

STATUTORY INSTRUMENTS

**1997 No. 1772**

**The Further Education (Northern Ireland) Order 1997**

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Further Education (Northern Ireland) Order 1997.

(2) Subject to paragraph (3), this Order shall come into operation on such day as the Department may by order appoint<sup>F1</sup>.

(3) This Article, Articles 2, 10 and 24 and Schedule 2 shall come into operation on the expiration of 2 months from the day on which this Order is made.

(4) An order under paragraph (2) may contain such transitional provisions as the Department thinks necessary or expedient.

**F1** fully exercised by SR 1998/82

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“facilities” includes land, goods and services;

“further education” has the meaning assigned by Article 3;

“higher education” means education provided by means of a course of any description mentioned in Schedule 1;

“institution of further education” means, subject to paragraph (3), an institution which is recognised as such by the Department under Article 8;

“liability” includes obligation;

“the transfer date” means the day appointed by the Department under Article 1(2);

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989.

<sup>F2</sup>(3) .....

(4) The Department may by order amend Schedule 1.

(5) Subject to paragraph (6), for the purposes of this Order 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 of further education for persons of his age.

(6) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

(7) Any direction, consent or determination given by the Department under this Order shall be in writing.

<sup>F3</sup>(8) .....

(9) This Order shall be construed as one with the 1986 Order and accordingly Article 2(2) of the 1986 Order, in so far as it relates to the definition of words or expressions used in that Order and in this Order, shall apply for the purposes of this Order as it applies for the purposes of that Order.

<b>F2</b>	Art. 2(3) repealed (1.4.2015) by <a href="#">Education Act (Northern Ireland) 2014 (c. 12)</a> , s. 7(2)(c), <a href="#">Sch. 4</a> (with <a href="#">Sch. 2 para. 4(3)</a> ); S.R. 2015/35, art. 2(b)
<b>F3</b>	Art. 2(8) repealed (1.4.2015) by <a href="#">Education Act (Northern Ireland) 2014 (c. 12)</a> , s. 7(2)(c), <a href="#">Sch. 4</a> (with <a href="#">Sch. 2 para. 4(3)</a> ); S.R. 2015/35, art. 2(b)

**Definition of “further education”**

3.—(1) Subject to the following provisions of this Article, in this Order “further education” means—

- (a) full-time and part-time education suitable to the requirements of persons over compulsory school age (including vocational training); and
- (b) organized leisure-time occupation provided in connection with the provision of such education.

(2) In this Order “further education” does not include—

- (a) higher education; or
- (b) full-time education suitable to the requirements of senior pupils over compulsory school age where provided at a school.

(3) For the purposes of this Order—

- (a) “organized leisure-time occupation” means leisure-time occupation, in such organized cultural, training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose;
- (b) “vocational training” includes continuing education for persons already in employment or already engaged in a vocation as well as education with a view to entry into any employment or vocation.

*Duties and powers of the Department*

**Powers of Department in relation to further education**

4.—(1) The Department shall have the power to do all that is necessary or expedient for the purposes of the exercise of its duty under Article 3 of the 1989 Order in so far as it relates to further education.

(2) In particular, the Department may—

- (a) make grants, loans and other payments in accordance with Article 5—
  - (i) to the governing bodies of institutions of further education; or

- (ii) to others for the purposes of, or in connection with, the provision of further education;
  - (b) establish a new institution of further education in accordance with Article 6;
  - (c) amalgamate two or more institutions of further education to form a single new institution of further education in accordance with Article 7;
  - (d) recognise an educational establishment as an institution of further education in accordance with Article 8;
  - (e) provide for the discontinuance of an institution of further education in accordance with Article 9.
- (3) In discharging its functions under this Order, the Department shall have regard to the requirements of persons over compulsory school age who have learning difficulties.

