

ACCOMPANYING DOCUMENTS

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Further and Higher Education (Governance and Information) (Wales) Bill

[AS AMENDED AT STAGE 2]

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Further and Higher Education (Governance and Information) (Wales) Bill

[AS AMENDED AT STAGE 2]

An Act of the National Assembly for Wales to make provision about the governance of institutions within the further education sector and about the supply of information in connection with the provision of support to students in further or higher education.

5 **Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

Further education institutions: governance

1 **Borrowing and investing by further education corporations**

In section 19 of the Further and Higher Education Act 1992 (supplementary powers of a further education corporation), omit—

- 10 (a) subsection (4A) (power in subsection (4)(bb) to form, participate in forming or invest in company not to be exercised by further education corporation in Wales for conducting, or investing in company conducting, educational institution),
- 15 (b) subsection (4AA) (power in subsection (4)(bc) to form, participate in forming or otherwise becoming member of charitable incorporated organisation not to be exercised by further education corporation in Wales for conducting, or becoming member of charitable incorporated organisation conducting, educational institution),
- (c) subsection (4AB) (power of Welsh Ministers to consent to exercise of power not complying with restriction in subsection (4A) or (4AA)),
- 20 (d) subsection (4B) (powers in subsection (4)(bb) and (bc) not to be exercised by further education corporation in Wales for provision of education funded by Welsh Ministers under Learning and Skills Act 2000),
- (e) subsection (4C) (subsection (4B) not to apply if Welsh Ministers consent to exercise of powers), and
- 25 (f) subsection (5) (power in subsection (4)(c) to borrow not to be exercised by further education corporation in Wales without consent of Welsh Ministers).

2 **Instrument and articles of government of further education corporations**

(1) In section 20 of the Further and Higher Education Act 1992 (constitution of corporation and conduct of the institution), for subsections (2) and (2A) substitute—

30 “(2) Instruments of government and articles of government of further education corporations—

- (a) must comply with the requirements of Schedule 4, and

(b) subject to that, may make such other provision as may be necessary or desirable.”

(2) Schedule 1 (which substitutes Schedule 4 to the Further and Higher Education Act 1992) has effect.

(3) For sections 22 and 22ZA of the Further and Higher Education Act 1992 substitute –

“22 Subsequent instruments and articles

A further education corporation may modify or replace their instrument of government or articles of government.”

3 Dissolution of further education corporations

For sections 27 to 27C of the Further and Higher Education Act 1992 substitute –

“27 Proposals for dissolution of further education corporations

(1) This section applies if a further education corporation propose that the corporation should be dissolved.

(2) The corporation must publish –

(a) details of the proposal, and

(b) such other information as may be prescribed by regulations made by the appropriate authority.

(3) The publication is to be in accordance with regulations made by the appropriate authority.

(4) The corporation must consult on the proposal, and take account of the views of those consulted, in accordance with regulations made by the appropriate authority.

(5) In this section, “the appropriate authority” means –

(a) in relation to a further education corporation in England, the Secretary of State, and

(b) in relation to a further education corporation in Wales, the Welsh Ministers.

27A Dissolution of further education corporations

(1) This section and section 27B apply if, after complying with section 27, a further education corporation resolve that the corporation should be dissolved on a specified date.

(2) “The dissolution date” means the date specified in a resolution under subsection (1).

(3) The corporation must notify the appropriate authority of the resolution and the dissolution date as soon as reasonably practicable.

(4) The corporation are dissolved on the dissolution date.

(5) In this section, “the appropriate authority” has the meaning given in section 27.

27B Dissolution of further education corporations: transfer of property, rights and liabilities

- 5 (1) At any time before the dissolution date, the corporation may transfer any of their property, rights or liabilities to such person or body, or a person or body of such description, as may be prescribed by regulations made by the appropriate authority.
- (2) The corporation may do so only with the consent of the person or body concerned.
- (3) A transfer under subsection (1) has effect on the dissolution date.
- 10 (4) Subsection (5) applies if a person or body prescribed, or of a description prescribed, under subsection (1) is not a charity established for charitable purposes which are exclusively educational purposes.
- 15 (5) Any property transferred to the person or body must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (6) In this section, “the appropriate authority” has the meaning given in section 27.”

