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STATUTORY INSTRUMENTS

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**1997 No. 1772 (N.I. 15)**

**The Further Education (Northern Ireland) Order 1997 <sup>F1</sup>**

- - - - - 22nd July 1997

**F1** functions transf. by SR 1999/481

*Introductory*

**Title and commencement**

- 1.—(1) This Order may be cited as the Further Education (Northern Ireland) Order 1997.
- (2) Subject to paragraph (3), this Order shall come into operation on such day as the Department may by order appoint<sup>F2</sup>.
- (3) This Article, Articles 2, 10 and 24 and Schedule 2 shall come into operation on the expiration of 2 months from the day on which this Order is made.
- (4) An order under paragraph (2) may contain such transitional provisions as the Department thinks necessary or expedient.

**F2** fully exercised by SR 1998/82

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
- “facilities” includes land, goods and services;
  - “further education” has the meaning assigned by Article 3;
  - “higher education” means education provided by means of a course of any description mentioned in Schedule 1;
  - “institution of further education” means, subject to paragraph (3), an institution which is recognised as such by the Department under Article 8;
  - “liability” includes obligation;
  - “the transfer date” means the day appointed by the Department under Article 1(2);
  - “the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;
  - “the 1989 Order” means the Education Reform (Northern Ireland) Order 1989.

*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997. (See end of Document for details)*

(3) In relation to any time before the transfer date, references in this Order to an institution of further education are to an institution of further education managed by a board under Part VII of the 1989 Order.

(4) The Department may by order amend Schedule 1.

(5) Subject to paragraph (6), for the purposes of this Order 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 of further education for persons of his age.

(6) 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.

(7) Any direction, consent or determination given by the Department under this Order shall be in writing.

(8) References in this Order to the board for the area in which an institution or establishment is (or is to be) situated shall, in a case where parts of an institution or establishment are (or are to be) situated in the areas of two or more boards, be read as references to both or all of those boards.

(9) This Order shall be construed as one with the 1986 Order and accordingly Article 2(2) of the 1986 Order, in so far as it relates to the definition of words or expressions used in that Order and in this Order, shall apply for the purposes of this Order as it applies for the purposes of that Order.

### **Definition of “further education”**

**3.—**(1) Subject to the following provisions of this Article, in this Order “further education” means—

(a) full-time and part-time education suitable to the requirements of persons over compulsory school age (including vocational training); and

(b) organized leisure-time occupation provided in connection with the provision of such education.

(2) In this Order “further education” does not include—

(a) higher education; or

(b) full-time education suitable to the requirements of senior pupils over compulsory school age where provided at a school.

(3) For the purposes of this Order—

(a) “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;

(b) “vocational training” includes continuing education for persons already in employment or already engaged in a vocation as well as education with a view to entry into any employment or vocation.

### *Duties and powers of the Department*

#### **Powers of Department in relation to further education**

4.—(1) The Department shall have the power to do all that is necessary or expedient for the purposes of the exercise of its duty under Article 3 of the 1989 Order in so far as it relates to further education.

(2) In particular, the Department may—

- (a) make grants, loans and other payments in accordance with Article 5—
  - (i) to the governing bodies of institutions of further education; or
  - (ii) to others for the purposes of, or in connection with, the provision of further education;
- (b) establish a new institution of further education in accordance with Article 6;
- (c) amalgamate two or more institutions of further education to form a single new institution of further education in accordance with Article 7;
- (d) recognise an educational establishment as an institution of further education in accordance with Article 8;
- (e) provide for the discontinuance of an institution of further education in accordance with Article 9.

(3) In discharging its functions under this Order, the Department shall have regard to the requirements of persons over compulsory school age who have learning difficulties.

#### **Funding of further education**

5.—(1) The Department may make grants, loans or other payments—

- (a) to the governing body of an institution of further education in respect of any expenditure incurred or to be incurred by it in connection with its functions under this Order in relation to the institution; and
- (b) to such other persons as appear to it to be appropriate in respect of the expenditure of such persons incurred or to be incurred for the purposes of, or in connection with, the provision of further education.

(2) Grants, loans and other payments under this Article shall be of such amounts as the Department may determine.

(3) A grant, loan or other payment under this Article may be made subject to such conditions as the Department thinks appropriate and such conditions—

- (a) may be imposed before, after or at the time the grant, loan or other payment is made; and
- (b) may relate to any time, whether before or after such time.

(4) The terms and conditions on which the Department may make any grants, loans or other payments under this Article may, in particular, include conditions—

- (a) enabling the Department to require the repayment, in whole or in part, of sums paid by it if any other condition subject to which the sums were paid is not complied with; and
- (b) requiring the payment of interest in respect of any period during which a sum due to the Department in accordance with any other condition remains unpaid,

but shall not relate to the application by the person to whom the grants, loans or other payments are made of any sums derived otherwise than from the Department.

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(5) A condition imposed under paragraph (3) shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

**Modifications etc. (not altering text)**

**C1** Art. 5(3) modified (13.2.2006) by Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5)), arts. 1(3), 4(1)(c); S.R. 2006/30, art. 2

**Establishment of new institution of further education**

6.—(1) The Department may establish a new institution of further education.

(2) Before establishing a new institution of further education under this Article the Department shall consult—

- (a) the board for the area in which the institution is to be situated; and
- (b) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) Where the Department proposes to establish a new institution of further education, it shall, as soon as reasonably practicable, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

**Amalgamations of institutions of further education**

7.—(1) The Department may direct that two or more institutions of further education shall be amalgamated to form a single new institution of further education (in this Article referred to as “the new institution”).

(2) Before giving any direction under this Article affecting any institutions of further education, the Department shall consult—

- (a) the governing bodies of those institutions;
- (b) the board for the area in which each such institution is situated; and
- (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) A direction under this Article providing for the amalgamation of two or more institutions of further education shall specify the date (referred to in this Article as “the implementation date”) on which the amalgamation is to take effect.

(4) Where the Department issues a direction under this Article, it shall be the duty of the governing bodies of the institutions of further education affected by the direction to take all such steps as are necessary to give effect to the direction.

(5) The Department shall, not later than the implementation date, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

(6) On the implementation date—

- (a) all property, rights and liabilities of the governing bodies of the institutions affected by the direction shall be transferred to, and by virtue of this Article vest in, the governing body of the new institution;

- (b) the institutions affected by the direction shall cease to exist; and
  - (c) the governing bodies of those institutions shall be dissolved.
- (7) A contract of employment between a person and the governing body of an institution of further education affected by a direction under this Article shall have effect from the implementation date as if originally made between that person and the governing body of the new institution.
- (8) Without prejudice to paragraph (7)—
- (a) all the rights, powers, duties and liabilities of the governing body of the institution affected by the direction under or in connection with a contract to which that paragraph applies shall by virtue of this Article be transferred to the governing body of the new institution on the implementation date; and
  - (b) anything done before that date by or in relation to the governing body of the institution affected by the direction in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the governing body of the new institution.
- (9) Paragraphs (7) and (8) 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 Article.
- (10) Any land or other property transferred to the governing body of the new institution under this Article which immediately before the implementation date was held on trust shall vest in that body as trustee on the trusts applicable immediately before that date under any trust deed regulating the use of the land or other property for the purposes of an institution of further education.
- (11) Stamp duty shall not be chargeable in respect of any transfer effected by this Article.
- (12) For the purposes of this Article an institution of further education is affected by a direction under this Article if, and only if, it is one of the institutions which are to be amalgamated in pursuance of the direction.

