

LEARNING AND SKILLS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 9: Amendments

233. Where provisions in Schedule 9 make straight forward amendments, including amendments consequential on the provisions in the rest of the Act, no commentary is offered.
234. **Paragraph 11** amends section 1 of the Education (Fees and Awards) Act 1983. Section 1 of the Education (Fees and Awards) Act 1983 gives a power to make regulations authorising certain categories of institutions to charge higher fees for overseas students than for home students. Without this authority, an institution which charged higher fees for overseas students than for home students might be in breach of the Race Relations Act 1976. The categories of institutions set out in section 1 of the Education (Fees and Awards) Act 1983 include an institution within the FE sector and an institution which provides further education and which is “substantially dependent for its maintenance on public funds and either is specified in regulations or is of a class or description so specified”. The LSC and the CETW have powers to fund any provider of post-16 education and they may wish to provide such funding subject to a condition that fees charged to home students do not exceed a certain amount but with no conditions on fees charged to overseas students. An institution which receives funding subject to this condition need not necessarily be in the FE sector or be substantially dependent for its maintenance on public funds. Consequently, section 1 of the Education (Fees and Awards) Act 1983 is amended to include any institution which receives funding from the LSC or the CETW which is specified in or is of a class or description specified in regulations. The effect is that any institution which receives funding from the LSC or the CETW subject to the conditions described above will be able to comply with the conditions without any danger of being in breach of the Race Relations Act 1976.
235. This amendment is most likely to be relevant to institutions providing dance and drama courses. Financial assistance is currently given to these institutions directly by the Secretary of State but in the future it is intended that financial assistance for most courses should be given by the LSC and the CETW.
236. At present, the Secretary of State secures work-based training provision via TECs under section 2 of the Employment and Training Act 1973. Under section 26 of the Employment Act 1988, he has powers to ensure that individuals receiving allowances in respect of that training should not be considered employed simply by virtue of those allowances and that those allowances are not to be treated as income for tax purposes or with respect to social security benefits. In the future, the LSC and CETW will be responsible for securing work-based training provision and will have the power to pay allowances to individuals under sections 5(1)(c) and 34(1)(c). **Paragraph 14** allows the Secretary of State to make similar provision to the effect that the individuals concerned are not to be considered as employed simply by virtue of their training allowances.
237. **Paragraph 15** makes provision to bring the description of HE corporations’ powers in respect of companies under the Education Reform Act 1988 into line with those of

the LSC and CETW under sections 18 and 46 of this Act and those of FE corporations (see paragraph 22).

Amendments to the Further and Higher Education Act 1992

238. **Paragraph 20** repeals sections 1 to 9 of the Further and Higher Education Act 1992 which, together with Schedules 1 and 2 to that Act, refer to the establishment of the FEFCs and their functions.
239. **Paragraphs 36 and 45** provide for section 60A and Schedule 5A (inserted into the 1992 Act by the School Standards and Framework Act 1998) to cease to have effect. These provisions allowed for partnership arrangements in Wales between LEAs and the governing bodies of FE institutions for the purpose of securing secondary education for 16 to 18 year olds. These provisions will no longer be required when section 142 comes into force.
240. **Paragraph 22** amends section 19(4) to enable FE corporations to form companies. The power may not be exercised for the purpose of providing education or of conducting an educational institution: this is the responsibility of the FE corporation.
241. **Paragraphs 23 and 24** amend sections 22 and 29 of the 1992 Act to make provision for the Secretary of State or the National Assembly not only to modify (as now) but to replace or revoke any instrument of government of FE corporations or designated institutions. Provision is also made for the Secretary of State (or the National Assembly) to modify, replace or revoke articles of government for FE corporations. At present he may only direct corporations to carry out modifications to articles and may not modify them himself. This provision will enable the consolidation of colleges' original instruments and articles of government with subsequent modifications.
242. Section 44 of the Further and Higher Education Act 1992 provides that sixth form colleges in the FE sector should provide an act of collective worship at least once each week. At subsection (3), provision is made to ensure that, at institutions of a voluntary origin, this collective worship should comply with any trust deed and reflect the religious traditions and practices of the institution before it entered the sector. Section 45 of the 1992 Act provides similarly for the provision of religious education. **Paragraphs 27 and 28** correct certain technical defects in these provisions. In particular, the amended sections 44 and 45 would apply to any new 16 to 19 institutions that may enter the FE sector in future, by allowing the Secretary of State to designate an institution for the purposes of those sections. The amended sections will also apply to institutions created through the merger of existing institutions which fall within the definitions of the new subsections (2)(a) to (2)(c) of section 44.
243. The LSC and CETW have a duty under sections 2 and 32 of this Act to secure provision to meet the reasonable needs of 16 to 19 year olds, whether full-time or part-time. **Paragraph 29** amends section 52 of the 1992 Act (duty to provide for named individuals) to ensure that the Councils will, as a last resort, be able to require an FE institution to secure provision for an individual, even where that individual's needs are for part-time provision.
244. The definition of education and training brought within the remits of ALI, HMCI for England and HMCI for Wales through the powers and duties provided by Parts III and IV of this Act encompasses education provided by LEAs. As a consequence the specific duties in section 55 of the Further and Higher Education Act 1992 for the Chief Inspectors in England and Wales to inspect LEA provision are redundant, and the amendment made by **paragraph 32** means that they cease to have effect. However LEAs will retain a duty to keep the quality of its education provision under review.
245. **Paragraph 34** replaces section 57 of the 1992 Act with revised arrangements in relation to the Secretary of State's powers of intervention in FE sector colleges. The Secretary of State may intervene if he is satisfied that there has been mismanagement at the college,

