

# **Further Education and Training Bill [HL]**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Education and Skills, are published separately as Bill 75 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Alan Johnson has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Further Education and Training Bill [HL] are compatible with the Convention rights.

# Further Education and Training Bill [HL]

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## CONTENTS

### PART 1

#### THE LEARNING AND SKILLS COUNCIL FOR ENGLAND

##### *The Council*

- 1 Minimum membership of the Council
- 2 Regional councils
- 3 Abolition of local councils
- 4 Strategies for functions of Council
- 5 Young people's learning committee and adult learning committee

##### *Functions of the Council*

- 6 Duty in relation to diversity and choice
- 7 Consultation by the Council
- 8 Plans for academic years
- 9 Powers to form or be involved in certain bodies corporate
- 10 Directions
- 11 Provision of services
- 12 Assistance with respect to employment and training
- 13 Assistance with respect to employment and training: Northern Ireland

### PART 2

#### FURTHER EDUCATION INSTITUTIONS

##### *Further education corporations*

- 14 Incorporation of further education institutions
- 15 Dissolution of further education corporations
- 16 Publication of proposals

##### *Foundation degrees*

- 17 Power to award foundation degrees
- 18 Report

*Other provisions relating to further education institutions*

- 19 Powers of a further education corporation to form or be involved in certain bodies corporate
- 20 Consultation by governing bodies of further education institutions
- 21 Qualifications of principals of further education institutions

**PART 3**

INDUSTRIAL TRAINING LEVIES

- 22 Conditions relating to levy proposals
- 23 Duration of levy orders

**PART 4**

MISCELLANEOUS AND GENERAL

- 24 Powers of a higher education corporation to form or be involved in certain bodies corporate
- 25 Powers of National Assembly for Wales
- 26 Orders and regulations
- 27 Amendments
- 28 Repeals
- 29 Interpretation
- 30 Commencement
- 31 Extent
- 32 Short title

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Schedule 1 – Amendments  
Schedule 2 – Repeals

[NOTE: : The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

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# B I L L

TO

Make provision about the Learning and Skills Council for England; to make provision about institutions within the further education sector; to make provision with respect to industrial training levies; to make provision about the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations; to enable the making of Assembly Measures in relation to the field of education and training; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### THE LEARNING AND SKILLS COUNCIL FOR ENGLAND

#### *The Council*

#### **1 Minimum membership of the Council**

In section 1(2) of LSA 2000 (number of persons to be appointed to the Learning and Skills Council for England), for “12” substitute “10”.

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#### **2 Regional councils**

After section 18 of LSA 2000 insert—

#### *“Regional councils*

#### **18A Regional councils**

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- (1) The Council must establish a committee (to be called a regional learning and skills council) for each area of England specified by the Secretary of State.

- (2) The Secretary of State may by regulations make provision about regional councils.
- (3) Regulations under subsection (2) may, in particular, make provision about—
- (a) the membership of a regional council; 5
  - (b) the appointment of the members of a regional council;
  - (c) the appointment of a member of a regional council as chairman;
  - (d) the holding and vacation of office as a member or chairman of a regional council (including a person's re-appointment, resignation and removal from office); 10
  - (e) the appointment by the Council of its employees as staff of a regional council;
  - (f) the delegation of functions by a regional council to its chairman;
  - (g) the delegation by the chairman of a regional council of functions that he is authorised to exercise to a member of the regional council; 15
  - (h) the delegation of functions by a regional council, with the consent of the Council, to a member of staff of the regional council;
  - (i) the payment by the Council of such salaries and such travelling, subsistence and other allowances to the chairman and other members of a regional council as the Secretary of State may determine; 20
  - (j) the provision of information to the Secretary of State;
  - (k) the attendance of a representative of the Secretary of State at, and the participation of such a representative in, any meeting of a regional council; 25
  - (l) the validity of the proceedings of a regional council;
  - (m) the regulation by a regional council of its own procedure.
- (4) Regulations made by virtue of subsection (3)(a) may provide for the membership of a regional council to include persons who are not members of the Council. 30
- (5) A consent given under subsection (3)(h) by the Council may relate to a particular function or to such descriptions of function as may be specified in the consent. 35

## 18B Functions of regional councils

- (1) A regional council—
- (a) must perform in relation to its area such of the Council's duties as the Council specifies;
  - (b) may exercise in relation to its area such of the Council's powers as the Council specifies. 40
- (2) A regional council—
- (a) must perform in relation to such places outside its area as the Council specifies such of the Council's duties as the Council specifies; 45
  - (b) may exercise in relation to such places outside its area as the Council specifies such of the Council's powers as the Council specifies.

### **18C Guidance to regional councils**

- (1) In relation to each financial year of the Council it must prepare guidance for each regional council.
- (2) The guidance must include objectives which a regional council should achieve in seeking to carry out its functions. 5
- (3) The guidance must set a regional council’s budget for the financial year.
- (4) The Council must consult the regional development agencies and local authorities on the guidance.
- (5) After consulting under subsection (4) and (if appropriate) altering the guidance the Council must issue the guidance to the regional council. 10
- (6) The guidance in relation to the financial year of the Council in which section 2 of the Further Education and Training Act 2007 comes into force must be prepared as soon as reasonably practicable after that section comes into force. 15
- (7) The guidance in relation to any subsequent financial year of the Council must be prepared in time for the guidance to be issued before the financial year starts.
- (8) A regional development agency is a development agency established by section 1 of the Regional Development Agencies Act 1998.” 20

### **3 Abolition of local councils**

- (1) The local learning and skills councils established under section 19 of LSA 2000 are abolished.
- (2) In consequence of the abolition of local councils, the following are repealed – 25
  - (a) sections 19 to 24 of LSA 2000;
  - (b) Schedule 2 to that Act.

