

## **Explanatory Memorandum to The Dissolution of Further Education Corporations (Publication of Proposals and Prescribed Bodies) (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Member's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of above Regulations.

**Huw Lewis AM**

Minister for Education and Skills

6 August 2014

## **1. DESCRIPTION**

The Regulations set out the time, manner and process for the publication of proposals for the dissolution of a further education corporation. The Regulations also provide specific detail on the consultation process that must be followed, as well as prescribing the bodies to which a further education corporation can transfer its property, rights and liabilities upon dissolution.

## **2. MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE**

None.

## **3. LEGISLATIVE BACKGROUND**

The Further and Higher Education (Governance and Information) (Wales) Act 2014 (“the Act”) received Royal Assent on the 27 January 2014. Section 3 of the Act relates to the arrangements for the dissolution of further education corporations (“FECs”). Section 3 amends the Further and Higher Education Act 1992 (“FHEA”) in respect of institutions in Wales and restates the law in respect of England, specifically sections 27, 27A and 27B. Section 3 of the Act came into force on the 1<sup>st</sup> August 2014 for the purpose of making regulations.

The functions of the Secretary of State under section 89 were transferred to the National Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Section 89 was amended by paragraph 1 of Schedule 2 to the Further and Higher Education (Governance and Information) (Wales) Act 2014.

The Welsh Ministers make these Regulations in accordance with their powers under sections 27(2) to (4), 27B(1) and 89(4) of the FHEA.

The Regulations follow the negative resolution procedure.

## **4. PURPOSE AND INTENDED EFFECT OF THE REGULATIONS**

The provisions in the Act have been specified to remove restrictions on further education institutions to enable the Office of National Statistics to reclassify them to their previous status as Non Profit Institutions Serving Households.

The Regulations set out the process a FEC must follow before making a resolution to dissolve itself and prescribe the bodies to which a FEC may transfer its property, rights and liabilities, upon its dissolution.

The provisions of the Act and the Regulations remove the Welsh Ministers’ power to dissolve FECs and transfer their property, rights and liabilities to another education

provider. Instead, FECs will have the power to dissolve themselves, provided they have published proposals, conducted a full consultation and taken account of the views of those consulted in accordance with the Regulations.

## **5. CONSULTATION**

Consultation was undertaken between 7 April 2014 and 9 June 2014. The consultation sought views from the sector on the time and manner to publish proposals for dissolution, the requirement and timing of consultation, and the prescribed bodies to which institutions may transfer their property, rights and liabilities upon dissolution.

In total, 16 responses were received including 6 responses from the further education sector, and 10 responses received from other sector related stakeholders including Estyn.

There was significant support for the proposals, thirteen respondents (81%) agreed to the proposed process an FEC must follow to dissolve itself, twelve respondents (75%) agreed to the proposed consultation process and eleven responses (69%) agreed with the prescribed list of eligible bodies for transfer of assets and liabilities.

Following consideration of the consultation responses the Regulations were amended to extend the method of publication of a notice of a proposal to dissolve, to electronic means such as websites, and extending the minimum notice period for the publication of the proposal to 6 months. Trade unions recognised by the corporation which represents staff at the institution have been added to the required consultee list, together with MPs in whose constituency the institution to which the proposal relates is situated.

A summary of the responses was published on the Welsh Government website at:

<http://wales.gov.uk/consultations/education/proposed-regulations-for-the-dissolution-of-further-education-corporations/?status=closed&lang=en>

## **6. REGULATORY IMPACT ASSESSMENT**

An impact assessment was completed in respect of the introduction of the Act, and was reviewed following consultation on the Regulations.

If the dissolution proposals are made in accordance with the Regulations, there should be minimal financial implications for FECs.

The Regulations prescribe that the corporation must publish details of its proposed dissolution, and where it must publish this information. Costs to the institution will be limited to the advertisement of dissolution notices in the local and national press.

The cost of this is on average £2,000.00 per advertisement in a national newspaper, and approximately half that amount in a local newspaper. This would amount to

approximately £5,000 total publication cost. (Assuming 2X National, 1X Local newspaper).

The same cost commitment would have been required for consultation on proposals for dissolutions and mergers which took place before the introduction of the new legislation. As such there is no additional financial burden imposed on FECs.

There were, therefore, no differential impacts identified following the review of the impact assessment or the consultation responses. The impact on further education colleges will be no different to before introduction of the Act. There is no impact on businesses, charities, voluntary bodies or the public sector. Therefore, no Regulatory Impact Assessment has been undertaken on these Regulations.