

Classification of Sixth Form and Further Education Institutions

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Executive Summary

Ninety Three Sixth Form College Corporations, created from 1 April 2010 following the passage of the Apprentices, Skills Children and Learning Act 2009, have been classified as Local Government entities for the purposes of the National Accounts.

In the course of the reaching this decision, ONS reviewed the existing classification of other further education institutions in England and Wales using Eurostat's Manual on Government Deficit and Debt, which has been published since the original classification decision was taken in the late 1990s. ONS has decided that Further Education (FE) Corporations in England and Wales should be reclassified, from Non-Profit Institutions Serving Households (NPISH) to Central Government, from their inception in April 1993. NPISH is often known as the 'third sector'; in National Accounts, NPISH is part of the private sector.

Similar analysis of education systems of Scotland and Northern Ireland results in the reclassification of Colleges of Further Education in Scotland, and Institutions of Further Education in Northern Ireland from NPISH to the Central Government sector. These changes take effect from 1 April 1993 in Scotland, and 1989 in Northern Ireland.

The key factors in each of these decisions are public sector powers over the various institutions. Most importantly FE Corporations, Sixth Form College Corporations, Scottish Colleges of Further Education and Northern Irish Institutions of Further Education require public sector approval for borrowing they wish to undertake.

Specific classification guidance is provided in the European Manual on Government Deficit and Debt (MGDD) which states that, in the case of schools:

“The general government controls a school if its approval is needed for creating new classes, making significant investments in gross fixed capital formation or borrowing; or if it can prevent the school from ending its relationship with government.”

These decisions mean that all publicly funded education institutions in the UK responsible for educating people to the age of 18 are classified in the public sector.

UK Universities, which are responsible for higher education, remain classified as private sector as they enjoy considerably greater freedom over their general corporate policy compared to the Further Education sector.

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1. The context of National Accounts classification decisions

- 1.1 The National Accounts provide a framework for describing what is happening in national economies. All institutional units operating within an economy are classified to an institutional sector and all transactions between the sectors of the economy are also categorised as part of the National Accounts framework. Work on classification of sectors and transactions is a key input in the production of National Accounts.
- 1.2 This is particularly relevant in the area of public expenditure, revenues, borrowing and debt. This applies both domestically, and within the European Union. For example, in the European Union statistics based on the European System of Accounts 1995 (ESA95) are used in:
 - the Maastricht Treaty Excessive Deficit Procedure measures, particularly of government debt and deficit, where they determine the convergence criteria for monetary union for non-members, and performance against the Growth and Stability Pact for eurozone members; and
 - the measurement of Gross National Income (GNI), one of the main determinants of member states' contributions to the European Union's budget.
- 1.3 It is a legal requirement for European Union countries to compile specified statistical returns on the basis of ESA95. The United Kingdom National Accounts are produced by the Office for National Statistics (ONS) on this basis. Further guidance is contained in Eurostat's Manual on Government Deficit and Debt (MGDD).
- 1.4 In the UK, since 1997 the fiscal policy framework has also been based on National Accounts aggregates.
- 1.5 Classification decisions for National Accounts purposes are taken by the National Accounts Classification Committee (NACC) within ONS.

2. Background to Education in the UK

- 2.1 The UK Education system is devolved. Different systems apply in England and Wales, Scotland and Northern Ireland.
- 2.2 There have also been various reorganisations, new legislation and policy changes in each education system over time.

Education and National Accounts Classifications

- 2.3 Apart from private schools, the majority of pre-16 education institutions in the UK are classified in the general government sector. These include a mix of Local Government schools (such as Community or Foundation Schools) and Central Government schools (such as Academies or City Technology Colleges).
- 2.4 Following the adoption by the UK of ESA 95, from 1993 until the decision published in this article, all stand alone post 16 educational institutions in the UK were classified in the NPISH sector. This included Sixth Form, Tertiary and Technical Colleges, as well as Further Education Institutions. The NPISH sector includes a number of bodies like charities, trade unions or civic society bodies that could be regarded as being part of the "Third Sector" (i.e. not in the private sector or in the public sector) but in National Accounts terms NPISH is part of the private sector.
- 2.5 The decision to classify these entities in NPISH from 1993 was taken in the late 1990s, when the NPISH sector was first recognised in UK National Accounts and followed the establishment of the Further Education Funding Council. That decision was informed by the creation of autonomous management boards for the FE sector under legislative changes in the early 1990s, discussed below, but predated more detailed advice on the treatment of schools that was introduced by Eurostat in the MGDD in 2004. Prior to that decision, these institutions were classified in the then local authority sector.

