



# Further and Higher Education Act 1992

## 1992 CHAPTER 13

### PART I

#### FURTHER EDUCATION

#### CHAPTER I

##### RESPONSIBILITY FOR FURTHER EDUCATION

##### *The new funding councils*

### **1 The Further Education Funding Councils.**

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

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he shall have regard to the desirability of their being currently engaged in the provision of further education or in carrying responsibility for such provision, and

(b) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.

(5) In this Part of this Act any reference to a council is to a further education funding council.

(6) References in the Education Acts to the appropriate further education funding council, in relation to any educational institution—

(a) where the institution mainly serves the population of England, are to the Further Education Funding Council for England and, where the institution mainly serves the population of Wales, are to the Further Education Funding Council for Wales, and

(b) where the institution receives financial support from a further education funding council, are to that council also (if different).

(7) Any dispute as to whether any functions are exercisable by one of the councils shall be determined by the Secretary of State.

(8) Schedule 1 to this Act has effect with respect to each of the councils.

**Modifications etc. (not altering text)**  
C1 S. 1(7) modified (1.7.1999) by S.I. 1999/672, art. 5, Sch.2.

**Commencement Information**  
I1 S. 1 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

*The new further education sector*

VALID FROM 01/04/2001

F12 .....

**Textual Amendments**  
F1 Ss. 1-9 repealed (1.4.2001) by 2000 c. 21, ss. 149, 153, Sch. 9 para. 20, Sch. 11 (with s. 150); S.I. 2001/654, art. 2, Sch. Pt. II (with transitional provisions in art. 3); S.I. 2001/1274, art. 2, Sch. Pt. I

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

(1) It shall be the duty of each council to secure the provision for the population of their area of adequate facilities for education to which this subsection applies, that is—

(a) part-time education suitable to the requirements of persons of any age over compulsory school age, and

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

#### Commencement Information

**I2** S. 3 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

#### 4 Persons with learning difficulties.

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

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

#### Commencement Information

**I3** S. 4 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

### Finance

#### 5 Administration of funds by councils.

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

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(b) the carrying on of research or other activities, relevant to the provision of facilities for further education.

(6) Financial support under this section—

- (a) shall take the form of grants, loans or other payments, and
- (b) may [<sup>F2</sup>, subject to subsection (7A) below,] be given on such terms and conditions as the council think fit.

(7) The terms and conditions on which a council make any grants, loans or other payments under this section may in particular—

- (a) enable the council to require the repayment, in whole or in part, of sums paid by the council if any of the terms and conditions subject to which the sums were paid is not complied with, and
- (b) require the payment of interest in respect of any period during which a sum due to the council in accordance with any of the terms and conditions remains unpaid,

but shall not relate to the application by the person to whom the financial support is given of any sums derived otherwise than from the council.

[<sup>F3</sup>(7A) Without prejudice to the power to impose conditions given by subsection (6)(b) above, the conditions subject to which a council gives financial support under this section to the governing body of an institution within the further education sector—

- (a) shall require the governing body to publish disability statements at such intervals as may be prescribed; and
- (b) may include conditions relating to the provision made, or to be made, by the institution with respect to disabled persons.

(7B) For the purposes of subsection (7A) above—

“disability statement” means a statement containing information of a prescribed description about the provision of facilities for education made by the institution in respect of disabled persons;

“disabled persons” means persons who are disabled persons for the purposes of the <sup>M1</sup>Disability Discrimination Act 1995; and

“prescribed” means prescribed by regulations.]

(8) A council may not give any financial support except in accordance with this section.

#### Textual Amendments

**F2** Words in s. 5(6)(b) inserted (31.7.1996) by 1995 c. 50, s. 30(2) (with ss. 59, 64, 65); S.I. 1996/1474, art. 2(2), **Sch. Pt.II**

**F3** S. 5(7A)(7B) inserted (31.7.1996) by 1995 c. 50, s. 30(3) (with ss. 59, 64, 65); S.I. 1996/1474, art. 2(2), **Sch. Pt.II**

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

**C2** S. 5(1) (except s. 5(1)(b)) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**

S. 5(2) (except s. 5(2)(b)) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**

**C3** S. 5(4) applied (with modifications): (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**; (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

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#### Commencement Information

**I4** S. 5 wholly in force: s. 5(5)(6)(7)(8) in force at 6.5.1992; s. 5(3) in force at 30.9.1992; s. 5(1)(2)(4) in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Schs. 1-3

#### Marginal Citations

**M1** 1995 c.50.

## 6 Administration of funds: supplementary.

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

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- (b) there are no arrangements for the provision in that year of any facilities of the kind specified in the application for the population of the sponsoring body's locality by any other institutions or the arrangements for such provision for that population in that year by other institutions are inadequate,

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

- (6) In subsection (5) above—

- (a) references to part-time, or adult, further education are to education provided by means of courses of any description mentioned in Schedule 2 to this Act, and

- (b) references to the provision of facilities for such education by any institution in any academic year include the provision of facilities, and the carrying on of any activities, which the governing body of the institution consider necessary or desirable to be provided or carried on for the purpose of or in connection with the provision of facilities for such education by them in that year,

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

#### Commencement Information

- I5** S. 6 wholly in force: s. 6(2)(3)(4) in force at 6.5.1992; s. 6(5)(6) in force at 30.9.1992; s. 6(1) in force at 1.4.1993, see s. 94(3) and S.I. 1992/831, art. 2, Schs. 1-3

## 7 Grants to councils.

- (1) The Secretary of State may make grants to each of the councils of such amounts and subject to such terms and conditions as he may determine.

- (2) The terms and conditions subject to which grants are made by the Secretary of State to either of the councils—

- (a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the council in respect of activities carried on by the institution, but
- (b) shall not otherwise relate to the provision of financial support by the council in respect of activities carried on by any particular institution or institutions.

- (3) Such terms and conditions may in particular—

- (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with, and
- (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

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

**C4** S. 7(1) extended (16.7.1998) by 1998 c. 30, ss. 26(1), 46(3) (with s. 42(8))

#### Commencement Information

**I6** S. 7 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### *Further functions*

## 8 Supplementary functions.

(1) Each council—

- (a) shall provide the Secretary of State with such information or advice relating to the provision for the population of their area of further education as he may from time to time require, and
- (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit,

and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.

(2) Each council shall keep under review the matters in respect of which they have power under this Part of this Act to give financial support.

(3) Where in the case of an institution within the further education sector or which provides any facilities for further education, the Secretary of State has, before the date on which the councils were established, made any grant, loan or other payment to the institution subject to any terms or conditions—

- (a) all the functions of the Secretary of State in relation to the grant, loan or other payment shall, if the Secretary of State so directs, be exercisable on his behalf by a council in accordance with such directions as he may give from time to time,
- (b) the council shall keep the Secretary of State informed of any action they take or propose to take in the exercise of those functions, and
- (c) the council shall immediately pay to the Secretary of State any sums received by them in the exercise of those functions.

(4) The Secretary of State may by order confer or impose on a council such supplementary functions relating to the provision of education as he thinks fit.

(5) For the purposes of subsection (4) above a function is a supplementary function in relation to a council if it is exercisable for the purposes of—

- (a) the exercise by the Secretary of State of functions of his under any enactment, or
- (b) the doing by the Secretary of State of anything he has power to do apart from any enactment,

and it is relevant to the provision of facilities for further education for the population of the council's area.

[<sup>F4</sup>(6) As soon as is reasonably practicable after the end of its financial year, each council shall make a written report to the Secretary of State on—



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- (a) the progress made during the year to which the report relates in the provision of further education for disabled students in their area; and
  - (b) their plans for the future provision of further education for disabled students in their area.
- (7) In subsection (6) above—
- “disabled students” means students who are disabled persons for the purposes of the Disability Discrimination Act 1995; and
  - “financial year” means the period of twelve months ending with 31st March 1997 and each successive period of twelve months.]

#### Textual Amendments

- F4** S. 8(6)(7) added (31.7.1996) by 1995 c. 50, s. 30(4) (with ss. 59, 64, 65); S.I. 1996/1474, art. 2(2), Sch. Pt.II

#### Commencement Information

- I7** S. 8 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

## 9 Assessment of quality of education provided by institutions.

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

#### Commencement Information

- I8** S. 9 wholly in force at 1.4.1993 see s. 94(3), S.I. 1992/831, art. 2, Sch. 3 and S.I. 1992/2377, art. 2

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*Adjustment of local education authority sector*

**F5**10 .....

**Textual Amendments**  
**F5** S. 10 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

**F6**11 .....

**Textual Amendments**  
**F6** S. 11 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

*Provision of further education in schools*

**F7**12 .....

**Textual Amendments**  
**F7** s. 12 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

**F8**13 .....

**Textual Amendments**  
**F8** S. 13 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

*General*

**F9**14 .....

**Textual Amendments**  
**F9** S. 14 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

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## CHAPTER II

### INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

#### *The further education corporations*

#### **15 Initial incorporation of existing institutions.**

- (1) Before the appointed day the Secretary of State shall by order specify—
  - (a) each educational institution maintained by a local education authority which appears to him to fall within subsection (2) below, and
  - (b) each county school, controlled school or grant-maintained school which appears to him to fall within subsection (3) below.
- (2) An institution falls within this subsection if on 1st November 1990 its enrolment number calculated in accordance with paragraph 1(1) of Schedule 3 to this Act was not less than 15 per cent. of its total enrolment number calculated in accordance with paragraph 1(2) of that Schedule.
- (3) An institution falls within this subsection if on 17th January 1991 not less than 60 per cent. of the pupils at the institution were receiving full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years.
- (4) On the appointed day a body corporate shall be established, for each institution so specified, for the purpose of conducting the institution as from the operative date.
- (5) The name given in the order under subsection (1) above as the name of the institution shall be the initial name of the body corporate.
- (6) Where an educational institution, being an institution maintained by a local education authority or a grant-maintained school, has been established since 1st November 1990 or, as the case may be, 17th January 1991 by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) or, as the case may be, subsection (3) above if it would have done so if the merger had taken place before that date.
- (7) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) above.

#### **Commencement Information**

- 19** S. 15 wholly in force: s. 15(1)(2)(3)(5)(6)(7) in force at 6.5.1992; s. 15(4) in force at 30.9.1992, see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Schs. 1, 2](#)

#### **16 Orders incorporating further institutions.**

- (1) The Secretary of State may by order make provision for the establishment of a body corporate—
  - (a) for the purpose of establishing and conducting an educational institution, or
  - (b) for the purpose of conducting an existing educational institution,

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but shall not make an order in respect of an existing institution without the consent of the governing body.

(2) Subsection (1) above does not apply to any educational institution maintained by a local education authority or any grant-maintained school; but if at any time it appears to the Secretary of State, in the case of any educational institution so maintained or any grant-maintained school—

- (a) that its enrolment number calculated in accordance with paragraph 1(1) of Schedule 3 to this Act was not less than 15 per cent. of its total enrolment number calculated in accordance with paragraph 1(2) of that Schedule, or
- (b) that it is principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years,

he may by order make provision for the establishment of a body corporate for the purpose of conducting that institution.

(3) If at any time a council proposes to the Secretary of State that a body corporate should be established for the purpose of conducting an educational institution which—

- (a) is maintained by a local education authority or is a grant-maintained school, and
- (b) is principally concerned with the provision of further or higher education or full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years,

the Secretary of State may by order make provision for the establishment of a body corporate for that purpose.

(4) The name given in the order under this section as the name of the institution shall be the initial name of the body corporate.

(5) An order under this section shall provide for the institution to be conducted by the body corporate as from the operative date.

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

**C5** S. 16(1) modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.1

**C6** S. 16(2) applied (with modifications): (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I; (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt.I

**Commencement Information**

**I10** S. 16 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

**17 “Further education corporation” and “operative date”.**

(1) In this Act “further education corporation” means a body corporate established under section 15 or 16 of this Act.

(2) In this Part of this Act “operative date”, in relation to a further education corporation and the institution, means—

- (a) in the case of a further education corporation established under section 15 of this Act, such date as the Secretary of State may by order appoint in relation to the corporations so established, and

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- (b) in the case of a further education corporation established under section 16 of this Act, such date as the Secretary of State may by order appoint in relation to that corporation.

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**Commencement Information**

**I11** S. 17 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

## 18 Principal powers of a further education corporation.

- (1) A further education corporation may—
- (a) provide further and higher education, and
  - (b) supply goods or services in connection with their provision of education, and those powers are referred to in section 19 of this Act as the corporation's principal powers.
- (2) For the purposes of subsection (1) above, goods are supplied in connection with the provision of education by a further education corporation if they result from—
- (a) their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
  - (b) the use of their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
  - (c) ideas of a person employed by them, or of one of their students, arising out of their provision of education.
- (3) For the purposes of that subsection, services are supplied in connection with the provision of education by a further education corporation if—
- (a) they result from their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
  - (b) they are provided by making available their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
  - (c) they result from ideas of a person employed by them, or of one of their students, arising out of their provision of education.

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**Commencement Information**

**I12** S. 18 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## 19 Supplementary powers of a further education corporation.

- (1) A further education corporation may do anything (including in particular the things referred to in subsections (2) to (4) below) which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of their principal powers.
- (2) A further education corporation may conduct an educational institution for the purpose of carrying on activities undertaken in the exercise of their powers to provide further or higher education and, in particular, may assume as from the operative date the conduct of the institution in respect of which the corporation is established.

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- (3) A further education corporation may provide facilities of any description appearing to the corporation to be necessary or desirable for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties within the meaning of section 4(6) of this Act).
- (4) A further education corporation may—
- (a) acquire and dispose of land and other property,
  - (b) enter into contracts, including in particular—
    - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers, and
    - (ii) contracts with respect to the carrying on by the corporation of any such activities,
  - (c) borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under sections 23 to 27 of this Act and, in connection with such borrowing, may grant any mortgage, charge or other security in respect of any land or other property of the corporation,
  - (d) invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on,
  - (e) accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes, and
  - (f) do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.
- (5) The power conferred on a further education corporation by subsection (4)(c) above to borrow money may not be exercised without the consent of the appropriate council, and such consent may be given for particular borrowing or for borrowing of a particular class.