### **Funding of further education**

- 5.—(1) The Department may make grants, loans or other payments—
- (a) to the governing body of an institution of further education in respect of any expenditure incurred or to be incurred by it in connection with its functions under this Order in relation to the institution; and
  - (b) to such other persons as appear to it to be appropriate in respect of the expenditure of such persons incurred or to be incurred for the purposes of, or in connection with, the provision of further education.
- (2) Grants, loans and other payments under this Article shall be of such amounts as the Department may determine.
- (3) A grant, loan or other payment under this Article may be made subject to such conditions as the Department thinks appropriate and such conditions—
- (a) may be imposed before, after or at the time the grant, loan or other payment is made; and
  - (b) may relate to any time, whether before or after such time.
- (4) The terms and conditions on which the Department may make any grants, loans or other payments under this Article may, in particular, include conditions—
- (a) enabling the Department to require the repayment, in whole or in part, of sums paid by it if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to the Department in accordance with any other condition remains unpaid,
- but shall not relate to the application by the person to whom the grants, loans or other payments are made of any sums derived otherwise than from the Department.
- (5) A condition imposed under paragraph (3) shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

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

- C1 [Art. 5\(3\)](#) modified (13.2.2006) by [Higher Education \(Northern Ireland\) Order 2005 \(S.I. 2005/1116 \(N.I. 5\)\)](#), arts. 1(3), 4(1)(c); S.R. 2006/30, [art. 2](#)

### **Establishment of new institution of further education**

- 6.—(1) The Department may establish a new institution of further education.

(2) Before establishing a new institution of further education under this Article the Department shall consult—

- [<sup>F4</sup>(a) the Authority; and]
- (b) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) Where the Department proposes to establish a new institution of further education, it shall, as soon as reasonably practicable, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

**F4** Art. 6(2)(a) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 18\(1\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

### **Amalgamations of institutions of further education**

7.—(1) The Department may direct that two or more institutions of further education shall be amalgamated to form a single new institution of further education (in this Article referred to as “the new institution”).

(2) Before giving any direction under this Article affecting any institutions of further education, the Department shall consult—

- (a) the governing bodies of those institutions;
- [<sup>F5</sup>(b) the Authority; and]
- (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) A direction under this Article providing for the amalgamation of two or more institutions of further education shall specify the date (referred to in this Article as “the implementation date”) on which the amalgamation is to take effect.

(4) Where the Department issues a direction under this Article, it shall be the duty of the governing bodies of the institutions of further education affected by the direction to take all such steps as are necessary to give effect to the direction.

(5) The Department shall, not later than the implementation date, ensure—

- (a) that an instrument of government and articles of government are made for the new institution; and
- (b) that a governing body is established for the new institution under this Order.

(6) On the implementation date—

- (a) all property, rights and liabilities of the governing bodies of the institutions affected by the direction shall be transferred to, and by virtue of this Article vest in, the governing body of the new institution;
- (b) the institutions affected by the direction shall cease to exist; and
- (c) the governing bodies of those institutions shall be dissolved.

(7) A contract of employment between a person and the governing body of an institution of further education affected by a direction under this Article shall have effect from the implementation date as if originally made between that person and the governing body of the new institution.

(8) Without prejudice to paragraph (7)—

- (a) all the rights, powers, duties and liabilities of the governing body of the institution affected by the direction under or in connection with a contract to which that paragraph applies shall by virtue of this Article be transferred to the governing body of the new institution on the implementation date; and
  - (b) anything done before that date by or in relation to the governing body of the institution affected by the direction in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the governing body of the new institution.
- (9) Paragraphs (7) and (8) 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 Article.
- (10) Any land or other property transferred to the governing body of the new institution under this Article which immediately before the implementation date was held on trust shall vest in that body as trustee on the trusts applicable immediately before that date under any trust deed regulating the use of the land or other property for the purposes of an institution of further education.
- (11) Stamp duty shall not be chargeable in respect of any transfer effected by this Article.
- (12) For the purposes of this Article an institution of further education is affected by a direction under this Article if, and only if, it is one of the institutions which are to be amalgamated in pursuance of the direction.

