
STATUTORY INSTRUMENTS

1989 No. 2406

The Education Reform(Northern Ireland) Order 1989

PART VII

FURTHER AND HIGHER EDUCATION

Functions of boards with respect to further and higher education

Duty of boards with respect to further education

100.—(1) Each board shall secure, in accordance with arrangements approved by the Department, the provision for its area of adequate facilities for further education and may, with the approval of the Department, provide facilities for further education to meet the requirements of an area in Northern Ireland outside its own area.

(2) Subject to the following provisions of this Article, in this Order “further education” means—

- (a) full-time and part-time education for persons over compulsory school age (including vocational, social, physical and recreational training); and
- (b) organized leisure-time occupation provided in connection with the provision of such education.

(3) In this Order “further education” does not include higher education, that is to say, education provided by means of a course of any description mentioned in Schedule 7; and the Department may by order amend Schedule 7.

(4) Full-time education suitable to the requirements of senior pupils over compulsory school age shall not be regarded for the purposes of this Order as further education if it is or is to be provided by an institution which does not provide part-time senior education or post-school age education to a significant extent.

(5) In this Order—

- (a) “part-time senior education” means part-time education for senior pupils over compulsory school age; and
- (b) “post-school age education” means full-time or part-time education for persons of or over nineteen years of age.

(6) The duty of a board under paragraph (1) extends, in the case of further education of a vocational kind, to the provision of facilities for continuing education for persons already in employment or already engaged in a vocation as well as to the provision of facilities for education with a view to entry into any employment or vocation.

(7) In paragraph (2)(b) “organized leisure-time occupation” means leisure-time occupation, in such organized cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose.

(8) In fulfilling its duty under paragraph (1) a board shall have regard to any educational facilities provided by other boards or by other bodies which are provided for, or available for use by persons living in, its area and may—

- (a) co-operate with other boards and bodies other than boards;
- (b) with the approval of the Department, contribute towards the expenses of such bodies other than boards or incur expenditure jointly with another board or other boards.

(9) In fulfilling that duty a board shall also have regard to the requirements of persons over compulsory school age who have learning difficulties.

(10) Subject to paragraph (11), for the purposes of paragraph (9) a person has a “learning difficulty” if—

- (a) he has a significantly greater difficulty in learning than the majority of persons of his age; or
- (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by the board concerned in pursuance of its duty under paragraph (1) for persons of his age.

(11) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

Powers of boards with respect to higher education

101.—(1) A board shall have power in accordance with arrangements approved by the Department—

- (a) to secure the provision for its area of such facilities for higher education to which this Article applies as appear to it to be appropriate for meeting the needs of the population of its area; and
- (b) to secure the provision of higher education to which this Article applies for persons living outside its area.

(2) In exercising its power under paragraph (1)(a) a board shall have regard to any facilities for higher education to which this Article applies provided by universities, boards and other bodies which are provided for, or available for use by persons living in, its area and may—

- (a) co-operate with other boards and bodies other than boards;
- (b) with the approval of the Department, contribute towards the expenses of such bodies other than boards or incur expenditure jointly with another board or other boards.

(3) The higher education to which this Article applies is higher education provided by means of a course of a description mentioned in paragraph 1(a), (b), (c) or (d) of Schedule 7.

(4) The Department may by order amend paragraph (3).

Management of institutions of further education

Management of institutions of further education

102.—(1) Each institution of further education shall be under the management of the board for the area in which the institution is situated and the board shall make provision by means of a governing body for the management of each such institution in its area.

(2) A governing body for an institution of further education shall also have under its management any technical secondary school conducted in association with the institution.