#### **Commencement Information**

**I13** S. 19 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## **20 Constitution of corporation and conduct of the institution.**

- (1) For every further education corporation established to conduct an educational institution there shall be—
- (a) an instrument providing for the constitution of the corporation (to be known as the instrument of government), and
  - (b) an instrument in accordance with which the corporation, and the institution, are to be conducted (to be known as articles of government).
- (2) Instruments of government and articles of government—
- (a) shall comply with the requirements of Schedule 4 to this Act, and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.

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- (3) The validity of any proceedings of a further education corporation, or of any committee of the corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (4) Every document purporting to be an instrument made or issued by or on behalf of a further education corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

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#### Commencement Information

**I14** S. 20 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## 21 Initial instruments and articles.

- (1) As from the date on which a further education corporation is established, the instrument of government and articles of government—
  - (a) in the case of an institution which was a grant-maintained school on that date, shall be such as is prescribed by the order in respect of the institution under section 15 or 16 of this Act, and
  - (b) in any other case, shall be such as is prescribed by regulations.
- (2) Such orders and regulations—
  - (a) may provide for all or any of the persons who, on the date on which a corporation is established to conduct the grant-maintained school or other existing institution, are the members of the governing body of the institution to be the initial members of the corporation, and
  - (b) may make such other provision in relation to grant-maintained schools or other existing institutions as appears to the Secretary of State necessary or desirable to secure continuity in their government.
- (3) In the case of a further education corporation established to conduct an institution which, on the date the corporation was established, was a grant-maintained school, the governing body incorporated under [F10Chapter V of Part III of the Education Act 1996 (or any corresponding earlier enactment)] shall, on the operative date, be dissolved.

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#### Textual Amendments

**F10** Words in s. 21(3) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.108 (with ss. 1(4), 561, 562, Sch. 39)

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#### Commencement Information

**I15** S. 21 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## 22 Subsequent instruments and articles.

- (1) The Secretary of State may, after consulting the appropriate council—
  - (a) if a further education corporation submits a draft of an instrument of government to have effect in place of their existing instrument, by order make

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- a new instrument of government in terms of the draft or in such terms as he thinks fit, and
- (b) if such a corporation submits draft modifications of an instrument made under paragraph (a) above, by order modify the instrument in terms of the draft or in such terms as he thinks fit,
- but shall not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the corporation.
- (2) The Secretary of State may by order modify any instrument of government of any further education corporation.
- (3) An order under subsection (2) above—
- (a) may relate to all further education corporations, to any category of such corporations specified in the order or to any such corporation so specified, but
- (b) shall not be made unless the Secretary of State has consulted the appropriate council and each further education corporation to which the order relates.
- (4) A further education corporation may, with the consent of the Secretary of State—
- (a) make new articles of government in place of their existing articles, or
- (b) modify their existing articles.
- (5) The Secretary of State may by a direction under this section require further education corporations, any class of such corporations specified in the direction or any particular further education corporation so specified—
- (a) to modify their articles of government, or
- (b) to secure that any rules or bye-laws made in pursuance of their articles of government are modified,
- in any manner so specified.
- (6) Before giving a direction under this section, the Secretary of State shall consult the further education corporation or (as the case may be) each further education corporation to which the direction applies.

#### **Commencement Information**

**I16** S. 22 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

VALID FROM 01/10/1998

#### **[<sup>F11</sup>22A Charitable status of a further education corporation.**

- (1) A further education corporation shall be a charity which is an exempt charity for the purposes of the Charities Act 1993.
- (2) So far as it is a charity, any institution which—
- (a) is administered by or on behalf of any further education corporation, and
- (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,
- shall also be an exempt charity for the purposes of the <sup>M2</sup>Charities Act 1993.



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(3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.]

#### Textual Amendments

**F11** S. 22A inserted (1.10.1998) by 1998 c. 30, s. 41(2) (with s. 42(8)); S.I. 1998/2215, art.2

#### Marginal Citations

**M2** 1993 c. 10.

### *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—
  - (a) the governing body of the institution and the local authority have agreed in writing to exclude any land, and
  - (b) the Secretary of State has given his written approval of the agreement,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.

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- (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.

#### Commencement Information

**I17** 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>M3</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.
- (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>M4</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.

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- (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).

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**Commencement Information**

**I18** S. 24 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

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**Marginal Citations**

**M3** 1985 c. 47.

**M4** 1988 c. 9.

## 25 Transfer of property, etc.: grant-maintained schools.

- (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 a grant-maintained school.
- (2) On the operative date—
- (a) all land or other property which, immediately before that date, was property of the 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.

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**Commencement Information**

**I19** S. 25 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## 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 or was a grant-maintained school—
- (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

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- (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, that authority,
  - (b) in relation to a corporation established to conduct an institution which, on that date, was a voluntary aided or special agreement school, the governing body of the school, and
  - (c) in relation to a corporation established to conduct an institution which, on that date, was a grant-maintained school, the governing body of the 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
  - (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) This section is subject to section 48 of this Act.

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

**C7** 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. 1999/1284, **art. 3**; (1.6.1999) by S.I. 1999/1285, **art. 3**; (1.8.1999) by S.I. 1802, art. 3; (1.8.1999) by S.I. 1999/1919, **art.3**; (1.8.1999) by S.I. 1999/1997, **art.3**; (1.9.1999) by S.I. 1999/2220, **art. 3**.

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#### Commencement Information

**I20** 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)

### *Dissolution of further education corporations*

#### **27 Dissolution of further education corporations.**

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for the dissolution of any further education corporation and the transfer to any person mentioned in subsection (2) or (3) below of property, rights and liabilities of the corporation.
- (2) Such property, rights and liabilities may be transferred to—
  - (a) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description, or
  - (b) any body corporate established for purposes which include the provision of such facilities or services,with the consent of the person or body in question.
- (3) Such property, rights and liabilities may be transferred to—
  - (a) a council, or
  - (b) a higher education funding council.
- (4) Where the recipient of a transfer under any order under this section is not a charity established for charitable purposes which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (5) In subsection (4) above “charity” and “charitable purposes” have the same meanings as in the <sup>M5</sup>Charities Act 1960.
- (6) An order under this section may apply section 26 of this Act with such modifications as the Secretary of State may consider necessary or desirable.
- (7) Before making an order under this section in respect of a further education corporation the Secretary of State shall consult—
  - (a) the corporation, and
  - (b) the appropriate council, unless the order was made for the purpose of giving effect to a proposal of that council.

#### Commencement Information

**I21** S. 27 wholly in force at 30.9.1992, see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

#### Marginal Citations

**M5** 1960 c. 58.

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### *Designation of institutions for funding by the councils*

## **28 Designation of institutions.**

- (1) The Secretary of State may by order designate as eligible to receive support from funds administered by the councils any educational institution principally concerned with the provision of one or both of the following—
  - (a) full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, and
  - (b) courses of further or higher education,
 if the institution meets the requirements of subsection (2) below.
- (2) The institution must be one of the following—
  - (a) a voluntary aided school,
  - (b) an institution (other than a school) assisted by a local education authority, or
  - (c) an institution which is grant-aided or eligible to receive aid by way of grant.
- (3) For the purposes of subsection (2)(c) above an institution is grant-aided or eligible to receive aid by way of grant if it is maintained by persons other than local education authorities who—
  - (a) receive any grants under regulations made under [F12 section 485 of the Education Act 1996], or
  - (b) are eligible to receive such grants.
- (4) In this Part of this Act “designated institution” means an institution in relation to which a designation under this section has effect.

#### **Textual Amendments**

**F12** Words in s. 28(3)(a) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.109** (with ss. 1(4), 561, 562, **Sch. 39**)

#### **Commencement Information**

**I22** S. 28 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

## **29 Government and conduct of designated institutions.**

- (1) This section has effect in relation to any designated institution, other than—
  - (a) an institution conducted by a company, or
  - (b) an institution conducted by an unincorporated association if the order designating the institution provides for its exemption.
- (2) For each institution in relation to which this section has effect there shall be—
  - (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government), and
  - (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government),
 each of which meets the requirements of subsection (3) below.
- (3) Those requirements are that the instrument—

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- (a) was in force when the designation took effect and is approved for the purposes of this section by the Secretary of State,
  - (b) is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below, and is approved for the purposes of this section by the Secretary of State, or
  - (c) is made under subsection (6) below.
- (4) In this section “regulatory instrument”, in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.
- (5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the governing body of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) The Secretary of State may by order make either of the instruments referred to in subsection (2) above and any instrument made by him under this subsection may replace wholly or partly any existing regulatory instrument.
- (7) If an instrument approved by the Secretary of State for the purposes of this section—
- (a) falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it, or
  - (b) was made by the governing body of the institution,
- the instrument may be modified by the governing body.
- (8) The Secretary of State may by order modify either of the instruments referred to in subsection (2) above and no instrument approved by him for the purposes of this section may be modified by any other person without the Secretary of State’s consent.
- (9) Before exercising any power under subsection (6) or (8) above in relation to any instrument the Secretary of State shall consult—
- (a) the governing body of the institution, and
  - (b) where there is such a power as is mentioned in subsection (3)(b) above to make or, as the case may be, modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,
- so far as it appears to him to be practicable to do so.

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**Commencement Information**

**I23** S. 29 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### 30 Special provision for voluntary aided sixth form colleges.

Notwithstanding anything in section 29 of this Act, the instrument of government of an institution which, when designated, was a voluntary aided school must provide—

- (a) for the governing body of the institution to include persons appointed for the purpose of securing so far as practicable that the established character of the institution at the time of its designation is preserved and developed and,

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in particular, that the school is conducted in accordance with any trust deed relating to it, and

- (b) for the majority of members of the governing body to be such governors.

**Commencement Information**

**I24** S. 30 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

**31 Designated institutions conducted by companies.**

- (1) This section has effect in relation to any designated institution conducted by a company.
- (2) The articles of association of the company shall incorporate—
- (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution), and
  - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).
- (3) The Secretary of State may give to the persons who appear to him to have effective control over the company such directions as he thinks fit for securing that—
- (a) the memorandum or articles of association of the company, or
  - (b) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company,
- are amended in such manner as he may specify in the direction.
- (4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Secretary of State for his approval and he has notified his approval to the company.
- (5) Before giving any directions under subsection (3) above the Secretary of State shall consult the persons who appear to him to have effective control over the company.

**Commencement Information**

**I25** S. 31 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

**32 Transfer of property, etc., to designated institutions.**

- (1) This section has effect in relation to an institution designated under section 28 of this Act in any case where—
- (a) the order designating the institution under that section so provides, and
  - (b) when designated the institution was a voluntary aided school or an institution (other than a school) assisted by a local education authority.
- (2) Subject to subsection (4) below and section 36 of this Act, on the designation date—
- (a) all land or other property which, immediately before that date, was property of a former assisting authority used or held for the purposes of the institution, and
  - (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes,



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shall be transferred to and, by virtue of this Act, vest in the appropriate transferees.

- (3) In this section and section 33 of this Act—
- “appropriate transferees” means—
- (a) in relation to an institution conducted by a company, the company, and
  - (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution,

“designation date”, in relation to a designated institution, means the date on which the designation takes effect, and

“former assisting authority” means—

    - (a) in relation to an institution which when designated was a voluntary aided school, the local education authority which maintained the school, and
    - (b) in relation to an institution which when designated was an institution (other than a school) assisted by a local education authority, that authority.

(4) Subsection (2) above shall not apply to—

    - (a) any liability of a former assisting authority in respect of the principal of, or interest on, any loan, or
    - (b) any property, rights or liabilities excluded under subsections (5) or (6) below.

(5) If before the designation date—

    - (a) the appropriate transferees and the former assisting authority have agreed in writing to exclude any land, and
    - (b) the Secretary of State has given his written approval of the agreement, the land, and any rights or liabilities relating to it, shall be excluded.

(6) If in default of agreement under subsection (5) above—

    - (a) the appropriate transferees or the former assisting 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.

(7) An agreement under subsection (5) 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 (6) 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.

(8) References in subsections (5) and (6) above to anything done, other than the making of an order, include anything done before the passing of this Act.

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**Commencement Information**

**I26** S. 32 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

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### 33 Provisions supplementary to section 32.

- (1) Subject to section 36(2) of this Act, where persons appearing to the Secretary of State to be trustees holding property for the purposes of the institution are the appropriate transferee, any land or other property or rights transferred to them under section 32 of this Act shall be held on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be specified in the order designating the institution or, if no such trust deed is so specified, on trust for the general purposes of the institution.
- (2) Where persons so appearing to the Secretary of State are the appropriate transferee, they shall incur no personal liability by virtue of any liability so transferred but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.
- (3) Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of that section 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).
- (4) References in this Part of this Act to the operative date, in relation to a designated institution, are to the designation date.

