

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Educational Institutions: Other Provisions

Further education institutions

Section 49: Further education institutions: amendments

233. *Section 48* gives effect to Schedule 12 which makes amendments to the duties on further education corporations and sixth form college corporations.
234. A further education corporation is a body corporate established under section 15 or 16 of FHEA 1992, or which has become a further education corporation by virtue of section 33D or 47 of that Act.
235. A sixth form college corporation is a body corporate that is designated as a sixth form college corporation under section 33A or 33B of FHEA 1992, or established under section 33C, of that Act. References to sixth form colleges are to institutions conducted by sixth form college corporations.

Schedule 12

236. *Paragraph 2* inserts a new section 16A into FHEA 1992. The new section requires the Secretary of State to publish draft proposals in the prescribed form, before he makes an order to establish a further education (FE) corporation. This retains the current legislative provision in relation to the establishment of FE corporations as set out in section 51 of FHEA 1992, which is repealed by paragraph 23.
237. *Paragraphs 3, 13 and 14* amend sections 19, 33F and 33G of FHEA 1992. They remove the requirement for FE corporations in England and sixth form college corporations to gain the consent of the relevant body – the relevant local authority or in some cases the Young People’s Learning Agency for England (the YPLA) in the case of sixth form college corporations, and the Chief Executive of Skills Funding for FE corporations – before they exercise their supplementary powers to borrow money, and form or invest in a company or a charitable incorporated organisation for the purposes of conducting an educational institution.
238. The Schedule also provides for the repeal of the duty on colleges to promote the economic and social wellbeing of the local area. *Paragraph 4* repeals section 19A of FHEA 1992 that places this duty on FE corporations in exercising their function under sections 18 and 19 of FHEA 1992; *paragraph 10* repeals section 33H of FHEA 1992 that places a corresponding duty on sixth form college corporations in exercising their functions under sections 33E and 33F. *Paragraph 46(2)* makes a consequential amendment to section 256 of ASCLA 2009.
239. The Schedule also makes provision relating to sixth form college corporation and FE corporation instrument and articles of government. *Paragraph 5* amends section 20 of

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FHEA 1992 to make new provision about the content of instruments and articles of government of FE corporations in England. *Paragraph 6* substitutes a new section 22 of FHEA 1992 which removes the Secretary of State's power to modify, revoke or replace the instrument and articles of FE colleges in England and gives FE colleges in England the power to modify or replace their instrument and articles; *paragraph 19* makes similar changes in relation to sixth form colleges by repealing the Young People's Learning Agency power to modify, revoke or replace the instrument and articles of sixth form colleges, and giving such colleges the power to modify or replace their instrument and articles through new section 33L. *Paragraph 5* also makes provision to maintain the current position for FE college corporations in Wales.

240. The Schedule also makes provision relating to the dissolution of sixth form college corporations and FE corporations. *Paragraph 7* replaces section 27 of FHEA 1992 with new sections 27, 27A and 27B. These new sections remove the Secretary of State's power to dissolve a FE college corporation and to transfer their property, rights and liabilities to another educational provider. Instead, FE college corporations will have the power to dissolve themselves, provided they have conducted a full consultation and taken account of the views of those consulted, in accordance with regulations. *Paragraph 7* also gives colleges the ability to transfer their property, rights or liabilities to a body or institution with their consent. The body or institution will be specified in regulations. In addition, new section 27C will retain the current position for FE colleges in Wales. *Paragraph 20* makes similar changes in relation to sixth form colleges by replacing 33N of FHEA 1992 with new sections 33N, 33O and 33P.
241. *Paragraph 8* replaces section 29 of FHEA 1992 with new sections 29, 29A, 29B and 29C, to give designated institutions in England the power to modify or replace their instrument and articles.
242. *Paragraph 11* amends section 33C of FHEA 1992 which provides for the establishment of new sixth form college corporations by order of the Secretary of State. At present, an order may only be made where the responsible local authority makes a proposal which meets specified requirements. The effect of the amendment is to enable any person or body to make a direct application to the Secretary of State, to establish a sixth form college corporation.
243. *Paragraphs 12, 17 and 18* provide statutory safeguards relating to the specific governance and constitutional arrangements of voluntary sixth form colleges, which were afforded by previous legislation relating to FE colleges or Secretary of State directions. *Paragraphs 12 and 17* give voluntary sixth form colleges the express power to conduct their institution in accordance with their trust deeds and established character. *Paragraph 18* requires the Secretary of State to gain the consent of the trustees of voluntary sixth form colleges when providing the initial instrument and articles of government.
244. *Paragraph 18* amends section 33K of FHEA 1992. It transfers responsibility from the YPLA to the Secretary of State for the drawing up of the initial instruments and articles of government of a new sixth form college corporation established under section 33C.
245. *Paragraph 21* makes consequential amendments to section 38 of FHEA 1992 in light of the dissolution of the YPLA. It transfers to the Secretary of State the YPLA's power to make payments, on such terms and conditions as the YPLA may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
246. *Paragraph 22* repeals section 49A of FHEA 1992, as it has effect in England. The effect is to remove the requirement for governing bodies of sixth form and FE colleges to have regard, when exercising their functions, to the content of any guidance that has been issued by the Secretary of State about consulting certain groups in connection with decisions which affect them. The groups concerned are people who are, or are likely to become, students and employers.

