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Further and Higher Education Act 1992

1992 CHAPTER 13

PART I

FURTHER EDUCATION

CHAPTER II

INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

The further education corporations

15 Initial incorporation of existing institutions.

- (1) Before the appointed day the Secretary of State shall by order specify—
 - (a) each educational institution maintained by a local education authority which appears to him to fall within subsection (2) below, and
 - (b) each county school, controlled school or grant-maintained school which appears to him to fall within subsection (3) below.
- (2) An institution falls within this subsection if on 1st November 1990 its enrolment number calculated in accordance with paragraph 1(1) of Schedule 3 to this Act was not less than 15 per cent. of its total enrolment number calculated in accordance with paragraph 1(2) of that Schedule.
- (3) An institution falls within this subsection if on 17th January 1991 not less than 60 per cent. of the pupils at the institution were receiving full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years.
- (4) On the appointed day a body corporate shall be established, for each institution so specified, for the purpose of conducting the institution as from the operative date.
- (5) The name given in the order under subsection (1) above as the name of the institution shall be the initial name of the body corporate.

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- (6) Where an educational institution, being an institution maintained by a local education authority or a grant-maintained school, has been established since 1st November 1990 or, as the case may be, 17th January 1991 by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) or, as the case may be, subsection (3) above if it would have done so if the merger had taken place before that date.
- (7) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) above.

Commencement Information

- II** S. 15 wholly in force: s. 15(1)(2)(3)(5)(6)(7) in force at 6.5.1992; s. 15(4) in force at 30.9.1992, see s. 94(3) and [S.I. 1992/831, art. 2, Schs. 1, 2](#)

16 Orders incorporating further institutions.

- (1) The Secretary of State may by order make provision for the establishment of a body corporate—
- (a) for the purpose of establishing and conducting an educational institution, or
 - (b) for the purpose of conducting an existing educational institution,
- but shall not make an order in respect of an existing institution without the consent of the governing body.
- (2) Subsection (1) above does not apply to any educational institution maintained by a local education authority or any grant-maintained school; but if at any time it appears to the Secretary of State, in the case of any educational institution so maintained or any grant-maintained school—
- (a) that its enrolment number calculated in accordance with paragraph 1(1) of Schedule 3 to this Act was not less than 15 per cent. of its total enrolment number calculated in accordance with paragraph 1(2) of that Schedule, or
 - (b) that it is principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years,
- he may by order make provision for the establishment of a body corporate for the purpose of conducting that institution.
- (3) If at any time a council proposes to the Secretary of State that a body corporate should be established for the purpose of conducting an educational institution which—
- (a) is maintained by a local education authority or is a grant-maintained school, and
 - (b) is principally concerned with the provision of further or higher education or full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years,
- the Secretary of State may by order make provision for the establishment of a body corporate for that purpose.
- (4) The name given in the order under this section as the name of the institution shall be the initial name of the body corporate.

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- (5) An order under this section shall provide for the institution to be conducted by the body corporate as from the operative date.

Modifications etc. (not altering text)

- C1 S. 16(1) modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.1
C2 S. 16(2) applied (with modifications): (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I; (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt.I

Commencement Information

- I2 S. 16 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

17 “Further education corporation” and “operative date”.

- (1) In this Act “further education corporation” means a body corporate established under section 15 or 16 of this Act.
- (2) In this Part of this Act “operative date”, in relation to a further education corporation and the institution, means—
- (a) in the case of a further education corporation established under section 15 of this Act, such date as the Secretary of State may by order appoint in relation to the corporations so established, and
 - (b) in the case of a further education corporation established under section 16 of this Act, such date as the Secretary of State may by order appoint in relation to that corporation.

Commencement Information

- I3 S. 17 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

18 Principal powers of a further education corporation.

- (1) A further education corporation may—
- (a) provide further and higher education, and
 - (b) supply goods or services in connection with their provision of education, and those powers are referred to in section 19 of this Act as the corporation’s principal powers.
- (2) For the purposes of subsection (1) above, goods are supplied in connection with the provision of education by a further education corporation if they result from—
- (a) their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
 - (b) the use of their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
 - (c) ideas of a person employed by them, or of one of their students, arising out of their provision of education.
- (3) For the purposes of that subsection, services are supplied in connection with the provision of education by a further education corporation if—

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- (a) they result from their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
- (b) they are provided by making available their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
- (c) they result from ideas of a person employed by them, or of one of their students, arising out of their provision of education.

Commencement Information

I4 S. 18 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

19 Supplementary powers of a further education corporation.

- (1) A further education corporation may do anything (including in particular the things referred to in subsections (2) to (4) below) which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of their principal powers.
- (2) A further education corporation may conduct an educational institution for the purpose of carrying on activities undertaken in the exercise of their powers to provide further or higher education and, in particular, may assume as from the operative date the conduct of the institution in respect of which the corporation is established.
- (3) A further education corporation may provide facilities of any description appearing to the corporation to be necessary or desirable for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties within the meaning of section 4(6) of this Act).
- (4) A further education corporation may—
 - (a) acquire and dispose of land and other property,
 - (b) enter into contracts, including in particular—
 - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers, and
 - (ii) contracts with respect to the carrying on by the corporation of any such activities,
 - (c) borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under sections 23 to 27 of this Act and, in connection with such borrowing, may grant any mortgage, charge or other security in respect of any land or other property of the corporation,
 - (d) invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on,
 - (e) accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes, and
 - (f) do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.

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- (5) The power conferred on a further education corporation by subsection (4)(c) above to borrow money may not be exercised without the consent of the appropriate council, and such consent may be given for particular borrowing or for borrowing of a particular class.

Commencement Information

I5 S. 19 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

20 Constitution of corporation and conduct of the institution.

- (1) For every further education corporation established to conduct an educational institution there shall be—
- (a) an instrument providing for the constitution of the corporation (to be known as the instrument of government), and
 - (b) an instrument in accordance with which the corporation, and the institution, are to be conducted (to be known as articles of government).
- (2) Instruments of government and articles of government—
- (a) shall comply with the requirements of Schedule 4 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.
- (3) The validity of any proceedings of a further education corporation, or of any committee of the corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (4) Every document purporting to be an instrument made or issued by or on behalf of a further education corporation 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.