**F5** [Art. 7\(2\)\(b\)](#) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 18\(2\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

### **Recognition of institutions of further education**

- 8.—**(1) Subject to paragraphs (2) and (3), the Department may recognise an educational establishment as an institution of further education for the purposes of this Order.
- (2) The Department may not recognise an educational establishment except with the consent of the body responsible for the management of that establishment.
- (3) Before recognising an educational establishment, the Department shall consult—
- <sup>F6</sup>(a) the Authority;
  - (b) the body responsible for the management of that establishment; and
  - (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.
- (4) The Department shall, not later than the date on which an institution of further education is recognised by virtue of paragraph (1), ensure—
- (a) that an instrument of government and articles of government are made for the institution; and
  - (b) that a governing body is established for the institution under this Order.
- (5) An institution of further education to which Article 10 applies shall be taken for the purposes of this Order to be recognised by the Department on the transfer date.
- (6) An institution of further education which—
- (a) is established by the Department under Article 6; or
  - (b) is formed by the amalgamation of two or more institutions of further education under Article 7;

shall be taken for the purposes of this Order to be recognised by the Department on the date on which a governing body is established for the institution under this Order.

(7) The Department shall maintain, and publish in such manner as it thinks fit, a list of institutions for the time being recognised by it.

(8) In this Article “recognised” means recognised under this Article.

**F6** Art. 8(3)(a) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), **Sch. 3 para. 18(3)** (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

### **Discontinuance of institution of further education**

**9.**—(1) The Department may by order provide for the discontinuance of an institution of further education.

(2) Before making any order under this Article in relation to an institution of further education, the Department shall consult with—

- (a) the governing body of the institution;
- [<sup>F7</sup>(b) the Authority; and]
- (c) the governing bodies of such institutions of further education and such other persons as appear to the Department to be appropriate.

(3) An order made under this Article in relation to an institution of further education shall—

- (a) contain provision for the winding-up of the governing body of that institution; and
- (b) provide for the dissolution of that body on such date as is determined by or in accordance with the order.

(4) An order made under this Article in relation to an institution of further education may include provision—

- (a) for the transfer of property, rights and liabilities of the governing body of the institution to—
  - (i) the Department; or
  - (ii) subject to paragraph (5), such other body or person as may be specified in the order;
- (b) applying Article 7(7) to (9) with such modifications as the Department considers necessary or appropriate;
- (c) for the payment by the Department of any expenses incurred in the winding-up of the governing body or the discontinuance of the institution;
- (d) imposing such duties, or conferring such additional powers, on the governing body of the institution in relation to the winding-up and discontinuance as the Department may consider appropriate;
- (e) for the exercise of any of the governing body's functions by any member of that body specified in the order;
- (f) for the appointment of a person to administer the winding-up and discontinuance, and for such person to have such functions as appear to the Department necessary or expedient for such purposes and are specified in the order;
- (g) of such incidental, supplementary, transitional or ancillary nature as appears to the Department to be necessary or expedient for the purpose of the winding-up and discontinuance.

(5) An order transferring any property, rights or liabilities to a person or body other than the Department—

- (a) shall not be made except with the consent of that person or body; and

- (b) may impose such conditions as to the use or disposal of any property and rights so transferred as may be specified in the order.
- (6) Where land or other property was held on trust for the purposes of an institution of further education, an order under this Article may vest the property in the Department or another body or person beneficially or on such trusts as appear to the Department to be appropriate.
- (7) Stamp duty shall not be chargeable in respect of any transfer effected by an order under this Article.
- (8) The making of an order under this Article in relation to an institution of further education shall not affect—
  - (a) the power of the Department to give directions to the governing body of that institution under Article 101 of the 1986 Order; or
  - (b) the duty of the governing body to comply with any directions so given.
- (9) Article 101 of the 1986 Order shall apply in relation to a person appointed under paragraph (4)
- (e) as it applies in relation to a relevant authority within the meaning of that Article.

**F7** Art. 9(2)(b) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 18\(4\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

#### *Transfer of management of institutions of further education*

### **Transfer of management of institutions of further education from boards to incorporated governing bodies**

- 10.**—(1) With effect from the transfer date—
- (a) each institution of further education shall cease to be under the management of [<sup>F8</sup>the Authority] which, immediately before that date, was responsible for its management;
  - (b) the governing body of each such institution constituted under Part VII of the 1989 Order shall cease to exist;
  - (c) there shall be established under this Order for each such institution a body corporate to be known as the governing body of that institution; and
  - (d) each such institution shall be under the management of that governing body.
- (2) Schedule 2 (which provides for the transfer of certain property, rights, liabilities and staff to the governing bodies of institutions of further education established under this Order and makes other provision consequential on, related to, or for the purpose of facilitating, the transfer effected by paragraph (1)) shall have effect.

