

**EDUCATION REFORM ACT 1988****Part II - Higher and Further Education****Chapter II****Reorganisation of Provision and Funding of Higher Education***The higher education corporations*

Initial  
incorporation of  
higher education  
institutions  
maintained by  
local education  
authorities.

**121.**—(1) Before such date as may be appointed for the purposes of this section the Secretary of State shall by order specify each institution maintained by a local education authority which appears to him to fall within subsection (2) below; and on that date a body corporate shall be established for the purpose of conducting each institution so specified as from the transfer date applicable in relation to bodies corporate established under this section.

(2) An institution falls within this subsection if on 1st November 1985 either—

(a) its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55 per cent. of its total full-time equivalent enrolment number; or

(b) its full-time equivalent enrolment number for such courses exceeded 2,500.

(3) Where an institution maintained by a local education authority has been established since that date by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) above if it would have done so if the merger had taken place before that date.

(4) References in this Part of this Act to courses of advanced further education are references to courses designated by Schedule 2 to the [S.I. 1981/1086.] Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

Orders  
incorporating

**122.**—(1) Subject to subsection (2) below, if at any time it

higher education institutions maintained by local education authorities.

appears to the Secretary of State, in the case of any institution maintained by a local education authority, that its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number he may make an order under this section with respect to that institution.

(2) An order may only be made by virtue of subsection (1) above with the consent of the local education authority concerned, unless at the time when the order is made it appears to the Secretary of State that the institution's full-time equivalent enrolment number for courses of higher education exceeds 350.

(3) Subject to the following provisions of this section, if it appears to the Secretary of State, in the case of any such institution, that its full-time equivalent enrolment number for courses of advanced further education on 1st November 1985—

(a) exceeded 55 per cent. of its total full-time equivalent enrolment number on that date; but

(b) did not exceed 350;

he may make an order under this section with respect to that institution.

(4) No order shall be made by virtue of subsection (3) above after the end of the period of twelve months beginning with the date on which this section comes into force.

(5) An order may only be made by virtue of subsection (3) above with the consent of the local education authority concerned.

(6) An order under this section with respect to any institution shall make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date applicable in relation to that body corporate.

Provisions supplementary to sections 121 and 122.

**123.**—(1) References in this Act to a higher education corporation are references to a body corporate established under section 121 or 122 of this Act.

(2) In this Act "transfer date" means, in relation to a higher education corporation, the date appointed under section 126 of

this Act in relation to the transfer under that section of property, rights and liabilities to that corporation.

(3) Schedule 7 to this Act has effect with respect to each higher education corporation.

Powers of a  
higher education  
corporation.

**124.**—(1) A higher education corporation shall have power—

- (a) to provide higher education;
- (b) to provide further education; and
- (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit.

(2) A higher education corporation shall also have power to do anything which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on the corporation by subsection (1) above, including in particular power—

- (a) to conduct an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, to assume the conduct as from the transfer date applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities transferred to the corporation under section 126 of this Act;
- (b) to provide facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of disabled students);
- (c) to supply goods and services;
- (d) to acquire and dispose of land and other property;
- (e) to enter into contracts, including in particular—
  - (i) contracts for the employment of teachers and

other staff for the purposes of or in connection with carrying on any such activities; and

(ii) contracts with respect to the carrying on by the corporation of any such activities;

(f) to form or take part in forming a body corporate for carrying on any such activities;

(g) to borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under section 126 of this Act and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the corporation;

(h) to invest any sums not immediately required for any of the purposes mentioned in paragraph (g) above;

(i) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and

(j) to do anything incidental to the conduct of an educational institution providing higher or further education.

(3) The power under subsection (2)(j) above includes in particular power—

(a) to found scholarships or exhibitions; and

(b) to make grants and give prizes.

(4) In subsection (2)(b) above "disabled student" means a student who is a person to whom section 29 of the [1948 c. 29.] National Assistance Act 1948 applies.

Articles of government.

**125.**—(1) Any institution conducted by a higher education corporation shall be conducted in accordance with articles of government, to be made by the corporation with the approval of the Secretary of State.

(2) The articles of government—

(a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the

academic board of the institution; and

(b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.

(3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies), and may make provision with respect to—

(a) procedures for the appointment, promotion, suspension and dismissal of staff;

(b) procedures for the admission, suspension and expulsion of students; and

(c) the appointment and functions of a clerk to the board of governors.

(4) The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—

(a) the conduct of students and staff or either of them; and

(b) any such procedures as are mentioned in subsection (3)(a) or (b) above.