- (3) For every institution of further education there shall be—
- (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
 - (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government).
- (4) Subject to paragraph (6), the instrument of government and articles of government shall be made by order of the board with the approval of the Department (which may be given subject to such conditions as the Department thinks fit).
- (5) The Department may direct a board to amend the instrument or articles of government of any institution of further education under its management in such manner, or for such purpose, as may be specified in the direction; and any amendment made in pursuance of such a direction shall be made by order under paragraph (4).
- (6) The Department may by order amend the instrument or articles of government of any institution of further education.
- (7) An order made under paragraph (6) may relate to all such institutions, to any category of such institutions specified in the order, or to any institution so specified.
- (8) Before giving any direction under paragraph (5) or making any order under paragraph (6) the Department shall consult such persons as it thinks fit.
- (9) The articles of government of an institution of further education—
- (a) shall provide for the functions of the governing body under the articles in relation to the appointment of teachers and other staff to be carried out on behalf of, and in the name of, the board;
 - (b) may provide for the carrying out by the governing body in relation to the institution of other specified functions on behalf of, and in the name of, the board.
- (10) In this Article, Article 103 and Article 104 references to the board in relation to an institution of further education are references to the board for the area in which the institution is situated.

Provisions required in instrument of government

- 103.**—(1) The instrument of government of an institution of further education shall provide for the governing body to consist of not more than twenty-five members, of whom—
- (a) not less than one-half shall be persons selected from among persons appearing to the person or persons selecting them to be, or to have been, engaged or employed in business, industry or any profession;
 - (b) not more than one-fifth shall be persons selected and appointed by the board, of whom not more than one-half shall be members of district councils;
 - (c) not more than one-tenth shall be elected by teachers at that institution from amongst such teachers;
 - (d) at least one shall be co-opted by the other members of the governing body.
- (2) The members of the governing body other than those mentioned in paragraph (1)(b), (c) or (d) shall be selected and appointed in accordance with the instrument of government.
- (3) The instrument of government shall make provision regulating the election of teachers to the governing body under paragraph (1)(c) and shall provide that a teacher elected as a member of the governing body shall, on ceasing to be a teacher at the institution of further education, cease to hold office as a member of the governing body.
- (4) The instrument of government shall provide that persons who are—
- (a) members of, or of any committee or sub-committee of, any board or district council; or

(b) employed by any board or district council,
are disqualified for being members of the governing body of the category mentioned in paragraph (1)(a).

(5) The provision made by the instrument of government by virtue of paragraph (4)(a) shall not be such as to disqualify a member of the governing body for being such a member by reason only of the fact that he becomes, by virtue of that office, a member of a committee or sub-committee of a board or district council.

(6) Notwithstanding any provision made by the instrument of government by virtue of any of the preceding provisions of this Article, the board shall appoint all the members of the governing body of an institution of further education as first constituted in accordance with this Article.

(7) In making those appointments, the board—

- (a) shall first appoint all members other than members of the category mentioned in paragraph (1)(d); and
- (b) shall appoint as the members of that category persons nominated in accordance with the instrument of government by the members already appointed.

(8) In the case of the initial members within the category mentioned in paragraph (1)(a), the board shall appoint persons nominated by bodies determined by the board in accordance with paragraph (9).

(9) In determining the bodies who are to be entitled to nominate such persons for appointment, the board shall consult—

- (a) the management committee constituted for the institution under Article 28 of the principal Order;
- (b) such bodies representing business or industrial interests, the professions or trade unions as the board considers appropriate.

(10) In determining the provision to be included in any instrument of government for an institution of further education, a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in any such instrument.

Provisions required in articles of government

104.—(1) The articles of government of an institution of further education—

- (a) shall determine the functions to be exercised respectively, in relation to the institution, by the board, the governing body, the principal, and the academic board; and
- (b) shall regulate the constitution and functions of committees of the governing body and of the academic board of the institution, and of sub-committees of such committees, and may provide for the delegation of functions of the governing body and the academic board to such committees, to the principal or to such other persons as may be specified by or determined in accordance with the articles.

(2) The articles of government of an institution of further education in association with which a technical secondary school is conducted shall—

- (a) provide for the conduct of the school;
- (b) determine the functions to be exercised respectively, in relation to the school, by the board, the governing body and the principal.