**F8** Words in Order substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), s. 7(2)(c), [Sch. 3 para. 1\(1\)\(a\)](#) (with [Sch. 2 para. 4\(3\)](#), [Sch. 3 para. 1\(2\)](#)); S.R. 2015/35, art. 2(b)

#### *Governing bodies – constitution, etc.*

### **Constitution of governing body and conduct of institution**

- 11.**—(1) For every institution of further education there shall be—
- (a) an instrument providing for the constitution of the governing body of the institution (to be known as the instrument of government); and

- (b) an instrument in accordance with which the governing body and the institution are to be conducted (to be known as the articles of government).
- (2) Schedule 3 (which makes general provision concerning governing bodies of institutions of further education) shall have effect.
- (3) The instrument of government and articles of government of an institution of further education—
  - (a) shall comply with the requirements of Schedule 3; and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.

### **Making and amendment of instruments of government and articles of government**

**12.**—(1) The initial instrument of government and articles of government of an institution shall be made by order of the Department after consultation with such persons or bodies as appear to it to be appropriate.

- (2) The Department may—
  - (a) if the governing body of an institution of further education submits a draft of an instrument of government or articles of government to have effect in place of the existing instrument or articles, by order make a new instrument of government or articles of government in terms of the draft or in such terms as it thinks fit;
  - (b) if such a body submits draft amendments of the existing instrument of government or articles of government, by order amend the existing instrument or articles in terms of the draft or in such terms as it thinks fit.
- (3) The Department shall not—
  - (a) make a new instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(a), or
  - (b) amend an existing instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(b),

unless it has consulted the governing body.

(4) The Department may direct all governing bodies or any particular governing body specified in the direction to submit—

- (a) a draft under paragraph (2)(a) making such provision as is specified in the direction; or
- (b) a draft under paragraph (2)(b) making such amendments as are so specified.

(5) Before giving any direction under paragraph (4) to any governing body the Department shall consult that body.

- (6) In this Article—
  - (a) references to the initial instrument of government and articles of government of an institution are to the instrument and articles which are to have effect—
    - (i) as from the establishment of the governing body of the institution, in the case of an institution established under Article 6 or an institution formed by an amalgamation under Article 7;
    - (ii) as from the date on which the institution is recognised by the Department (within the meaning of Article 8), in the case of an institution recognised by virtue of paragraph (1) of that Article;
    - (iii) as from the transfer date, in the case of an institution to which Article 10 applies;



- (b) references to the existing instrument of government or articles of government of an institution of further education are references to the instrument of government or articles of government for the time being having effect in relation to the institution under this Article.

### *Duties and powers of governing bodies*

#### **General duties of governing bodies**

**13.**—(1) It shall be the duty of the governing body of an institution of further education—

- (a) to secure the efficient and effective management of the institution; and
- (b) to ensure that the institution provides, or secures the provision of, suitable and efficient further education to students of the institution.

(2) In carrying out its duty under paragraph (1), the governing body of an institution of further education shall have regard to the requirements of persons over compulsory school age who have learning difficulties.

(3) In carrying out its duty under paragraph (1)(b), the governing body of an institution of further education shall have regard to—

- (a) the provision of education in the area in which the institution is situated; and
- (b) the educational needs of industry and commerce, and the community, in that area.