4 Designated institutions: instrument and articles of government

- 20 (1) In section 29A of the Further and Higher Education Act 1992 (first post-designation instruments and articles), omit –
- (a) in subsection (1) the words “and (if the institution is in Wales) subsection (6)”,
 - (b) subsection (6), and
 - (c) in the heading “: England and Wales”.
- 25 (2) For sections 29B and 29C of that Act substitute –

“29B Changes to instruments and articles

- 30 (1) This section applies to a designated institution to which section 29 applies.
- (2) The governing body of the institution may modify or replace its instrument of government and articles of government.
- (3) If the institution is in Wales and is an institution to which section 30 applies, the governing body may do any of the things mentioned in subsection (2) only with the consent of the trustees of the institution.
- 35 (4) The instrument of government and articles of government (as modified or replaced) –
- (a) must comply with the requirements of Schedule 4, and
 - (b) subject to that, may make such other provision as may be necessary or desirable.”

- (3) In section 31 of that Act (designated institutions conducted by companies), omit subsection (2A) (articles relating to appointment of members to take into account members who may be appointed by Welsh Ministers).

5 Intervention by Welsh Ministers in respect of institutions within further education sector

- (1) Section 57 of the Further and Higher Education Act 1992 (intervention: Wales) is amended as follows.

- (2) In subsection (5A) –

(a) after “include” insert “ –

(a) ”;

(b) insert at the end “, and

(b) a direction requiring a governing body to make a resolution under section 27A(1) for the body to be dissolved on a date specified in the direction.”

- (3) After that subsection insert –

“(5B) A governing body to which a direction such as is mentioned in subsection (5A)(b) is given is to be taken for the purposes of section 27A(1) to have complied with section 27 before making the resolution required by the direction.”

- (4) Omit section 57A of the Further and Higher Education Act 1992 (intervention policy: Wales).

6 Abolition of duties of further education institutions to comply with directions

- (1) In section 33J of the Learning and Skills Act 2000 (planning the local curriculum), for subsection (3) substitute –

“(3) The persons mentioned in paragraphs (a) to (c) of subsection (1) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under that subsection.

(4) The persons mentioned in paragraphs (a) and (b) of subsection (1) must comply with any direction given by the Welsh Ministers as to the exercise of their functions under that subsection.”

- (2) In section 33L(3) of that Act (joint working: guidance and directions), for “The persons mentioned in subsection (1)” substitute “A local authority and a governing body of a maintained school”.

- (3) In section 116I of the Education Act 2002 (planning the local curriculum), for subsection (3) substitute –

“(3) The persons mentioned in paragraphs (a) and (b) of subsection (1) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under that subsection.

(4) The persons mentioned in paragraph (a) of subsection (1) must comply with any direction given by the Welsh Ministers as to the exercise of their functions under that subsection."

(4) In section 116K(3) of that Act (joint working: guidance and directions), for "The persons mentioned in subsection (1)" substitute "A local authority and a governing body of a maintained secondary school".

7 **Abolition of power to regulate higher education courses in further education sector**

In the Education Act 2002, omit section 139 (power to make regulations prohibiting provision of higher education courses by institutions within further education sector without approval of Welsh Ministers and determining numbers of persons who may take such courses at such institutions).

8 **Minor and consequential amendments**

Schedule 2 (which makes minor and consequential amendments) has effect.