(3) The articles of government of an institution of further education shall provide for it to be the duty of the governing body—

- (a) to determine, and keep under review, its policy in relation to the courses of study to be provided by or on behalf of the institution and, when so doing, to take account of the plan

drawn up under Article 105 by the board and of the scheme made under Article 106 by the board;

(b) to make, and keep up to date, a written statement of that policy.

(4) In determining the provision to be included in any articles of government for an institution of further education, a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in any such articles.

Planning of, and publication of information with respect to, educational provision in institutions of further education

105.—(1) Each board shall draw up and may from time to time amend a plan for the educational provision to be made by institutions of further education situated in its area.

(2) In drawing up or amending a plan under this Article, a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in any such plan.

(3) The Department shall publish any guidance given by it for the purposes of this Article in such manner as it thinks fit.

(4) Before drawing up or amending such a plan a board shall consult the governing body of every institution of further education situated in the area of the board.

(5) A plan under this Article shall be published in such manner as may be directed by the Department—

(a) when first drawn up by the board; and

(b) on such subsequent occasions as may be so directed.

(6) The Department may make regulations requiring every board to publish, in relation to each institution of further education under its management—

(a) such information as may be prescribed with respect to—

(i) the educational provision made by the institution for students at the institution; and

(ii) the educational achievements of students at the institution (including the results of examinations, tests and other assessments of those students); and

(b) such copies of any written statement made by the governing body under Article 104(3)

(b) as may be prescribed.

(7) The information shall be published in such form and manner and at such times as may be prescribed; and the regulations may provide for a board to make arrangements with the governing body of any institution of further education for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution.

Further and higher education funding schemes

Schemes for financing by boards of further and higher education

106.—(1) It shall be the duty of every board to prepare a scheme in accordance with this Part and submit it for the approval of the Department in accordance with Article 107.

(2) The scheme shall provide for—

(a) the determination in respect of each financial year of the board, for each institution of further education situated in the area of the board, of the share to be appropriated for that institution in that year of the further and higher education budget of the board for that

year (referred to in this Part, in relation to such an institution, as the institution's budget share); and

(b) the delegation by the board of the management of an institution's budget share for any year to the governing body of the institution.

(3) The scheme shall also set out the principles and procedures to be applied by the board in planning the educational provision to be made by institutions of further education situated in the area of the board (in this Part referred to as institutions covered by the scheme).

(4) In this Part—

(a) references to an institution in respect of which financial delegation is required for any financial year under a scheme under this Article are references to an institution managed by a governing body to which the board concerned is for the time being required by or under the scheme to delegate the management of the institution's budget share for that year (and the governing body of such an institution is said to have a right to a delegated budget for the year);

(b) references to an institution which has a delegated budget are references to an institution managed by a governing body to which a board has for the time being delegated the management of the institution's budget share for any financial year in pursuance of such a scheme.

(5) The Department may by order substitute for references in this Part to a financial year references to such other period as may be specified in the order.

Preparation and imposition of further and higher education funding schemes

107.—(1) A scheme prepared by a board under Article 106 shall be submitted to the Department on or before such date as the Department may direct.

(2) In preparing a scheme under that Article, a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in any such scheme.

(3) The Department shall publish any guidance given by it for the purposes of this Article in such manner as it thinks fit.

(4) Before preparing such a scheme a board shall consult the governing body of every institution of further education situated in the area of the board.

(5) The Department may request a board to furnish such information in connection with any scheme submitted to the Department as the Department may require, including information as to the results of consultations under paragraph (4).

(6) Such a scheme shall not come into operation until it has been approved by the Department or until such date as the Department may, in giving its approval, specify; and the Department may approve such a scheme—

(a) either without modifications or with such modifications as it thinks fit after consulting the board concerned; and

(b) subject to such conditions as it may specify in giving its approval.

