



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Establishment and functions of Education Assets Board*

#### **197 Education Assets Board**

- (1) There shall be established a body corporate to be known as the Education Assets Board.
- (2) The Board shall consist of a chairman and not less than two nor more than ten other members appointed by the Secretary of State.
- (3) In appointing the members of the Board the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, property management, local government or education.
- (4) The principal functions of the Board are those conferred or imposed on them under sections 198 to 201 of and Schedule 10 to this Act; and the Board may also undertake such other activities as they consider it necessary or expedient to undertake for the purposes of or in connection with carrying out any of their functions.
- (5) The Secretary of State may make grants to the Board of such amounts and subject to such conditions as he may determine.
- (6) In exercising their functions under this Act the Board shall comply with any directions given to them by the Secretary of State.
- (7) Any local education authority shall give the Board such information as the Board may require for the purposes of the exercise of any of their functions under this Act.
- (8) The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or property held on behalf of, the Crown.

(9) Schedule 8 to this Act has effect with respect to the Board.

## **198 Transfers under Parts I and II**

- (1) This section applies to any transfer under section 74, 126 or 130 of this Act, and each of those sections is subject to Schedule 10 to this Act.
- (2) That Schedule has effect for the purpose of—
  - (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or other educational institution;
  - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer;
  - (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred; and
  - (d) making supplementary and consequential provisions in relation to transfers to which this section applies.
- (3) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.
- (4) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—
  - (a) it may not be done by the transferee; and
  - (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee;

and in a case where the transferee is a body corporate established under this Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act.
- (5) Not later than the end of the period of six months beginning with the transfer date applicable in relation to any transfer to a higher education corporation under section 126 of this Act, the Board shall provide the Polytechnics and Colleges Funding Council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.
- (6) If in any case within subsection (5) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide that Council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

## **199 Loan liabilities excepted from transfer under Part II**

- (1) The amount of any liability of a local education authority in respect of the principal of any loan which is an excepted liability in relation to an institution to which this section applies shall be treated on and after the operative date as having been borrowed from that authority by the default on such terms as to repayment and the payment of interest

as may be agreed between the Education Assets Board and the authority or determined by the Secretary of State under this section.

- (2) This section applies to any institution conducted by a higher education corporation and any institution designated under section 129 of this Act; and in relation to any such institution—
  - (a) a liability is an excepted liability for the purposes of this section if it would have been transferred under section 126(3) but for subsection (5)(b) of that section or (as the case may be) under section 130(2) of this Act but for subsection (4)(a) of that section; and
  - (b) references, in relation to an excepted liability, to the default transferee and the operative date are references respectively to the body or persons to whom and the date on which that liability would have been so transferred.
- (3) It shall be the duty of the authority and the Board, whether before or after the operative date, so far as practicable to arrive at such written agreements as may be necessary for determining the amount of any excepted liability and the terms to apply in relation to the liability imposed on the default transferee under this section by reference to that liability.
- (4) Notwithstanding any terms agreed or determined as mentioned in subsection (1) above, any liability in respect of any sum treated by virtue of that subsection as having been borrowed from a local education authority may at any time be discharged by a single payment of a sum equal to the aggregate of—
  - (a) the amount of the principal of the loan outstanding at the time of the payment; and
  - (b) the amount of any interest accrued before that time.
- (5) The Board shall notify the Secretary of State if it appears to them that it is unlikely the case of any matter on which agreement is required to be reached under subsection (3) above that such an agreement will be reached.
- (6) Where the Secretary of State has received a notification from the Board under subsection (5) above he may, whether before or after the operative date, give a direction determining the matter, and may include in the direction any provision which might have been included in an agreement under subsection (3) above.
- (7) The Secretary of State shall consult the authority before giving a direction under this section.
- (8) The Board shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this section.
- (9) The Board shall deliver any agreement made under subsection (3) above to the default transferee.
- (10) Any such agreement shall be treated as made between the authority and the default transferee.

## **200 Grant-maintained schools: school property**

- (1) The Secretary of State shall consult the Education Assets Board before making any determination to which this section applies; and it shall be the duty of the Board to give the Secretary of State such assistance and advice as he may require for the purpose of making any such determination.

(2) This section applies to—

- (a) a determination for the purposes of section 95 of this Act of the appropriate consideration for any transfer of school property of a grant-maintained school conducted or formerly conducted by a governing body in liquidation;
- (b) a determination for the purposes of section 98 of this Act of an amount representing the appropriate share of a local education authority in the value of the school premises of a grant-maintained school conducted or formerly conducted by such a body;
- (c) a determination for the purposes of section 101(2) of this Act of the amount of any sum to be paid by such an authority by way of consideration for any premises required under that section to be transferred by the governing body of a grant-maintained school to the authority;
- (d) a determination for the purposes of section 101(3) of this Act of the amount of any payment required under that section to be made to such an authority by a governing body of such a school; and
- (e) a determination for the purposes of paragraph 8 of Schedule 1 to the Education Act 1946 of the amount required to be paid under that paragraph to such an authority from money paid in respect of the acquisition of premises from the trustees of a grant-maintained school.