### **Recognition of institutions of further education**

- 8.—**(1) Subject to paragraphs (2) and (3), the Department may recognise an educational establishment as an institution of further education for the purposes of this Order.
- (2) The Department may not recognise an educational establishment except with the consent of the body responsible for the management of that establishment.
- (3) Before recognising an educational establishment, the Department shall consult—
- (a) the board for the area in which the establishment is situated;
  - (b) the body responsible for the management of that establishment; and
  - (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.
- (4) The Department shall, not later than the date on which an institution of further education is recognised by virtue of paragraph (1), ensure—
- (a) that an instrument of government and articles of government are made for the institution; and
  - (b) that a governing body is established for the institution under this Order.
- (5) An institution of further education to which Article 10 applies shall be taken for the purposes of this Order to be recognised by the Department on the transfer date.
- (6) An institution of further education which—
- (a) is established by the Department under Article 6; or

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(b) is formed by the amalgamation of two or more institutions of further education under Article 7;

shall be taken for the purposes of this Order to be recognised by the Department on the date on which a governing body is established for the institution under this Order.

(7) The Department shall maintain, and publish in such manner as it thinks fit, a list of institutions for the time being recognised by it.

(8) In this Article “recognised” means recognised under this Article.

### **Discontinuance of institution of further education**

**9.—**(1) The Department may by order provide for the discontinuance of an institution of further education.

(2) Before making any order under this Article in relation to an institution of further education, the Department shall consult with—

- (a) the governing body of the institution;
- (b) the board for the area in which the institution is situated; and
- (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) An order made under this Article in relation to an institution of further education shall—

- (a) contain provision for the winding-up of the governing body of that institution; and
- (b) provide for the dissolution of that body on such date as is determined by or in accordance with the order.

(4) An order made under this Article in relation to an institution of further education may include provision—

- (a) for the transfer of property, rights and liabilities of the governing body of the institution to—
  - (i) the Department; or
  - (ii) subject to paragraph (5), such other body or person as may be specified in the order;
- (b) applying Article 7(7) to (9) with such modifications as the Department considers necessary or appropriate;
- (c) for the payment by the Department of any expenses incurred in the winding-up of the governing body or the discontinuance of the institution;
- (d) imposing such duties, or conferring such additional powers, on the governing body of the institution in relation to the winding-up and discontinuance as the Department may consider appropriate;
- (e) for the exercise of any of the governing body's functions by any member of that body specified in the order;
- (f) for the appointment of a person to administer the winding-up and discontinuance, and for such person to have such functions as appear to the Department necessary or expedient for such purposes and are specified in the order;
- (g) of such incidental, supplementary, transitional or ancillary nature as appears to the Department to be necessary or expedient for the purpose of the winding-up and discontinuance.

(5) An order transferring any property, rights or liabilities to a person or body other than the Department—

- (a) shall not be made except with the consent of that person or body; and

- (b) may impose such conditions as to the use or disposal of any property and rights so transferred as may be specified in the order.
- (6) Where land or other property was held on trust for the purposes of an institution of further education, an order under this Article may vest the property in the Department or another body or person beneficially or on such trusts as appear to the Department to be appropriate.
- (7) Stamp duty shall not be chargeable in respect of any transfer effected by an order under this Article.
- (8) The making of an order under this Article in relation to an institution of further education shall not affect—
  - (a) the power of the Department to give directions to the governing body of that institution under Article 101 of the 1986 Order; or
  - (b) the duty of the governing body to comply with any directions so given.
- (9) Article 101 of the 1986 Order shall apply in relation to a person appointed under paragraph (4)
- (e) as it applies in relation to a relevant authority within the meaning of that Article.

*Transfer of management of institutions of further education*

**Transfer of management of institutions of further education from boards to incorporated governing bodies**

- 10.**—(1) With effect from the transfer date—
- (a) each institution of further education shall cease to be under the management of the board which, immediately before that date, was responsible for its management;
  - (b) the governing body of each such institution constituted under Part VII of the 1989 Order shall cease to exist;
  - (c) there shall be established under this Order for each such institution a body corporate to be known as the governing body of that institution; and
  - (d) each such institution shall be under the management of that governing body.
- (2) Schedule 2 (which provides for the transfer of certain property, rights, liabilities and staff to the governing bodies of institutions of further education established under this Order and makes other provision consequential on, related to, or for the purpose of facilitating, the transfer effected by paragraph (1)) shall have effect.

*Governing bodies – constitution, etc.*

**Constitution of governing body and conduct of institution**

- 11.**—(1) For every institution of further education there shall be—
- (a) an instrument providing for the constitution of the governing body of the institution (to be known as the instrument of government); and
  - (b) an instrument in accordance with which the governing body and the institution are to be conducted (to be known as the articles of government).
- (2) Schedule 3 (which makes general provision concerning governing bodies of institutions of further education) shall have effect.
- (3) The instrument of government and articles of government of an institution of further education—
- (a) shall comply with the requirements of Schedule 3; and

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- (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.

### **Making and amendment of instruments of government and articles of government**

**12.**—(1) The initial instrument of government and articles of government of an institution shall be made by order of the Department after consultation with such persons or bodies as appear to it to be appropriate.

(2) The Department may—

- (a) if the governing body of an institution of further education submits a draft of an instrument of government or articles of government to have effect in place of the existing instrument or articles, by order make a new instrument of government or articles of government in terms of the draft or in such terms as it thinks fit;
- (b) if such a body submits draft amendments of the existing instrument of government or articles of government, by order amend the existing instrument or articles in terms of the draft or in such terms as it thinks fit.

(3) The Department shall not—

- (a) make a new instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(a), or
- (b) amend an existing instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(b),

unless it has consulted the governing body.

(4) The Department may direct all governing bodies or any particular governing body specified in the direction to submit—

- (a) a draft under paragraph (2)(a) making such provision as is specified in the direction; or
- (b) a draft under paragraph (2)(b) making such amendments as are so specified.

(5) Before giving any direction under paragraph (4) to any governing body the Department shall consult that body.

(6) In this Article—

- (a) references to the initial instrument of government and articles of government of an institution are to the instrument and articles which are to have effect—
- (i) as from the establishment of the governing body of the institution, in the case of an institution established under Article 6 or an institution formed by an amalgamation under Article 7;
- (ii) as from the date on which the institution is recognised by the Department (within the meaning of Article 8), in the case of an institution recognised by virtue of paragraph (1) of that Article;
- (iii) as from the transfer date, in the case of an institution to which Article 10 applies;
- (b) references to the existing instrument of government or articles of government of an institution of further education are references to the instrument of government or articles of government for the time being having effect in relation to the institution under this Article.