(7) If in the case of any board either—

(a) the board fails to submit a scheme as required by paragraph (1); or

(b) it appears to the Department that a scheme submitted by the board as required by that paragraph does not accord with any guidance given by it for the purposes of this Article and cannot be made to do so merely by modifying it,

the Department may, after consulting the board and such other persons as it thinks fit, impose a scheme making such provision of a description required to be made by a scheme under Article 106 in the case of that board as it considers appropriate.

- (8) A scheme imposed by the Department by virtue of paragraph (7)—
 - (a) shall be treated as if made under Article 106 by the board concerned; and
 - (b) shall come into operation on such date as may be specified in the scheme.

Replacement and variation of further and higher education funding schemes

108.—(1) Subject to the following provisions of this Article, a scheme may be replaced or varied by a subsequent scheme made under Article 106 by the board concerned.

(2) Article 106 shall apply for the purposes of a scheme replacing or varying a previous scheme with the omission of paragraph (1), and, subject to paragraph (5), Article 107(2) to (6) shall also apply for those purposes.

- (3) A scheme prepared by a board under Article 106 which—
 - (a) replaces a previous scheme; or
 - (b) makes any significant variation of a previous scheme,

shall be submitted to the Department for its approval.

(4) A scheme under Article 106 varying a previous scheme which is not required by paragraph (3) (b) to be submitted to the Department for its approval is referred to in this Article as a “minor variation scheme”.

(5) Paragraphs (4) to (6) of Article 107 shall not apply in relation to a minor variation scheme and such a scheme shall come into operation on such date as is specified in the scheme.

(6) The Department may give directions specifying what descriptions of variation are to be regarded as significant for the purposes of paragraph (3)(b).

(7) Where a board proposes to make a scheme under Article 106 which in its opinion is a minor variation scheme, the board shall notify the Department in writing of its proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.

(8) In any such case the board shall, if so required by the Department before the end of the period of two months beginning with the date on which it receives notification under paragraph (7) of the board’s proposal, send to the Department a copy of the board’s proposed scheme; and it shall be for the Department to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in directions under paragraph (6).

(9) A scheme made under Article 106 may also be varied by a direction given by the Department, as from such date as may be specified in the direction.

(10) Before giving such a direction the Department shall consult the board concerned and such other persons as it thinks fit.

Delegation to governing body of management of institution’s budget share

109.—(1) This Article applies where in the case of any board the board’s financial provision for institutions of further education situated in its area is subject to regulation by a scheme.

(2) Subject to Article 117(6), it shall be the duty of the board in the case of each such institution to put at the disposal of the governing body of the institution in respect of each financial year a sum equal to the institution’s budget share for that year to be spent for the purposes of the institution.

(3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body of an institution shall be such as may be provided by or under the scheme.

(4) A board may not in any financial year delegate to the governing body of an institution of further education covered by the scheme the power to spend any sum appropriated by the board for the purposes of the institution in that year otherwise than as required under the scheme.

(5) Subject to Article 117(7), the governing body of any institution which has a delegated budget—

(a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to it in respect of the institution's budget share for any financial year as it thinks fit for the purposes of the institution; and

(b) may delegate to the principal, to such extent as may be permitted by or under the scheme and subject to any provision of the articles of government of the institution, its power under sub-paragraph (a) in relation to any part of that sum.

(6) The members of the governing body of an institution shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of any power under paragraph (5).

Further and higher education funding schemes: determination of budget shares

110.—(1) The provision to be included in a scheme for determining the budget share for any financial year of each institution of further education covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of a formula laid down by the scheme for the purpose of dividing among all such institutions so much of the board's further and higher education budget for that year as is appropriated by the board for allocation in accordance with the scheme among those institutions.

(2) In this Article "formula" includes methods, principles and rules of any description, however expressed.

(3) The formula laid down by a scheme in accordance with paragraph (1)—

(a) shall include provision for taking into account, in the case of each institution covered by the scheme in any financial year, the student numbers allocated to that institution under the scheme for that year; and

(b) may include provision for taking into account any other factors affecting the needs of individual institutions which are subject to variation from institution to institution.

