EXPLANATORY MEMORANDUM TO

THE FURTHER EDUCATION CORPORATIONS (PUBLICATION OF PROPOSALS) (ENGLAND) REGULATIONS 2012

2012 No. 1157

AND

THE SIXTH FORM COLLEGE CORPORATIONS (PUBLICATION OF PROPOSALS) (ENGLAND) REGULATIONS 2012

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1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills, and the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Further Education Corporations (Publication of Proposals) (England) Regulations 2012 ("the FE 2012 Regulations") replace the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (England) Regulations 2001 (S.I. 2001/782) ("the Principal Regulations"); and the Sixth Form College Corporations (Publication of Proposals) (England) Regulations 2012 ("the SFC 2012 Regulations") replace the Education (Publication of Proposals) (Sixth Form College Corporations) (England) Regulations 2010 (S.I. 2010/2609) ("the SFC 2010 Regulations").

2.2 These instruments are made as a consequence of the transfer of the Secretary of State's powers to dissolve a further education corporation and a sixth form college corporation to the corporation itself, and of the transfer of local authorities' power to propose the establishment of a sixth form college corporation to any person, pursuant to amendments to the Further and Higher Education Act 1992 ("the 1992 Act") inserted by the Education Act 2011 ("the 2011 Act"). These instruments also make similar arrangements for the establishment of further education corporations pursuant to the amendments to the 1992 Act inserted by the 2011 Act. Both instruments set out the time, manner and process for the publication of proposals for the dissolution of a corporation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

The FE 2012 Regulations

4.1 The Principal Regulations were made under section 51 of the Further and Higher Education Act 1992, which has been repealed through the 2011 Act, with effect from 1 April. Accordingly, the Principal Regulations have lapsed (save in so far as transitional provisions contained in Commencement Order no.3 apply). The FE 2012 Regulations replace the Principal Regulations in order to implement the changes made under sections 16A, 27 and 27A of the 1992 Act as inserted by the 2011 Act.

4.2 Under section 16A of the 1992 Act, the appropriate authority may only make a order under section 16 (which makes provision for the establishment of a further education corporation) when it has published a draft of the proposed order in such a way and in such a manner as may be prescribed in regulations. Under section 27A of the 1992 Act further education corporations have the power to dissolve themselves. A further education corporation can dissolve itself once is has complied with the requirements of section 27, which require the Corporation to publish details of the proposal for dissolution, and such other information as may be prescribed, in accordance with regulations. The Corporation must also consult on the proposal, and take account of the views of those consulted, in accordance with regulations. These regulations set out the time, manner and process for the publication of proposals and set out the requirements in regards to consultation.

The SFC 2012 Regulations

4.3 Under section 33C of the 1992 Act, as amended by the 2011 Act, it is now possible for any person or body to make a proposal to the Secretary of State for a new sixth form college corporation. Previously, only the local authority had the power to make such a proposal. Section 33C requires the proposer to publish the proposal by a prescribed time and in a prescribed manner; for the proposal as published to contain prescribed information; and for the proposal to consider any representations about the proposal made to them within a prescribed period. The SFC 2012 Regulations revoke and replace the SFC 2010 Regulations and set out the requirements in relation to the publication of proposal to establish a sixth form college corporation.

4.4 Under section 33O of the 1992 Act, inserted by the 2011 Act, sixth form college corporations now have the power to dissolve themselves. A sixth form college corporation may only do so where it has complied with the requirements under the amended section 33N of the Act which require the corporation to publish details of the proposal for dissolution, and such other information as may be requires in accordance with regulations. The corporation must also consult on the proposal, and take account of the views of those consulted in accordance with regulations. The SFC 2012 Regulations set out the time, manner and process for the publication of proposals and set out the requirements in regards to consultation.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Through the changes to the 1992 Act (inserted by the Education Act 2011), various statutory requirements and controls have been removed which will serve to free up the further education sector from central government control, putting responsibility into the hands of the corporations themselves.

7.2 For example, further education corporations and sixth form college corporations now have the power to dissolve themselves, thus enabling corporations to decide for themselves how they should be organised in order to deliver high quality, flexible provision to meet the needs of their local area.

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills, and the Department for Education sought the views of further education corporations and sixth form college corporations on these Regulations. The Departments received responses from 14 further education corporations, seven sixth form college corporations, the Sixth Form College Forum, the Young People's Learning Agency, the Skills Funding Agency, and the Catholic Education Services. The Association of Colleges had previously commented on the changes. The exercise concluded that the sector broadly welcomed the changes brought about through these regulations. Respondents raised a number of clarifying comments and requests for further information on the draft regulations, which we have reflected in the final regulations.

9. Guidance

9.1 Neither the Department for Business, Innovation and Skills, nor the Department for Education will be issuing guidance in relation to these instruments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Both Departments will monitor the implementation of these regulations as part of its programme of work with Governors.

13. Contacts

Kathryn Harrison at the Department for Business, Innovation and Skills Tel: 0114 207 5316 or email: kathryn.harrison@bis.gsi.gov.uk can answer any queries regarding the FE 2012 Regulations

Sarah Todd at the Department for Education Tel: 0114 2742387 or email Sarah.Todd@education.gsi.gov.uk can answer any queries regarding the SFC 2012 Regulations.