

# FURTHER EDUCATION AND TRAINING ACT 2007

---

## EXPLANATORY NOTES

### COMMENTARY

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

#### ***Sections 14, 15 and 16: Transferring powers to the LSC to establish and dissolve further education corporations***

62. The Government's White Paper entitled 'Further Education: Raising Skills, Improving Life Chances' contained a commitment to eliminate inadequate provision across the learning and skills sector by 2008. The Government also undertook to bring about significant improvements in those providers perceived to be coasting.
63. The policy intention in England is to enable the LSC to intervene quickly where a college is underperforming, mismanaged or inadequate. As part of a package of measures, the power to incorporate and dissolve colleges will be transferred from the Secretary of State to the LSC. As far as Wales is concerned, these powers will continue to be exercised by the Welsh Ministers.
64. Section 16 of the Further and Higher Education Act 1992 ("the 1992 Act") enables the Secretary of State by order to establish a body corporate to conduct a new or existing educational institution in England. Such a body is known as a further education corporation. Section 27 of the 1992 Act enables the Secretary of State to provide by order for the dissolution of further education corporations in England and the transfer of their assets and liabilities. In Wales these powers are exercised by Welsh Ministers.
65. The provisions for the publication of proposals for the establishment and dissolution of further education corporations under sections 16 and 27 of the 1992 Act are set out in section 51 of the 1992 Act and in regulations made under that section, i.e. the [Education \(Publication of Draft Proposals and Orders\) \(Further Education Corporations\) \(England\) Regulations \(SI 2001/782\)](#) and the [Further Education Corporations \(Publication of Draft Orders\) \(Wales\) Regulations 2007 \(SI 2007/854\)](#).
66. [Section 14](#) transfers the power to incorporate further education institutions in England under section 16 of the 1992 Act to the LSC. In Wales the powers will continue to be exercised by the Welsh Ministers.
67. [Section 15](#) transfers the Secretary of State's power to dissolve further education corporations in England under section 27 of the 1992 Act to the LSC. In Wales the powers will continue to be exercised by the Welsh Ministers.
68. Where it is proposed to dissolve a further education corporation, it may be necessary to transfer the property, rights and liabilities of a corporation to the LSC to achieve the best outcome for an area. In such a case the LSC will need to seek the agreement of the Secretary of State before making such provision.

69. **Section 16** amends section 51 of the 1992 Act which requires the LSC, when making a proposal to the Secretary of State to establish or dissolve a further education corporation under section 16 or section 27, to publish the proposal in a prescribed form and consider any representations made on it. The amendment makes appropriate modifications to reflect the transfer of power to establish and dissolve further education corporations from the Secretary of State to the LSC and the fact that for institutions in Wales, this power will remain exercisable by the Welsh Ministers. It will be necessary to make consequential amendments to the regulations for England made under section 51 (see paragraph 65).
70. The provision made by section 10 is relevant to the operation of sections 16, 27 and 51 as amended by sections 14 to 16 (see paragraphs 50 and 51).

***Sections 17 and 18: Intervention in further education institutions***

71. The same policy intention lies behind sections 17 and 18 as lies behind sections 14 to 16 (see paragraph 63 above).
72. **Section 17** inserts new sections 56A, 56B and 56C before section 57 of the 1992 Act. This amendment, in conjunction with amendments to section 57, has the effect of transferring the Secretary of State's intervention powers (as set out in section 57), with modifications, to the LSC. This section will apply to further education colleges in England only.
73. Inserted section 56A empowers the LSC to take remedial action in relation to an institution within the further education sector in certain prescribed circumstances, such as where there is evidence that the provider is failing to meet the needs of its learners or is performing significantly less well than might be expected. Under such circumstances, the LSC may do one or more of the following: remove all or any of the members of the institution's governing body; appoint new members of the governing body if there are vacancies; direct the governing body as it thinks expedient as to the exercise of their powers and performance of their duties.
74. The directions as to powers and duties that may be given include a direction to the governing body requiring them to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) and a direction to a governing body (where they have power under their institution's articles of government) to secure that they give effect to the procedures in those articles for considering the case for dismissal of a member of staff, where the LSC considers that it may be appropriate to dismiss that member of staff. A governing body must comply with any such directions.
75. Before taking action, the LSC must give the Secretary of State a notice stating which of the prescribed circumstances applies (or apply), the reasons why it is so satisfied, what it proposes to do and the reasons why it proposes to take that action.
76. At the same time as it takes action, the LSC must give the governing body a notice stating which of the prescribed circumstances set out in section 56A(2) applies (or apply) in the case of their institution, the reasons why it is so satisfied, and the reasons for taking the particular course of action (under section 56A(5)) which it has decided to adopt.
77. Inserted section 56B requires the LSC to prepare a statement of its policy with respect to the exercise of its intervention powers under section 56A and to keep it under review. The LSC is required to consult and to take account of representations when preparing a statement (or revised statement) of its policy. The Secretary of State may issue guidance about the preparation and review of statements and the LSC must have regard to it. Once prepared, a statement must be submitted to the Secretary of State. Where a statement is approved by the Secretary of State, he must lay a copy of it before Parliament and the

LSC must publish it. The LSC must have regard to its most recently published statement when exercising or deciding whether to exercise any of its powers under section 56A.