England and Wales

- 2.6 Since 1 April 1993, the main legal form of post 16 institution in England and Wales has been known as a Further Education (FE) Corporation.
- 2.7 These were created under the Further and Higher Education Act 1992¹ and more than 450 educational institutions were designated as FE Corporations by the Education (Further Education Corporations) Order 1992². Over time, there have been a number of changes, with the establishment of new FE Corporations, mergers between FE Corporations and the closure of other bodies.
- 2.8 There have been a number of subsequent pieces of legislation affecting the further education sector in England. These have included the Learning and Skills Act 2000, the Further

¹ Insert link to act here

² www.opsi.gov.uk/si/si1992/Uksi_19922097_en_1.htm

Education and Training Act 2007 and the Apprentice, Skills, Children and Learning Act 2009. These Acts have, in particular, changed the funding bodies for Further Education:

- The Further Education Funding Councils for England and Wales were abolished under the Learning and Skills Act 2000, which established successor bodies: the Learning and Skills Council (for England) and National Council for Education and Training for Wales (ELWa).
- The Apprentice, Skills, Children and Learning Act 2009 abolished the Learning and Skills Council and established another successor body - the Chief Executive of Skills Funding (Skills Funding Agency).

2.9 The Apprentice, Skills, Children and Learning Act 2009 also introduced a new legal type of college in England, the Sixth Form College Corporation, and the Initial Sixth Form College Corporation Designation (England) Order 2010 created 93 of these new corporate bodies from 1 April 2010. These had previously been Further Education Corporations.

Scotland

2.10 The Scottish post 16 educational system is similar to that in England. The Further and Higher Education (Scotland) Act 1992³ was passed at a similar time to the Further and Higher Education Act 1992 that applied to England and Wales.

2.11 As a result of this Act, institutions in Scotland became known collectively as Colleges of Further Education. The Transfer of Colleges of Further Education (Scotland) Order 1992⁴ transferred a total of 43 institutions that became Colleges of Further Education from 1 April 1993.

2.12 There has been less subsequent legislation in Scotland compared to England and Wales. There have been some minor amendments to the 1992 Act but the main changes has been the passage of the Further and Higher Education (Scotland) Act 2005.

2.13 The main purpose of the 2005 Act was to merge the separate Scottish Further and Higher Education Funding Councils into one body - the Scottish Further and Higher Education Funding Council, which came into existence on 3 October 2005.

Northern Ireland

2.14 From 1986, following the passage of The Education and Libraries (Northern Ireland) Order 1986, education at a local level in Northern Ireland has been administered by five "education and library boards" covering different geographical areas. These are classified by ONS as central government bodies.

2.15 In 1989, the UK Parliament passed the Education Reform (Northern Ireland) Order 1989⁵. Part VII of this Statutory Instrument dealt with Further and Higher Education and included

³ www.opsi.gov.uk/acts/acts1992/Ukpga_19920037_en_1.htm

⁴ www.opsi.gov.uk/si/si1992/uksi_19921597_en_1.htm

⁵ www.uk-legislation.hmso.gov.uk/si/si1989/Uksi_19892406_en_1.htm

details of the duties and powers of education and library boards with respect to further education, and "institutions of further education".

- 2.16 In 1997, the UK Parliament passed another Statutory Instrument, the Further Education (Northern Ireland) Order 1997⁶. This transferred management of institutions of further education from the local education and library boards to incorporated governing bodies.

