



# Further and Higher Education Act 1992

## 1992 CHAPTER 13

### 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.
- (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

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- (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>F1</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.

#### Textual Amendments

- F1** 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

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

- C1** S. 62(7) applied (31.3.1999) by S.I. 1999/603, art. 3(2).  
**C2** S. 62(8) modified (1.7.1999) by S.I. 1999/672, art. 5, Sch.2.

#### Commencement Information

- I1** 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,

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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).

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**Commencement Information**

**I2** S. 63 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2](#), [Sch. 3](#)

**F264 Transitional arrangements.**

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**Textual Amendments**

**F2** S. 64 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 5](#) Group 4

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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 [<sup>F3</sup>local 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>F4</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>F5</sup>(4A) .....

<sup>F5</sup>(4B) .....

- (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**

- F3** 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)**
- F4** S. 65(3A)(3B) inserted (retrospectively) by 1998 c. 30, **ss. 27, 46(3)** (with s. 42(8))
- F5** S. 65(4A)(4B) repealed (1.9.2002) by 2001 c. 10, s. 42(6), **Sch. 9** (with s. 43(13)); S.I. 2002/2217, **art. 3, Sch. 1 Pt. I**

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

- C3** S. 65(3)(a) modified (1.4.1993) by [S.I. 1993/563](#), **art. 2, Sch. 1**

**Commencement Information**

- I3** 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 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—

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- (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

**I4** 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>M1</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 [<sup>F3</sup>local 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 ”.
- (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 ”.

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- (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 [<sup>F3</sup>local authority] included the London Residuary Body and the London Pensions Fund Authority.

#### Textual Amendments

- F3** 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\(2\)](#)

#### Commencement Information

- I5** 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

- M1** [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)**

- C4** S. 68 excluded (1.9.2005) by [Education Act 2005 \(c. 18\)](#), **ss. 88(5)**, 125(3)(a)  
**C5** S. 68 modified (14.1.2006) by [Higher Education Act 2004 \(c. 8\)](#), **ss. 23**, 52(2) (with [ss. 24-29](#)); S.I. 2006/51, [art. 2](#)  
**C6** S. 68(1) extended (16.7.1998) by [1998 c. 30](#), **ss. 26(3)**, 46(3) (with [s. 42\(8\)](#))

**Commencement Information**

- I6** 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—



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- (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 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 [<sup>F3</sup>local authorities], at which prescribed courses of higher education are currently provided.

#### Textual Amendments

**F3** 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\(2\)](#)

#### Commencement Information

**I7** 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>F6</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

**F6** 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](#)

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### Commencement Information

**18** 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>M2</sup>Education Reform Act 1988 there is inserted—

#### **“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.

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- (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.

#### **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.

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### **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.
- (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

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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.

#### Commencement Information

**I9** S. 71 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

**M2** [1988 c. 40.](#)

## 72 Further power of designation.

(1) In section 129 of the <sup>M3</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

**I10** S. 72 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

**M3** [1988 c. 40.](#)

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### 73 Government and conduct of designated institutions.

(1) After section 129 of the <sup>M4</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—
  - (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.

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- (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 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.

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#### **Commencement Information**

**I11** S .73 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**

**M4** 1988 c. 40.

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

- (1) After section 122 of the <sup>M5</sup>Education Reform Act 1988 (orders incorporating higher education institutions maintained by [<sup>F3</sup>local 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 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>M6</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.

#### Textual Amendments

- F3** 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)**

#### Commencement Information

- I12** S. 74 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831](#), **art. 2**, **Sch. 3**

#### Marginal Citations

- M5** 1988 c. 40.  
**M6** 1988 c. 40.



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## 75 Variation of trust deeds.

In section 157 of the <sup>M7</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.
- (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)

C7 S. 75(3)(a) modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.2](#)

### Commencement Information

I13 S. 75 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

### Marginal Citations

M7 [1988 c. 40.](#)

## 76 Power to award degrees, etc.

- (1) The Privy Council may by order
- [<sup>F7</sup>(a) 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][<sup>F8</sup>;
  - (b) specify any institution in England within the further education sector as competent to grant in pursuance of this section an award of the kind mentioned in subsection (2A) below.]
- (2) The kinds of award referred to in [<sup>F9</sup>subsection (1)(a)] above are—
- (a) awards granted to persons who complete an appropriate course of study and satisfy an appropriate assessment, and

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(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.

