

**FURTHER EDUCATION
CORPORATION NAMES**

Guidance on changing
existing corporation / college
name or developing new
names

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NOTE - This guidance applies to FE Corporations; FE Colleges and FE College Companies only.

1. Introduction

- 1.1 In accordance with its Instrument, a college in the further education sector may change its name with the approval of the Secretary of State (SoS) for Business, Innovation and Skills (BIS).
- 1.2 The college may wish to establish or change:
 - the name of the corporation conducting its business, i.e. its statutory name;
 - a company name registered with Companies House, i.e. a registered name; and/ or
 - any other name under which it trades, i.e. a trading or business name.
- 1.3 This Guidance sets out the legislation, policy and procedures on:
 - Applications for changing the name of the statutory corporation conducting the college, a registered name and/or a business (trading name);
 - Use of prescribed and sensitive words such as “trust”, “national”, “university” or “polytechnic”;
 - Use of misleading names including possible action if an offence has occurred.
- 1.4 Following changes to the legislation governing company names, with effect from 1st October 2009, colleges are required to seek approval from the SoS and Companies House for name changes. However, to avoid unnecessary burden on colleges and as both of these applications would fall under the same SoS, it has been agreed that colleges will only need to make one application to the SoS in respect of a change of its statutory name.
- 1.5 This guidance also includes links to further sources of help and information, including a link to the Companies House guidance on both registered names and business names.
- 1.6 The policy intent for college name changes is for the SoS/BIS to exercise control in order to prevent name changes which would be misleading or which would give false impressions of the type of service being offered, with a view to safeguarding the reputation of the statutory further education sector.
- 1.7 Registered names and business names require the approval of Companies House, acting for the SoS, only if the name suggests a connection to any part of Government or to a prescribed public body, or if the name includes a prescribed sensitive word or expression, as set out in regulations. The regulations also specify the body whose support would be required if approval is to be granted.
- 1.8 The process FE colleges should follow for changing their statutory name includes:
 - identifying any relevant bodies to be consulted including those whose approval is required for using prescribed words or expressions set out in the relevant regulations;

- demonstrating that they have consulted other educational institutions in the locality and the emergency services on whether the proposed name is misleading or confusing;
- seeking the approval of the SoS's nominated contact in BIS.

2. Changing the statutory name of a College Corporation

- 2.1 Colleges wishing to change the name of the statutory corporation conducting the college need to seek the approval of the SoS for BIS. In practice the decision will normally be taken by the FE Governance and Organisation Team within BIS.
- 2.2 When considering a corporation's application to change its name BIS will wish to ensure that the proposed name is not in any way confusing or misleading, that it does not wrongly suggest regional / national pre-eminence or imply that the college serves a wider or different area than is the case. It should not be the same as that of another institution, nor should it give false impressions of the type of education on offer. The FE Governance and Organisation Team will work with Companies House and BIS advisers on business law to ensure considerations align, for example when prescribed words or expressions form part of the proposed new name, such as *national* or *group*.
- 2.3 Some colleges may be considering changing their name to "College of Higher Education"; or, if they are granted taught degree-awarding powers, using the word "University" or term "University College" in their names. It is important to distinguish between institutions in the further education sector and those in the higher education sector. The SoS will therefore not be disposed to approve a name change of this nature unless the institution meets the criteria for designation under section 129 of the Education Reform Act 1988 as an institution eligible to receive support from funds administered by a higher education funding council, and has been so designated.
- 2.4 Similarly, the Department takes the view that the title "College of Further and Higher Education" should be available only to institutions where:
 - A minimum of 10% of a college's full time equivalent students are in HE; **and**
 - There is a minimum number of 500 full time equivalent HE students.

Note: an institution's full time equivalent enrolment number is calculated in accordance with Schedule 9 of the Education Reform Act 1988.

