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# Further and Higher Education Act 1992

## 1992 CHAPTER 13

### PART I

#### FURTHER EDUCATION

### CHAPTER II

#### INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

##### *Transfer of property, etc., to further education corporations*

#### **23 Transfer of property, etc.: institutions maintained by local education authorities.**

- (1) This section has effect in relation to a further education corporation established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority.
- (2) Subject to subsection (3) below and section 36 of this Act, on the operative date—
  - (a) all land or other property which, immediately before that date, was property of any local authority used or held for the purposes of the institution the corporation is established to conduct, and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes,shall be transferred to, and by virtue of this Act vest in, that corporation.
- (3) Subsection (2) above shall not apply to—
  - (a) any liability of any such authority in respect of the principal of, or interest on, any loan, or
  - (b) any property, rights or liabilities excluded under subsections (4) or (5) below.
- (4) If before the operative date—

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- (a) the governing body of the institution and the local authority have agreed in writing to exclude any land, <sup>F1</sup> . . .
- (b) <sup>F1</sup> . . . . .
- the land, and any rights or liabilities relating to it, shall be excluded.
- (5) If in default of agreement under subsection (4) above—
- (a) the governing body or the local authority have applied to the Secretary of State to exclude any land, and
- (b) the Secretary of State has by order directed its exclusion,
- the land, and any rights or liabilities relating to it, shall be excluded.
- (6) An agreement under subsection (4) above may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (5) above—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) shall have effect as if contained in such an agreement.
- (7) References in subsections (4) and (5) above to anything done, other than the making of an order, include anything done before the passing of this Act.
- (8) On the operative date—
- (a) all land and other property which, immediately before that date, was property of the former governing body, and
- (b) all rights and liabilities of that body subsisting immediately before that date, shall be transferred to and, by virtue of this Act, vest in the corporation.
- (9) In subsection (8) above “former governing body” in relation to an institution means the governing body of the institution immediately before the operative date.

**Textual Amendments**

**F1** S. 23(4)(b) and preceding word repealed (1.10.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c.32\)](#), ss. 215, 216, Sch. 21 para. 13, [Sch. 22 Pt. 3](#); S.I. 2002/2349, [art. 3](#); S.I. 2002/3185, [art. 4](#)

**Commencement Information**

**II** S. 23 wholly in force at 30.9.1992 see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Sch. 2](#)

**24 Provisions supplementary to section 23.**

- (1) Where in exercise of their powers under section 2 of the <sup>M1</sup>Further Education Act 1985 a local authority—
- (a) have entered into an agreement for the supply of goods or services or both through an educational institution, or
- (b) for the purposes of any agreement for such a supply through such an institution, hold shares in any body corporate,
- and a further education corporation is established to conduct the institution, then, the rights and liabilities of the authority under or by virtue of the agreement or, as the case may be, the interest of the authority in the shares shall be treated as falling within section 23(2) of this Act.

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- (2) Expressions used in subsection (1) above and in section 2 of that Act have the same meaning as in that section.
- (3) Where, immediately before the operative date in relation to a further education corporation, arrangements exist for the supply by a local authority of goods or services for the purposes of the institution in pursuance of a bid prepared under section 7 of the <sup>M2</sup>Local Government Act 1988 (restrictions on activities of local authorities), those arrangements shall have effect as from that date as if—
  - (a) they were contained in an agreement made before that date between the local authority and the corporation on the terms specified in the bid, and
  - (b) the agreement required the corporation or, as the case may be, the local authority to make payments corresponding to the provision made in the bid in pursuance of section 8(3) of that Act for items to be credited or, as the case may be, debited to any account.
- (4) Where such arrangements are for the supply to others as well as to the institution—
  - (a) those arrangements shall have effect as mentioned in subsection (3) above only to the extent that they relate to the institution in question, and
  - (b) the rights and liabilities arising under the agreement shall be such rights and liabilities as are properly required to give effect to the arrangements so far as relating to that institution.
- (5) Where at any time land is used for the purposes of such an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of section 23 of this Act to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

