



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

34 Making additional property available for use

- (1) The Secretary of State may by order provide for any land or other property of a local authority to be made available for use by an institution within the further education sector (referred to in this section as the “new sector institution”) if the requirements of subsection (2) below are satisfied.
- (2) Those requirements are that in the opinion of the Secretary of State—
 - (a) the property—
 - (i) either has within the preceding six months been used for the purpose of the provision of further education by an institution maintained by a local education authority but its use for that purpose has been discontinued or the local education authority intend its use for that purpose to be discontinued, or
 - (ii) is being used for that purpose but the local education authority intend its use for that purpose to be discontinued, and
 - (b) it is necessary or desirable for the property to be available for use for the purposes of the new sector institution but the governing body of that institution have been unable to secure agreement with the local authority, on such terms as may reasonably be required, to secure that the property is so available.
- (3) The Secretary of State shall not make an order under this section unless—

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- (a) the governing body of the new sector institution have applied to him, before the end of the period of three years beginning with the date which is the operative date in relation to further education corporations established under section 15 of this Act, for such an order to be made, and
 - (b) he has consulted the appropriate council, the local authority and the Education Assets Board.
- (4) For the purpose of making any property available for use for the purposes of an institution, an order under this section may—
- (a) transfer to, and vest in, the governing body—
 - (i) the property concerned, and
 - (ii) any rights or liabilities of the local authority acquired or incurred for the purpose of the provision of further education there, or
 - (b) confer any rights or impose any liabilities and, to the extent (if any) that the order does so, it shall have effect as if contained in an agreement between the local authority and the governing body.
- (5) Subsection (4)(a)(ii) above shall not apply to any liability of the local authority in respect of the principal of, or interest on, any loan.
- (6) References in this section to use for the purpose of the provision of further education are to use wholly or mainly for that purpose.

35 Voluntary transfers of staff in connection with section 34

- (1) This section applies where—
- (a) for the purpose of making any property of a local authority available for use for the purposes of an institution within the further education sector, an order is made under section 34 of this Act,
 - (b) at any time on or after such date as may be specified by the order a person employed by the local authority ceases to be so employed and is subsequently employed by the governing body of the institution, and
 - (c) by virtue of section 84 of the Employment Protection (Consolidation) Act 1978 (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under Part VI of that Act.
- (2) Schedule 13 to that Act (computation of period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions—
- (a) the period of employment of that person with the local authority shall count as a period of employment with the governing body, and
 - (b) the change of employer shall not break the continuity of the period of employment.
- (3) The period of that person's employment with the local authority shall count as a period of employment with the governing body for the purposes of any provision of his contract of employment with the governing body which depends on his length of service with that employer.

36 General provisions about transfers under Chapter II

- (1) This section applies to any transfer under section 23 or 32 of this Act, and those sections are subject to Schedule 5 to this Act.
- (2) Where any land or other property or rights—
 - (a) were immediately before the operative date in relation to any institution held on trust for any particular purposes, or (as the case may be) for the general purposes, of the institution, and
 - (b) fall to be transferred under any transfer to which this section applies, they shall continue to be so held by the transferee.
- (3) Schedule 5 to this Act has effect for the purpose of—
 - (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one educational institution,
 - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer,
 - (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred, and
 - (d) making supplementary and consequential provisions in relation to transfers to which this section applies.
- (4) Where arrangements for the supply by a local authority of goods or services for the purposes of an institution to be conducted by a further education corporation are to have effect as from the operative date in accordance with section 24(4) of this Act as if contained in an agreement made before that date between the local authority and the corporation, paragraphs 2 to 5 of Schedule 5 to this Act shall have effect as if the rights and liabilities of the corporation under the agreement were rights and liabilities of the local authority transferred to the corporation under a transfer to which this section applies.
- (5) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.
- (6) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—
 - (a) it may not be done by the transferee, and
 - (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee,and in a case where the transferee is a body corporate established under this Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act.
- (7) Not later than the end of the period of six months beginning with the operative date in relation to a further education corporation established under section 15 of this Act, the Board shall provide the appropriate council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.