Student support: supply of information

9 **Supply of information in connection with student loans and grants**

(1) In section 24 of the Teaching and Higher Education Act 1998 (supply of information in connection with student loans) –

(a) in subsection (2) –

(i) in paragraph (a), after "State" insert ", the Welsh Ministers";

(ii) in paragraph (b), after "State" insert ", the Welsh Ministers";

(iii) in paragraph (c), after "State" insert ", the Welsh Ministers";

(b) after subsection (2) insert –

"(2A) Information to which this section applies may also be supplied to –

(a) the Welsh Ministers,

(b) any person or body acting on behalf of the Welsh Ministers under section 23(4), or

(c) any authority or governing body by whom any function of the Welsh Ministers is for the time being exercisable to any extent by virtue of section 23(1),

for the purpose of enabling or assisting the recipient to exercise any function in connection with regulations under section 22 so far as having effect in relation to grants under that section.";

(c) in subsection (3) –

(i) in the opening words, after "(2)" insert "or (2A)";

(ii) in paragraph (b), for "of the student loans scheme." substitute "of –

(i) the student loans scheme, or

(ii) regulations under section 22 so far as having effect in relation to grants made in pursuance of the Welsh Ministers' functions under that section.",

(d) in subsection (4), after "(2)" insert ", (2A)";

(e) in subsection (10), after "student" insert "grants or";

(f) in the heading, for "loans" substitute "support".

General

10 Commencement

(1) Section 9, this section and section 11 come into force on the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.

(3) An order under this section may –

(a) appoint different days for different purposes;

(b) contain transitional, transitory or saving provision in connection with the coming into force of this Act.

11 Short title

The short title of this Act is the Further and Higher Education (Governance and Information) (Wales) Act 2014.

SCHEDULE 1
(introduced by section 2)

INSTRUMENT AND ARTICLES OF GOVERNMENT

In the Further and Higher Education Act 1992, for Schedule 4 substitute—

“SCHEDULE 4

INSTRUMENTS AND ARTICLES OF GOVERNMENT

1 This Schedule applies in relation to—

- (a) a further education corporation,
- (b) the governing body of a designated institution, and
- (c) a sixth form college corporation.

2 In this Schedule—

“the body” means—

- (a) in the case of a further education corporation or a sixth form college corporation, the corporation, and
- (b) in the case of the governing body of a designated institution, the governing body;

“the institution” means—

- (a) in the case of a further education corporation, the institution which the corporation are established to conduct;
- (b) in the case of the governing body of a designated institution, the institution;
- (c) in the case of a sixth form college corporation, the relevant sixth form college;

“instrument” means an instrument of government or articles of government.

3 An instrument must provide for—

- (a) the number of members of the body,
- (b) the eligibility of persons for membership,
- (c) the members to include—
 - (i) staff and students at the institution, and
 - (ii) in the case of a sixth form college corporation, parents of students at the institution aged under 19, and
- (d) the appointment of members, if the institution is in England, or the appointment or election of members, if the institution is in Wales.

4 (1) An instrument must make provision about the procedures of the body

and the institution.

(2) In particular, an instrument must specify how the body may resolve for its dissolution and the transfer of its property, rights and liabilities.

5 (1) An instrument must make provision for there to be –

(a) a chief executive of the institution, and

(b) a clerk to the body.

(2) An instrument must make provision about the respective responsibilities of the body, the chief executive and the clerk.

(3) The responsibilities of the body must include –

10 (a) in the case of a sixth form college corporation to which section 33J applies, the preservation and development of the educational character and mission of the institution and the oversight of its activities;

15 (b) in the case of any other sixth form college corporation, a further education corporation or a governing body, the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;

20 (c) in any case, the effective and efficient use of resources, the solvency of the institution and the body and the safeguarding of their assets.

6 An instrument must require the body to publish arrangements for obtaining the views of staff and students on the matters for which the body are responsible under paragraph 5(3)(a) or (b).

7 In the case of an institution in Wales, an instrument must require the body to consult persons in the locality of the institution receiving education or training, employers in that locality and bodies representing persons living in that locality as to the education provided at the institution and the planning of its curriculum.