#### Commencement Information

**I2** S. 24 wholly in force at 30.9.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 2](#)

#### Marginal Citations

**M1** 1985 c. 47.

**M2** 1988 c. 9.

## [<sup>F2</sup>25] **Transfer of property, etc. from foundation bodies.**

- (1) This section applies where a further education corporation is established to conduct an institution which, on the date the corporation is established, is a foundation or voluntary school belonging to the group of schools for which a foundation body acts under section 21 of the School Standards and Framework Act 1998.
- (2) Regulations may make such provision as the Secretary of State considers necessary or expedient in connection with the transfer, in any such case, of property, rights and liabilities from the foundation body to the further education corporation.
- (3) Regulations under subsection (2) may, in relation to any such transfer of property, rights or liabilities—
  - (a) modify any provision made by or under any of sections 23, 24, 36 and 38 of this Act and Schedule 5 to this Act;
  - (b) apply any such provision with or without modifications;
  - (c) make provision corresponding or similar to any such provision.

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- (4) In this section “foundation body” and “group of schools” have the same meaning as in the School Standards and Framework Act 1998.]

#### Textual Amendments

**F2** S. 25 substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.36** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch.1**.

## 26 Transfer of staff to further education corporations.

- (1) This section applies to any person who immediately before the operative date in relation to a further education corporation established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority<sup>F3</sup>. . . —
- (a) is employed by the transferor to work solely at the institution the corporation is established to conduct, or
  - (b) is employed by the transferor to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) A contract of employment between a person to whom this section applies and the transferor shall have effect from the operative date as if originally made between that person and the corporation.
- (3) Without prejudice to subsection (2) above—
- (a) all the transferor’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the operative date, and
  - (b) anything done before that date by or in relation to the transferor in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a further education corporation, to the transferor are—
- (a) in relation to a corporation established to conduct an institution which, on the date on which it was established, was maintained by a local education authority, [<sup>F4</sup>references to that authority, and],
  - [<sup>F5</sup>(b) in relation to a corporation established to conduct an institution which, on that date, was a foundation or voluntary aided school, references to the governing body of that school.]
- (7) For the purposes of this section—
- (a) a person employed by the transferor is to be regarded as employed to work at an institution if his employment with the transferor for the time being involves work at that institution, and

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- (b) subject to subsection (8) below, a person employed by the transferor is to be regarded as employed to work solely at an institution if his only employment with the transferor (disregarding any employment under a separate contract with the transferor) is for the time being at that institution.
- (8) A person employed by the transferor in connection with the provision of meals shall not be regarded for the purposes of subsection (7)(b) above as employed to work solely at an institution unless the meals are provided solely for consumption by persons at the institution.
- (9) <sup>F6</sup> .....

### Textual Amendments

- F3** Words in s. 26(1) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 37(a), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch.1**.
- F4** Words in s. 26(6) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 37(b)(i)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch.1**.
- F5** S. 26(6)(b) substituted (1.9.1999) for s. 26(6)(b)(c) by 1998 c. 31, s. 140(1), **Sch. 30 para. 37(b)(ii)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch.1**.
- F6** S. 26(9) repealed (1.10.2002) by Education Act 2002 (c. 32), s. 215, **Sch. 21 para. 14, Sch. 22 Pt. 1**, S.I. 2002/2439, {art. 2}

