



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART II

#### HIGHER AND FURTHER EDUCATION

#### CHAPTER II

##### REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

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

- C1** Pt. II Ch. II (ss. 121-138) modified (temp. until 31. 3. 1993) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 64(1); S.I. 1992/831, art. 2, [Schs.1](#) and 3.

###### *The higher education corporations*

#### **121 Initial incorporation of higher education institutions maintained by local education authorities.**

- (1) Before such date as may be appointed for the purposes of this section the Secretary of State shall by order specify each institution maintained by a local education authority which appears to him to fall within subsection (2) below; and on that date a body corporate shall be established for the purpose of conducting each institution so specified as from the transfer date applicable in relation to bodies corporate established under this section.
- (2) An institution falls within this subsection if on 1st November 1985 either—
  - (a) its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55 per cent. of its total full-time equivalent enrolment number; or
  - (b) its full-time equivalent enrolment number for such courses exceeded 2,500.

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- (3) Where an institution maintained by a local education authority has been established since that date by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) above if it would have done so if the merger had taken place before that date.
- (4) References in this Part of this Act to courses of advanced further education are references to courses designated by Schedule 2 to the <sup>M1</sup>Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

**Marginal Citations**  
**M1** [S.I. 1981/1086.](#)

**122 Orders incorporating higher education institutions maintained by local education authorities.**

- (1) Subject to subsection (2) below, if at any time it appears to the Secretary of State, in the case of any institution maintained by a local education authority, that its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number he may make an order under this section with respect to that institution.

- <sup>F1</sup>(2) .....
- <sup>F1</sup>(3) .....
- <sup>F1</sup>(4) .....
- <sup>F1</sup>(5) .....

- (6) An order under this section with respect to any institution shall make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date applicable in relation to that body corporate.

**Textual Amendments**  
**F1** S. 122(2)-(5) repealed (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. 1 para. 31, [Sch. 9](#); [S.I. 1992/831](#), art. 2, [Sch. 1](#)

**Modifications etc. (not altering text)**  
**C2** S. 122 applied by [S.I. 1991/1391](#), [art. 2](#)

**[<sup>F2</sup>122A Orders transferring further education corporations to higher education sector.**

- (1) The Secretary of State may by order provide for the transfer of a further education corporation to the higher education sector if it appears to him that the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number.
- (2) Where an order under this section is made in respect of a further education corporation, sections 124A and 125 of this Act shall have effect as if—

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- (a) on the date the order has effect, the corporation were established as a higher education corporation, and
  - (b) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation.
- (3) In determining in pursuance of subsection (2)(b) above the number of members to appoint within each variable category of members, the Secretary of State shall secure that at least half of all the members of the higher education corporation as first constituted are independent members; and in this subsection “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (4) On such date as may be specified in the order the corporation shall cease to be a further education corporation and become a higher education corporation and any member of the further education corporation who is not re-appointed by the Secretary of State in pursuance of subsection (2)(b) above shall cease to hold office on that date.

#### Textual Amendments

- F2** S. 122A inserted (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(1\)](#); S.I. 1992/831, art. 2, [Sch. 3](#)

### 123 Provisions supplementary to sections 121 and 122.]

- (1) References in this Act to a higher education corporation are references to a body corporate established under section 121 or 122 of this Act [<sup>F3</sup>or which has become a higher education corporation by virtue of section 122A of this Act].
- (2) In this Act “transfer date” means, in relation to a higher education corporation, the date appointed under section 126 of this Act in relation to the transfer under that section of property, rights and liabilities to that corporation.
- [<sup>F4</sup>(3) Schedule 7 to this Act has effect with respect to each higher education corporation established before the appointed day (within the meaning of section 124A of this Act) unless an instrument of government for the corporation made under that section has effect.
- <sup>F4</sup>(4) A higher education corporation established under section 122 of this Act on or after that day for the purpose of conducting any institution shall be established initially under the name given in the order under that section establishing the corporation.]

#### Textual Amendments

- F2** S. 122A inserted (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(1\)](#); S.I. 1992/831, art. 2, [Sch. 3](#)
- F3** Words in s. 123(1) added (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\)](#), [Sch. 8 Pt. I para. 32\(a\)](#); S.I. 1992/831, art. 2, [Sch.3](#).
- F4** S. 123(3)(4) substituted for s. 123(3) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\)](#), [Sch. 8 Pt. I para. 32\(b\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

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## 124 Powers of a higher education corporation.

