

FURTHER EDUCATION AND TRAINING ACT 2007

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Further Education and Training Act 2007 which received Royal Assent on 23 October 2007. They have been prepared by the Department for Innovation, Universities and Skills in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Act implements proposals contained in the White Paper 'Further Education: Raising Skills, Improving Life Chances' (Cm 6768: published on 27 March 2006).

SUMMARY

Part 1 – The Learning and Skills Council for England

4. The Act makes provision to restructure the Learning and Skills Council for England (LSC). The LSC is the principal public body charged with planning and funding further education provision.

5. The Act also places new duties on the LSC in relation to encouraging diversity and increasing choice in education and training, consulting employers and learners and carrying out specified functions in accordance with strategies formulated by (i) bodies specified by the Secretary of State, and (ii) a body chaired by the Mayor of London the establishment of which the Secretary of State will be under a duty to provide for by making regulations.

6. Proposals in the Act extend the powers of the LSC to design, develop and operate support services for persons and bodies involved in education or training and for educational institutions.

7. The Act also clarifies the power of the LSC to form and invest in companies.

Part 2 – Further education institutions

8. The Act transfers the power to incorporate further education institutions and to dissolve further education corporations from the Secretary of State to the LSC. It also transfers to the LSC the Secretary of State's existing powers of intervention (with some modifications), thereby enabling it to intervene in certain prescribed circumstances, including where a college is identified as underperforming or mismanaged.

9. The Act enables the Secretary of State to make regulations requiring all college principals to achieve a stipulated leadership qualification before taking up a new post. At the

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moment, the Secretary of State can regulate only in relation to principals first appointed as such after commencement of section 137 of the Education Act 2002.

10. The Act places a duty on further education institutions to have regard to guidance about consulting employers and learners.

11. The Act clarifies the power of further education corporations to form or invest in companies and enables them to form or become members of charitable incorporated organisations. They may also use either power for the purpose of conducting an educational institution, with the consent of the LSC in relation to England and the Welsh Ministers in relation to Wales. This is currently not possible.

12. The Act enables the Privy Council to grant further education institutions in England powers to award their own foundation degrees subject to certain restrictions. The Secretary of State is required, within a specified time, to lay a report before Parliament about the effect of the changes relating to foundation degrees.

Part 3 – Industrial training levies

13. The Act amends the Industrial Training Act 1982 to make it easier for an industrial training board to demonstrate support for a levy proposal among employers in the relevant industry. It also requires that proposals for levy orders cover a three-year period, subject to certain exceptions.

Part 4 – Miscellaneous and general

14. The power of higher education institutions to form and invest in companies is clarified and there is a new power to form or become a member of a charitable incorporated organisation.

15. The Act gives measure-making powers to the National Assembly for Wales in the field of education and training.

16. The Act contains general provisions relating to regulations, commencement, extent, short title and other matters.

TERRITORIAL EXTENT

17. The Act extends to England and Wales only with the following exceptions:

- sections 11 and 12, which extend to Scotland;
- sections 11 and 13, which extend to Northern Ireland;
- sections 24 and 25 and certain provisions in Schedules 1 and 2 which amend enactments extending to Scotland;
- certain general provisions, which extend to the whole of the United Kingdom.

TERRITORIAL APPLICATION: WALES

18. The Act contains provision amending the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales. The amendment will allow the National Assembly for Wales to pass Measures containing any provision that could be made by Act of Parliament, subject to the restrictions in the 2006 Act, in respect of certain matters in the field of education and training.

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19. The following paragraphs set out all the provisions that apply to Wales in the Act or which affect Wales and England differently.
20. The Bill amends provision about the creation and dissolution of, and intervention in, further education institutions. Welsh Ministers (to whom functions of the National Assembly for Wales constituted under the Government of Wales Act 1998 are transferred under Schedule 11 to the Government of Wales Act 2006) will continue to act under these provisions in relation to Wales, but the LSC will act in relation to England. The amendments as to intervention include provision for the Welsh Ministers to publish intervention policies.
21. Consent for colleges in Wales to form or acquire an interest in companies or charitable incorporated organisations for the purpose of conducting an educational institution would be obtained from the Welsh Ministers (in England it would be from the LSC).
22. Further education colleges in Wales will be required to have regard to guidance from the Welsh Ministers about consulting learners and employers.
23. Provision amending the requirement that industrial training boards demonstrate consensus for their levy proposals solely by reference to “relevant organisations” would apply in Wales.
24. Provision requiring industrial training boards usually to submit levy proposals covering three years, rather than one, would also apply in Wales.
25. Provision enabling the LSC to operate shared services and take part in arrangements giving assistance as regards employment and training, for example by operating loans, would operate in Wales only with the consent of the Welsh Ministers.

