



# Further and Higher Education Act 1992

## 1992 CHAPTER 13

### PART I

#### FURTHER EDUCATION

### CHAPTER II

#### INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

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

#### **28 Designation of institutions.**

- (1) The Secretary of State may by order designate [<sup>F1</sup>for the purposes of this section] 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 [<sup>F2</sup>(other than one belonging to a group of schools for which a foundation body acts under section 21 of the School Standards and Framework Act 1998)],
  - <sup>F3</sup>(b) .....
  - (c) an institution which is grant-aided or eligible to receive aid by way of grant [<sup>F4</sup>or
  - (d) an institution established for the purpose of being principally concerned with the provision of one or both of the kinds of education specified in subsection (1) above.]

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- (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 <sup>F5</sup>local authorities] who—
- (a) receive any grants under regulations made under <sup>F6</sup>section 485 of the Education Act 1996], or
  - (b) are eligible to receive such grants.
- <sup>F7</sup>(3A) The Secretary of State shall not make an order under this section in respect of a voluntary aided school without the consent of the governing body and the <sup>F5</sup>local authority].]
- (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

- F1** Words in s. 28(1) substituted (1.4.2001) by 2000 c. 21, s. 143(1)(a) (with s. 150); S.I. 2001/1274, art. 2, **Sch. Pt. I**; S.I. 2001/654, art. 2, **Sch. Pt. I**
- F2** Words in s. 28(2)(a) inserted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 38** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F3** S. 28(2)(b) repealed (1.10.2000 for E. and 1.4.2001 for W.), by 2000 c. 21, ss. 143(1)(b), 153, **Sch. 11** (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F4** S. 28(2)(d) and the word preceding it added (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 143(1)(c) (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F5** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 5(2)**
- F6** 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**)
- F7** S. 28(3A) inserted (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 112 (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**

#### Commencement Information

- I1** 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 applies to a 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 designated institution to which this section applies, there is to 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).
- (3) In sections 29A to 29C—
- “instrument” means an instrument of government or articles of government;
- “regulatory instrument”, in relation to an institution, means—

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- (a) an instrument of government or articles of government, or
- (b) any other instrument relating to or regulating the institution.

**Commencement Information**

**I2** S. 29 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

**29A First post-designation instruments and articles of designated institutions<sup>F8</sup>...**

- (1) The first post-designation instrument and articles of government of a designated institution to which section 29 applies must each comply with subsection (3)<sup>F9</sup>....
- (2) The “first post-designation instrument and articles of government” of a designated institution are the first instrument of government and articles of government that the institution has after the designation takes effect.
- (3) The instrument must meet one of the following requirements—
  - (a) the instrument was in force when the designation took effect and is approved for the purposes of this section by the appropriate authority;
  - (b) the instrument—
    - (i) is made in pursuance of a power under a regulatory instrument or (where there is no such power) by the governing body of the institution, and
    - (ii) (in either case) is approved for the purposes of this section by the appropriate authority;
  - (c) the instrument is made by the appropriate authority by order.
- (4) An instrument made by the governing body under subsection (3)(b) or the appropriate authority under subsection (3)(c) may replace wholly or in part an existing regulatory instrument.
- (5) Before making an instrument under subsection (3)(c), the appropriate authority must, so far as it appears practicable to do so, consult—
  - (a) the governing body of the institution, and
  - (b) where there is power under a regulatory instrument to make the instrument, and that power is exercisable by persons other than the governing body of the institution, the persons by whom the power is exercisable.

<sup>F10</sup>(6) .....

- (7) In this section “the appropriate authority”—
  - (a) in relation to an institution in England, means the Secretary of State;
  - (b) in relation to an institution in Wales, means the Welsh Ministers.

