

**EXPLANATORY MEMORANDUM TO**  
**THE FURTHER EDUCATION (GOVERNING BODY OF INSTITUTION OF**  
**FURTHER EDUCATION) ORDER (NORTHERN IRELAND) 2016**

**SR 2016 No. 391**

**1. Introduction**

- 1.1** This Explanatory memorandum has been prepared by the Department for the Economy (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2** The Statutory Rule is made under para 2(3) of Schedule 3 of the Further Education (Northern Ireland) Order 1997 (the ‘1997 Order’) and is subject to the affirmative resolution procedure.
- 1.3** The Rule will come into operation when affirmed by resolution of the Assembly. The Department aims to obtain the Assembly’s affirmation shortly after the conclusion of the 2016 Assembly summer recess.

**2. Purpose**

- 2.1** This Rule amends Schedule 3 of the Further Education (Northern Ireland) Order 1997 to remove the requirement on the Department for the Economy to appoint persons nominated by the Education Authority to each of the Governing Bodies of the Northern Ireland Institutions of Further Education. In addition, it allows for existing Education Authority appointments to continue until their current terms of appointment end.

**3. Background**

- 3.1** The Department must ensure that Northern Ireland’s Institutions of Further Education each have in place Governing Bodies which are able to provide strategic leadership, as well as perform key governance and accountability functions. The Governing Body’s role is specified in the ‘1997 Order’ and its proceedings are governed by related statutory Articles of Government and an Instrument of Government, which draw their authority from the 1997 Order. The membership of a College Governing Body is also stipulated within the Instrument of Government.
- 3.2** The removal of the requirement to seek nominees from relating to the Education Authority is considered necessary as:
  - the original justification for same has been overtaken by the passage of time and the evolution of Colleges as larger, self governing business orientated entities, with a more significant role in supporting the development of students and the local economy;

- the new role of the single Education Authority, which no longer resembles its regionalised predecessor bodies that had responsibility for the colleges;
- the existence of more practical and effective linking mechanisms between the Department of Education, the Department of the Economy, the Education Authority and the Further Education Colleges;
- there is a conflict between these unregulated appointments within public bodies which are regulated by the Commissioner for Public Appointments for Northern Ireland; and
- the need for the Department of the Economy to ensure governing body appointments have the necessary knowledge, skills and experience appropriate to the demands of the role.

#### **4. Consultation**

- 4.1** The proposal was originally subject to public consultation as part of a wider package of public appointment reforms in 2007 and responses were supportive. In 2009 the Learning and Skills Development Agency Improvement Service was commissioned to undertake a Review of Governance which suggested the removal of the nomination rights of the Education Authority's predecessor bodies. Following this there was a period of targeted consultation within the FE sector in 2010/11 to consider implementation of the Review's overall findings, as well as discussions around Governing Body membership. Subsequently, it was determined that non-regulated appointments (i.e. not subject to scrutiny by the Commissioner for Public Appointments for Northern Ireland) of student reps, staff reps and the principal to Governing Bodies should remain unchanged, but that there was little justification to retain the Education Authority nomination rights.
- 4.2** During 2015 officials in the predecessor to the Department for the Economy and the Department of Education engaged in discussion about the matter and obtained agreement in both Departments to remove the Authority's nomination rights, however because of other priorities and the timing of the 2016 Assembly elections there was insufficient time to bring forward amending legislation.
- 4.3** In June 2016 agreement was reached between the Department for the Economy and the Department of Education (which has responsibility for the Education Authority) for the removal of the Education Authority nomination rights. To allow for a smooth transition period, it was also agreed that the existing Governing Body members whose appointments arose from the Education Authority (or its predecessor bodies) would continue until the end of their current term of appointment.

## **5. Equality Impact Assessment**

A Section 75 Equality of Opportunity Screening exercise has been carried out and it is considered that the proposed change will not have an adverse impact on any of the Section 75 categories. Indeed, the change introduced by the Statutory Rule is more likely to promote increased participation amongst those groups which are currently under represented on Governing Bodies, on the basis that the pool of potential applicants will be widened from those currently considered by the Education Authority to be suitable, to all individuals who are suitably qualified to undertake a Governing Body member role. The appointments would then fall under the scrutiny of the Commissioner for Public Appointments for Northern Ireland.

## **6. Regulatory Impact Assessment**

A Regulatory Impact Assessment has not been prepared for this rule as it has no adverse impact on business, charities or voluntary bodies.

## **7. Financial Implications**

As the overall number of College Governing Body members will remain unchanged, there are not considered to be any additional financial implications resulting from the legislation.

## **8. Section 24 of the Northern Ireland Act 1998**

The Departmental Solicitor's Office has confirmed that the making of this rule complies with Section 24 of the NI Act 1998.

## **9. EU Implications**

Not applicable.

## **10. Parity or Replicatory Measures**

The Rule is not a parity or replicatory instrument.

## **11. Additional Information**

Not applicable.

## **12. Contact**

Brian Patterson, Department for the Economy (Tel: 028 90 257993 or email: [brian.patterson@economy-ni.gov.uk](mailto:brian.patterson@economy-ni.gov.uk) ) can answer queries regarding this Rule.