- (1) A higher education corporation shall have power—
- (a) to provide higher education;
  - (b) to provide further education; and
  - [<sup>F5</sup>(ba) to provide secondary education [<sup>F6</sup>suitable to the requirements of persons who have attained the age of fourteen years],
  - (bb) to provide education which is secondary education by virtue of section 2(2B) of the Education Act 1996 (definition of secondary education),
  - (bc) to participate in the provision of secondary education at a school,]
  - (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit.
- [<sup>F7</sup>(1A) A higher education corporation may not provide education of a kind specified in subsection (1)(ba) or (bb) above unless they have consulted such local education authorities as they consider appropriate.]
- (2) A higher education corporation shall also have power to do anything which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on the corporation by subsection (1) above, including in particular power—
- (a) to conduct an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, to assume the conduct as from the transfer date applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities transferred to the corporation under section 126 of this Act;
  - (b) to provide facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of [<sup>F8</sup>students having learning difficulties <sup>F9</sup>. . .]);
  - (c) to supply goods and services;
  - (d) to acquire and dispose of land and other property;
  - (e) to enter into contracts, including in particular—
    - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any such activities; and
    - (ii) contracts with respect to the carrying on by the corporation of any such activities;
  - [<sup>F10</sup>(f) to subscribe for or otherwise acquire shares in or securities of a company for the purpose of carrying on any such activities;]
  - (g) to borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under section 126 of this Act and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the corporation;
  - (h) to invest any sums not immediately required for any of the purposes mentioned in paragraph (g) above;
  - (i) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and

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- (j) to do anything incidental to the conduct of an educational institution providing higher or further education.
- (3) The power under subsection (2)(j) above includes in particular power—
- (a) to found scholarships or exhibitions; and
- (b) to make grants and give prizes.
- <sup>F11</sup>(4) . . . . .
- [<sup>F12</sup>(5) For the purposes of subsection (2)(b) 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 institutions within the higher education sector for persons of his age.
- (6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.]

#### Textual Amendments

- F5** S. 124(1)(ba)-(bc) inserted (1.4.2001) by 2000 c. 21, s. 142(2)(a); S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F6** Words in s. 124(1)(ba) substituted (1.10.2002 (E) and 19.12.2002 (W.)) by 2002 c. 32, s.215(1), **Sch. 21 para. 8** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3; S.I. 2002/3185, art. 4, **Sch. Pt. I**
- F7** S. 124(1A) inserted (1.4.2001) by 2000 c. 21, s. 142(2)(b); S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F8** Words in s. 124(2)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 33(a)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F9** Words in s. 124(2)(b) repealed (28.7.2000 insofar as consequential on ss. 130, 131, Sch. 8 of the amending Act and otherwise 1.4.2001) by 2000 c. 21, ss. 149, 153, 154, Sch. 9 para. 15(a), **Sch. 11**; S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F10** S. 124(f) substituted (28.7.2000 insofar as consequential on ss. 130, 131, Sch. 8 of the amending Act and otherwise 1.4.2001) by 2000 c. 21, ss. 149, 154, **Sch. 9 para. 15(b)**; S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F11** S. 124(4) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 33(b), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F12** S. 124(5)(6) inserted (28.7.2000 insofar as consequential on ss. 130, 131, Sch. 8 of the amending Act and otherwise 1.4.2001) by 2000 c. 21, ss. 149, 154, **Sch. 9 para. 15(c)**; S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**

#### [<sup>F13</sup>124A Constitution and conduct of corporations.

- (1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—

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- (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
  - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation—
- (a) shall comply with the requirements of Schedule 7A to this Act; and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.
- (8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.
- (9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.
- (10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

#### **Textual Amendments**

**F13** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(1); S.I. 1992/831, art. 2, [Sch. 1](#)

#### **124B Accounts.**

- (1) It shall be the duty of each corporation—
- (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—

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- (a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and
  - (b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.
- (4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.
- (5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.
- (6) No person shall be qualified to be appointed auditor under that subsection except—
  - (a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;
  - (b) a member of the Chartered Institute of Public Finance and Accountancy; or
  - (c) a firm each of the members of which is a member of that institute.
- (7) In this section, in relation to a corporation—

“the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

“financial year” means that period and each successive period of twelve months.