#### Commencement Information

**I27** S. 33 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

*Property, rights and liabilities: general*

### 34 Making additional property available for use.

- (1) The Secretary of State may by order provide for any land or other property of a local authority to be made available for use by an institution within the further education sector (referred to in this section as the “new sector institution”) if the requirements of subsection (2) below are satisfied.
- (2) Those requirements are that in the opinion of the Secretary of State—
  - (a) the property—
    - (i) either has within the preceding six months been used for the purpose of the provision of further education by an institution maintained by a local education authority but its use for that purpose has been discontinued or the local education authority intend its use for that purpose to be discontinued, or
    - (ii) is being used for that purpose but the local education authority intend its use for that purpose to be discontinued, and
  - (b) it is necessary or desirable for the property to be available for use for the purposes of the new sector institution but the governing body of that institution have been unable to secure agreement with the local authority, on such terms as may reasonably be required, to secure that the property is so available.
- (3) The Secretary of State shall not make an order under this section unless—

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- (a) the governing body of the new sector institution have applied to him, before the end of the period of three years beginning with the date which is the operative date in relation to further education corporations established under section 15 of this Act, for such an order to be made, and
  - (b) he has consulted the appropriate council, the local authority and the Education Assets Board.
- (4) For the purpose of making any property available for use for the purposes of an institution, an order under this section may—
  - (a) transfer to, and vest in, the governing body—
    - (i) the property concerned, and
    - (ii) any rights or liabilities of the local authority acquired or incurred for the purpose of the provision of further education there, or
  - (b) confer any rights or impose any liabilities and, to the extent (if any) that the order does so, it shall have effect as if contained in an agreement between the local authority and the governing body.
- (5) Subsection (4)(a)(ii) above shall not apply to any liability of the local authority in respect of the principal of, or interest on, any loan.
- (6) References in this section to use for the purpose of the provision of further education are to use wholly or mainly for that purpose.

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

**C8** S. 34 modified (1.1.2001) by [S.I. 2000/3209](#), [reg. 9](#) (with savings in [regs. 13, 14](#))

**C9** S. 34(4) modified (1.4.1993) by [S.I. 1993/563](#), [art. 2](#), [Sch.1](#)

**Commencement Information**

**I28** S. 34 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Sch. 3](#)

### **35 Voluntary transfers of staff in connection with section 34.**

- (1) This section applies where—
  - (a) for the purpose of making any property of a local authority available for use for the purposes of an institution within the further education sector, an order is made under section 34 of this Act,
  - (b) at any time on or after such date as may be specified by the order a person employed by the local authority ceases to be so employed and is subsequently employed by the governing body of the institution, and
  - (c) by virtue of [<sup>F13</sup>section 138 of the Employment Rights Act 1996] (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under [<sup>F13</sup>Part XI] of that Act.
- (2) [<sup>F14</sup>Chapter I of Part XIV of] that Act (computation of period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions—
  - (a) the period of employment of that person with the local authority shall count as a period of employment with the governing body, and
  - (b) the change of employer shall not break the continuity of the period of employment.

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- (3) The period of that person's employment with the local authority shall count as a period of employment with the governing body for the purposes of any provision of his contract of employment with the governing body which depends on his length of service with that employer.

#### Textual Amendments

- F13** Words in s. 35(1)(c) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 52(2)(a)(i)(ii)** (with ss. 191-195, 202)
- F14** Words in s. 35(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 52(2)(b)** (with ss. 191-195, 202)

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

- C10** S. 35 modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**

#### Commencement Information

- I29** S. 35 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 3**

### 36 General provisions about transfers under Chapter II.

- (1) This section applies to any transfer under section 23 or 32 of this Act, and those sections are subject to Schedule 5 to this Act.
- (2) Where any land or other property or rights—
- (a) were immediately before the operative date in relation to any institution held on trust for any particular purposes, or (as the case may be) for the general purposes, of the institution, and
  - (b) fall to be transferred under any transfer to which this section applies, they shall continue to be so held by the transferee.
- (3) Schedule 5 to this Act has effect for the purpose of—
- (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one educational institution,
  - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer,
  - (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred, and
  - (d) making supplementary and consequential provisions in relation to transfers to which this section applies.
- (4) Where arrangements for the supply by a local authority of goods or services for the purposes of an institution to be conducted by a further education corporation are to have effect as from the operative date in accordance with section 24(4) of this Act as if contained in an agreement made before that date between the local authority and the corporation, paragraphs 2 to 5 of Schedule 5 to this Act shall have effect as if the rights and liabilities of the corporation under the agreement were rights and liabilities of the local authority transferred to the corporation under a transfer to which this section applies.

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- (5) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.
- (6) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—
- (a) it may not be done by the transferee, and
  - (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee,
- and in a case where the transferee is a body corporate established under this Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act.
- (7) Not later than the end of the period of six months beginning with the operative date in relation to a further education corporation established under section 15 of this Act, the Board shall provide the appropriate council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.
- (8) If in any case within subsection (7) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide the appropriate council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

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

**C11** S. 36 modified (1.1.2001) by [S.I. 2000/3209](#), [reg. 9](#) (with savings in [regs. 13, 14](#))

**Commencement Information**

**I30** S. 36 wholly in force at 30.9.1992 see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Sch. 2](#)

**37 Attribution of surpluses and deficits.**

- (1) This section applies where, immediately before the date on which any educational institution becomes an institution within the further education sector—
- (a) it is maintained by a local education authority, or
  - (b) it is a designated assisted institution dependent on assistance from a local education authority,
- and in the financial year ending immediately before that date (referred to in this section as the “relevant financial year”), the institution was covered by a scheme under [<sup>F15</sup>section 103 of the Education Act 1996 (schemes for financing schools)]; and in this section, in relation to the institution, the scheme is referred to as the “applicable scheme” and the authority concerned as the “assisting authority”.
- (2) If the net expenditure of the institution for the relevant financial year is less than the net budget share of the institution for that year, the assisting authority shall pay to the net governing body of the institution a sum equal to the shortfall.

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- (3) If the net expenditure of the institution for the relevant financial year is greater than the net budget share of the institution for that year, the new governing body of the institution shall pay to the assisting authority a sum equal to the excess.
- (4) In this section, in respect of any financial year of the institution—  
“net budget share” means the budget share—  
(i) less such amount as may be prescribed in respect of any earned income, and  
(ii) plus such amount as may be prescribed in respect of any surplus, and  
“net expenditure” means any expenditure, less such amount as may be prescribed in respect of earned income.
- (5) Any sum payable under this section shall be paid in accordance with regulations, and the regulations may provide for sums to be payable by prescribed instalments and for sums to carry prescribed interest.
- (6) Regulations may, in the case of any institution where the operative date falls within a financial year in which the institution was covered by such a scheme as is referred to in subsection (1) above, make provision for applying this section with modifications relating to the amounts that are to be taken for the purposes of this section to be the net budget share and the net expenditure of the institution for that year.
- (7) In this section, in respect of any financial year of the institution—  
“budget share” means the amount which is that institution’s budget share for the relevant financial year for the purposes of [F16Part II of the Education Act 1996],  
“earned income” means any sums, other than sums appropriated for the purposes of the institution by the assisting authority, received by the institution in respect of the relevant financial year which the institution is authorised under the applicable scheme to retain,  
“expenditure” means such expenditure for the purposes of the institution incurred in the relevant financial year by the former governing body or the assisting authority as may be prescribed,  
“financial year” has the same meaning as in [F16the Education Act 1996],  
“former governing body” means the governing body of the institution immediately before the operative date and “new governing body” means the governing body of the institution on or after that date, and  
“surplus” means the amount of any surplus which the institution is authorised under the applicable scheme to carry forward to the relevant financial year.
- (8) In this section—  
(a) references to a designated assisted institution are references to an institution designated by or under regulations made, or having effect as if made, under section 218(10)(b) of the M6Education Reform Act 1988 as an institution substantially dependent for its maintenance on assistance from local education authorities, and  
(b) “prescribed” means prescribed by regulations.
- (9) For the purposes of this section a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either—

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- (a) it is not assisted by any other local education authority, or
- (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.

#### Textual Amendments

- F15** Words in s. 37(1) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 110(2)** (with ss. 1(4), 561, 562, **Sch. 39**)
- F16** Words in s. 37(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 110(3) (a)(b)** (with ss. 1(4), 561, 562, **Sch. 39**)

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

- C12** S. 37(2)(3) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**  
S. 37 applied (with modifications) (1.9.1993) by S.I. 1993/1977, **regs. 3, 4**; (1.8.1995) by S.I. 1995/1453, **regs. 3, 4(1)**; (1.8.1996) by S.I. 1996/1766, **regs. 3, 4(1)**
- C13** S. 37(4)(7) applied (with modifications) (1.8.1995) by S.I. 1995/1453, **regs. 3, 4(1)**; (1.8.1996) by S.I. 1996/1766, **regs. 3, 4(1)**

#### Commencement Information

- I31** S. 37 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 3**

#### Marginal Citations

- M6** 1988 c. 40.

### 38 Payments by council in respect of loan liabilities.

- (1) This section applies to any excepted loan liability, that is, any liability of a local authority which—
- (a) in the case of a transfer by virtue of section 23 of this Act, would have been transferred but for subsection (3)(a) of that section,
  - (b) in the case of a transfer by virtue of section 32 of this Act, would have been transferred but for subsection (4)(a) of that section, or
  - (c) in the case of a transfer by virtue of section 34(4)(a) of this Act, could have been transferred but for subsection (5) of that section.
- (2) A council may make payments, on such terms and conditions as the council may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
- (3) No payment shall be made under this section in respect of any excepted loan liability, where the class or classes of excepted loan liabilities in respect of which payments may be made are for the time being prescribed by an order of the Secretary of State, unless the liability falls within a prescribed class.
- (4) The Secretary of State may by order provide for determining—
- (a) the amounts that may be paid under this section in respect of the principal of, and any interest on, any excepted loan liability,
  - (b) the instalments by which any amounts may be paid, and

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(c) the rate at which interest may be paid on any outstanding amounts, and, in the case of any payment to which such an order applies, no amount may be paid under this section in excess of any amount determined in accordance with the order.

**Commencement Information**

**I32** S. 38 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

**39 Control of disposals of land.**

- (1) Subject to subsection (11) below, this section applies to any disposal during the controlled period—
  - (a) of land which, immediately before the beginning of that period, was used or held for the purposes of any relevant institution, or
  - (b) of land which was obtained before the beginning of that period for the purpose of being so used or held and had not before the beginning of that period been appropriated to any other use.
- (2) For the purposes of this section and sections 41 and 43 of this Act, an institution is a relevant institution if—
  - (a) it is an educational institution maintained by a local education authority and falls within section 15(2) of this Act,
  - (b) it is a county school or controlled school and falls within section 15(3) of this Act, or
  - (c) it is an educational institution such as is mentioned in section 28(1) of this Act and meets the requirements of subsection (2)(a) or (b) of that section.
- (3) In this section “the controlled period” means the period beginning with 22nd March 1991 and ending with—
  - (a) the operative date in relation to the institution in question or, if later, the date on which any matter relating to that land on which agreement is required to be reached under paragraph 2(1) of Schedule 5 to this Act is finally determined, or
  - (b) in the case of an institution falling within paragraph (c) above, 21st March 1995 if earlier.
- (4) Except with the consent of the Secretary of State, no local authority shall after the passing of this Act make a disposal to which this section applies.
- (5) If at any time after 21st March 1991 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the provisions of subsection (4) above if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.
- (6) Any consent for the purposes of this section may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.



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- (8) This section has effect notwithstanding anything in section 123 of the <sup>M7</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (9) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 40 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions have been complied with.
- (10) In this section references to disposing of land include—
- (a) granting or disposing of any interest in land,
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest, and
  - (c) granting an option to acquire any land or any such interest.
- (11) This section does not apply to a disposal falling within subsection (10)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 21st March 1991.
- (12) Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of subsection (1) above 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).

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**Commencement Information**

**I33** S. 39 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

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**Marginal Citations**

**M7** 1972 c. 70.

#### **40 Wrongful disposals of land.**

- (1) This section applies where a local authority have made any disposal to which section 39 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local authority concerned.

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- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The <sup>M8</sup>Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
- (a) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) used or held by the local authority concerned for the purposes of an institution to which section 39(2)(a) or (b) of this Act applies, or
    - (ii) obtained by that authority for the purpose of being so used or held, the further education corporation established under this Act to conduct that institution, and
  - (b) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) so used or held for the purposes of an institution to which section 39(2)(c) of this Act applies, or
    - (ii) obtained by the authority concerned for the purpose of being so used or held,
 the appropriate transferee within the meaning of section 32 of this Act in relation to that institution.
- (9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the <sup>M9</sup>Compulsory Purchase Act 1965 or section 52A of the <sup>M10</sup>Land Compensation Act 1973, and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

#### Commencement Information

**I34** S. 40 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M8** 1981 c. 67.

**M9** 1965 c. 56.

**M10** 1973 c. 26.

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#### **41 Control of contracts.**

- (1) This section applies, subject to subsection (5) below, to any contract which, if a relevant institution were to become an institution within the further education sector, would or might on or after the operative date bind the governing body of the institution.
- (2) Except with the appropriate consent, a local authority shall not after the passing of this Act enter into a contract to which this section applies.
- (3) If at any time after 21st March 1991 and before the passing of this Act a local authority have entered into a contract which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by the local authority.
- (4) In relation to any contract the appropriate consent is—
  - (a) the consent of the existing governing body of the institution, and
  - (b) if (on the assumption in subsection (1) above) the contract will require the governing body of the institution to make payments on or after 1st April 1993 amounting in aggregate to £50,000 or more, the consent of the Secretary of State.
- (5) This section does not apply to—
  - (a) a works contract (within the meaning of Part III of the <sup>M11</sup>Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act, or
  - (b) a works contract (within the meaning of Part I of the <sup>M12</sup>Local Government Act 1988) which is entered into in accordance with section 4 of that Act.
- (6) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the governing body of an institution or the Secretary of State before the passing of this Act in respect of any contract to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.
- (8) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 42 of this Act) a person entering into a contract with a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.
- (9) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) above shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (10) This section does not apply to a contract to dispose of land or to grant or dispose of any interest in land.

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#### **Commencement Information**

**I35** S. 41 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

**Status:** Point in time view as at 11/09/1998. This version of this Act contains provisions that are not valid for this point in time.

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#### Marginal Citations

**M11** 1980 c. 65.

**M12** 1988 c. 9.

#### 42 Wrongful contracts.

- (1) This section applies where a local authority have entered into a contract to which section 41 of this Act applies in contravention of that section.
- (2) The Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) above shall have effect as if made by the local authority concerned.