### Modifications etc. (not altering text)

- C1** S. 26(1)-(5) applied (with modifications) (1.12.2002) by [The North Derbyshire Tertiary College \(Dissolution\) Order 2002 \(S.I. 2002/1714\)](#), **art. 3**
- C2** S. 26(2)(3)(4) applied (with modifications): (2.4.1993) by [S.I. 1993/270](#), **art. 4**; (1.8.1994) by [S.I. 1994/1478](#), **art. 4**; (1.8.1994) by [S.I. 1994/1741](#), **art. 3**; (1.8.1994) by [S.I. 1994/1754](#), **art. 3**; (1.8.1994) by [S.I. 1994/1755](#), **art. 3**; (1.8.1994) by [S.I. 1994/1830](#), **art. 3**; (1.8.1995) by [S.I. 1995/1710](#), **art. 3**; (1.8.1995) by [S.I. 1995/1711](#), **art. 3**; (15.8.1995) by [S.I. 1995/1927](#), **art. 3**; (1.9.1995) by [S.I. 1995/2091](#), **art. 3**; (1.3.1996) by [S.I. 1996/249](#), **art. 3**; (1.8.1996) by [S.I. 1996/1744](#), **art. 3**; (1.8.1996) by [S.I. 1996/1764](#), **art. 3**; (1.9.1996) by [S.I. 1996/2084](#), **art. 3**; (6.1.1996) by [S.I. 1996/3136](#), **art. 3**; (10.5.1997) by [S.I. 1997/1168](#), **art. 3**; (1.8.1997) by [S.I. 1997/513](#), **art. 3**; (18.2.1998) by [S.I. 1998/156](#), **art. 3**; (1.8.1998) by [S.I. 1998/1651](#), **art. 3**; (1.8.1998) by [S.I. 1998/1652](#), **art. 3**; (1.8.1998) by [S.I. 1998/1653](#), **art. 3**; (1.8.1998) by [S.I. 1998/1654](#), **art. 3**; (1.8.1998) by [S.I. 1998/1655](#), **art. 3**; (1.8.1998) by [S.I. 1998/1656](#), **art. 3**; (1.8.1998) by [S.I. 1998/1657](#), **art. 3**; (1.4.1999) by [S.I. 1999/218](#), **art. 3**; (1.4.1999) by [S.I. 1999/602](#), **art. 3**; (1.4.1999) by [S.I. 1999/699](#), **art. 3**; (1.6.1999) by [S.I. 1999/1285](#), **art. 3**; (1.8.1999) by [S.I. 1999/1802](#), **art. 3**; (1.8.1999) by [S.I. 1999/1919](#), **art. 3**; (1.8.1999) by [S.I. 1999/1997](#), **art. 3**; (1.10.1999) by [S.I. 1999/2544](#), **art. 3**; (1.1.2000) by [S.I. 1999/3300](#), **art. 3**; (1.4.2000) by [S.I. 2000/354](#), **art. 3**; (1.4.2000) by [S.I. 2000/974](#), **art. 3**; (1.8.2000) by [S.I. 2000/1684](#), **art. 3**; (1.8.2000) by [S.I. 2000/1751](#), **art. 3**; (1.8.2000) by [S.I. 2000/1806](#), **art. 3**; (1.9.2000) by [S.I. 2000/2124](#), **art. 3**; (1.9.2000) by [S.I. 2000/2172](#), **art. 3**; (1.11.2000) by [S.I. 2000/2728](#), **art. 3**; (1.1.2001) by [S.I. 2000/3219](#), **art. 3**; (31.3.2001) by [S.I. 2001/781](#), **art. 3**; (1.8.2001) by [S.I. 2001/2447](#), **art. 3**; (1.8.2001) by [S.I. 2001/1532](#), **art. 3**; (1.8.2001) by [S.I. 2001/1533](#), **art. 3**; (1.9.2001) by [S.I. 2001/2898](#), **art. 3**; (1.11.2001) by [S.I. 2001/3153](#), **art. 3**; (1.11.2001) by [S.I. 2001/3154](#), **art. 3**; (1.1.2002) by [S.I. 2001/3809](#), **art. 3**; (1.1.2002) by [S.I. 2001/3833](#), **art. 3**; (1.2.2002) by [S.I. 2001/4037](#), **art. 3**
- C3** S. 26(2)(3)(4) applied (with modifications) (1.3.2002) by [The Mackworth College \(Dissolution\) Order 2002 \(S.I. 2002/244\)](#), **art. 3**
- S. 26(2)(3)(4) applied (with modifications) (1.3.2002) by [The Broomfield Agricultural College \(Dissolution\) Order 2002 \(S.I. 2002/243\)](#), **art. 3**
- S. 26(2)(3)(4) applied (with modifications) (1.3.2002) by [The Derby Tertiary College-Wilmorton \(Dissolution\) Order \(S.I. 2002/245\)](#), {art. 3}