#### **Principal powers of governing body**

**14.**—(1) The governing body of an institution of further education shall have the power—

- (a) to provide or secure the provision of further education and (subject to Article 16) higher education;

[<sup>F9</sup>(aa) to provide secondary education—

- (i) for registered pupils of a grant-aided school in accordance with arrangements entered into under Article 21 of the Education (Northern Ireland) Order 2006;
- (ii) for children who are not registered pupils at any grant-aided school in accordance with arrangements entered into with a board under Article 83(2)(b) of the Education (Northern Ireland) Order 1998]

- (b) to charge fees for or in connection with the provision by virtue of sub-paragraph (a) of any form of further or higher education;
- (c) to provide to students of the institution such assistance of a financial or other nature (including waiving or granting remission of fees) as it may consider appropriate;
- (d) to manage the institution, and for that purpose to receive any property, rights and liabilities transferred to it under this Order;
- (e) to provide, or secure the provision of, facilities of any description appearing to it to be necessary or expedient for the purpose of or in connection with the carrying on of any activities it has power to carry on (including residential accommodation and recreational facilities for students and staff of the institution and facilities to meet the needs of students who have learning difficulties and disabled students and staff);
- (f) to provide meals and refreshments for students and staff of the institution;
- (g) to supply goods and services in connection with the provision of education by it and make charges for such goods and services;
- (h) to acquire, hold and dispose of land and other property;
- (i) to enter into contracts, including in particular—

- (i) contracts for the employment of teachers and other staff for the purpose of or in connection with the carrying on of any activities it has power to carry on;
  - (ii) contracts with respect to the carrying on by it of any such activities; and
  - (iii) contracts to secure the provision by others of facilities in connection with the carrying on by it of any such activities, including externally financed development agreements as defined in Article 15(3)(c).
- (j) to form or promote, or to join with any other person in forming or promoting, companies<sup>F10</sup> under the Companies Act 2006];
- <sup>F11</sup>(jj) to enter into collaborative arrangements with other educational institutions or bodies and community groups on such terms as it thinks fit and to exercise its decision-making in relation to such arrangements through any joint body established for the purposes of collaboration under this sub-paragraph;]
- (k) to borrow such sums as it thinks fit for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order and, in connection with such borrowing, to grant such security<sup>F11</sup> . . . as it thinks fit;
- <sup>F11</sup>(kk) to give such guarantee or indemnity in relation to the obligations of a company to which sub-paragraph (j) applies or any other person on such terms and conditions (including the giving of security in respect of its obligations under such guarantee or indemnity) as it thinks fit;]
- (l) to invest any sums not immediately required by it for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order;
- (m) to raise funds, accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of carrying on any activities it has power to carry on; and
- (n) to do all such other things as are calculated to facilitate or are incidental or conducive to the carrying on of any activities it has power to carry on.
- (2) For the purposes of paragraph (1)(g), goods and services are supplied in connection with the provision of education by a governing body if—
- (a) they result from the provision of education or anything done by the governing body under this Order for the purpose of or in connection with the provision of education,
  - (b) they result from the use of, or are provided by making available, the facilities of the governing body or the expertise of persons employed by it in the fields in which they are so employed, or
  - (c) they result from ideas of a person employed by the governing body, or of one of its students, arising out of the provision of education by it.
- (3) The Department may by order—
- (a) amend the provisions of paragraph (1) by varying, adding to or removing the powers for the time being conferred by that paragraph; or
  - (b) direct that paragraph (1) shall apply, in relation to any governing body specified in the order, with such variations, additions or omissions as may be so specified.
- (4) Before making any order under paragraph (3), the Department shall consult—
- (a) the governing bodies of institutions of further education to which the order applies; and
  - (b) any other bodies with which consultation appears to the Department to be appropriate.
- (5) The exercise by a governing body of any power conferred by this Article is subject to Article 15; and an order under paragraph (3) may make such consequential amendments to Article 15 as appear to the Department to be necessary or expedient.

- F9** Art. 14(1)(aa) substituted (26.1.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(a), **21(4)**; S.R. 2007/42, **art. 2**
- F10** Words in art. 14(1)(j) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 170** (with art. 10)
- F11** SR 2003/110

### Restrictions on exercise of principal powers of governing body

15.—(1) The powers of a governing body under—

- (a) Article 14(1)(b) (charging of fees for education);
- (b) Article 14(1)(j) (formation of companies);
- (c) Article 14(1)(l) (investment),
- [<sup>F12</sup>(d) Article 14(1)(jj) (collaborative arrangements)]

shall be exercised in accordance with any arrangements approved or determined by the Department.

