



Further and Higher Education Act 1992

1992 CHAPTER 13

PART I

FURTHER EDUCATION

CHAPTER II

INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

Designation of institutions for funding by the councils

28 Designation of institutions.

- (1) The Secretary of State may by order designate [^{F1}for the purposes of this section]any educational institution principally concerned with the provision of one or both of the following—
 - (a) full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, and
 - (b) courses of further or higher education,if the institution meets the requirements of subsection (2) below.
- (2) The institution must be one of the following—
 - (a) a voluntary aided school [^{F2}(other than one belonging to a group of schools for which a foundation body acts under section 21 of the School Standards and Framework Act 1998)],
 - ^{F3}(b)
 - (c) an institution which is grant-aided or eligible to receive aid by way of grant.

[^{F4}or

 - (d) an institution established for the purpose of being principally concerned with the provision of one or both of the kinds of education specified in subsection (1) above.]

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- (3) For the purposes of subsection (2)(c) above an institution is grant-aided or eligible to receive aid by way of grant if it is maintained by persons other than local education authorities who—
- (a) receive any grants under regulations made under [^{F5}section 485 of the Education Act 1996], or
 - (b) are eligible to receive such grants.
- [^{F6}(3A) The Secretary of State shall not make an order under this section in respect of a voluntary aided school without the consent of the governing body and the local education authority.]
- (4) In this Part of this Act “designated institution” means an institution in relation to which a designation under this section has effect.

Textual Amendments

- F1** Words in s. 28(1) substituted (1.4.2001) by 2000 c. 21, s. 143(1)(a) (with s. 150); S.I. 2001/1274, art. 2, **Sch. Pt. I**; S.I. 2001/654, art. 2, **Sch. Pt. I**
- F2** Words in s. 28(2)(a) inserted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 38** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F3** S. 28(2)(b) repealed (1.10.2000 for E. and 1.4.2001 for W.), by 2000 c. 21, ss. 143(1)(b), 153, **Sch. 11** (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F4** S. 28(2)(d) and the word preceding it added (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 143(1)(c) (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F5** Words in s. 28(3)(a) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 109** (with ss. 1(4), 561, 562, **Sch. 39**)
- F6** S. 28(3A) inserted (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 112 (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**; S.I. 2001/1274, art. 2, **Sch. Pt. I**

Commencement Information

- I1** S. 28 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

29 Government and conduct of designated institutions.

- (1) This section has effect in relation to any designated institution, other than—
- (a) an institution conducted by a company, or
 - (b) an institution conducted by an unincorporated association if the order designating the institution provides for its exemption.
- (2) For each institution in relation to which this section has effect 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 [^{F7}subsections (3) and (7A)] below.
- (3) Those requirements are that the instrument—
- (a) was in force when the designation took effect and is approved for the purposes of this section by the Secretary of State,

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- (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 Secretary of State, or
 - (c) is made under subsection (6) below.
- (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 governing body of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) The Secretary of State may by order make either of the instruments referred to in subsection (2) above and any instrument made by him under this subsection may replace wholly or partly any existing regulatory instrument.
- (7) If an instrument approved by the Secretary of State 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 governing body of the institution,
- the instrument may be modified by the governing body.
- [^{F8}(7A) Provision made by the instrument in relation to the appointment of members of the governing body shall take into account the members who may be appointed by—
- (a) the Learning and Skills Council for England under section 11 of the Learning and Skills Act 2000, or
 - (b) the [^{F9}National Assembly for Wales] under section 39 of that Act.]
- (8) The Secretary of State may by order modify[^{F10}, replace or revoke] either of the instruments referred to in subsection (2) above and no instrument approved by him for the purposes of this section may be modified[^{F10}, replaced or revoked] by any other person without the Secretary of State’s consent.
- (9) Before exercising any power under subsection (6) or (8) above in relation to any instrument the Secretary of State 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 make or, as the case may be, 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 him to be practicable to do so.

Textual Amendments

- F7** Words in s. 29(2) substituted (1.4.2001) by 2000 c. 21, s. 149, **Sch. 9 para. 24(2)** (with s. 150); S.I. 2001/654, art. 2, **Sch. Pt. II** (with transitional provisions in art. 3); S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F8** S. 29(7A) inserted (1.4.2001) by 2000 c. 21, s. 149, **Sch. 9 para. 24(3)** (with s. 150); S.I. 2001/654, art. 2, **Sch. Pt. II** (with transitional provisions in art. 3); S.I. 2001/1274, art. 2, **Sch. Pt. I**

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- F9** Words in s. 29(7A)(b) substituted (1.4.2006) by [The National Council for Education and Training for Wales \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005 \(S.I. 2005/3238\)](#), art. 1(1), [Sch. 1 para. 17](#) (with art. 7)
- F10** Words in s. 29(8) inserted (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, s. 149, [Sch. 9 para. 24\(4\)](#) (with s. 150); S.I. 2000/2559, art. 2(1), [Sch. Pt. I](#); S.I. 2001/1274, art. 2, [Sch. Pt. I](#)

Commencement Information

- I2** S. 29 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

[^{F11}30 Special provision for certain institutions.

