



# Further and Higher Education Act 1992

## 1992 CHAPTER 13

### PART I

#### FURTHER EDUCATION

### CHAPTER II

#### INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR

##### *Property, rights and liabilities: general*

#### **37 Attribution of surpluses and deficits**

(1) This section applies where, immediately before the date on which any educational institution becomes an institution within the further education sector—

- (a) it is maintained by a local education authority, or
- (b) it is a designated assisted institution dependent on assistance from a local education authority,

and in the financial year ending immediately before that date (referred to in this section as the “relevant financial year”), the institution was covered by a scheme under section 33 or 139 of the Education Reform Act 1988 (schemes for financing schools or institutions of further or higher education); and in this section, in relation to the institution, the scheme is referred to as the “applicable scheme” and the authority concerned as the “assisting authority”.

(2) If the net expenditure of the institution for the relevant financial year is less than the net budget share of the institution for that year, the assisting authority shall pay to the new governing body of the institution a sum equal to the shortfall.

(3) If the net expenditure of the institution for the relevant financial year is greater than the net budget share of the institution for that year, the new governing body of the institution shall pay to the assisting authority a sum equal to the excess.

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*Status: This is the original version (as it was originally enacted).*

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- (4) In this section, in respect of any financial year of the institution—  
“net budget share” means the budget share—  
(i) less such amount as may be prescribed in respect of any earned income,  
and  
(ii) plus such amount as may be prescribed in respect of any surplus, and  
“net expenditure” means any expenditure, less such amount as may be prescribed in respect of earned income.
- (5) Any sum payable under this section shall be paid in accordance with regulations, and the regulations may provide for sums to be payable by prescribed instalments and for sums to carry prescribed interest.
- (6) Regulations may, in the case of any institution where the operative date falls within a financial year in which the institution was covered by such a scheme as is referred to in subsection (1) above, make provision for applying this section with modifications relating to the amounts that are to be taken for the purposes of this section to be the net budget share and the net expenditure of the institution for that year.
- (7) In this section, in respect of any financial year of the institution—  
“budget share” means the amount which is that institution’s budget share for the relevant financial year for the purposes of Chapter III of Part I or Chapter III of Part II of the Education Reform Act 1988,  
“earned income” means any sums, other than sums appropriated for the purposes of the institution by the assisting authority, received by the institution in respect of the relevant financial year which the institution is authorised under the applicable scheme to retain,  
“expenditure” means such expenditure for the purposes of the institution incurred in the relevant financial year by the former governing body or the assisting authority as may be prescribed,  
“financial year” has the same meaning as in the Education Reform Act 1988,  
“former governing body” means the governing body of the institution immediately before the operative date and “new governing body” means the governing body of the institution on or after that date, and  
“surplus” means the amount of any surplus which the institution is authorised under the applicable scheme to carry forward to the relevant financial year.
- (8) In this section—  
(a) references to a designated assisted institution are references to an institution designated by or under regulations made, or having effect as if made, under section 218(10)(b) of the Education Reform Act 1988 as an institution substantially dependent for its maintenance on assistance from local education authorities, and  
(b) “prescribed” means prescribed by regulations.
- (9) For the purposes of this section a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either—  
(a) it is not assisted by any other local education authority, or

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- (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.