(4) The student numbers allocated to any institution under a scheme for any financial year shall be determined (and may from time to time be revised) in such manner as may be provided by the scheme.

(5) A scheme must provide for all amounts and student numbers relevant to the determination of an institution's budget share under the scheme for any financial year to be determined initially before the beginning of that year.

Further and higher education funding schemes: provision for financial delegation

111.—(1) A scheme shall include provision for requiring, in the case of each institution of further education covered by the scheme in any financial year, the delegation by the board concerned to the governing body of the institution of the management of the institution's budget share for that year.

(2) References in this Part to the delegation requirement under any scheme are references to any provision included in the scheme by virtue of paragraph (1).

(3) Where a new institution of further education is established, the delegation requirement under the scheme covering that institution shall not apply in relation to that institution until such date as may be specified in the scheme in relation to that institution.

(4) Any delegation by a board under a scheme to the governing body of any institution of the management of the institution's budget share for any financial year shall be subject to such conditions as may be imposed by or under the scheme.

(5) Conditions so imposed may (in particular) relate to the application of the whole of the budget share of any institution or of any part of the budget share of any institution determined by or under the scheme, and different conditions may be imposed in relation to any parts so determined.

(6) In imposing conditions under a scheme a board shall take into account any guidance given by the Department as to the conditions it regards as appropriate for imposition under a scheme.

(7) The Department shall publish any guidance given by it under paragraph (6) in such manner as it thinks fit.

Publication of further and higher education funding schemes

112. A scheme shall be published in such manner as may be directed by the Department—

- (a) on its coming into operation; and
- (b) on such subsequent occasions as may be so directed.

Publication of financial statements

113.—(1) This Article applies where in the case of any board the board's financial provision for institutions of further education situated in its area is subject to regulation by a scheme.

(2) Before the beginning of each financial year, the board shall prepare a statement containing—

- (a) such information as to the operation of the scheme; and
- (b) such information as to the financial provision it plans to make in that year for institutions of further education situated in its area,

as the Department may direct.

(3) After the end of each financial year the board shall prepare a statement containing such information with respect to—

- (a) expenditure actually incurred in that year for the purposes of all institutions covered by the scheme; and
- (b) expenditure so incurred which was incurred, or is treated by the board as having been incurred, for the purposes of each such institution,

as the Department may direct.

(4) A statement prepared under this Article shall be prepared in such form, and published in such manner and at such times, as the Department may direct.

(5) The board shall furnish the governing body of each institution of further education covered by the scheme in any financial year with a copy of each statement prepared by the board under this Article in relation to that year.

(6) The governing body of each such institution shall secure that a copy of any such statement furnished to it under this Article is available for inspection (at all reasonable times and free of charge) at the institution.

Provisions relating to staff during financial delegation

Delegation of certain powers as to staff

114.—(1) This Article applies to an institution of further education at any time when financial delegation is required in respect of the institution for the current financial year under any scheme, subject to any suspension, limitation or restriction under Article 117 of the powers conferred on the governing body under this Article or Article 115.

(2) A scheme may include provision with respect to the complement and the dismissal of staff at any institution to which this Article for the time being applies and (without prejudice to the inclusion of other provisions as to staff and other costs to be met from the budget share of any such institution) with respect to costs incurred by the board in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff.

(3) Subject to any provision of the relevant scheme or the articles of government of the institution, in the case of any institution to which this Article for the time being applies it shall be for the governing body of the institution to determine what staff (both full-time and part-time) are for the time being required for the purposes of the institution.

(4) Subject to any provision of the relevant scheme or the articles of government of the institution, where the governing body of an institution to which this Article for the time being applies notifies the board concerned in writing that it has determined that any person employed to work at the institution under a particular contract of employment should cease to work there under that contract—

- (a) if the person concerned is employed under the contract of employment in question to work solely at the institution, the board shall, before the end of the period of one month beginning with the date on which the notification is given in relation to him, either—
 - (i) give him such notice terminating that contract of employment with the board as is required under that contract; or
 - (ii) terminate that contract without notice if the circumstances are such that the board is entitled to do so by reason of his conduct; and
- (b) in any other case, the board shall require the person concerned to cease to work at the institution.