(5) Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of the Secretary of State.

(6) The Secretary of State may by a direction under this section require higher education corporations, any class of such corporations specified in the direction or any particular higher education corporation so specified—

(a) to amend their articles of government; or

(b) to secure that any rules or bye-laws made in

pursuance of their articles of government are amended by the board of governors;

in any manner so specified.

(7) Before giving a direction under this section, the Secretary of State shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.

Transfer of property, etc., to higher education corporations.

**126.**—(1) In the case of a higher education corporation established under section 121 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to the corporations so established.

(2) In the case of a higher education corporation established under section 122 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to that corporation.

(3) Subject to subsection (5) below and section 198 of this Act, on the transfer date applicable in relation to a higher education corporation the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, that corporation.

(4) The property, rights and liabilities referred to in subsection (3) above are—

(a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the transferred institution; and

(b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.

(5) Subsection (3) above shall not apply to—

(a) rights and liabilities under any contract of employment;

(b) any liability of any such authority in respect of the principal of, or any interest on, any loan; or

(c) any liability of any such authority in respect of

compensation for premature retirement of any person formerly employed by them.

(6) In this section "the transferred institution" means, in relation to any higher education corporation, the institution the corporation is established to conduct.

Transfer of staff to higher education corporations.

**127.—**(1) This section applies to any person who immediately before the transfer date applicable in relation to a higher education corporation—

(a) is employed by the transferor authority to work solely at the institution the corporation is established to conduct; or

(b) is employed by that authority to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.

(2) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the corporation.

(3) Without prejudice to subsection (2) above—

(a) all the transferor authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the transfer date; and

(b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.

(4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

(5) An order under this section may designate a person either individually or as a member of a class or description of employees.

(6) References in this section, in relation to a higher education corporation, to the transferor authority, are references to the local education authority by whom the institution that corporation is established to conduct is maintained immediately before the transfer date.

Dissolution of  
higher education  
corporations.

**128.**—(1) Subject to the following provisions of this section, the Secretary of State may by order provide for—

(a) the dissolution of any higher education corporation;  
and

(b) the transfer of property, rights and liabilities of the corporation to—

(i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;

(ii) any body corporate established for purposes which include the provision of such facilities or services;

(iii) the Universities Funding Council established under section 131 of this Act; or

(iv) the Polytechnics and Colleges Funding Council established under section 132 of this Act.

(2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.

(3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.

(4) Before making an order under this section in respect of a higher education corporation the Secretary of State shall consult—

- (a) the corporation; and
- (b) the Polytechnics and Colleges Funding Council.

(5) In this section "charity" and "charitable purposes" have the same meanings as in the [1960 c. 58.] Charities Act 1960.

*Designation of certain institutions for funding by the Polytechnics and Colleges Funding Council, etc.*

Designation of institutions.

**129.**—(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council established under section 132 of this Act—

- (a) any institution other than a university which appears to him to fall within subsection (2) or (3) below; and
- (b) any institution which is or is to be conducted by a successor company to a higher education corporation.

(2) An institution falls within this subsection if—

- (a) its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number; and
- (b) it is either—
  - (i) an institution assisted by a local education authority; or
  - (ii) an institution which is grant-aided or eligible to receive aid by way of grant.

(3) An institution falls within this subsection if—

- (a) its full-time equivalent enrolment number for courses of advanced further education on 1st November 1985 exceeded 55 per cent. of its total full-time equivalent enrolment number on that date; and

(b) it was on that date either—

(i) an institution assisted by a local education authority; or

(ii) a grant-aided institution.

(4) An order under this section designating an institution as falling within subsection (3) above may not be made after the end of the period of twelve months beginning with the date on which this section comes into force.

(5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if—

(a) it is a company limited by a guarantee formed and registered under the [1985 c. 6.] Companies Act 1985;

(b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation;

(c) its objects—

(i) are exclusively charitable according to the law of England and Wales; and

(ii) include the conduct of the institution which was at that time conducted by that corporation;

(d) its memorandum and articles of association have been approved by the Secretary of State; and

(d) an order has been made under section 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this section is made).

Transfer of property, etc., to certain designated institutions.

**130.**—(1) This section applies to an institution designated under section 129 of this Act in any case where—

(a) the order designating the institution under that section so provides; and

(b) immediately before the date on which the designation takes effect (referred to below in this section, in relation to such an institution, as the designation date) the institution is an institution assisted by a local education authority (referred to below in this section as the former assisting authority).