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- S. 26(2)(3)(4) applied (with modifications) (1.3.2002) by [The East Yorkshire College of Further Education, Bridlington \(Dissolution\) Order 2002 \(S.I. 2002/246\)](#), [art. 3](#)
- S. 26(2)(3)(4) applied (with modifications) (1.8.2002) by [The Brinsbury College \(Dissolution\) Order 2002 \(S.I. 2002/1402\)](#), [art. 3](#)
- S. 26(2)(3)(4) applied (with modifications) (1.8.2002) by [The Teesside Tertiary College \(Dissolution\) Order 2002 \(S.I. 2002/1695\)](#), [art. 3](#)
- C4** S. 26(2)(3)(4) applied (1.8.2003) by [The Rugby College of Further Education \(Dissolution\) Order 2003 \(S.I. 2003/516\)](#), [arts. 1, 3](#)
- C5** S. 26(2)(3)(4) applied (with modifications) (1.8.2003) by [The North Birmingham College \(Dissolution\) Order 2003 \(S.I. 2003/1293\)](#), [arts. 1, 3](#)
- C6** S. 26(2)(3)(4) applied (with modifications) (1.8.2003) by [The Merrist Wood College \(Dissolution\) Order 2003 \(S.I. 2003/1611\)](#), [arts. 1, 3](#)
- C7** S. 26(2)(3)(4) applied (with modifications) (1.8.2003) by [The Rycotewood College, Oxford College of Further Education and North Oxfordshire College and School of Art \(Dissolution\) Order 2003 \(S.I. 2003/1610\)](#), [arts. 1, 3](#)
- C8** S. 26(2)(3)(4) applied (with modifications) (31.10.2003) by [The Park College \(Dissolution\) Order 2003 \(S.I. 2003/2442\)](#), [arts. 1, 3](#)
- C9** S. 26(2)(3)(4) applied (with modifications) (31.12.2003) by [The Reading College and School of Arts and Design \(Dissolution\) Order 2003 \(S.I. 2003/2918\)](#), [arts. 1, 3](#)
- C10** S. 26(2)(3)(4) applied (with modifications) (1.8.2004) by [The Daventry Tertiary College \(Dissolution\) Order 2004 \(S.I. 2004/1598\)](#), [arts. 1, 3](#)
- C11** S. 26(2)(3)(4) applied (with modifications) (1.8.2004) by [The Rother Valley College \(Dissolution\) Order 2004 \(S.I. 2004/1681\)](#), [arts. 1, 3](#)
- C12** S. 26(2)(3)(4) applied (with modifications) (1.9.2004) by [The Cannington College \(Dissolution\) Order 2004 \(S.I. 2004/2024\)](#), [arts. 1, 3](#)
- C13** S. 26(2)(3)(4) applied (with modifications) (1.3.2005) by [The Tynemouth College and North Tyneside College \(Dissolution\) Order 2005 \(S.I. 2005/94\)](#), [arts. 1, 3](#)
- C14** S. 26(2)(3)(4) applied (with modifications) (1.8.2005) by [The Crawley College and Haywards Heath College \(Dissolution\) Order 2005 \(S.I. 2005/1113\)](#), [arts. 1, 3](#)
- C15** S. 26(2)(3)(4) applied (with modifications) (1.1.2006) by [The North Area College \(Dissolution\) Order 2005 \(S.I. 2005/3097\)](#), [arts. 1, 3](#)
- C16** S. 26(2)(3)(4) applied (with modifications) (1.4.2006) by [The Isle College \(Dissolution\) Order 2006 \(S.I. 2006/555\)](#), [arts. 1, 3](#)
- C17** S. 26(2)(3)(4) applied (with modifications) (1.6.2006) by [The Peoples College, Nottingham \(Dissolution\) Order 2006 \(S.I. 2006/1184\)](#), [arts. 1, 3](#)
- C18** S. 26(2)(3)(4) applied (with modifications) (1.8.2006) by [The Widnes and Runcorn Sixth Form College \(Dissolution\) Order 2006 \(S.I. 2006/1739\)](#), [arts. 1, 3](#)
- C19** S. 26(2)(3)(4) applied (with modifications) (1.8.2006) by [The Josiah Mason Sixth Form College, Erdington, Birmingham \(Dissolution\) Order 2006 \(S.I. 2006/1754\)](#), [arts. 1, 3](#)
- C20** S. 26(2)(3)(4) applied (with modifications) (1.1.2007) by [The Newark and Sherwood College \(Dissolution\) Order 2006 \(S.I. 2006/3160\)](#), [arts. 1, 3](#)
- C21** S. 26(3) applied (with modifications) (31.10.2003) by [The Park College \(Dissolution\) Order 2003 \(S.I. 2003/2442\)](#), [arts. 1, 3](#)
- C22** S. 26(3) applied (with modifications) (31.12.2003) by [The Reading College and School of Arts and Design \(Dissolution\) Order 2003 \(S.I. 2003/2918\)](#), [arts. 1, 3](#)
- C23** S. 26(3) applied (with modifications) (1.8.2004) by [The Rother Valley College \(Dissolution\) Order 2004 \(S.I. 2004/1681\)](#), [arts. 1, 3](#)
- C24** S. 26(3) applied (with modifications) (1.9.2004) by [The Cannington College \(Dissolution\) Order 2004 \(S.I. 2004/2024\)](#), [arts. 1, 3](#)
- C25** S. 26(3) applied (with modifications) (1.1.2006) by [The North Area College \(Dissolution\) Order 2005 \(S.I. 2005/3097\)](#), [arts. 1, 3](#)
- C26** S. 26(3) applied (with modifications) (1.4.2006) by [The Isle College \(Dissolution\) Order 2006 \(S.I. 2006/555\)](#), [arts. 1, 3](#)