### **4 Strategies for functions of Council**

Before section 25 of LSA 2000, and after the italic cross-heading preceding that section, insert –

#### **“24A Strategies for functions of Council 30**

- (1) The Secretary of State may by order specify an area in England as an area for which a body specified in the order may formulate and keep under review a strategy setting out how such functions of the Council as are specified in the order are to be carried out in relation to the area.
- (2) An order under subsection (1) may specify an area comprising the whole of England. 35
- (3) An order under subsection (1) may not specify an area in England consisting only of Greater London or a part of Greater London.
- (4) The Secretary of State may give to a body specified in an order under subsection (1) directions and guidance in relation to the formulation and review of its strategy, in particular in relation to – 40

- (a) the form and content of the strategy;
  - (b) the updating of the strategy;
  - (c) the steps to be taken when the body is formulating or reviewing the strategy;
  - (d) the matters to which the body is to have regard when formulating or reviewing the strategy; 5
  - (e) the consultation to be carried out when the body is formulating or reviewing the strategy.
- (5) It is the duty of a body specified in an order under subsection (1) to comply with any directions given to it by the Secretary of State under subsection (4). 10
- (6) It is the duty of a body specified in an order under subsection (1) to have regard to any guidance given to it by the Secretary of State under subsection (4).
- (7) The Council may pay to a body specified in an order under subsection (1) such sums as appear to the Council appropriate for enabling the body to meet costs and expenses incurred, or to be incurred, by it in formulating its strategy or keeping it under review. 15

#### **24B Strategy for functions of Council: Greater London**

- (1) The Secretary of State must by regulations provide for the establishment of a body for the purposes of discharging the functions set out in subsection (2). 20
- (2) The body established under this section must –
- (a) formulate a strategy setting out how specified functions of the Council are to be carried out in Greater London, and 25
  - (b) keep it under review.
- (3) Specified functions are functions of the Council specified for the purposes of this section by order of the Secretary of State.
- (4) The Secretary of State may give to the body established under this section directions and guidance in relation to the formulation and review of its strategy, in particular in relation to – 30
- (a) the form and content of the strategy;
  - (b) the updating of the strategy;
  - (c) the steps to be taken when the body is formulating or reviewing the strategy; 35
  - (d) the matters to which the body is to have regard when formulating or reviewing the strategy;
  - (e) the consultation to be carried out when the body is formulating or reviewing the strategy.
- (5) It is the duty of the body established under this section to comply with any directions given to it by the Secretary of State under subsection (4). 40
- (6) It is the duty of the body established under this section to have regard to any guidance given to it by the Secretary of State under subsection (4).
- (7) Where the body established under this section formulates a strategy under this section, or in consequence of a review of the strategy 45

modifies it, the body must publish the strategy or modified strategy in such manner as it thinks fit.

- (8) Regulations under this section must include –
  - (a) provision for the body to consist of the Mayor of London and such other persons as are appointed by the Mayor in accordance with the regulations; 5
  - (b) provision for the Mayor to be the chairman of the body.
- (9) The Council may pay to the body established under this section such sums as appear to the Council appropriate for enabling the body to meet costs and expenses incurred, or to be incurred, by it in formulating its strategy or keeping it under review. 10
- (10) The Council may pay to the Greater London Authority such sums as appear to the Council appropriate for enabling the Authority to meet costs and expenses incurred, or to be incurred, by the Mayor in connection with the exercise of functions conferred on him by regulations under this section or as chairman of the body established under this section. 15

#### **24C Duty of Council**

- (1) The Council must carry out any function to which a strategy under section 24A or 24B relates in accordance with that strategy. 20
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) The Council may not carry out a function in accordance with such a strategy if in doing so it would fail to comply with a duty imposed on it by or under any enactment other than subsection (1).
- (4) If provision in the Council's strategy under section 16 conflicts with provision in a strategy under section 24A (or section 24B), the Council may disregard the provision in the strategy under section 24A (or section 24B) so far as it conflicts with the provision in the Council's strategy under section 16. 25
- (5) If provision in a strategy under section 24A conflicts with provision in another strategy, being a strategy under section 24A or section 24B, the Council may disregard such conflicting provision in one of the strategies or in both of them. 30
- (6) The Council may disregard a strategy under section 24A (or section 24B) if the body whose strategy it is, in formulating or reviewing the strategy – 35
  - (a) failed to comply with directions given under section 24A(4) (or section 24B(4)), or
  - (b) failed to have regard to guidance given under section 24A(4) (or section 24B(4)). 40
- (7) Nothing in subsection (1) requires the Council to carry out any of its functions in a manner that it is satisfied –
  - (a) would be unreasonable, or
  - (b) might give rise to disproportionate expenditure.