(5) The articles of government of an institution to which this Article for the time being applies shall provide for it to be the duty of the governing body to consult the chief education officer of the board concerned before making any determination which would have the effect of removing senior staff from work at the institution.

In this paragraph “senior staff” means staff who fall in accordance with the articles to be treated as senior staff for the purposes of any such provision.

(6) It shall be the duty of the chief education officer to offer advice when consulted in accordance with any such provision, and the duty of the governing body to consider any advice so offered.

(7) Subject to any provision of the articles of government of the institution—

- (a) the regulation of conduct and discipline in relation to the staff of an institution to which this Article for the time being applies, and any procedures for affording to members of the staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the governing body; and
- (b) where the implementation of any determination made by the governing body in the exercise of that control requires any action which—
 - (i) is not within the functions exercisable by the governing body by virtue of the Education Orders; but
 - (ii) is within the powers of the board concerned,

it shall be the duty of the board to take that action at the request of the governing body.

(8) References in this Article to the chief education officer of a board include references to any officer of the board nominated by the chief education officer.

Costs of dismissal, premature retirement or voluntary severance

115.—(1) Subject to any provision of the relevant scheme or the articles of government of the institution and paragraph (2), it shall be for the governing body of any institution to which Article 114 for the time being applies to determine—

- (a) whether any payment should be made by the board concerned in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the institution; and
- (b) the amount of any such payment.

(2) Paragraph (1) does not apply in relation to any payment which the board is required to make—

- (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or
- (b) under any statutory provision.

(3) The board concerned—

- (a) shall take such steps as may be required for giving effect to any determination of the governing body of any such institution under paragraph (1); and
- (b) shall not make, or agree to make, any payment to which that paragraph applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such institution otherwise than in accordance with any such determination.

(4) Subject to any provision of the relevant scheme or the articles of government of the institution, costs incurred by the board concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of any such institution shall not be met from the institution's budget share for any financial year except in so far as the board has good reason for deducting those costs, or any part of those costs, from that share.

(5) The fact that the board has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of paragraph (4).

Application of employment law during financial delegation

116.—(1) The Department may by order make such modifications in any statutory provision relating to employment, and in particular in any statutory provision—

- (a) conferring powers or imposing duties on employers;
- (b) conferring rights on employees; or
- (c) otherwise regulating the relations between employers and employees,

as it considers necessary or expedient in consequence of the operation of any of the provisions of Articles 114 and 115.

(2) Before making any order under this Article, the Department shall consult—

- (a) the boards;
- (b) such organisations representing staff in institutions of further education as appear to the Department to be concerned; and
- (c) such other persons as the Department thinks fit.

Withdrawal of delegated powers

Withdrawal of delegated powers for mismanagement, etc.

117.—(1) Where it appears to a board, in the case of any institution in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the institution—

- (a) has been guilty of a substantial or persistent failure to comply with any requirements or conditions applicable under the scheme; or
- (b) is not managing the appropriation or expenditure of the sum put at its disposal for the purposes of the institution in a satisfactory manner,

the board may take any action permitted by paragraph (2).

(2) The actions so permitted are—

- (a) complete suspension of the governing body's right to a delegated budget;
- (b) the limitation of that right to part only of the budget share of the institution concerned; and
- (c) the restriction, in any manner that appears to the board to be appropriate in the circumstances, of the discretion of the governing body to spend any sum made available to it in respect of the institution's budget share or any part of it as the board thinks fit for the purposes of the institution.

(3) Subject to paragraph (5), a board shall give the governing body of any institution in respect of which it proposes to take any action permitted by paragraph (2) not less than one month's notice of the action it proposes.