(2) Subject to subsection (4) below and section 198 of this Act, on the designation date in relation to any institution to which this section applies the property, rights and liabilities mentioned in subsection (3) below shall be transferred to, and by virtue of this Act vest in, the appropriate transferee.

(3) The property, rights and liabilities referred to in subsection (2) above are—

(a) all land or other property which, immediately before that date, was property of the former assisting authority used or held for the purposes of that institution; and

(b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes.

(4) Subsection (2) above shall not apply to—

(a) any liability of the former assisting authority in respect of the principal of, or any interest on, any loan; or

(b) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them.

(5) In subsection (2) above, "the appropriate transferee" means—

(a) in relation to an institution conducted by a body corporate, that body; and

(b) in relation to an institution not so conducted, any persons specified in the order designating the

institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution.

(6) Subject to subsection (7) below, where any persons so specified are the appropriate transferee for the purposes of subsection (2) above—

(a) any land or other property or rights transferred to them under this section shall be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution; and

(b) they shall incur no personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.

(7) Subsection (6)(a) above shall not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution.

(8) In this Act, "transfer date" means, in relation to an institution to which this section applies, the designation date in relation to that institution.

*New arrangements for funding higher education*

Universities  
Funding Council.

**131.**—(1) There shall be established a body corporate to be known as the Universities Funding Council.

(2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.

(3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—

(a) to have experience of, and to have shown capacity in, the provision of higher education; and

(b) to be currently engaged in the provision of higher education;

and in appointing the remaining members the Secretary of State shall have regard to the desirability of including persons who

appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.

(4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purpose of providing financial support for activities eligible for funding under this section.

(5) Those activities are—

(a) the provision of education and the undertaking of research by universities; and

(b) the provision of any facilities and the carrying on of any other activities by universities which their governing bodies consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research.

(6) The Council shall have power to make grants, subject to such terms and conditions as they think fit, to the governing body of any university in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section.

(7) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any university in respect of which grants are made under subsection (6) above from maintaining or developing its funding from other sources.

(8) The Council shall also have power—

(a) to keep under review activities eligible for funding under this section;

(b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit;

(c) to provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the

discharge of the Department's functions relating to universities in Northern Ireland; and

(d) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.

(9) The governing body of any university shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.

(10) In this section "governing body" means, in relation to a university, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs.

Polytechnics and  
Colleges Funding  
Council.

**132.**—(1) There shall be established a body corporate to be known as the Polytechnics and Colleges Funding Council.

(2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.

(3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—

(a) to have experience of, and to have shown capacity in, the provision of higher education; and

(b) to be currently engaged in the provision of higher education;

and in appointing the remaining members the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.

(4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purposes of—

(a) providing financial support for activities eligible for

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funding under this section; and

(b) making payments in accordance with section 133 of this Act.

(5) The activities eligible for funding under this section are—

(a) the provision of education and the undertaking of research by institutions within the PCFC funding sector;

(b) the provision of any facilities and the carrying on of any other activities by such institutions which the governing bodies of those institutions consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research; and

(c) the provision by institutions maintained or assisted by local education authorities, other than universities, of prescribed courses of higher education.

(6) The following are to be treated for the purposes of this Act as institutions within the PCFC funding sector—

(a) any institution conducted by a higher education corporation; and

(b) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Council.

(7) The Council shall have power—

(a) to make grants to the governing body of any institution within the PCFC funding sector in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (5)(a) or (b) above; and

(b) to make grants to any local education authority or other persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in subsection (5)(c) above of prescribed courses of higher education;

subject in each case to such terms and conditions as the Council think fit.

(8) In exercising their functions in relation to the provision of

financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any institution within the PCFC funding sector in respect of which grants are made under subsection (7) above from maintaining or developing its funding from other sources.

(9) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to them to be for the time being an appropriate balance in their support of such activities as between institutions concerned in those activities which are of a denominational character and other institutions so concerned.

(10) The Council shall also have power—

- (a) to keep under review activities eligible for funding under this section;
- (b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit; and
- (c) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.

(11) Each of the following, that is to say—

- (a) a local education authority;
- (b) the governing body of any institution within the PCFC funding sector; and
- (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided;

shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.

(12) For the purposes of subsection (9) above an institution is an institution of a denominational character if it appears to the Council that either—

(a) a majority of the members of the governing body of the institution are persons appointed to represent the interests of a particular religious denomination; or

(b) all or most of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a particular religious denomination.

Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education.

**133.**—(1) The Polytechnics and Colleges Funding Council shall have power to make payments, subject to such terms and conditions as the Council think fit, to—

(a) any local education authority; and

(b) the governing body of any institution designated under section 129 of this Act;

in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.