- (8) If the Council proposes not to carry out, or does not carry out, a function to which a strategy under section 24A or 24B relates in accordance with the strategy –
- (a) the Council must refer the matter to the Secretary of State;
  - (b) the body whose strategy it is may refer the matter to the Secretary of State. 5
- (9) On a reference under subsection (8) the Secretary of State may give such direction to the Council as he thinks fit as to the carrying out of the function.
- (10) The Council must comply with any direction that the Secretary of State may give it under subsection (9).” 10

## 5 Young people’s learning committee and adult learning committee

In Schedule 3 to LSA 2000 (provision for committees of the Council), paragraph 1(1)(a) (duty to establish a young people’s learning committee and an adult learning committee) shall cease to have effect. 15

### *Functions of the Council*

## 6 Duty in relation to diversity and choice

- (1) In section 2 of LSA 2000 (education and training for persons aged 16 to 19), in subsection (3), after paragraph (d) insert –
- “(da) act with a view to encouraging diversity in the education and training available to individuals; 20
  - (db) act with a view to increasing opportunities for individuals to exercise choice;”.
- (2) In section 3 of that Act (education and training for persons over 19), in subsection (3), after paragraph (d) insert – 25
- “(da) act with a view to encouraging diversity in the education and training available to individuals;
  - (db) act with a view to increasing opportunities for individuals to exercise choice;”.

## 7 Consultation by the Council 30

After section 14 of LSA 2000 insert –

### “14A Consultation

- (1) In exercising its functions the Council must have regard to any guidance given from time to time by the Secretary of State about consultation with – 35
- (a) persons receiving or proposing to receive post-16 education or training,
  - (b) employers, or
  - (c) such other persons as may be specified in such guidance,
- in connection with the taking of decisions affecting them. 40

- (2) Any guidance under this section about consultation with persons falling within paragraph (a) of subsection (1) must provide for the views of such a person to be considered in the light of his age and understanding.”

**8 Plans for academic years** 5

- (1) Section 15 of LSA 2000 (plans of the Council) is amended as follows.
- (2) In subsection (1)(a), for “each of its financial years” substitute “each academic year”.
- (3) Omit subsection (2).
- (4) In subsection (3), for “any subsequent financial year of the Council” substitute “an academic year”. 10
- (5) In subsection (4) –  
(a) for “a financial year” substitute “an academic year”, and  
(b) in paragraph (a), for “the financial year” substitute “the academic year”.
- (6) After subsection (4) insert – 15  
“(5) In this section “academic year” means –  
(a) the period starting with the 1 April following the date on which section 8 of the Further Education and Training Act 2007 comes into force and ending with the second 31 July following that 1 April; 20  
(b) each successive period of 12 months.”

**9 Powers to form or be involved in certain bodies corporate**

- (1) Section 18 of LSA 2000 (supplementary functions of the Council) is amended as set out in subsections (2) and (3).
- (2) In subsection (3), for paragraph (c), substitute – 25  
“(c) to form, participate in forming or invest in a company unless the Secretary of State consents;  
(d) to form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993) unless the Secretary of State consents.” 30
- (3) At the end, insert –  
“(8) The reference in this section to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.” 35
- (4) In relation to the period beginning on 1st September 2000 and ending immediately before the coming into force of this section, the power conferred by section 18 of LSA 2000 is to be taken to have included power to form, participate in forming or become a member of a company limited by guarantee with the consent of the Secretary of State. 40

**10 Directions**

In section 25 of LSA 2000 (directions), in subsection (6), after “Directions” insert “with respect to powers conferred or duties imposed on the Council by or under this Act”.

**11 Provision of services**

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- (1) The Learning and Skills Council for England may make arrangements with a person or body to whom this section applies for the provision by the Council of services that are required by the person or body in connection with the exercise of the person’s or body’s functions relating to education or training.
- (2) The services that may be provided under arrangements made under subsection (1) include –
  - (a) providing accommodation and other facilities to a person or body to whom this section applies or managing such facilities on behalf of such a person or body;
  - (b) procuring, or assisting in procuring, goods and services for use by a person or body to whom this section applies. 15
- (3) The terms and conditions upon which the arrangements are made may include provision for making payments to the Council in respect of expenditure incurred by the Council in performing any function under the arrangements.
- (4) The persons and bodies to whom this section applies are – 20
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) Northern Ireland departments;
  - (e) persons or bodies, wholly or partly funded from public funds, that have functions relating to education or training; 25
  - (f) persons or bodies specified, or of a description specified, by order made by the appropriate national authority for the purposes of this section.
- (5) Before making arrangements under which it may provide services to a person or body falling within any of paragraphs (b) to (f) of subsection (4) in connection with the exercise of the person’s or body’s functions relating to education or training provided in Wales, Scotland or Northern Ireland, the Council must obtain the consent of the Secretary of State. 30
- (6) Before making arrangements under which it may provide services to a person or body falling within paragraph (a), (e) or (f) of subsection (4) in connection with the exercise of the person’s or body’s functions relating to education or training provided in Wales, Scotland or Northern Ireland, the Council must obtain – 35
  - (a) in relation to education or training provided in Wales, the consent of the Welsh Ministers; 40
  - (b) in relation to education or training provided in Scotland, the consent of the Scottish Ministers;
  - (c) in relation to education or training provided in Northern Ireland, the consent of the Minister for Employment and Learning in Northern Ireland. 45

- (7) Consent may be given under subsection (5) or (6) in relation to particular arrangements or arrangements of a particular description.
- (8) “The appropriate national authority” means –
- (a) in relation to persons or bodies exercising functions relating only to education or training provided in Wales, the Welsh Ministers; 5
  - (b) in relation to persons or bodies exercising functions relating only to education or training provided in Scotland, the Scottish Ministers;
  - (c) in relation to persons or bodies exercising functions relating only to education or training provided in Northern Ireland, the Department for Employment and Learning in Northern Ireland; 10
  - (d) in any other case, the Secretary of State.