COMMENTARY

PART 1: THE LEARNING AND SKILLS COUNCIL FOR ENGLAND

Sections 1, 2, 3, 4 and 5: the LSC

Restructuring the LSC

26. The LSC was established by the Learning and Skills Act 2000 (“the 2000 Act”) as a body corporate. The 2000 Act placed the LSC under a duty to establish a committee of the LSC (to be called a local learning and skills council) for each area of England specified by the Secretary of State. The Act contained provisions about the members and staff of local councils, delegation of local council functions and the preparation of local council plans. The Secretary of State specified 47 such areas of England in relation to which the LSC established 47 local councils.
27. The 2000 Act also placed the LSC under a duty to establish a young people’s learning committee and an adult learning committee.
28. The commitment to restructure the LSC was set out in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’.
29. Section 1 reduces the minimum size of the LSC National Council from twelve to ten.
30. Section 2 places the LSC under a duty to establish a committee, to be called a regional learning and skills council, for each area of England specified by the Secretary of State. The section requires a regional council to perform in relation to its area such of the LSC’s duties

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as the LSC specifies as well as allowing a regional council to exercise in relation to its area such of the LSC's powers as the LSC specifies. The section also provides for the LSC to be able to specify functions that regional councils must, or may, exercise outside their area.

31. The section gives the Secretary of State the power to make provision about regional councils in regulations. Regulations may make provision about matters including the membership of regional councils, the appointment of the members, chairman and staff of a regional council, the delegation of functions by a regional council, the payment of salaries and allowances of members and chairmen and the regulation by a regional council of its own procedure.

32. Paragraph 15 of Schedule 1 to the Act provides that the first set of regulations made under section 18A(2) of the 2000 Act (inserted by section 2), is subject to the affirmative resolution procedure.

33. Under section 18C of the 2000 Act, inserted by section 2 of the Act, the LSC is required to prepare guidance in relation to each financial year for each regional council, including the objectives which a regional council should achieve in seeking to carry out its functions, and the budget for the regional council in that financial year. The first set of guidance must be prepared as soon as reasonably practicable after section 2 comes into force.

34. Section 3 abolishes the local learning and skill councils and, as a consequence, current statutory provision in relation to them.

Strategy-making bodies

35. Section 24A of the 2000 Act, as inserted by section 4, allows the Secretary of State by order to specify a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or a part of it, but not exclusively either Greater London or a part of Greater London, and to keep the strategy under review. This will enable strategies to be set either for a specified area in England in relation to specified functions of the LSC or in relation to a particular education and training theme for the whole of England, where a theme relates to a function of the LSC. The LSC will be under a statutory duty to carry out any function or functions to which a strategy relates in accordance with that strategy (see inserted section 24C of the 2000 Act).

36. Section 24B of the 2000 Act, as inserted by section 4, requires the Secretary of State to provide, by regulations, for the establishment of a body to formulate a strategy setting out how the functions of the LSC as specified by order are to be carried out in Greater London. The regulations must provide for the body to consist of the Mayor of London and other members appointed by the Mayor in accordance with the regulations. They must also provide for the Mayor of London to be chairman of the body.

37. The section also makes provision (in inserted sections 24A and 24B) for the Secretary of State to give directions and guidance in relation to the formulation and review of strategies, including such matters as: the form and content of the strategy; the updating of the strategy; the steps to be taken by a strategy-making body, and matters to which the body is to have regard, when formulating or reviewing its strategy; and the consultation to be carried out when the body formulates or reviews its strategy.

38. In formulating and reviewing its strategy, a specified body, or the body chaired by the Mayor of London, must have regard to any guidance, and act in accordance with any

directions, given by the Secretary of State. The LSC can disregard the strategy of a specified body, or that of the body chaired by the Mayor, if that strategy has not been prepared in accordance with the requirements set out in the guidance and directions concerning formulation or review. If provision in a strategy of a specified body or the body chaired by the Mayor conflicts with the LSC's strategy made in accordance with section 16 of the 2000 Act, the Council may disregard that provision in the body's strategy. Where there is a conflict between provisions in the strategies of different specified bodies, including the body chaired by the Mayor of London, the LSC may disregard relevant provision in one or both of the strategies. The LSC is not required to carry out its functions in accordance with a strategy in a manner that it is satisfied might involve disproportionate expenditure or in a manner that is considered by the LSC to be unreasonable.