Commencement Information

I6 S. 20 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

21 Initial instruments and articles.

- (1) As from the date on which a further education corporation is established, the instrument of government and articles of government—
- (a) in the case of an institution which was a grant-maintained school on that date, shall be such as is prescribed by the order in respect of the institution under section 15 or 16 of this Act, and
 - (b) in any other case, shall be such as is prescribed by regulations.
- (2) Such orders and regulations—
- (a) may provide for all or any of the persons who, on the date on which a corporation is established to conduct the grant-maintained school or other

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existing institution, are the members of the governing body of the institution to be the initial members of the corporation, and

- (b) may make such other provision in relation to grant-maintained schools or other existing institutions as appears to the Secretary of State necessary or desirable to secure continuity in their government.

- (3) In the case of a further education corporation established to conduct an institution which, on the date the corporation was established, was a grant-maintained school, the governing body incorporated under [^{F1}Chapter V of Part III of the Education Act 1996 (or any corresponding earlier enactment)] shall, on the operative date, be dissolved.

Textual Amendments

- F1** Words in s. 21(3) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.108** (with ss. 1(4), 561, 562, **Sch. 39**)

Commencement Information

- I7** S. 21 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 2**

22 Subsequent instruments and articles.

- (1) The Secretary of State may, after consulting the appropriate council—
 - (a) if a further education corporation submits a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
 - (b) if such a corporation submits draft modifications of an instrument made under paragraph (a) above, by order modify the instrument in terms of the draft or in such terms as he thinks fit,
 but shall not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the corporation.
- (2) The Secretary of State may by order modify any instrument of government of any further education corporation.
- (3) An order under subsection (2) above—
 - (a) may relate to all further education corporations, to any category of such corporations specified in the order or to any such corporation so specified, but
 - (b) shall not be made unless the Secretary of State has consulted the appropriate council and each further education corporation to which the order relates.
- (4) A further education corporation may, with the consent of the Secretary of State—
 - (a) make new articles of government in place of their existing articles, or
 - (b) modify their existing articles.
- (5) The Secretary of State may by a direction under this section require further education corporations, any class of such corporations specified in the direction or any particular further education corporation so specified—
 - (a) to modify their articles of government, or
 - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are modified,

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in any manner so specified.

- (6) Before giving a direction under this section, the Secretary of State shall consult the further education corporation or (as the case may be) each further education corporation to which the direction applies.

Commencement Information

I8 S. 22 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

VALID FROM 01/10/1998

[^{F2}22A Charitable status of a further education corporation.

- (1) A further education corporation shall be a charity which is an exempt charity for the purposes of the Charities Act 1993.
- (2) So far as it is a charity, any institution which—
- (a) is administered by or on behalf of any further education corporation, and
 - (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,
- shall also be an exempt charity for the purposes of the ^{M1}Charities Act 1993.
- (3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.]

Textual Amendments

F2 S. 22A inserted (1.10.1998) by 1998 c. 30, s. 41(2) (with s. 42(8)); S.I. 1998/2215, art.2

Marginal Citations

M1 1993 c. 10.

Transfer of property, etc., to further education corporations

23 Transfer of property, etc.: institutions maintained by local education authorities.

- (1) This section has effect in relation to a further education corporation established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority.
- (2) Subject to subsection (3) below and section 36 of this Act, on the operative date—
- (a) all land or other property which, immediately before that date, was property of any local authority used or held for the purposes of the institution the corporation is established to conduct, and
 - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to, and by virtue of this Act vest in, that corporation.

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- (3) Subsection (2) above shall not apply to—
- (a) any liability of any such authority in respect of the principal of, or interest on, any loan, or
 - (b) any property, rights or liabilities excluded under subsections (4) or (5) below.
- (4) If before the operative date—
- (a) the governing body of the institution and the local authority have agreed in writing to exclude any land, and
 - (b) the Secretary of State has given his written approval of the agreement, the land, and any rights or liabilities relating to it, shall be excluded.
- (5) If in default of agreement under subsection (4) above—
- (a) the governing body or the local authority have applied to the Secretary of State to exclude any land, and
 - (b) the Secretary of State has by order directed its exclusion, the land, and any rights or liabilities relating to it, shall be excluded.
- (6) An agreement under subsection (4) above may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (5) above—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
 - (b) shall have effect as if contained in such an agreement.
- (7) References in subsections (4) and (5) above to anything done, other than the making of an order, include anything done before the passing of this Act.
- (8) On the operative date—
- (a) all land and other property which, immediately before that date, was property of the former governing body, and
 - (b) all rights and liabilities of that body subsisting immediately before that date, shall be transferred to and, by virtue of this Act, vest in the corporation.
- (9) In subsection (8) above “former governing body” in relation to an institution means the governing body of the institution immediately before the operative date.

Commencement Information

I9 S. 23 wholly in force at 30.9.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 2](#)

24 Provisions supplementary to section 23.

- (1) Where in exercise of their powers under section 2 of the ^{M2}Further Education Act 1985 a local authority—
- (a) have entered into an agreement for the supply of goods or services or both through an educational institution, or
 - (b) for the purposes of any agreement for such a supply through such an institution, hold shares in any body corporate,
- and a further education corporation is established to conduct the institution, then, the rights and liabilities of the authority under or by virtue of the agreement or, as the

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case may be, the interest of the authority in the shares shall be treated as falling within section 23(2) of this Act.

- (2) Expressions used in subsection (1) above and in section 2 of that Act have the same meaning as in that section.
- (3) Where, immediately before the operative date in relation to a further education corporation, arrangements exist for the supply by a local authority of goods or services for the purposes of the institution in pursuance of a bid prepared under section 7 of the ^{M3}Local Government Act 1988 (restrictions on activities of local authorities), those arrangements shall have effect as from that date as if—
 - (a) they were contained in an agreement made before that date between the local authority and the corporation on the terms specified in the bid, and
 - (b) the agreement required the corporation or, as the case may be, the local authority to make payments corresponding to the provision made in the bid in pursuance of section 8(3) of that Act for items to be credited or, as the case may be, debited to any account.
- (4) Where such arrangements are for the supply to others as well as to the institution—
 - (a) those arrangements shall have effect as mentioned in subsection (3) above only to the extent that they relate to the institution in question, and
 - (b) the rights and liabilities arising under the agreement shall be such rights and liabilities as are properly required to give effect to the arrangements so far as relating to that institution.
- (5) Where at any time land is used for the purposes of such an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of section 23 of this Act to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

Commencement Information

I10 S. 24 wholly in force at 30.9.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 2](#)

Marginal Citations

M2 1985 c. 47.

M3 1988 c. 9.