## 12 Assistance with respect to employment and training

- (1) The Learning and Skills Council for England may take part in arrangements made by the Secretary of State, the Welsh Ministers or the Scottish Ministers under section 2 of the Employment and Training Act 1973 (c. 50) (arrangements for assisting persons to select, train for, obtain and retain employment). 15
- (2) Before making arrangements in relation to Wales or Scotland in which the Council is to take part, the Secretary of State must obtain the consent of the Welsh Ministers or (as the case may be) the Scottish Ministers to the arrangements. 20
- (3) Before making arrangements in which the Council is to take part, the Welsh Ministers or (as the case may be) the Scottish Ministers must obtain the consent of the Secretary of State to the arrangements.

## 13 Assistance with respect to employment and training: Northern Ireland 25

- (1) The Learning and Skills Council for England may take part in any arrangements made by the Department for Employment and Learning in Northern Ireland under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)) (arrangements for assisting persons to select, train for, obtain and retain employment). 30
- (2) Before making arrangements in which the Council is to take part, the Department must obtain the consent of the Secretary of State to the arrangements.

## PART 2

### FURTHER EDUCATION INSTITUTIONS 35

#### *Further education corporations*

## 14 Incorporation of further education institutions

- (1) Section 16 of FHEA 1992 (incorporation of further education institutions) is amended as set out in subsections (2) to (4).
- (2) In subsection (1) for “The Secretary of State” substitute “The appropriate authority”. 40

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- (3) In subsection (3) –
- (a) for “The Secretary of State” substitute “The appropriate authority”, and
  - (b) in paragraph (b), for “his” substitute “the appropriate authority’s”.
- (4) After subsection (5) insert –
- “(6) In this section “the appropriate authority” means – 5
- (a) in relation to an educational institution in England, the Learning and Skills Council for England, and
  - (b) in relation to an educational institution in Wales, the Welsh Ministers.”
- (5) In section 17(2) of FHEA 1992 (meaning of “operative date”) – 10
- (a) omit the word “and” at the end of paragraph (a),
  - (b) at the end of that paragraph insert – 15
    - “(aa) in the case of a further education corporation in England established under section 16 of this Act, such date as the Learning and Skills Council for England may by order appoint in relation to that corporation, and”, and
  - (c) in paragraph (b) –
    - (i) after “further education corporation” insert “in Wales”, and
    - (ii) for “the Secretary of State” substitute “the Welsh Ministers”.
- 15 Dissolution of further education corporations 20**
- (1) Section 27 of FHEA 1992 (orders dissolving further education corporations) is amended as follows.
- (2) In subsections (1), (2)(a) and (6), for “the Secretary of State” substitute “the appropriate authority”.
- (3) In subsection (3), omit paragraph (a) and the “or” following it. 25
- (4) After subsection (3) insert –
- “(3A) An order under this section made by the Learning and Skills Council for England in respect of a further education corporation in England may provide for the transfer to the council of property, rights and liabilities of the corporation. 30
- (3B) The council must obtain the consent of the Secretary of State before making provision of a kind mentioned in subsection (3A).”
- (5) In subsection (7) –
- (a) for “the Secretary of State” substitute “the Welsh Ministers”, and
  - (b) omit paragraph (b) and the “and” preceding it. 35
- (6) Omit subsection (8).
- (7) After subsection (8) insert –
- “(9) In this section “the appropriate authority” means – 40
- (a) in relation to a further education corporation in England, the Learning and Skills Council for England, and
  - (b) in relation to a further education corporation in Wales, the Welsh Ministers.”

## 16 Publication of proposals

- (1) Section 51 of FHEA 1992 (publication of proposals for establishment or dissolution of further education corporation) is amended as follows.
- (2) For subsections (1) and (2) substitute—
  - “(1) The Learning and Skills Council for England may not make—
    - (a) an order under section 16(1) or (3) establishing a body corporate, or
    - (b) an order under section 27 dissolving a further education corporation,unless it has satisfied the requirements in subsections (2) and (2A). 5
  - (2) The first requirement is that the council publishes a proposal relating to the order, giving such information as may be prescribed, by such time and in such manner as may be prescribed.
  - (2A) The second requirement is that the council considers any representations about the proposal made to it within the prescribed period.” 10
- (3) In subsection (3), for the words from the beginning to “he has” substitute “The Welsh Ministers shall not make an order under section 16(1) or (3) unless they have”.
- (4) In subsection (3A), for “A draft proposal or order” substitute “A proposal or a draft order”.

### *Foundation degrees*

## 17 Power to award foundation degrees

- (1) Section 76 of FHEA 1992 (power to award degrees etc) is amended as follows.
- (2) In subsection (1) (power of Privy Council to specify institutions by order)—
  - (a) the words from “specify any institution” to the end become paragraph (a), and
  - (b) after that paragraph insert “;
    - (b) specify any institution in England within the further education sector as competent to grant in pursuance of this section an award of the kind mentioned in subsection (2A) below.” 30
- (3) In subsection (2) (kinds of award) for “subsection (1)” substitute “subsection (1)(a)”.
- (4) After subsection (2) insert—
  - “(2A) The kind of award referred to in subsection (1)(b) above is a foundation degree granted to persons who complete an appropriate course of study and satisfy an appropriate assessment.” 35
- (5) In subsection (3) (power to grant awards), after “subsection (2)(a) or (b)” insert “or (2A)”.

