



Further and Higher Education Act 1992

1992 CHAPTER 13

PART II

HIGHER EDUCATION

Institutions in the higher education sector

71 Higher education corporations: constitution and conduct.

(1) After section 124 of the ^{M1}Education Reform Act 1988 there is inserted—

“124A Constitution and conduct of corporations.

- (1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—
 - (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
 - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation—
 - (a) shall comply with the requirements of Schedule 7A 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.

Changes to legislation: Further and Higher Education Act 1992, Section 71 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect 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.
- (8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.
- (9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.
- (10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

124B Accounts.

- (1) It shall be the duty of each corporation—
 - (a) to keep proper accounts and proper records in relation to the accounts; and
 - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
 - (a) give a true and fair account of the state of the corporation’s affairs at the end of the financial year and of the corporation’s income and expenditure in the financial year; and
 - (b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.
- (4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.

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- (5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.
- (6) No person shall be qualified to be appointed auditor under that subsection except—
 - (a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;
 - (b) a member of the Chartered Institute of Public Finance and Accountancy; or
 - (c) a firm each of the members of which is a member of that institute.
- (7) In this section, in relation to a corporation—
 - “the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and
 - “financial year” means that period and each successive period of twelve months.

124C Initial and transitional arrangements.

- (1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.
- (2) In subsection (1) above “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.
- (4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.
- (5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

124D Exercise of Powers by Privy Council.

- (1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.
- (2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.
- (3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.

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- (4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.
- (5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.”
- (2) In section 125 of that Act (articles of government) for “the Secretary of State” (in each place where it appears) there is substituted “ the Privy Council ”; but nothing in this subsection requires further approval to be given for anything approved by the Secretary of State under that section before the commencement of this subsection.
- (3) In Schedule 7 to that Act (constitution of higher education corporations)—
- (a) at the end of paragraph 7 (appointments) there is added—
- “(8) If the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum”, and
- (b) in paragraph 18 (accounts) after sub-paragraph (2) there is inserted—
- “(2A) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.”
- (4) After that Schedule there is inserted the Schedule set out in Schedule 6 to this Act.

Commencement Information

II S. 71 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

Marginal Citations

M1 [1988 c. 40.](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

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