39. The LSC may not carry out a function in accordance with a strategy if in doing so it would fail to comply with a duty imposed on it by or under any enactment. Examples of such statutory duties include: the duty of the LSC in section 16(2) of the 2000 Act to have regard to its own strategy in exercising its functions; the LSC's duty in section 25(8) of the 2000 Act to comply with any directions given to it by the Secretary of State; and the duty of the LSC to comply with a condition of grant made under section 27(1) of the 2000 Act.

40. Where the LSC proposes not to, or does not, carry out a function to which a strategy relates, the LSC must refer the matter to the Secretary of State and the body whose strategy it is may do so. Upon such a reference the Secretary of State may give such direction to the LSC as he thinks fit, including a direction that a strategy be complied with to the extent specified in the direction.

Young people's learning committee and adult learning committee

41. Section 5 removes the duty on the LSC to establish a young people's learning committee and an adult learning committee, but the LSC retains its general power under paragraph 1(1)(b) of Schedule 3 to the 2000 Act to establish such committees as it thinks fit. This will give the LSC flexibility to establish committees to consider different issues as and when needed. For example, the LSC may establish a single group advising it on the needs of young learners, adults and the workforce as a whole.

Sections 6, 7, 8, 9, 10, 11, 12 and 13: functions of the LSC

Duty on the LSC in relation to diversity and choice

42. Section 2 of the 2000 Act imposes a duty on the LSC to secure the provision of facilities for education and training suitable to the requirements of 16 to 19 year olds and section 3 imposes a similar duty in relation to persons aged 19 or more. Section 6 of this Act provides that in performing those duties the LSC must act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice. This reflects commitments in the White Paper 'Further Education: Raising Skills, Improving Life Chances'.

43. The LSC will be expected to make whatever changes are necessary in order to effect an increase in the type and number of providers in the post-16 education and training market and in the opportunities available to individuals.

Consultation with learners and employers

44. Section 7 inserts a new section into the 2000 Act. New section 14A requires the LSC to have regard to guidance from the Secretary of State about consulting with learners, with people likely to become learners, with employers and with other persons specified in such guidance on the funding and provision of learning. New section 14A does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. New section 14A specifies that guidance must provide for the views of a learner or a prospective learner to be considered in the light of his age and understanding.

45. The background to this section is a Government commitment in the March 2006 White Paper 'Further Education: Raising Skills, Improving Life Chances' to create a demand-led system of further education provision, whereby funding follows the choices of employers and learners.

Plans for academic years

46. Section 8 amends section 15 of the 2000 Act so as to provide that the LSC must make and publish a plan for each academic year, rather than for each of its financial years. An academic year runs from 1 August to the following 31 July. This brings the LSC planning year in line with the planning and delivery arrangements of key partners such as further education colleges.

Power to form or be involved in certain bodies corporate

47. Section 9 amends the LSC's current power to form or invest in companies, as set out in section 18 of the 2000 Act, to make it clear that the LSC can form any type of company, including companies limited by guarantee as well as companies limited by shares, with the consent of the Secretary of State.

48. Subsection (4) contains retrospective provision that ensures that companies limited by guarantee that have already been formed between 1 September 2000 and the date on which this section comes into force were formed lawfully.

49. Section 18, as amended by this section, provides that the LSC's power to form charitable incorporated organisations (a new form of body corporate created by the Charities Act 2006) is subject to the consent of the Secretary of State.

Directions

50. Section 10 amends subsection (6) of section 25 of the 2000 Act (the Secretary of State's power to direct the LSC) so that the Secretary of State may exercise the power to direct the LSC in relation to the establishment and dissolution of further education corporations. (Section 10 is linked to sections 14 to 16 which transfer the powers to establish and dissolve further education corporations, and associated order-making powers, from the Secretary of State to the LSC.)

51. Section 25 of that Act enables the Secretary of State to give directions to the LSC where he is satisfied that it has either failed to discharge a duty, or has acted or is proposing to act unreasonably. An amendment to the 2000 Act is required because section 25(6), without the amendment made by this Act, would provide that directions may not concern the provision of financial resources. Because a direction to establish or dissolve a further

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education corporation might be considered to contravene such a prohibition, section 10 amends section 25(6) so that its scope is limited to powers and duties under that Act. The powers to establish or dissolve further education corporations are conferred by the Further and Higher Education Act 1992, so this means that the Secretary of State will be able to issue directions with regard to these matters where he is satisfied that the LSC had acted or was proposing to act unreasonably.