- (6) In subsection (4) (power to grant honorary degrees etc), after “such an order” insert “as competent to grant in pursuance of this section either or both of the kinds of award mentioned in subsection (2)(a) or (b) above”.
- (7) After subsection (4) insert –
- “(4A) An institution specified in such an order as competent to grant in pursuance of this section the kind of award mentioned in subsection (2A) above may also –
- (a) grant honorary foundation degrees, and
- (b) grant foundation degrees to members of the academic and other staff of the institution.”
- (8) In subsection (5) (powers comprised in the power to grant awards), for “Any” substitute “Subject to subsection (5A) below, any”.
- (9) After subsection (5) insert –
- “(5A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution’s power to grant such awards does not include the power described in subsection (5)(a) above.”
- (10) In subsection (6) (power of institution to determine appropriate course of study etc) for “It” substitute “Subject to subsection (6A) below, it”.
- (11) After subsection (6) insert –
- “(6A) An order under subsection (1) above specifying an institution as competent to grant in pursuance of this section only the kind of award mentioned in subsection (2A) above may provide that the institution is not to grant such an award to a person unless he was enrolled at the institution at the time he completed the course of study for which the award is granted.”
- 18 Report**
- Within the period of four years beginning with the commencement of section 17, the Secretary of State must lay before Parliament a report about the effect of that section.

*Other provisions relating to further education institutions*

- 19 Powers of a further education corporation to form or be involved in certain bodies corporate**
- (1) Section 19 of FHEA 1992 (supplementary powers of a further education corporation) is amended as set out in subsections (2) to (6).
- (2) In subsection (4), for paragraph (bb), substitute –
- “(bb) form, participate in forming or invest in a company,
- (bc) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993),”.

- (3) For subsection (4A) substitute –
- “(4A) The power conferred by subsection (4)(bb) above may not be exercised for the purpose of –
- (a) conducting an educational institution, or
  - (b) investing in a company conducting an educational institution. 5
- (4AA) The power conferred by subsection (4)(bc) above may not be exercised for the purpose of –
- (a) conducting an educational institution, or
  - (b) becoming a member of a charitable incorporated organisation conducting an educational institution. 10
- (4AB) But a restriction on the exercise of a power imposed by subsection (4A) or (4AA) above shall not apply to the extent that the appropriate authority consents to the exercise of the power in a way which does not comply with the restriction.
- (4AC) In subsection (4AB) above “the appropriate authority” means – 15
- (a) in relation to a further education corporation in England, the Learning and Skills Council for England;
  - (b) in relation to a further education corporation in Wales, the Welsh Ministers.”
- (4) In subsection (4B), for the words from the beginning to “be exercised” substitute “Neither the power conferred by subsection (4)(bb) above nor the power conferred by subsection (4)(bc) above may be exercised”. 20
- (5) In subsection (4C), after “subsection (4)(bb) above” insert “or the power conferred by subsection (4)(bc) above”.
- (6) At the end, insert – 25
- “(8) A reference in this section to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.”
- (7) In relation to the period beginning on 1st April 2001 and ending immediately before the coming into force of this section, the power conferred by section 19(4)(bb) of FHEA 1992 is to be taken to have included power to form, participate in forming or become a member of a company limited by guarantee. 30
- 20 Consultation by governing bodies of further education institutions**
- After section 49 of FHEA 1992 insert –
- “49A Consultation 35**
- (1) In exercising their functions the governing body of an institution within the further education sector must have regard to any guidance given from time to time by the appropriate authority about consultation with –
- (a) persons who are or are likely to become students of the institution, or
  - (b) employers, 40
- in connection with the taking of decisions affecting them.



- (2) Any guidance under this section about consultation with persons falling within paragraph (a) of subsection (1) must provide for the views of such a person to be considered in the light of his age and understanding.
- (3) In this section “the appropriate authority” means – 5  
 (a) in relation to an institution in England, the Secretary of State, and  
 (b) in relation to an institution in Wales, the Welsh Ministers.”
- 21 Qualifications of principals of further education institutions**
- (1) Section 137 of the Education Act 2002 (c. 32) (power of Secretary of State or Welsh Ministers to make regulations requiring principals of further education institutions to have specified qualifications) is amended as follows. 10
- (2) After subsection (2) insert –  
 “(2A) Regulations under subsection (1) may limit the period of time during which a person may serve as the principal of an institution in reliance on subsection (2).” 15
- (3) In subsection (3) (regulations made for England or Wales not to apply to persons already appointed to institutions) –  
 (a) for “under subsection (1)” substitute “made under subsection (1) by the Welsh Ministers in relation to Wales”, and 20  
 (b) after “an institution” insert “in England or Wales”.