#### Commencement Information

**I36** S. 42 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### 43 Remuneration of employees.

- (1) Where, in consequence of a determination by the local education authority or any other person of the rate of remuneration of any employees, the rate of remuneration of any relevant employees would, apart from this section, be increased as from a date (referred to in this section as the “proposed date of increase”) falling after 1st September 1992, the authority—
  - (a) shall notify the Secretary of State in writing of the determination and the proposed date of increase, and
  - (b) shall not pay any relevant employee at the new rate unless the increase is authorised under this section by the Secretary of State.
- (2) In this section “relevant employees” means persons who are employed at institutions which are relevant institutions by virtue of section 39(2)(a) or (b) of this Act.
- (3) This section does not apply to remuneration determined in accordance with the scales and other provisions set out or referred to in a pay and conditions order (within the meaning of the <sup>M13</sup>School Teachers’ Pay and Conditions Act 1991).
- (4) Where the Secretary of State receives a notification under subsection (1) above, he shall, before the end of the period of four weeks beginning with the day on which he received the notification, either—
  - (a) authorise the increase resulting from the determination so far as it relates to relevant employees, or
  - (b) afford to the authority, and to such persons appearing to him to be representative of relevant employees affected by the determination as he considers appropriate, an opportunity of making representations to him in respect of the determination.
- (5) After considering any representations made to him under subsection (4)(b) above, the Secretary of State shall—
  - (a) authorise the increase resulting from the determination, or
  - (b) refuse to authorise the increase,

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so far as it relates to relevant employees.

- (6) The Secretary of State shall give written notification of any decision under subsection (4)(a) or (5) above to the local education authority and, in the case of subsection (5) above, to any other persons who made representations to him under subsection (4)(b) above.
- (7) Subsection (8) below applies where—
  - (a) by virtue of this section a relevant employee is not paid at the new rate on the proposed date of increase, but
  - (b) the Secretary of State authorises the increase after that date.
- (8) Where this subsection applies, the employee concerned shall, for the purpose of determining the terms of any contract affected by section 26 of this Act, be regarded as having been entitled under his contract of employment to be paid by the local education authority at the new rate as from the proposed date of increase.

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**Commencement Information**

**I37** S. 43 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

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**Marginal Citations**

**M13** 1991 c. 49.

*Miscellaneous*

**44 Collective worship.**

- (1) In this section “institution of voluntary origin” means a further education institution which, when it became a further education institution, was a voluntary school or a grant-maintained school which was a voluntary school before it became grant-maintained.
- (2) The governing body of every further education institution except an institution which on the appointed day was a college of further education shall ensure that at an appropriate time on at least one day in each week during which the institution is open an act of collective worship is held at the institution which persons receiving education at the institution may attend.
- (3) In an institution of voluntary origin such act of collective worship shall —
  - (a) be in such forms as to comply with the provisions of any trust deed affecting the institution, and
  - (b) reflect the religious traditions and practices of the institution before it became a further education institution.
- (4) In all other further education institutions such act of collective worship shall be wholly or mainly of a broadly Christian character in that it shall reflect the broad traditions of Christian belief but need not be distinctive of any particular Christian denomination.
- (5) If the governing body of a further education institution considers it appropriate to do so it may in addition to the act of collective worship referred to in subsection (3) or (4) provide for acts of worship which reflect the practices of some or all of the other religious traditions represented in Great Britain.

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- (6) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) of section 15 of this Act.

**Commencement Information**

**I38** S. 44 partly in force: s. 44 in force for certain purposes at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

**45 Religious education.**

- (1) In this section “institution of voluntary origin” means a further education institution which, when it became a further education institution, was a voluntary school or a grant-maintained school which was a voluntary school before it became grant-maintained.
- (2) The governing body of every further education institution except an institution which on the appointed day was a college of further education shall ensure that religious education is provided at the institution for all persons attending the institution who wish to receive it.
- (3) The governing body of a further education institution shall be deemed to be fulfilling its duty under this section if religious education is provided at a time or times at which it is convenient for the majority of full time students to attend.
- (4) For the purposes of this section religious education may take the form of a course of lectures or classes or of single lectures or classes provided on a regular basis and may include a course of study leading to an examination or the award of a qualification.
- (5) The form and content of religious education provided pursuant to this section shall be determined from time to time by the governing body of each further education institution and—
- (a) in the case of an institution of voluntary origin—
    - (i) shall be in accordance with the provisions of any trust deed affecting the institution, and
    - (ii) shall not be contrary to the religious traditions of the institution before it became a further education institution;
  - (b) in the case of all further education institutions shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.
- (6) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) of section 15 of this Act.

**Commencement Information**

**I39** S. 45 partly in force: s. 45 in force for certain purposes at 1.4.1993 see s. 94(3) and Sch. 3

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#### 46 Variation of trust deeds.

- (1) The Secretary of State may by order make such modifications as he thinks fit in any trust deed or other instrument—
  - (a) relating to or regulating an institution within the further education sector, or
  - (b) relating to any land or other property held by any person for the purposes of such an institution.
- (2) Before making any modifications under subsection (1) above of any trust deed or other instrument the Secretary of State shall so far as it appears to him to be practicable to do so consult—
  - (a) the governing body of the institution,
  - (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons, and
  - (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in paragraphs (a) and (b) above, the trustees.

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

**C14** S. 46(2)(a) modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.2](#)

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##### Commencement Information

**I40** S. 46 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

#### 47 Transfer of higher education institutions to further education sector.

- (1) The Secretary of State may by order provide for the transfer of a higher education corporation to the further education sector.
- (2) Where an order is made under this section in respect of a higher education corporation, sections 20 and 21 of this Act shall have effect as if, on the date the order has effect, the corporation were established as a further education corporation; and the order may make any provision that may be made by an order under section 15 of this Act specifying a grant-maintained school.
- (3) On such date as may be specified in the order the corporation shall cease to be a higher education corporation and become a further education corporation.
- (4) An order under section 28 of this Act in respect of any institution may revoke any order in respect of that institution under section 129 of the <sup>M14</sup>Education Reform Act 1988 (designation of institutions).

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##### Commencement Information

**I41** S. 47 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

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##### Marginal Citations

**M14** 1988 c. 40.

**Status:** Point in time view as at 11/09/1998. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Further and Higher Education Act 1992 is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 48 Statutory conditions of employment.

- (1) This section applies where—
  - (a) an educational institution at which a school teacher is employed by a local education authority, or by the governing body of a voluntary or grant-maintained school, becomes an institution within the further education sector, and
  - (b) immediately before the operative date, any of the terms and conditions of his employment have effect by virtue of a pay and conditions order.
- (2) As from the operative date the person’s contract of employment shall have effect—
  - (a) in relation to him and to the governing body of the institution as it had effect immediately before that date in relation to school teachers and to local education authorities or governing bodies of voluntary or grant-maintained schools, and
  - (b) as if the contract required any remuneration determined in accordance with the scales and other provisions set out or referred to in the relevant pay and conditions order to be paid to him by the governing body of the institution.
- (3) Nothing in this section affects any right to vary the terms of any contract of employment.
- (4) In this section—
  - (a) “pay and conditions order” and “school teacher” have the same meaning as in the <sup>M15</sup>School Teachers’ Pay and Conditions Act 1991, and
  - (b) “relevant pay and conditions order”, in relation to any person, means the pay and conditions order having effect in relation to him immediately before the operative date or, if that order is no longer in force, the pay and conditions order which would have had effect in relation to him if the institution at which he is employed had not become an institution within the further education sector.

### Modifications etc. (not altering text)

**C15** S. 48 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.1

**C16** S. 48(4)(b) modified (16.3.1992) by S.I. 1992/831, arts. 2,5, Sch. 3

### Commencement Information

**I42** S. 48 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

### Marginal Citations

**M15** 1991 c. 49.

## 49 Avoidance of certain contractual terms.

- (1) This section applies to any contract made between the governing body of an institution within the further education sector and any person employed by them, not being a contract made in contemplation of the employee’s pending dismissal by reason of redundancy.
- (2) In so far as a contract to which this section applies provides that the employee—
  - (a) shall not be dismissed by reason of redundancy, or



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- (b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay to him under <sup>F17</sup>Part XI of the Employment Rights Act 1996],  
the contract shall be void and of no effect.

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**Textual Amendments**

**F17** Words in s. 49(2)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 52(3)** (with ss. 191-195, 202)

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**Commencement Information**

**I43** S. 49 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 3**

**50 Information with respect to institutions within the further education sector.**

- (1) The Secretary of State may by regulations require the governing body of any institution within the further education sector to publish such information as may be prescribed about—
- (a) the educational provision made or proposed to be made for their students,
  - (b) the educational achievements of their students on entry to the institution and the educational achievements of their students while at the institution (including in each case the results of examinations, tests and other assessments),
  - (c) the financial and other resources of the institution and the effectiveness of the use made of such resources, and
  - (d) the careers of their students after completing any course or leaving the institution.
- (2) For the purposes of subsection (1)(d) above, 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) In this section “prescribed” means prescribed by regulations.

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

**C17** S. 50(1) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch.2**

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**Commencement Information**

**I44** S. 50 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 3**

**51 Publication of proposals.**

- (1) A council shall not make a proposal for—

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- (a) the establishment by the Secretary of State of a body corporate under section 16(1) of this Act,
- (b) the establishment by the Secretary of State of a body corporate under subsection (3) of that section, or
- (c) the dissolution of any further education corporation by the Secretary of State under section 27 of this Act,

unless the following conditions have been complied with.

(2) The conditions are that—

- (a) a draft of the proposal, or of a proposal in substantially the same form, giving such information as may be prescribed has been published by such time and in such manner as may be prescribed,
- (b) the council have considered any representations about the draft made to them within the prescribed period, and
- (c) copies of the draft and of any such representations have been sent to the Secretary of State.

(3) The Secretary of State shall not make—

- (a) an order under section 16(1) of this Act, other than an order made for the purpose of giving effect to a proposal by a council, or
- (b) an order under section 16(2) of this Act,

unless he has published a draft of the proposed order, or of an order in substantially the same form, by such time and in such manner as may be prescribed.

(4) In this section “prescribed” means prescribed by regulations.

#### **Commencement Information**

**I45** S. 51 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

## **52 Duty to provide for named individuals.**

- (1) This section applies where an institution within the further education sector provides full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years.
- (2) A council may by notice given to the governing body of such an institution—
  - (a) require them to provide for such individuals as may be specified in the notice such education falling within subsection (1) above as is appropriate to their abilities and aptitudes, or
  - (b) withdraw such a requirement.
- (3) The governing body of such an institution shall, for any academic year in respect of which they receive financial support from a council, secure compliance with any requirement in respect of any individual who has not attained the age of nineteen years which is or has been imposed by that council under subsection (2) above and has not been withdrawn.

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

**C18** S. 52 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.2

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#### Commencement Information

**I46** S. 52 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

VALID FROM 01/10/1998

#### [52A <sup>F18</sup>Duty to safeguard pupils receiving secondary education.

- (1) This section applies where secondary education is provided to pupils in the fourth key stage—
- (a) by a further education corporation in pursuance of arrangements falling within section 18(1)(aa) of this Act, or
  - (b) by a designated institution in pursuance of arrangements made—
    - (i) by a local education authority, or
    - (ii) by the governing body of a school on behalf of such an authority.
- (2) The governing body of the corporation or institution shall secure that, except in such circumstances as may be prescribed by regulations, no education is provided to a person who has attained the age of nineteen years in a room in which any such pupils are for the time being receiving secondary education.]

#### Textual Amendments

**F18** S. 52A inserted (1.10.1998) by 1998 c. 31, s. 113(2) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch.1 Pt. I.

#### 53 Inspection of accounts.

- (1) The accounts of—
- (a) any further education corporation, and
  - (b) any designated institution,
- shall be open to the inspection of the Comptroller and Auditor General.
- (2) In the case of any such corporation or institution—
- (a) the power conferred by subsection (1) above, and
  - (b) the powers under sections 6 and 8 of the <sup>M16</sup>National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act,
- shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which grants, loans or other payments are made to them under this Part of this Act.

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

**C19** S. 53(2) modified by S.I. 1993/563, art. 2 Sch.1 (as amended (19.4.1993) by 1993/870, art. 2)

**Status:** Point in time view as at 11/09/1998. This version of this Act contains provisions that are not valid for this point in time.

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#### Commencement Information

**I47** S. 53 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

#### Marginal Citations

**M16** 1983 c. 44.

## CHAPTER III

### GENERAL

#### 54 Duty to give information.

- (1) Each of the following shall give a council such information as they may require for the purposes of the exercise of any of their functions under this Part of this Act—
- (a) a local education authority,
  - (b) the governing body of any institution maintained by a local education authority, grant-maintained school, city technology college or city college for the technology of the arts,
  - (c) the governing body of any institution within the further education sector or the higher education sector, and
  - (d) the governing body of any institution which is receiving or has received financial support under section 5 of this Act.
- (2) Such information relating to the provision which has been made by a local education authority in respect of any pupil at an institution as the authority may require for the purposes of claiming any amount in respect of the pupil from another authority under [F19 regulations under section 492 or 493 of the Education Act 1996] shall, where the institution becomes an institution within the further education sector, be provided to the authority by the governing body of the institution.