Provision of services

52. Section 11 extends the powers of the LSC to design, develop and operate support services for persons and bodies exercising education and training functions, in relation to those functions. The LSC's current powers are in the 2000 Act. This provides that the LSC has powers and duties mainly in respect of post-16 education and training and in relation to England only. The powers are largely exclusive of higher education. This section enables the LSC to provide support in respect of higher education and learners under 16, throughout the United Kingdom.

53. The provisions enable the LSC to offer support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services.

54. The LSC may provide these services to: publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and persons or bodies specified by order (who may or may not be publicly funded).

55. The orders specifying additional persons or bodies may be made by the Secretary of State or, where a person or body has education and training functions only in Wales, Scotland or Northern Ireland, by the relevant devolved administration (*see subsection (8)*).

56. In Wales, Scotland and Northern Ireland, these services will be supplied only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service.

57. The LSC will need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

58. The LSC will not need the consent of the Secretary of State before making arrangements to provide support services as regards education and training provided in England, because this process will be regulated via accountability mechanisms that were already in place and by which the LSC was already reporting to the Department for Innovation, Universities and Skills at the time of Royal Assent.

59. An example of such a support service is the Managing Information Across Partners (MIAP) programme, under which the LSC will manage the sharing of learner and learning data between learning and skills organisations, including higher education institutions and schools. This data, which includes information on participation and achievement, is held by a diverse range of owners. The LSC will manage the MIAP system on behalf of participating partners.

Assistance with respect to employment and training

60. Section 12 widens the powers of the LSC so as to allow it to take part in arrangements for assisting persons to select, train for, obtain and retain employment. Consent of the devolved administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland and the consent of the Secretary of State will be required for arrangements made by those devolved administrations. The arrangements that may be made include arrangements for a loans scheme which would be available to learners undertaking either further or higher education. An example of this type of scheme is Career Development Loans (CDLs). The CDL programme operates across England, Wales and Scotland. It is delivered through high street banks, who offer loans on a commercial basis to learners undertaking vocational learning, including some higher education courses. The interest on loans is paid by Government funds during the period of learning.

61. Section 13 enables the LSC to take part in similar arrangements, including provision for loans to be made available to individuals who are undertaking further or higher education, made by the Department for Employment and Learning in Northern Ireland. Consent of the Secretary of State is required for any such arrangements.

PART 2: FURTHER EDUCATION INSTITUTIONS

Sections 14, 15 and 16: Transferring powers to the LSC to establish and dissolve further education corporations

62. The Government's White Paper entitled 'Further Education: Raising Skills, Improving Life Chances' contained a commitment to eliminate inadequate provision across the learning and skills sector by 2008. The Government also undertook to bring about significant improvements in those providers perceived to be coasting.

63. The policy intention in England is to enable the LSC to intervene quickly where a college is underperforming, mismanaged or inadequate. As part of a package of measures, the power to incorporate and dissolve colleges will be transferred from the Secretary of State to the LSC. As far as Wales is concerned, these powers will continue to be exercised by the Welsh Ministers.

64. Section 16 of the Further and Higher Education Act 1992 ("the 1992 Act") enables the Secretary of State by order to establish a body corporate to conduct a new or existing educational institution in England. Such a body is known as a further education corporation. Section 27 of the 1992 Act enables the Secretary of State to provide by order for the dissolution of further education corporations in England and the transfer of their assets and liabilities. In Wales these powers are exercised by Welsh Ministers.

65. The provisions for the publication of proposals for the establishment and dissolution of further education corporations under sections 16 and 27 of the 1992 Act are set out in section 51 of the 1992 Act and in regulations made under that section, i.e. the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (England) Regulations (SI 2001/782) and the Further Education Corporations (Publication of Draft Orders) (Wales) Regulations 2007 (SI 2007/854).

66. Section 14 transfers the power to incorporate further education institutions in England under section 16 of the 1992 Act to the LSC. In Wales the powers will continue to be exercised by the Welsh Ministers.

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67. Section 15 transfers the Secretary of State's power to dissolve further education corporations in England under section 27 of the 1992 Act to the LSC. In Wales the powers will continue to be exercised by the Welsh Ministers.

68. Where it is proposed to dissolve a further education corporation, it may be necessary to transfer the property, rights and liabilities of a corporation to the LSC to achieve the best outcome for an area. In such a case the LSC will need to seek the agreement of the Secretary of State before making such provision.