25 Transfer of property, etc.: grant-maintained schools.

- (1) This section has effect in relation to a further education corporation established to conduct an institution which, on the date the corporation was established, was a grant-maintained school.
- (2) On the operative date—
 - (a) all land or other property which, immediately before that date, was property of the governing body, and
 - (b) all rights and liabilities of that body subsisting immediately before that date, shall be transferred to and, by virtue of this Act, vest in the corporation.

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Commencement Information

III S. 25 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

26 Transfer of staff to further education corporations.

- (1) This section applies to any person who immediately before the operative date in relation to a further education corporation established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority or was a grant-maintained school—
 - (a) is employed by the transferor to work solely at the institution the corporation is established to conduct, or
 - (b) is employed by the transferor to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) A contract of employment between a person to whom this section applies and the transferor shall have effect from the operative date as if originally made between that person and the corporation.
- (3) Without prejudice to subsection (2) above—
 - (a) all the transferor’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the operative date, and
 - (b) anything done before that date by or in relation to the transferor in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.
- (4) Subsections (2) and (3) above 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 section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a further education corporation, to the transferor are—
 - (a) in relation to a corporation established to conduct an institution which, on the date on which it was established, was maintained by a local education authority, that authority,
 - (b) in relation to a corporation established to conduct an institution which, on that date, was a voluntary aided or special agreement school, the governing body of the school, and
 - (c) in relation to a corporation established to conduct an institution which, on that date, was a grant-maintained school, the governing body of the school.
- (7) For the purposes of this section—
 - (a) a person employed by the transferor is to be regarded as employed to work at an institution if his employment with the transferor for the time being involves work at that institution, and
 - (b) subject to subsection (8) below, a person employed by the transferor is to be regarded as employed to work solely at an institution if his only employment

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with the transferor (disregarding any employment under a separate contract with the transferor) is for the time being at that institution.

(8) A person employed by the transferor in connection with the provision of meals shall not be regarded for the purposes of subsection (7)(b) above as employed to work solely at an institution unless the meals are provided solely for consumption by persons at the institution.

(9) This section is subject to section 48 of this Act.

Modifications etc. (not altering text)

C3 S. 26(2)(3)(4) applied (with modifications): (2.4.1993) by S.I. 1993/270, **art.4**; (1.8.1994) by S.I. 1994/1478, **art. 4**; (1.8.1994) by S.I. 1994/1741, **art.3**; (1.8.1994) by S.I. 1994/1754, **art.3**; (1.8.1994) by S.I. 1994/1755, **art.3**; (1.8.1994) by S.I. 1994/1830, **art.3**; (1.8.1995) by S.I. 1995/1710, **art.3**; (1.8.1995) by S.I. 1995/1711, **art.3**; (15.8.1995) by S.I. 1995/1927, **art.3**; (1.9.1995) by S.I. 1995/2091, **art.3**; (1.3.1996) by S.I. 1996/249, **art.3**; (1.8.1996) by S.I. 1996/1744, **art.3**; (1.8.1996) by S.I. 1996/1764, **art.3**; (1.9.1996) by S.I. 1996/2084, **art.3**; (6.1.1996) by S.I. 1996/3136, **art.3**; (10.5.1997) by S.I. 1997/1168, **art.3**; (1.8.1997) by S.I. 1997/513, **art.3**; (18.2.1998) by S.I. 1998/156, **art.3**; (1.8.1998) by S.I. 1998/1651, **art.3**; (1.8.1998) by S.I. 1998/1652, **art.3**; (1.8.1998) by S.I. 1998/1653, **art.3**; (1.8.1998) by S.I. 1998/1654, **art.3**; (1.8.1998) by S.I. 1998/1655, **art.3**; (1.8.1998) by S.I. 1998/1656, **art.3**; (1.8.1998) by S.I. 1998/1657, **art.3**; (1.4.1999) by S.I. 1999/218, **art.3**; (1.4.1999) by S.I. 1999/602, **art.3**; (1.4.1999) by S.I. 1999/699, **art.3**; (1.6.1999) by S.I. 1999/1284, **art. 3**; (1.6.1999) by S.I. 1999/1285, **art. 3**; (1.8.1999) by S.I. 1802, art. 3; (1.8.1999) by S.I. 1999/1919, **art.3**; (1.8.1999) by S.I. 1999/1997, **art.3**; (1.9.1999) by S.I. 1999/2220, **art. 3**.

Commencement Information

I12 S. 26 partly in force; s. 26 in force for certain purposes at 30.9.1992 see s. 94(3) and S.I. 1992/831, **art. 2**, **Sch. 2**, as amended by S.I. 1992/2041, **art. 2(a)**

Dissolution of further education corporations

27 Dissolution of further education corporations.

(1) Subject to the following provisions of this section, the Secretary of State may by order provide for the dissolution of any further education corporation and the transfer to any person mentioned in subsection (2) or (3) below of property, rights and liabilities of the corporation.

(2) Such property, rights and liabilities may be transferred to—

- (a) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description, or
- (b) any body corporate established for purposes which include the provision of such facilities or services,

with the consent of the person or body in question.

(3) Such property, rights and liabilities may be transferred to—

- (a) a council, or
- (b) a higher education funding council.

(4) Where the recipient of a transfer under any order under this section is not a charity established for charitable purposes which are exclusively educational purposes, any

Status: Point in time view as at 01/11/1996. This version of this chapter contains provisions that are not valid for this point in time.

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property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.

- (5) In subsection (4) above “charity” and “charitable purposes” have the same meanings as in the ^{M4}Charities Act 1960.
- (6) An order under this section may apply section 26 of this Act with such modifications as the Secretary of State may consider necessary or desirable.
- (7) Before making an order under this section in respect of a further education corporation the Secretary of State shall consult—
 - (a) the corporation, and
 - (b) the appropriate council, unless the order was made for the purpose of giving effect to a proposal of that council.

Commencement Information

I13 S. 27 wholly in force at 30.9.1992, see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 2](#)

Marginal Citations

M4 [1960 c. 58.](#)

Designation of institutions for funding by the councils

28 Designation of institutions.

- (1) The Secretary of State may by order designate as eligible to receive support from funds administered by the councils 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,
 - (b) an institution (other than a school) assisted by a local education authority, or
 - (c) an institution which is grant-aided or eligible to receive aid by way of grant.
- (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 local education authorities who—
 - (a) receive any grants under regulations made under [^{F3}section 485 of the Education Act 1996], or
 - (b) are eligible to receive such grants.
- (4) In this Part of this Act “designated institution” means an institution in relation to which a designation under this section has effect.

