Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No.

NORTHERN IRELAND

The Colleges of Education (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Colleges of Education (Northern Ireland) Order 2005.

(2) This Part, Part II (together with Schedules 1 and 2) and Article 13 come into operation one week after the date on which this Order is made.

(3) Part III and Article 14 (together with Schedules 3 and 4) come into operation on the transfer date.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the college" means the college of education heretofore maintained in pursuance of arrangements made under Article 66(1) of the 1986 Order and known as Stranmillis University College: a College of The Queen's University of Belfast;

"the Department" means the Department for Employment and Learning;

"facilities" includes land, goods and services;

"the governing body" means the body established under Article 3;

"the transfer date" means 1st October 2005 or such later date as the Department may by order appoint;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986 (NI 3).

(3) References in this Order to a person having a "learning difficulty" are to be construed in accordance with Article 2(5) and (6) of the Further Education (Northern Ireland) Order 1997 (NI 15).

(4) Any direction, consent or determination given by the Department under this Order shall be in writing.

PART II

THE COLLEGE

Management of the college

Transfer of management of college to incorporated governing body

3.—(1) With effect from the transfer date—

(a) the college shall cease to be managed in accordance with arrangements under Article 66(1) of the 1986 Order;

(b) there shall be established under this Order for the college a body corporate to be known as the governing body of the college; and

(c) the college shall be under the management of the governing body.

(2) Schedule 1 (which provides for the transfer of certain property, rights, liabilities and staff to the governing body established under this Order and makes other provision consequential on, related to, or for the purpose of facilitating, the transfer effected by paragraph (1)) shall have effect.

Constitution of governing body and conduct of college

4.—(1) There shall be—

(a) an instrument providing for the constitution of the governing body (to be known as the instrument of government); and

(b) an instrument in accordance with which the governing body and the college are to be conducted (to be known as the articles of government).

(2) Schedule 2 (which makes general provision concerning the governing body) shall have effect.

(3) The instrument of government and articles of government of the college—

(a) shall comply with the requirements of Schedule 2; and

(b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.

Making and amendment of instrument of government and articles of government

5.—(1) The initial instrument of government and articles of government of the college shall be made by order of the Department after consultation with such persons as appear to it to be appropriate.

(2) The Department may—

(a) if the governing body submits a draft of an instrument of government or articles of government to have effect in place of the existing instrument or articles, by order make a new instrument of government or articles of government in terms of the draft or in such terms as it thinks fit;

(b) if that body submits draft amendments of the existing instrument of government or articles of government, by order amend the existing instrument or articles in terms of the draft or in such terms as it thinks fit.

(3) The Department shall not—

(a) make a new instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(a), or

(b) amend an existing instrument of government or articles of government otherwise than in terms of a draft submitted under paragraph (2)(b),

unless it has consulted the governing body.

(4) The Department may direct the governing body to submit—

(a) a draft under paragraph (2)(a) making such provision as is specified in the direction; or

(b) a draft under paragraph (2)(b) making such amendments as are so specified.

(5) Before giving any direction under paragraph (4) to the governing body the Department shall consult that body.

(6) In this Article—

(a) references to the initial instrument of government and articles of government of the college are to the instrument and articles which are to have effect as from the transfer date;

(b) references to the existing instrument of government or articles of government of the college are references to the instrument of government or articles of government for the time being having effect in relation to the college under this Article.

Duties and powers of the governing body

General duties of the governing body

6.—(1) It shall be the duty of the governing body—

(a) to secure the efficient and effective management of the college; and

(b) to ensure that the college provides, or secures the provision of, suitable and efficient education to students of the college.

(2) In carrying out its duty under paragraph (1), the governing body shall have regard to the requirements of persons who have learning difficulties.