69. Section 16 amends section 51 of the 1992 Act which requires the LSC, when making a proposal to the Secretary of State to establish or dissolve a further education corporation under section 16 or section 27, to publish the proposal in a prescribed form and consider any representations made on it. The amendment makes appropriate modifications to reflect the transfer of power to establish and dissolve further education corporations from the Secretary of State to the LSC and the fact that for institutions in Wales, this power will remain exercisable by the Welsh Ministers. It will be necessary to make consequential amendments to the regulations for England made under section 51 (see paragraph 65).

70. The provision made by section 10 is relevant to the operation of sections 16, 27 and 51 as amended by sections 14 to 16 (see paragraphs 50 and 51).

Sections 17 and 18: Intervention in further education institutions

71. The same policy intention lies behind sections 17 and 18 as lies behind sections 14 to 16 (see paragraph 63 above).

72. Section 17 inserts new sections 56A, 56B and 56C before section 57 of the 1992 Act. This amendment, in conjunction with amendments to section 57, has the effect of transferring the Secretary of State's intervention powers (as set out in section 57), with modifications, to the LSC. This section will apply to further education colleges in England only.

73. Inserted section 56A empowers the LSC to take remedial action in relation to an institution within the further education sector in certain prescribed circumstances, such as where there is evidence that the provider is failing to meet the needs of its learners or is performing significantly less well than might be expected. Under such circumstances, the LSC may do one or more of the following: remove all or any of the members of the institution's governing body; appoint new members of the governing body if there are vacancies; direct the governing body as it thinks expedient as to the exercise of their powers and performance of their duties.

74. The directions as to powers and duties that may be given include a direction to the governing body requiring them to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) and a direction to a governing body (where they have power under their institution's articles of government) to secure that they give effect to the procedures in those articles for considering the case for dismissal of a member of staff, where the LSC considers that it may be appropriate to dismiss that member of staff. A governing body must comply with any such directions.

75. Before taking action, the LSC must give the Secretary of State a notice stating which of the prescribed circumstances applies (or apply), the reasons why it is so satisfied, what it proposes to do and the reasons why it proposes to take that action.

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76. At the same time as it takes action, the LSC must give the governing body a notice stating which of the prescribed circumstances set out in section 56A(2) applies (or apply) in the case of their institution, the reasons why it is so satisfied, and the reasons for taking the particular course of action (under section 56A(5)) which it has decided to adopt.

77. Inserted section 56B requires the LSC to prepare a statement of its policy with respect to the exercise of its intervention powers under section 56A and to keep it under review. The LSC is required to consult and to take account of representations when preparing a statement (or revised statement) of its policy. The Secretary of State may issue guidance about the preparation and review of statements and the LSC must have regard to it. Once prepared, a statement must be submitted to the Secretary of State. Where a statement is approved by the Secretary of State, he must lay a copy of it before Parliament and the LSC must publish it. The LSC must have regard to its most recently published statement when exercising or deciding whether to exercise any of its powers under section 56A.

78. Inserted section 56C enables the Secretary of State to direct the LSC to take action where he considers that the LSC has failed properly to exercise its powers of intervention under section 56A in the case of an underperforming or failing college. The LSC must comply with any directions given under this section. Inserted section 56C requires the Secretary of State to give the LSC a notice stating why he considers intervention is justified. Where the LSC takes action under section 56A in relation to an institution in compliance with a direction given by the Secretary of State, it must give the institution's governing body copy of that notice (instead of the notice to the governing body required by section 56A).

79. As regards institutions in Wales, section 18 amends section 57 of the 1992 Act so as to alter the grounds for interventions in such institutions and to make it clear that Welsh Ministers are able to direct the governing body of an institution to initiate dismissal proceedings against a senior post-holder or to enter into collaboration arrangements. These changes mirror provision in inserted section 56A.

80. Section 18 provides that the Welsh Ministers must prepare a statement of their policy with respect to the exercise of their intervention powers, keep the statement under review and, if they consider it appropriate, prepare a revised statement. It also provides that, when preparing a statement or revised statement, Welsh Ministers must undertake such consultation as they think appropriate and consider any representations made to them about the policy to be set out in the statement; and that Welsh Ministers must lay any statement or revised statement before the National Assembly for Wales.

81. In order to give a fuller picture of how the policy intention described in paragraph 63 is put into effect, the following paragraphs set out the various provisions that will enable the LSC to take action where appropriate as regards the performance of further education institutions.