### *Duties and powers of governing bodies*

#### **General duties of governing bodies**

**13.**—(1) It shall be the duty of the governing body of an institution of further education—

- (a) to secure the efficient and effective management of the institution; and
  - (b) to ensure that the institution provides, or secures the provision of, suitable and efficient further education to students of the institution.
- (2) In carrying out its duty under paragraph (1), the governing body of an institution of further education shall have regard to the requirements of persons over compulsory school age who have learning difficulties.
- (3) In carrying out its duty under paragraph (1)(b), the governing body of an institution of further education shall have regard to—
- (a) the provision of education in the area in which the institution is situated; and
  - (b) the educational needs of industry and commerce, and the community, in that area.

### **Principal powers of governing body**

**14.—**(1) The governing body of an institution of further education shall have the power—

- (a) to provide or secure the provision of further education and (subject to Article 16) higher education;
- [<sup>F3</sup>(aa) to provide or secure the provision of secondary education in pursuance of arrangements made with a board under Article 83(2) of the Education (Northern Ireland) Order 1998 (registered pupils in key stage 4 or children over the age of 14 who are not registered pupils);]
- (b) to charge fees for or in connection with the provision by virtue of sub-paragraph (a) of any form of further or higher education;
- (c) to provide to students of the institution such assistance of a financial or other nature (including waiving or granting remission of fees) as it may consider appropriate;
- (d) to manage the institution, and for that purpose to receive any property, rights and liabilities transferred to it under this Order;
- (e) to provide, or secure the provision of, facilities of any description appearing to it to be necessary or expedient for the purpose of or in connection with the carrying on of any activities it has power to carry on (including residential accommodation and recreational facilities for students and staff of the institution and facilities to meet the needs of students who have learning difficulties and disabled students and staff);
- (f) to provide meals and refreshments for students and staff of the institution;
- (g) to supply goods and services in connection with the provision of education by it and make charges for such goods and services;
- (h) to acquire, hold and dispose of land and other property;
- (i) to enter into contracts, including in particular—
  - (i) contracts for the employment of teachers and other staff for the purpose of or in connection with the carrying on of any activities it has power to carry on;
  - (ii) contracts with respect to the carrying on by it of any such activities; and
  - (iii) contracts to secure the provision by others of facilities in connection with the carrying on by it of any such activities, including externally financed development agreements as defined in Article 15(3)(c).
- (j) to form or promote, or to join with any other person in forming or promoting, companies (within the meaning of the Companies (Northern Ireland) Order 1986);
- [<sup>F4</sup>(jj) to enter into collaborative arrangements with other educational institutions or bodies and community groups on such terms as it thinks fit and to exercise its decision-making in

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relation to such arrangements through any joint body established for the purposes of collaboration under this sub-paragraph;]

- (k) to borrow such sums as it thinks fit for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order and, in connection with such borrowing, to grant such security<sup>F4</sup>. . . as it thinks fit;
  - [<sup>F4</sup>(kk) to give such guarantee or indemnity in relation to the obligations of a company to which sub-paragraph (j) applies or any other person on such terms and conditions (including the giving of security in respect of its obligations under such guarantee or indemnity) as it thinks fit;]
  - (l) to invest any sums not immediately required by it for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order;
  - (m) to raise funds, accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of carrying on any activities it has power to carry on; and
  - (n) to do all such other things as are calculated to facilitate or are incidental or conducive to the carrying on of any activities it has power to carry on.
- (2) For the purposes of paragraph (1)(g), goods and services are supplied in connection with the provision of education by a governing body if—
- (a) they result from the provision of education or anything done by the governing body under this Order for the purpose of or in connection with the provision of education,
  - (b) they result from the use of, or are provided by making available, the facilities of the governing body or the expertise of persons employed by it in the fields in which they are so employed, or
  - (c) they result from ideas of a person employed by the governing body, or of one of its students, arising out of the provision of education by it.
- (3) The Department may by order—
- (a) amend the provisions of paragraph (1) by varying, adding to or removing the powers for the time being conferred by that paragraph; or
  - (b) direct that paragraph (1) shall apply, in relation to any governing body specified in the order, with such variations, additions or omissions as may be so specified.
- (4) Before making any order under paragraph (3), the Department shall consult—
- (a) the governing bodies of institutions of further education to which the order applies; and
  - (b) any other bodies with which consultation appears to the Department to be appropriate.
- (5) The exercise by a governing body of any power conferred by this Article is subject to Article 15; and an order under paragraph (3) may make such consequential amendments to Article 15 as appear to the Department to be necessary or expedient.

**F3** 2003 NI 12

**F4** SR 2003/110

### **Restrictions on exercise of principal powers of governing body**

- 15.—**(1) The powers of a governing body under—
- (a) Article 14(1)(b) (charging of fees for education);
  - (b) Article 14(1)(j) (formation of companies);
  - (c) Article 14(1)(l) (investment),

[<sup>F5</sup>(d) Article 14(1)(jj) (collaborative arrangements)]

shall be exercised in accordance with any arrangements approved or determined by the Department.

(2) The powers of a governing body under Article 14(1)(f) (provision of meals and refreshments) shall be so exercised as to give effect to arrangements approved or determined by the Department for the remission in whole or in part of charges which would otherwise be made in respect of meals or refreshments provided to students of the institution.

(3) A governing body of an institution of further education shall not, without the prior consent of the Department—

- (a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of its property;
- (b) effect any material change in the character of the institution; or
- (c) enter into an externally financed development agreement, that is to say an agreement—
  - (i) the purpose or main purpose of which is the provision of facilities in connection with the carrying on of any activities which the governing body has power to carry on; and
  - (ii) in connection with which a person proposes to make a loan to, or provide any other form of finance for, any party to the agreement other than the governing body.

(4) The consent of the Department under paragraph (3) may be given subject to such conditions as the Department may determine.

(5) Subject to paragraph (8), the governing body of an institution of further education shall not dispose of any property to which this paragraph applies without the prior consent of the Department.

(6) Property to which paragraph (5) applies is—

- (a) property transferred to the governing body under this Order;
- (b) property acquired by the governing body wholly or partly with assets which represent or in any way derive from any part of the proceeds of or any consideration for the disposal of property so transferred; and
- (c) property acquired, improved or maintained wholly or partly, directly or indirectly, out of funds provided under this Order by the Department or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained.

(7) The consent of the Department under paragraph (5) may be given in respect of a particular disposal of property or of disposals of any class or description and may be given subject to such conditions as the Department may determine.

(8) The consent of the Department is not required for the disposal of land which is or forms part of property to which paragraph (5) applies where the disposal is in consequence of the compulsory acquisition of such land by any authority in pursuance of any power of compulsory acquisition under any statutory provision; but the governing body shall inform the Department of any such compulsory acquisition.

