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) **[**[F1]The appropriate authority**]** may by order designate **[**[F2]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 **[**[F3](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)**]**,

[F4](b) . . . . . .

(c) an institution which is grant-aided or eligible to receive aid by way of grant **[**[F5]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.**]**

(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 **[**[F6]local authorities**]** who—

(a) receive any grants under regulations made under **[**[F7]section 485 of the Education Act 1996**]**, or

(b) are eligible to receive such grants.

[[F8](3A) **[**[F9]The appropriate authority**]** shall not make an order under this section in respect of a voluntary aided school without the consent of the governing body and the **[**[F6]local authority**].]**

[[F10](3B) In this section "the appropriate authority"—

(a) in relation to an educational institution in England, means the Secretary of State;

(b) in relation to an educational institution in Wales, means the Welsh Ministers.**]**

(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 (28.6.2022) by Skills and Post-16 Education Act 2022 (c. 21), **ss. 32(2)(a)**, 36(2)

F2 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**

F3 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**.

F4 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**

F5 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**

F6 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)**

F7 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)

F8 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**

F9 Words in s. 28(3A) substituted (28.6.2022) by Skills and Post-16 Education Act 2022 (c. 21), **ss. 32(2)(a)**, 36(2)

F10 S. 28(3B) inserted (28.6.2022) by Skills and Post-16 Education Act 2022 (c. 21), **ss. 32(2)(b)**, 36(2)

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.

***Changes to legislation:** Further and Higher Education Act 1992, Cross Heading: Designation of institutions for funding by the councils is up to date with all changes known to be in force on or before 24 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) View outstanding changes*

(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—

(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[F11]...

(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)[F12]....

(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.

[F13](6) . . . . . .

(7) In this section "the appropriate authority"—

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(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

F11 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)

F12 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)

F13 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)

[[F14]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

F14 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)

[[F15]30 Special provision for certain institutions.

(1) Notwithstanding anything in sections 29 to **[**[F16]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.

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(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.**]**

Textual Amendments

F15 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**

F16 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.

[[F17](1) This section has effect in relation to any designated institution **[**[F18]in Wales**]** 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).

[F19](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 **[**[F20]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 **[**[F21]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

F17 S. 31 ceases to have effect (E.) (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(h), **Sch. 15 para. 5(1)**

F18 Words in s. 31(1) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(h), **Sch. 15 para. 5(2)**

F19 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)

F20 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)

F21 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**

[F22]32 Transfer of property, etc., to designated institutions.

. . . . . .

Textual Amendments

F22 S. 32 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(h), **Sch. 15 para. 4(3)**

[F23]33 Provisions supplementary to section 32.

. . . . . .

Textual Amendments

F23 S. 33 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(h), **Sch. 15 para. 4(3)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16(6) inserted by 2007 c. 25 s. 14(4)
- s. 17(2)(aa) inserted by 2007 c. 25 s. 14(5)(b)
- s. 27(3A)(3B) inserted by 2007 c. 25 s. 15(4)
- s. 27(9) inserted by 2007 c. 25 s. 15(7)
- s. 51(1)-(2A) substituted for s. 51(1)(2) by 2007 c. 25 s. 16(2)
- s. 76(8)(9) inserted by 2017 c. 29 s. 52(4)
- s. 85D inserted by 2009 c. 22 s. 247
- s. 85D(7) words inserted by S.I. 2016/413 reg. 140 (This amendment comes into force on the day that section 85D of the Further and Higher Education Act 1992 (c. 13) comes into force. That provision is still prospective.)