82. As noted in paragraphs 62 to 70, under sections 16 and 27 of the 1992 Act the Secretary of State or the Welsh Ministers may establish a body corporate to conduct a new or existing educational institution and may provide by order for the dissolution of further education corporations and the transfer of their assets and liabilities. Section 51 provides for the publication of proposals for the establishment or dissolution of further education institutions. Sections 14, 15 and 17 of this Act transfer these powers, with modifications, to the LSC in England.

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83. The LSC will also continue to have relevant powers under the 2000 Act. Section 6 provides that the LSC may impose conditions when allocating its financial resources. If the conditions are not met, these resources may be withdrawn. Under section 27, grants made to the LSC by the Secretary of State may be the subject of conditions, including conditions on the funding of others by the LSC. Section 9 provides that the LSC may develop schemes to assess the performance of further education institutions and take these into account when allocating its financial resources.

84. Under section 11 of the 2000 Act, the LSC may appoint up to two governors of the governing body of an institution. It may use this power where it considers there has been mismanagement at the institution, or where it has concerns over the quality of provision.

Sections 19 and 20: Foundation degrees

85. The Privy Council has a statutory power, under section 76 of the 1992 Act, to make orders that enable institutions providing higher education to grant one or both of two groups of awards. Institutions providing higher education can be given a power to grant awards to students who complete a course of study or a power to grant awards to students who complete a programme of research or both. These are commonly referred to as taught and research degree awarding powers respectively.

86. A number of further education institutions provide courses leading to foundation degrees. However, only institutions with full taught degree awarding powers can award foundation degrees in their own right. At the time of Royal Assent, no further education institutions had such powers, and foundation degrees for courses provided by further education institutions were awarded by other institutions with full, taught degree-awarding powers. Section 19 amends section 76 so as to enable the Privy Council to make orders granting further education institutions in England the power to award only foundation degrees (see *subsection (5)*). In order to be granted this power, institutions would have to meet certain non-statutory criteria, which were published in draft during the passage of the Bill. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.

87. As a result of this provision, further education institutions in England providing courses leading to foundation degrees are able to apply for powers to award foundation degrees themselves.

88. In order to grant a further education institution in England the power to award foundation degrees, the Privy Council must first have received a statement from that institution setting out how it proposes to secure an opportunity for progression to one or more courses of more advanced study for any person awarded one of its foundation degrees. Before it can grant the power to award foundation degrees, the Privy Council must consider that these proposals are satisfactory and are likely to be carried out before it can grant foundation degree-awarding powers (see section 76(2B) as inserted by *subsection (5)*). The proposals do not have to cover honorary foundation degrees.

89. If the Privy Council by order gives a further education institution the power to award foundation degrees, it may in the same order specify that the power does not include the power to authorise other institutions to do so on its behalf (see section 76(5A), as inserted by *subsection (10)*). The Privy Council may in such an order provide that foundation degrees are not to be

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awarded unless a person is enrolled at the institution when he completes the course of study for which the degree is granted (see section 76(6A), as inserted by *subsection (12)*).

90. It is envisaged that the Quality Assurance Agency for Higher Education will advise that a further education institution's powers to award foundation degrees should initially be granted for a 'probationary period' of six years. The Quality Assurance Agency would also recommend that, during this probationary period, the further education institution's powers to award foundation degrees should be restricted to foundation degrees granted to persons enrolled at the institution and should exclude the power to authorise other institutions to award foundation degrees on its behalf.

91. The provision in this section applies to further education institutions in England as defined under section 91 of the 1992 Act. According to this definition, references to institutions within the further education sector are to institutions conducted by further education corporations and 'designated institutions'. Section 28 of the 1992 Act lists the criteria that an institution must meet in order to be designated as a further education institution.

92. Section 20 requires the Secretary of State to lay before Parliament a report about the effect of section 19 within a period of four years of section 19 coming into force.

Sections 21, 22 and 23: other provisions relating to further education institutions

Power to form or be involved in companies or charitable incorporated organisations

93. Section 19(4)(bb) of the 1992 Act sets out the powers of a further education corporation in relation to companies. Section 19(4A) prohibits further education corporations from forming or investing in companies for the purpose of conducting an educational institution.

94. Section 21 amends section 19 of the 1992 Act, clarifying the power of further education corporations to form or invest in all types of company and enabling them to do so for the purpose of conducting an educational institution, subject to the agreement of the LSC with respect to further education corporations in England and subject to the agreement of the Welsh Ministers with respect to further education corporations in Wales.