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247. *Paragraph 25* amends section 56A of FHEA 1992, which relates to the power to intervene in FE institutions. Currently, under section 56A, if the Chief Executive of Skills Funding considers that a further education institution is being mismanaged or is otherwise failing, he can, after serving a notice on the institution's governing body, intervene by making changes to the governing body or making another direction. Paragraph 25 transfers the functions of the Chief Executive under this section to the Secretary of State (and *paragraphs 27 to 29* make consequential repeals of sections 56B to 56D of FHEA 1992). *Paragraph 25(6)* amends sections 56A FHEA 1992 to enable the Secretary of State, when using the intervention powers provided under these sections, to direct the college's governing body to use its new powers to pass a resolution to dissolve itself. If this happens, colleges will be treated as if they had followed the consultation procedures set out in sections 27. *Paragraph 30(7)* makes similar provision for sixth form colleges in relation to section 56E of FHEA 1992.
248. *Paragraph 26* repeals section 56AA of FHEA 1992 so that the power of the Chief Executive of Skills Funding to appoint up to two additional members of the governing body of a FE corporation is removed. *Paragraphs 31* and *34* repeal sections 56F and 56I of FHEA 1992. They remove the corresponding powers of the relevant local authority and the YPLA in respect of sixth form college corporations. *Paragraph 10* makes a consequential amendment to section 31 of FHEA 1992. *Paragraph 46(3)* makes consequential amendments to Schedule 6 to ASCLA 2009. The consequential amendments remove references to the two additional members of the governing body appointed by the Chief Executive of Skills Funding or the relevant local authority and the YPLA.
249. *Paragraph 30* makes equivalent changes to section 56E of FHEA 1992 which currently gives the power of intervention in sixth form colleges to local authorities. This power of intervention is transferred to the Secretary of State. *Paragraphs 32 and 35* make consequential repeals of sections 56G and 56J. Paragraph 30(4) requires the Secretary of State to consult the trustees and each person or body with power to appoint or nominate the foundation governors prior to exercising his power of intervention in respect of voluntary sixth form colleges.
250. *Paragraph 33* repeals section 56H, thereby removing the power that the YPLA has to intervene in certain sixth form colleges (the YPLA is abolished by Part 7 of the Act).
251. *Paragraph 43* replaces Schedule 4 to FHEA 1992 with a new Schedule 4 that sets out the essential elements that all colleges are required to include in their instrument and articles. These essential elements will require colleges to set out, for example, the composition of the corporation or governing body, the roles and responsibilities of key personnel, and procedures for the conduct of the corporation or governing body, and how a college will change its instrument and articles. Governing bodies will have to include staff, student, and, in the case of sixth form colleges, parent governors.
252. Other paragraphs of this Schedule make consequential amendments in light of the dissolution of the YPLA and the amendments to FHEA 1992 contained within this Schedule.