(2) In subsection (1) above "relevant expenditure" means—

(a) in relation to a local education authority, expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and

(b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution.

(3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further

education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date.

(4) Each of the following, that is to say—

- (a) a local education authority; and
- (b) the governing body of any institution so designated;

shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.

The Funding Councils: supplementary provisions.

**134.**—(1) The Secretary of State may by order confer or impose on either of the Funding Councils such supplementary functions as he thinks fit; and any such functions shall be treated—

- (a) in the case of functions conferred or imposed on the Universities Funding Council, as functions under section 131 of this Act; and
- (b) in the case of functions conferred or imposed on the Polytechnics and Colleges Funding Council, as functions under section 132 of this Act.

(2) For the purposes of subsection (1) above a function is a supplementary function, in relation to either of the Funding Councils, if it is exercisable for the purposes of—

- (a) the exercise by the Secretary of State of functions of his under any enactment; or
- (b) the doing by the Secretary of State of anything he has power to do apart from any enactment;

and it relates to, or to the activities of, institutions eligible for funding by that Council.

(3) The terms and conditions on which either of the Funding Councils make any grants or other payments may include in particular conditions—

- (a) enabling the Council to require the repayment, in whole or in part, of sums paid by the Council if any other condition subject to which the sums were paid is not complied with; and

(b) requiring the payment of interest in respect of any period during which a sum due to the Council in accordance with any other condition remains unpaid;

but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council.

(4) Before exercising their discretion under section 131(6) or (as the case may be) section 132(7)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants each of the Funding Councils shall consult such of the following bodies as it appears to the Council to be appropriate to consult in the circumstances, that is to say—

(a) such bodies representing the interests of relevant institutions as appear to the Council to be concerned; and

(b) the governing body of any particular relevant institution which appears to the Council to be concerned.

(5) References in subsection (4) above to relevant institutions are references—

(a) in relation to consultations required to be carried out by the Universities Funding Council, to universities; and

(b) in relation to consultations required to be carried out by the Polytechnics and Colleges Funding Council, to institutions within the PCFC funding sector.

(6) Subject to subsection (7) below, the Secretary of State may make grants to each of the Funding Councils of such amounts and subject to such conditions as he may determine.

(7) The conditions subject to which grants are made by the Secretary of State to either of the Funding Councils shall not relate to the making of grants or other payments by the Council to any specified institution.

(8) In exercising their functions under this Part of this Act each of the Funding Councils shall comply with any directions given to them by the Secretary of State.

(9) Directions given for the purposes of subsection (8) above

shall be given by order made by the Secretary of State.

(10) Neither of the Funding Councils shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of either Council shall not be regarded as property of, or property held on behalf of, the Crown.

(11) An order under subsection (1) above may exclude the application of subsection (10) above to any extent specified in the order in relation to the exercise of any functions conferred or imposed by the order on either of the Funding Councils.

(12) Schedule 8 to this Act has effect with respect to each of the Funding Councils.

(13) In this section "the Funding Councils" means the Universities Funding Council and the Polytechnics and Colleges Funding Council; and the reference in subsection (2) above to institutions eligible for funding by either of those Councils is a reference—

- (a) in relation to the Universities Funding Council, to universities; and
- (b) in relation to the Polytechnics and Colleges Funding Council, to—
  - (i) institutions within the PCFC funding sector; and
  - (ii) institutions maintained or assisted by local education authorities, other than universities, at which prescribed courses of higher education are currently provided.

*Supplementary*

Inspection of accounts.

**135.—**(1) The accounts of—

- (a) any university;
- (b) any higher education corporation; or
- (c) any institution designated under section 129 of this Act as an institution eligible to receive support from

funds administered by the Polytechnics and Colleges Funding Council;

shall be open to the inspection of the Comptroller and Auditor General.

(2) In the case of any higher education corporation or of any such institution as is mentioned in subsection (1)(a) or (c) above—

(a) the power conferred by subsection (1) above; and

(b) the powers under sections 6 and 8 of the [1983 c. 44.] National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act;

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which grants are made to them under section 131 or 132 of this Act.

Transfer to Polytechnics and Colleges Funding Council of property and staff of NAB.

**136.—**(1) In this section "NAB" means the company limited by guarantee registered under the Companies Acts 1948 to 1983 under the name of the National Advisory Body for Public Sector Higher Education.

(2) Notwithstanding anything in the memorandum of association of NAB, if upon the winding up or dissolution of NAB any property remains after the satisfaction of all its debts and liabilities the property shall be transferred to, and by virtue of this Act vest in, the Polytechnics and Colleges Funding Council.

