



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART II

#### HIGHER AND FURTHER EDUCATION

#### CHAPTER II

##### REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

##### *The higher education corporations*

#### **121 Initial incorporation of higher education institutions maintained by local education authorities**

- (1) Before such date as may be appointed for the purposes of this section the Secretary of State shall by order specify each institution maintained by a local education authority which appears to him to fall within subsection (2) below; and on that date a body corporate shall be established for the purpose of conducting each institution so specified as from the transfer date applicable in relation to bodies corporate established under this section.
- (2) An institution falls within this subsection if on 1st November 1985 either—
  - (a) its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55 per cent. of its total full-time equivalent enrolment number; or
  - (b) its full-time equivalent enrolment number for such courses exceeded 2,500.
- (3) Where an institution maintained by a local education authority has been established since that date by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) above if it would have done so if the merger had taken place before that date.

- (4) References in this Part of this Act to courses of advanced further education are references to courses designated by Schedule 2 to the Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

## **122 Orders incorporating higher education institutions maintained by local education authorities**

- (1) Subject to subsection (2) below, if at any time it appears to the Secretary of State, in the case of any institution maintained by a local education authority, that its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number he may make an order under this section with respect to that institution.
- (2) An order may only be made by virtue of subsection (1) above with the consent of the local education authority concerned, unless at the time when the order is made it appears to the Secretary of State that the institution's full-time equivalent enrolment number for courses of higher education exceeds 350.
- (3) Subject to the following provisions of this section, if it appears to the Secretary of State, in the case of any such institution, that its full-time equivalent enrolment number for courses of advanced further education on 1st November 1985—
- (a) exceeded 55 per cent. of its total full-time equivalent enrolment number on that date; but
  - (b) did not exceed 350;
- he may make an order under this section with respect to that institution.
- (4) No order shall be made by virtue of subsection (3) above after the end of the period of twelve months beginning with the date on which this section comes into force.
- (5) An order may only be made by virtue of subsection (3) above with the consent of the local education authority concerned.
- (6) An order under this section with respect to any institution shall make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date applicable in relation to that body corporate.

## **123 Provisions supplementary to sections 121 and 122**

- (1) References in this Act to a higher education corporation are references to a body corporate established under section 121 or 122 of this Act.
- (2) In this Act “transfer date” means, in relation to a higher education corporation, the date appointed under section 126 of this Act in relation to the transfer under that section of property, rights and liabilities to that corporation.
- (3) Schedule 7 to this Act has effect with respect to each higher education corporation.

## **124 Powers of a higher education corporation**

- (1) A higher education corporation shall have power—
- (a) to provide higher education;
  - (b) to provide further education; and

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- (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit.
- (2) A higher education corporation shall also have power to do anything which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on the corporation by subsection (1) above, including in particular power—
- (a) to conduct an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, to assume the conduct as from the transfer date applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities transferred to the corporation under section 126 of this Act;
  - (b) to provide facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of disabled students);
  - (c) to supply goods and services;
  - (d) to acquire and dispose of land and other property;
  - (e) to enter into contracts, including in particular—
    - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any such activities; and
    - (ii) contracts with respect to the carrying on by the corporation of any such activities;
  - (f) to form or take part in forming a body corporate for carrying on any such activities;
  - (g) to borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under section 126 of this Act and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the corporation;
  - (h) to invest any sums not immediately required for any of the purposes mentioned in paragraph (g) above;
  - (i) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
  - (j) to do anything incidental to the conduct of an educational institution providing higher or further education.
- (3) The power under subsection (2)(j) above includes in particular power—
- (a) to found scholarships or exhibitions; and
  - (b) to make grants and give prizes.
- (4) In subsection (2)(b) above “disabled student” means a student who is a person to whom section 29 of the National Assistance Act 1948 applies.

## **125 Articles of government**

- (1) Any institution conducted by a higher education corporation shall be conducted in accordance with articles of government, to be made by the corporation with the approval of the Secretary of State.
- (2) The articles of government—
  - (a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the academic board of the institution; and
  - (b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.
- (3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies), and may make provision with respect to—
  - (a) procedures for the appointment, promotion, suspension and dismissal of staff;
  - (b) procedures for the admission, suspension and expulsion of students; and
  - (c) the appointment and functions of a clerk to the board of governors.
- (4) The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—
  - (a) the conduct of students and staff or either of them; and
  - (b) any such procedures as are mentioned in subsection (3)(a) or (b) above.
- (5) Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of the Secretary of State.
- (6) The Secretary of State may by a direction under this section require higher education corporations, any class of such corporations specified in the direction or any particular higher education corporation so specified—
  - (a) to amend their articles of government; or
  - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are amended by the board of governors;in any manner so specified.
- (7) Before giving a direction under this section, the Secretary of State shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.

## **126 Transfer of property, etc., to higher education corporations**

- (1) In the case of a higher education corporation established under section 121 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to the corporations so established.
- (2) In the case of a higher education corporation established under section 122 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to that corporation.

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- (3) Subject to subsection (5) below and section 198 of this Act, on the transfer date applicable in relation to a higher education corporation the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, that corporation.
- (4) The property, rights and liabilities referred to in subsection (3) above are—
  - (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the transferred institution; and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (5) Subsection (3) above shall not apply to—
  - (a) rights and liabilities under any contract of employment;
  - (b) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) In this section “the transferred institution” means, in relation to any higher education corporation, the institution the corporation is established to conduct.

## **127 Transfer of staff to higher education corporations**

- (1) This section applies to any person who immediately before the transfer date applicable in relation to a higher education corporation—
  - (a) is employed by the transferor authority to work solely at the institution the corporation is established to conduct; or
  - (b) is employed by that authority to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the corporation.
- (3) Without prejudice to subsection (2) above—
  - (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the transfer date; and
  - (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a higher education corporation, to the transferor authority, are references to the local education authority by whom the

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institution that corporation is established to conduct is maintained immediately before the transfer date.

## **128 Dissolution of higher education corporations**

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for—
  - (a) the dissolution of any higher education corporation; and
  - (b) the transfer of property, rights and liabilities of the corporation to—
    - (i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;
    - (ii) any body corporate established for purposes which include the provision of such facilities or services;
    - (iii) the Universities Funding Council established under section 131 of this Act; or
    - (iv) the Polytechnics and Colleges Funding Council established under section 132 of this Act.
- (2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.
- (4) Before making an order under this section in respect of a higher education corporation the Secretary of State shall consult—
  - (a) the corporation; and
  - (b) the Polytechnics and Colleges Funding Council.
- (5) In this section “charity” and “charitable purposes” have the same meanings as in the Charities Act 1960.