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- (8) If in any case within subsection (7) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide the appropriate council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

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.
- (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

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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
 - (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.

38 Payments by council in respect of loan liabilities

- (1) This section applies to any excepted loan liability, that is, any liability of a local authority which—
- (a) in the case of a transfer by virtue of section 23 of this Act, would have been transferred but for subsection (3)(a) of that section,
 - (b) in the case of a transfer by virtue of section 32 of this Act, would have been transferred but for subsection (4)(a) of that section, or
 - (c) in the case of a transfer by virtue of section 34(4)(a) of this Act, could have been transferred but for subsection (5) of that section.
- (2) A council may make payments, on such terms and conditions as the council may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
- (3) No payment shall be made under this section in respect of any excepted loan liability, where the class or classes of excepted loan liabilities in respect of which payments may be made are for the time being prescribed by an order of the Secretary of State, unless the liability falls within a prescribed class.

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- (4) The Secretary of State may by order provide for determining—
- (a) the amounts that may be paid under this section in respect of the principal of, and any interest on, any excepted loan liability,
 - (b) the instalments by which any amounts may be paid, and
 - (c) the rate at which interest may be paid on any outstanding amounts,
- and, in the case of any payment to which such an order applies, no amount may be paid under this section in excess of any amount determined in accordance with the order.

39 Control of disposals of land

- (1) Subject to subsection (11) below, this section applies to any disposal during the controlled period—
- (a) of land which, immediately before the beginning of that period, was used or held for the purposes of any relevant institution, or
 - (b) of land which was obtained before the beginning of that period for the purpose of being so used or held and had not before the beginning of that period been appropriated to any other use.
- (2) For the purposes of this section and sections 41 and 43 of this Act, an institution is a relevant institution if—
- (a) it is an educational institution maintained by a local education authority and falls within section 15(2) of this Act,
 - (b) it is a county school or controlled school and falls within section 15(3) of this Act, or
 - (c) it is an educational institution such as is mentioned in section 28(1) of this Act and meets the requirements of subsection (2)(a) or (b) of that section.
- (3) In this section “the controlled period” means the period beginning with 22nd March 1991 and ending with—
- (a) the operative date in relation to the institution in question or, if later, the date on which any matter relating to that land on which agreement is required to be reached under paragraph 2(1) of Schedule 5 to this Act is finally determined, or
 - (b) in the case of an institution falling within paragraph (c) above, 21st March 1995 if earlier.
- (4) Except with the consent of the Secretary of State, no local authority shall after the passing of this Act make a disposal to which this section applies.
- (5) If at any time after 21st March 1991 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the provisions of subsection (4) above if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.
- (6) Any consent for the purposes of this section may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.

- (8) This section has effect notwithstanding anything in section 123 of the Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (9) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 40 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions have been complied with.
- (10) In this section references to disposing of land include—
 - (a) granting or disposing of any interest in land,
 - (b) entering into a contract to dispose of land or to grant or dispose of any such interest, and
 - (c) granting an option to acquire any land or any such interest.
- (11) This section does not apply to a disposal falling within subsection (10)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 21st March 1991.
- (12) 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 subsection (1) above 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).

40 Wrongful disposals of land

- (1) This section applies where a local authority have made any disposal to which section 39 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local authority concerned.
- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.