(2) The powers of a governing body under Article 14(1)(f) (provision of meals and refreshments) shall be so exercised as to give effect to arrangements approved or determined by the Department for the remission in whole or in part of charges which would otherwise be made in respect of meals or refreshments provided to students of the institution.

(3) A governing body of an institution of further education shall not, without the prior consent of the Department—

- (a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of its property;
- (b) effect any material change in the character of the institution; or
- (c) enter into an externally financed development agreement, that is to say an agreement—
  - (i) the purpose or main purpose of which is the provision of facilities in connection with the carrying on of any activities which the governing body has power to carry on; and
  - (ii) in connection with which a person proposes to make a loan to, or provide any other form of finance for, any party to the agreement other than the governing body.

(4) The consent of the Department under paragraph (3) may be given subject to such conditions as the Department may determine.

(5) Subject to paragraph (8), the governing body of an institution of further education shall not dispose of any property to which this paragraph applies without the prior consent of the Department.

(6) Property to which paragraph (5) applies is—

- (a) property transferred to the governing body under this Order;
- (b) property acquired by the governing body wholly or partly with assets which represent or in any way derive from any part of the proceeds of or any consideration for the disposal of property so transferred; and
- (c) property acquired, improved or maintained wholly or partly, directly or indirectly, out of funds provided under this Order by the Department or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained.

(7) The consent of the Department under paragraph (5) may be given in respect of a particular disposal of property or of disposals of any class or description and may be given subject to such conditions as the Department may determine.

(8) The consent of the Department is not required for the disposal of land which is or forms part of property to which paragraph (5) applies where the disposal is in consequence of the compulsory acquisition of such land by any authority in pursuance of any power of compulsory acquisition under any statutory provision; but the governing body shall inform the Department of any such compulsory acquisition.

(9) Where any property to which paragraph (5) applies is disposed of, the governing body shall pay to the Department such portion of the proceeds or value of the consideration for the disposal, after deduction of such expenses as appear to the Department to have been reasonably incurred in the disposal, as the Department may, after consultation with the governing body, determine.

F12 SR 2003/110
-----------------

### **Provision of higher education by institutions of further education**

16.—(1) Subject to paragraphs (2) and (3), the governing body of an institution of further education shall have power, in accordance with any arrangements approved or determined by the Department, to provide, or secure the provision of, higher education.

(2) Paragraph (1) does not apply to higher education provided by means of—

- (a) a course for the initial training of teachers;
- (b) a full-time higher degree course; or
- (c) a course of a description prescribed for the purposes of this paragraph.

(3) Paragraph (1) does not apply to higher education provided by means of a course of a description prescribed for the purposes of this paragraph unless it is provided under arrangements of a prescribed description with a university or other prescribed institution.

### *Conduct of institutions of further education*

### **Regulations as to carrying on of institutions of further education**

17.—(1) The Department may by regulations make provision as to the carrying on of institutions of further education.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

- (a) preventing the use of the premises or equipment of such institutions for such purposes as may be prescribed;
- (b) with respect to the keeping, disclosure and transfer of educational records about students at such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations.

(3) Regulations made under paragraph (1) by virtue of paragraph (2)(b) may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

(4) Regulations under paragraph (1) may enable the Department or a prescribed body or person to authorise such exceptions, grant such approvals and make such determinations for the purposes of the regulations as are specified therein.

### [<sup>F13</sup>Provision of information

**17A.**—(1) The Department may make regulations requiring the governing body or the principal of an institution of further education to make available either generally or to prescribed persons, in such form and at such times as may be prescribed, such information relating to—

- (a) the external qualifications (within the meaning of Article 81 of the Education (Northern Ireland) Order 1998) for which courses of study are to be provided by or on behalf of the institution concerned for students under the age of 19 who are in full time attendance at the institution;
- (b) the courses of study leading to such qualifications which are to be so provided;
- (c) the specifications which have been provided or determined for the purposes of those courses; and
- (d) the results of the assessments of such students for the purposes of those qualifications,

as may be prescribed.