(4) Any such notice shall specify the grounds for the proposed action, giving particulars of any failure alleged on the part of the governing body to comply with any requirements or conditions applicable under the scheme and of any alleged mismanagement on its part; and a copy of the notice shall be given to the Department and the principal of the institution at the same time as the notice is given to the governing body.

(5) A board may take the action to which such a notice relates before the expiry of the period of notice if it appears to the board to be necessary to do so by reason of gross incompetence or mismanagement on the part of the governing body concerned or other emergency; but in such a case the board shall immediately give to the governing body and the Department written notification of the board's action and the reasons for it.

(6) During any period when a governing body's right to a delegated budget is subject to any suspension or limitation imposed under this Article the duty of the board concerned under Article 109(2) shall not apply in relation to that governing body or (as the case may require) shall apply only in relation to such part of the budget share of the institution concerned as is not subject to the limitation.

(7) During any period when a governing body's discretion to spend the budget share of the institution concerned is subject to any restriction imposed under this Article, the power of the governing body under paragraph (5)(a) of that Article shall be subject to that restriction.

(8) In imposing any suspension, limitation or restriction under paragraph (2) in relation to the governing body of any institution to which Article 114 applies a board may also impose such suspension, limitation or restriction as appears to it to be appropriate in that connection on the powers conferred on the governing body under or by virtue of that Article or Article 115.

(9) Without prejudice to paragraph (8), in imposing any such suspension, limitation or restriction in relation to any institution a board may exclude or modify, for the period during which the suspension, limitation or restriction applies, any provision of the articles of government of the

institution which appears to it to be inconsistent with the operation of the suspension, limitation or restriction.

(10) It shall be the duty of the board concerned—

- (a) to review before the beginning of every financial year any suspension, limitation or restriction under this Article which is for the time being in force;
- (b) for the purposes of that review, to afford the governing body concerned and the principal of the institution concerned an opportunity of making representations with respect to that suspension, limitation or restriction and to have regard to any representations made by the governing body or the principal; and
- (c) to revoke any such suspension, limitation or restriction where the board considers it appropriate to do so.

(11) The board shall give the governing body concerned and the principal of the institution concerned written notification of its decision on any such review.

(12) The revocation of any such suspension, limitation or restriction shall take effect as from the beginning of the next following financial year.

(13) A governing body shall be entitled to appeal to the Department against—

- (a) the imposition of any suspension, limitation or restriction under this Article; and
- (b) any refusal of a board to revoke any such suspension, limitation or restriction on any review required under this Article.

(14) On any such appeal the Department shall have regard, in making its determination, to the gravity of the default on the part of the governing body and the likelihood of its continuance or recurrence.

(15) On any such appeal the Department—

- (a) may allow or reject the appeal; and
- (b) may give such directions as it thinks fit to the board for giving effect to its determination.

Miscellaneous

Regulations as to carrying on of institutions of further education

118.—(1) The Department may by regulations make provision as to the carrying on of institutions of further education.

(2) Without prejudice to the generality of paragraph (1), regulations under paragraph (1) may include provision—

- (a) with respect to the curriculum and time-table to be followed in such institutions;
- (b) enabling the Department to prohibit the use in such institutions of any book or other teaching material of which the Department does not approve;
- (c) preventing the use of the premises of such institutions for such purposes as may be prescribed;
- (d) with respect to the fees to be charged to persons attending such institutions;
- (e) with respect to the keeping, disclosure and transfer of educational records about pupils at such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations.

(3) Regulations made under paragraph (1) by virtue of paragraph (2)(e) may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

(4) Regulations under paragraph (1) may enable the Department or a prescribed body or person to authorise such exceptions, grant such approvals and make such determinations for the purposes of the regulations as are specified therein.

Supply of goods and services through institutions of further education

119.—(1) The governing body of an institution of further education which has a delegated budget may—

- (a) make available the facilities of the institution to any other institution, school, body or person and, subject to paragraphs (3) and (6), make charges for any facilities made available under this sub-paragraph;
- (b) supply goods and services through the institution to any other institution, school, body or person and, subject to paragraphs (4) to (6), make charges for any goods and services supplied under this sub-paragraph.