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- (6) The Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
- (a) where the interest disposed of, or the land in which the interest was granted, was—
 - (i) used or held by the local authority concerned for the purposes of an institution to which section 39(2)(a) or (b) of this Act applies, or
 - (ii) obtained by that authority for the purpose of being so used or held, the further education corporation established under this Act to conduct that institution, and
 - (b) where the interest disposed of, or the land in which the interest was granted, was—
 - (i) so used or held for the purposes of an institution to which section 39(2)(c) of this Act applies, or
 - (ii) obtained by the authority concerned for the purpose of being so used or held,

the appropriate transferee within the meaning of section 32 of this Act in relation to that institution.
- (9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the Compulsory Purchase Act 1965 or section 52A of the Land Compensation Act 1973, and
 - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

41 Control of contracts

- (1) This section applies, subject to subsection (5) below, to any contract which, if a relevant institution were to become an institution within the further education sector, would or might on or after the operative date bind the governing body of the institution.
- (2) Except with the appropriate consent, a local authority shall not after the passing of this Act enter into a contract to which this section applies.
- (3) If at any time after 21st March 1991 and before the passing of this Act a local authority have entered into a contract which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by the local authority.
- (4) In relation to any contract the appropriate consent is—
 - (a) the consent of the existing governing body of the institution, and
 - (b) if (on the assumption in subsection (1) above) the contract will require the governing body of the institution to make payments on or after 1st April 1993

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amounting in aggregate to £50,000 or more, the consent of the Secretary of State.

- (5) This section does not apply to—
 - (a) a works contract (within the meaning of Part III of the Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act, or
 - (b) a works contract (within the meaning of Part I of the Local Government Act 1988) which is entered into in accordance with section 4 of that Act.
- (6) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (7) Any signification of consent for the purposes of this section, or of such consent subject to conditions, given by the governing body of an institution or the Secretary of State before the passing of this Act in respect of any contract to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to the conditions, given under this section.
- (8) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 42 of this Act) a person entering into a contract with a local authority shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.
- (9) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) above shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (10) This section does not apply to a contract to dispose of land or to grant or dispose of any interest in land.

42 Wrongful contracts

- (1) This section applies where a local authority have entered into a contract to which section 41 of this Act applies in contravention of that section.
- (2) The Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) above shall have effect as if made by the local authority concerned.

43 Remuneration of employees

- (1) Where, in consequence of a determination by the local education authority or any other person of the rate of remuneration of any employees, the rate of remuneration of any relevant employees would, apart from this section, be increased as from a date (referred to in this section as the “proposed date of increase”) falling after 1st September 1992, the authority—
 - (a) shall notify the Secretary of State in writing of the determination and the proposed date of increase, and

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- (b) shall not pay any relevant employee at the new rate unless the increase is authorised under this section by the Secretary of State.
- (2) In this section “relevant employees” means persons who are employed at institutions which are relevant institutions by virtue of section 39(2)(a) or (b) of this Act.
- (3) This section does not apply to remuneration determined in accordance with the scales and other provisions set out or referred to in a pay and conditions order (within the meaning of the School Teachers' Pay and Conditions Act 1991).
- (4) Where the Secretary of State receives a notification under subsection (1) above, he shall, before the end of the period of four weeks beginning with the day on which he received the notification, either—
 - (a) authorise the increase resulting from the determination so far as it relates to relevant employees, or
 - (b) afford to the authority, and to such persons appearing to him to be representative of relevant employees affected by the determination as he considers appropriate, an opportunity of making representations to him in respect of the determination.
- (5) After considering any representations made to him under subsection (4)(b) above, the Secretary of State shall—
 - (a) authorise the increase resulting from the determination, or
 - (b) refuse to authorise the increase,so far as it relates to relevant employees.
- (6) The Secretary of State shall give written notification of any decision under subsection (4)(a) or (5) above to the local education authority and, in the case of subsection (5) above, to any other persons who made representations to him under subsection (4)(b) above.
- (7) Subsection (8) below applies where—
 - (a) by virtue of this section a relevant employee is not paid at the new rate on the proposed date of increase, but
 - (b) the Secretary of State authorises the increase after that date.
- (8) Where this subsection applies, the employee concerned shall, for the purpose of determining the terms of any contract affected by section 26 of this Act, be regarded as having been entitled under his contract of employment to be paid by the local education authority at the new rate as from the proposed date of increase.