8 An instrument must permit the body to change their name with the approval of –

(a) in the case of an institution in England, the Secretary of State;

(b) in the case of an institution in Wales, the Welsh Ministers.

9 An instrument must specify how the body may modify or replace the instrument of government and articles of government.

10 An instrument must prohibit the body from making changes to the instrument of government or articles of government that would result in the body ceasing to be a charity.

11 An instrument must provide for –

40 (a) a copy of the instrument to be given free of charge to every member of the body,

(b) a copy of the instrument to be given free of charge, or at a

charge not exceeding the cost of copying, to anyone else who requests it, and

- (c) a copy of it to be available for inspection at the institution on request, during normal office hours, to every member of staff of, and student at, the institution.

5

12 An instrument must provide for the authentication of the application of the seal of the body.”

SCHEDULE 2
(introduced by section 8)

MINOR AND CONSEQUENTIAL AMENDMENTS

Further and Higher Education Act 1992

- 5 1 In the Further and Higher Education Act 1992—
- (a) in section 30 (special provision for certain institutions), in subsection (1), for “29C” substitute “29B”;
 - (b) in section 33I(2)(a) (instrument and articles of government of sixth form college corporations), omit “Part 2 of”;
 - 10 (c) in section 61 (interpretation of Part 1), in subsection (1), in the definition of “regulations” after “Secretary of State” insert “or the Welsh Ministers”;
 - (d) in section 89 (orders, regulations and directions)—
 - (i) in subsection (1), omit “of the Secretary of State”;
 - (ii) in subsection (2) omit “22ZA(1) and (4),” and “29C(4),”;
 - 15 (iii) in subsection (3), for the words from “a resolution” to the end substitute “—
 - (a) in the case of an order or regulations made by the Secretary of State, a resolution of either House of Parliament;
 - (b) in the case of an order or regulations made by the Welsh Ministers, a resolution of the National Assembly for Wales.”
- 20

Learning and Skills Act 2000

- 2 In the Learning and Skills Act 2000, omit—
- (a) section 39 (power of Welsh Ministers to appoint governors of institution falling within further education sector and mainly serving population of Wales), and
 - 25 (b) in Schedule 9, paragraphs 22(4) and 25 (which amend sections 19 and 31 of the Further and Higher Education Act 1992).

National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005

- 3 In the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, in Schedule 1, omit paragraphs 14 to 16, 18 and 59 (which amend sections 19, 22, 27 and 31 of the Further and Higher Education Act 1992 and section 39 of the Learning and Skills Act 2000).
- 30

Further Education and Training Act 2007

4 In the Further Education and Training Act 2007, omit –

(a) section 18(5) (which inserts section 57A into the Further and Higher Education 1992),

5 (b) section 21(3) to (5) (which amend section 19 of that Act), and

(c) section 22 (which, if in force, would insert section 49A into the Further and Higher Education 1992 so as to require governing body of further education sector institution in Wales to have regard to guidance of Welsh Ministers about consultation).

10 *Apprenticeships, Skills, Children and Learning Act 2009*

5 In the Apprenticeships, Skills, Children and Learning Act 2009, in Schedule 6, omit paragraphs 3(1), (3) and (4) and 5(b) of Schedule 6 (which amend sections 19(4A) and (4B) and 31(2A) of the Further and Higher Education 1992).

Learning and Skills (Wales) Measure 2009

15 6 In the Learning and Skills (Wales) Measure 2009, in the Schedule, in paragraph 3 (which amends section 39 of the Learning and Skills Act 2000), omit “39(1)”.

Education Act 2011

7 In the Education Act 2011, in Schedule 12, omit paragraphs 3(3) to (5) and (7)(a) and (9), 5, 6, 7, 16(a), 43 and 45 (which amend sections 19 and 20, insert sections 22 and 22ZA, and substitute section 27 of and Schedule 4 to the Further and Higher Education Act 1992 and amend section 22 of the Further Education and Training Act 2007).

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