



# Further Education Act 1985

## 1985 CHAPTER 47

An Act to empower local education authorities to supply goods and services through further education establishments and to make loans to certain other persons to enable them to do so; to repeal section 28(b) of the Sex Discrimination Act 1975; and for connected purposes. [16th July 1985]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act except ss. 4 and 5 amended by [Education Reform Act 1988 \(c. 40, SIF 41:1\), s. 163\(1\)](#)
- C2** Act except ss. 4 and 5 modified by [Education Reform Act 1988 \(c. 40, SIF 41:1\), s. 236\(2\)\(a\)](#)
- C3** Act applied (provinces of Canterbury and York except Channel Islands and Isle of Man)(1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2\), s. 7\(3\)](#);Archbishops' Instrument made 26.7.1991
- C4** Act: certain functions transferred (1.7.1999) by [S.I. 1999/672, art. 2, Sch.1](#)  
Act (except ss. 4, 5) applied (1.6.2001) by [S.I. 2001/1507, reg. 2, Sch. 2 para. 2](#)

### Commencement Information

- I1** Act partly in force at Royal Assent; Act wholly in force at 16.9.1985 see s. 7

### *Further education establishments*

## **1 Supply of goods and services through further education establishments.**

- (1) For the purposes of this Act goods are supplied through [<sup>F1</sup>an institution which provides higher education or further education (or both)] if they result—
- (a) from its educational activities;
  - (b) from the use of its facilities and the expertise of persons employed at it in the fields in which they are so employed;

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- (c) from ideas of a person employed at it, or of one of its students, arising out of its educational activities.
- (2) For the purposes of this Act services are supplied through such an [F<sup>2</sup>institution]—
- (a) if they are provided by making available—
- (i) its facilities;
  - (ii) the expertise of persons employed at it in the fields in which they are so employed;
- (b) if they result—
- (i) from its educational activities;
  - (ii) from ideas such as are mentioned in subsection (1)(c) above.
- (3) For the purposes of this Act educational activities are—
- (a) the provision of teaching and industrial and vocational training;
  - (b) the carrying out of research; and
  - (c) any activity incidental or ancillary to any activity mentioned in paragraph (a) or (b) above.

F<sup>3</sup>[( 4 ) In this Act “ institution ” does not include a school. ]

#### Textual Amendments

- F1** Words substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 92(2)**
- F2** Word substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 92(3)**
- F3** S. 1(4) added (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para.20**; S.I. 1992/831, art. 2, **Sch. 3**

## 2 Powers of local education authorities.

- (1) A local education authority shall have power—
- (a) to enter into an agreement for the supply of goods or services or both through [F<sup>4</sup>an institution which is maintained by them and provides higher education or further education (or both)];
  - (b) to lend money for the purposes of such an agreement to a body corporate in which they have a holding such as is mentioned in subsection (8) below.
- (2) A local education authority shall also have power to lend money—
- [F<sup>5</sup>(a) to a higher education corporation or further education corporation (within the meaning of the Further and Higher Education Act 1992);
  - (b) in the case of the following institutions—
    - (i) an institution within the higher education sector which is not conducted by a higher education corporation;
    - (ii) an institution within the further education sector which is not conducted by a further education corporation; or
    - (iii) an institution which provides higher education or further education and is assisted by a local education authority,
 to the governing body of the institution or, if it is conducted by a company, to the company; or

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- (c) to a body corporate in which such a corporation or company as is mentioned in paragraph (a) or (b) above has a holding such as is mentioned in subsection (8) below],

if the loan is for the purposes of an agreement for the supply of goods or services or both through the [<sup>F6</sup>institution conducted by the corporation, company or governing body].

- (3) Subject to the following provisions of this section, a local education authority shall not under an agreement under subsection (1)(a) above supply goods or services for less than their open market value.
- (4) Subsection (3) above does not apply to the supply of goods or services where the goods are produced, or the goods or services are supplied, in the normal course of any of the educational activities mentioned in section 1(3)(a) above, or where the supply is—
- (a) for a body which is a Research Council for the purposes of the <sup>M1</sup>Science and Technology Act 1965; or
- (b) for a body specified in an order under subsection (5) below.
- (5) The Secretary of State may by order made by statutory instrument provide that any person who is specified in the order or is of a description so specified, being a person or description of persons appearing to the Secretary of State to be exercising functions of a public nature, shall be a public body for the purposes of this Act; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under subsection (5) above may contain such provisions as the Secretary of State considers appropriate—
- (a) for restricting the application of subsection (4)(b) above to agreements of a description specified in the order;
- (b) without prejudice to paragraph (a) above, for securing the inclusion of terms imposing restrictions in any agreement to which subsection (4)(b) above applies and which is made by a body to which the order applies.
- (7) For the purposes of this Act 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 by a person standing in no such relationship with any person as would affect that consideration.
- (8) The holding referred to in subsections (1)(b) [<sup>F7</sup>and [<sup>F8</sup>( 2)(c)]] above is a holding of not less than 20 per cent. of the issued shares comprised in the share capital of the body corporate and carrying rights to vote in all circumstances at general meetings of the body corporate.
- (9) Money may be lent under this section for the purposes of an agreement either before the agreement is made or during its currency.
- (10) Nothing in this section shall be construed as derogating from any powers exercisable by a local education authority apart from this section.

#### Textual Amendments

- F4** Words substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 93\(2\)](#)
- F5** S. 2(2)(a)-(c) substituted (30.9.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), [Sch. 8 Pt. 1 para. 21 \(1\)](#); S.I. 1992/831, art. 2, [Sch. 2](#)

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- F6** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 93(4)**
- F7** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 237(1), **Sch. 12 para. 93(5)**
- F8** Words in s. 2(8) substituted (30.9.1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 21(2)**; S.I. 1992/831, art. 2, **Sch. 2**

#### Marginal Citations

- M1** 1965 c. 4.

