



Dissolution, Merger and Establishment of FE Corporations

This is an SFA internal process paper which can be shared externally. Colleges however should not rely solely on the information provided here and should take their own legal advice.

An FE Corporation is the only body with the power to dissolve the corporation¹. A college would only reach the decision that dissolution was appropriate having undertaken a Structure and Prospects Appraisal which would ensure that they had considered all of the options fully and consulted fully and openly with key stakeholders.

A corporation seeking to dissolve must observe the process set out in regulation which includes statutory consultation with key stakeholders and disposal of assets and liabilities in accordance with charity and FE legislation. The process as set out in regulation is in [The Further Education Corporations \(Publication of Proposals\) \(England\) Regulations 2012](#).

The process for undertaking a Structure and Prospects Appraisal was set out in New Challenges, New Chances. BIS produced more detailed guidance on the process and this can be found at [Structure and Prospects Appraisals - Guidance](#)

There are two types of mergers. A Type A merger where one or more colleges will dissolve and decide to establish a new Corporation to which they transfer their property, rights and liabilities to. Or a Type B where one or more college dissolves and transfers its property, rights and liabilities to another existing corporation.

The legal power to establish and incorporate FE Corporations sits with the Secretary of State through the Further and Higher Education Act 1992.

Below is a timeline which sets out what actions need to take place and by when in the case of both types of merger.

¹ In extreme circumstances the Secretary of State can direct a corporation to dissolve

Type A Merger – One or more college dissolve and a new Corporation is established

A Type A Merger will follow the Type B Merger steps below but has additional steps (indicated in blue) because the Secretary of State for Business and Skills has the legal power to establish FE Colleges through the Further and Higher Education Act 1992. The SoS will review an application as prescribed by *The Further Education Corporations (publication of proposals) Regulations 2012. SI no.1157.*

ACTION	TIMELINE
<p>College/s reviews their mission and vision to ensure that it is still relevant and responsive to the needs of learners, employers and communities. This review may conclude that a Structure and Prospects Appraisal should be carried out.</p> <p>A SPA must consider all of the options and a full and open consultation undertaken with key stakeholders.</p> <p>Having assessed options against the chosen criteria during the SPA process and identified a lead option, the college draws this up in to a more detailed proposal, including plans for implementation.</p> <p>This decision is solely the responsibility of the corporation; there is no requirement for ministerial sign off. The college should keep the funding agencies fully informed so that they can check and confirm funding agreement compliance.</p>	<p>For the Corporation to decide</p>
<p>Where a dissolution and a new Corporation is proposed the colleges should contact the Secretary of State to seek an agreement in principle to set up a new corporation.</p>	<p>For the Corporation to decide</p>
<p>Ministers write to the colleges indicating that he is minded in principle to set up a new corporation following the full consultation and final proposal</p>	<p>Determined by the Minister</p>
<p>The Corporations must publish a notice of the proposal to dissolve in at least one newspaper circulating in the area served by the dissolving college/s to which the proposal relates and in at least one national newspaper.</p> <p>As a minimum this notice must contain the following:</p> <ul style="list-style-type: none"> • the name of the FE Corporation and the name of the institution concerning (if different) • the date proposed for the dissolution of the further education corporation and • the procedure for obtaining a copy of the proposal 	<p>Published at least 4 months before the date which is specified in the proposal for the dissolution of the corporation</p>
<p>The Corporations must publish the proposal (consultation on dissolution) which must include the following:</p> <ul style="list-style-type: none"> • the name of the FE Corporation and the name of the institution concerning (if different) • the address of the institution • a general description of the education provided by the institution • The number of full-time students , part time students and the total number of students at the institution • The reason for proposing the dissolution of the FE corporation • The date proposed for the dissolution of the FE corporation 	<p>Published at least 4 months before the date which is specified in the proposal for the dissolution of the corporation</p>