#### Textual Amendments

**F19** Words in s. 54(2) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.111 (with ss. 1(4), 561, 562, Sch. 39)

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

**C20** S. 54 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch. 2

**C21** S. 54(1) applied (with modifications): (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt. I; (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt. I

#### Commencement Information

**I48** S. 54 wholly in force: s. 54(1) in force at 6.5.1992, s. 54(2) in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Schs. 1, 3

#### 55 Inspection etc. of local education authority institutions, other than schools, and advice to Secretary of State.

- (1) The chief inspector shall have the general duty of keeping the Secretary of State informed about—

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**Changes to legislation:** Further and Higher Education Act 1992 is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the quality of education provided in local education authority institutions,
  - (b) the educational standards achieved in such institutions, and
  - (c) whether the financial resources made available to such institutions are managed efficiently.
- (2) When asked to do so by the Secretary of State, the chief inspector shall—
- (a) give advice to the Secretary of State on such matters relating to local education authority institutions, and on such other matters relating to further education, as may be specified in the Secretary of State’s request, and
  - (b) inspect and report on any such local education authority institution, or any such class of local education authority institution, as may be so specified.
- (3) In connection with the duties imposed on the chief inspector under this section, his powers, and those of his inspectors, in relation to the inspection of schools under any enactment shall extend to the inspection of institutions under this section.
- (4) In relation to any local education authority institution maintained or assisted by them, a local education authority—
- (a) shall keep under review the quality of education provided, the educational standards achieved and whether the financial resources made available are managed efficiently, and
  - (b) may cause an inspection to be made by persons authorised by them.
- (5) A local education authority shall not authorise any person to inspect any institution under this section unless they are satisfied that he is suitably qualified to do so.
- (6) A person who wilfully obstructs any person authorised to inspect an institution under or by virtue of this section in the exercise of his functions shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In this section—
- (a) in relation to institutions in England, “chief inspector” means Her Majesty’s Chief Inspector of Schools in England and “his inspectors” means Her Majesty’s Inspectors of Schools in England,
  - (b) in relation to institutions in Wales, “chief inspector” means Her Majesty’s Chief Inspector of Schools in Wales and “his inspectors” means Her Majesty’s Inspectors of Schools in Wales, and
  - (c) “local education authority institution” means an educational institution, other than a school, maintained or assisted by a local education authority.

#### Commencement Information

**I49** S. 55 wholly in force; s. 55 not in force at Royal assent see s. 94(3); s. 55(1)-(3) (as respects England only) and s. 55(4)-(6)(7)(a)(c) in force at 1.4.1993 by S.I. 1992/831, art. 2, Sch. 3; s. 55(1)(2)(3)(7)(b) in force at 1.8.1996 so far as not already in force by S.I. 1996/1897, art. 3

## 56 Directions.

- (1) In exercising their functions under this Part of this Act, each council shall comply with any directions contained in an order made by the Secretary of State.

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- (2) Directions under this section may be general or special, and special directions may, in particular, relate to the provision of financial support by the council in respect of activities carried on by any particular institution or institutions.
- [<sup>F20</sup>(3) Section 496 of the Education Act 1996 (power to prevent unreasonable exercise of functions) applies in relation to a council as it applies in relation to a body falling within subsection (2) of that section.]

#### Textual Amendments

**F20** S. 56(3) added (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.112** (with ss. 1(4), 561, 562, Sch. 39)

#### Commencement Information

**I50** S. 56 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

## 57 Intervention in the event of mismanagement or breach of duty.

- (1) If the Secretary of State is satisfied that the affairs of any institution within the further education sector have been or are being mismanaged, he may on the recommendation of the appropriate council by order—
- (a) remove all or any of the members of the governing body of the institution and appoint new members in their places, and
  - (b) make such modifications of the instrument of government of the institution as he thinks fit.
- (2) An appointment of a member of a governing body of an institution under subsection (1) above shall have effect as if made in accordance with the instrument of government and articles of government of the institution.
- (3) If the Secretary of State is satisfied, either upon complaint by any person interested or otherwise, that—
- (a) a council, or
  - (b) the governing body of any institution within the further education sector,
- have failed to discharge any duty imposed on them by or for the purposes of the Education Acts, he may make an order under this subsection.
- (4) An order under subsection (3) above shall declare the council or the governing body, as the case may be, to be in default in respect of that duty, and may give such directions for the purpose of enforcing the execution of that duty as appear to the Secretary of State to be expedient.
- (5) A council or governing body in respect of which an order is made under subsection (3) above shall comply with any directions contained in the order.
- [<sup>F21</sup>(6) In the Education Act 1996—
- (a) section 496 (power to prevent unreasonable exercise of functions) applies in relation to the governing body of an institution within the further education sector as it applies in relation to a body falling within subsection (2) of that section; and

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- (b) section 507 (power to direct local inquiries) applies for the purposes of the Secretary of State’s functions under this section as it applies for the purposes of his functions under that Act.]

#### Textual Amendments

**F21** S. 57(6) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.113** (with ss. 1(4), 561, 562, **Sch. 39**)

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

**C22** S. 57 modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 2**

#### Commencement Information

**I51** S. 57 wholly in force: s. 57(3)-(6) in force for certain purposes at 6.5.1992; s. 57 (so far as not already in force) in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Schs. 1, 3**

## 58 Reorganisations of schools involving establishment of further education corporation.

- (1) Subsection (2) below applies where, in connection with a reorganisation of schools maintained by a local education authority, any land used for the purposes of one or more of the schools affected by the reorganisation or, as the case may be, the school so affected—
- is to cease to be so used or is to continue to be so used for a limited period, and
  - while it is so used, or after it has ceased to be so used, is to be used for the purposes of an institution conducted by a further education corporation;
- and in that subsection that land is referred to as “the land to be transferred”.
- (2) If the land to be transferred is land of the local authority, the land and any other property of the local authority used for the purposes of the school on that land shall be treated for the purposes of section 23 of this Act as used for the purposes of the educational institution conducted by the corporation.
- (3) For the purposes of this section there is a reorganisation of schools maintained by a local education authority if, in the case of each of the schools affected by the reorganisation or (if there is only one) the school so affected—
- the local education authority cease to maintain the school, or
  - a significant change is made in the character of the school or the premises of the school are significantly enlarged,
- whether or not the reorganisation also involves the establishment of one or more new schools.

#### Commencement Information

**I52** S. 58 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 2**

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### Textual Amendments

- F22** S. 59 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39)

## 60 Saving as to persons detained by order of a court.

No function conferred or imposed by this Act on a further education funding council shall be construed as relating to any person who is detained, otherwise than at a school, in pursuance of an order made by a court or of an order of recall made by the Secretary of State.

### Commencement Information

- I53** S. 60 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 3**

VALID FROM 01/09/1999

## [60A] <sup>F23</sup> Partnership arrangements to secure provision of certain further education in Wales.

- (1) An arrangement is a partnership arrangement to which this section applies if—
- (a) it is made by—
    - (i) one or more local education authorities for areas in Wales, and
    - (ii) one or more governing bodies of Welsh further education institutions,
 for the purpose of securing the provision of education within subsection (3),
  - (b) it provides for the facilities connected with the provision of education under the arrangement to be provided—
    - (i) in part, at one or more schools maintained by the local education authority which is a party to the arrangement (or where more than one local education authority is a party, by each of them), and
    - (ii) in part, at one or more Welsh further education institutions conducted by the governing body which is a party to the arrangement (or, where more than one governing body is a party, by each of them),
  - (c) it is made with the consent of—
    - (i) the Further Education Funding Council for Wales, and
    - (ii) the governing body of each school at which, in accordance with the arrangement, facilities are to be provided, and
  - (d) it is approved by the Secretary of State.
- (2) For the purposes of subsection (1) above—
- (a) “Welsh further education institution” means an institution which is within the further education sector and is situated in Wales, and
  - (b) a designated institution shall be treated as conducted by the governing body of the institution.



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- (3) Education is within this subsection if it is full-time or part-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19.
- (4) The following bodies shall exercise their functions with a view to securing that any education provided under a partnership arrangement to which this section applies is provided and funded in accordance with the arrangement—
- (a) each local education authority which is a party to the arrangement;
  - (b) each governing body of an institution (or institutions) within the further education sector which is a party to the arrangement;
  - (c) the Further Education Funding Council for Wales;
  - (d) each governing body of a school which consented to the arrangement.
- (5) Schedule 5A to this Act shall have effect in relation to partnership arrangements to which this section applies.]

#### Textual Amendments

- F23** S. 60A inserted (1.9.1999) by 1998 c. 31, s. 125(4) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch.1.

## 61 Interpretation of Part I.

- (1) In this Part of this Act—
- “functions” includes powers and duties,
  - “modifications” includes additions, alterations and omissions and
  - “modify” shall be construed accordingly, and
  - “regulations” means regulations made by the Secretary of State.
- (2) References in this Part of this Act, except section 26, to the transfer of any person’s rights or liabilities do not include—
- (a) rights or liabilities under a contract of employment, or
  - (b) liabilities of that person in respect of compensation for premature retirement of any person formerly employed by him.
- (3) In relation to any time before the commencement of section 65 of this Act, references in this Part of this Act and, so far as relating to this Part, Part III of this Act—
- (a) to institutions within the higher education sector are to universities, to institutions within the PCFC funding sector and to higher education institutions which receive, or are maintained by persons who receive, grants under regulations made under section 100(1)(b) of the<sup>M17</sup> Education Act 1944, and
  - (b) to a higher education funding council are to the Universities Funding Council established under section 131 of the<sup>M18</sup> Education Reform Act 1988 and to the Polytechnics and Colleges Funding Council established under section 132 of that Act.

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

**C23** S. 61(3)(a) applied by 1973 c. 50, s. 8(4) (as substituted (1.4.1994 in relation to England and Scotland and 1.4.1995 for all other purposes) by 1993 c. 19, s.45; S.I. 1993/2503, art. 2(3)(a)(b), Sch.3)

#### Commencement Information

**I54** S. 61 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M17** 1944 c. 31.

**M18** 1988 c. 40.

VALID FROM 28/07/2000

#### [<sup>F24</sup>61A References to councils.

- (1) In this Part of this Act any reference to a council is to a learning and skills council.
- (2) In this Part of this Act a reference to the appropriate council, in relation to any educational institution, is to be construed as follows—
  - (a) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England;
  - (b) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales;
  - (c) if the institution receives financial support from the other council, the reference is to that council also.]

#### Textual Amendments

**F24** S. 61A inserted (28.7.2000 for specified purposes and otherwise 1.4.2001) by 2000 c. 21, s. 149, Sch. 9 para. 37; S.I. 2001/654, art. 2, Sch. Pt. II (with transitional provisions in art. 3)

## PART II

### HIGHER EDUCATION

#### *The new funding councils*

#### 62 The Higher Education Funding Councils.

- (1) There shall be established—
  - (a) a body corporate to be known as the Higher Education Funding Council for England to exercise in relation to England the functions conferred on them, and
  - (b) a body corporate to be known as the Higher Education Funding Council for Wales to exercise in relation to Wales the functions conferred on them.

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- (2) The Higher Education Funding Council for England shall consist of not less than twelve nor more than fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) The Higher Education Funding Council for Wales shall consist of not less than eight nor more than twelve members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (4) In appointing the members of a council the Secretary of State—
- (a) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, the provision of higher education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of higher education and, in appointing such persons, he shall have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision, and
  - (b) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (5) In this Part of this Act any reference to a council is to a higher education funding council.
- (6) In the Education Acts any reference to a higher education funding council—
- (a) in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, is to that council, and
  - (b) in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, is to that council.
- (7) In this Part of this Act references to institutions in England or institutions in Wales—
- (a) are to institutions whose activities are carried on, or principally carried on, in England or, as the case may be, Wales, but
  - (b) include, in both cases, the Open University.
- [<sup>F25</sup>(7A) In exercising their functions, each council shall have regard to the requirements of disabled persons.
- (7B) In subsection (7A) “disabled persons” means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.]
- (8) Any dispute as to whether any functions are exercisable by one of the councils shall be determined by the Secretary of State.
- (9) Schedule 1 to this Act has effect with respect to each of the councils.

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#### Textual Amendments

**F25** S. 62(7A)(7B) inserted (31.7.1996) by 1995 c. 50, s. 30(5) (with ss. 59, 64, 65); S.I. 1996/1474, art. 2(2), Sch. Pt.II

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

**C24** S. 62(7) applied (31.3.1999) by S.I. 1999/603, art. 3(2).

**Status:** Point in time view as at 11/09/1998. This version of this Act contains provisions that are not valid for this point in time.

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**C25** S. 62(8) modified (1.7.1999) by S.I. 1999/672, art. 5, **Sch.2**.

#### Commencement Information

**I55** S. 62 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

### 63 Dissolution of existing councils.

(1) On the appointed day—

- (a) the Universities Funding Council and the Polytechnics and Colleges Funding Council (referred to in this section as the “existing councils”) shall be dissolved, and
- (b) all property, rights and liabilities to which either of the existing councils were entitled or subject immediately before that date shall become by virtue of this section property, rights and liabilities of the Higher Education Funding Council for England,

but this subsection does not apply to rights or liabilities under a contract of employment.

(2) Where—

- (a) immediately before the appointed day, a person (referred to below as “the employee”) is employed by an existing council (referred to below as “the existing employer”) under a contract of employment which would have continued but for the dissolution of the existing employer, and
- (b) the employee is designated for the purposes of this section by an order made by the Secretary of State,

the contract of employment shall not be terminated by that dissolution but shall have effect as from the appointed day as if originally made between the employee and the new employer.

(3) In this section “the new employer”, in relation to the employee, means such higher education funding council as may be specified in relation to the employee by the order designating him for the purposes of this section; and in this subsection “higher education funding council” includes the Scottish Higher Education Funding Council.

(4) Without prejudice to subsection (2) above, where that subsection applies—

- (a) all the existing employer’s rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this section be transferred on the appointed day to the new employer, and
- (b) anything done before that date by or in relation to the existing employer in respect of that contract or the employee shall as from that date be treated as having been done by or in relation to the new employer.

(5) Subsections (2) and (4) above are without prejudice to any right of the 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.

(6) An order under this section may designate a person either individually or as a member of a class or description of employees.

(7) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of this section.