⁶ www.opsi.gov.uk/si/si1997/19971772.htm

3. Explaining the Classification Decisions

- 3.1 In reaching the classification decision, the National Accounts Classification Committee has considered the legislative basis for each of the different types of institution.
- 3.2 The key factor in the NACC decision is specific MGDD guidance which implies that educational institutions should be classified to the appropriate government sector is deemed to be in control of the institutions' borrowing.
- 3.3 In England, Wales, Scotland and Northern Ireland, the various different types of college / FE institution are unable to borrow without the approval of Central or Local Government bodies. These powers are summarised in the sub-sections below.

England and Wales

- 3.4 Further Education Corporations are governed by the Further and Higher Education Act 1992. Section 19 of the Act sets out the supplementary powers of an FE Corporation, and this includes public sector powers over an FE Corporation's borrowing. Although an FE Corporation can "borrow such sums as the corporation think fit" it cannot do so "without the consent of the appropriate council".
- 3.5 In the Act "council" refers to the Further Education Funding Councils for England and Wales, established by the Act. The powers, in England, passed to the Learning and Skills Council (LSC) under the Learning and Skills Act 2000, until it was abolished under the 2009 Act. The powers were moved again from 1 April 2010 with the dissolution of the LSC by the Apprenticeship, Skills, Children and Learning Act to the Chief Executive of Skills Funding. All these bodies are (or were) classified as Central Government by ONS.
- 3.6 The powers, in Wales, passed to another new body, created by the 2000 Act, called the National Council for Education and Training for Wales (ELWa). ELWa's functions are now exercised by the Assembly Government's Department for Children, Education, Lifelong Learning and Skills. ELWa is not listed in the Sector Classification Guide (SCG), but was an Assembly Sponsored Public Body (ASPB) responsible for post-16 learning in Wales, active from 2000 to 2006. Most other ASPBs are listed as CG bodies in the SCG.
- 3.7 Sixth Form College Corporations were created under the Apprenticeship Skills Children and Learning Act 2009 which received Royal Assent on 12 November 2009. Schedule 8 of the Act deals with the creation of Sixth Form College Corporations by introducing amendments to the earlier Further and Higher Education Act 1992. It introduces Sixth Form College Corporations as a specific subset of institutions.
- 3.8 Sections 33E-G set out the principal and supplementary powers of sixth form college corporations, and they largely reflect the powers of FE corporations originally established in the Act.
- 3.9 It also continues to provide the public sector with power over a sixth form college corporation's borrowing. Although a sixth form college corporation can "borrow such sums as

the corporation think fit" it cannot do so "without the consent of the responsible local education authority"

Scotland

3.10 The Further and Higher Education (Scotland) Act 1992 created the legal concept of a "College of Further Education".

3.11 Section 12 spells out the main powers of the newly formed boards of management. This provides the boards of management a very similar set of powers to the FE Corporations and Sixth Form College Corporations, including the power to borrow under Section 12 (2) (j). However, as with FE Corporations and Sixth Form College Corporations in England, the right to borrow is curtailed and subject to public sector approval. Section 12 (7) states:

"(7) A board of management shall not, without the prior consent, given in writing, of the Secretary of State -

(a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of their property..."

3.12 Subsequent legislative changes passed controls over borrowing firstly to Scottish Ministers, then to the Scottish Further Education Funding Council and then, under The Further and Higher Education (Scotland) Act 2005, to the Scottish Further and Higher Education Funding Council. Therefore although responsibility for exercising control over borrowing for Scottish Colleges of Further Education has changed hands, it remains under public sector control.

Northern Ireland

3.13 Between 1989 and 1997 institutions of further education were under the control of the local Education and Library Boards, and had no ability to borrow money at all. Section 102 (1) of the Education Reform (Northern Ireland) Order 1989⁷ states:

102. (1) Each institution of further education shall be under the management of the board for the area in which the institution is situated and the board shall make provision by means of a governing body for the management of each such institution in its area.