### 3 Financial and accounting provisions.

- (1) Loans under this Act shall carry interest at a rate not less than such rate as may be determined by the Secretary of State with the consent of the Treasury.
- (2) Without prejudice to the generality of subsection (1) above a rate may be determined in relation—
  - (a) to all loans under this Act; or
  - (b) to loans under this Act of a particular category,
 and a determination may be made by reference to a rate specified by or under any other statutory provision or a rate ascertainable by such other means as the Secretary of State may with the consent of the Treasury specify.
- (3) Before determining a rate the Secretary of State shall consult such bodies representing local education authorities as appear to him to be concerned and any local education authority with whom consultation appears to him to be desirable.
- (4) In addition to any accounts or statements of account which they are required to keep by virtue of section 23 of the <sup>M2</sup>Local Government Finance Act 1982 a local education authority who exercise powers under this Act shall in respect of their exercise—
  - (a) keep—
    - (i) a general revenue account; and
    - (ii) such other accounts as the Secretary of State may direct; and
  - (b) prepare such statements of account as he may direct.
- (5) Any revenue account kept by an authority under this section and any statement of account prepared by an authority under this section shall show the full cost to the authority of goods or services which are supplied under this Act and which are relevant to that account or statement.
- (6) A local education authority shall use their best endeavours to secure that at the end of every year any revenue account kept by them under this section and relating to that year is in surplus.
- (7) Income and expenditure attributable to the supply of goods or services in circumstances such as are mentioned in section 2(4) above are to be disregarded for the purposes of subsection (6) above, whether or not the goods or services are supplied for less than their open market value.
- (8) If at the end of any year any revenue account kept by a local education authority under this section is in deficit, the amount of the deficit shall be charged—
  - (a) to the extent that the deficit is attributable to a particular [<sup>F9</sup>institution], to any fund set up by the authority for the sole purpose of meeting expenditure

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- in relation to that [<sup>F9</sup>institution] in connection with the authority's functions under this Act or their other functions as a local education authority;
- (b) subject to paragraph (a) above, to any general fund set up by the authority for the sole purpose of meeting expenditure in connection with their functions under this Act or their other functions as a local education authority; and
- (c) subject to paragraphs (a) and (b) above, to their [<sup>F10</sup>county fund or general fund].
- (9) Without prejudice to the generality of this section, the powers conferred upon the Secretary of State by this section may be exercised separately and differently as respects England and Wales.
- (10) In this section—
- .....<sup>F11</sup>
- “year” means a period of twelve months ending with 31st March.

**Textual Amendments**

- F9** Word substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 94](#)
- F10** Words substituted by [S.I. 1990/776, art. 8, Sch. 3 para. 25\(a\)](#)
- F11** Definition repealed by [S.I. 1990/776, art. 8, Sch. 3 para. 25\(b\)](#)

**Marginal Citations**

- M2** [1982 c. 32.](#)

*Teachers of physical training*

**4 Repeal of s.28(b) of Sex Discrimination Act 1975.**

In section 28 of the <sup>M3</sup>Sex Discrimination Act 1975 (which excepts physical training courses from the application of provisions of that Act making sex discrimination in education unlawful), paragraph (b) (which relates to courses for teachers of physical training) and the word “or” immediately preceding it shall cease to have effect except in relation to persons admitted to courses in an academic year beginning in a year earlier than the year in which there falls the day appointed for the coming into force of this section.

**Modifications etc. (not altering text)**

- C5** Appointed 16.9.1985 (E.W.) for purposes of section 4 by [S.I. 1985/1429, art. 2](#)

**Marginal Citations**

- M3** [1975 c. 65.](#)

**5 Power to make corresponding provision for Northern Ireland.**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M4</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of section 4 above—

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- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

#### Marginal Citations

**M4** 1974 c. 28.

### Supplementary

#### 6 Extent.

- (1) Sections 1 to 3 above extend to England and Wales only.
- (2) Section 4 above extends to England and Wales and Scotland.
- (3) Section 5 above extends to Northern Ireland only.
- (4) This section and sections 7 and 8 below extend to England and Wales, Scotland and Northern Ireland.

#### 7 Commencement.

- (1) Section 4 above shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed under this subsection for England and Wales and for Scotland.
- (2) Sections 5 and 6 above, this section and section 8 below shall come into force on the day this Act is passed.
- (3) Subject to subsections (1) and (2) above, this Act shall come into force at the end of the period of two months beginning with the day on which it is passed.

#### Modifications etc. (not altering text)

**C6** Power of appointment conferred by s. 7(1) partly exercised: [S.I. 1985/1429](#), [art. 2](#); 1987/1335

#### 8 Citation etc.

- (1) This Act may be cited as the Further Education Act 1985.
- <sup>F12</sup>(2) .....
- (3) This Act, except sections 4 and 5 above, shall be construed as one with the [<sup>F13</sup>the Education Act 1996.].

#### Textual Amendments

**F12** [S. 8\(2\)](#) repealed (1.11.1996) by [1996 c. 56](#), [ss. 582\(2\), 583\(2\)](#), [Sch. 38 Pt.I](#) (with [ss. 1\(4\), 561, 562](#), [Sch. 39](#)).

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**F13** Words in s. 8(3) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt.1** (with ss. 1(4), 561, 562, Sch. 39).

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**Changes to legislation:**

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