Status: Point in time view as at 01/11/1996. This version of this chapter contains provisions that are not valid for this point in time.

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Textual Amendments

F3 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**)

Commencement Information

I14 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 has effect in relation to any 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.
- (2) For each institution in relation to which this section has effect 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 and is approved for the purposes of this section by the Secretary of State,
 - (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 Secretary of State, or
 - (c) is made under subsection (6) below.
- (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 governing body of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) The Secretary of State may by order make either of the instruments referred to in subsection (2) above and any instrument made by him under this subsection may replace wholly or partly any existing regulatory instrument.
- (7) If an instrument approved by the Secretary of State 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 governing body of the institution,the instrument may be modified by the governing body.

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- (8) The Secretary of State may by order modify either of the instruments referred to in subsection (2) above and no instrument approved by him for the purposes of this section may be modified by any other person without the Secretary of State's consent.
- (9) Before exercising any power under subsection (6) or (8) above in relation to any instrument the Secretary of State 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 make or, as the case may be, 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 him to be practicable to do so.

Commencement Information

I15 S. 29 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

30 Special provision for voluntary aided sixth form colleges.

Notwithstanding anything in section 29 of this Act, the instrument of government of an institution which, when designated, was a voluntary aided school 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 school 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.

Commencement Information

I16 S. 30 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

31 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 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 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 he may specify in the direction.

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- (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 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.

Commencement Information

I17 S. 31 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

32 Transfer of property, etc., to designated institutions.

- (1) This section has effect in relation to an institution designated under section 28 of this Act in any case where—
 - (a) the order designating the institution under that section so provides, and
 - (b) when designated the institution was a voluntary aided school or an institution (other than a school) assisted by a local education authority.
- (2) Subject to subsection (4) below and section 36 of this Act, on the designation date—
 - (a) all land or other property which, immediately before that date, was property of a former assisting authority used or held for the purposes of the institution, and
 - (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes,shall be transferred to and, by virtue of this Act, vest in the appropriate transferees.
- (3) In this section and section 33 of this Act—

“appropriate transferees” means—

 - (a) in relation to an institution conducted by a company, the company, and
 - (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution,

“designation date”, in relation to a designated institution, means the date on which the designation takes effect, and

“former assisting authority” means—

 - (a) in relation to an institution which when designated was a voluntary aided school, the local education authority which maintained the school, and
 - (b) in relation to an institution which when designated was an institution (other than a school) assisted by a local education authority, that authority.
 - (4) Subsection (2) above shall not apply to—
 - (a) any liability of a former assisting authority in respect of the principal of, or interest on, any loan, or
 - (b) any property, rights or liabilities excluded under subsections (5) or (6) below.
 - (5) If before the designation date—
 - (a) the appropriate transferees and the former assisting authority have agreed in writing to exclude any land, and

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- (b) the Secretary of State has given his written approval of the agreement, the land, and any rights or liabilities relating to it, shall be excluded.
- (6) If in default of agreement under subsection (5) above—
- (a) the appropriate transferees or the former assisting authority have applied to the Secretary of State to exclude any land, and
- (b) the Secretary of State has by order directed its exclusion, the land, and any rights or liabilities relating to it, shall be excluded.
- (7) An agreement under subsection (5) above may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (6) above—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) shall have effect as if contained in such an agreement.
- (8) References in subsections (5) and (6) above to anything done, other than the making of an order, include anything done before the passing of this Act.

Commencement Information

I18 S. 32 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

33 Provisions supplementary to section 32.

- (1) Subject to section 36(2) of this Act, where persons appearing to the Secretary of State to be trustees holding property for the purposes of the institution are the appropriate transferee, any land or other property or rights transferred to them under section 32 of this Act shall be held on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be specified in the order designating the institution or, if no such trust deed is so specified, on trust for the general purposes of the institution.
- (2) Where persons so appearing to the Secretary of State are the appropriate transferee, they shall incur no personal liability by virtue of any liability so transferred but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.
- (3) Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of that section to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).
- (4) References in this Part of this Act to the operative date, in relation to a designated institution, are to the designation date.

Commencement Information

I19 S. 33 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

Status: Point in time view as at 01/11/1996. This version of this chapter contains provisions that are not valid for this point in time.

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Property, rights and liabilities: general

34 Making additional property available for use.

- (1) The Secretary of State may by order provide for any land or other property of a local authority to be made available for use by an institution within the further education sector (referred to in this section as the “new sector institution”) if the requirements of subsection (2) below are satisfied.
- (2) Those requirements are that in the opinion of the Secretary of State—
 - (a) the property—
 - (i) either has within the preceding six months been used for the purpose of the provision of further education by an institution maintained by a local education authority but its use for that purpose has been discontinued or the local education authority intend its use for that purpose to be discontinued, or
 - (ii) is being used for that purpose but the local education authority intend its use for that purpose to be discontinued, and
 - (b) it is necessary or desirable for the property to be available for use for the purposes of the new sector institution but the governing body of that institution have been unable to secure agreement with the local authority, on such terms as may reasonably be required, to secure that the property is so available.
- (3) The Secretary of State shall not make an order under this section unless—
 - (a) the governing body of the new sector institution have applied to him, before the end of the period of three years beginning with the date which is the operative date in relation to further education corporations established under section 15 of this Act, for such an order to be made, and
 - (b) he has consulted the appropriate council, the local authority and the Education Assets Board.
- (4) For the purpose of making any property available for use for the purposes of an institution, an order under this section may—
 - (a) transfer to, and vest in, the governing body—
 - (i) the property concerned, and
 - (ii) any rights or liabilities of the local authority acquired or incurred for the purpose of the provision of further education there, or
 - (b) confer any rights or impose any liabilities and, to the extent (if any) that the order does so, it shall have effect as if contained in an agreement between the local authority and the governing body.
- (5) Subsection (4)(a)(ii) above shall not apply to any liability of the local authority in respect of the principal of, or interest on, any loan.
- (6) References in this section to use for the purpose of the provision of further education are to use wholly or mainly for that purpose.

Modifications etc. (not altering text)

- C4** S. 34 modified (1.1.2001) by [S.I. 2000/3209](#), [reg. 9](#) (with savings in [regs. 13, 14](#))
- C5** S. 34(4) modified (1.4.1993) by [S.I. 1993/563](#), [art. 2](#), [Sch.1](#)

Status: Point in time view as at 01/11/1996. This version of this chapter contains provisions that are not valid for this point in time.