### PART 3

#### INDUSTRIAL TRAINING LEVIES

- 22 Conditions relating to levy proposals**
- (1) Section 11 of the Industrial Training Act 1982 (c. 10) (levies imposed for industrial training board expenses) is amended as follows. 25
- (2) In subsection (6) (conditions relating to certain levy proposals), for paragraph (a) substitute –  
 “(a) that the Secretary of State is satisfied that – 30  
 (i) the board has taken reasonable steps to ascertain the views of persons who the Secretary of State considers are likely to be liable to make payments by way of levy in consequence of the levy proposals, and  
 (ii) a class of persons, who together satisfy the requirements in subsection (6A) below, considers that the proposals are necessary to encourage adequate training in the industry;” 35
- (3) After subsection (6) insert –  
 “(6A) The requirements referred to in subsection (6)(a) above are that – 40  
 (a) the class must consist of more than half of those persons who the Secretary of State considers are likely to be liable to make payments by way of levy in consequence of the levy proposals; and

- (b) the class must include such persons as the Secretary of State considers are together likely to be liable to make payments by way of levy in consequence of the levy proposals which amount to more than half the aggregate amount of those payments.”
- (4) After subsection (6A) (as inserted by subsection (3)) insert – 5
- “(6B) The Secretary of State may by regulations make provision as to what constitutes “reasonable steps” for the purposes of subsection (6)(a) above.
- (6C) Regulations under subsection (6B) above may include – 10
- (a) provision for ascertaining the views of persons with respect to levy proposals by means of a sample of those persons;
- (b) provision for treating a person who is represented by an organisation of such description as may be prescribed by the regulations as having the same view as the organisation with respect to levy proposals. 15
- (6D) Regulations under subsection (6B) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) In subsection (8) (interpretation) omit the definition of “the relevant organisations”. 20

## 23 Duration of levy orders

- (1) Section 11 of the Industrial Training Act 1982 (c. 10) is amended as set out in subsections (2) to (5).
- (2) After subsection (2) insert –
- “(2A) Levy proposals must provide for one or more periods (in this Act referred to as “levy periods”) by reference to which a person’s liability to levy is to be established and the levy period or periods must fall within the period of three years beginning with the day on which the levy order giving effect to the proposals is made. 25
- Levy proposals may not provide for more than three levy periods. 30
- (2B) Subsection (2A) above is subject to subsections (2C) and (2D) below.
- (2C) If the levy order giving effect to levy proposals submitted by an industrial training board would be the first or second levy order giving effect to proposals submitted by the board, the proposals may instead provide for a single levy period that falls within the period of one year starting with the day on which the levy order giving effect to the proposals is made. 35
- (2D) No levy order may be made in reliance upon subsection (6)(b) below unless the proposals in pursuance of which the order would be made provide for a single levy period that falls within the period of one year starting with the day on which the levy order giving effect to the proposals is made. 40
- (2E) Levy proposals must specify, for each levy period, a period (in this Act referred to as a “base period”) by reference to which the relevant emoluments are to be calculated.” 45

- (3) In subsection (6), for paragraph (b) substitute –
- “(b) that the order will be made –
- (i) after the making of a levy order (“the earlier levy order”) in respect of which the Secretary of State was satisfied that the condition in paragraph (a) above applied, and
- (ii) within the period described in subsection (6E) below, and the condition in subsection (6F) or (6G) below is satisfied;”.
- (4) After subsection (6D) (as inserted by section 22) insert –
- “(6E) The period mentioned in subsection (6)(b)(ii) above is –
- (a) if the earlier levy order provides for such levy periods as are referred to in subsection (2A) above, the period beginning with the third anniversary and ending with the fourth anniversary of the making of the earlier levy order;
- (b) if the earlier levy order provides for such levy period as is referred to in subsection (2C) above, the period beginning with the first anniversary and ending with the second anniversary of the making of the earlier levy order.
- (6F) The condition in this subsection is that the proposals relating to the earlier levy order included proposals for securing –
- (a) that no exemption certificates should be issued; or
- (b) that the exemption certificates to be issued should not exempt employers from any of the levy payable in respect of any levy period.
- (6G) The condition in this subsection is that –
- (a) the proposals in pursuance of which the earlier levy order was made included proposals for securing that exemption certificates should not exempt employers from a portion of the levy payable in respect of a levy period; and
- (b) the percentage of the relevant emoluments from which under the current proposals the exemption certificates will not exempt any person will not exceed the percentage of the relevant emoluments in respect of any of the base periods specified in the earlier levy order from which that person was not exempted under that order.”
- (5) In subsection (8), in the definition of “the relevant emoluments”, for the words from “the period specified” to the end substitute “a period specified in levy proposals as a base period.”
- (6) In section 12 of that Act, after subsection (1) insert –
- “(1A) Subsection (1B) below applies where a levy order (“the new levy order”) giving effect to levy proposals submitted by an industrial training board will be made –
- (a) after the making of a levy order (“the earlier levy order”) that gives effect to earlier proposals submitted by the board, and
- (b) within three years or, where the earlier levy order provides for a single levy period in accordance with section 11(2C) or (2D) above, within one year after the making of the earlier levy order.
- (1B) The proposals for the new levy order must include proposals for securing that no liability to levy is imposed under the earlier levy order

by reference to such part of a levy period provided for in the earlier levy order as falls on or after the day on which the new levy order is made.”