Making an application

2.5 Before a request for a name change will be considered by the Department the college will be required by BIS to carry out the following action:

- i. **Consult with other educational institutions in the locality and with the emergency services** to ensure that the proposed new title is not in any way confusing or misleading. The consultation period should have a reasonable deadline to allow for considered responses. Copies of all responses (includes any relevant correspondence) to the consultation should be forwarded to the Department; the Department requires at least one positive response from the emergency services confirming that they do not find the name in any way confusing.
- ii. **Consider the effective date for the change of name.** The Department would expect the name change of the College to take effect within 6 months of the end of the consultation, including allowing the Department a minimum of one month for considering the request. Colleges will also need to have considered how the date of name change might affect on-going business, including negotiating and agreeing contractual arrangements.
- iii. **Gain agreement, by means of a resolution of the Corporation,** to the change of name of the College Corporation. A copy of the Corporation minutes confirming this should be forwarded to the Department. These minutes should explicitly state that it was agreed to change the name of the College **Corporation**, this being the legal entity. [Suggested wording would be something like: *'It was formally agreed to change the name of the Corporation of [old name] College to [new name] College'*.
- iv. **Forward with the above, a covering letter, from the Corporation,** explaining the reason for the proposed name change and indicating the date on which it would like the name change to take effect. This should be sent to:

FE Governance and Organisation Team
 Department for Business, Innovation and Skills
 Level 1
 2 St Paul's Place
 125 Norfolk Street
 Sheffield
 S1 2FJ

2.6 On receipt of the request and supporting information for a change of statutory name, the FE Governance and Organisation Team on behalf of the SoS will consider a range of factors to determine whether the proposed name is acceptable or not, including checking that the proposed use of prescribed words or expressions is appropriate and acceptable under the law relating to business names (see below). The FE Governance and Organisation Team will also seek advice from the Skills Funding Agency, Companies House and any other relevant bodies. If the college has already done this and has a response in writing this can be forwarded to the Department with the other information. Following receipt of that advice, the policy team would normally expect to be in a position to give the College a decision within four weeks.

3. Changing the name of a college-owned company that is registered with Companies House

- 3.1 Colleges incorporated under the Companies Act or colleges wishing to change the name of a company registered with Companies House must follow the Guidance found at the link below. The principal relevant legislation is sections 54, 55, 56, 68 & 76 of the Companies Act 2006 http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060046_en.pdf for registered names of companies.

Regulations on registered names – sections 55 and 56 of the Companies Act 2006 (“the 2006 Act”)

- 3.2 A company may change its name by special resolution or by other means provided by its articles. The company must give notice to Companies House of its proposed new name – the form is available on <http://www.companieshouse.gov.uk/forms/formsOnline.shtml#Company>

The change takes effect when the new name is entered on the register. However the change does not affect any existing rights or obligations or legal proceedings.

- 3.3 The main considerations for changing registered names are:
- a name must only include characters expressly permitted in the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (SI 2009/1085). These specify the characters A-Z, the digits 0-9, and the most common punctuation marks and symbols;
 - each name must be easily distinguishable from every other name on the index of company names. The rules on what names will be considered the same as an existing name are in these Regulations. Companies House provide an online test so that a proposed name can be checked to see if it is the same as an existing name: <http://www.companieshouse.gov.uk/about/miscellaneous/nameAvailability.shtml>;
 - whether the name requires the Secretary of State’s approval (see section 4 below).

If all the documents are in order, the change of name will normally be processed within five working days from receipt at Companies House. Companies House publish guidance on their website: <http://www.companieshouse.gov.uk/companiesAct/faq.shtml>

4. Prescribed or sensitive words or expressions

4.1 Prior approval is required for either a registered name or a business name that either:

- gives the impression that the company is connected with Her Majesty's Government, a devolved administration, a local authority or a public authority specified in the Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009 (S.I. 2009/2982) ; or
- includes a sensitive word or expression specified in the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009 (S.I. 2009/2615).

Regulations may require the applicant to request a specified body to indicate whether (and if so why) it has any objections to the proposed name. The documents for the name change must include a statement that such a request has been made and a copy of any response from the specified body. The decision to approve is taken by the Registrar of Companies, on behalf of the Secretary of State; not by the specified body. Companies House will also wish to confirm that the views of the FE Governance and Organisation Team, on behalf of BIS, have been sought and included in the application. The procedures and criteria are described in the guidance "Incorporation and names" published by Companies House in respect of the 2006 Act.

<http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch3>.

