time occupation” means leisure-time occupation, in such organized cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose.
- (6) A local education authority may secure the provision of further education for persons from other areas.
- (7) In exercising their functions under this section a local education authority shall have regard to any educational facilities provided by institutions within the higher education sector or the further education sector, and other bodies, which are provided for, or available for use by persons in, their area.
- (8) In exercising their functions under this section a local education authority shall also have regard to the requirements of persons over compulsory school age who have learning difficulties.
- (9) Subject to subsection (10) below, for the purposes of subsection (8) above a person has a “learning difficulty” if—
 - (a) he has a significantly greater difficulty in learning than the majority of persons of his age; or
 - (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided in pursuance of the duty under subsection (1) above for persons of his age.
- (10) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

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- (11) A local education authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section.”

Provision of further education in schools

12 Provision of further education in maintained schools

- (1) At the end of section 9 of the Education Act 1944 (power of local authority to establish schools) there is added—

“(7) The powers conferred by subsection (1) of this section shall not extend to establishing a school to provide—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years”.

- (2) In section 13 of the Education Act 1980 (requirement to publish proposal for alteration of voluntary school) after subsection (1) there is inserted—

“(1A) The reference in subsection (1) above to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years;

and no proposals under this section by any persons that a school established or proposed to be established by them, or by persons whom they represent, should be maintained by a local education authority shall be approved by the Secretary of State if the school or proposed school is to provide education falling within paragraph (a) or (b) above”.

- (3) In Part III of the Education (No. 2) Act 1986 (conduct of county, voluntary and maintained special schools) after section 16 there is inserted—

“16A Provision of further education

- (1) The governing body of any county, voluntary or maintained special school shall be responsible for determining whether or not to provide—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years,

but the governing body of a maintained special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.

- (2) It shall be the duty of the governing body of any such school which provides such education to secure that such education is not provided at any time in a

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room where pupils are at that time being taught except in such circumstances as may be prescribed.”

- (4) In section 9 of the Education Reform Act 1988 (exceptions, etc, relating to religious education for pupils) after subsection (1) there is inserted—

“(1A) It shall not be required, as a condition of any person attending any maintained school to receive further education, that he shall attend or abstain from attending any Sunday school or any place of religious worship.”

- (5) In section 33 of that Act (schemes for financing schools), in subsection (4)(a) (meaning of general schools budget) after “that authority” there is inserted “(other than expenditure in respect of the provision of part-time education suitable to the requirements of persons of any age over compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years)”.

- (6) In section 36 of that Act (delegation to governing body of management of school’s budget share), after subsection (5) (governing body entitled to spend sums for the purposes of the school) there is inserted—

“(5A) In subsection (5) above “the purposes of the school” does not include purposes wholly referable to the provision of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years”.

- (7) In section 38 of that Act (determination of budget share), after subsection (3) (matters that must or may be taken into account) there is inserted—

“(3A) The allocation formula under a scheme shall not include provision for taking into account persons provided with—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years”.

- (8) In section 105 of that Act (city technology colleges etc.), in subsection (2)(b) (must provide education for pupils who have attained eleven but not nineteen years) “but not the age of nineteen years” is omitted.

- (9) In section 106 of that Act (prohibition of charges), after subsection (1) (no charges for admission to maintained school) there is inserted—

“(1A) Subsection (1) above shall not apply to the admission of any person to any maintained school for the purpose of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years”.

13 Provision of further education in grant-maintained schools

- (1) In section 57(5) of the Education Reform Act 1988 (provision by grant-maintained school of education which is neither primary nor secondary) after “provided that” there is inserted—

- “(a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years; or
(b)”.

- (2) At the end of section 79 of that Act (grants to grant-maintained schools in respect of expenditure for the purposes of the school) there is added—

“(13) In this section “the purposes of the school” do not include purposes wholly referable to the provision of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
(b) full-time education suitable to the requirements of persons who have attained the age of nineteen years”.

- (3) In section 89 of that Act (change of character of grant-maintained school) after subsection (1) there is inserted—

“(1A) The reference in subsection (1) above to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with part-time education suitable to the requirements of persons of any age over compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years, but it shall be the duty of the governing body of any grant-maintained school which provides such education to secure that it is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed.”

*General***14 Meaning of “further education”, “secondary education”, “school” and “pupil”**

- (1) Subject to subsection (2) below, for the purposes of the Education Acts education to which this subsection applies, that is, full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, is further education not secondary education.

- (2) Subject to subsection (3) below, for the purposes of those Acts—

- (a) education falling within section 8(1)(b) of the Education Act 1944 (full-time education suitable to the requirements of pupils of compulsory school age), and
(b) education to which subsection (1) above applies provided at a school where education falling within section 8(1)(b) of that Act is also provided,

is secondary education not further education.

- (3) For the purposes of the Education Acts education provided for persons who have attained the age of nineteen years is further education not secondary education; but

where a person has begun a particular course of secondary education before attaining the age of eighteen years, then, if he continues to attend that course, the education does not cease to be secondary education by reason of his having attained the age of nineteen years.

- (4) In subsections (1) to (3) above “education” does not include higher education.
- (5) For the purposes of the Education Acts “school” means an educational institution not within the further education sector or the higher education sector, being an institution for providing any one or more of the following—
- (a) primary education,
 - (b) education which is secondary education by virtue of subsection (2)(a) above, or
 - (c) education to which subsection (1) above applies,
- whether or not the institution also provides further education or other secondary education.
- (6) For the purposes of the Education Acts, and of any instrument made or having effect as if made under those Acts, “pupil” means a person for whom education is being provided at a school, other than—
- (a) a person who has attained the age of nineteen years for whom further education is being provided, or
 - (b) a person for whom part-time education suitable to the requirements of persons of any age over compulsory school age is being provided.