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- C27** S. 26(3) applied (with modifications) (1.6.2006) by [The Peoples College, Nottingham \(Dissolution\) Order 2006 \(S.I. 2006/1184\)](#), arts. 1, 3
- C28** S. 26(3) applied (with modifications) (1.8.2006) by [The Widnes and Runcorn Sixth Form College \(Dissolution\) Order 2006 \(S.I. 2006/1739\)](#), arts. 1, 3
- C29** S. 26(3) applied (with modifications) (1.1.2007) by [The Newark and Sherwood College \(Dissolution\) Order 2006 \(S.I. 2006/3160\)](#), arts. 1, 3
- C30** S. 26(4) applied (with modifications) (31.10.2003) by [The Park College \(Dissolution\) Order 2003 \(S.I. 2003/2442\)](#), arts. 1, 3
- C31** S. 26(4) applied (with modifications) (31.12.2003) by [The Reading College and School of Arts and Design \(Dissolution\) Order 2003 \(S.I. 2003/2918\)](#), arts. 1, 3
- C32** S. 26(4) applied (with modifications) (1.8.2004) by [The Rother Valley College \(Dissolution\) Order 2004 \(S.I. 2004/1681\)](#), arts. 1, 3
- C33** S. 26(4) applied (with modifications) (1.9.2004) by [The Cannington College \(Dissolution\) Order 2004 \(S.I. 2004/2024\)](#), arts. 1, 3
- C34** S. 26(4) applied (with modifications) (1.1.2006) by [The North Area College \(Dissolution\) Order 2005 \(S.I. 2005/3097\)](#), arts. 1, 3
- C35** S. 26(4) applied (with modifications) (1.4.2006) by [The Isle College \(Dissolution\) Order 2006 \(S.I. 2006/555\)](#), arts. 1, 3
- C36** S. 26(4) applied (with modifications) (1.6.2006) by [The Peoples College, Nottingham \(Dissolution\) Order 2006 \(S.I. 2006/1184\)](#), arts. 1, 3
- C37** S. 26(4) applied (with modifications) (1.8.2006) by [The Widnes and Runcorn Sixth Form College \(Dissolution\) Order 2006 \(S.I. 2006/1739\)](#), arts. 1, 3
- C38** S. 26(4) applied (with modifications) (1.1.2007) by [The Newark and Sherwood College \(Dissolution\) Order 2006 \(S.I. 2006/3160\)](#), arts. 1, 3

#### Commencement Information

- I3** S. 26 partly in force; s. 26 in force for certain purposes at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 2**, as amended by S.I. 1992/2041, **art. 2(a)**

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