[<sup>F10</sup>(2A) The kind of award referred to in subsection (1)(b) above is a foundation degree granted to persons who complete an appropriate course of study and satisfy an appropriate assessment.]

[<sup>F11</sup>(2B) Where the Privy Council is considering whether to make an order under subsection (1) above specifying an institution as mentioned in subsection (1)(b) above, the Privy Council may not make the order unless—

- (a) the institution gives the Privy Council a statement setting out what it proposes to do as regards making arrangements for securing that any person granted an award under or by virtue of any power that would be conferred on the institution if the order were made (other than the power described in subsection (4A) below) has an opportunity to progress to one or more particular courses of more advanced study, and
- (b) the Privy Council considers that the proposals are satisfactory and are likely to be carried out.]

(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) [<sup>F12</sup>or (2A)] 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 [<sup>F13</sup>as competent to grant in pursuance of this section either or both of the kinds of award mentioned in subsection (2)(a) or (b) above] may also—

- (a) grant honorary degrees, and
- (b) grant degrees to members of the academic and other staff of the institution.

[<sup>F14</sup>(4A) An institution specified in such an order as competent to grant in pursuance of this section the kind of award mentioned in subsection (2A) above may also—

- (a) grant honorary foundation degrees, and
- (b) grant foundation degrees to members of the academic and other staff of the institution.]

(5) [<sup>F15</sup>Subject to subsection (5A) below, 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
- (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).

[<sup>F16</sup>(5A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution's power to grant such awards does not include the power described in subsection (5)(a) above.]

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(6) <sup>F17</sup>Subject to subsection (6A) below, 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.

<sup>F18</sup>(6A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution is not to grant such an award to a person unless he was enrolled at the institution at the time he completed the course of study for which the award is granted.]

(7) Section 124D of the <sup>M8</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.

#### Textual Amendments

- F7** S. 76(1)(a) renumbered (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(2\)\(a\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F8** S. 76(1)(b) and preceding semi-colon inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(2\)\(b\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F9** Words in s. 76(2) substituted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(3\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F10** S. 76(2A) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(4\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F11** S. 76(2B) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(5\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F12** Words in s. 76(3) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(6\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F13** Words in s. 76(4) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(7\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F14** S. 76(4A) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(8\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F15** Words in s. 76(5) substituted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(9\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F16** S. 76(5A) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(10\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F17** Words in s. 76(6) substituted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(11\), 32\(5\); S.I. 2007/3505, art. 6](#)
- F18** S. 76(6A) inserted (1.5.2008) by [Further Education and Training Act 2007 \(c. 25\), ss. 19\(12\), 32\(5\); S.I. 2007/3505, art. 6](#)

#### Commencement Information

- I14** S. 76 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

#### Marginal Citations

- M8** 1988 c. 40.

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

(1) Where—

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- (a) 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
- (b) 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 [<sup>F19</sup>, unless in that name that word is immediately followed by the word “college” or “collegiate”.]

#### Textual Amendments

**F19** Words in s. 77(4) added (1.10.1998) by 1998 c. 30, ss.40, 46(4) (with s. 42(8)); S.I. 1998/2215, art. 2

#### Commencement Information

**I15** S. 77 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

## 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>M9</sup>Education Reform Act 1988 (financial years) shall have effect subject to this section.

#### Commencement Information

**I16** S. 78 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

#### Marginal Citations

**M9** 1988 c. 40.

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### 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 [<sup>F3</sup>local 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.

#### Textual Amendments

**F3** 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\(2\)](#)

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

**C8** S. 79 modified (1.4.1993) by [S.I. 1993/563](#), art. 2, [Sch.2](#)

#### Commencement Information

**I17** S. 79 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831](#), art. 2, [Sch. 1](#)

#### <sup>F20</sup>80 Dissolution of Council for National Academic Awards.

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#### Textual Amendments

**F20** S. 80 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 5](#) Group 4

PROSPECTIVE

#### 81 Directions.

- (1) In exercising their functions under this Part of this Act, [<sup>F21</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>F22</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>F23</sup>the HEFCW] and the institution, give such directions to [<sup>F23</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.

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### Textual Amendments

- F21** 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)
- F22** 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)
- F23** 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

- I18** S. 81 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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