#### PART 4

##### MISCELLANEOUS AND GENERAL

- 24 Powers of a higher education corporation to form or be involved in certain bodies corporate** 5
- (1) In the Education Reform Act 1988 (c. 40) (“the 1988 Act”), section 124 (powers of a higher education corporation) is amended as set out in subsections (2) and (3).
- (2) In subsection (2), for paragraph (f), substitute – 10
- “(f) to form, participate in forming or invest in a company for the purpose of carrying on any such activities;
- (fa) to form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993) for the purpose of carrying on any such activities;” 15
- (3) At the end, insert –
- “(7) The reference in this section to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.” 20
- (4) In relation to the period beginning on 1st April 2001 and ending immediately before the coming into force of this section, the power conferred by section 124(2)(f) of the 1988 Act is to be taken to have included power to form, participate in forming or become a member of a company limited by guarantee for the purpose mentioned in section 124(2)(f). 25
- 25 Powers of National Assembly for Wales**
- (1) Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly Measures) is amended as follows.
- (2) In field 5 (education and training), after matter 5.10 insert – 30
- “*Matter 5.11*  
    Provision for and in connection with securing the provision of facilities for post-16 education or training.
- “*Matter 5.12*  
    Provision for and in connection with the establishment and dissolution of – 35
- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,  
    including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education. 40
- Provision about –
- (a) the conduct and functions of such institutions and bodies that conduct such institutions;

- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;
- (c) property held by any person for the purposes of such an institution;
- (d) the governance and staff of such institutions. 5
- Matter 5.13*  
Provision for and in connection with securing collaboration –
- (a) between bodies that conduct institutions concerned with the provision of further education, or 10
- (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,
- including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration. 15
- Matter 5.14*  
The provision of financial resources for and in connection with – 20
- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the carrying out of research relating to education or training falling within paragraph (a) or (b). 25
- Matter 5.15*  
The inspection of –
- (a) education or training provided by institutions concerned with the provision of further education; 30
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8. 35
- Matter 5.16*  
The provision of advice and information in connection with, and the carrying out of studies in relation to, any of the kinds of education, training or services mentioned in matter 5.15.”
- (3) In that field, immediately after the heading “*Interpretation of this field*”, insert – 40
- “In this field –
- “post-16 education” means –
- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and 45
- (b) organised leisure-time occupation connected with such education;
- “post-16 training” means –
- (a) training suitable to the requirements of persons who are above compulsory school age, and 50

- (b) organised leisure-time occupation connected with such training.

References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the Further and Higher Education Act 1992), that is conducted (whether or not exclusively) for the purpose of providing further education.”

5

## 26 Orders and regulations

- (1) Any power to make an order or regulations under this Act is exercisable by statutory instrument. 10
- (2) A statutory instrument containing an order or regulations made by the Secretary of State under any provision of this Act other than section 30 is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (3) A statutory instrument is subject to annulment in pursuance of a resolution of the National Assembly for Wales if the instrument contains an order made by the Welsh Ministers under section 11.
- (4) A statutory instrument is subject to annulment in pursuance of a resolution of the Scottish Parliament if the instrument contains an order made by the Scottish Ministers under section 11. 20
- (5) The power of the Department for Employment and Learning in Northern Ireland to make an order under section 11 shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)); and any such order shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act. 25
- (6) Any power to make an order or regulations under this Act includes power – 30
- (a) to make different provision for different cases or areas;
  - (b) to make provision generally or in relation to specific cases;
  - (c) to make such incidental, supplementary, transitional or saving provision as the person making the order or regulations thinks fit.

## 27 Amendments

Schedule 1 (which contains miscellaneous and consequential amendments) has effect. 35

## 28 Repeals

The enactments specified in Schedule 2 are repealed to the extent specified.

## 29 Interpretation

In this Act – 40

“FHEA 1992” means the Further and Higher Education Act 1992 (c. 13);

“LSA 2000” means the Learning and Skills Act 2000 (c. 21).

**30 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed –
- sections 9, 19, 24, 26 and 29;
  - this section; 5
  - sections 31 and 32.
- (2) Section 25 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Sections 20 and 21 come into force in accordance with provision made by order by – 10
- (a) the Welsh Ministers, in relation to Wales;
  - (b) the Secretary of State, in relation to England.
- (4) The remaining provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

**31 Extent**

15

- (1) Subject to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions extend also to Scotland –
- section 11;
  - section 12;
  - sections 26, 29 and 30, this section and section 32. 20
- (3) The following provisions extend also to Northern Ireland –
- section 11;
  - section 13;
  - sections 26, 29 and 30, this section and section 32.
- (4) Any amendment or repeal made by this Act has the same extent as the enactment amended or repealed. 25

**32 Short title**

- (1) This Act may be cited as the Further Education and Training Act 2007.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 30