#### **Textual Amendments**

**F13** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

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

**C3** S. 124B(7): power to exclude conferred (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 78\(2\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

### **124C Initial and transitional arrangements.**

- (1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.
- (2) In subsection (1) above “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.



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- (3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.
- (4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.
- (5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

#### **Textual Amendments**

**F13** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

### **124D Exercise of Powers by Privy Council.**

- (1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.
- (2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.
- (3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.
- (4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.
- (5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.

#### **Textual Amendments**

**F13** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

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

**C4** S. 124D extended (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 76\(7\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

### **125 Articles of government.]**

- (1) Any institution conducted by a higher education corporation shall be conducted in accordance with articles of government, to be made by the corporation with the approval of [<sup>F14</sup>the Privy Council].
- (2) The articles of government—



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- (a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the academic board of the institution; and
  - (b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.
- (3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies), and may make provision with respect to—
- (a) procedures for the appointment, promotion, suspension and dismissal of staff;
  - (b) procedures for the admission, suspension and expulsion of students; and
  - (c) the appointment and functions of a clerk to the board of governors.
- (4) The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—
- (a) the conduct of students and staff or either of them; and
  - (b) any such procedures as are mentioned in subsection (3)(a) or (b) above.
- (5) Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of [<sup>F14</sup>the Privy Council].
- (6) [<sup>F14</sup>The Privy Council] may by a direction under this section require higher education corporations, any class of such corporations specified in the direction or any particular higher education corporation so specified—
- (a) to amend their articles of government; or
  - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are amended by the board of governors;
- in any manner so specified.
- (7) Before giving a direction under this section, [<sup>F14</sup>the Privy Council] shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.

#### Textual Amendments

**F13** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

**F14** Words in s. 125(1)(5)-(7) substituted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(2\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

#### [<sup>F15</sup>125A Charitable status of a higher education corporation.

- (1) A higher education corporation shall be a charity which is an exempt charity for the purposes of the <sup>M2</sup>Charities Act 1993.
- (2) So far as it is a charity, any institution which—

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- (a) is administered by or on behalf of any higher education corporation, and
- (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,

shall also be an exempt charity for the purposes of the Charities Act 1993.

- (3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.

#### **Textual Amendments**

**F15** S. 125A inserted (1.10.1998) by [1998 c. 30, s. 41\(1\)](#); [S.I. 1998/2215, art. 2](#)

#### **Marginal Citations**

**M2** [1993 c. 10.](#)

### **126 Transfer of property, etc., to higher education corporations.]**

- (1) In the case of a higher education corporation established under section 121 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to the corporations so established.
- (2) In the case of a higher education corporation established under section 122 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to that corporation.
- (3) Subject to subsection (5) below and section 198 of this Act, on the transfer date applicable in relation to a higher education corporation the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, that corporation.
- (4) The property, rights and liabilities referred to in subsection (3) above are—
  - (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the transferred institution; and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (5) Subsection (3) above shall not apply to—
  - (a) rights and liabilities under any contract of employment;
  - (b) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) In this section “the transferred institution” means, in relation to any higher education corporation, the institution the corporation is established to conduct.

#### **Textual Amendments**

**F15** S. 125A inserted (1.10.1998) by [1998 c. 30, s. 41\(1\)](#); [S.I. 1998/2215, art. 2](#)

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## **127 Transfer of staff to higher education corporations.**

- (1) This section applies to any person who immediately before the transfer date applicable in relation to a higher education corporation—
  - (a) is employed by the transferor authority to work solely at the institution the corporation is established to conduct; or
  - (b) is employed by that authority to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the corporation.
- (3) Without prejudice to subsection (2) above—
  - (a) all the transferor authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the transfer date; and
  - (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a higher education corporation, to the transferor authority, are references to the local education authority by whom the institution that corporation is established to conduct is maintained immediately before the transfer date.

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

- C5** S. 127 applied (with modifications) (1.9.1992) by [S.I. 1992/1849](#), [art.4](#).  
**C6** S. 127 applied (with modifications) (1.10.1992) by [S.I. 1992/2151](#), [art.4](#).  
**C7** S. 127 applied (with modifications) (1.3.1995) by [S.I. 1995/183](#), [art.4](#).  
**C8** S. 127 applied (with modifications) (1.8.1996) by [S.I. 1996/1225](#), [art.4](#).  
S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/1383](#), [art. 3](#).  
S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/355](#), [art. 3](#).  
S. 127 applied (with modifications) (1.8.2001) by [S.I. 2001/1340](#), [art. 3](#).