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Commencement Information

I20 S. 34 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

35 Voluntary transfers of staff in connection with section 34.

- (1) This section applies where—
- (a) for the purpose of making any property of a local authority available for use for the purposes of an institution within the further education sector, an order is made under section 34 of this Act,
 - (b) at any time on or after such date as may be specified by the order a person employed by the local authority ceases to be so employed and is subsequently employed by the governing body of the institution, and
 - (c) by virtue of [^{F4}section 138 of the Employment Rights Act 1996] (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under [^{F4}Part XI] of that Act.
- (2) [^{F5}Chapter I of Part XIV of] that Act (computation of period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions—
- (a) the period of employment of that person with the local authority shall count as a period of employment with the governing body, and
 - (b) the change of employer shall not break the continuity of the period of employment.
- (3) The period of that person's employment with the local authority shall count as a period of employment with the governing body for the purposes of any provision of his contract of employment with the governing body which depends on his length of service with that employer.

Textual Amendments

F4 Words in s. 35(1)(c) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 52(2)(a)(i)(ii) (with ss. 191-195, 202)

F5 Words in s. 35(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 52(2)(b) (with ss. 191-195, 202)

Modifications etc. (not altering text)

C6 S. 35 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch. 1

Commencement Information

I21 S. 35 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

36 General provisions about transfers under Chapter II.

- (1) This section applies to any transfer under section 23 or 32 of this Act, and those sections are subject to Schedule 5 to this Act.
- (2) Where any land or other property or rights—

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- (a) were immediately before the operative date in relation to any institution held on trust for any particular purposes, or (as the case may be) for the general purposes, of the institution, and
 - (b) fall to be transferred under any transfer to which this section applies, they shall continue to be so held by the transferee.
- (3) Schedule 5 to this Act has effect for the purpose of—
 - (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one educational institution,
 - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer,
 - (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred, and
 - (d) making supplementary and consequential provisions in relation to transfers to which this section applies.
- (4) Where arrangements for the supply by a local authority of goods or services for the purposes of an institution to be conducted by a further education corporation are to have effect as from the operative date in accordance with section 24(4) of this Act as if contained in an agreement made before that date between the local authority and the corporation, paragraphs 2 to 5 of Schedule 5 to this Act shall have effect as if the rights and liabilities of the corporation under the agreement were rights and liabilities of the local authority transferred to the corporation under a transfer to which this section applies.
- (5) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.
- (6) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—
 - (a) it may not be done by the transferee, and
 - (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee,and in a case where the transferee is a body corporate established under this Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act.
- (7) Not later than the end of the period of six months beginning with the operative date in relation to a further education corporation established under section 15 of this Act, the Board shall provide the appropriate council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.
- (8) If in any case within subsection (7) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide the appropriate council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

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Modifications etc. (not altering text)

C7 S. 36 modified (1.1.2001) by **S.I. 2000/3209, reg. 9** (with savings in **regs. 13, 14**)

Commencement Information

I22 S. 36 wholly in force at 30.9.1992 see s. 94(3) and **S.I. 1992/831, art. 2, Sch. 2**

37 Attribution of surpluses and deficits.

(1) This section applies where, immediately before the date on which any educational institution becomes an institution within the further education sector—

- (a) it is maintained by a local education authority, or
- (b) it is a designated assisted institution dependent on assistance from a local education authority,

and in the financial year ending immediately before that date (referred to in this section as the “relevant financial year”), the institution was covered by a scheme under [F⁶section 103 of the Education Act 1996 (schemes for financing schools)]; and in this section, in relation to the institution, the scheme is referred to as the “applicable scheme” and the authority concerned as the “assisting authority”.

(2) If the net expenditure of the institution for the relevant financial year is less than the net budget share of the institution for that year, the assisting authority shall pay to the new governing body of the institution a sum equal to the shortfall.

(3) If the net expenditure of the institution for the relevant financial year is greater than the net budget share of the institution for that year, the new governing body of the institution shall pay to the assisting authority a sum equal to the excess.

(4) In this section, in respect of any financial year of the institution—

“net budget share” means the budget share—

- (i) less such amount as may be prescribed in respect of any earned income, and
- (ii) plus such amount as may be prescribed in respect of any surplus, and

“net expenditure” means any expenditure, less such amount as may be prescribed in respect of earned income.

(5) Any sum payable under this section shall be paid in accordance with regulations, and the regulations may provide for sums to be payable by prescribed instalments and for sums to carry prescribed interest.

(6) Regulations may, in the case of any institution where the operative date falls within a financial year in which the institution was covered by such a scheme as is referred to in subsection (1) above, make provision for applying this section with modifications relating to the amounts that are to be taken for the purposes of this section to be the net budget share and the net expenditure of the institution for that year.

(7) In this section, in respect of any financial year of the institution—

“budget share” means the amount which is that institution’s budget share for the relevant financial year for the purposes of [F⁷Part II of the Education Act 1996],

“earned income” means any sums, other than sums appropriated for the purposes of the institution by the assisting authority, received by the institution

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in respect of the relevant financial year which the institution is authorised under the applicable scheme to retain,

“expenditure” means such expenditure for the purposes of the institution incurred in the relevant financial year by the former governing body or the assisting authority as may be prescribed,

“financial year” has the same meaning as in [F7 the Education Act 1996],

“former governing body” means the governing body of the institution immediately before the operative date and “new governing body” means the governing body of the institution on or after that date, and

“surplus” means the amount of any surplus which the institution is authorised under the applicable scheme to carry forward to the relevant financial year.

(8) In this section—

- (a) references to a designated assisted institution are references to an institution designated by or under regulations made, or having effect as if made, under section 218(10)(b) of the M5 Education Reform Act 1988 as an institution substantially dependent for its maintenance on assistance from local education authorities, and
- (b) “prescribed” means prescribed by regulations.

(9) For the purposes of this section a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either—

- (a) it is not assisted by any other local education authority, or
- (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.

Textual Amendments

- F6** Words in s. 37(1) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 110(2)** (with ss. 1(4), 561, 562, **Sch. 39**)
- F7** Words in s. 37(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 110(3)(a)(b)** (with ss. 1(4), 561, 562, **Sch. 39**)

Modifications etc. (not altering text)

- C8** S. 37(2)(3) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**
S. 37 applied (with modifications) (1.9.1993) by S.I. 1993/1977, **regs. 3, 4**; (1.8.1995) by S.I. 1995/1453, **regs. 3, 4(1)**; (1.8.1996) by S.I. 1996/1766, **regs. 3, 4(1)**
- C9** S. 37(4)(7) applied (with modifications) (1.8.1995) by S.I. 1995/1453, **regs. 3, 4(1)**; (1.8.1996) by S.I. 1996/1766, **regs. 3, 4(1)**

Commencement Information

- I23** S. 37 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.