(3) The Secretary of State may by order designate persons employed by NAB for transfer under this section to the employment of the Polytechnics and Colleges Funding Council on such date as may be specified in the order.

(4) The contract of employment between NAB and any person so designated who, immediately before the date so specified, is employed by NAB shall have effect from that date as if originally made between the Polytechnics and Colleges Funding Council and that person.

- (5) Without prejudice to subsection (4) above—
- (a) all NAB's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to that Council on the date so specified; and
  - (b) anything done before that date by or in relation to NAB in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to that Council.

(6) Subsections (4) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

(7) An order under this section may designate a person either individually or as a member of a class or description of employees.

Control of  
disposals of land.

**137.**—(1) Subject to subsection (9) below, this section applies to any disposal after 22nd July 1987—

- (a) of land which, immediately before that date, was used or held for the purposes of any relevant institution; or
- (b) of land which was obtained before that date for the purpose of being so used or held and had not before that date been appropriated to any other use.

(2) For the purposes of subsection (1) above, an institution is a relevant institution if it falls within section 121(2) or 129(3) of this Act.

(3) Except with the consent of the Secretary of State, no local education authority shall after the passing of this Act make a disposal to which this section applies; and if at any time after

22nd July 1987 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the preceding provisions of this subsection if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.

(4) Any consent for the purposes of subsection (3) above may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.

(5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of subsection (3) above as a consent, or a consent subject to those conditions, given under this section.

(6) This section has effect notwithstanding anything in section 123 of the [1972 c. 70.] Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 201 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given or complied with.

(8) In this section references to disposing of land include references to—

- (a) granting or disposing of any interest in land;
- (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
- (c) granting an option to acquire any land or any such interest.

(9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

Construction of  
references to land

**138.**—(1) This section applies for the purpose of the construction of the following provisions of this Act—

held for the  
purposes of an  
institution.

- (a) section 126(4)(a);
- (b) section 130(3)(a); and
- (c) section 137(1)(a).

(2) Where at any time any land is used for the purposes of an institution to which any of those provisions applies, any interest of a local education authority in that land subsisting at that time shall be taken for the purposes of that provision to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

## **SCHEDULE 7**

Section 123.

The Higher Education Corporations  
*Preliminary*

1.—(1) A higher education corporation established under section 121 of this Act for the purpose of conducting any institution shall be established initially under the name given as the name of that institution in the order under that section specifying that institution.

(2) A higher education corporation established under section 122 of this Act shall be established initially under the name given in the order under that section establishing the corporation.

(3) Below in this Schedule—

(a) references to a corporation are references to any higher education corporation; and

(b) references, in relation to a corporation, to the institution are references—

(i) in relation to any time before the transfer date applicable in relation to the corporation, to the institution the corporation is established to conduct; and

(ii) in relation to any later time, to any institution for the time being conducted by the corporation in exercise of their powers under this Act.

(4) The Secretary of State may by order change the name of a corporation.

#### *Initial constitution*

2.—(1) Paragraphs 3 and 4 below provide for the initial constitution of a corporation and are subject to paragraph 6 below.

(2) References below in this Schedule, in relation to a corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with paragraphs 3 and 4 below is subject to variation.

3.—(1) A corporation shall consist of—

(a) not less than twelve and not more than twenty-four members appointed in accordance with the following provisions of this Schedule; and

(b) the person who is for the time being the principal of the institution, unless he chooses not to be a member.

## (2) Of the appointed members—

- (a) up to thirteen (referred to below in this Schedule as the independent members) shall be persons appearing to the appointing authority to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession;
- (b) not less than four and not more than eight (referred to below in this Schedule as the initial nominee members) shall be persons nominated in accordance with this Schedule otherwise than by other members of the corporation;
- (c) at least one and not more than four (referred to below in this Schedule as the additional nominee members) shall be persons nominated in accordance with this Schedule by the members of the corporation who are either independent members or initial nominee members and the principal of the institution (if he is a member).

(3) The members of the corporation for the time being shall be known as the board of governors of the institution.

4.—(1) The initial nominee members of a corporation shall consist of—

- (a) at least one and not more than three local authority nominees;
- (b) one teacher nominee;
- (c) one general staff nominee; and
- (d) one student nominee;

and may include up to two academic nominees.