(2) The Department may make regulations requiring the governing body or the principal of an institution of further education to make available either generally or to prescribed persons, in such form and at such times as may be prescribed, such information as may be prescribed relating to the results of the assessments of pupils for whom secondary education is provided at the institution in pursuance of arrangements under Article 21 of the Education (Northern Ireland) Order 2006.

(3) Regulations under paragraph (1)(d) or (2) shall not require information as to the results of an assessment of a student or pupil to be made available to any persons or bodies other than—

- (a) the student or pupil concerned and his parents;
- (b) the governing body of the institution or school attended by the student or pupil concerned; or
- (c) a body or person prescribed by the regulations,

and shall not require such information to be made available to any body or person mentioned in subparagraphs (b) and (c) except where necessary for the purposes of the performance by that body or person of any functions under this Order or the Education Orders (as defined in the 1986 Order).

(4) Regulations under this Article may authorise governing bodies and principals to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.

(5) Before making any regulations under this Article the Department shall consult with—

- (a) the governing bodies and principals of all institutions of further education; and
- (b) any other persons with whom consultation appears to it to be desirable.]

**F13** Art. 17A inserted (1.8.2006) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(2), 44(1), Sch. 2 para. 14

### Efficiency reviews

**18.**—(1) The Department may arrange for the carrying out (whether as part of an inspection under Article 102 of the 1986 Order or otherwise) by any person of studies designed to improve economy, efficiency and effectiveness in the management or operation of an institution of further education.

(2) The Department may give directions under Article 101 of the 1986 Order for the purpose of remedying any matter referred to, or implementing any recommendation contained, in a report of any studies carried out under paragraph (1).

*Accounts, reports, information, etc.*

**Accounts of governing body**

[<sup>F14</sup>19.—(1) The governing body of an institution of further education shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The governing body shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him by the governing body under this Article; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) The financial year of the governing body shall be the period of 12 months ending on 31st July.

(7) The Department may by order amend paragraph (6).

(8) The Department shall have right of access to the books, accounts and records of the governing body]

**F14** [Art. 19](#) substituted (9.12.2008 with effect as mentioned in art. 2(3) of the amending Order) by [Institutions of Further Education \(Public Sector Audit\) Order \(Northern Ireland\) 2008 \(S.R. 2008/511\)](#), [art. 2\(2\)](#)

**Development plans**

**20.**—(1) Each governing body of an institution of further education shall, not later than such date in every financial year as the Department may determine, submit to the Department a development plan in respect of the institution.

(2) The development plan shall be prepared in respect of the next following financial year and the succeeding two financial years.

(3) The development plan shall contain a statement of—

- (a) the number of persons the governing body estimates will be students of the institution;
- (b) the courses of further and higher education which the governing body proposes to provide or secure the provision of;
- (c) the capital expenditure proposed by the governing body and an estimate of the recurrent expenditure and income of the governing body; and
- (d) such other matters as may be determined by the Department,

as regards each financial year to which the plan relates.

(4) In preparing a development plan, a governing body shall take into account any guidance issued to it by the Department.

(5) A development plan prepared in pursuance of this Article shall be in such form as the Department may determine.

(6) Any power of the Department under this Article to make a determination may be exercised differently in respect of different governing bodies.

(7) Each governing body of an institution of further education shall make arrangements for monitoring the implementation of the development plan in respect of the institution.

### Reports, returns and information

**21.**—(1) The governing body of an institution of further education shall make such reports and returns, and give such information to—

(a) the Department, as the Department may reasonably require for the purposes of its functions under any statutory provision;

[<sup>F15</sup>(b) the Education Authority, as the Education Authority may reasonably require for the purpose of its functions under any statutory provision.]

(2) Reports, returns and information provided under paragraph (1)(a) shall be in such form as the Department may direct.

(3) [<sup>F8</sup>The Authority] shall provide the governing body of an institution of further education with such information as the governing body may reasonably require for the purposes of its functions under this Order.