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38 Payments by council in respect of loan liabilities.

- (1) This section applies to any excepted loan liability, that is, any liability of a local authority which—
 - (a) in the case of a transfer by virtue of section 23 of this Act, would have been transferred but for subsection (3)(a) of that section,
 - (b) in the case of a transfer by virtue of section 32 of this Act, would have been transferred but for subsection (4)(a) of that section, or
 - (c) in the case of a transfer by virtue of section 34(4)(a) of this Act, could have been transferred but for subsection (5) of that section.
- (2) A council may make payments, on such terms and conditions as the council may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
- (3) No payment shall be made under this section in respect of any excepted loan liability, where the class or classes of excepted loan liabilities in respect of which payments may be made are for the time being prescribed by an order of the Secretary of State, unless the liability falls within a prescribed class.
- (4) The Secretary of State may by order provide for determining—
 - (a) the amounts that may be paid under this section in respect of the principal of, and any interest on, any excepted loan liability,
 - (b) the instalments by which any amounts may be paid, and
 - (c) the rate at which interest may be paid on any outstanding amounts,
 and, in the case of any payment to which such an order applies, no amount may be paid under this section in excess of any amount determined in accordance with the order.

Commencement Information

I24 S. 38 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 3](#)

39 Control of disposals of land.

- (1) Subject to subsection (11) below, this section applies to any disposal during the controlled period—
 - (a) of land which, immediately before the beginning of that period, was used or held for the purposes of any relevant institution, or
 - (b) of land which was obtained before the beginning of that period for the purpose of being so used or held and had not before the beginning of that period been appropriated to any other use.
- (2) For the purposes of this section and sections 41 and 43 of this Act, an institution is a relevant institution if—
 - (a) it is an educational institution maintained by a local education authority and falls within section 15(2) of this Act,
 - (b) it is a county school or controlled school and falls within section 15(3) of this Act, or
 - (c) it is an educational institution such as is mentioned in section 28(1) of this Act and meets the requirements of subsection (2)(a) or (b) of that section.

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- (3) In this section “the controlled period” means the period beginning with 22nd March 1991 and ending with—
- (a) the operative date in relation to the institution in question or, if later, the date on which any matter relating to that land on which agreement is required to be reached under paragraph 2(1) of Schedule 5 to this Act is finally determined, or
 - (b) in the case of an institution falling within paragraph (c) above, 21st March 1995 if earlier.
- (4) Except with the consent of the Secretary of State, no local authority shall after the passing of this Act make a disposal to which this section applies.
- (5) If at any time after 21st March 1991 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the provisions of subsection (4) above if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.
- (6) Any consent for the purposes of this section may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.
- (8) This section has effect notwithstanding anything in section 123 of the ^{M6}Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (9) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 40 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions have been complied with.
- (10) In this section references to disposing of land include—
- (a) granting or disposing of any interest in land,
 - (b) entering into a contract to dispose of land or to grant or dispose of any such interest, and
 - (c) granting an option to acquire any land or any such interest.
- (11) This section does not apply to a disposal falling within subsection (10)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 21st March 1991.
- (12) Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of subsection (1) above to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

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Commencement Information

I25 S. 39 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

Marginal Citations

M6 1972 c. 70.

40 Wrongful disposals of land.

- (1) This section applies where a local authority have made any disposal to which section 39 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local authority concerned.
- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The ^{M7}Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
 - (a) where the interest disposed of, or the land in which the interest was granted, was—
 - (i) used or held by the local authority concerned for the purposes of an institution to which section 39(2)(a) or (b) of this Act applies, or
 - (ii) obtained by that authority for the purpose of being so used or held, the further education corporation established under this Act to conduct that institution, and
 - (b) where the interest disposed of, or the land in which the interest was granted, was—
 - (i) so used or held for the purposes of an institution to which section 39(2)(c) of this Act applies, or

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(ii) obtained by the authority concerned for the purpose of being so used or held,

the appropriate transferee within the meaning of section 32 of this Act in relation to that institution.

(9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—

- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the ^{M8}Compulsory Purchase Act 1965 or section 52A of the ^{M9}Land Compensation Act 1973, and
- (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

Commencement Information

I26 S. 40 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

Marginal Citations

M7 1981 c. 67.
M8 1965 c. 56.
M9 1973 c. 26.

41 Control of contracts.

- (1) This section applies, subject to subsection (5) below, to any contract which, if a relevant institution were to become an institution within the further education sector, would or might on or after the operative date bind the governing body of the institution.
- (2) Except with the appropriate consent, a local authority shall not after the passing of this Act enter into a contract to which this section applies.
- (3) If at any time after 21st March 1991 and before the passing of this Act a local authority have entered into a contract which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by the local authority.
- (4) In relation to any contract the appropriate consent is—
 - (a) the consent of the existing governing body of the institution, and
 - (b) if (on the assumption in subsection (1) above) the contract will require the governing body of the institution to make payments on or after 1st April 1993 amounting in aggregate to £50,000 or more, the consent of the Secretary of State.
- (5) This section does not apply to—
 - (a) a works contract (within the meaning of Part III of the ^{M10}Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act, or
 - (b) a works contract (within the meaning of Part I of the ^{M11}Local Government Act 1988) which is entered into in accordance with section 4 of that Act.

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- (6) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the governing body of an institution or the Secretary of State before the passing of this Act in respect of any contract to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.
- (8) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 42 of this Act) a person entering into a contract with a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.
- (9) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) above shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (10) This section does not apply to a contract to dispose of land or to grant or dispose of any interest in land.

Commencement Information

I27 S. 41 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

Marginal Citations

M10 1980 c. 65.

M11 1988 c. 9.

42 Wrongful contracts.

- (1) This section applies where a local authority have entered into a contract to which section 41 of this Act applies in contravention of that section.
- (2) The Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) above shall have effect as if made by the local authority concerned.