## (2) In this Schedule—

"local authority nominee" means a person, other than a person employed at the institution (whether or not as a teacher) or a student at the institution, nominated by a local authority specified in relation to the corporation in an order made by the Secretary of State;

"teacher nominee" means a teacher at the institution

nominated by the teachers at the institution;

"general staff nominee" means a person employed at the institution otherwise than as a teacher and nominated by the persons so employed;

"student nominee" means a student at the institution nominated by the students at the institution; and

"academic nominee" means a teacher at the institution nominated by the academic board.

(3) Of the additional nominee members of a corporation—

(a) the one required by paragraph 3(2)(c) above shall be a person who has experience in the provision of education; and

(b) the three others permitted by paragraph 3(2)(c) are—

(i) one person who has such experience; and

(ii) two persons who need not have such experience.

(4) In the case of any corporation, a person who is—

(a) employed at the institution (whether or not as a teacher);

(b) a full-time student at the institution; or

(c) an elected member of any local authority;

is not eligible for appointment as an independent member or as an additional nominee member of the corporation.

(5) For the purposes of this paragraph, a person who is not for the time being enrolled as a student at the institution shall be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution.

(6) It shall be for the appointing authority to determine any question as to whether any person is qualified in accordance with the preceding provisions of this paragraph for appointment as a member of a corporation of any description or category.

(7) Before making an order specifying local authorities in relation to any corporation for the purposes of sub-paragraph

(1)(a) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned.

*Initial appointments*

5.—(1) The Secretary of State is the appointing authority for the purposes of this Schedule in relation to the appointment of the first members of a corporation.

(2) In determining the number of members to appoint within each variable category, he shall secure that at least half of all the members of the corporation as first constituted are independent members.

*Determination of membership numbers*

6.—(1) Following the appointment by the Secretary of State of the first members of a corporation, the corporation shall make a determination with respect to their membership numbers under this paragraph.

(2) Such a determination shall fix the number of members of each variable category of which the corporation are to consist, subject to the limits applicable in relation to that category under paragraphs 3 and 4 above.

(3) In making a determination under this paragraph, the corporation shall secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be independent members.

(4) A determination under this paragraph shall not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect.

(5) A determination under this paragraph may be varied by a subsequent determination under this paragraph.

*Subsequent appointments*

7.—(1) Appointments of members of a corporation at any time after the appointment by the Secretary of State of the first members shall be subject to this paragraph.

(2) No such appointment may be made before the first determination of the corporation under paragraph 6 above takes

effect.

(3) The corporation are the appointing authority for the purposes of this Schedule in relation to the appointment of any member of the corporation other than an independent member.

(4) Where an appointment of an additional independent member of the corporation falls to be made in consequence of a determination under paragraph 6 above, the appointing authority for the purposes of this Schedule in relation to the appointment—

(a) shall be the corporation if the appointment is made within the period of three months beginning with the date of the determination; or

(b) if the appointment is not made within that period, shall be the current independent members of the corporation.

(5) Where a vacancy in the office of an independent member of the corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office—

(a) his successor shall not be appointed more than six months before the expiry of that term; and

(b) the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—

(i) shall be the corporation if the appointment is made not less than three months before the expiry of that term; or

(ii) if the appointment is not so made, shall be the current independent members of the corporation.

(6) Where a vacancy in the office of an independent member of the corporation arises on the death of any such member or on any such member ceasing to hold office under paragraph 8(2) or 10 below, the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—

(a) shall be the corporation if the appointment is made

within the period of three months beginning with the date of death or the date of the notice under paragraph 8(2) or 10 below (as the case may be); or

(b) if the appointment is not made within that period, shall be the current independent members of the corporation.

(7) No appointment of an independent member of the corporation by the corporation under sub-paragraph (4)(a), (5)(a) or (6)(a) above shall be made unless the appointment has been approved by the current independent members of the corporation.

*General provisions with respect to qualifications of members and tenure of office*

8.—(1) A member of a corporation shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

(2) A member of a corporation may at any time by notice in writing to the corporation resign his office.

(3) Where a member of a corporation appointed as a teacher nominee, an academic nominee, a general staff nominee or a student nominee ceases before the end of his term of office to be qualified in accordance with paragraph 4 above for appointment as a nominee of the description in question his office shall thereupon become vacant.

9.—(1) Subject to the following provisions of this paragraph, a person is not qualified for appointment as a member of a corporation at any time when he is under the age of eighteen or over the age of seventy.

(2) A person over the age of seventy shall not by virtue of sub-paragraph (1) above be disqualified for appointment as a member of the corporation where—

(a) the appointing authority in relation to the appointment is the Secretary of State; or

(b) the appointing authority in relation to the appointment determine to make the appointment by a vote representing an absolute majority of all the members of that authority (whether or not taking part in the vote).

