

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 15: Further and higher education: reduction of burdens

769. In this note on the Schedule, references to further education institutions are to institutions which provide further education and are maintained by a local authority, or to institutions within the further education sector. References to institutions within the further education sector are to further education corporations, designated institutions and sixth form colleges (see section 91(3) of the Further and Higher Education Act 1992 (the “FHEA 1992”). A further education corporation is a body corporate established under section 15 or 16 of the FHEA 1992, or which has become a further education corporation by virtue of section 33D or 47 of that Act. A sixth form college corporation is a body corporate that is designated as a sixth form college corporation under section 33A or 33B of the FHEA 1992, or established under section 33C of that Act. References to sixth form colleges are to institutions conducted by sixth form college corporations. A designated institution is a further education institution that has been designated by the Secretary of State under section 28 of the FHEA 1992.

Part 1: Measures applying to England and Wales

770. The measures in this part apply to England and Wales.

Control of interest rates on loans

771. *Paragraph 1* omits section 3 of the Further Education Act 1985. This section confers powers on the Secretary of State and the Welsh Ministers to determine the minimum interest rate on loans made under that Act by local authorities to certain educational bodies. This power has never been used and its retention is no longer considered necessary.

Powers of Secretary of State in relation to local authority maintained institutions

772. *Paragraph 2(2)* omits section 61 of the Education (No. 2) Act 1986. Section 61(1) provides that governors of higher or further education institutions maintained by local authorities must be at least eighteen years old or students of the institution. Section 61(2) confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations restricting the participation by students in the proceedings of the governing bodies of those institutions. *Paragraph 2(3)* omits section 62 of the Education (No. 2) Act 1986 which confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations requiring governing bodies of higher or further education institutions maintained by local authorities to make documents and information relating to the governing documents available. These provisions are being removed so as to bring the governance requirements which apply in relation to such institutions into line with other higher and further education institutions.
773. *Paragraph 3(2)* omits section 158 of the Education Reform Act 1988. This section requires the governing bodies of institutions providing full-time education which are

maintained by local authorities in exercise of their higher or further education functions to make reports and returns etc to the Secretary of State or the Welsh Ministers on request. *Paragraph 3(3)* omits section 159 of the Education Reform Act 1988 which confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations requiring local authorities to publish information relating to institutions providing full-time education which are maintained by the authorities in exercise of their higher or further education functions. These powers are being removed so as to bring them into line with the powers held by the Secretary of State and the Welsh Ministers in relation to other higher and further education institutions.

774. *Paragraph 3(4)* omits section 219 of the Education Reform Act 1988 which applies in relation to England and Wales. This section confers default powers on the Secretary of State and the Welsh Ministers in relation to governing bodies of institutions maintained by local authorities and providing higher or further education.

Transfer of property etc

775. *Paragraph 4(2) to (4)* omits sections 23 to 26, 32, 33 and 34 of the FHEA 1992. Sections 23 to 26 make provision about the transfer of property, rights and liabilities to further education corporations established to conduct certain other institutions in the education sector. Sections 32 and 33 make provision about the transfer of property, rights and liabilities to designated institutions. Section 34 confers power on the Secretary of State and the Welsh Ministers by order to provide for property of a local authority to be made available for use by institutions within the further education sector. The sections which are being repealed concern the initial incorporation of further education corporations and are now considered to be obsolete. *Paragraph 4(5)* makes consequential amendments and repeals.

Part 2: Measures applying to England only

776. The measures in this Part apply in relation to England only.

Control of governance of designated institutions conducted by companies

777. *Paragraph 5* provides for section 31 of the FHEA 1992 to cease to apply in relation to England. Section 31 confers power on the Secretary of State to give directions for the purpose of securing that the articles of association of designated institutions conducted by companies are amended as specified in the directions. This amendment will ensure that the powers available to the Secretary of State in relation to the articles of association of designated institutions are reduced in line with other further education institutions in England. These powers will continue to be available to the Welsh Ministers in relation to designated institutions conducted by companies in Wales.

Conversion of sixth form college corporations into further education corporations

778. *Paragraph 6* omits section 33D(2)(b) and (4) of the FHEA 1992. Section 33D(2)(b) confers power on the Secretary of State to convert a sixth form college corporation into a further education corporation if satisfied that it is no longer appropriate for the body to be a sixth form college corporation. The government considers that the retention of the Secretary of State's power to unilaterally convert sixth form college corporations into further education corporations is inconsistent with the aim of giving greater autonomy to such institutions. Sixth form college corporations will still be able to apply to the Secretary of State to be converted into a further education corporation under section 33D(2)(a) of the FHEA 1992.

Power of Secretary of State in relation to local authority maintained institutions

779. In consequence of the change made by paragraph 3(4), *paragraph 7* amends section 56A of the FHEA 1992 to extend the Secretary of State's power to intervene in relation

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

to institutions in the further education sector to cover institutions in England which are maintained by local authorities and provide further education, except where the institution is within the higher education sector. This will ensure that the Secretary of State has the same powers of intervention in relation to all further education institutions in England. It remains the case that section 56A will apply irrespective of whether or not a complaint is made by any person.

Regulation of teaching requirements for teaching staff and principals

780. *Paragraph 8* provides for sections 136(a), 136(b), 137 and 138 of the Education Act 2002 to cease to apply in relation to England. These sections confer powers on the Secretary of State, by regulations, to impose qualification requirements in respect of staff and principals at further education institutions in England. All regulations made under these sections have been revoked in line with Lord Lingfield's recommendations (*Professionalism in Further Education*, March 2012) which questioned the effectiveness of qualification requirements in improving the standard of teaching. The newly-established Education and Training Foundation will support the development of teaching best practice in the further education sector. These powers will continue to be exercisable by the Welsh Ministers in relation to further education institutions in Wales.
781. The provisions of this Schedule come into force at the end of the period of 2 months beginning with the day on which the Act is passed. All the provisions form part of the law of England and Wales and their application to England and Wales has been set out in the commentary on each provision.