

These notes refer to the Further Education and Training Act 2007 (c.25) which received Royal Assent on 23 October 2007

FURTHER EDUCATION AND TRAINING ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1: the Learning and Skills Council for England Sections 1, 2, 3, 4 and 5: the LSC

Restructuring the LSC

26. The LSC was established by the Learning and Skills Act 2000 (“the 2000 Act”) as a body corporate. The 2000 Act placed the LSC under a duty to establish a committee of the LSC (to be called a local learning and skills council) for each area of England specified by the Secretary of State. The Act contained provisions about the members and staff of local councils, delegation of local council functions and the preparation of local council plans. The Secretary of State specified 47 such areas of England in relation to which the LSC established 47 local councils.
27. The 2000 Act also placed the LSC under a duty to establish a young people’s learning committee and an adult learning committee.
28. The commitment to restructure the LSC was set out in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’.
29. [Section 1](#) reduces the minimum size of the LSC National Council from twelve to ten.
30. [Section 2](#) places the LSC under a duty to establish a committee, to be called a regional learning and skills council, for each area of England specified by the Secretary of State. The section requires a regional council to perform in relation to its area such of the LSC’s duties as the LSC specifies as well as allowing a regional council to exercise in relation to its area such of the LSC’s powers as the LSC specifies. The section also provides for the LSC to be able to specify functions that regional councils must, or may, exercise outside their area.
31. The section gives the Secretary of State the power to make provision about regional councils in regulations. Regulations may make provision about matters including the membership of regional councils, the appointment of the members, chairman and staff of a regional council, the delegation of functions by a regional council, the payment of salaries and allowances of members and chairmen and the regulation by a regional council of its own procedure.
32. [Paragraph 15](#) of Schedule 1 to the Act provides that the first set of regulations made under section 18A(2) of the 2000 Act (inserted by section 2), is subject to the affirmative resolution procedure.
33. Under section 18C of the 2000 Act, inserted by section 2 of the Act, the LSC is required to prepare guidance in relation to each financial year for each regional council, including the objectives which a regional council should achieve in seeking to carry out

its functions, and the budget for the regional council in that financial year. The first set of guidance must be prepared as soon as reasonably practicable after section 2 comes into force.

34. **Section 3** abolishes the local learning and skill councils and, as a consequence, current statutory provision in relation to them.

Strategy-making bodies

35. Section 24A of the 2000 Act, as inserted by section 4, allows the Secretary of State by order to specify a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or a part of it, but not exclusively either Greater London or a part of Greater London, and to keep the strategy under review. This will enable strategies to be set either for a specified area in England in relation to specified functions of the LSC or in relation to a particular education and training theme for the whole of England, where a theme relates to a function of the LSC. The LSC will be under a statutory duty to carry out any function or functions to which a strategy relates in accordance with that strategy (see inserted section 24C of the 2000 Act).
36. Section 24B of the 2000 Act, as inserted by section 4, requires the Secretary of State to provide, by regulations, for the establishment of a body to formulate a strategy setting out how the functions of the LSC as specified by order are to be carried out in Greater London. The regulations must provide for the body to consist of the Mayor of London and other members appointed by the Mayor in accordance with the regulations. They must also provide for the Mayor of London to be chairman of the body.
37. The section also makes provision (in inserted sections 24A and 24B) for the Secretary of State to give directions and guidance in relation to the formulation and review of strategies, including such matters as: the form and content of the strategy; the updating of the strategy; the steps to be taken by a strategy-making body, and matters to which the body is to have regard, when formulating or reviewing its strategy; and the consultation to be carried out when the body formulates or reviews its strategy.
38. In formulating and reviewing its strategy, a specified body, or the body chaired by the Mayor of London, must have regard to any guidance, and act in accordance with any directions, given by the Secretary of State. The LSC can disregard the strategy of a specified body, or that of the body chaired by the Mayor, if that strategy has not been prepared in accordance with the requirements set out in the guidance and directions concerning formulation or review. If provision in a strategy of a specified body or the body chaired by the Mayor conflicts with the LSC's strategy made in accordance with section 16 of the 2000 Act, the Council may disregard that provision in the body's strategy. Where there is a conflict between provisions in the strategies of different specified bodies, including the body chaired by the Mayor of London, the LSC may disregard relevant provision in one or both of the strategies. The LSC is not required to carry out its functions in accordance with a strategy in a manner that it is satisfied might involve disproportionate expenditure or in a manner that is considered by the LSC to be unreasonable.
39. The LSC may not carry out a function in accordance with a strategy if in doing so it would fail to comply with a duty imposed on it by or under any enactment. Examples of such statutory duties include: the duty of the LSC in section 16(2) of the 2000 Act to have regard to its own strategy in exercising its functions; the LSC's duty in section 25(8) of the 2000 Act to comply with any directions given to it by the Secretary of State; and the duty of the LSC to comply with a condition of grant made under section 27(1) of the 2000 Act.
40. Where the LSC proposes not to, or does not, carry out a function to which a strategy relates, the LSC must refer the matter to the Secretary of State and the body whose strategy it is may do so. Upon such a reference the Secretary of State may give such

direction to the LSC as he thinks fit, including a direction that a strategy be complied with to the extent specified in the direction.

Young people's learning committee and adult learning committee

41. [Section 5](#) removes the duty on the LSC to establish a young people's learning committee and an adult learning committee, but the LSC retains its general power under paragraph 1(1)(b) of Schedule 3 to the 2000 Act to establish such committees as it thinks fit. This will give the LSC flexibility to establish committees to consider different issues as and when needed. For example, the LSC may establish a single group advising it on the needs of young learners, adults and the workforce as a whole.