**Textual Amendments**

- F8** Words in s. 29A heading omitted (1.9.2014) by virtue of [Further and Higher Education \(Governance and Information\) \(Wales\) Act 2014 \(anaw 1\), ss. 4\(1\)\(c\), 11\(2\); S.I. 2014/1706, art. 3\(d\)](#)
- F9** Words in s. 29A(1) omitted (1.9.2014) by virtue of [Further and Higher Education \(Governance and Information\) \(Wales\) Act 2014 \(anaw 1\), ss. 4\(1\)\(a\), 11\(2\); S.I. 2014/1706, art. 3\(d\)](#)

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**F10** S. 29A(6) omitted (1.9.2014) by virtue of [Further and Higher Education \(Governance and Information\) \(Wales\) Act 2014 \(anaw 1\)](#), **ss. 4(1)(b)**, 11(2); S.I. 2014/1706, art. 3(d)

### **[<sup>F11</sup>29B Changes to instruments and articles**

- (1) This section applies to a designated institution to which section 29 applies.
- (2) The governing body of the institution may modify or replace its instrument of government and articles of government.
- (3) If the institution is in Wales and is an institution to which section 30 applies, the governing body may do any of the things mentioned in subsection (2) only with the consent of the trustees of the institution.
- (4) The instrument of government and articles of government (as modified or replaced)—
  - (a) must comply with the requirements of Schedule 4, and
  - (b) subject to that, may make such other provision as may be necessary or desirable.]

#### **Textual Amendments**

**F11** S. 29B substituted for ss. 29B, 29C (1.9.2014) by [Further and Higher Education \(Governance and Information\) \(Wales\) Act 2014 \(anaw 1\)](#), **ss. 4(2)**, 11(2); S.I. 2014/1706, art. 3(d)

### **[<sup>F12</sup>30 Special provision for certain institutions.**

- (1) Notwithstanding anything in sections 29 to [<sup>F13</sup>29B] of this Act, the instrument of government of a designated institution to which this section applies 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, in particular, that the institution 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.
- (2) This section applies to—
  - (a) an institution which, when designated, was a voluntary aided school, and
  - (b) an institution specified, or falling within a class specified, by the Secretary of State by order.
- (3) The Secretary of State may specify an institution or a class of institutions only if the institution or each member of the class is principally concerned with the provision of the education specified in section 28(1)(a) above.
- (4) The reference in subsection (1)(a) above to the established character of an institution is, in relation to an institution established shortly before or at the same time as being designated, a reference to the character which the institution is intended to have on its establishment.]

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#### Textual Amendments

- F12** S. 30 substituted (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 143(2) (with s. 150); S.I. 2000/2559, art. 2(1), Sch. Pt. I; S.I. 2001/1274, art. 2, Sch. Pt. I
- F13** Word in s. 30(1) substituted (1.9.2014) by Further and Higher Education (Governance and Information) (Wales) Act 2014 (anaw 1), s. 11(2), Sch. 2 para. 1(a); S.I. 2014/1706, art. 3(h)

### 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).

<sup>F14</sup>(2A) .....

- (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 [<sup>F15</sup>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 [<sup>F16</sup>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.

#### Textual Amendments

- F14** S. 31(2A) omitted (1.9.2014) by virtue of Further and Higher Education (Governance and Information) (Wales) Act 2014 (anaw 1), ss. 4(3), 11(2); S.I. 2014/1706, art. 3(d)
- F15** Words in s. 31(3)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 131 (with art. 10)
- F16** Words in s. 31(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 131 (with art. 10)

#### Commencement Information

- I3** S. 31 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

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**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 <sup>F5</sup>local 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,
 shall be transferred to and, by virtue of this Act, vest in the appropriate transferees.

<sup>F17</sup>(2A) .....

- (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 <sup>F5</sup>local 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 <sup>F5</sup>local 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—

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- (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.

#### Textual Amendments

- F5** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 5\(2\)](#)
- F17** S. 32(2A) repealed (1.4.2001) by [2000 c. 21, ss. 143\(3\), 153](#), [Sch. 11](#); [S.I. 2001/654, art. 2](#), [Sch. Pt. II](#) (with transitional provisions in [art. 3](#)); [S.I. 2001/1274, art. 2](#), [Sch. Pt. I](#)

#### Commencement Information

- I4** S. 32 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2](#), [Sch. 1](#)

### 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

- I5** S. 33 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2](#), [Sch. 1](#)

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