(2) A board may—

- (a) make available the facilities of an institution of further education under its management which does not have a delegated budget to any school, institution, body or person and, subject to paragraphs (3) and (6), make charges for any facilities made available under this sub-paragraph;
- (b) supply goods and services through such an institution to any school, institution, body or person and, subject to paragraphs (4) to (6), make charges for any goods and services supplied under this sub-paragraph.

(3) Charges for facilities made available under paragraph (1)(a) or (2)(a)—

- (a) shall not be made in such circumstances or for such facilities as may be prescribed;
- (b) shall not for any prescribed facility exceed such amount as may be prescribed,

but shall otherwise be of such amounts and be made for such facilities as the body making the charges may determine.

(4) Charges for goods and services supplied under paragraph (1)(b) or (2)(b)—

- (a) shall, subject to paragraph (5), not be less than the open market value of the goods and services supplied;
- (b) shall otherwise be of such amounts as the body making the charges may determine.

(5) Paragraph (4)(a) does not apply where the goods are produced or the goods or services are supplied in the normal course of any educational activities.

(6) Nothing in paragraphs (1) to (5) authorises—

- (a) the making of any charge which is prohibited or regulated by any provision of Chapter II of Part VIII;
- (b) the carrying on through an institution of further education of any commercial activities which are detrimental to the provision of further or higher education at the institution.

(7) The articles of government of every institution of further education shall provide—

- (a) for the use of the institution's premises to be under the control of the governing body of the institution at all times except, in the case of an institution which does not have a delegated budget, to the extent necessary for the exercise by the board of its powers under paragraph (2); and
- (b) for the governing body to exercise control subject to any direction given to it by the board.

(8) For the purposes of this Article—

- (a) references to the facilities of an institution of further education are references to the equipment, premises or other property of that institution;
- (b) educational activities are—
 - (i) the provision of further and higher education;
 - (ii) the carrying out of research;
 - (iii) any activity incidental or ancillary to any activity mentioned in head (i) or (ii);
- (c) goods are supplied through an institution of further education if they are—
 - (i) produced in the course of its educational activities;
 - (ii) produced by the use of its facilities and the expertise of persons employed at it in the fields in which they are so employed; or
 - (iii) derived from ideas of a person employed at it, or of one of its students, arising out of its educational activities;
- (d) services are supplied through an institution of further education if they are—
 - (i) provided by making available the expertise of persons employed at it in the fields in which they are so employed;
 - (ii) supplied in the course of its educational activities; or
 - (iii) derived from ideas such as are mentioned in sub-paragraph (c)(iii);
- (e) the open market value of goods or services shall be taken to be the amount of the consideration in money that would be payable for the supply of those goods or services by a person standing in no such relationship with any person as would affect that consideration.

Interpretation

Interpretation of Part VII

120. In this Part—

- (a) references to a scheme are references—
 - (i) to a scheme made by a board under Article 106; and
 - (ii) in a context referring to a particular board, to a scheme so made by that board;
- (b) references to an institution's budget share for any financial year—
 - (i) shall be read in accordance with Article 106(2)(a); and
 - (ii) include references to that share as from time to time revised in accordance with the scheme under which it is determined;
- (c) references to an institution covered by a scheme shall be read in accordance with Article 106(3);
- (d) references to an institution in respect of which financial delegation is required for any financial year shall be read in accordance with Article 106(4)(a);
- (e) references to an institution which has a delegated budget shall be read in accordance with Article 106(4)(b);
- (f) references to the further and higher education budget of a board for any financial year are references to the amount appropriated by the board for meeting expenditure in that year—
 - (i) for the purposes of the exercise of its functions under Articles 100 and 101; and
 - (ii) in respect of technical secondary schools under the management of that board;

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- (g) references to the delegation requirement under any scheme shall be read in accordance with Article 111(2).