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#### Extent Information

**E1** S. 63 extends to Great Britain see s. 94(5).

#### Commencement Information

**I56** S. 63 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

## 64 Transitional arrangements.

- (1) Until the commencement of section 65 of this Act, any institution which is a university and was at any time within the PCFC funding sector shall be treated for the purposes of Chapter II of Part II of the <sup>M19</sup>Education Reform Act 1988 (reorganisation and provision of funding of higher education) as if it were within that sector and were not a university.
- (2) Until their dissolution the Universities Funding Council shall give to the higher education funding councils and the Scottish Higher Education Funding Council all such assistance as those councils may reasonably require for the purpose of enabling them to exercise their functions on and after the commencement of section 65 of this Act or, as the case may be, the corresponding provisions of the <sup>M20</sup>Further and Higher Education (Scotland) Act 1992.
- (3) Until their dissolution the Polytechnics and Colleges Funding Council shall give to the higher education funding councils all such assistance as those councils may reasonably require for the purpose of enabling them to exercise their functions on and after the commencement of section 65 of this Act.
- (4) The Higher Education Funding Council for England shall discharge any duty under paragraph 17 of Schedule 8 to the <sup>M21</sup>Education Reform Act 1988 (accounts) in respect of any period ending before the dissolution of the Universities Funding Council and the Polytechnics and Colleges Funding Council under section 63 of this Act which would have fallen to be discharged by those councils after the dissolution or fell to be so discharged before the dissolution but has not been discharged.

#### Extent Information

**E2** S. 64 extends to Great Britain see s. 94(5).

#### Commencement Information

**I57** S. 64 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

**M19** 1988 c. 40.

**M20** 1992 c. 37.

**M21** 1988 c. 40.

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## *Funds*

### **65 Administration of funds by councils.**

- (1) Each council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the council by the Secretary of State and others for the purposes of providing financial support for activities eligible for funding under this section.
- (2) The activities eligible for funding under this section are—
  - (a) the provision of education and the undertaking of research by higher education institutions in the council’s area,
  - (b) the provision of any facilities, and the carrying on of any other activities, by higher education institutions in their area which the governing bodies of those institutions consider it necessary or desirable to provide or carry on for the purpose of or in connection with education or research,
  - (c) the provision—
    - (i) by institutions in their area maintained or assisted by local education authorities, or
    - (ii) by such institutions in their area as are within the further education sector,
 of prescribed courses of higher education, and
  - (d) the provision by any person of services for the purposes of, or in connection with, the provision of education or the undertaking of research by institutions within the higher education sector.
- (3) A council may—
  - (a) make grants, loans or other payments to the governing body of any higher education institution in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (2)(a) or (b) above, and
  - (b) make grants, loans or other payments to any persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in subsection (2)(c) above of prescribed courses of higher education or the provision of services as mentioned in subsection (2)(d) above,
 subject in each case to such terms and conditions as the council think fit.
- [<sup>F26</sup>(3A) In the application of subsection (3) above to any grants, loans or other payments by a Council, the reference to expenditure incurred or to be incurred by the governing body of a higher education institution as mentioned in paragraph (a) of that subsection includes a reference to expenditure incurred or to be incurred by any connected institution to which the governing body propose, with the consent of the Council, to pay the whole or part of any such grants, loans or other payments.
- (3B) In subsection (3A) “connected institution”, in relation to a higher education institution, means any college, school, hall or other institution which the Council in question are satisfied has a sufficient connection with that institution for the purposes of that subsection.]
- (4) The terms and conditions on which a council may make any grants, loans or other payments under this section may in particular—

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- (a) enable the council to require the repayment, in whole or in part, of sums paid by the council if any of the terms and conditions subject to which the sums were paid is not complied with, and
- (b) require the payment of interest in respect of any period during which a sum due to the council in accordance with any of the terms and conditions remains unpaid,

but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the council.

[<sup>F27</sup>(4A) Without prejudice to the power to impose conditions given by subsection (3) above, the conditions subject to which a council makes grants, loans or other payments under this section to the governing body of a higher education institution shall require the governing body to publish disability statements at such intervals as may be specified.

(4B) For the purposes of subsection (4A) above—

“disability statement” means a statement containing information of a specified description about the provision of facilities for education and research made by the institution in respect of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995; and

“specified” means specified in the conditions subject to which grants, loans or other payments are made by a council under this section.]

(5) In this section and section 66 of this Act “higher education institution” means a university, an institution conducted by a higher education corporation or a designated institution.

#### Textual Amendments

**F26** S. 65(3A)(3B) inserted (*retrospectively*) by 1998 c. 30, ss. 27, 46(3) (with s. 42(8))

**F27** S. 65(4A)(4B) inserted (31.7.1996) by 1995 c. 50, s. 30(6) (with ss. 59, 64, 65); S.I. 1996/1474, art. 2(2), Sch. Pt.II

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

**C26** S. 65(3)(a) modified (1.4.1993) by S.I. 1993/563, art. 2, Sch. 1

#### Commencement Information

**I58** S. 65 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

## 66 Administration of funds: supplementary.

- (1) Before exercising their discretion under section 65(3)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, a council shall consult such of the following bodies as appear to the council to be appropriate to consult in the circumstances—
  - (a) such bodies representing the interests of higher education institutions as appear to the council to be concerned, and
  - (b) the governing body of any particular higher education institution which appears to the council to be concerned.
- (2) In exercising their functions in relation to the provision of financial support for activities eligible for funding under section 65 of this Act a council shall have regard to the desirability of not discouraging any institution for whose activities financial

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support is provided under that section from maintaining or developing its funding from other sources.

- (3) In exercising those functions a council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining—
- (a) what appears to them to be an appropriate balance in the support given by them as between institutions which are of a denominational character and other institutions, and
  - (b) any distinctive characteristics of any institution within the higher education sector for whose activities financial support is provided under that section.
- (4) For the purposes of subsection (3) above an institution is an institution of a denominational character if it appears to the council that either—
- (a) at least one quarter of the members of the governing body of the institution are persons appointed to represent the interests of a religion or religious denomination,
  - (b) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination, or
  - (c) any of the property held for the purposes of the institution is held on trust for or in connection with—
    - (i) the provision of education, or
    - (ii) the conduct of an educational institution,
 in accordance with the tenets of a religion or religious denomination.

#### Commencement Information

**I59** S. 66 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

#### 67 **Payments in respect of persons employed in provision of higher or further education.**

- (1) In section 133 of the <sup>M22</sup>Education Reform Act 1988 (payments by PCFC in respect of persons employed in the provision of higher or further education) for subsection (1) there is substituted—
- “(1) A higher education funding council shall have power to make payments, subject to such terms and conditions as the council think fit, to—
- (a) any local education authority in their area;
  - (b) the London Residuary Body;
  - (c) the London Pensions Fund Authority; and
  - (d) the governing body of any institution designated under section 129 of this Act, as originally enacted;
- in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.”
- (2) In subsection (2)(a) of that section (meaning of relevant expenditure) after “education authority” there is inserted “ the London Residuary Body or the London Pensions Fund Authority ”.



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- (3) At the end of subsection (3) of that section (meaning of references to higher and further education) there is added “ and in any other case the reference to further education shall be read as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect on that date ”.
- (4) In subsection (4) of that section (duty to give information) after paragraph (a) there is inserted—
- “(aa) the London Residuary Body;  
(ab) the London Pensions Fund Authority”.
- (5) That section as originally enacted shall have effect, or be treated as having had effect, as if—
- (a) in subsection (1), in relation to anything done before regulations for the purposes of that subsection were in force, the words “of any class or description prescribed for the purposes of this section” were omitted, and
- (b) in subsections (1) and (2) the references to a local education authority included the London Residuary Body and the London Pensions Fund Authority.

#### Commencement Information

**I60** S. 67 wholly in force: s. 67(2)-(5) in force at 6.5.1992; s. 67(1) in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Schs. 1, 3

#### Marginal Citations

**M22** 1988 c. 40.

## 68 Grants to councils.

- (1) The Secretary of State may make grants to each of the councils of such amounts and subject to such terms and conditions as he may determine.
- (2) The terms and conditions subject to which grants are made by the Secretary of State to either of the councils—
- (a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the council in respect of activities carried on by the institution, but
- (b) shall not otherwise relate to the provision of financial support by the council in respect of activities carried on by any particular institution or institutions.
- (3) Such terms and conditions may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students.
- (4) Such terms and conditions may in particular—
- (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with, and

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

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

**C27** S. 68(1) extended (16.7.1998) by 1998 c. 30, ss. 26(3), 46(3) (with s. 42(8))

**Commencement Information**

**I61** S. 68 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

*Further functions*

**69 Supplementary functions.**

- (1) Each council—
- (a) shall provide the Secretary of State with such information or advice relating to the provision for their area of higher education as he may from time to time require, and
  - (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit,
- and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.
- (2) Each council shall keep under review activities eligible for funding under section 65 of this Act.
- (3) A council may provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the department's functions relating to higher education in Northern Ireland.
- (4) Where—
- (a) any land or other property is or was used or held for the purposes of an institution, and
  - (b) the Secretary of State is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event,
- then, if the institution is within the higher education sector, the Secretary of State may direct that all or any of his functions in respect of the property shall be exercisable on his behalf by the council, and the functions shall be so exercised in accordance with such directions as he may give from time to time.
- (5) The Secretary of State may by order confer or impose on a council such supplementary functions relating to the provision of education as he thinks fit.
- (6) For the purposes of subsection (5) above a function is a supplementary function in relation to a council if it is exercisable for the purposes of—
- (a) the exercise by the Secretary of State of functions of his under any enactment, or
  - (b) the doing by the Secretary of State of anything he has power to do apart from any enactment,

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and it relates to, or to the activities of, any institution mentioned in subsection (7) below.

- (7) Those institutions are—
- (a) institutions within the higher education sector, or
  - (b) institutions within the further education sector, or maintained or assisted by local education authorities, at which prescribed courses of higher education are currently provided.

#### Commencement Information

**I62** S. 69 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### 70 Assessment of quality of education provided by institutions.

- (1) Each council shall—
- (a) secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support<sup>F28</sup> . . . , and
  - (b) establish a committee, to be known as the “Quality Assessment Committee”, with the function of giving them advice on the discharge of their duty under paragraph (a) above and such other functions as may be conferred on the committee by the council.
- (2) The majority of the members of the committee—
- (a) shall be persons falling within subsection (3) below, and
  - (b) shall not be members of the council.
- (3) Persons fall within this subsection if they appear to the council to have experience of, and to have shown capacity in, the provision of higher education in institutions within the higher education sector and, in appointing such persons, the council shall have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision.
- (4) Schedule 1 to this Act shall apply to a committee established under this section as it applies to committees established under paragraph 8 of that Schedule.

#### Textual Amendments

**F28** Words in s. 70(1)(a) omitted (21.9.1994) by virtue of 1994 c. 30, s. 24, Sch. 2 para. 10(2); S.I. 1994/2204, art.2

#### Commencement Information

**I63** S. 70 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### *Institutions in the higher education sector*

### 71 Higher education corporations: constitution and conduct.

- (1) After section 124 of the<sup>M23</sup> Education Reform Act 1988 there is inserted—

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#### **“124A Constitution and conduct of corporations.**

- (1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—
  - (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
  - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation—
  - (a) shall comply with the requirements of Schedule 7A to this Act; and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.
- (8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.
- (9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.
- (10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

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### **124B Accounts.**

- (1) It shall be the duty of each corporation—
  - (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
  - (a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and
  - (b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.
- (4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.
- (5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.
- (6) No person shall be qualified to be appointed auditor under that subsection except—
  - (a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;
  - (b) a member of the Chartered Institute of Public Finance and Accountancy; or
  - (c) a firm each of the members of which is a member of that institute.
- (7) In this section, in relation to a corporation—

“the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

“financial year” means that period and each successive period of twelve months.

### **124C Initial and transitional arrangements.**

- (1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.

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- (2) In subsection (1) above “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.
- (4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.
- (5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

#### **124D Exercise of Powers by Privy Council.**

- (1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.
  - (2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.
  - (3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.
  - (4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.
  - (5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.”
- (2) In section 125 of that Act (articles of government) for “the Secretary of State” (in each place where it appears) there is substituted “ the Privy Council ”; but nothing in this subsection requires further approval to be given for anything approved by the Secretary of State under that section before the commencement of this subsection.
  - (3) In Schedule 7 to that Act (constitution of higher education corporations)—
    - (a) at the end of paragraph 7 (appointments) there is added—
      - “(8) If the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum”, and
    - (b) in paragraph 18 (accounts) after sub-paragraph (2) there is inserted—
      - “(2A) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.”
  - (4) After that Schedule there is inserted the Schedule set out in Schedule 6 to this Act.

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#### Commencement Information

**I64** S. 71 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M23** 1988 c. 40.

## 72 Further power of designation.

(1) In section 129 of the <sup>M24</sup>Education Reform Act 1988 (designation of institutions)—

(a) for subsections (1) and (2) there is substituted—

“(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by a higher education funding council—

(a) any institution which appears to him to fall within subsection (2) below; and

(b) any institution which is, or is to be, conducted by a successor company to a higher education corporation.

(2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number”, and

(b) subsections (3) and (4) of that section are omitted.

(2) An order in force immediately before the commencement of subsection (1) above designating an institution as falling within subsection (3) of that section shall have effect as if made under that section as amended by subsection (1) above.

(3) In this Part of this Act “designated institution” means an institution in relation to which a designation made, or having effect as if made, under section 129 of that Act has effect.

#### Commencement Information

**I65** S. 72 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M24** 1988 c. 40.

## 73 Government and conduct of designated institutions.

(1) After section 129 of the <sup>M25</sup>Education Reform Act 1988 there is inserted—

### “129A Government and conduct of designated institutions.

(1) This section has effect in relation to any designated institution, other than an institution conducted by a company.