(9) Where any property to which paragraph (5) applies is disposed of, the governing body shall pay to the Department such portion of the proceeds or value of the consideration for the disposal, after deduction of such expenses as appear to the Department to have been reasonably incurred in the disposal, as the Department may, after consultation with the governing body, determine.

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### **Provision of higher education by institutions of further education**

16.—(1) Subject to paragraphs (2) and (3), the governing body of an institution of further education shall have power, in accordance with any arrangements approved or determined by the Department, to provide, or secure the provision of, higher education.

(2) Paragraph (1) does not apply to higher education provided by means of—

- (a) a course for the initial training of teachers;
- (b) a full-time higher degree course; or
- (c) a course of a description prescribed for the purposes of this paragraph.

(3) Paragraph (1) does not apply to higher education provided by means of a course of a description prescribed for the purposes of this paragraph unless it is provided under arrangements of a prescribed description with a university or other prescribed institution.

### *Conduct of institutions of further education*

### **Regulations as to carrying on of institutions of further education**

17.—(1) The Department may by regulations make provision as to the carrying on of institutions of further education.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

- (a) preventing the use of the premises or equipment of such institutions for such purposes as may be prescribed;
- (b) with respect to the keeping, disclosure and transfer of educational records about students at such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations.

(3) Regulations made under paragraph (1) by virtue of paragraph (2)(b) may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

(4) Regulations under paragraph (1) may enable the Department or a prescribed body or person to authorise such exceptions, grant such approvals and make such determinations for the purposes of the regulations as are specified therein.

### **[<sup>F6</sup>Provision of information**

17A.—(1) The Department may make regulations requiring the governing body or the principal of an institution of further education to make available either generally or to prescribed persons, in such form and at such times as may be prescribed, such information relating to—

- (a) the external qualifications (within the meaning of Article 81 of the Education (Northern Ireland) Order 1998) for which courses of study are to be provided by or on behalf of the institution concerned for students under the age of 19 who are in full time attendance at the institution;
- (b) the courses of study leading to such qualifications which are to be so provided;
- (c) the specifications which have been provided or determined for the purposes of those courses; and
- (d) the results of the assessments of such students for the purposes of those qualifications,

as may be prescribed.

(2) The Department may make regulations requiring the governing body or the principal of an institution of further education to make available either generally or to prescribed persons, in such form and at such times as may be prescribed, such information as may be prescribed relating to the results of the assessments of pupils for whom secondary education is provided at the institution in pursuance of arrangements under Article 21 of the Education (Northern Ireland) Order 2006.

(3) Regulations under paragraph (1)(d) or (2) shall not require information as to the results of an assessment of a student or pupil to be made available to any persons or bodies other than—

- (a) the student or pupil concerned and his parents;
- (b) the governing body of the institution or school attended by the student or pupil concerned; or
- (c) a body or person prescribed by the regulations,

and shall not require such information to be made available to any body or person mentioned in subparagraphs (b) and (c) except where necessary for the purposes of the performance by that body or person of any functions under this Order or the Education Orders (as defined in the 1986 Order).

(4) Regulations under this Article may authorise governing bodies and principals to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.

(5) Before making any regulations under this Article the Department shall consult with—

- (a) the governing bodies and principals of all institutions of further education; and
- (b) any other persons with whom consultation appears to it to be desirable.]

**F6** Art. 17A inserted (1.8.2006) by [Education \(Northern Ireland\) Order 2006 \(S.I. 2006/1915 \(N.I. 11\)\)](#), arts. 1(2), 44(1), [Sch. 2 para. 14](#)

### Efficiency reviews

**18.**—(1) The Department may arrange for the carrying out (whether as part of an inspection under Article 102 of the 1986 Order or otherwise) by any person of studies designed to improve economy, efficiency and effectiveness in the management or operation of an institution of further education.

(2) The Department may give directions under Article 101 of the 1986 Order for the purpose of remedying any matter referred to, or implementing any recommendation contained, in a report of any studies carried out under paragraph (1).

*Accounts, reports, information, etc.*

### Accounts of governing body

**19.**—(1) It shall be the duty of the governing body of an institution of further education to keep proper accounts and proper records in relation to the accounts.

(2) The accounts shall be prepared and audited in respect of each financial year in such manner as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The audited accounts shall—

- (a) be submitted to the Department on or before such date as the Department may direct; and
- (b) be published in such manner as the Department may direct.

(4) The financial year of the governing body shall be the period of 12 months ending on 31st July.

(5) The Department may by order amend paragraph (4).

*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997. (See end of Document for details)*

(6) The Comptroller and Auditor General for Northern Ireland and the Department shall have the right of access to the books, accounts and records of the governing body.

### **Development plans**

**20.**—(1) Each governing body of an institution of further education shall, not later than such date in every financial year as the Department may determine, submit to the Department a development plan in respect of the institution.

(2) The development plan shall be prepared in respect of the next following financial year and the succeeding two financial years.

(3) The development plan shall contain a statement of—

- (a) the number of persons the governing body estimates will be students of the institution;
- (b) the courses of further and higher education which the governing body proposes to provide or secure the provision of;
- (c) the capital expenditure proposed by the governing body and an estimate of the recurrent expenditure and income of the governing body; and
- (d) such other matters as may be determined by the Department,

as regards each financial year to which the plan relates.

(4) In preparing a development plan, a governing body shall take into account any guidance issued to it by the Department.

(5) A development plan prepared in pursuance of this Article shall be in such form as the Department may determine.

(6) Any power of the Department under this Article to make a determination may be exercised differently in respect of different governing bodies.

(7) Each governing body of an institution of further education shall make arrangements for monitoring the implementation of the development plan in respect of the institution.

### **Reports, returns and information**

**21.**—(1) The governing body of an institution of further education shall make such reports and returns, and give such information to—

- (a) the Department, as the Department may reasonably require for the purposes of its functions under any statutory provision;
- (b) a board, as the board may reasonably require for the purposes of its functions under<sup>F7</sup> any statutory provision].

(2) Reports, returns and information provided under paragraph (1)(a) shall be in such form as the Department may direct.

(3) A board shall provide the governing body of an institution of further education with such information as the governing body may reasonably require for the purposes of its functions under this Order.

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### **Information as to provision of further education**

**22.**—(1) The Department may by regulations require the governing body of an institution of further education to publish such information as may be prescribed with respect to—

- (a) the educational provision made by the institution for students at the institution;
  - (b) the educational achievements of students on entry to the institution and the educational achievements of students while at the institution (including in each case the results of examinations, tests and other assessments of those students);
  - (c) the financial and other resources of the institution and the effectiveness of the use made of such resources;
  - (d) the careers of students of the institution after completing any course or leaving the institution; and
  - (e) any other prescribed matter relating to the institution.
- (2) For the purposes of paragraph (1)(d), a person's career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—
- (a) the numbers of students not undertaking any career, and
  - (b) the persons providing students with education, training or employment.
- (3) The information shall be published in such form and manner and at such times as may be prescribed.
- (4) The published information shall not name any student to whom it relates.
- (5) The Department may by regulations require the Board of Governors of any secondary school to provide such persons as may be prescribed with such categories of information falling within paragraph (6) as may be prescribed.
- (6) Information falls within this paragraph if it is—
- (a) published under paragraph (1); and
  - (b) made available to Boards of Governors for distribution.
- (7) Information provided under paragraph (5) shall be provided in such form and in such manner as may be prescribed.