95. *Subsection (7)* contains retrospective provision that ensures that companies limited by guarantee that have already been formed in the period beginning on 1 April 2001 and ending immediately before the date on which this section comes into force were formed lawfully.

96. The Charities Act 2006 created a new form of body corporate called charitable incorporated organisations (CIOs) which will be regulated by the Charities Commission. There is a new power in section 21 for further education corporations to form, participate in forming or otherwise become members of charitable incorporated organisations. Where this is to be for the purposes of conducting an educational institution, it is subject to the agreement of the LSC or the Welsh Ministers, as appropriate.

97. In considering requests to establish companies or charitable incorporated organisations for the purpose of delivering education, the LSC will look at whether the entity should be designated as part of the further education sector (under section 28 of the 1992 Act). Designated institutions are required to comply with all legislation appropriate to further education corporations.

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98. This provision is intended to facilitate collaboration between further education corporations and schools, businesses, universities and other partners. The background to this section is a Government commitment in the White Paper ‘Further Education: Raising Skills, Improving Life Chances’ to encourage new delivery models for further education provision in England.

Consultation with employers and learners

99. Section 22 inserts a new section 49A into the 1992 Act. New section 49A imposes a duty on the governing bodies of further education institutions in England to have regard to guidance from the Secretary of State and for the governing bodies of institutions in Wales to have regard to guidance from the Welsh Ministers, about consulting with learners, with people likely to become learners or with employers in connection with decisions which will affect them. The section does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. The section specifies that guidance must provide for the views of a learner or prospective learner to be considered in the light of his age and understanding.

100. The background to this section is a Government commitment in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’ to create a demand-led system of further education provision, whereby funding follows the choices of employers and learners.

Qualifications of principals of further education institutions

101. Section 23 amends section 137 of the Education Act 2002 (“the 2002 Act”). Section 137 allows the Secretary of State (in relation to England), or the Welsh Ministers (in relation to Wales), to make regulations requiring a person appointed as a principal of a further education institution after commencement of that section to have achieved, or be working towards, a specified leadership qualification. Persons who were appointed before the commencement of section 137 are thus exempt from the requirement that may be imposed by regulations.

102. Section 23 limits to institutions in Wales the exemption from the regulations for those appointed as principals before the commencement of section 137. The effect of this will be to enable regulations made under section 137 by the Secretary of State to extend to all further education college principals in England.

103. The removal of this exemption applies to principals in England only, although section 137 of the 2002 Act applies to England and Wales.

104. This section also inserts new subsection (2A) which provides that regulations made under subsection (1) of section 137 may limit the period of time a principal may be given to achieve the qualification. This provision applies to England and Wales.

PART 3: INDUSTRIAL TRAINING LEVIES

Sections 24 and 25: Amendments to the Industrial Training Act 1982

Levy proposals

105. Section 24 amends section 11 of the Industrial Training Act 1982 (“the 1982 Act”).

*These notes refer to the Further Education and Training Act 2007 (c.25)
which received Royal Assent on 23 October 2007*

106. The 1982 Act would, but for the amendments made by this Act, require an Industrial Training Board (ITB) to demonstrate that a levy proposal has the support of organisations representing more than half the employers who are likely to be liable for levy payments and organisations representing employers who together are likely to pay more than half the total amount of levy payable, before the Secretary of State imposes that levy on the industry. These representative organisations have traditionally taken the form of employer federations and trade associations. However, an increasing proportion of employers no longer choose to be members of such organisations. Without the amendments made by this Act, it would continue to be difficult for ITBs to demonstrate support for a levy among employers within their industry, even where this support exists.

107. This section amends the 1982 Act to allow support for levy proposals to be demonstrated by consulting more widely with employers, whether or not they are members of representative organisations. It allows the Secretary of State to make regulations about the detail of how support for levy proposals is to be demonstrated, including allowing a sample of employers to be consulted.

Three-Year Levy Orders

108. A levy order is an order issued by the Secretary of State requiring that employers in a given industry pay a levy and that the ITB for that industry collect and administer the levy. A levy order also includes provision for exempting employers from payment of the levy in appropriate cases.

109. Current practice is for ITBs to make proposals for levy orders annually. However, levy rates have remained unchanged for a number of years.

110. Section 25 requires ITBs who wish to submit proposals for levy orders to submit proposals for three-year levy orders to the Secretary of State. These proposals must specify up to three levy periods for each three-year period. There are certain exceptions to this. The levy is imposed in respect of the levy period.

