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## STATUTORY INSTRUMENTS

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# 1997 No. 1772

## The Further Education (Northern Ireland) Order 1997

### *Duties and powers of the Department*

#### **Powers of Department in relation to further education**

4.—(1) The Department shall have the power to do all that is necessary or expedient for the purposes of the exercise of its duty under Article 3 of the 1989 Order in so far as it relates to further education.

(2) In particular, the Department may—

- (a) make grants, loans and other payments in accordance with Article 5—
  - (i) to the governing bodies of institutions of further education; or
  - (ii) to others for the purposes of, or in connection with, the provision of further education;
- (b) establish a new institution of further education in accordance with Article 6;
- (c) amalgamate two or more institutions of further education to form a single new institution of further education in accordance with Article 7;
- (d) recognise an educational establishment as an institution of further education in accordance with Article 8;
- (e) provide for the discontinuance of an institution of further education in accordance with Article 9.

(3) In discharging its functions under this Order, the Department shall have regard to the requirements of persons over compulsory school age who have learning difficulties.

#### **Funding of further education**

5.—(1) The Department may make grants, loans or other payments—

- (a) to the governing body of an institution of further education in respect of any expenditure incurred or to be incurred by it in connection with its functions under this Order in relation to the institution; and
- (b) to such other persons as appear to it to be appropriate in respect of the expenditure of such persons incurred or to be incurred for the purposes of, or in connection with, the provision of further education.

(2) Grants, loans and other payments under this Article shall be of such amounts as the Department may determine.

(3) A grant, loan or other payment under this Article may be made subject to such conditions as the Department thinks appropriate and such conditions—

- (a) may be imposed before, after or at the time the grant, loan or other payment is made; and
- (b) may relate to any time, whether before or after such time.

*Status: Point in time view as at 01/04/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997, Cross Heading: Duties and powers of the Department. (See end of Document for details)*

(4) The terms and conditions on which the Department may make any grants, loans or other payments under this Article may, in particular, include conditions—

- (a) enabling the Department to require the repayment, in whole or in part, of sums paid by it if any other condition subject to which the sums were paid is not complied with; and
- (b) requiring the payment of interest in respect of any period during which a sum due to the Department in accordance with any other condition remains unpaid,

but shall not relate to the application by the person to whom the grants, loans or other payments are made of any sums derived otherwise than from the Department.

(5) A condition imposed under paragraph (3) shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

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

**C1** Art. 5(3) modified (13.2.2006) by [Higher Education \(Northern Ireland\) Order 2005 \(S.I. 2005/1116 \(N.I. 5\)\)](#), arts. 1(3), 4(1)(c); S.R. 2006/30, **art. 2**

**Establishment of new institution of further education**

6.—(1) The Department may establish a new institution of further education.

(2) Before establishing a new institution of further education under this Article the Department shall consult—

- [<sup>F1</sup>(a) the Authority; and]
- (b) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) Where the Department proposes to establish a new institution of further education, it shall, as soon as reasonably practicable, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

**F1** Art. 6(2)(a) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), **Sch. 3 para. 18(1)** (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

**Amalgamations of institutions of further education**

7.—(1) The Department may direct that two or more institutions of further education shall be amalgamated to form a single new institution of further education (in this Article referred to as “the new institution”).

(2) Before giving any direction under this Article affecting any institutions of further education, the Department shall consult—

- (a) the governing bodies of those institutions;
- [<sup>F2</sup>(b) the Authority; and]
- (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) A direction under this Article providing for the amalgamation of two or more institutions of further education shall specify the date (referred to in this Article as “the implementation date”) on which the amalgamation is to take effect.

(4) Where the Department issues a direction under this Article, it shall be the duty of the governing bodies of the institutions of further education affected by the direction to take all such steps as are necessary to give effect to the direction.

(5) The Department shall, not later than the implementation date, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

(6) On the implementation date—

- (a) all property, rights and liabilities of the governing bodies of the institutions affected by the direction shall be transferred to, and by virtue of this Article vest in, the governing body of the new institution;
- (b) the institutions affected by the direction shall cease to exist; and
- (c) the governing bodies of those institutions shall be dissolved.

(7) A contract of employment between a person and the governing body of an institution of further education affected by a direction under this Article shall have effect from the implementation date as if originally made between that person and the governing body of the new institution.

(8) Without prejudice to paragraph (7)—

- (a) all the rights, powers, duties and liabilities of the governing body of the institution affected by the direction under or in connection with a contract to which that paragraph applies shall by virtue of this Article be transferred to the governing body of the new institution on the implementation date; and
- (b) anything done before that date by or in relation to the governing body of the institution affected by the direction in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the governing body of the new institution.