4.2 BIS is the "specified body" for various words relating to education. The Department's policy on the use of these words is as follows. Certain specific titles are sometimes covered by other education legislation in addition to being prescribed, including:

- The Department would object to the proposed use of the word "University" either by itself or in the term "University College" by an institution in the FE sector. As outlined in paragraph 2.3, the Department would consider it misleading for FE institutions to use names which are associated with the higher education sector;
- The Department would object to the proposed use of the word "polytechnic" by an institution in the FE sector. Even though all former polytechnics have adopted university titles, the concept of a polytechnic as an institution which offers broadly a university type education remains. For that reason the Department considers that it would be confusing if the term were to be adopted by the institutions which did not conform to the broad criteria formerly used for polytechnic designation;
- Approval for use of "institute" or "institution" in the title is normally given only to those organisations which are carrying out research at the highest level or to professional bodies of the highest standing.

- 4.3 The Department follows the Companies House guidance on prescribed words, relating to groups of organisations, for agreeing statutory college names: The policy is that:
- To use the word *association* a company should normally be limited by guarantee with each member having one vote and include a non-profit distribution clause in the articles;
 - Similarly to use the word *federation* the company should normally be limited by guarantee with each member having one vote, and include a non-profit distribution clause in the articles of association;
 - Any use of the word *foundation* will normally be refused if it wrongly implies that the company has charitable status. If the company is limited by guarantee and has a non-profit distribution clause in the articles of association then the name will normally be approved;
 - Use of the word *group* normally implies more than one company under the same corporate ownership. If the company cannot satisfy these conditions on registration, it must provide a written undertaking that it will do so within 3 months. If the name clearly shows that the company is to promote the interests of a group of individuals, then the name will normally be approved, but note, the SoS will not be disposed to approve applications to change the name of a Corporation to include the word group.
 - Colleges wishing to use the word *national* in their name would need to show that the company is pre-eminent in its field by providing independent support from a representative body, trade association or government department;
 - *Trust* is a prescribed term and will normally require the approval or support of a representative body. The requirements for individual trusts vary depending for example on whether it is primarily an educational trust, a charitable trust or a family trust.
- 4.4 Approval can be conditional: under sections 67 and 68 of the 2006 Act, a company can be required to change its name if the conditions are not met for up to 5 years after its registration.

5. Adopting a business (trading) name

- 5.1 The Department takes the view that, in the interests of minimising confusion for students, employers and the local community, the outward facing name of a college should usually be the same as the name of the corporation that conducts the college. Where a college wishes to adopt a different name, we would usually expect the name of the corporation established to conduct the college also to be changed.
- 5.2 If a college chooses to trade under a “business name”, i.e. a name that is not the statutory name of the college or the name of a registered company then its choice of name is subject to sections 1192-1196 of the 2006 Act. There is no register of business names. However prior approval is required if the name suggests a connection with any part of the Government or includes a prescribed word – just as is required for a registered

name (see above). Under section 1198 of the 2006 Act, it is a criminal offence for a person to carry on business in the United Kingdom under a name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public. The requirement is enforced by both Companies House and Trading Standards Officers. This is driven by complaints. The usual practice is to advise the business that it is committing an offence but only to prosecute if it **continues** to trade under the name. In practice, offending businesses seek to change their name; prosecution is extremely rare. Section 1196 provides that the SoS may withdraw by notice in writing his or her approval given for the purposes of:

- section 1193 (name suggesting connection with government or public authority); or
- section 1194 (other sensitive words or expressions).

but only where there are overriding considerations of public policy.

- 5.3 If a college wishes to change its name on an occasional basis for purely marketing purposes (i.e. College “in Hampshire”, on advertisements to make it clear where the college is situated), then the Department would not need to treat this as a formal name change.

6. Law on use of misleading names

- 6.1 BIS seeks to work with colleges to minimise the risk of the name change being seen as an offence.
- 6.2 Colleges may wish to challenge a company if they consider its registered name exploits their goodwill or reputation. Section 69 of the 2006 Act provides the power to object to a registered name “that it is the same as a name associated with the applicant [the person making the objection] in which he has goodwill, or that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant”.

7. Sources of Information

Separate guidance will be issued by BIS on the use of the sensitive word “University” by FE and HE institutions in relation to subsidiary companies, centres of higher education, campuses and joint ventures.

Guidance on the Companies Act 2006 and the Company and Business Names (Miscellaneous Provisions) Regulations 2009 can be found at

<http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch3>

8. Contacts

FE Governance and Organisation Team
Department for Business, Innovation and Skills
Level 1
2 St Paul's Place
125 Norfolk Street
Sheffield
S1 2FJ

0114 2742000

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Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
www.bis.gov.uk

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