## **128 Dissolution of higher education corporations.**

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for—
  - (a) the dissolution of any higher education corporation; and
  - (b) the transfer of property, rights and liabilities of the corporation to—
    - (i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;

*Status: Point in time view as at 01/10/2002.*

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- (ii) any body corporate established for purposes which include the provision of such facilities or services;
  - [<sup>F16</sup>(iii) a higher education funding council]
  - [<sup>F17</sup>(v) the learning and Skills Council for England or the National Council for Education and Training for Wales.]
- (2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.
- (4) Before making an order under this section in respect of a higher education corporation the Secretary of State shall consult—
- (a) the corporation; and
  - [<sup>F18</sup>(b) the higher education funding council]
- (5) In this section “charity” and “charitable purposes” have the same meanings as in [<sup>F19</sup>the Charities Act 1993].
- [<sup>F20</sup>(6) An order under this section may apply section 127 of this Act with such modifications as the Secretary of State may consider necessary or desirable.]

#### Textual Amendments

- F16** S. 128(1)(b)(iii) substituted for s. 128(1)(b)(iii)(iv) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 34(a)(i)**; S.I. 1992/831, art. 2, **Sch. 1**.
- F17** S. 128(1)(b)(v) substituted (28.7.2000 insofar as consequential on ss. 130, 131, **Sch. 8** of the amending Act and otherwise 1.4.2001) by [2000 c. 21](#), ss. 149, **Sch. 9 para. 16** (with s. 150); S.I. 2001/654, art. 2(2), **Sch. Pt. II**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F18** S. 128(4)(b) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 34(b)**; S.I. 1992/831, art. 2, **Sch. 1**.
- F19** Words in s. 128(5) substituted (1.8.1993) by [1993 c. 10](#), ss. 98(1), 99(1), **Sch. 6**, para. 30
- F20** S. 128(6) added (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 34(c)**; S.I. 1992/831, art. 2, **Sch. 1**.

*Designation of certain institutions for funding by  
the Polytechnics and Colleges Funding Council, etc.*

## 129 Designation of institutions.

- [<sup>F21</sup>(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by a higher education funding council—
- (a) any institution which appears to him to fall within subsection (2) below; and
  - (b) any institution which is, or is to be, conducted by a successor company to a higher education corporation.

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- <sup>F21</sup>(2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number]
- <sup>F22</sup>(3) . . . . .
- <sup>F22</sup>(4) . . . . .
- (5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if-
- (a) it is a company limited by a guarantee formed and registered under the <sup>M3</sup>Companies Act 1985;
  - (b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation;
  - (c) its objects—
    - (i) are exclusively charitable according to the law of England and Wales; and
    - (ii) include the conduct of the institution which was at that time conducted by that corporation;
  - (d) its memorandum and articles of association have been approved by the Secretary of State; and
  - (e) an order has been made under section 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this section is made).

**Textual Amendments**

- F21** S. 129(1)(2) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 72\(1\)\(a\)](#); S.I. 1992/831, art. 2, [Sch.1](#).
- F22** S. 129(3)(4) repealed (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), ss. 72\(1\)\(b\), 93\(2\)](#), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).

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

- C9** S. 129 extended (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(2\)](#); S.I. 1992/831, art. 2, [Sch.3](#).

**Marginal Citations**

- M3** 1985 c. 6.

<sup>F23</sup>**129A Government and conduct of designated institutions.**

- (1) This section has effect in relation to any designated institution, other than an institution conducted by a company.
- (2) For each such institution 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),

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each of which meets the requirements of subsection (3) below.

- (3) Those requirements are that the instrument—
- (a) was in force when the designation took effect; or
  - (b) is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below,
- and is approved for the purposes of this section by the Privy Council.
- (4) In this section “regulatory instrument”, in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.
- (5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the body of persons responsible for the management of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) If an instrument approved by the Privy Council for the purposes of this section—
- (a) falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it; or
  - (b) was made by the body of persons responsible for the management of the institution,
- the instrument may be modified by those persons.
- (7) Either of the instruments referred to in subsection (2) above may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of this section may be modified by any other person without the Privy Council’s consent.
- (8) Before exercising any power under subsection (7) above in relation to any instrument the Privy Council shall consult—
- (a) the governing body of the institution, and
  - (b) where there is such a power as is mentioned in subsection (3)(b) above to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,
- so far as it appears to them to be practicable to do so.
- (9) Nothing in this section requires further approval for any instrument approved by the Secretary of State for the purposes of section 156 of this Act, and references in this section to instruments approved by the Privy Council for the purposes of this section include instruments so approved by the Secretary of State.
- (10) In this section and section 129B “designated institution” means an institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect but does not include any institution established by Royal Charter.]