Commencement Information

I28 S. 42 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 1

43 Remuneration of employees.

- (1) Where, in consequence of a determination by the local education authority or any other person of the rate of remuneration of any employees, the rate of remuneration of any relevant employees would, apart from this section, be increased as from a

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- date (referred to in this section as the “proposed date of increase”) falling after 1st September 1992, the authority—
- (a) shall notify the Secretary of State in writing of the determination and the proposed date of increase, and
 - (b) shall not pay any relevant employee at the new rate unless the increase is authorised under this section by the Secretary of State.
- (2) In this section “relevant employees” means persons who are employed at institutions which are relevant institutions by virtue of section 39(2)(a) or (b) of this Act.
- (3) This section does not apply to remuneration determined in accordance with the scales and other provisions set out or referred to in a pay and conditions order (within the meaning of the ^{M12}School Teachers’ Pay and Conditions Act 1991).
- (4) Where the Secretary of State receives a notification under subsection (1) above, he shall, before the end of the period of four weeks beginning with the day on which he received the notification, either—
- (a) authorise the increase resulting from the determination so far as it relates to relevant employees, or
 - (b) afford to the authority, and to such persons appearing to him to be representative of relevant employees affected by the determination as he considers appropriate, an opportunity of making representations to him in respect of the determination.
- (5) After considering any representations made to him under subsection (4)(b) above, the Secretary of State shall—
- (a) authorise the increase resulting from the determination, or
 - (b) refuse to authorise the increase,
- so far as it relates to relevant employees.
- (6) The Secretary of State shall give written notification of any decision under subsection (4)(a) or (5) above to the local education authority and, in the case of subsection (5) above, to any other persons who made representations to him under subsection (4)(b) above.
- (7) Subsection (8) below applies where—
- (a) by virtue of this section a relevant employee is not paid at the new rate on the proposed date of increase, but
 - (b) the Secretary of State authorises the increase after that date.
- (8) Where this subsection applies, the employee concerned shall, for the purpose of determining the terms of any contract affected by section 26 of this Act, be regarded as having been entitled under his contract of employment to be paid by the local education authority at the new rate as from the proposed date of increase.

Commencement Information

I29 S. 43 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

Marginal Citations

M12 1991 c. 49.

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Miscellaneous

44 Collective worship.

- (1) In this section “institution of voluntary origin” means a further education institution which, when it became a further education institution, was a voluntary school or a grant-maintained school which was a voluntary school before it became grant-maintained.
- (2) The governing body of every further education institution except an institution which on the appointed day was a college of further education shall ensure that at an appropriate time on at least one day in each week during which the institution is open an act of collective worship is held at the institution which persons receiving education at the institution may attend.
- (3) In an institution of voluntary origin such act of collective worship shall —
 - (a) be in such forms as to comply with the provisions of any trust deed affecting the institution, and
 - (b) reflect the religious traditions and practices of the institution before it became a further education institution.
- (4) In all other further education institutions such act of collective worship shall be wholly or mainly of a broadly Christian character in that it shall reflect the broad traditions of Christian belief but need not be distinctive of any particular Christian denomination.
- (5) If the governing body of a further education institution considers it appropriate to do so it may in addition to the act of collective worship referred to in subsection (3) or (4) provide for acts of worship which reflect the practices of some or all of the other religious traditions represented in Great Britain.
- (6) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) of section 15 of this Act.

Commencement Information

I30 [S. 44](#) partly in force: [s. 44](#) in force for certain purposes at 1.4.1993 see [s. 94\(3\)](#) and [S.I. 1992/831](#), [art. 2](#), [Sch. 3](#)

45 Religious education.

- (1) In this section “institution of voluntary origin” means a further education institution which, when it became a further education institution, was a voluntary school or a grant-maintained school which was a voluntary school before it became grant-maintained.
- (2) The governing body of every further education institution except an institution which on the appointed day was a college of further education shall ensure that religious education is provided at the institution for all persons attending the institution who wish to receive it.
- (3) The governing body of a further education institution shall be deemed to be fulfilling its duty under this section if religious education is provided at a time or times at which it is convenient for the majority of full time students to attend.

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- (4) For the purposes of this section religious education may take the form of a course of lectures or classes or of single lectures or classes provided on a regular basis and may include a course of study leading to an examination or the award of a qualification.
- (5) The form and content of religious education provided pursuant to this section shall be determined from time to time by the governing body of each further education institution and—
 - (a) in the case of an institution of voluntary origin—
 - (i) shall be in accordance with the provisions of any trust deed affecting the institution, and
 - (ii) shall not be contrary to the religious traditions of the institution before it became a further education institution;
 - (b) in the case of all further education institutions shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.
- (6) In this section “the appointed day” means the day appointed under section 94 of this Act for the commencement of subsection (4) of section 15 of this Act.

Commencement Information

I31 S. 45 partly in force: s. 45 in force for certain purposes at 1.4.1993 see s. 94(3) and Sch. 3

46 Variation of trust deeds.

- (1) The Secretary of State may by order make such modifications as he thinks fit in any trust deed or other instrument—
 - (a) relating to or regulating an institution within the further education sector, or
 - (b) relating to any land or other property held by any person for the purposes of such an institution.
- (2) Before making any modifications under subsection (1) above of any trust deed or other instrument the Secretary of State shall so far as it appears to him 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)

C10 S. 46(2)(a) modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.2

Commencement Information

I32 S. 46 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

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47 **Transfer of higher education institutions to further education sector.**

- (1) The Secretary of State may by order provide for the transfer of a higher education corporation to the further education sector.
- (2) Where an order is made under this section in respect of a higher education corporation, sections 20 and 21 of this Act shall have effect as if, on the date the order has effect, the corporation were established as a further education corporation; and the order may make any provision that may be made by an order under section 15 of this Act specifying a grant-maintained school.
- (3) On such date as may be specified in the order the corporation shall cease to be a higher education corporation and become a further education corporation.
- (4) An order under section 28 of this Act in respect of any institution may revoke any order in respect of that institution under section 129 of the ^{M13}Education Reform Act 1988 (designation of institutions).

Commencement Information

I33 S. 47 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

Marginal Citations

M13 1988 c. 40.