*Functions of boards in relation to institutions of further education*

**Functions of boards in relation to institutions of further education**

- 23.—**(1) Where—
- (a) a board is under a duty, or has power, to provide any benefits or services for pupils; and
  - (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at institutions of further education and in relation to pupils at grant-aided schools,
- the board shall in performing the duty, or exercising the power, treat pupils at institutions of further education no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at grant-aided schools.
- (2) A board may, with the approval of the Department, give financial or other assistance to, or provide services to, the governing body of an institution of further education on such terms and conditions as may be arranged between the board and the governing body of the institution.
- (3) In the period of three years beginning on the transfer date it shall be the duty of a board and the governing body of an institution of further education to give effect to such arrangements for the provision of services by the board to the governing body in that period as may be approved or determined by the Department.
- (4) Where in accordance with arrangements approved under Article 15(2) the governing body of an institution of further education remits the whole or part of any charges which would otherwise be

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*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997. (See end of Document for details)*

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made in respect of meals and refreshments provided to any student, it shall be the duty of the board for the area in which the student is ordinarily resident to pay to the governing body a sum equal to the total of the amounts so remitted.

### *Supplementary*

#### **Regulations and orders**

**24.**—(1) All regulations made by the Department under this Order shall be subject to negative resolution.

(2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to any order made by the Department under Article 9 or 12, paragraph 9(1) or 17(1) of Schedule 2 or paragraph 4(2) of Schedule 3.

(3) Except as provided by paragraphs (4) and (5), all other orders made by the Department under this Order shall be subject to negative resolution.

(4) An order under Article 14(3)(a) [<sup>F8</sup>or paragraph 2(3) of Schedule 3] shall be subject to affirmative resolution.

(5) Paragraph (3) does not apply to an order under Article 1(2).

(6) Regulations and orders under this Order may contain such incidental, supplementary and transitional provisions as the Department thinks necessary or expedient.

<p><b>F8</b> Words in art. 24(4) inserted (1.8.2006) by <a href="#">Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11))</a>, arts. 1(2), <b>38(2)</b></p>
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*Art. 25—Amendments and repeals*

## SCHEDULES

### SCHEDULE 1

Article 2.

#### COURSES OF HIGHER EDUCATION

1. The descriptions of courses referred to in the definition of “higher education” in Article 2(2) are the following—

- (a) a course for the further training of teachers or youth and community workers;
- (b) a course for the Higher National Diploma or Higher National Certificate of the Business & Technology Education Council, or the Diploma in Management Studies;
- (c) a course in preparation for a professional examination at higher level;
- (d) a course providing education at a higher level (whether or not in preparation for an examination);
- (e) a post-graduate course (including a higher degree course);
- (f) a first degree course;
- (g) a course for the Diploma of Higher Education;
- (h) a course for the Certificate in Education.

2. For the purposes of paragraph 1(c) a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business & Technology Education Council.

3. For the purposes of paragraph 1(d) a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in paragraph 2.

### SCHEDULE 2

Article 10.

#### TRANSFER OF MANAGEMENT OF INSTITUTIONS OF FURTHER EDUCATION

##### *Interpretation*

1. In this Schedule—

“former governing body”, in relation to an institution of further education, means the governing body constituted for the institution under Part VII of the 1989 Order;

“new governing body”, in relation to an institution of further education, means the governing body established for the institution under this Order;

“relevant board”, in relation to an institution of further education, means the board which, immediately before the transfer date, was responsible for the management of the institution.

*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997. (See end of Document for details)*

### *Transfer of certain property, rights and liabilities*

2.—(1) Subject to the following provisions of this Schedule, on the transfer date there shall be transferred to, and by virtue of this paragraph vest in, the new governing body of an institution of further education—

- (a) all land and other property which, immediately before that date, was property of the relevant board used, held or obtained by that board for or in connection with the purposes of the institution;
- (b) all rights and liabilities subsisting immediately before that date which were acquired or incurred by the relevant board for or in connection with those purposes; and
- (c) any property, rights and liabilities of the former governing body of the institution.

(2) This paragraph does not apply to—

- (a) any right or liability under a contract of employment (which is dealt with in paragraph 9);
- (b) any liability of the relevant board in respect of compensation for premature retirement of any person formerly employed by it;
- (c) any liability of the relevant board in respect of the principal of, or any interest on, any loan obtained by it;
- (d) any liability of the relevant board in tort where the cause of action accrued before the transfer date;
- (e) any liability of the relevant board under a contract of indemnity in respect of acts committed before the transfer date;
- (f) any property, right or liability excluded from this paragraph—
  - (i) by an agreement under sub-paragraph (3); or
  - (ii) by a direction under sub-paragraph (4).

(3) If, before the transfer date, the former governing body of an institution of further education and the relevant board have agreed in writing to exclude any property, right or liability from this paragraph, that property, right or liability shall be so excluded.

(4) The Department may, at any time before the transfer date, direct that any property, right or liability specified in the direction shall be excluded from this paragraph.

(5) Subject to paragraph 3, the land and other property referred to in sub-paragraph (1)(a) includes any land or other property which was used, held or obtained—

- (a) for or in connection with the purposes of more than one institution of further education; or
- (b) partly for or in connection with the purposes of one or more such institutions and partly for or in connection with other purposes of the board,

to the extent that it was used, held or obtained for or in connection with the purposes of any such institution.

(6) Subject to paragraph 3, the rights and liabilities referred to in sub-paragraph (1)(b) include any rights and liabilities which were acquired or incurred—

- (a) for or in connection with the purposes of more than one institution of further education; or
- (b) partly for or in connection with the purposes of one or more such institutions and partly for or in connection with other purposes of the board,

to the extent that they were acquired or incurred for or in connection with the purposes of any such institution.

### *Apportionment of certain property, rights and liabilities*

3.—(1) The land, other property, rights and liabilities mentioned in paragraph 2(5) or (6) shall, where their nature permits, be divided or apportioned between the new governing bodies of the institutions of further education concerned or (as the case may be) between the board and the new governing body of any institution or institutions concerned, in such proportions as may be appropriate.

(2) Where any estate in land falls to be divided or apportioned under sub-paragraph (1), any rent payable by or to any party in respect of that estate and any rent charged on that estate shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate.