#### **Textual Amendments**

**F23** Ss. 129A, 129B inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 73(1); S.I. 1992/831, art. 2, [Sch.1](#).



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## **129B** <sup>F24</sup>**Designated institutions conducted by companies.**

- (1) This section has effect in relation to any designated institution conducted by a company.
- (2) The articles of association of the company shall incorporate—
  - (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and
  - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).
- (3) The Privy Council may give to the persons who appear to them to have effective control over the company such directions as they think fit for securing that—
  - (a) the memorandum or articles of association of the company; or
  - (b) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company,are amended in such manner as they may specify in the direction.
- (4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Privy Council for their approval and they have notified their approval to the company.
- (5) Before giving any directions under subsection (3) above the Privy Council shall consult the persons who appear to them to have effective control over the company.

### **Textual Amendments**

**F24** Ss. 129A, 129B inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 73(1); S.I. 1992/831, art. 2, Sch.1.

## **130 Transfer of property, etc., to certain designated institutions.**

- (1) This section applies to an institution designated under section 129 of this Act in any case where—
  - (a) the order designating the institution under that section so provides; and
  - (b) immediately before the date on which the designation takes effect (referred to below in this section, in relation to such an institution, as the designation date) the institution is an institution assisted by a local education authority (referred to below in this section as the former assisting authority).
- (2) Subject to subsection (4) below and section 198 of this Act, on the designation date in relation to any institution to which this section applies the property, rights and liabilities mentioned in subsection (3) below shall be transferred to, and by virtue of this Act vest in, the appropriate transferee.
- (3) The property, rights and liabilities referred to in subsection (2) above are—
  - (a) all land or other property which, immediately before that date, was property of the former assisting authority used or held for the purposes of that institution; and
  - (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes.



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- (4) Subsection (2) above shall not apply to—
  - (a) any liability of the former assisting authority in respect of the principal of, or any interest on, any loan; or
  - (b) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them.
- (5) In subsection (2) above, “the appropriate transferee” means—
  - (a) in relation to an institution conducted by a body corporate, that body; and
  - (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution.
- (6) Subject to subsection (7) below, where any persons so specified are the appropriate transferee for the purposes of subsection (2) above—
  - (a) any land or other property or rights transferred to them under this section shall be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution; and
  - (b) they shall incur no personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.
- (7) Subsection (6)(a) above shall not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution.
- (8) In this Act, “transfer date” means, in relation to an institution to which this section applies, the designation date in relation to that institution.

*New arrangements for funding higher education*

<sup>F25</sup> **131** .....

**Textual Amendments**

**F25** S. 131 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 35, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

<sup>F26</sup> **132** .....

**Textual Amendments**

**F26** S. 132 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 35, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

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### **133 Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education.**

[<sup>F27</sup>(1) A higher education funding council shall have power to make payments, subject to such terms and conditions as the council think fit, to—

- (a) any local education authority in their area;
- (b) the London Residuary Body;
- (c) the London Pensions Fund Authority; and
- (d) the governing body of any institution designated under section 129 of this Act, as originally enacted;

in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.]

(2) In subsection (1) above “relevant expenditure” means—

- (a) in relation to a local education authority [<sup>F28</sup>the London Residuary Body or the London Pensions Fund Authority], expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and
- (b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution.

(3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date [<sup>F29</sup>and in any other case the reference to further education shall be read as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect on that date].

(4) Each of the following, that is to say—

- (a) a local education authority;
- [<sup>F30</sup>(aa) the London Residuary Body;
- <sup>F30</sup>(ab) the London Pensions Fund Authority; and]
- (b) the governing body of any institution so designated;

shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.

#### **Textual Amendments**

**F27** S. 133(1) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(1\)](#); S.I. 1992/831, art. 2, [Sch.3](#).

**F28** Words in s. 133(2)(a) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(2\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

**F29** Words in s. 133(3) added (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(3\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

**F30** S. 133(4)(aa)(ab) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(4\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

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

- C10** S. 133 amended (*retrospectively*) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(5\)](#); [S.I. 1992/831, art. 2, Sch. 1](#).  
 S. 133 modified (1.4.1993) by [S.I. 1993/563, art. 2\(b\)\(i\), Sch.1](#)

<sup>F31</sup> **134** .....

