

# **FURTHER EDUCATION AND TRAINING ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part 2: Further Education Institutions**

**Sections 21, 22 and 23:** other provisions relating to further education institutions

#### ***Power to form or be involved in companies or charitable incorporated organisations***

93. Section 19(4)(bb) of the 1992 Act sets out the powers of a further education corporation in relation to companies. Section 19(4A) prohibits further education corporations from forming or investing in companies for the purpose of conducting an educational institution.
94. **Section 21** amends section 19 of the 1992 Act, clarifying the power of further education corporations to form or invest in all types of company and enabling them to do so for the purpose of conducting an educational institution, subject to the agreement of the LSC with respect to further education corporations in England and subject to the agreement of the Welsh Ministers with respect to further education corporations in Wales.
95. *Subsection (7)* contains retrospective provision that ensures that companies limited by guarantee that have already been formed in the period beginning on 1 April 2001 and ending immediately before the date on which this section comes into force were formed lawfully.
96. The Charities Act 2006 created a new form of body corporate called charitable incorporated organisations (CIOs) which will be regulated by the Charities Commission. There is a new power in section 21 for further education corporations to form, participate in forming or otherwise become members of charitable incorporated organisations. Where this is to be for the purposes of conducting an educational institution, it is subject to the agreement of the LSC or the Welsh Ministers, as appropriate.
97. In considering requests to establish companies or charitable incorporated organisations for the purpose of delivering education, the LSC will look at whether the entity should be designated as part of the further education sector (under section 28 of the 1992 Act). Designated institutions are required to comply with all legislation appropriate to further education corporations.
98. This provision is intended to facilitate collaboration between further education corporations and schools, businesses, universities and other partners. The background to this section is a Government commitment in the White Paper 'Further Education: Raising Skills, Improving Life Chances' to encourage new delivery models for further education provision in England.

### **Consultation with employers and learners**

99. **Section 22** inserts a new section 49A into the 1992 Act. New section 49A imposes a duty on the governing bodies of further education institutions in England to have regard to guidance from the Secretary of State and for the governing bodies of institutions in Wales to have regard to guidance from the Welsh Ministers, about consulting with learners, with people likely to become learners or with employers in connection with decisions which will affect them. The section does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. The section specifies that guidance must provide for the views of a learner or prospective learner to be considered in the light of his age and understanding.
100. 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.

### **Qualifications of principals of further education institutions**

101. **Section 23** amends section 137 of the Education Act 2002 ("the 2002 Act"). Section 137 allows the Secretary of State (in relation to England), or the Welsh Ministers (in relation to Wales), to make regulations requiring a person appointed as a principal of a further education institution after commencement of that section to have achieved, or be working towards, a specified leadership qualification. Persons who were appointed before the commencement of section 137 are thus exempt from the requirement that may be imposed by regulations.
102. **Section 23** limits to institutions in Wales the exemption from the regulations for those appointed as principals before the commencement of section 137. The effect of this will be to enable regulations made under section 137 by the Secretary of State to extend to all further education college principals in England.
103. The removal of this exemption applies to principals in England only, although section 137 of the 2002 Act applies to England and Wales.
104. This section also inserts new subsection (2A) which provides that regulations made under subsection (1) of section 137 may limit the period of time a principal may be given to achieve the qualification. This provision applies to England and Wales.