



Further Education and Training Act 2007

2007 CHAPTER 25

PART 2

FURTHER EDUCATION INSTITUTIONS

Further education corporations

14 Incorporation of further education institutions

- (1) Section 16 of FHEA 1992 (incorporation of further education institutions) is amended as set out in subsections (2) to (4).
- (2) In subsection (1) for “The Secretary of State” substitute “The appropriate authority”.
- (3) In subsection (3)—
 - (a) for “The Secretary of State” substitute “The appropriate authority”, and
 - (b) in paragraph (b), for “his” substitute “the appropriate authority's”.
- (4) After subsection (5) insert—
 - “(6) In this section “the appropriate authority” means—
 - (a) in relation to an educational institution in England, the Learning and Skills Council for England, and
 - (b) in relation to an educational institution in Wales, the Welsh Ministers.”
- (5) In section 17(2) of FHEA 1992 (meaning of “operative date”)—
 - (a) omit the word “and” at the end of paragraph (a),
 - (b) at the end of that paragraph insert—
 - “(aa) in the case of a further education corporation in England established under section 16 of this Act, such date as the Learning and Skills Council for England may by order appoint in relation to that corporation, and”, and
 - (c) in paragraph (b)—

- (i) after “further education corporation” insert “in Wales”, and
- (ii) for “the Secretary of State” substitute “the Welsh Ministers”.

15 Dissolution of further education corporations

- (1) Section 27 of FHEA 1992 (orders dissolving further education corporations) is amended as follows.
- (2) In subsections (1), (2)(a) and (6), for “the Secretary of State” substitute “the appropriate authority”.
- (3) In subsection (3), omit paragraph (a) and the “or” following it.
- (4) After subsection (3) insert—
 - “(3A) An order under this section made by the Learning and Skills Council for England in respect of a further education corporation in England may provide for the transfer to the council of property, rights and liabilities of the corporation.
 - (3B) The council must obtain the consent of the Secretary of State before making provision of a kind mentioned in subsection (3A).”
- (5) In subsection (7)—
 - (a) for “the Secretary of State” substitute “the Welsh Ministers”, and
 - (b) omit paragraph (b) and the “and” preceding it.
- (6) Omit subsection (8).
- (7) After subsection (8) insert—
 - “(9) In this section “the appropriate authority” means—
 - (a) in relation to a further education corporation in England, the Learning and Skills Council for England, and
 - (b) in relation to a further education corporation in Wales, the Welsh Ministers.”

16 Publication of proposals

- (1) Section 51 of FHEA 1992 (publication of proposals for establishment or dissolution of further education corporation) is amended as follows.
- (2) For subsections (1) and (2) substitute—
 - “(1) The Learning and Skills Council for England may not make—
 - (a) an order under section 16(1) or (3) establishing a body corporate, or
 - (b) an order under section 27 dissolving a further education corporation, unless it has satisfied the requirements in subsections (2) and (2A).
 - (2) The first requirement is that the council publishes a proposal relating to the order, giving such information as may be prescribed, by such time and in such manner as may be prescribed.
 - (2A) The second requirement is that the council considers any representations about the proposal made to it within the prescribed period.”

- (3) In subsection (3), for the words from the beginning to “he has” substitute “The Welsh Ministers shall not make an order under section 16(1) or (3) unless they have”.
- (4) In subsection (3A), for “A draft proposal or order” substitute “A proposal or a draft order”.

Intervention in further education institutions

17 Intervention: England

Before section 57 of FHEA 1992, insert—

“56A Intervention: England

- (1) This section applies if the Learning and Skills Council for England is satisfied as to one or more of the matters listed in subsection (2) in the case of an institution in England within the further education sector; and it is immaterial whether or not a complaint is made by any person.
- (2) The matters are—
 - (a) that the institution’s affairs have been or are being mismanaged by the institution’s governing body;
 - (b) that the institution’s governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
 - (c) that the institution’s governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act;
 - (d) that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.
- (3) If this section applies the council may do one or more of the things listed in subsection (6).
- (4) Before doing one or more of those things, the council must give the Secretary of State a notice stating—
 - (a) the matter or matters listed in subsection (2) as to which the council is satisfied;
 - (b) the reasons why the council is so satisfied;
 - (c) the thing or things that the council proposes to do;
 - (d) the reasons why the council proposes to do that thing or those things.
- (5) If the council does one or more of those things, it must at the same time give the institution’s governing body a notice stating—
 - (a) the matter or matters listed in subsection (2) as to which the council is satisfied;
 - (b) the reasons why the council is so satisfied;
 - (c) the reasons why the council has decided to do that thing or those things.
- (6) The council may—
 - (a) remove all or any of the members of the institution’s governing body;

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

- (b) appoint new members of that body if there are vacancies (however arising);
 - (c) give to that body such directions as it thinks expedient as to the exercise of their powers and performance of their duties.
- (7) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
- (8) Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent on the body's opinion.
- (9) The council may not direct a governing body under subsection (6)(c) to dismiss a member of staff.
- (10) But subsection (9) does not prevent the council, where it considers that it may be appropriate to dismiss a member of staff whom the governing body have power under their institution's articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.
- (11) A governing body must comply with any directions given to them under this section.
- (12) An appointment of a member of a governing body under this section shall have effect as if made in accordance with the instrument of government and articles of government of the institution concerned.