**Textual Amendments**

- F31** S. 134 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93, Sch. 8 Pt. I para. 35, Sch.9](#); [S.I. 1992/831, art. 2, Sch.3](#).

*Supplementary*

<sup>F32</sup> **135 Inspection of accounts.**

- (1) The accounts of—
- (a) any university;
  - (b) any higher education corporation; or
  - <sup>F33</sup>(c) any designated institution within the meaning of section 129A of this Act]
- shall be open to the inspection of the Comptroller and Auditor General.
- (2) In the case of any higher education corporation or of any such institution as is mentioned in subsection (1)(a) or (c) above—
- (a) the power conferred by subsection (1) above; and
  - (b) the powers under sections 6 and 8 of the <sup>M4</sup>National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act;
- shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which [<sup>F34</sup>financial support has been given to them under section 65 of the Further and Higher Education Act 1992.]

**Textual Amendments**

- F32** S. 135(2) modified by [S.I. 1993/563 art. 2\(b\)\(i\), Sch.1](#) as amended (19.4.1993) by [1993/870, art.2](#)
- F33** S. 135(1)(c) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 36\(a\)](#); [S.I. 1992/831, art. 2, Sch. 1](#).
- F34** Words in s. 135(2) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 36\(b\)](#); [S.I. 1992/831, art. 2, Sch.3](#).

**Marginal Citations**

- M4** 1983 c. 44.

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### 136 Transfer to Polytechnics and Colleges Funding Council of property and staff of NAB.

(1) In this section “NAB” means the company limited by guarantee registered under the Companies Acts 1948 to 1983 under the name of the National Advisory Body for Public Sector Higher Education.

(2) Notwithstanding anything in the memorandum of association of NAB, if upon the winding up or dissolution of NAB any property remains after the satisfaction of all its debts and liabilities the property shall be transferred to, and by virtue of this Act vest in, the [<sup>F35</sup>Higher Education Funding Council for England].

<sup>F36</sup>(3) .....

<sup>F36</sup>(4) .....

<sup>F36</sup>(5) .....

<sup>F36</sup>(6) .....

<sup>F36</sup>(7) .....

#### Textual Amendments

**F35** Words in s. 136(2) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 37(a); S.I. 1992/831, art. 2, Sch.3.

**F36** S. 136(3)-(7) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 37(b), Sch. 9; S.I. 1992/831, art. 2, Sch. 1.

### 137 Control of disposals of land.

(1) Subject to subsection (9) below, this section applies to any disposal after 22nd July 1987—

- (a) of land which, immediately before that date, was used or held for the purposes of any relevant institution; or
- (b) of land which was obtained before that date for the purpose of being so used or held and had not before that date been appropriated to any other use.

(2) For the purposes of subsection (1) above, an institution is a relevant institution if it falls within section 121(2) <sup>F37</sup> . . . of this Act.

(3) Except with the consent of the Secretary of State, no local education authority shall after the passing of this Act make a disposal to which this section applies; and if at any time after 22nd July 1987 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the preceding provisions of this subsection if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.

(4) Any consent for the purposes of subsection (3) above may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.

(5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this

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section applies, shall be treated for the purposes of subsection (3) above as a consent, or a consent subject to those conditions, given under this section.

- (6) This section has effect notwithstanding anything in section 123 of the <sup>M5</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 201 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given or complied with.
- (8) In this section references to disposing of land include references to—
- (a) granting or disposing of any interest in land;
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  - (c) granting an option to acquire any land or any such interest.
- (9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

#### Textual Amendments

**F37** Words in s. 137(2) repealed (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 38, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).

#### Marginal Citations

**M5** 1972 c. 70.

### 138 Construction of references to land held for the purposes of an institution.

- (1) This section applies for the purpose of the construction of the following provisions of this Act—
- (a) section 126(4)(a);
  - (b) section 130(3)(a); and
  - (c) section 137(1)(a).
- (2) Where at any time any land is used for the purposes of an institution to which any of those provisions applies, any interest of a local education authority in that land subsisting at that time shall be taken for the purposes of that provision to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

**Status:**

Point in time view as at 01/10/2002.

**Changes to legislation:**

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