



Education Reform Act 1988

1988 CHAPTER 40

PART II

HIGHER AND FURTHER EDUCATION

CHAPTER II

REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

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

129 Designation of institutions.

[(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by [^{F1}the Higher Education Funding Council for Wales]—

- (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.

(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]

^{F2}(3)

^{F2}(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 [^{F3}the Companies Act 2006];

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- (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 [^{F4}articles of association] have been approved by the Secretary of State; and
- (e) an order has been made under section [^{F5}127A or] 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

- F1** Words in s. 129(1) substituted (1.8.2019) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 11 para. 9](#); S.I. 2018/1226, reg. 4(p)
- F2** S. 129(3)(4) repealed (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), ss. 72(1)(b), 93(2), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).
- F3** Words in s. 129(5)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 96\(2\)\(a\)](#) (with art. 10)
- F4** Words in s. 129(5)(d) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 96\(2\)\(b\)](#) (with art. 10)
- F5** Words in s. 129(5)(e) inserted (1.8.2019) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 8 para. 18](#); S.I. 2018/1226, reg. 4(o)

Modifications etc. (not altering text)

- C1** 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](#).

[^{F6}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),
 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.

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- (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

F6 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](#).

129B ^{F7} **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

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- (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 [^{F8}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 [^{F9}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

- F7** 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](#).
- F8** Words in s. 129B(3)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 96\(3\)](#) (with art. 10)
- F9** Words in s. 129B(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 96\(3\)](#) (with art. 10)

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 [^{F10}local 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.
- (4) Subsection (2) above shall not apply to—

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- (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.

Textual Amendments

- F10** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 4(2)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 120(4A) inserted by [2022 asc 1 Sch. 4 para. 5\(2\)](#)
- s. 124A(9A)(9B) inserted by [2022 asc 1 s. 137\(3\)](#)
- s. 125(8)(9) inserted by [2022 asc 1 s. 138\(2\)](#)
- s. 128(1)(b)(iib) omitted by [2011 c. 21 Sch. 16 para. 8](#)
- s. 128(1)(b)(iia) omitted by [2015 c. 20 Sch. 14 para. 35](#)
- s. 128(1A)-(1C) inserted by [2022 asc 1 s. 139\(3\)](#)
- s. 128(7)-(10) inserted by [2022 asc 1 s. 139\(6\)](#)
- s. 232(4ZA)-(4ZC) inserted by [2022 asc 1 s. 138\(3\)\(b\)](#)