56B Intervention policy: England

- (1) The Learning and Skills Council for England must—
- (a) prepare a statement of its policy with respect to the exercise of its powers under section 56A,
 - (b) keep it under review, and
 - (c) if it considers it appropriate in consequence of a review, prepare a revised statement of its policy.
- (2) When preparing a statement or revised statement of its policy, the council must—
- (a) undertake such consultation as it thinks appropriate;
 - (b) consider any representations made to it about the policy to be set out in the statement.
- (3) The Secretary of State may give the council guidance in relation to the exercise of its functions under subsections (1) and (2), and in particular in relation to the form and content of the policy.
- (4) It is the duty of the council to have regard to any guidance given to it under subsection (3).
- (5) The council must send a copy of the statement or revised statement prepared by it to the Secretary of State.

- (6) If the Secretary of State approves it he shall lay a copy of it before each House of Parliament.
- (7) The council must publish—
 - (a) the statement of its policy approved by the Secretary of State;
 - (b) where the Secretary of State approves a revised statement of its policy, the revised statement.
- (8) The council must have regard to the statement most recently published under subsection (7) in exercising, or deciding whether to exercise, any of its powers under section 56A in relation to an institution.

56C Directions

- (1) This section applies if—
 - (a) the Secretary of State is satisfied as to one or more of the matters listed in section 56A(2) in the case of an institution in England within the further education sector, and
 - (b) the Secretary of State is satisfied that the circumstances are such that it would be appropriate for the Learning and Skills Council for England to do one or more of the things listed in section 56A(6) in relation to the institution.
- (2) In such a case the Secretary of State may give to the council such directions as he thinks fit as to the exercise of the council's powers under section 56A.
- (3) Where the Secretary of State gives the council a direction under this section, he must at the same time give the council a notice stating the matter or matters listed in section 56A(2) as to which he is satisfied.
- (4) The council must comply with any directions given to it under this section.
- (5) Where the council does a thing listed in section 56A(6) in relation to an institution in compliance with a direction under this section—
 - (a) the council must give the institution's governing body a copy of the relevant notice under subsection (3), and
 - (b) the requirement to give a notice under section 56A(5) does not apply."

18 Intervention: Wales

- (1) Section 57 of FHEA 1992 (intervention) is amended as set out in subsections (2) to (4).
- (2) In subsection (2) (conditions for intervention), for paragraph (d) substitute—
 - “(d) they are satisfied that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.”
- (3) After subsection (5) insert—
 - “(5A) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and

Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.”

(4) After subsection (6) insert—

“(6A) The Welsh Ministers may not direct a governing body under subsection (5) (c) to dismiss a member of staff.

(6B) But subsection (6A) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body have power under their institution’s articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.”

(5) After section 57 of FHEA 1992 insert—

“57A Intervention policy: Wales

(1) The Welsh Ministers must—

- (a) prepare a statement of their policy with respect to the exercise of their powers under section 57,
- (b) keep it under review, and
- (c) if they consider it appropriate in consequence of a review, prepare a revised statement of their policy.

(2) When preparing a statement or revised statement of their policy, the Welsh Ministers must—

- (a) undertake such consultation as they think appropriate;
- (b) consider any representations made to them about the policy to be set out in the statement.

(3) The Welsh Ministers must lay before the National Assembly for Wales a copy of any statement or revised statement prepared by them under this section.

(4) The Welsh Ministers must publish any statement or revised statement prepared by them under this section.

(5) The Welsh Ministers must have regard to the statement most recently published under subsection (4) in exercising, or deciding whether to exercise, any of their powers under section 57 in relation to an institution.”

Foundation degrees

19 Power to award foundation degrees

(1) Section 76 of FHEA 1992 (power to award degrees etc) is amended as follows.

(2) In subsection (1) (power of Privy Council to specify institutions by order)—

- (a) the words from “specify any institution” to the end become paragraph (a), and
- (b) after that paragraph insert “;
 - (b) specify any institution in England within the further education sector as competent to grant in pursuance of this

section an award of the kind mentioned in subsection (2A) below.”

(3) In subsection (2) (kinds of award) for “subsection (1)” substitute “subsection (1)(a)”.

(4) After subsection (2) insert—

“(2A) The kind of award referred to in subsection (1)(b) above is a foundation degree granted to persons who complete an appropriate course of study and satisfy an appropriate assessment.”