3.14 From 1997, although each institution had its own governing board, the governing bodies are unable to borrow without the approval of the Department for Employment and Learning. Section 15 (3) "Restrictions on exercise of principal powers of governing body" of the Further Education (Northern Ireland) Order 1997 states:

"(3) A governing body of an institution of further education shall not, without the prior consent of the Department -

(a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of its property;"

⁷ www.uk-legislation.hmso.gov.uk/si/si1989/Uksi_19892406_en_1.htm

4. The Classification Decisions

- 4.1 Prior to this decision, further education institutions in the UK were classified in the Non-Profit Institutions Serving Households (NPISH) sector. The NPISH sector includes a number of bodies like charities, trade unions or civic society bodies that could be regarded as being part of the "Third Sector" (i.e. not in the private sector or in the public sector) but in National Accounts terms NPISH is part of the private sector.
- 4.2 As a result of these public sector powers, especially those over borrowing, Sixth Form College Corporations have been classified en bloc as Local Government entities, from their creation on 1 April 2010.
- 4.3 ONS has also decided to reclassify Further Education Corporations en bloc as Central Government entities back to their initial creation on 1 April 1993.
- 4.4 The decision to classify one group of entities as Local Government and the remainder as Central Government is a result of the different bodies able to control borrowing. Approval for borrowing for Sixth Form College Corporations rests with the Local Education Authority, a Local Government Body. For Further Education Corporations, control over borrowing has been held by a succession of Central Government bodies.
- 4.5 On the basis of the same considerations, ONS has also decided to reclassify Colleges of Further Education (in Scotland) en bloc as Central Government entities from 1 April 1993; and Institutions of Further Education in Northern Ireland, en bloc, as Central Government entities from 1989.

5. Impact on ONS Statistics and Fiscal indicators

- 5.1 The decision to reclassify these institutions will have some effects on a number of ONS outputs. ONS will coordinate implementation of the change and revision of back series and make changes over the coming months.
- 5.2 There are approximately 250 FE Corporations and 90 Sixth Form College Corporations in England and Wales; around 40 Colleges of Further Education in Scotland; and six Institutions of Further Education in Northern Ireland. Total employment is estimated at 300,000.
- 5.3 With respect to fiscal indicators, the reclassification is expected to have an impact on the public sector finances, but this is not expected to be large:
- Public Sector Current Budget (PSCB) is expected to be largely unaffected. Expenditure funded by Government is already captured, and fees received directly by the colleges is offset against expenditure in the public finances.
 - Public Sector Net Debt (PSND) is expected to rise marginally, as the FE sector has some debt, though the amounts are not significant in relation to public debt as a whole.
 - Public Sector Net Investment is expected to rise. The FE sector has undergone considerable expansion in recent years, and capital formation by FE institutions would previously have been treated as capital formation by the private sector. Again, this is expected to be small in the context of total PSNI.
- 5.4 Data for the FE sector will be fully incorporated into the public sector finances as soon as is practicable, but there are a large number of institutions involved, and the timing will be affected by the practicalities.
- 5.5 Other ONS outputs affected by the decision include the following
- GDP – although conceptually the decision to reclassify FE institutions should not affect GDP in aggregate, the UK's Sector accounts will be affected by this change. The change will be made prospectively for accounts from the 3rd or 4th quarter of 2010 (to be confirmed in the relevant statistical bulletin). The position on historic adjustments will be published separately.
 - Labour Market Statistics – the most obvious impact of the reclassification is in sectoral employment numbers, with the move of more than 300,000 FE workers from private sector to public sector employment. This increases both total and (broad) industry public sector employment numbers, with the former growing by around 4%. ONS will align the classification change with that for Average Weekly Earnings to maintain consistency in the labour market statistics bulletin, hence, PSE estimates will be revised back to Q2 2010 as a result of this classification decision.

- Average Weekly Earnings - there is an impact on the series for public sector earnings. The classification change was implemented in the business register following the passage of the Apprentices, Skills, Children and Learning Act 2009 and as such is reflected in AWE from June 2010, with no retrospective revision.

6. Further information

- 6.1 Further information on ONS classifications and the NACC can be found on the National Statistics website using the following link <http://www.statistics.gov.uk/nacc>.