Principal powers of governing body

7.—(1) The governing body shall have the power—

(a) to provide or secure the provision of education (and in particular education relevant to the initial or further training of teachers) and to secure the carrying on of research related to such education;

(b) to charge fees for or in connection with the provision under sub-paragraph (a) of any form of education or the securing of any research;

(c) to provide to students of the college such assistance of a financial or other nature (including waiving or granting remission of fees) as it may consider appropriate;

(d) to manage the college, and for that purpose to receive any property, rights and liabilities transferred to it under this Order;

(e) to provide, or secure the provision of, facilities of any description appearing to it to be necessary or expedient for the purpose of or in connection with the carrying on of any activities it has power to carry on (including residential accommodation and recreational facilities for students and staff of the college and facilities to meet the needs of students who have learning difficulties and disabled students and staff);

(f) to provide meals and refreshments for students and staff of the college;

(g) to supply goods and services in connection with the provision of education by it and make charges for such goods and services;

(h) to acquire, hold and dispose of land and other property;

(i) to enter into contracts, including in particular—

(i) contracts for the employment of teachers and other staff for the purpose of or in connection with the carrying on of any activities it has power to carry on;

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

(iii) contracts to secure the provision by others of facilities in connection with the carrying on by it of any such activities, including externally financed development agreements as defined in Article 8(4)(c).

(j) to form or promote, or to join with any other person in forming or promoting, companies (within the meaning of the Companies (Northern Ireland) Order 1986 (NI 6));

(k) to enter into collaborative arrangements with other educational institutions or bodies and community groups on such terms as it thinks fit and to exercise its decision-making in relation to such arrangements through any joint body established for the purposes of the arrangements;

(l) to borrow such sums as it thinks fit for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order and, in connection with such borrowing, to grant such security as it thinks fit;

(m) to give such guarantee or indemnity in relation to the obligations of a company to which sub-paragraph (j) applies or any other person on such terms and conditions (including the giving of security in respect of its obligations under such guarantee or indemnity) as it thinks fit;

(n) to invest any sums not immediately required by it for the purpose of carrying on any activities it has power to carry on or meeting any liability transferred to it under this Order;

(o) to raise funds, accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of carrying on any activities it has power to carry on; and

(p) to do all such other things as are calculated to facilitate or are incidental or conducive to the carrying on of any activities it has power to carry on.

(2) For the purposes of paragraph (1)(g), goods and services are supplied in connection with the provision of education by the governing body if—

(a) they result from the provision of education or anything done by the governing body under this Order for the purpose of or in connection with the provision of education,

(b) they result from the use of, or are provided by making available, the facilities of the governing body or the expertise of persons employed by it in the fields in which they are so employed, or

(c) they result from ideas of a person employed by the governing body, or of one of its students, arising out of the provision of education by it.

(3) The Department may by order amend the provisions of paragraph (1) by varying, adding to or removing the powers for the time being conferred by that paragraph.

(4) Before making any order under paragraph (3), the Department shall consult—

(a) the governing body; and

(b) any other persons with whom consultation appears to the Department to be appropriate.

(5) The exercise by the governing body of any power conferred by this Article is subject to Article 8; and an order under paragraph (3) may make such consequential amendments to Article 8 as appear to the Department to be necessary or expedient.

Restrictions on exercise of principal powers of governing body

8.—(1) The powers of the governing body under Article 7(1)(b) (charging of fees for education or research) shall not be exercised otherwise than in accordance with—

(a) the statutory provisions for the time being regulating the charging of such fees; and

(b) any other arrangements approved or determined by the Department.

(2) The powers of the governing body under—

(a) Article 7(1)(j) (formation of companies);

(b) Article 7(1)(k) (collaborative arrangements),

(c) Article 7(1)(n) (investment);

shall be exercised in accordance with any arrangements approved or determined by the Department.

(3) The powers of the governing body under Article 7(1)(f) (provision of meals and refreshments) shall be so exercised as to give effect to arrangements approved or determined by the Department for the remission in whole or in part of charges which would otherwise be made in respect of meals or refreshments provided to students of the college.

(4) The governing body 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;

(b) effect any material change in the character of the college;

(c) enter into an externally financed development agreement, that is to say an agreement—

(i) the purpose or main purpose of which is the provision of facilities in connection with the carrying on of any activities which the governing body has power to carry on; and

(ii) in connection with which a person proposes to make a loan to, or provide any other form of finance for, any party to the agreement other than the governing body; or

(d) acquire any land.

(5) The consent of the Department under paragraph (4) may be given subject to such conditions as the Department may determine.