if the educational provision has been assessed by HMCI or ALI as being seriously weak or to be failing, if a governing body fails to discharge a duty, or if it acts or proposes to act unreasonably in the exercise of its functions. The Secretary of State may act either on the recommendation of the LSC or on his own account. If he is satisfied that intervention is warranted, the Secretary of State may remove any or all of the governors of the college, may make appointments to any vacancies on the governing body as he sees fit and may issue directions. These powers apply to the National Assembly, the Inspectorate for Wales and the CETW.

246. **Paragraph 44(3)** amends paragraph 5 of Schedule 4 to the 1992 Act to provide that the instrument and articles of government of a FE corporation may allow delegation of functions of the corporation to the principal of the institution.

Amendment to the Employment Rights Act 1996

247. **Paragraph 50** amends the definition of further education in section 63A of the Employment Rights Act 1996 (right to time off for study or training) by removing the reference to Schedule 2 to the Further and Higher Education Act 1992 which is repealed by this Act. Schedule 2 has been used, in conjunction with the definition of further education in the Education Act 1996, as a means of identifying those persons who are ineligible for time off for study or training because they are in full-time further education. It limits the scope of the definition to courses listed in Schedule 2. Because Schedule 2 is being repealed, a new approach is necessary. It is intended that the regulations, under section 63A, (Right to Time Off for Study or Training Regulations, 1999, *SI 1999/ 986*) which define the standard of achievement and awarding bodies for the purposes of the right to time off will be amended to refer to the qualifications approved under sections 98 and 99 of this Act.

Amendments to the Education Act 1996

248. **Paragraph 53** repeals section 15 of the Education Act 1996 which imposed duties on LEAs in respect of further education (see 'Local Education Authorities' section of the Background set out at the beginning of these Notes). Duties in respect of all post-16 education and training are, as a result of the provisions of section 2 to 3 and 31 to 32 of this Act, to be exercised by the LSC and CETW. However, LEAs must have powers so that they may work with the LSC and CETW across the full range their duties in respect of post-16 education. **Paragraph 54**, therefore, gives LEAs the power to provide part-time provision for 16 to 18 year olds, including those outside their areas, in addition to their current powers to secure full-time provision for this age group and part- and full-time education for adults.
249. **Paragraph 55** inserts a new section 15B into the Education Act 1996 which gives LEAs power to provide education and training to anyone from the age of 19 onwards in their areas and beyond. In exercising this power, LEAs must have regard to the needs of persons with learning difficulties.
250. **Paragraph 57** amends section 408 of the Education Act 1996. Section 408 enables regulations to be made to require maintained schools, the LEA, governing body or headteacher to provide information on a range of matters such as the curriculum used in the school. The amendment will ensure that information can be required about the arrangements for qualifications described in section 96 of this Act and approved for use by those under 19 and the courses leading to them.

Amendment to the Education Act 1997

251. **Paragraph 72** amends section 44(3)(a) of the Education Act 1997. The effect of this will be to reduce from 18 to 16 the age at which young people, about whom a school or FE institution is proposing to disclose information to a careers adviser, are entitled to prevent the disclosure taking place, if they so wish. Currently, it is the parents of young people under the age of 18 who may prevent such disclosure. This amendment is

in keeping with the similar provision in section 117 of this Act in respect of disclosure of information to persons working for or with the Connexions Service in England (see section 126 for Wales). As it is intended that Careers Service advisers will have a key role in the new Connexions Service, it is important that these provisions on disclosure of information are consistent.

Amendments to the School Standards and Framework Act 1998

252. **Paragraph 78** provides that, where a school's sixth form or a 16 to 19 institution is inspected as part of an area-wide inspection, an adverse report will trigger the same powers of intervention by the LEA and the Secretary of State or National Assembly as similar reports after other types of inspection.
253. **Paragraph 79** amends section 19(2) of the 1998 Act (which lists those bodies the Secretary of State or the National Assembly should consult before directing an LEA to close a school on special measures) by adding, in respect of schools providing post-16 education, the LSC or the CETW. This reflects the fact that the LSC and CETW will have primary duties at sections 2 and 31 of this Act in respect of education and training provision for 16 to 18 year olds.
254. **Paragraph 80** amends section 26 of the School Standards and Framework Act 1998 in order to put beyond doubt that the school organisation plan must include the LEA's intentions with regard to their provision of secondary education for children over compulsory school age. The present wording of section 26 could be construed as applying only to the duties of LEAs - which do not, and will not, extend to post-16 secondary education - and not to their powers to make such provision.
255. **Paragraph 81** adds a new section 26A to the School Standards and Framework Act 1998 so that in England the schools planning process takes account of the plans published by the local LSC. The new Section 26B makes corresponding provision for Wales. The provision is different because there are no local learning and skills councils in Wales.