



THE CORPORATION OF EAST SURREY COLLEGE

APPOINTMENT OF INDEPENDENT MEMBER OF THE CORPORATION

GENERAL LEGAL INFORMATION

1. The Further and Higher Education Act 1992

The establishment of East Surrey College as an independent further education corporation with charitable status was brought about by the Further and Higher Education Act 1992 (the Act). Many of the detailed provisions of the Act were given full effect by the enactment of statutory instruments, of which the College's Instrument and Articles of Government is one. Effectively the Act provided for the creation of statutory corporations (i.e. bodies created by Acts of Parliament) with exempt charitable status (i.e. not to be taxed as charities and not needing to register with the Charities Commission) to take over the running of the institutions within the further education sector from 1 April 1993. To facilitate this, all staff, property rights and liabilities (except loans and premature retirement compensation) of the local education authority directly responsible for the institution before 1 April 1993 transferred to the employment, ownership or responsibility of the new Corporation established to run the further education college on 1 April.

2. Further Education Corporations

As a body corporate, a further education corporation has its own separate legal existence distinct from its members. It has its own assets and its own liabilities and can sue and be sued in its own name. Normally, only the assets of the body corporate are available to satisfy any judgement against it. There are circumstances where Governors or other officers might be personally liable.

In many ways a college corporation is akin to a company but it is not governed by the Companies Act. Furthermore, unlike the board of directors of a company, the governors have no shareholders from whom they can seek authority in advance or from whom they can obtain extended powers. In addition, they cannot obtain ratification for acts carried out beyond their powers. The Secretary of State does have the power to intervene if an institution has been mis-managed and can remove some or all of the governors or give directions to governors to carry out a duty where they are in default. However, the Secretary of State has no power to absolve those responsible from any personal liability which they may have incurred through having caused

or allowed the corporation to act beyond its powers. Although the powers of the corporation are vested in and exercisable by governors alone, the corporation is not intended to be an executive body and in practice the Instrument and Articles of Government allow for the delegation of authority as well as placing limits on what may be delegated.

3. Powers of Further Education Corporations

(i) Principal Powers

The Act sets out the principal powers of a corporation as follows:-

- (a) To provide further education and higher education;
- and
- (b) To supply goods or services in connection with its provision of education

If the corporation does not carry out its primary purpose, it can do nothing else. If its primary purpose is properly carried out, anything else it does must be done with the view to carrying into effect that purpose or must be incidental to or consequential upon that purpose.

(ii) Supplementary Powers

Section 19 of The Act provides for the execution of supplementary powers which are necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers of the corporation. Effectively, this means that governors must use the corporation's assets in a way which has regard to the principal powers of the institution and must test to see how what is proposed furthers the achievement of that overall objective. Section 19 does specify certain things, for instance the provision of facilities such as boarding and recreational facilities, acquiring and disposing of land, investing monies not immediately required and accepting gifts, but the list does not prevent the corporation from doing other things, provided that members of the corporation reasonably believe that the action is in accordance with or furthers the objectives of the institution and is not contrary to charity law.

4. **The Instrument and Articles of Government of East Surrey College**

Enshrined in Statutory Instrument 1992 No. 1962, the Education (Government of FE Corporations) (Former Further Education Colleges) Regulations came into force on 30 September 1992 and were subsequently updated by modification of the Orders in 1999, 1 April 2001, 1 May 2006, 1 January 2008, 1 April 2010 and on 31 March 2012.

(i) Instrument of Government

This outlines the composition of the Corporation and the way in which it must conduct its business. Key issues are as follows:

- **Membership** – The Corporation of East Surrey College has an establishment of sixteen members;
- **Conduct of the Corporation** – The Instrument of Government lays down the conduct of the Corporation which is further developed by the Code of Conduct and the Standing Orders of the Corporation agreed by the Corporation;
- **Accounts and Audit** – the Corporation has specific duties and responsibilities with respect to accounts and audit. Such duties are enshrined in the College's Financial Regulations and the Financial Memorandum with relevant funding authorities. The Corporation has also established an Audit Committee for which the terms of reference explicitly deal with the requirements specified in the Instrument of Government and by the relevant funding authorities;
- **Governors' Terms of Office** – The Corporation has agreed that Governors will normally serve for a four year term of office.

(ii) The Articles of Government

The Articles of Government deal with the duties and responsibilities of the Corporation, its Principal and Chief Executive and the Clerk to the Corporation. In addition, the Articles address the role of committees and the delegation of functions, as well as the Corporation's duties as an employer, its role with regard to students and with financial matters.