**F8** Words in Order substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), Sch. 3 para. 1(1)(a) (with Sch. 2 para. 4(3), Sch. 3 para. 1(2)); S.R. 2015/35, art. 2(b)

**F15** Art. 21(1)(b) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), Sch. 3 para. 18(5) (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

### Information as to provision of further education

**22.**—(1) The Department may by regulations require the governing body of an institution of further education to publish such information as may be prescribed with respect to—

(a) the educational provision made by the institution for students at the institution;

(b) the educational achievements of students on entry to the institution and the educational achievements of students while at the institution (including in each case the results of examinations, tests and other assessments of those students);

(c) the financial and other resources of the institution and the effectiveness of the use made of such resources;

(d) the careers of students of the institution after completing any course or leaving the institution; and

(e) any other prescribed matter relating to the institution.

(2) For the purposes of paragraph (1)(d), a person's career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—

(a) the numbers of students not undertaking any career, and

(b) the persons providing students with education, training or employment.

(3) The information shall be published in such form and manner and at such times as may be prescribed.

(4) The published information shall not name any student to whom it relates.

(5) The Department may by regulations require the Board of Governors of any secondary school to provide such persons as may be prescribed with such categories of information falling within paragraph (6) as may be prescribed.

(6) Information falls within this paragraph if it is—

(a) published under paragraph (1); and

(b) made available to Boards of Governors for distribution.

(7) Information provided under paragraph (5) shall be provided in such form and in such manner as may be prescribed.

### *Functions of boards in relation to institutions of further education*

#### **Functions of boards in relation to institutions of further education**

**23.**—(1) Where—

(a) [<sup>F8</sup>the Authority] is under a duty, or has power, to provide any benefits or services for pupils; and

(b) the duty is to be performed, or the power may be exercised, both in relation to pupils at institutions of further education and in relation to pupils at grant-aided schools,

[<sup>F8</sup>the Authority] shall in performing the duty, or exercising the power, treat pupils at institutions of further education no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at grant-aided schools.

(2) [<sup>F8</sup>The Authority] may, with the approval of the Department, give financial or other assistance to, or provide services to, the governing body of an institution of further education on such terms and conditions as may be arranged between [<sup>F8</sup>the Authority] and the governing body of the institution.

(3) In the period of three years beginning on the transfer date it shall be the duty of [<sup>F8</sup>the Authority] and the governing body of an institution of further education to give effect to such arrangements for the provision of services by [<sup>F8</sup>the Authority] to the governing body in that period as may be approved or determined by the Department.

(4) Where in accordance with arrangements approved under Article 15(2) the governing body of an institution of further education remits the whole or part of any charges which would otherwise be made in respect of meals and refreshments provided to any student, it shall be the duty of [<sup>F16</sup>the Authority] to pay to the governing body a sum equal to the total of the amounts so remitted.

**F8** Words in Order substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), Sch. 3 para. 1(1)(a) (with Sch. 2 para. 4(3), Sch. 3 para. 1(2)); S.R. 2015/35, art. 2(b)

**F16** Words in art. 23(4) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), s. 7(2)(c), Sch. 3 para. 18(6) (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)



### *Supplementary*

#### **Regulations and orders**

**24.**—(1) All regulations made by the Department under this Order shall be subject to negative resolution.

(2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to any order made by the Department under Article 9 or 12, paragraph 9(1) or 17(1) of Schedule 2 or paragraph 4(2) of Schedule 3.

(3) Except as provided by paragraphs (4) and (5), all other orders made by the Department under this Order shall be subject to negative resolution.

(4) An order under Article 14(3)(a) [<sup>F17</sup>or paragraph 2(3) of Schedule 3] shall be subject to affirmative resolution.

(5) Paragraph (3) does not apply to an order under Article 1(2).

(6) Regulations and orders under this Order may contain such incidental, supplementary and transitional provisions as the Department thinks necessary or expedient.

<p><b>F17</b> Words in <a href="#">art. 24(4)</a> inserted (1.8.2006) by <a href="#">Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11))</a>, arts. 1(2), <b>38(2)</b></p>
---

*Art. 25—Amendments and repeals*

**Changes to legislation:**

There are currently no known outstanding effects for the The Further Education (Northern Ireland) Order 1997.