(3) Any land, other property, right or liability the nature of which does not permit its division or apportionment shall be transferred to the new governing body of such institution or retained by the relevant board according to—

- (a) in the case of an estate in land, which of the board or the governing body of any such institution appears, as at the transfer date, to be likely to experience the greatest practical difficulty through not having that land vested in it or, where none of them appears likely to experience such difficulty to a greater extent than any other, which of them appears on that date to be likely to make use of the land to the greatest extent; or
- (b) in the case of any other property or of any right or liability, which of them appears on the transfer date to be likely to make use of the property or right or, as the case may be, to be affected by the liability to the greatest extent,

subject (in either case) to such arrangements for the protection of the other party or parties concerned as may be agreed between the relevant board and the former governing body of any such institution or determined by the Department under paragraph 5.

### *Identification of property, rights and liabilities for purposes of transfer*

4.—(1) In respect of each institution of further education, the relevant board and the former governing body shall, not later than the transfer date, so far as practicable, arrive at such written agreements and execute such other instruments as are necessary or expedient—

- (a) to identify or define the land, other property, rights and liabilities to be transferred to and vest in the new governing body of the institution under paragraph 2; and
- (b) for making any arrangements such as are mentioned in paragraph 3(3) as will afford to the relevant board and the new governing body as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement or instrument shall contain provision so far as it is expedient to enable the creation, variation or extinction of estates in land and for the granting of indemnities.

(3) The relevant board shall supply the former governing body of the institution with such information, including all documents relating to estates in land, as that body may require for the purposes of this Schedule.

(4) Where no such agreement is arrived at before the transfer date, the Department may prescribe a later date by which such agreement is to be arrived at; and an agreement arrived at in pursuance of this sub-paragraph shall be between the relevant board and the new governing body and, for the purposes of such an agreement, references in this Schedule to the former governing body shall be construed as references to the new governing body.

*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997. (See end of Document for details)*

### *Resolution of disputes*

5.—(1) Where it appears to a board or the former governing body of an institution of further education that it is unlikely, in the case of any matter in respect of which an agreement is required to be arrived at under paragraph 4, that an agreement will be arrived at, the board or governing body may refer the matter to the Department.

(2) Where a matter is so referred, the Department shall, after consulting the board and any former governing body required to arrive at such an agreement, determine the matter.

(3) The Department shall issue a determination to the board and any former governing body required to arrive at such an agreement and may include in such determination any provision which could have been included in an agreement or other instrument made under paragraph 4.

(4) A determination made under this paragraph shall have effect for all purposes as if it were an agreement made under paragraph 4.

(5) The board and the former governing body shall provide the Department with such information, including all documents relating to estates in land, as the Department may require for the purposes of the exercise of its functions under this paragraph.

(6) Where a board and a former governing body have failed to arrive at an agreement under paragraph 4 before the transfer date and neither of them has referred the matter in respect of which the agreement is required to the Department under sub-paragraph (1), the Department may act under this paragraph as if the matter had been referred to it under that sub-paragraph.

### *Right to production of documents of title*

6.—(1) Where any land or other property is, or rights or liabilities are, transferred to and vest in the new governing body of any institution of further education under paragraph 2, the relevant board shall deliver to the new governing body all documents of title relating solely to such land or other property and all documents relating solely to such rights or liabilities.

(2) Without prejudice to sub-paragraph (1), the new governing body of an institution of further education to which any land or other property has, or any rights or liabilities have, been transferred under paragraph 2 shall be entitled at any time to require any person having possession of any document of title or other document relating to such land, other property, rights or liabilities to produce such documents to it.

(3) No charge may be made in respect of anything done under this paragraph.

### *Third parties affected by transfer*

7.—(1) Any transfer of land or other property, rights or liabilities from a board to the new governing body of an institution of further education under paragraph 2 shall be binding on all other persons.

(2) Where any such transfer has an effect on the rights or liabilities of a third party—

- (a) in the case of a transfer to which paragraph 4 applies, the board; and
- (b) in the case of a transfer to which paragraph 5 applies, the Department,

shall give notice in writing to the third party of that transfer.

(3) Where in consequence of any such transfer or anything done under this Schedule—

- (a) the rights or liabilities of any third party which were enforceable against or by the board become enforceable against or by the new governing body of one or more institutions of further education or partly against or by a board and partly against or by the new governing body of one or more institutions of further education; and
- (b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by the board or the new governing body of the institution or institutions concerned.

(4) Any dispute as to whether, and if so how much, compensation is to be paid under sub-paragraph (3), or as to the person to or by whom it is to be paid, shall be referred to and determined by the Department.

### *Agreements concerning functional work*

**8.—**(1) Where, immediately before the transfer date, arrangements exist for the carrying out by a board of functional work for the purposes of an institution of further education in pursuance of a bid prepared under Article 7 of the Education and Libraries (Northern Ireland) Order 1993, those arrangements shall have effect as from that date as if—

- (a) they were contained in an agreement made between the board and the new governing body on the terms specified in the bid; and
- (b) the agreement required the new governing body or (as the case may be) the board to make payments corresponding to the provision made in the bid in pursuance of Article 7(3) of that Order for items to be credited or (as the case may be) debited to any account.

(2) In sub-paragraph (1) “functional work” has the same meaning as in Part II of the Education and Libraries (Northern Ireland) Order 1993.

(3) This Schedule shall have effect as if the rights and liabilities of the new governing body under the agreement mentioned in sub-paragraph (1) were rights and liabilities of the board transferred to the new governing body under paragraph 2.

### *Transfer of staff*

**9.—**(1) Subject to sub-paragraphs (8) to (10), this paragraph applies to any person who immediately before the transfer date—

- (a) is employed by a board to work solely at an institution of further education; or
- (b) is employed by a board to work at an institution of further education and is designated in relation to that institution by order made by the Department for the purposes of this paragraph.

(2) In this paragraph “relevant governing body” means—

- (a) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(a), the new governing body of the institution of further education at which he is employed to work;
- (b) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(b), the new governing body of the institution of further education in relation to which he is designated by an order under that sub-paragraph.

(3) A contract of employment between a person to whom this paragraph applies and a board shall have effect from the transfer date as if originally made between that person and the relevant governing body.

(4) Without prejudice to sub-paragraph (3)—

- (a) all the board's rights, powers, duties and liabilities under or in connection with a contract to which that sub-paragraph applies shall by virtue of this paragraph be transferred to the relevant governing body on the transfer date; and
- (b) anything done before that date by or in relation to the board in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the relevant governing body.

*Status: Point in time view as at 01/08/2006.*

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(5) Sub-paragraphs (3) and (4) 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 paragraph.

(6) An order under sub-paragraph (1)(b) may designate a person either individually or as a member of a class or description of employees.

(7) Before making any order under sub-paragraph (1)(b) the Department shall consult—

- (a) in the case of an order designating a person individually, that person; and
- (b) in the case of an order designating a class or description of employees, such persons as appear to the Department to be representative of the class or description of employees concerned.

(8) This paragraph does not apply to a person if—

- (a) his contract of employment terminates on the day immediately before the transfer date;
- (b) prior to the transfer date he is appointed or assigned by the board to work exclusively at some place other than the institution of further education and the appointment or assignation is to take effect on that date;
- (c) the board, with effect from the transfer date, withdraws him from work at the institution; or
- (d) he is employed by a board to work at an institution of further education—
  - (i) in pursuance of arrangements such as are mentioned in paragraph 8(1); or
  - (ii) for the purpose of otherwise carrying out functional work falling within a defined activity.