(5) After subsection (2A) (as inserted by subsection (4)) insert—

“(2B) Where the Privy Council is considering whether to make an order under subsection (1) above specifying an institution as mentioned in subsection (1) (b) above, the Privy Council may not make the order unless—

(a) the institution gives the Privy Council a statement setting out what it proposes to do as regards making arrangements for securing that any person granted an award under or by virtue of any power that would be conferred on the institution if the order were made (other than the power described in subsection (4A) below) has an opportunity to progress to one or more particular courses of more advanced study, and

(b) the Privy Council considers that the proposals are satisfactory and are likely to be carried out.”

(6) In subsection (3) (power to grant awards), after “subsection (2)(a) or (b)” insert “or (2A)”.

(7) In subsection (4) (power to grant honorary degrees etc), after “such an order” insert “as competent to grant in pursuance of this section either or both of the kinds of award mentioned in subsection (2)(a) or (b) above”.

(8) After subsection (4) insert—

“(4A) An institution specified in such an order as competent to grant in pursuance of this section the kind of award mentioned in subsection (2A) above may also—

(a) grant honorary foundation degrees, and

(b) grant foundation degrees to members of the academic and other staff of the institution.”

(9) In subsection (5) (powers comprised in the power to grant awards), for “Any” substitute “Subject to subsection (5A) below, any”.

(10) After subsection (5) insert—

“(5A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution’s power to grant such awards does not include the power described in subsection (5)(a) above.”

(11) In subsection (6) (power of institution to determine appropriate course of study etc) for “It” substitute “Subject to subsection (6A) below, it”.

(12) After subsection (6) insert—

“(6A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution is not to grant such an award to a person unless he was enrolled at the institution at the time he completed the course of study for which the award is granted.”

20 Report

Within the period of four years beginning with the commencement of section 19, the Secretary of State must lay before Parliament a report about the effect of that section.

Other provisions relating to further education institutions

21 Powers of a further education corporation to form or be involved in certain bodies corporate

(1) Section 19 of FHEA 1992 (supplementary powers of a further education corporation) is amended as set out in subsections (2) to (6).

(2) In subsection (4), for paragraph (bb), substitute—

- “(bb) form, participate in forming or invest in a company,
- (bc) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993),”.

(3) For subsection (4A) substitute—

“(4A) The power conferred by subsection (4)(bb) above may not be exercised for the purpose of—

- (a) conducting an educational institution, or
- (b) investing in a company conducting an educational institution.

(4AA) The power conferred by subsection (4)(bc) above may not be exercised for the purpose of—

- (a) conducting an educational institution, or
- (b) becoming a member of a charitable incorporated organisation conducting an educational institution.

(4AB) But a restriction on the exercise of a power imposed by subsection (4A) or (4AA) above shall not apply to the extent that the appropriate authority consents to the exercise of the power in a way which does not comply with the restriction.

(4AC) In subsection (4AB) above “the appropriate authority” means—

- (a) in relation to a further education corporation in England, the Learning and Skills Council for England;
- (b) in relation to a further education corporation in Wales, the Welsh Ministers.”

(4) In subsection (4B), for the words from the beginning to “be exercised” substitute “Neither the power conferred by subsection (4)(bb) above nor the power conferred by subsection (4)(bc) above may be exercised”.

- (5) In subsection (4C), after “subsection (4)(bb) above” insert “or the power conferred by subsection (4)(bc) above”.
- (6) At the end, insert—
- “(8) A reference in this section to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.”
- (7) In relation to the period beginning on 1st April 2001 and ending immediately before the coming into force of this section, the power conferred by section 19(4)(bb) of FHEA 1992 is to be taken to have included power to form, participate in forming or become a member of a company limited by guarantee.

22 Consultation by governing bodies of further education institutions

After section 49 of FHEA 1992 insert—

“49A Consultation

- (1) In exercising their functions the governing body of an institution within the further education sector must have regard to any guidance given from time to time by the appropriate authority about consultation with—
- (a) persons who are or are likely to become students of the institution, or
 - (b) employers,
- in connection with the taking of decisions affecting them.
- (2) Any guidance under this section about consultation with persons falling within paragraph (a) of subsection (1) must provide for the views of such a person to be considered in the light of his age and understanding.
- (3) In this section “the appropriate authority” means—
- (a) in relation to an institution in England, the Secretary of State, and
 - (b) in relation to an institution in Wales, the Welsh Ministers.”

23 Qualifications of principals of further education institutions

- (1) Section 137 of the Education Act 2002 (c. 32) (power of Secretary of State or Welsh Ministers to make regulations requiring principals of further education institutions to have specified qualifications) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Regulations under subsection (1) may limit the period of time during which a person may serve as the principal of an institution in reliance on subsection (2).”
- (3) In subsection (3) (regulations made for England or Wales not to apply to persons already appointed to institutions)—
- (a) for “under subsection (1)” substitute “made under subsection (1) by the Welsh Ministers in relation to Wales”, and
 - (b) after “an institution” insert “in England or Wales”.