(3) Expressions used in this section to which a meaning is given for the purposes of Chapter IV of Part I of this Act have the same meaning in this section.

## **201 Wrongful disposals**

- (1) This section applies where a local education authority have made any disposal to which section 137 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by a notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by a notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local education authority concerned.
- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above)—
  - (a) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal; and
  - (b) whether or not the Education Assets Board is so authorised, any sums which, apart from this provision, would fall to be included by reference to that disposal in the capital receipts of the local education authority concerned for

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the purposes of Part VIII of the Local Government, Planning and Land Act 1980 shall not be so included.

- (6) The Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local education authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
  - (a) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) used or held by the local education authority concerned for the purposes of an institution falling within section 121(2) of this Act; or
    - (ii) obtained by that authority for the purpose of being so used or held; the higher education corporation established under this Act to conduct that institution; and
  - (b) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) so used or held for the purposes of an institution falling within section 129(3) of this Act; or
    - (ii) obtained by the authority concerned for the purpose of being so used or held;the appropriate transferee within the meaning of section 130(2) of this Act in relation to that institution.
- (9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local education authority concerned an amount equal to the aggregate of—
  - (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the Compulsory Purchase Act 1965; and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

#### *Academic tenure*

## **202 The University Commissioners**

- (1) There shall be a body of Commissioners known as the University Commissioners (in this section and sections 203 to 207 of this Act referred to as “the Commissioners”) who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned to them by those sections.
- (2) In exercising those functions, the Commissioners shall have regard to the need—
  - (a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;

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- (b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and
  - (c) to apply the principles of justice and fairness.
- (3) The following are qualifying institutions for the purposes of this section and sections 203 to 206 of this Act, namely—
- (a) any university or other institution to which, during the period of three years beginning 1st August 1987, grants in aid are or have been made by the Universities Funding Council, or by the Secretary of State acting on the advice of the University Grants Committee;
  - (b) any constituent college, school or hall or other institution of a university falling within paragraph (a) above; and
  - (c) any institution not falling within paragraph (a) above which is authorised by charter to grant degrees and to which, during the period of three years beginning 1st August 1987, grants are or have been made by the Secretary of State.
- (4) Schedule 11 to this Act shall have effect with respect to the Commissioners.

### **203 Duty of Commissioners**

- (1) The Commissioners shall exercise the powers conferred by section 204 of this Act with a view to securing that the statutes of each qualifying institution include—
- (a) provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;
  - (b) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause;
  - (c) provision establishing disciplinary procedures determined by the Commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment;
  - (d) provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in paragraph (a) or (b) above) or who are otherwise disciplined; and
  - (e) provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment.
- (2) No provision such as is mentioned in subsection (1)(a) or (b) above which is included in the statutes of a qualifying institution by virtue of section 204 of this Act shall enable any member of the academic staff to be dismissed unless the reason for his dismissal may in the circumstances (including the size and administrative resources of the institution) reasonably be treated as a sufficient reason for dismissing him.
- (3) Where any such provision as is mentioned in subsection (1) above is included in the statutes of a qualifying institution (whether by virtue of section 204 of this Act or otherwise) and—
- (a) there is no requirement for any instrument which would have the effect of modifying the provision to be approved by Her Majesty in Council or to be laid before both Houses of Parliament; and

- (b) but for this subsection, there would be no requirement for such an instrument to be approved by the Privy Council;  
the Commissioners shall exercise the powers conferred by that section with a view to securing that no instrument which would have the effect of modifying the provision shall have that effect unless it has been approved by the Privy Council.
- (4) Any reference in this section to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of this section.
- (5) For the purposes of this section the dismissal of a member of staff shall be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to—
  - (a) the fact that the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or
  - (b) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish.
- (6) For the purposes of this section “good cause”, in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which he was appointed or employed to do; and in this subsection—
  - (a) “capability”, in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and
  - (b) “qualifications”, in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him.
- (7) In this section—
  - “appropriate”, in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution;
  - “dismiss” and “dismissal”—
    - (a) include remove or, as the case may be, removal from office; and
    - (b) in relation to employment under a contract, shall be construed in accordance with section 55 of the Employment Protection (Consolidation) Act 1978.
- (8) In this section and sections 204 to 206 of this Act “statutes”, in relation to an institution, includes any regulations, ordinances or other instruments which, in the opinion of the Commissioners, serve as statutes for the purposes of that institution and are designated as such by the Commissioners.

## **204 Powers of Commissioners**

- (1) For the purpose of performing the duty imposed on them by section 203 of this Act, the Commissioners may make such modifications of the statutes of any qualifying institution as they consider necessary or expedient.