(9) Where a person—

- (a) has, prior to the transfer date, entered into a contract of employment with a board which is to come into effect on or after that date; and
- (b) would, if the contract had come into effect before that date, have been a person to whom this paragraph applies,

he shall be treated as if he were a person to whom this paragraph applies.

(10) For the purposes of this paragraph—

- (a) a person employed by a board is to be regarded as employed to work at an institution of further education if his employment with the board for the time being involves work at that institution;
- (b) a person employed by a board is to be regarded as employed to work solely at an institution of further education if his only employment with the board (disregarding any employment under a separate contract with the board) is for the time being at that institution; and
- (c) “functional work” and “defined activity” have the same meanings as in Part II of the Education and Libraries (Northern Ireland) Order 1993.

#### *Restrictions on boards entering into contracts*

**10.**—(1) This paragraph applies to any contract which—

- (a) is entered into by a board after 31st August 1996 and before the transfer date; and
- (b) would by virtue of paragraph 2 or 9 be binding on the new governing body of an institution of further education with effect from the transfer date.

(2) A board shall not enter into a contract to which this paragraph applies without the prior consent, given in writing, of the former governing body of the institution of further education.

(3) A board shall not enter into a contract to which this paragraph applies in respect of which the consideration or, where the consideration is not expressed as an amount of money, the value of the consideration exceeds £50,000 without the prior consent, given in writing, of the Department.

(4) For the purposes of sub-paragraph (3), the consideration or value of the consideration in respect of a contract of employment exceeds £50,000 if, in respect of any period of 12 months, the aggregate amount of the remuneration payable to and value of other benefits receivable by the employee exceeds £50,000.

(5) Any consent for the purposes of this paragraph may be given in respect of a particular contract or in respect of contracts of any class or description; and such consent may be given unconditionally or subject to conditions.

(6) Where any contract entered into by a board whether on, before or after 31st August 1996 is varied after that date and the effect of such variation is as mentioned in paragraph (1)(b), the contract shall be treated, for the purposes of this paragraph, as if it were a contract entered into after that date.

(7) Any signification of consent for the purposes of this paragraph, or of such consent subject to conditions, given by the former governing body of an institution of further education or the Department before the coming into operation of this Schedule in respect of any contract to which this paragraph applies shall be treated for the purposes of this paragraph as a consent, or a consent subject to the conditions, given under this paragraph.

(8) Where—

- (a) a board has entered into a contract in contravention of this paragraph; and
- (b) the contract has not been performed, or has been performed only in part,

the new governing body may, in accordance with sub-paragraph (9), repudiate the contract to the extent that it has not been performed.

(9) A repudiation under sub-paragraph (8) shall be effected by serving notice in writing of the repudiation on—

- (a) the board; and
- (b) the other party to the contract.

(10) A repudiation under sub-paragraph (8) shall have effect as if made by the board.

### *Construction of agreements*

**11.—**(1) Where any rights or liabilities transferred under this Schedule are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement shall, unless the context otherwise requires, have effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement,
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee,
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement,
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as

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regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part, and head (d) shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

#### *Enforcement of transferred rights, etc.*

**12.**—(1) Without prejudice to the generality of paragraph 11, the transferee under a transfer made under this Schedule and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee under this Schedule as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee under this Schedule, or to any agreement relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

(3) Where any land or other property or rights transferred under this Schedule were immediately before the transfer date held on trust for any particular purpose, they shall, subject to any provision made under paragraph 17, continue to be so held by the transferee.

#### *Certification of transfer by Department*

**13.** A certificate issued by the Department and stating that any land or other property specified in the certificate, or any right or liability so specified, was or was not transferred by virtue of this Schedule to any body so specified shall be conclusive evidence for all purposes of that fact.

#### *Provision of information to new governing bodies*

**14.** The relevant board shall as soon as reasonably practicable after the transfer date provide to the new governing body of an institution of further education all such information held by the board, or available to it, as relates to the institution, its administration, management, fabric, students and staff.

#### *Stamp duty*

**15.** Stamp duty shall not be chargeable in respect of any agreement made or transfer effected under this Schedule.

#### *Attribution of surpluses and deficits*

**16.**—(1) Not later than such date as the Department may direct, the relevant board and the new governing body shall, in respect of each institution of further education, arrive at a written agreement as to—

- (a) the amount of any surplus or deficit in the accounts of the institution as at the day immediately before the transfer date;
- (b) if there is a surplus, the arrangements for the payment of a sum equal to the amount of that surplus by the relevant board to the new governing body;
- (c) if there is a deficit, the arrangements for the payment of a sum equal to the amount of that deficit by the new governing body to the relevant board.

(2) Where a board and a new governing body have failed to arrive at an agreement as mentioned in sub-paragraph (1), the matter shall be referred to the Department which shall—

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- (a) after consulting the board and the new governing body, determine the matter; and
  - (b) issue a determination to the board and the new governing body.
- (3) A determination under sub-paragraph (2) shall have effect for all purposes as if it were an agreement under sub-paragraph (1).
- (4) The board and the new governing body shall provide the Department with all such information as the Department may require for the exercise of its functions under this paragraph.

*Power to amend trust deeds, etc.*

**17.—**(1) The Department may by order make such modifications as it thinks fit in any trust deed or other instrument—

- (a) relating to or regulating an institution of further education; or
- (b) relating to any land or other property held by any person for the purposes of an institution of further education.

(2) Before making any modifications under sub-paragraph (1) of any trust deed or other instrument, the Department shall, so far as it appears to the Department practicable to do so, consult—

- (a) the new governing body of the institution concerned;
- (b) where any other person is empowered, by whatever means, to modify the trust deed or instrument, that person; and
- (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in head (a) or (b), the trustees.

*Amendment of memorandum or articles of association of certain companies*

**18.—**(1) This paragraph applies to a company formed by the former governing body of an institution of further education by virtue of Article 119A of the 1989 Order and in existence immediately before the transfer date.

(2) The Department may, after consultation with the new governing body of the institution, give to the persons who appear to it to have effective control over a company to which this paragraph applies such directions as it thinks fit for securing that the memorandum or articles of association of the company are amended in such manner as may be specified in the direction.

*Power to make further provision in relation to transfers*

**19.—**(1) The Department may by order make such further provision as appears to the Department to be necessary or expedient in consequence of, or for the purpose of facilitating, or otherwise related to, any transfer under this Schedule.

- (2) An order under this paragraph may—
- (a) amend or repeal any statutory provision; or
  - (b) provide for any statutory provision to have effect for any period specified in the order with such modifications as may be so specified.