(3) It shall be for the appointing authority in relation to the appointment in question to determine any question arising under sub-paragraph (1) above with respect to a person's qualification for appointment as a member of the corporation.

10. If at any time a corporation are satisfied that any member of the corporation—

(a) has been absent from meetings of the corporation for a period longer than twelve consecutive months without the permission of the corporation; or

(b) is unable or unfit to discharge the functions of a member;

the corporation may by notice in writing to that member remove him from office; and thereupon the office shall become vacant.

#### *Allowances to members*

11. A corporation shall have power to pay to the members of the corporation such travelling, subsistence or other allowances as the corporation may determine.

#### *Election of chairman*

12.—(1) The members of a corporation shall elect a chairman from among their number.

(2) The chairman shall hold office for such period as the corporation may determine.

(3) A member of a corporation who is employed at the institution or a student at the institution is not eligible for election as chairman of the corporation.

#### *Committees*

13.—(1) A corporation may establish a committee for any purpose.

(2) The number of members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the corporation.

(3) Such a committee may include persons who are not members of the corporation.

*Proceedings*

14. The validity of any proceedings of a corporation or of any committee of a corporation shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.

15. In the event of an equality of votes at any meeting of a corporation the chairman of the corporation shall have a second or casting vote.

*Application of seal and proof of instruments*

16. The application of the seal of the corporation shall be authenticated by the signature of the chairman of the corporation or of some other member authorised either generally or specially by the corporation to act for that purpose together with that of any other member.

17. Every document purporting to be an instrument made or issued by or on behalf of a corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

*Accounts*

18.—(1) It shall be the duty of each corporation—  
(a) to keep proper accounts and proper records in relation to the accounts; and  
(b) to prepare in respect of each financial year of the corporation a statement of accounts.

(2) The statement shall—  
(a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and  
(b) comply with any directions given by the Polytechnics and Colleges Funding Council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be

prepared.

(3) The accounts (including any statement prepared under this paragraph) shall be audited by persons appointed in respect of each financial year by the corporation.

(4) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities in England and Wales before appointing any auditor under sub-paragraph (3) above in respect of their first financial year.

(5) No person shall be qualified to be appointed auditor under that sub-paragraph unless he is—

(a) a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 389(1)(a) of the [1985 c. 6.] Companies Act 1985; or

(b) a member of the Chartered Institute of Public Finance and Accountancy;

but a firm may be so appointed if each of its members is qualified to be so appointed.

(6) In this paragraph, in relation to a corporation—  
"the first financial year" means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date;  
and  
"financial year" means that period and each successive period of twelve months.

#### *Efficiency studies*

19.—(1) The Polytechnics and Colleges Funding Council may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of a corporation.

(2) A person promoting or carrying out such studies at the request of the Council may require the corporation concerned—

(a) to furnish the person, or any person authorised by him,

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with such information; and

(b) to make available to him, or any person so authorised,  
for inspection their accounts and such other documents;

as the person may reasonably require for that purpose.

## SCHEDULE 8

Sections 134  
and 197.

The Funding Councils and the Assets Board

### *Preliminary*

1. References below in this Schedule to the Corporation are  
references to each of the following bodies—

- (a) the Universities Funding Council;
- (b) the Polytechnics and Colleges Funding Council; and
- (c) the Education Assets Board.

*Supplementary powers*

2.—(1) Subject to sub-paragraph (2) below, the Corporation shall have power to do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular power—

- (a) to acquire and dispose of land and other property;
- (b) to enter into contracts;
- (c) to invest any sums not immediately required for the purpose of the discharge of their functions; and
- (d) to accept gifts of money, land or other property.

(2) Sub-paragraph (1) above does not confer power to borrow money, except in the case of the Education Assets Board; but the power of that Board to borrow money shall be subject to the approval of the Secretary of State in the case of each transaction.

*Chief officer*

3.—(1) One of the members of the Corporation shall be the chief officer of the Corporation.

(2) The first chief officer of the Corporation shall be appointed as such by the Secretary of State and shall hold and vacate office in accordance with the terms of his appointment.

(3) Each subsequent chief officer shall be appointed by the Corporation with the approval of the Secretary of State on such terms and conditions (including terms with respect to tenure and vacation of office) as the Corporation may with the approval of the Secretary of State determine.

(4) On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the Corporation and the terms and conditions of his appointment, the Secretary of State shall—

- (a) if that person is not already a member of the
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Corporation, appoint him as a member for the same term as the term of his appointment as chief officer; or

(b) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer.