48 **Statutory conditions of employment.**

- (1) This section applies where—
 - (a) an educational institution at which a school teacher is employed by a local education authority, or by the governing body of a voluntary or grant-maintained school, becomes an institution within the further education sector, and
 - (b) immediately before the operative date, any of the terms and conditions of his employment have effect by virtue of a pay and conditions order.
- (2) As from the operative date the person’s contract of employment shall have effect—
 - (a) in relation to him and to the governing body of the institution as it had effect immediately before that date in relation to school teachers and to local education authorities or governing bodies of voluntary or grant-maintained schools, and
 - (b) as if the contract required any remuneration determined in accordance with the scales and other provisions set out or referred to in the relevant pay and conditions order to be paid to him by the governing body of the institution.
- (3) Nothing in this section affects any right to vary the terms of any contract of employment.
- (4) In this section—
 - (a) “pay and conditions order” and “school teacher” have the same meaning as in the ^{M14}School Teachers’ Pay and Conditions Act 1991, and
 - (b) “relevant pay and conditions order”, in relation to any person, means the pay and conditions order having effect in relation to him immediately before the operative date or, if that order is no longer in force, the pay and conditions

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order which would have had effect in relation to him if the institution at which he is employed had not become an institution within the further education sector.

Modifications etc. (not altering text)

C11 S. 48 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.1

C12 S. 48(4)(b) modified (16.3.1992) by S.I. 1992/831, arts. 2,5, Sch. 3

Commencement Information

I34 S. 48 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

Marginal Citations

M14 1991 c. 49.

49 Avoidance of certain contractual terms.

- (1) This section applies to any contract made between the governing body of an institution within the further education sector and any person employed by them, not being a contract made in contemplation of the employee's pending dismissal by reason of redundancy.
- (2) In so far as a contract to which this section applies provides that the employee—
 - (a) shall not be dismissed by reason of redundancy, or
 - (b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay to him under [^{F8}Part XI of the Employment Rights Act 1996],the contract shall be void and of no effect.

Textual Amendments

F8 Words in s. 49(2)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 52(3) (with ss. 191-195, 202)

Commencement Information

I35 S. 49 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

50 Information with respect to institutions within the further education sector.

- (1) The Secretary of State may by regulations require the governing body of any institution within the further education sector to publish such information as may be prescribed about—
 - (a) the educational provision made or proposed to be made for their students,
 - (b) the educational achievements of their students on entry to the institution and the educational achievements of their students while at the institution (including in each case the results of examinations, tests and other assessments),
 - (c) the financial and other resources of the institution and the effectiveness of the use made of such resources, and

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- (d) the careers of their students after completing any course or leaving the institution.
- (2) For the purposes of subsection (1)(d) above, a person’s career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—
- (a) the numbers of students not undertaking any career, and
- (b) the persons providing students with education, training or employment.
- (3) The information shall be published in such form and manner and at such times as may be prescribed.
- (4) The published information shall not name any student to whom it relates.
- (5) In this section “prescribed” means prescribed by regulations.

Modifications etc. (not altering text)

C13 S. 50(1) modified (1.4.1993) by [S.I. 1993/563](#), [art. 2](#), [Sch.2](#)

Commencement Information

I36 S. 50 wholly in force at 1.4.1993 see s. 94(3) and [S.I. 1992/831](#), [art. 2](#), [Sch. 3](#)

51 Publication of proposals.

- (1) A council shall not make a proposal for—
- (a) the establishment by the Secretary of State of a body corporate under section 16(1) of this Act,
- (b) the establishment by the Secretary of State of a body corporate under subsection (3) of that section, or
- (c) the dissolution of any further education corporation by the Secretary of State under section 27 of this Act,
- unless the following conditions have been complied with.
- (2) The conditions are that—
- (a) a draft of the proposal, or of a proposal in substantially the same form, giving such information as may be prescribed has been published by such time and in such manner as may be prescribed,
- (b) the council have considered any representations about the draft made to them within the prescribed period, and
- (c) copies of the draft and of any such representations have been sent to the Secretary of State.
- (3) The Secretary of State shall not make—
- (a) an order under section 16(1) of this Act, other than an order made for the purpose of giving effect to a proposal by a council, or
- (b) an order under section 16(2) of this Act,
- unless he has published a draft of the proposed order, or of an order in substantially the same form, by such time and in such manner as may be prescribed.
- (4) In this section “prescribed” means prescribed by regulations.

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Commencement Information

I37 S. 51 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

52 Duty to provide for named individuals.

- (1) This section applies where an institution within the further education sector provides full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years.
- (2) A council may by notice given to the governing body of such an institution—
 - (a) require them to provide for such individuals as may be specified in the notice such education falling within subsection (1) above as is appropriate to their abilities and aptitudes, or
 - (b) withdraw such a requirement.
- (3) The governing body of such an institution shall, for any academic year in respect of which they receive financial support from a council, secure compliance with any requirement in respect of any individual who has not attained the age of nineteen years which is or has been imposed by that council under subsection (2) above and has not been withdrawn.

Modifications etc. (not altering text)

C14 S. 52 modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.2

Commencement Information

I38 S. 52 wholly in force at 1.4.1993 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 3

VALID FROM 01/10/1998

[52A ^{F9}Duty to safeguard pupils receiving secondary education.

- (1) This section applies where secondary education is provided to pupils in the fourth key stage—
 - (a) by a further education corporation in pursuance of arrangements falling within section 18(1)(aa) of this Act, or
 - (b) by a designated institution in pursuance of arrangements made—
 - (i) by a local education authority, or
 - (ii) by the governing body of a school on behalf of such an authority.
- (2) The governing body of the corporation or institution shall secure that, except in such circumstances as may be prescribed by regulations, no education is provided to a person who has attained the age of nineteen years in a room in which any such pupils are for the time being receiving secondary education.]

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Textual Amendments

- F9** S. 52A inserted (1.10.1998) by 1998 c. 31, s. 113(2) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch.1 Pt. I.

53 Inspection of accounts.

(1) The accounts of—

- (a) any further education corporation, and
- (b) any designated institution,

shall be open to the inspection of the Comptroller and Auditor General.

(2) In the case of any such corporation or institution—

- (a) the power conferred by subsection (1) above, and
- (b) the powers under sections 6 and 8 of the ^{M15}National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act,

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which grants, loans or other payments are made to them under this Part of this Act.

Modifications etc. (not altering text)

- C15** S. 53(2) modified by S.I. 1993/563, art. 2 Sch.1 (as amended (19.4.1993) by 1993/870, art. 2)

Commencement Information

- I39** S. 53 wholly in force at 30.9.1992 see s. 94(3) and S.I. 1992/831, art. 2, Sch. 2

Marginal Citations

- M15** 1983 c. 44.

Status:

Point in time view as at 01/11/1996. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

Further and Higher Education Act 1992, Chapter II is up to date with all changes known to be in force on or before 20 March 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.