78. Inserted section 56C enables the Secretary of State to direct the LSC to take action where he considers that the LSC has failed properly to exercise its powers of intervention under section 56A in the case of an underperforming or failing college. The LSC must comply with any directions given under this section. Inserted section 56C requires the Secretary of State to give the LSC a notice stating why he considers intervention is justified. Where the LSC takes action under section 56A in relation to an institution in compliance with a direction given by the Secretary of State, it must give the institution's governing body copy of that notice (instead of the notice to the governing body required by section 56A).
79. As regards institutions in Wales, section 18 amends section 57 of the 1992 Act so as to alter the grounds for interventions in such institutions and to make it clear that Welsh Ministers are able to direct the governing body of an institution to initiate dismissal proceedings against a senior post-holder or to enter into collaboration arrangements. These changes mirror provision in inserted section 56A.
80. [Section 18](#) provides that the Welsh Ministers must prepare a statement of their policy with respect to the exercise of their intervention powers, keep the statement under review and, if they consider it appropriate, prepare a revised statement. It also provides that, when preparing a statement or revised statement, Welsh Ministers must undertake such consultation as they think appropriate and consider any representations made to them about the policy to be set out in the statement; and that Welsh Ministers must lay any statement or revised statement before the National Assembly for Wales.
81. In order to give a fuller picture of how the policy intention described in paragraph 63 is put into effect, the following paragraphs set out the various provisions that will enable the LSC to take action where appropriate as regards the performance of further education institutions.
82. As noted in paragraphs 62 to 70, under sections 16 and 27 of the 1992 Act the Secretary of State or the Welsh Ministers may establish a body corporate to conduct a new or existing educational institution and may provide by order for the dissolution of further education corporations and the transfer of their assets and liabilities. Section 51 provides for the publication of proposals for the establishment or dissolution of further education institutions. Sections 14, 15 and 17 of this Act transfer these powers, with modifications, to the LSC in England.
83. The LSC will also continue to have relevant powers under the 2000 Act. Section 6 provides that the LSC may impose conditions when allocating its financial resources. If the conditions are not met, these resources may be withdrawn. Under section 27, grants made to the LSC by the Secretary of State may be the subject of conditions, including conditions on the funding of others by the LSC. Section 9 provides that the LSC may develop schemes to assess the performance of further education institutions and take these into account when allocating its financial resources.
84. Under section 11 of the 2000 Act, the LSC may appoint up to two governors of the governing body of an institution. It may use this power where it considers there has been mismanagement at the institution, or where it has concerns over the quality of provision.

### ***Sections 19 and 20: Foundation degrees***

85. The Privy Council has a statutory power, under section 76 of the 1992 Act, to make orders that enable institutions providing higher education to grant one or both of two groups of awards. Institutions providing higher education can be given a power to grant awards to students who complete a course of study or a power to grant awards to students who complete a programme of research or both. These are commonly referred to as taught and research degree awarding powers respectively.

86. A number of further education institutions provide courses leading to foundation degrees. However, only institutions with full taught degree awarding powers can award foundation degrees in their own right. At the time of Royal Assent, no further education institutions had such powers, and foundation degrees for courses provided by further education institutions were awarded by other institutions with full, taught degree-awarding powers. Section 19 amends section 76 so as to enable the Privy Council to make orders granting further education institutions in England the power to award only foundation degrees (see *subsection (5)*). In order to be granted this power, institutions would have to meet certain non-statutory criteria, which were published in draft during the passage of the Bill. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.
87. As a result of this provision, further education institutions in England providing courses leading to foundation degrees are able to apply for powers to award foundation degrees themselves.
88. In order to grant a further education institution in England the power to award foundation degrees, the Privy Council must first have received a statement from that institution setting out how it proposes to secure an opportunity for progression to one or more courses of more advanced study for any person awarded one of its foundation degrees. Before it can grant the power to award foundation degrees, the Privy Council must consider that these proposals are satisfactory and are likely to be carried out before it can grant foundation degree-awarding powers (see section 76(2B) as inserted by subsection (5)). The proposals do not have to cover honorary foundation degrees.
89. If the Privy Council by order gives a further education institution the power to award foundation degrees, it may in the same order specify that the power does not include the power to authorise other institutions to do so on its behalf (see section 76(5A), as inserted by *subsection (10)*). The Privy Council may in such an order provide that foundation degrees are not to be awarded unless a person is enrolled at the institution when he completes the course of study for which the degree is granted (see section 76(6A), as inserted by *subsection (12)*).
90. It is envisaged that the Quality Assurance Agency for Higher Education will advise that a further education institution's powers to award foundation degrees should initially be granted for a 'probationary period' of six years. The Quality Assurance Agency would also recommend that, during this probationary period, the further education institution's powers to award foundation degrees should be restricted to foundation degrees granted to persons enrolled at the institution and should exclude the power to authorise other institutions to award foundation degrees on its behalf.
91. The provision in this section applies to further education institutions in England as defined under section 91 of the 1992 Act. According to this definition, references to institutions within the further education sector are to institutions conducted by further education corporations and 'designated institutions'. Section 28 of the 1992 Act lists the criteria that an institution must meet in order to be designated as a further education institution.
92. [Section 20](#) requires the Secretary of State to lay before Parliament a report about the effect of section 19 within a period of four years of section 19 coming into force.  
[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

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

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.