(2) For each such institution there shall be—

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- (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
  - (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government),
- each of which meets the requirements of subsection (3) below.
- (3) Those requirements are that the instrument—
- (a) was in force when the designation took effect; or
  - (b) is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below,
- and is approved for the purposes of this section by the Privy Council.
- (4) In this section “regulatory instrument”, in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.
- (5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the body of persons responsible for the management of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) If an instrument approved by the Privy Council for the purposes of this section—
- (a) falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it; or
  - (b) was made by the body of persons responsible for the management of the institution,
- the instrument may be modified by those persons.
- (7) Either of the instruments referred to in subsection (2) above may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of this section may be modified by any other person without the Privy Council’s consent.
- (8) Before exercising any power under subsection (7) above in relation to any instrument the Privy Council shall consult—
- (a) the governing body of the institution, and
  - (b) where there is such a power as is mentioned in subsection (3)(b) above to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,
- so far as it appears to them to be practicable to do so.
- (9) Nothing in this section requires further approval for any instrument approved by the Secretary of State for the purposes of section 156 of this Act, and references in this section to instruments approved by the Privy Council for the purposes of this section include instruments so approved by the Secretary of State.
- (10) In this section and section 129B “designated institution” means an institution in relation to which a designation made, or having effect as if made, under



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section 129 of this Act has effect but does not include any institution established by Royal Charter.

### **129B Designated institutions conducted by companies.**

- (1) This section has effect in relation to any designated institution conducted by a company.
- (2) The articles of association of the company shall incorporate—
  - (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and
  - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).
- (3) The Privy Council may give to the persons who appear to them to have effective control over the company such directions as they think fit for securing that—
  - (a) the memorandum or articles of association of the company; or
  - (b) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company,
 are amended in such manner as they may specify in the direction.
- (4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Privy Council for their approval and they have notified their approval to the company.
- (5) Before giving any directions under subsection (3) above the Privy Council shall consult the persons who appear to them to have effective control over the company.”

- (2) Section 156 of that Act (government and conduct of certain further and higher education institutions) shall cease to have effect in relation to designated institutions.

#### **Commencement Information**

**I66** S .73 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### **Marginal Citations**

**M25** 1988 c. 40.

## **74 Transfer of further education institutions to higher education sector.**

- (1) After section 122 of the <sup>M26</sup>Education Reform Act 1988 (orders incorporating higher education institutions maintained by local education authorities) there is inserted—

### **“122A Orders transferring further education corporations to higher education sector.**

- (1) The Secretary of State may by order provide for the transfer of a further education corporation to the higher education sector if it appears to him that

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the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number.

- (2) Where an order under this section is made in respect of a further education corporation, sections 124A and 125 of this Act shall have effect as if—
- (a) on the date the order has effect, the corporation were established as a higher education corporation, and
  - (b) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation.
- (3) In determining in pursuance of subsection (2)(b) above the number of members to appoint within each variable category of members, the Secretary of State shall secure that at least half of all the members of the higher education corporation as first constituted are independent members; and in this subsection “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (4) On such date as may be specified in the order the corporation shall cease to be a further education corporation and become a higher education corporation and any member of the further education corporation who is not re-appointed by the Secretary of State in pursuance of subsection (2)(b) above shall cease to hold office on that date.”

- (2) An order under section 129 of the <sup>M27</sup>Education Reform Act 1988 (designation of institutions for the purposes of the higher education sector) in respect of any institution may revoke any order in respect of that institution under section 28 of this Act.

#### Commencement Information

**I67** S. 74 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

#### Marginal Citations

**M26** 1988 c. 40.

**M27** 1988 c. 40.

## 75 Variation of trust deeds.

In section 157 of the <sup>M28</sup>Education Reform Act 1988 (variation of trust deeds, etc.) for subsections (1) to (3) (variations by Secretary of State in connection with institutions in the higher education sector or designated assisted institutions) there is substituted—

- “(1) An order of the Privy Council may modify any trust deed or other instrument—
- (a) relating to or regulating any such institution as is mentioned in subsection (2) below; or
  - (b) relating to any land or other property held by any person for the purposes of any such institution.
- (2) The institutions referred to in subsection (1) above are—
- (a) any institution conducted by a higher education corporation; and
  - (b) any institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect, other than an institution established by Royal Charter.

**Status:** Point in time view as at 11/09/1998. This version of this Act contains provisions that are not valid for this point in time.

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- (3) Before making any modifications under subsection (1) above of any trust deed or other instrument the Privy Council shall so far as it appears to them to be practicable to do so consult—
- (a) the governing body of the institution;
  - (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons; and
  - (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in paragraphs (a) and (b) above, the trustees.”

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

**C28** S. 75(3)(a) modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.2](#)

#### Commencement Information

**I68** S. 75 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

**M28** [1988 c. 40.](#)

## 76 Power to award degrees, etc.

- (1) The Privy Council may by order specify any institution which provides higher education as competent to grant in pursuance of this section either or both of the kinds of award mentioned in subsection (2)(a) and (b) below.
- (2) The kinds of award referred to in subsection (1) above are—
  - (a) awards granted to persons who complete an appropriate course of study and satisfy an appropriate assessment, and
  - (b) awards granted to persons who complete an appropriate programme of supervised research and satisfy an appropriate assessment,
 and in this section “award” means any degree, diploma, certificate or other academic award or distinction and “assessment” includes examination and test.
- (3) An institution for the time being specified in such an order may grant any award of a kind mentioned in subsection (2)(a) or (b) above which it is competent to grant by virtue of the order to persons who complete the appropriate course of study or, as the case may be, programme of supervised research on or after the date specified in the order.
- (4) An institution specified in such an order may also—
  - (a) grant honorary degrees, and
  - (b) grant degrees to members of the academic and other staff of the institution.
- (5) Any power conferred on an institution to grant awards in pursuance of this section includes power—
  - (a) to authorise other institutions to do so on behalf of the institution,
  - (b) to do so jointly with another institution, and

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- (c) to deprive any person of any award granted to him by or on behalf of the institution in pursuance of this section (or, in the case of an award granted to him by the institution and another institution jointly, to do so jointly with the other institution).
- (6) It shall be for the institution to determine in accordance with any relevant provisions of the instruments relating to or regulating the institution the courses of study or programmes of research, and the assessments, which are appropriate for the grant of any award and the terms and conditions on which any of the powers conferred under this section may be exercised.
- (7) Section 124D of the <sup>M29</sup>Education Reform Act 1988 applies in relation to orders under subsection (1) above as it applies in relation to the exercise of powers for the purposes of Part II of that Act.

#### Commencement Information

**I69** S. 76 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M29** 1988 c. 40.

## 77 Use of “university” in title of institution.

- (1) Where—
- power is conferred by any enactment or instrument to change the name of any educational institution or any body corporate carrying on such an institution, and
  - the educational institution is within the higher education sector,
- then, if the power is exercisable with the consent of the Privy Council, it may (whether or not the institution would apart from this section be a university) be exercised with the consent of the Privy Council so as to include the word “university” in the name of the institution and, if it is carried on by a body corporate, in the name of the body.
- (2) The reference in subsection (1) above to a power to change the name of an institution or body includes any power (however expressed and whether or not subject to any conditions or restrictions) in the exercise of which the name of the institution or body may be changed; but the power as extended by that subsection has effect subject to any such conditions or restrictions.
- (3) In exercising any power exercisable by virtue of this section to consent to a change in any name the Privy Council shall have regard to the need to avoid names which are or may be confusing.
- (4) Any educational institution whose name includes the word “university” by virtue of the exercise of any power as extended by subsection (1) above is to be treated as a university for all purposes.

#### Commencement Information

**I70** S. 77 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

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## 78 Financial years of higher education corporations.

- (1) If the Secretary of State directs that any financial year specified in the direction of the higher education corporations, and subsequent financial years, are to begin with a date specified in the direction, then—
- (a) the financial year of the corporations immediately preceding the year specified in the direction shall end immediately before the date specified in the direction, and
  - (b) the financial year specified in the direction and subsequent financial years shall be each successive period of twelve months.
- (2) Section 124B(7) of, and paragraph 18 of Schedule 7 to, the <sup>M30</sup>Education Reform Act 1988 (financial years) shall have effect subject to this section.

### Commencement Information

**I71** S. 78 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

### Marginal Citations

**M30** 1988 c. 40.

## General

## 79 Duty to give information to the funding councils.

Each of the following shall give a council such information as they may require for the purposes of the exercise of any of their functions under the Education Acts—

- (a) a local education authority,
- (b) the governing body of any institution within the higher education sector, and
- (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided.

### Modifications etc. (not altering text)

**C29** S. 79 modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.2](#)

### Commencement Information

**I72** S. 79 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

## 80 Dissolution of Council for National Academic Awards.

- (1) The Secretary of State may by order provide—
- (a) for the dissolution of the Council for National Academic Awards, and
  - (b) for all property, rights and liabilities to which the Council is entitled or subject immediately before the order comes into force to become property, rights and liabilities of such person as may be specified in the order.
- (2) If the order so provides the person so specified shall discharge any duty relating to accounts and records under the statutes of the Council for National Academic Awards in respect of any period ending before the dissolution of the council which would have

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fallen to be discharged by the council after the dissolution or fell to be so discharged before the dissolution but has not been discharged.

#### Extent Information

**E3** S. 80 extends to the United Kingdom see s. 94(6).

#### Commencement Information

**I73** S. 80 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

## 81 Directions.

- (1) In exercising their functions under this Part of this Act, [<sup>F29</sup>the HEFCW] shall comply with any directions under this section, and such directions shall be contained in an order made by the Secretary of State.
- (2) The Secretary of State may give general directions to [<sup>F30</sup>the HEFCW] about the exercise of their functions.
- (3) If it appears to the Secretary of State that the financial affairs of any institution within the higher education sector have been or are being mismanaged he may, after consulting [<sup>F31</sup>the HEFCW] and the institution, give such directions to [<sup>F31</sup>the HEFCW] about the provision of financial support in respect of the activities carried on by the institution as he considers are necessary or expedient by reason of the mismanagement.

#### Textual Amendments

- F29** Words in s. 81(1) substituted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), Sch. 11 para. 22(2); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 9)
- F30** Words in s. 81(2) substituted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), Sch. 11 para. 22(3); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 9)
- F31** Words in s. 81(3) substituted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), Sch. 11 para. 22(4); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 9)

#### Commencement Information

**I74** S. 81 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

## PART III

### MISCELLANEOUS AND GENERAL

## 82 Joint exercise of functions.

- (1) Any two or more councils may exercise jointly any of their functions where it appears to them that to do so—
  - (a) will be more efficient, or
  - (b) will enable them more effectively to discharge any of their functions.

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- (2) Any two or more councils shall, if directed to do so by the Secretary of State, jointly make provision for the assessment by a person appointed by them of matters relating to the arrangements made by each institution in Great Britain which is within the higher education sector for maintaining academic standards in the institution.
- (3) In this section—
- (a) “council” means a higher education funding council, a further education funding council or the Scottish Higher Education Funding Council, and
  - (b) references to institutions within the higher education sector include institutions within the higher education sector within the meaning of Part II of the <sup>M31</sup>Further and Higher Education (Scotland) Act 1992.

#### Extent Information

**E4** S. 82 extends to Great Britain see s. 94(5).

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

**C30** S. 82 modified (1.7.1999) by [S.I. 1999/672, art. 5, Sch.2](#).

**C31** S. 82 amended (30.6.1999) by [S.I. 1999/1756, art. 2, Sch. para.13](#).

#### Commencement Information

**I75** S. 82 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

**M31** [1992 c. 37](#).

## 83 Efficiency studies.

- (1) A further education funding council or a higher education funding council may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution within the further education sector or, as the case may be, the higher education sector.
- (2) A person promoting or carrying out such studies at the request of a council may require the governing body of the institution concerned—
- (a) to furnish the person, or any person authorised by him, with such information, and
  - (b) to make available to him, or any person so authorised, for inspection their accounts and such other documents,
- as the person may reasonably require for that purpose.

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

**C32** [S. 83\(2\)](#) modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.2](#)

#### Commencement Information

**I76** [S. 83](#) wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

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## 84 Effect of agreements made before date of transfer.

- (1) This section applies where—
- (a) (apart from this section) any land or other property of a local authority would on any date (“the date of transfer”) be transferred under Part I of this Act or Part II of the <sup>M32</sup>Education Reform Act 1988 to the governing body of an institution within the further education sector or the higher education sector, and
  - (b) at any time before that date the authority, the governing body of the institution and the governing body of any other institution which will on that date be an institution within the further education sector or the higher education sector have agreed in writing that the land or property should be transferred on that or a subsequent date to the governing body of that other institution.
- (2) If the Secretary of State has approved the agreement at any time before the date of transfer, Part I of this Act or, as the case may be, Part II of the <sup>M33</sup>Education Reform Act 1988 shall have effect as if they required the property to be transferred in accordance with the agreement.
- (3) References in this section to anything done include anything done before the passing of this Act.

### Modifications etc. (not altering text)

**C33** S. 84(1) modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.1](#)

### Commencement Information

**I77** S. 84 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

### Marginal Citations

**M32** 1988 c. 40.

**M33** 1988 c. 40.

## 85 Finance and government of locally funded further and higher education.

- (1) Chapter III of Part II of the <sup>M34</sup>Education Reform Act 1988 (finance and government of locally funded further and higher education) shall cease to have effect; and section 156 of that Act (government and conduct of certain further and higher education institutions) shall cease to have effect in relation to designated assisted institutions.
- (2) A local education authority shall have the following powers in relation to any institution, not within the further education sector or the higher education sector, which is maintained by them in the exercise of their further or higher education functions.
- (3) The authority may—
- (a) make such provision as they think fit in respect of the government of the institution (including replacing any instrument of government or articles of government of the institution made under that Chapter or that section), and
  - (b) delegate to the governing body of the institution such functions relating to the management of the finances of the institution, and such other functions relating to the management of the institution (including the appointment and dismissal of staff), as the authority may determine.



