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STATUTORY INSTRUMENTS

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**1993 No. 2810**

**The Education and Libraries (Northern Ireland) Order 1993**

**PART IV**

**MISCELLANEOUS**

*Commercial activities*

**Power of certain bodies to undertake commercial activities**

**32.**—(1) Subject to the following provisions of this Article, a relevant body shall have power, with the approval of the Department, to undertake commercial activities which, apart from this Article, it would not have power to undertake.

(2) An approval granted to a relevant body under this Article—

- (a) shall specify the particular commercial activities which the body has power to undertake under this Article in pursuance of the approval;
- (b) shall be subject to the general conditions for the time being specified in directions under paragraph (3); and
- (c) shall be subject to such other conditions as may be specified by the Department in the approval.

(3) The Department shall issue directions specifying the general conditions regulating the undertaking by a relevant body of commercial activities in pursuance of an approval under this Article.

(4) The Department shall consult all relevant bodies before issuing any directions under paragraph (3).

(5) Subject to any conditions applying under this Article, a relevant body shall have power—

- (a) to do anything whatsoever which appears to the body to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred under this Article; and
- (b) to make such charge as the body considers appropriate for anything that it does in the exercise of any such power and to calculate any such charge on any basis that it considers to be the appropriate commercial basis.

(6) Nothing in this Article authorises a relevant body—

- (a) to undertake any commercial activities which are detrimental to—
  - (i) the performance by that body of any duty imposed on it by the Education Orders; or
  - (ii) the interests of pupils or persons seeking to be provided with education under the Education Orders; or
- (b) to disregard any statutory provision or rule of law or to override any person's contractual or property rights.

(7) Where it appears to the Department that a relevant body—

- (a) has failed to comply with any conditions subject to which an approval under this Article has been granted; or
- (b) has in undertaking any commercial activity in pursuance of such an approval contravened paragraph (6),

the Department may, by notice served on that body,—

- (i) revoke the approval; or
- (ii) modify the approval, whether by modifying the particular commercial activities or any conditions specified therein.

(8) The revocation or modification of an approval under this Article shall not affect the power of a relevant body to meet any contractual commitments outstanding at the date on which the notice under paragraph (7) is served on the body.

(9) Any approval, directions or notice under this Article shall be in writing.

(10) In this Article—

“commercial activity” includes—

- (a) the carrying out of work for any other body or person;
- (b) the supplying of goods and services to any other body or person; and
- (c) the developing and exploiting of ideas and the exploiting of intellectual property;

“relevant body” means—

- (a) a board; or
- (b) the Northern Ireland Council for the Curriculum, Examinations and Assessment.

(11) Until the coming into operation of Article 34, paragraph (10) shall have effect with the substitution for paragraph (b) of the definition of relevant body of the following paragraph—

“(b) the Northern Ireland Curriculum Council.”.

### **Formation of companies in connection with institutions of further education**

**33.** After Article 119 of the 1989 Order there shall be inserted the following Article—

#### **“Formation of companies for purposes of Article 119(1)**

**119A.**—(1) The governing body of an institution of further education which has a delegated budget may, in the exercise of its powers under Article 119(1), form companies under the Companies (Northern Ireland) Order 1986(1).

(2) Subject to paragraphs (3) and (4), the board responsible for the management of an institution of further education may make loans to any company formed under this Article by the governing body of that institution.

(3) Loans made under this Article shall carry interest at a rate not less than a rate determined by the Department with the consent of the Department of Finance and Personnel, and—

- (a) different rates may be so determined in respect of different categories of loans;
- (b) a rate may be determined by reference to a rate—
  - (i) specified by or under any other statutory provision; or
  - (ii) ascertainable by such other means as the Department may with the consent of the Department of Finance and Personnel, specify.

(4) Before determining a rate under paragraph (3), the Department shall consult any boards and other bodies with which consultation appears to the Department to be desirable.

(5) The accounts kept by a board under Article 119 of the 1986 Order shall include a separate account of any loans made and repayments of principal or interest received by that board under this Article.”.