*Powers of former governing bodies*

**20.—**(1) The former governing body of an institution of further education shall have such of the powers to be conferred by this Order on the new governing body of the institution—

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- (a) as are necessary or expedient to enable the former governing body to do anything it is required or enabled to do under this Schedule in connection with the transfer of the management of the institution from the relevant board to the new governing body; and
  - (b) as will facilitate or enable the effective carrying on by the new governing body of its functions after the transfer date.
- (2) Nothing in Part VII of the 1989 Order or any instrument made thereunder shall prevent or restrict the exercise by a former governing body of the powers conferred by this paragraph.
- (3) In exercising such powers a former governing body shall not be taken to be acting on behalf of, or in the name of, the relevant board.

### SCHEDULE 3

Article 11.

## GOVERNING BODIES OF INSTITUTIONS OF FURTHER EDUCATION

### *Status and name*

- 1.—(1) The governing body of an institution of further education shall not—
- (a) be regarded as the servant or agent of the Crown;
  - (b) have any status, immunity or privilege of the Crown,
- and its property shall not be regarded as property of, or held on behalf of, the Crown.
- (2) Subject to the provisions of this Order, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply to the governing body of an institution of further education.
- (3) The name of an institution of further education shall be such as is specified in the instrument of government of the institution and the governing body shall be known as “the Governing Body of” that institution.

### *Membership*

- 2.—(1) The instrument of government of an institution of further education shall provide for the governing body to consist of not less than 12 nor more than 18 member, of whom—
- (a) not less than one-half shall be persons appearing to the Department to be, or to have been, engaged or employed in business, industry or any profession;
  - (b) one shall be the principal of the institution;
  - (c) not less than one nor more than two shall be elected by persons employed at the institution from among such persons;
  - (d) one shall be elected by students of the institution from among such students;
  - (e) two shall be persons nominated by the board for the area in which the institution is situated;
  - (f) not more than two may be persons co-opted by the other members of the governing body.
- (2) The instrument of government of an institution of further education shall provide—
- (a) for the members of the governing body to be appointed by the Department after consultation with such bodies or persons as appear to the Department to be appropriate;
  - (b) that where two persons are to be elected in pursuance of sub-paragraph (1)(c)—

- (i) one shall be elected by teachers employed at the institution from among such teachers; and
  - (ii) one shall be elected by other persons employed at the institution from among such other persons;
  - (c) that any election to be held in pursuance of sub-paragraph (1)(c) or (d) shall be conducted in accordance with rules made by the governing body.
- [<sup>F9</sup>(3) The Department may by order amend sub-paragraphs (1) and (2).]

**F9** Sch. 3 para. 2(3) inserted (1.8.2006) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(2), 38(1)

#### *Chairman and other officers*

- 3.—(1) The instrument of government of an institution of further education shall provide for—
- (a) the appointment, tenure of office and removal from office of a chairman of the governing body;
  - (b) the eligibility of persons for appointment as chairman.
- (2) The instrument of government of an institution of further education may provide for the appointment, tenure of office and removal from office of other officers of the governing body.

#### *Eligibility and tenure of office*

- 4.—(1) Subject to sub-paragraph (2), the instrument of government of an institution of further education shall provide for—
- (a) the eligibility of persons for membership of the governing body;
  - (b) the tenure of office, and removal from office, of members of the governing body.
- (2) If it appears to the Department that the affairs of the governing body of any institution of further education have been or are being mismanaged—
- (a) the Department may by order remove all or any of the members of the governing body (other than the principal of the institution); and
  - (b) new members shall be appointed to the governing body in place of those so removed.
- (3) Where the Department exercises the power conferred by sub-paragraph (2) to remove members of the governing body, it shall give notice in writing of such removal to any members so removed and to the governing body.

#### *Payments to members*

5.—<sup>F10</sup>(1) The articles of government of an institution of further education may provide, for the governing body to pay travelling and subsistence allowances to its members and the members of committees of the governing body.

<sup>F11</sup>(2) The articles of government of an institution of further education may provide for the governing body to pay remuneration to the members of the governing body (or such of those members as may be specified or described in the articles) of such amounts or at rates not exceeding such amounts or rates and on such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine.]

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- F10** Sch. 3 para. 5 renumbered (1.8.2006) as Sch. 3 para. 5(1) by [Education \(Northern Ireland\) Order 2006 \(S.I. 2006/1915 \(N.I. 11\)\)](#), arts. 1(2), **39**
- F11** Sch. 3 para. 5(2) inserted (1.8.2006) by [Education \(Northern Ireland\) Order 2006 \(S.I. 2006/1915 \(N.I. 11\)\)](#), arts. 1(2), **39**

### *Proceedings*

**6.**—(1) Subject to any provision made by the articles of government of an institution of further education, the governing body of an institution of further education may regulate its own proceedings and those of any committee established by it.

(2) The validity of any proceedings of a governing body, or of any committee of the body, shall not be affected by—

- (a) a vacancy amongst the members; or
  - (b) any defect in the appointment of any member.
- (3) The articles of government of an institution of further education—
- (a) shall make provision about the procedures of the governing body and of the institution;
  - (b) shall make provision for the admission, suspension and expulsion of students;
  - (c) shall provide for the authentication of the application of the seal of the governing body;
  - (d) may authorise the governing body to make rules for the government and conduct of the institution including, in particular, provision about the conduct of students and employees.

### *Committees, etc.*

**7.**—(1) The articles of government of an institution of further education—

- (a) shall provide for the governing body to establish an Audit Committee; and
- (b) may provide for the governing body to establish other committees.

(2) The articles of government shall regulate the constitution and functions of committees of the governing body.

### *Delegation of functions*

**8.** The articles of government of an institution of further education may provide for the delegation of functions of the governing body to—

- (a) a committee of the governing body;
- (b) the principal of the institution; or
- (c) such other person as may be specified by or determined in accordance with the articles.

### *Evidence of documents*

**9.**—(1) In any legal proceedings a document purporting—

- (a) to be a document made or issued by the governing body of an institution of further education; and
- (b) to be duly executed under the seal of the body, or to be signed by the chairman of the body or the principal of the institution,

shall be received in evidence and shall be treated, without further proof, as being so made or issued unless the contrary is shown.

(2) In any legal proceedings an extract from the minutes of the proceedings of any meeting of the governing body of an institution of further education signed by the chairman of the body or by the principal of the institution shall be evidence of the matters stated therein.

### *Staff*

**10.**—(1) The articles of government of an institution of further education shall make provision for the arrangements concerning the appointment, appraisal, promotion, suspension and dismissal of the principal and other employees of the institution.

(2) Subject to any provision so made, the governing body of an institution of further education may appoint such employees as it thinks fit.

(3) The terms and conditions of the employees of the governing body of an institution of further education (other than those to whom sub-paragraph (4) applies) shall be such as may be determined by the governing body after consultation with representatives of the employees concerned.

(4) The terms and conditions of employees to whom this sub-paragraph applies shall be such as may be determined by the governing body subject to the approval of the Department.

(5) Sub-paragraph (4) applies to—

- (a) the principal and a vice principal of the institution; and
- (b) such other employees as the Department may direct.

### *Schedule 4—Amendments*

### *Schedule 5—Repeals*

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