[Sections 6, 7, 8, 9, 10, 11, 12 and 13](#): functions of the LSC

Duty on the LSC in relation to diversity and choice

42. Section 2 of the 2000 Act imposes a duty on the LSC to secure the provision of facilities for education and training suitable to the requirements of 16 to 19 year olds and section 3 imposes a similar duty in relation to persons aged 19 or more. Section 6 of this Act provides that in performing those duties the LSC must act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice. This reflects commitments in the White Paper 'Further Education: Raising Skills, Improving Life Chances'.
43. The LSC will be expected to make whatever changes are necessary in order to effect an increase in the type and number of providers in the post-16 education and training market and in the opportunities available to individuals.

Consultation with learners and employers

44. [Section 7](#) inserts a new section into the 2000 Act. New section 14A requires the LSC to have regard to guidance from the Secretary of State about consulting with learners, with people likely to become learners, with employers and with other persons specified in such guidance on the funding and provision of learning. New section 14A does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. New section 14A specifies that guidance must provide for the views of a learner or a prospective learner to be considered in the light of his age and understanding.
45. The background to this section is a Government commitment in the March 2006 White Paper 'Further Education: Raising Skills, Improving Life Chances' to create a demand-led system of further education provision, whereby funding follows the choices of employers and learners.

Plans for academic years

46. [Section 8](#) amends section 15 of the 2000 Act so as to provide that the LSC must make and publish a plan for each academic year, rather than for each of its financial years. An academic year runs from 1 August to the following 31 July. This brings the LSC planning year in line with the planning and delivery arrangements of key partners such as further education colleges.

Power to form or be involved in certain bodies corporate

47. [Section 9](#) amends the LSC's current power to form or invest in companies, as set out in section 18 of the 2000 Act, to make it clear that the LSC can form any type of company, including companies limited by guarantee as well as companies limited by shares, with the consent of the Secretary of State.

48. Subsection (4) contains retrospective provision that ensures that companies limited by guarantee that have already been formed between 1 September 2000 and the date on which this section comes into force were formed lawfully.
49. [Section 18](#), as amended by this section, provides that the LSC's power to form charitable incorporated organisations (a new form of body corporate created by the Charities Act 2006) is subject to the consent of the Secretary of State.

Directions

50. [Section 10](#) amends subsection (6) of section 25 of the 2000 Act (the Secretary of State's power to direct the LSC) so that the Secretary of State may exercise the power to direct the LSC in relation to the establishment and dissolution of further education corporations. (Section 10 is linked to sections 14 to 16 which transfer the powers to establish and dissolve further education corporations, and associated order-making powers, from the Secretary of State to the LSC.)
51. Section 25 of that Act enables the Secretary of State to give directions to the LSC where he is satisfied that it has either failed to discharge a duty, or has acted or is proposing to act unreasonably. An amendment to the 2000 Act is required because section 25(6), without the amendment made by this Act, would provide that directions may not concern the provision of financial resources. Because a direction to establish or dissolve a further education corporation might be considered to contravene such a prohibition, section 10 amends section 25(6) so that its scope is limited to powers and duties under that Act. The powers to establish or dissolve further education corporations are conferred by the Further and Higher Education Act 1992, so this means that the Secretary of State will be able to issue directions with regard to these matters where he is satisfied that the LSC had acted or was proposing to act unreasonably.

Provision of services

52. [Section 11](#) extends the powers of the LSC to design, develop and operate support services for persons and bodies exercising education and training functions, in relation to those functions. The LSC's current powers are in the 2000 Act. This provides that the LSC has powers and duties mainly in respect of post-16 education and training and in relation to England only. The powers are largely exclusive of higher education. This section enables the LSC to provide support in respect of higher education and learners under 16, throughout the United Kingdom.
53. The provisions enable the LSC to offer support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services.
54. The LSC may provide these services to: publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and persons or bodies specified by order (who may or may not be publicly funded).
55. The orders specifying additional persons or bodies may be made by the Secretary of State or, where a person or body has education and training functions only in Wales, Scotland or Northern Ireland, by the relevant devolved administration (*see subsection (8)*).
56. In Wales, Scotland and Northern Ireland, these services will be supplied only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service.
57. The LSC will need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

58. The LSC will not need the consent of the Secretary of State before making arrangements to provide support services as regards education and training provided in England, because this process will be regulated via accountability mechanisms that were already in place and by which the LSC was already reporting to the Department for Innovation, Universities and Skills at the time of Royal Assent.
59. An example of such a support service is the Managing Information Across Partners (MIAP) programme, under which the LSC will manage the sharing of learner and learning data between learning and skills organisations, including higher education institutions and schools. This data, which includes information on participation and achievement, is held by a diverse range of owners. The LSC will manage the MIAP system on behalf of participating partners.

Assistance with respect to employment and training

60. [Section 12](#) widens the powers of the LSC so as to allow it to take part in arrangements for assisting persons to select, train for, obtain and retain employment. Consent of the devolved administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland and the consent of the Secretary of State will be required for arrangements made by those devolved administrations. The arrangements that may be made include arrangements for a loans scheme which would be available to learners undertaking either further or higher education. An example of this type of scheme is Career Development Loans (CDLs). The CDL programme operates across England, Wales and Scotland. It is delivered through high street banks, who offer loans on a commercial basis to learners undertaking vocational learning, including some higher education courses. The interest on loans is paid by Government funds during the period of learning.
61. [Section 13](#) enables the LSC to take part in similar arrangements, including provision for loans to be made available to individuals who are undertaking further or higher education, made by the Department for Employment and Learning in Northern Ireland. Consent of the Secretary of State is required for any such arrangements.