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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**

**14** 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

#### [<sup>F2</sup>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 <sup>M1</sup>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.

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