<ul style="list-style-type: none"> • The educational provision to be made for those students who have not completed their courses on that date • The proposed arrangements for the transfer of the property, rights and liabilities of the FE corporation 	
<p>The Corporations must send a copy of the proposal (consultation on dissolution) to:</p> <ul style="list-style-type: none"> • the governing body or proprietor of any institution within the further education sector within the local authority area in which the corporation is situated • the governing body or proprietor of any maintained school or Academy which provides full-time education suitable to the requirements of persons over compulsory school age within the local authority area in which the institution is situated • the local authority in whose area the institution is situated • the Member of Parliament in whose constituency the institution is situated • any other Member of Parliament whose constituents it appears to the corporations are likely to be affected by the proposal. • the Secretary of State and • any other person who appears to the corporation to have an interest. 	<p>Published at least 4 months before the date which is specified in the proposal for the dissolution of the corporation</p>
<p>The Corporation must hold a consultation on the proposal.</p> <p>The Corporations must take account of the views expressed in any representations they receive.</p>	<p>One calendar month</p>
<p>The corporation must apply with a full proposal to the Secretary of State for a new Corporation.</p> <p>As a minimum this proposal should contain the following:</p> <ul style="list-style-type: none"> • Address of the institution • Name of Principal/CEO • A general description of the education to be provided including levels, sector subject areas and age range of learners • Numbers of full and part time learners • Why the Corporation is to establish a new institution rather than conduct an existing one • Description of the consultation process undertaken including consultees, and overall results and findings including any significant support/opposition • the reasons for proposing, and the expected impact of, the incorporation, addressing the factors below (where appropriate including responses to specific issues raised in the consultation): • the strategic drivers for change with evidence of the current and future needs of learners, employers and the wider community including an assessment of impact on these groups; • an assessment of how the incorporated institution will deliver value for money; • the impact on the curriculum offer; 	

<ul style="list-style-type: none"> • plans to secure continuity for existing learners, to engage new learners and to improve progression plans to improve provision for under-represented /under-achieving groups; • current employer engagement and proposals for developing this further; • impact on the development of focused, specialised employer led provision and how this will better meet local and regional skills needs. • impact of the incorporated institution’s contributions to: skills; services; economic growth; social cohesion and well being within the community. • assessment of current quality and the expected impact of incorporation; • how account will be taken of learner and employer feedback to inform the continuing development of the incorporation • an assessment of the implications for staff and appropriate consultations with staff and representative bodies; • how the corporation will ensure effective governance and management structures with clear accountability lines and effective long term strategic planning; • how the corporation will ensure an orderly and effective transition to new arrangements (including timetables, key milestones and risk analysis) • how senior management and governors will ensure effective engagement with the communities the college serves, forming appropriate strategic partnerships and securing regular feedback. • Proposed governance arrangements • Nominations for the initial members of the Corporation 	
<p>The Corporations must publish a summary of the consultation and its outcome and make the summary available free of charge to any person who requests it</p>	<p>Within two months of the date after the end of the consultation period</p>
<p>SoS reviews the consultation outcome and agrees to establishment of the Corporation.</p>	<p>Determined by the Secretary of State</p>
<p>The SoS must publish a <u>draft</u> of a proposed Order to establish the Further Education Corporation (the draft order): n at least one newspaper in the area served by the institution to which the draft order relates and in at least one national newspaper</p>	<p>At least two months before the date of its establishment</p>
<p>The SoS must send a copy of the draft order together with a statement containing the information set out in Part 1 of the Schedule as detailed in <i>The Further Education Corporations (publication of proposals) Regulations 2012. SI no.1157</i> to:</p>	<p>At least two months before the date of its establishment</p>