## SCHEDULES

### SCHEDULE 1

Section 27

#### AMENDMENTS

#### *Industrial Training Act 1982 (c. 10)*

- |   |  |    |
|---|--|----|
| 1 | The Industrial Training Act 1982 is amended as follows.  | 5  |
| 2 | In section 1(2) (definitions) –  |    |
|   | (a) before the definition of “employee” insert –   |    |
|   | ““base period” has the meaning assigned to it by section 11(2E) below;”;                           |    |
|   | (b) omit the word “and” at the end of the definition of “levy order”;                              | 10 |
|   | (c) after that definition, insert –  |    |
|   | ““levy period” has the meaning assigned to it by section 11(2A) below; and”.                       |    |
| 3 | (1) Section 11 (levies imposed for industrial training board expenses) is amended as follows.      | 15 |
|   | (2) In subsection (3) –  |    |
|   | (a) after “must include” insert “, in relation to each levy period,”;                              |    |
|   | (b) after “the levy” insert “payable in respect of that levy period”;                              |    |
|   | (c) after “they provide” insert “, in relation to each levy period,”.                              |    |
|   | (3) In subsection (4) –  | 20 |
|   | (a) after “may include” insert “, in relation to any levy period,”;                                |    |
|   | (b) in paragraph (a), after “portion of the levy” insert “payable in respect of that levy period”; |    |
|   | (c) for “the proposals published by the board” substitute “proposals published by the board”.      | 25 |
|   | (4) In subsection (5) –  |    |
|   | (a) in paragraph (a) –   |    |
|   | (i) after “the levy” insert “payable in respect of a levy period”, and                             |    |
|   | (ii) after “the relevant emoluments” insert “in respect of the base period for that levy period”;  | 30 |
|   | (b) in paragraph (b) –   |    |
|   | (i) after “any person” insert “in respect of a levy period”, and                                   |    |
|   | (ii) after “the relevant emoluments” insert “in respect of the base period for that levy period”.  | 35 |
|   | (5) In subsection (7) –  |    |



	(a) after “unless the amount” insert “of levy payable in respect of each levy period”;	
	(b) in paragraph (a), after “the relevant emoluments” insert “in respect of the base period for that levy period”.	
4	In section 12 (supplementary provision), in paragraph (a) of subsection (3), for “a period specified in the order” substitute “a levy period”.	5
5	(1) In section 13 (proposals for exemption certificates), subsection (2) is amended as follows.	
	(2) In paragraph (b) –	
	(a) after “the levy payable” insert “in respect of each levy period”;	10
	(b) for the words after “the relevant emoluments” substitute “in respect of the base period for that levy period”.	
	(3) In paragraph (c), after “the levy” insert “payable by virtue of the resulting levy order”.	
	(4) At the end, insert –	15
	“In this subsection “the relevant emoluments” has the meaning given by section 11(8) above.”	
<i>Further and Higher Education Act 1992 (c. 13)</i>		
6	FHEA 1992 is amended as follows.	
7	In section 19 (supplementary powers of a further education corporation), in subsection (4C), for “the Council” substitute “the council”.	20
8	In section 27 (dissolution of further education corporations), in subsection (5), for “the Charities Act 1960” substitute “the Charities Act 1993”.	
9	In section 83 (efficiency studies), in subsection (2), for “a, the” substitute “the”.	25
10	In section 89 (orders, regulations and directions), in subsection (4), for “the Secretary of State” substitute “the person making the order or regulations”.	
<i>Learning and Skills Act 2000 (c. 21)</i>		
11	LSA 2000 is amended as follows.	
12	In section 1(5) (functions of the Learning and Skills Council for England to be carried out in relation to England), at the beginning insert “Except as provided in section 11, 12 or 13 of the Further Education and Training Act 2007,”.	30
13	In section 3D (duties of the Council in relation to core and additional entitlement), in subsection (6) (meaning of “local learning and skills area”), for the words from “an area” to the end substitute “an area specified by the Secretary of State by order for the purposes of this section.”	35
14	In section 152 (orders and regulations), after subsection (2) insert –	
	“(2A) Subsection (2) does not apply to a statutory instrument that contains regulations to which subsection (2B) applies.	40

- (2B) The first regulations under section 18A(2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.”
- 15 (1) Schedule 3 (committees of the Council) is amended as follows.
- (2) In paragraph 1(3) (exception for local councils), for “local learning and skills councils” substitute “regional learning and skills councils”. 5
- (3) In paragraph 4 (functions and members), in the heading to that paragraph, for “*Other committees*” substitute “*Functions and members of committees*”.
- (4) In paragraph 5 (tenure of members of committees), in sub-paragraph (4), for “any other committee” substitute “a committee”. 10

SCHEDULE 2

Section 28

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Industrial Training Act 1982 (c. 10)	In section 1(2), the “and” at the end of the definition of “levy order”. In section 11(8), the definition of “the relevant organisations” and the “and” preceding that definition.	15
Further and Higher Education Act 1992 (c. 13)	In section 17(2), the “and” following paragraph (a). In section 27 –	20
	(a) in subsection (3), paragraph (a) and the “or” following that paragraph;	
	(b) in subsection (7), paragraph (b) and the “and” preceding that paragraph;	25
	(c) subsection (8).	
Learning and Skills Act 2000 (c. 21)	Section 15(2). Sections 19 to 24. Schedule 2. In Schedule 3 –	30
	(a) in paragraph 1(1), paragraph (a) and, in paragraph (b), the word “other”;	
	(b) paragraphs 2 and 3;	
	(c) in paragraph 4(1), the words from “other than” to the end;	35
	(d) paragraph 5(3).	
Education Act 2002 (c. 32)	Section 209.	
Children Act 2004 (c. 31)	In section 18(3)(c), the words “or section 23 of the Learning and Skills Act 2000 (c. 21)”.	

# Further Education and Training Bill [HL]

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## B I L L

To make provision about the Learning and Skills Council for England; to make provision about institutions within the further education sector; to make provision with respect to industrial training levies; to make provision about the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations; to enable the making of Assembly Measures in relation to the field of education and training; and for connected purposes.

*Brought from the Lords, 7th March 2007.*

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*Ordered, by The House of Commons, to be  
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