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### Commencement Information

**I78** S. 85 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

### Marginal Citations

**M34** 1988 c. 40.

VALID FROM 01/10/2002

## [<sup>F32</sup>85A Nuisance or disturbance on educational premises

- (1) Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises (whether or not any such persons are present at the time) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) This section applies to premises, including playing fields and other premises for outdoor recreation, of—
  - (a) any institution (other than a school) which is maintained by a local education authority and provides further education or higher education (or both), and
  - (b) any institution within the further education sector.
- (3) If—
  - (a) a police constable, or
  - (b) a person whom the appropriate authority have authorised to exercise the power conferred by this subsection,
 has reasonable cause to suspect that any person is committing or has committed an offence under this section, he may remove him from the premises in question.
- (4) In subsection (3) “the appropriate authority” means—
  - (a) in relation to premises of an institution such as is mentioned in subsection (2) (a), a local education authority, and
  - (b) in relation to premises of an institution within the further education sector, the governing body.
- (5) No proceedings under this section shall be brought by any person other than—
  - (a) a police constable, or
  - (b) an authorised person.
- (6) In subsection (5) “authorised person” means—
  - (a) in relation to an offence committed on premises of an institution such as is mentioned in subsection (2)(a), a local education authority, and
  - (b) in relation to an offence committed on premises of an institution within the further education sector, a person whom the governing body have authorised to bring such proceedings.]

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#### Textual Amendments

**F32** S. 85A inserted (1.10.2002 for E., otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 206, 216, [Sch. 20 para. 2](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#)

### 86 Temporary exclusion of section 5 of Data Protection Act 1984 in relation to data transferred to new bodies.

- (1) Where personal data are transferred under any provision of this Act to a body corporate established under this Act, section 5(1) of the <sup>M35</sup>Data Protection Act 1984 (prohibition of unregistered holding, etc, of personal data) shall not apply in relation to the holding by that body corporate of the data so transferred or any data of the same description as the data so transferred until the end of the period of six months beginning—
- (a) in the case of a body established to conduct an educational institution, the date on which the body begins to conduct the institution, and
  - (b) in any other case, when the body is established.
- (2) Expressions used in subsection (1) above and in that Act have the same meaning in that subsection as in that Act.

#### Commencement Information

**I79** S. 86 wholly in force 6.5.1992 see s. 94(3) and S.I. 1992/831, [art. 2](#), [Sch. 1](#)

#### Marginal Citations

**M35** 1984 c. 35.

### 87 Transfers of property, etc: supplementary provision.

Schedule 7 to this Act has effect to supplement the provisions of this Act relating to the transfer of property, rights and liabilities.

#### Commencement Information

**I80** S. 87 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, [art. 2](#), [Sch. 2](#)

### 88 Stamp duty.

- (1) Subject to subsection (2) below, stamp duty shall not be chargeable in respect of any transfer effected under or by virtue of any of the following sections of this Act: 23, 25, 27, 32, 34, 40(5) and (7), 63 and 80.
- (2) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsection (1) shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the <sup>M36</sup>Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the <sup>M37</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

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### Commencement Information

**I81** S. 88 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### Marginal Citations

**M36** 1982 c. 39.

**M37** 1891 c. 39.

## 89 Orders, regulations and directions.

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument.
- (2) For the purposes of subsection (1) above the excepted provisions are sections 22, 29(6) and (8), 38, 46 and 57; but section 14 of the <sup>M38</sup>Interpretation Act 1978 (implied power to amend) applies to orders made under those sections as it applies to orders made by statutory instrument.
- (3) A statutory instrument containing any order or regulations under this Act, other than an order under section 94, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Orders or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.
- (5) [<sup>F33</sup>Section 570 of the Education Act 1996] (revocation and variation) applies to directions given under this Act as it applies to directions given under that Act.

### Textual Amendments

**F33** Words in s. 89(5) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.114 (with ss. 1(4), 561, 562, Sch. 39)

### Commencement Information

**I82** S. 89 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

### Marginal Citations

**M38** 1978 c. 30.

## 90 Interpretation.

- (1) In this Act—

“contract of employment”, “employee” and “employer” have the same meaning as in [<sup>F34</sup>the Employment Rights Act 1996], and “employed” means employed under a contract of employment,

“the Education Acts” [<sup>F35</sup>has the meaning given by section 578 of the Education Act 1996],

[<sup>F36</sup>“further education” has the meaning given by section 2(3) to (5) of that Act;]

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“governing body”, in relation to an institution, means, subject to subsection (2) below—

- (a) in the case of an institution conducted by a further education corporation or a higher education corporation, the corporation,
- (b) in the case of a university not falling within paragraph (a) above, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs,
- (c) in the case of any other institution not falling within paragraph (a) or (b) above for which there is an instrument of government providing for the constitution of a governing body, the governing body so provided for, and
- (d) in any other case, any board of governors of the institution or any persons responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors,

“higher education” has the same meaning as in the <sup>M39</sup>Education Reform Act 1988,

“higher education corporation” means a body corporate established under section 121 or 122 of the <sup>M40</sup>Education Reform Act 1988, including those sections as applied by section 227(4) of that Act (application to Wales), or a body corporate which has become a higher education corporation by virtue of section 122A of that Act,

“interest in land” includes any easement, right or charge in, to or over land,

“land” includes buildings and other structures, land covered with water and any interest in land,

“liability” includes obligation, and

“local authority” means a county council, [<sup>F37</sup>a county borough council,] a district council, a London borough council or (in their capacity as a local authority) the Common Council of the City of London.

- (2) The Secretary of State may by order provide for any reference in the Education Acts to the governing body of an institution, in relation to an institution which is—
  - (a) a designated institution for the purposes of Part I or Part II of this Act, and
  - (b) conducted by a company,
 to be read as a reference to the governing body provided for in the instrument of government, or to the company or to both.
- (3) In this Act “university” includes a university college and any college, or institution in the nature of a college, in a university; but where a college or institution would not, apart from this subsection, fall to be treated separately it shall not be so treated for the purpose of determining whether any institution is in England or in Wales.
- (4) References in this Act to institutions within the PCFC funding sector are to be construed in accordance with section 132(6) of the <sup>M41</sup>Education Reform Act 1988.
- (5) Subject to the provisions of this Act, expressions used in this Act and in [<sup>F38</sup>the Education Act 1996] have the same meaning in this Act as in that Act.

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### Textual Amendments

- F34** Words in s. 90(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 52(4)** (with ss. 191-195, 202)
- F35** Words in s. 90(1) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 115(2)(a)** (with ss. 1(4), 561, 562, **Sch. 39**)
- F36** Definition in s. 90(1) inserted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 115(2)(b)** (with ss. 1(4), 561, 562, **Sch. 39**)
- F37** Words in s. 90(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 95**; S.I. 1996/396, art. 4, **Sch. 2** (with ss. 54(4)(7), 55(5))
- F38** Words in s. 90(5) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 115(3)** (with ss. 1(4), 561, 562, **Sch. 39**)

### Commencement Information

- I83** S. 90 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

### Marginal Citations

- M39** 1988 c. 40.  
**M40** 1988 c. 40.  
**M41** 1988 c. 40.

## 91 Interpretation of Education Acts.

- (1) This section applies for the interpretation of the Education Acts.
- (2) References to a further education funding council are to a council established under section 1 of this Act.
- (3) References to institutions within the further education sector are to—
  - (a) institutions conducted by further education corporations, and
  - (b) designated institutions for the purposes of Part I of this Act (defined in section 28(4) of this Act),
 and references to institutions outside the further education sector are to be read accordingly.
- (4) References to a higher education funding council are to a council established under section 62 of this Act, subject to subsection (6) of that section.
- (5) References to institutions within the higher education sector are to—
  - (a) universities receiving financial support under section 65 of this Act,
  - (b) institutions conducted by higher education corporations, and
  - (c) designated institutions for the purposes of Part II of this Act (defined in section 72(3) of this Act),
 and references to institutions outside the higher education sector are to be read accordingly.
- (6) References, in relation to a further education corporation or higher education corporation, to the institution—
  - (a) in relation to any time before the operative date for the purposes of Part I of this Act (defined in section 17 of this Act) or, as the case may be, the transfer date for the purposes of the <sup>M42</sup>Education Reform Act 1988 (defined in section 123 of that Act), are to the institution the corporation is established to conduct, and

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- (b) in relation to any later time or to any corporation which is a further education corporation by virtue of section 47 of this Act or a higher education corporation by virtue of section 122A of that Act, are to any institution for the time being conducted by the corporation in the exercise of their powers under this or that Act.

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

- C34** S. 91 applied (30.6.1999) by 1991 c. 56, s. 1(2), **Sch. 4A para. 11(2)** (as inserted (30.6.1999) by 1999 c. 9, ss. 1(2), 17(2), **Sch.1**)
- C35** S. 91(3)(a)(b) applied (1.9.1994) by 1994 c. 23, ss. 8(2), 31, 101(1), **Sch. 9 Pt. II** Group6 Note (1)(c) (i) (with Sch. 13 para. 2)
- C36** S. 91(5) applied by 1973 c. 50, s. 8(4) (as substituted (1.4.1994 in relation to England and Scotland and 1.4.1995 for all other purposes) by 1993 c. 19, s.45; S.I. 1993/2503, art. 2(3)(a)(b), **Sch.3**)
- C37** S. 91(5)(b)(c) applied (1.9.1994) by 1994 c. 23, ss. 8(2), 31, 101(1), **Sch. 9 Pt. II** Group6 Note (1)(c) (i) (with Sch. 13 para. 2)

#### Commencement Information

- I84** S. 91 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

#### Marginal Citations

- M42** 1988 c. 40.

## 92 Index.

The expressions listed in the left-hand column below are respectively defined by or (as the case may be) are to be interpreted in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
appropriate further education funding council	section 1(6)
contract of employment, etc.	section 90(1)
council (in Part I), or further education funding council	sections 1(5) and 91(2)
council (in Part II), or higher education funding council	sections 61(3)(b), 62(5) and (6) and 91(4)
designated institution (in Part I)	section 28(4)
designated institution (in Part II)	section 72(3)
the Education Acts	section 90(1)
functions	section 61(1)
further education	[ <sup>F39</sup> section 90(1)]
further education corporation	section 17(1)
governing body	section 90(1) and (2)
higher education	section 90(1)

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higher education corporation	section 90(1)
institution in England or in Wales (in relation to higher education funding councils)	section 62(7)
institutions within or outside the further education sector	section 91(3)
institutions within or outside the higher education sector	sections 61(3)(a) and 91(5)
institutions within the PCFC funding sector	section 90(4)
interest in land	section 90(1)
land	section 90(1)
liability	section 90(1)
local authority	section 90(1)
modification	section 61(1)
operative date	sections 17 and 33(4)
F40	F40
...	...
regulations	section 61(1)
F40	F40
...	...
F40	F40
...	...
transfer of rights or liabilities	section 61(2)
university	section 90(3)

#### Textual Amendments

**F39** Words in the entry for “further education” in s. 92 substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 116(a)** (with ss. 1(4), 561, 562, Sch. 39)

**F40** Entries in s. 92 repealed (1.11.1996) by 1996 c. 56, ss. 582(1)(2), 583(2), **Sch. 37 Pt. I para. 116(b)**, **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39)

#### Commencement Information

**I85** S. 92 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

### 93 Amendments and repeals.

- (1) Schedule 8 (which makes minor and consequential amendments) shall have effect.
- (2) The enactments mentioned in Schedule 9 to this Act are repealed to the extent mentioned in the third column.

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### Commencement Information

**I86** S. 93 wholly in force; s. 93 not in force at Royal Assent see s. 94(3); s. 93(2) wholly in force and s. 93(1) in force for certain purposes at 6.5.1992, 30.9.1992, 1.4.1993, 1.8.1993 by [S.I. 1992/831](#), [art. 2](#), [Schs.](#) (as amended by [S.I. 1992/2041](#), [art. 2\(b\)](#)); s. 93(1) in force (E.) for certain purposes at 7.12.1992 by [S.I. 1992/3057](#), [art. 2](#); s. 93(1) in force for certain purposes at 1.8.1996 by [S.I. 1996/1897](#), [art. 2](#)

## 94 Short title, commencement, etc.

(1) This Act may be cited as the Further and Higher Education Act 1992.

<sup>F41</sup>(2) .....

(3) This Act shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions and for different purposes.

(4) Subject to the following provisions of this section, this Act extends to England and Wales only.

(5) Sections 63, 64 and 82 of this Act extend also to Scotland.

(6) Section 80 extends also to Scotland and Northern Ireland.

(7) The amendment by this Act of an enactment which extends to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.

### Subordinate Legislation Made

**P1** S. 94(3) power partly exercised (16.3.1992): different dates appointed for specified provisions by [S.I. 1992/831](#) (with saving and transitional provisions);  
s. 94(3) power partly exercised (25.8.1992) by [S.I. 1992/2041](#) (amending [S.I. 1992/831](#));  
s. 94(3) power partly exercised (1.9.1992): 1.4.1993 appointed for specified provisions by [S.I. 1992/2377](#);  
s. 94(3) power partly exercised (7.12.1992): 7.12.1992 appointed (E.) for s. 93(1) for certain purposes by [S.I. 1992/3057](#);  
s. 94(3) power partly exercised (9.7.1996): 1.8.1996 appointed for certain purposes by [S.I. 1996/1897](#);

### Textual Amendments

**F41** S. 94(2) repealed (1.11.1996) by [1996 c. 56](#), [ss. 582\(2\)\(3\)](#), [583\(2\)](#), [Sch. 38 Pt.I](#) (with [ss. 1\(4\)](#), [561](#), [562](#), [Sch. 39](#))

### Commencement Information

**I87** S. 94 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Sch. 1](#)



**Status:**

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**Changes to legislation:**

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