111. The ITB submitting the proposal for a three-year levy order must also specify a base period for each levy period of the proposed order. A base period is usually a period covering a financial year (6 April to 5 April) prior to the beginning of a levy period. The emoluments to their workers and payments for sub-contract labour that are paid or payable by employers during a base period are used as the basis for calculating the levies due as a consequence of passing the proposed levy order.

112. The first and second levy proposals made by an ITB do not need to cover a three-year period; they may specify one levy period. Subsequent levy proposals, if the ITB chooses to make them, must cover a three-year period, subject to certain exceptions.

PART 4 – MISCELLANEOUS AND GENERAL

Section 26: Power of a higher education corporation to form or be involved in certain bodies corporate

113. The Charities Act 2006 created a new form of body corporate called charitable incorporated organisations (CIOs) which will be regulated by the Charities Commission. Section 26 clarifies the power of higher education corporations to form or invest in

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companies and gives them a new power to form or become members of charitable incorporated organisations.

114. *Subsection (4)* contains retrospective provision that ensures that any companies limited by guarantee that have already been formed between 1 April 2001 and the date on which this section comes into force were formed lawfully.

Section 27: Powers of National Assembly for Wales

115. This section makes amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006 (“GOWA 2006”), so as to confer enhanced legislative competence on the National Assembly for Wales in specific subject areas. Section 94 of GOWA 2006 provides that a provision of an Assembly Measure is within the Assembly’s competence if it relates to (or is incidental or consequential on provision that relates to) one or more of the matters specified in Schedule 5. Part 1 of Schedule 5 to GOWA 2006 sets out twenty fields and matters in respect of some of those fields. Assembly Measures may include any provision that could be made by Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to GOWA 2006.

116. The matters added by section 27 of this Act to field 5 in Part 1 of Schedule 5 to GOWA 2006 cover a broad range but centre on post-16 education and training.

Sections 28, 29, 30, 31, 32, 33 and 34: General provisions

117. Sections 28, 29, 30, 31, 32, 33 and 34 contain general provisions, including: those relating to the exercise of powers to make orders and regulations; general interpretation provisions; commencement; extent of the Act; and the short title of the Act.

118. Section 29 introduces Schedule 1 which contains miscellaneous and consequential amendments.

119. Section 30 introduces Schedule 2 which specifies the extent to which the enactments listed are repealed.

COMMENCEMENT

120. Section 32(1) specifies those provisions that come into force on the day on which this Act is passed. These are sections 9, 21 and 26 and a number of general provisions such as: provisions about orders and regulations; financial provisions; interpretation; commencement; extent; and the short title of the Act.

121. Subsection (2) specifies those provisions that come into force at the end of the period of two months beginning with the day on which this Act is passed. This applies to provision securing measure-making powers for Wales.

122. Subsection (3) specifies that section 18 will come into force in accordance with provision made by a commencement order made by the Welsh Ministers.

123. Subsection (4) specifies that sections 22 and 23 (which are about consultation by governing bodies of further education institutions and qualifications of principals of further education institutions) will come into force in accordance with provision made by a commencement order made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

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124. Subsection (5) specifies that the remaining provisions in the Act will come into force in accordance with provision made by a commencement order made by the Secretary of State.

HANSARD REFERENCES

125. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Lords</i>		
Introduction	20 November 2006	Vol. 687 Col. 111
Second Reading	13 December 2006	Vol. 687 Cols. 1538-1616
Committee	23 and 25 January 2007	Vol. 688 Cols. GC309-GC372 and GC423-GC472
Report	27 February 2007	Vol. 689 Cols. 1495-1561
Third Reading	6 March 2007	Vol. 690 Cols. 137-147
Lords Consideration of Commons Amendments	25 July 2007	Vol. 694 Cols. 812-836
Lords Consideration of Commons Amendments in lieu	18 October 2007	Vol. 695 Cols. 794-799
<i>House of Commons</i>		
Introduction	7 March 2007	
Second Reading	21 May 2007	Vol. 460 Cols. 994-1079
Committee	12 and 14 June 2007	Hansard Public Bill Committee
Report and Third Reading	12 July 2007	Vol. 462 Cols. 1629-1710
Commons Consideration of Lords Reasons for disagreeing to the Commons Amendments	11 October 2007	Vol. 464 Cols. 512-520

Royal Assent – 23 October 2007 House of Lords Hansard Vol. 695 Col. 973
House of Commons Hansard Vol. 465 Col. 187