- (1) Notwithstanding anything in section 29 of this Act, the instrument of government of a designated institution to which this section applies must provide—
- (a) for the governing body of the institution to include persons appointed for the purpose of securing so far as practicable that the established character of the institution at the time of its designation is preserved and developed and, in particular, that the institution is conducted in accordance with any trust deed relating to it, and
 - (b) for the majority of members of the governing body to be such governors.
- (2) This section applies to—
- (a) an institution which, when designated, was a voluntary aided school, and
 - (b) an institution specified, or falling within a class specified, by the Secretary of State by order.
- (3) The Secretary of State may specify an institution or a class of institutions only if the institution or each member of the class is principally concerned with the provision of the education specified in section 28(1)(a) above.
- (4) The reference in subsection (1)(a) above to the established character of an institution is, in relation to an institution established shortly before or at the same time as being designated, a reference to the character which the institution is intended to have on its establishment.]

Textual Amendments

- F11** S. 30 substituted (1.10.2000 for E. and 1.4.2001 for W.) by 2000 c. 21, [s. 143\(2\)](#) (with s. 150); S.I. 2000/2559, art. 2(1), [Sch. Pt. I](#); S.I. 2001/1274, art. 2, [Sch. Pt. I](#)

31 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).

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- [^{F12}(2A) Provision made by the articles of association of the company in relation to the appointment of members of the governing body shall take into account the members who may be appointed by—
- (a) the Learning and Skills Council for England under section 11 of the Learning and Skills Act 2000, or
 - (b) the [^{F13}National Assembly for Wales] under section 39 of that Act.]
- (3) The Secretary of State may give to the persons who appear to him to have effective control over the company such directions as he thinks fit for securing that—
- (a) the [^{F14}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 he may specify in the direction.
- (4) No amendment of the [^{F15}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 Secretary of State for his approval and he has notified his approval to the company.
- (5) Before giving any directions under subsection (3) above the Secretary of State shall consult the persons who appear to him to have effective control over the company.

Textual Amendments

- F12** S. 31(2A) inserted (1.4.2001) by 2000 c. 21, s. 149, **Sch. 9 para. 25**; S.I. 2001/654, art. 2, **Sch. Pt. II** (with transitional provisions in art. 3); S.I. 2001/1274, art. 2, **Sch. Pt. I**
- F13** Words in s. 31(2A)(b) substituted (1.4.2006) by [The National Council for Education and Training for Wales \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005](#) (S.I. 2005/3238), art. 1(1), **Sch. 1 para. 18** (with art. 7)
- F14** Words in s. 31(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. 131** (with art. 10)
- F15** Words in s. 31(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. 131** (with art. 10)

Commencement Information

- I3** S. 31 wholly in force at 6.5.1992 see s. 94(3) and S.I. 1992/831, art. 2, **Sch. 1**

32 Transfer of property, etc., to designated institutions.

- (1) This section has effect in relation to an institution designated under section 28 of this Act in any case where—
- (a) the order designating the institution under that section so provides, and
 - (b) when designated the institution was a voluntary aided school or an institution (other than a school) assisted by a local education authority.
- (2) Subject to subsection (4) below and section 36 of this Act, on the designation date—
- (a) all land or other property which, immediately before that date, was property of a former assisting authority used or held for the purposes of the 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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shall be transferred to and, by virtue of this Act, vest in the appropriate transferees.

^{F16}(2A)

- (3) In this section and section 33 of this Act—
 - “appropriate transferees” means—
 - (a) in relation to an institution conducted by a company, the company, 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,
 - “designation date”, in relation to a designated institution, means the date on which the designation takes effect, and
 - “former assisting authority” means—
 - (a) in relation to an institution which when designated was a voluntary aided school, the local education authority which maintained the school, and
 - (b) in relation to an institution which when designated was an institution (other than a school) assisted by a local education authority, that authority.
- (4) Subsection (2) above shall not apply to—
 - (a) any liability of a former assisting authority in respect of the principal of, or interest on, any loan, or
 - (b) any property, rights or liabilities excluded under subsections (5) or (6) below.
- (5) If before the designation date—
 - (a) the appropriate transferees and the former assisting authority have agreed in writing to exclude any land, and
 - (b) the Secretary of State has given his written approval of the agreement, the land, and any rights or liabilities relating to it, shall be excluded.
- (6) If in default of agreement under subsection (5) above—
 - (a) the appropriate transferees or the former assisting authority have applied to the Secretary of State to exclude any land, and
 - (b) the Secretary of State has by order directed its exclusion, the land, and any rights or liabilities relating to it, shall be excluded.
- (7) An agreement under subsection (5) above may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (6) above—
 - (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
 - (b) shall have effect as if contained in such an agreement.
- (8) References in subsections (5) and (6) above to anything done, other than the making of an order, include anything done before the passing of this Act.

Textual Amendments

F16 S. 32(2A) repealed (1.4.2001) by 2000 c. 21, ss. 143(3), 153, **Sch. 11**; S.I. 2001/654, art. 2, **Sch. Pt. II** (with transitional provisions in art. 3); S.I. 2001/1274, art. 2, **Sch. Pt. I**

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Commencement Information

14 S. 32 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

33 Provisions supplementary to section 32.

- (1) Subject to section 36(2) of this Act, where persons appearing to the Secretary of State to be trustees holding property for the purposes of the institution are the appropriate transferee, any land or other property or rights transferred to them under section 32 of this Act shall be held on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be specified in the order designating the institution or, if no such trust deed is so specified, on trust for the general purposes of the institution.
- (2) Where persons so appearing to the Secretary of State are the appropriate transferee, 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.
- (3) Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time shall be taken for the purposes of that section 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).
- (4) References in this Part of this Act to the operative date, in relation to a designated institution, are to the designation date.

Commencement Information

15 S. 33 wholly in force at 6.5.1992 see s. 94(3) and [S.I. 1992/831, art. 2, Sch. 1](#)

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