

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: the Sixth Form College Sector

Section 125: Sixth form college sector

339. This Part introduces Schedule 8, which contains provisions for a new sixth form college sector.

Section 126: Removal of power to establish sixth form schools

340. This section prevents LEAs from establishing additional sixth form schools, but does not affect existing sixth form schools, which will continue to operate in exactly the same way as other schools maintained by the LEA.

Schedule 8: Sixth form college sector

341. Paragraph 3 of Schedule 8 inserts new provisions for sixth form college corporations in England into the Further and Higher Education Act 1992 (“the FHEA 1992”).

Section 33A: Initial designation of existing bodies corporate as sixth form college corporations

342. This new section gives the Secretary of State a power to designate, by order, specified existing further education (“FE”) corporations as “sixth form college corporations”. This initial designation power will take the form of a list of institutions. Designation will take effect from a date that is specified in the order. The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.
343. The sixth form college corporations designated under this section will include both FE corporations established under section 16 of the FHEA 1992 and “designated institutions”. Some colleges that were sixth form colleges before 1992 entered the further education sector by being designated under section 28 of the FHEA 1992, and were later incorporated as FE corporations under section 143 of the Learning and Skills Act 2000.
344. This power is exercisable only once and not after a date specified by order.

Section 33B: Subsequent designation of existing bodies corporate as sixth form college corporations

345. This new section gives the Secretary of State further power to designate, by order, FE corporations as sixth form college corporations once the power in section 33A is no longer exercisable. A designation order may be considered only after the governing

body of a FE college has applied to the Secretary of State and if, on the date of application, at least 80% of the total enrolment number at the institution is aged 16 or over but under 19. The “total enrolment number” is defined as the full-time equivalence number (as calculated under Schedule 3 to the FHEA 1992). The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.

Section 33C: Establishment of new bodies corporate as sixth form college corporations

346. This section gives the Secretary of State the power to establish, by order, a sixth form college corporation. The local education authority must first publish proposals in line with the requirements set out in subsection (3). On establishment, at least 80% of the total enrolment number at the institution must be aged 16 to 18. The order will specify the date of establishment and may provide for the name of the new corporation.

Section 33D: Conversion of sixth form college corporations into further education corporations

347. Under this new section, the Secretary of State may, by order, convert a sixth form college corporation into a FE corporation. This is the opposite of the process under section 33B for the designation of a sixth form college. The governing body of the sixth form college must apply to the Secretary of State and he must be satisfied that it is no longer appropriate for the college to remain a sixth form college. So that change does not destabilise colleges, subsection (3) prevents a sixth form college from seeking to convert for two years from the date that it is designated or established as a sixth form college. The order may, as with designation or establishment orders, ensure the continuity of governance from sixth form college status to FE college status.

Section 33E: Principal powers of a sixth form college corporation, Section 33F: Supplementary powers of a sixth form college corporation, Section 33G: Further provision about supplementary powers

348. These sections set out the principal and supplementary powers of sixth form college corporations, reflecting powers of FE corporations in sections 18 and 19 of the FHEA 1992.

Section 33H: Duty in relation to promotion of well-being of local area

349. This new section will place a duty on sixth form college corporations, when providing education and training for young people and adults, to take account of the way in which they contribute to the economic and social well-being of people who live and work in the area. This mirrors section 256 which places a similar duty on FE corporations.

Section 33I: Constitution of sixth form college corporation and conduct of sixth form college, Section 33J: Special provision for certain institutions, Section 33K: Instrument and articles of new sixth form college corporations, Section 33L: Changes to instruments and articles

350. These new sections contain provisions relating to the instruments and articles of government of sixth form colleges. Under section 33I, all sixth form colleges must have instruments and articles of government. Section 33J makes provision requiring sixth form colleges of a particular character — mainly faith-based institutions and those established by foundations — to reflect those characteristics in their trust deeds and the membership of their governing bodies. The initial instruments and articles of government of a new sixth form college established under section 33C will be drawn up by the YPLA (section 33K). Section 33L sets out procedures by which the YPLA may

modify instruments and articles of government in consultation with sixth form college corporations.

Section 33M: Charitable status of a sixth form college corporation

351. This new section provides that sixth form college corporations are to be charities within the meaning of the Charities Act 1993.

Section 33N: Dissolution of sixth form college corporations

352. Section 33N gives power to the Secretary of State to dissolve a sixth form college corporation and transfer the property, rights and liabilities of the corporation to another person or corporation, which may include the responsible LEA. Orders may make provision for the transfer of staff (subsection (8)). Before making an order to dissolve a sixth form college corporation and transfer assets and liabilities, the Secretary of State must consult the corporation and the responsible LEA.
353. *Paragraphs 4 to 7* of Schedule 8 make amendments to the FHEA 1992 to distinguish sixth form colleges and sixth form college corporations from FE colleges and FE college corporations. Paragraph 8 of the Schedule amends the provisions of the FHEA 1992 relating to intervention in colleges to add new sections 56E to 56J.
354. Section 56D (inserted by paragraph 11 of Schedule 6) requires a LEA or the YPLA to notify the Chief Executive of Skills Funding about concerns that they have about FE colleges other than sixth form colleges. The Chief Executive must have regard to those views when considering whether to intervene.

Sections 56E and 56F: Intervention by LEAs: sixth form colleges

355. Section 56E replicates for local education authorities the powers previously held by the LSC for intervention in sixth form colleges. This section sets out the matters that would trigger consideration of intervention in a college (subsection (2)) and the arrangements by which the LEA must notify the Secretary of State and the YPLA, and the college, of their intention to intervene and the reasons for doing so. The powers of the LEA are explained in subsection (6). The LEA may give directions to the governing body to make arrangements for collaboration (subsection (7)) and to dismiss a member of staff, if the governing body have power under their institution's instruments and articles of government (subsection (10)). The governing body must comply with any directions made under this section. In addition section 56F allows a local education authority to appoint no more than two additional members of a governing body of a sixth form college. The local education authority must consult the governing body before exercising its power to appoint a member of the governing body.

Section 56G: Intervention policy: sixth form colleges

356. This section requires the YPLA to prepare a statement of the intervention policy, to which LEAs are required to have regard (subsection (7)) when using their powers under section 56E. The YPLA must consult on the statement and send a copy to the Secretary of State, which he is required to lay before each House of Parliament. The YPLA must then publish that policy, as approved by the Secretary of State.

Sections 56H & 56I: Intervention by YPLA

357. Section 56H allows the YPLA to intervene in the running of a sixth form college in the circumstances set out in subsection (1). These are that the YPLA proposes to commission the provision of education or training at the college and is satisfied that the grounds in section 56E for intervention by a LEA are satisfied (and that it would be appropriate for a LEA to exercise its powers under that section). The YPLA's intervention powers correspond to those of a LEA (section 56H(5)). Section 56I gives the YPLA power to appoint additional governors, mirroring LEAs' powers under

These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009

section 56F. The YPLA must consult the governing body before exercising its power to appoint a member of the governing body

Section 56J: Notification by Chief Executive of Skills Funding of possible grounds for intervention

358. This new section requires the Chief Executive of Skills Funding to notify the responsible local education authority and YPLA if he has concerns about post-19 provision at sixth form colleges. The local education authority, or the YPLA where it is involved under its powers in section 56H, must have regard to the Chief Executive's views when considering whether to intervene. This is the mirror provision of section 56D.
359. Paragraphs 9 to 15 make further consequential amendments including to definitions of terms used in the new sections.