(9) Paragraphs (7) and (8) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this Article.

(10) Any land or other property transferred to the governing body of the new institution under this Article which immediately before the implementation date was held on trust shall vest in that body as trustee on the trusts applicable immediately before that date under any trust deed regulating the use of the land or other property for the purposes of an institution of further education.

(11) Stamp duty shall not be chargeable in respect of any transfer effected by this Article.

(12) For the purposes of this Article an institution of further education is affected by a direction under this Article if, and only if, it is one of the institutions which are to be amalgamated in pursuance of the direction.

**F2** Art. 7(2)(b) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 18\(2\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

## **Recognition of institutions of further education**

**8.—(1)** Subject to paragraphs (2) and (3), the Department may recognise an educational establishment as an institution of further education for the purposes of this Order.

*Status: Point in time view as at 01/04/2015.*

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(2) The Department may not recognise an educational establishment except with the consent of the body responsible for the management of that establishment.

(3) Before recognising an educational establishment, the Department shall consult—

[<sup>F3</sup>(a) the Authority;]

(b) the body responsible for the management of that establishment; and

(c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(4) The Department shall, not later than the date on which an institution of further education is recognised by virtue of paragraph (1), ensure—

(a) that an instrument of government and articles of government are made for the institution; and

(b) that a governing body is established for the institution under this Order.

(5) An institution of further education to which Article 10 applies shall be taken for the purposes of this Order to be recognised by the Department on the transfer date.

(6) An institution of further education which—

(a) is established by the Department under Article 6; or

(b) is formed by the amalgamation of two or more institutions of further education under Article 7;

shall be taken for the purposes of this Order to be recognised by the Department on the date on which a governing body is established for the institution under this Order.

(7) The Department shall maintain, and publish in such manner as it thinks fit, a list of institutions for the time being recognised by it.

(8) In this Article “recognised” means recognised under this Article.

**F3** Art. 8(3)(a) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), Sch. 3 para. 18(3) (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

### **Discontinuance of institution of further education**

**9.**—(1) The Department may by order provide for the discontinuance of an institution of further education.

(2) Before making any order under this Article in relation to an institution of further education, the Department shall consult with—

(a) the governing body of the institution;

[<sup>F4</sup>(b) the Authority; and]

(c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) An order made under this Article in relation to an institution of further education shall—

(a) contain provision for the winding-up of the governing body of that institution; and

(b) provide for the dissolution of that body on such date as is determined by or in accordance with the order.

(4) An order made under this Article in relation to an institution of further education may include provision—

- (a) for the transfer of property, rights and liabilities of the governing body of the institution to—
    - (i) the Department; or
    - (ii) subject to paragraph (5), such other body or person as may be specified in the order;
  - (b) applying Article 7(7) to (9) with such modifications as the Department considers necessary or appropriate;
  - (c) for the payment by the Department of any expenses incurred in the winding-up of the governing body or the discontinuance of the institution;
  - (d) imposing such duties, or conferring such additional powers, on the governing body of the institution in relation to the winding-up and discontinuance as the Department may consider appropriate;
  - (e) for the exercise of any of the governing body's functions by any member of that body specified in the order;
  - (f) for the appointment of a person to administer the winding-up and discontinuance, and for such person to have such functions as appear to the Department necessary or expedient for such purposes and are specified in the order;
  - (g) of such incidental, supplementary, transitional or ancillary nature as appears to the Department to be necessary or expedient for the purpose of the winding-up and discontinuance.
- (5) An order transferring any property, rights or liabilities to a person or body other than the Department—
- (a) shall not be made except with the consent of that person or body; and
  - (b) may impose such conditions as to the use or disposal of any property and rights so transferred as may be specified in the order.
- (6) Where land or other property was held on trust for the purposes of an institution of further education, an order under this Article may vest the property in the Department or another body or person beneficially or on such trusts as appear to the Department to be appropriate.
- (7) Stamp duty shall not be chargeable in respect of any transfer effected by an order under this Article.
- (8) The making of an order under this Article in relation to an institution of further education shall not affect—
- (a) the power of the Department to give directions to the governing body of that institution under Article 101 of the 1986 Order; or
  - (b) the duty of the governing body to comply with any directions so given.
- (9) Article 101 of the 1986 Order shall apply in relation to a person appointed under paragraph (4) (e) as it applies in relation to a relevant authority within the meaning of that Article.

**F4** Art. 9(2)(b) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 18\(4\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

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