*Qualifications of members and tenure of office*

4.—(1) A person shall hold and vacate office as a member or as chairman or chief officer of the Corporation in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

(2) A person may at any time by notice in writing to the Secretary of State resign his office as a member or as chairman of the Corporation.

5. If the Secretary of State is satisfied that a member of the Corporation—

(a) has been absent from meetings of the Corporation for a period longer than six consecutive months without the permission of the Corporation; or

(b) is unable or unfit to discharge the functions of a member;

the Secretary of State may by notice in writing to that member remove him from office; and thereupon the office shall become vacant.

*Salaries, allowances and pensions for members*

6.—(1) The Corporation—

(a) shall pay to the members of the Corporation such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine; and

(b) shall pay, or make such payments towards the provision of, such pension to or in respect of any member of the Corporation as the Secretary of State may determine.

(2) If a person ceases to be a member of the Corporation and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Corporation to make to that person a payment of such amount as the Secretary of State may determine.

(3) A determination or direction of the Secretary of State under sub-paragraph (1) or (2) above requires the approval of the Treasury.

*House of Commons disqualification*

7. In Part III of Schedule 1 to the [1975 c. 24.] House of Commons Disqualification Act 1975 (disqualifying offices), there shall be inserted at the appropriate places the following entries—

Any member of the Universities Funding Council in receipt of remuneration.

Any member of the Polytechnics and Colleges Funding Council in receipt of remuneration.

Any member of the Education Assets Board in receipt of remuneration." .

*Staff*

8.—(1) The Corporation may appoint such employees as the Corporation think fit.

(2) The Corporation shall pay to their employees such remuneration and allowances as the Corporation may determine.

(3) The employees shall be appointed on such other terms and conditions as the Corporation may determine.

(4) A determination under sub-paragraph (2) or (3) above requires the approval of the Secretary of State given with the consent of the Treasury.

(5) Employment with the Corporation shall be included among the kinds of employment to which a scheme under section 1 of the [1972 c. 11.] Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of

employment are listed), at the end of the list of "Other Bodies" there shall be inserted—

Universities Funding Council.

Polytechnics and Colleges Funding Council.

Education Assets Board."

(6) The Corporation shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to sub-paragraph (5) above in the sums payable out of money provided by Parliament under that Act.

(7) Where an employee of the Corporation is, by reference to that employment, a participant in a scheme under section 1 of that Act and is also a member of the Corporation the Treasury may determine that his service as such a member shall be treated for the purposes of the scheme as service as an employee of the Corporation (whether or not any benefits are payable to or in respect of him by virtue of paragraph 6 above).

#### *Committees*

9.—(1) The Corporation may establish a committee for any purpose.

(2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Corporation.

(3) Such a committee may include persons who are not members of the Corporation.

(4) The Corporation shall keep under review the structure of committees established under this paragraph and the scope of each committee's activities.

#### *Scottish and Welsh Committees of Universities Funding Council*

10. The Universities Funding Council shall establish committees under paragraph 9 above for the purpose of advising the Council on the exercise of their functions in relation to universities in Scotland and universities in Wales respectively.

*Delegation of Functions*

11. The Corporation may authorise the chairman, the chief officer or any committee established under paragraph 9 above to exercise such of their functions as they may determine.

*Proceedings*

12. Without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to the Corporation under section 134 of this Act—

(a) a representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Corporation or of any committee of the Corporation; and

(b) the Secretary of State shall be entitled to receive copies of any documents distributed to members of the Corporation or of any such committee.

13. The validity of any proceedings of the Corporation or of any committee of the Corporation shall not be affected by a vacancy among the members or by any defect in the appointment of a member.

14. Subject to the preceding provisions of this Schedule, the Corporation shall have power to regulate their own procedure and that of any of their committees.

*Application of seal and proof of instruments*

15. The application of the seal of the Corporation shall be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the Corporation to act for that purpose and of one other member.

16. Every document purporting to be an instrument made or issued by or on behalf of the Corporation and to be duly executed under the seal of the Corporation, or to be signed or executed by a person authorised by the Corporation to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

*Accounts*

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17.—(1) It shall be the duty of the Corporation—

- (a) to keep proper accounts and proper records in relation to the accounts;
- (b) to prepare in respect of each financial year of the Corporation a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury; and
- (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.

(2) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.

(3) In this paragraph "financial year" means the period beginning with the date on which the Corporation is established and ending with the second 31st March following that date, and each successive period of twelve months.