<ul style="list-style-type: none"> • the governing body of any institution within the further education sector within the local authority area in which the institution to which the draft order relates, is proposed to be situated; • the governing body of proprietor of any maintained school or Academy which provides full-time education suitable to the requirements of persons over compulsory school age within the local authority area in which the institution to which the draft order relates, is situated or proposed to be situated • the local authority in whose area the institution to which the draft order relates, is situated or proposed to be situated • the Member of Parliament in whose constituency the institution to which the draft order relates, is situated or is proposed to be situated • any other Member of Parliament whose constituents it appears to the SoS are likely to be affected by the proposal <p>any other person who appears to the SoS to have an interest.</p>	
<p>The SoS signs and lays the final order for establishment for the new Corporation in the House of Lords</p>	<p>Must lay for 21 days in Parliament before coming into force</p>
<p>The SoS appoints initial Corporation members (nominated quorum)</p>	<p>while the order is laying for 21 days</p>
<p>New Corporation becomes operative and meets to resolve to take on the assets, rights and liabilities of the dissolving corporations before the transfer can take place and the resolution to dissolve be made</p>	<p>To be determined by the new corporation</p>
<p>The dissolving Corporation(s) will then make a resolution to dissolve and transfer its property, rights and liabilities to the new Corporation.</p>	

Type B Merger – One college or more dissolves and transfers its property, rights and liabilities to another college

ACTION	TIMELINE
<p>College/s reviews their mission and vision to ensure that it is still relevant and responsive to the needs of learners, employers and communities. This review may conclude that a Structure and Prospects Appraisal should be carried out.</p> <p>A SPA must consider all of the options and a full and open consultation undertaken with key stakeholders.</p> <p>Having assessed options against the chosen criteria during the SPA process and identified a lead option, the college draws this up in to a more detailed proposal, including plans for implementation.</p> <p>This decision is solely the responsibility of the corporation; there is no requirement for ministerial sign off. The college should keep the funding agencies fully informed so that they can check and confirm funding agreement compliance.</p>	<p>For the Corporation to decide</p>
<p>The Corporation must publish a notice of the proposal to dissolve in at least one newspaper circulating in the area served by the dissolving college/s to which the proposal relates and in at least one national newspaper.</p> <p>As a minimum this notice must contain the following:</p> <ul style="list-style-type: none"> • the name of the FE Corporation and the name of the institution concerning (if different) • the date proposed for the dissolution of the further education corporation and • the procedure for obtaining a copy of the proposal 	<p>Published at least 4 months before the date which is specified in the proposal for the dissolution of the corporation</p>
<p>The Corporation must publish the proposal which must include the following:</p> <ul style="list-style-type: none"> • the name of the FE Corporation and the name of the institution concerning (if different) • the address of the institution • a general description of the education provided by the institution • The number of full-time students , part time students and the total number of students at the institution • The reason for proposing the dissolution of the FE corporation • The date proposed for the dissolution of the FE corporation • The educational provision to be made for those students who have not completed their courses on that date • The proposed arrangements for the transfer of the property, rights and liabilities of the FE corporation 	<p>Published at least 4 months before the date which is specified in the proposal for the dissolution of the corporation</p>
<p>The Corporation must send a copy of the proposal to:</p> <ul style="list-style-type: none"> • the governing body of any institution within the further education sector within the local authority area in which the institution to which the draft order relates, is proposed to be situated; • the governing body or proprietor of any maintained school or Academy which provides full-time education suitable to the requirements of persons over compulsory school age within the local authority area in which the institution is situated • the local authority in whose area the institution is situated 	

<ul style="list-style-type: none"> • the Member of Parliament in whose constituency the institution is situated • any other Member of Parliament whose constituents it appears to the corporations are likely to be affected by the proposal. • the Secretary of State and • any other person who appears to the corporation to have an interest. 	
<p>The Corporation must hold a consultation on the proposal.</p> <p>The Corporation must take account of any views expressed in any representations they receive.</p>	One calendar month
<p>Before SoS responds to the consultation BIS will ask SFA whether they wish to make a contribution to the formal response or provide a separate response to the consultation.</p>	Within the consultation period
<p>The Corporation must publish a summary of the consultation and its outcome and make the summary available free of charge to any person who requests it.</p>	Within two months of the date after the end of the consultation period
<p>The accepting Corporation must meet and agree to accept the property, rights and liabilities of the dissolving Corporation before the transfer can take place and the resolution to dissolve be made</p>	
<p>The Corporation(s) will then make a resolution to dissolve and transfer its property, rights and liabilities to the continuing Corporation.</p>	