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- (2) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of section 203(1)(a) of this Act shall not apply in relation to a person unless—
- (a) his appointment is made, or his contract of employment is entered into, on or after 20th November 1987; or
  - (b) he is promoted on or after that date.
- (3) For the purposes of this section a person shall be taken to be promoted on or after 20th November 1987 if (and only if) immediately before that date he is paid on a scale which provides for a maximum rate of remuneration (his former pay scale) and on or after that date the terms of his appointment, or of his contract of employment, are varied (whether with effect before or after that date) so that—
- (a) his rate of remuneration is increased to a rate which exceeds the highest point on his former pay scale at the date on which the increase takes effect; or
  - (b) he is paid on another scale on which the highest point at the date the variation takes effect exceeds the highest point on his former pay scale at that date; or
  - (c) he is paid on a basis which does not provide for a maximum rate of remuneration.
- (4) For the purposes of subsection (3) above references, in relation to a pay scale, to the highest point on the scale at any date are references to the maximum rate of remuneration payable at that date in accordance with the scale whether on a regular or a discretionary basis.
- (5) For the purposes of this section a person holding an office or position of any description shall not be taken to be promoted by reason only of any general variation of the terms of appointment or of contracts of employment of persons holding offices or positions of that description.
- (6) Modifications such as are mentioned in subsection (2) above shall not apply in relation to a person who held an office or position at the institution in question immediately before 20th November 1987 by reason only of the fact that—
- (a) he is appointed to, or employed in, a different office or position at the institution instead of his former office or position if the terms of his appointment or of his contract of employment which relate to remuneration are the same as those of his former appointment or contract of employment;
  - (b) he is appointed to, or employed in, an additional office or position at the institution which carries no remuneration; or
  - (c) he is promoted or is appointed to, or employed in, a different office or position at the institution if he is so promoted, appointed or employed only on a temporary basis for a particular purpose with an expectation that the promotion will cease to have effect, or that he will resume his former office or position, when that purpose is accomplished.
- (7) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of section 203(1)(b) of this Act shall not apply in relation to anything done or omitted to be done before the date on which the instrument making the modifications is approved under subsection (9) below.
- (8) Subject to subsections (2) to (7) above, the Commissioners' powers under this section include power to make such incidental, supplementary and transitional provision as they consider necessary or expedient.



- (9) No instrument made in the exercise of the Commissioners' powers under this section shall have effect unless it has been approved by Her Majesty in Council.

## **205 Procedure for exercise of Commissioners' powers**

- (1) This section applies where the Commissioners propose to exercise the powers conferred on them by section 204 of this Act in relation to a qualifying institution.
- (2) The Commissioners shall send a copy of the proposed modifications to each of the following persons, namely—
- (a) the body appearing to the Commissioners to have responsibility for the management and administration of the institution's revenue and property and the conduct of its affairs;
  - (b) such bodies representing qualifying institutions as appear to them to be concerned;
  - (c) such organisations representing staff of such institutions as appear to them to be concerned;
  - (d) the Universities Funding Council; and
  - (e) such other persons appearing to the Commissioners to be concerned as they consider it would be appropriate to consult;
- and shall afford those persons a reasonable opportunity of making representations as to the issues arising.
- (3) After taking into account any representations made by those persons, the Commissioners shall submit the modifications, with or without revisions, to Her Majesty in Council.
- (4) Her Majesty in Council may remit for reconsideration by the Commissioners any modifications submitted under subsection (3) above; and any remission under this subsection shall be accompanied by a declaration of the reasons for it.
- (5) The Commissioners shall reconsider and revise any modifications remitted under subsection (4) above; and subsections (2) to (4) above shall apply in relation to any modifications so revised as they apply in relation to modifications originally proposed.
- (6) Until the coming into force of section 131 of this Act subsection (2)(d) above shall have effect as if for the reference to the Universities Funding Council there were substituted a reference to the University Grants Committee.

## **206 Exclusion of visitor's jurisdiction**

- (1) The visitor of a qualifying institution shall not have jurisdiction in respect of any dispute relating to a member of the academic staff which concerns his appointment or employment or the termination of his appointment or employment.
- (2) Subsection (1) above does not apply in relation to any dispute which is referred to the visitor of a qualifying institution before—
- (a) the relevant date; or
  - (b) the date on which this section comes into force;
- whichever is the later.

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- (3) Subsection (1) above shall not be taken to prevent any person who is the visitor of a qualifying institution—
- (a) from hearing or determining appeals; or
  - (b) from hearing or redressing grievances;
- in accordance with procedures established in pursuance of section 203(1)(d) and (e) of this Act.
- (4) In this section—
- (a) “the relevant date”, in relation to a qualifying institution, means the date on which the statutes of the institution include such provision as is mentioned in section 203(1)(d) and (e) of this Act; and
  - (b) the reference to a member of the academic staff includes a reference to a person who is treated as such a member for the purposes of that section.

## **207 Power to make incidental, etc., provisions by Order in Council**

- (1) Her Majesty may at any time by Order in Council make such incidental, consequential or supplementary provision as appears to Her necessary or expedient—
- (a) for the general purposes or any particular purposes of any exercise of the Commissioners' powers under section 204 of this Act;
  - (b) in consequence of any exercise of those powers or for the purpose of giving full effect to any such exercise; or
  - (c) in consequence of the provisions of section 206 of this Act.
- (2) An Order in Council under this section may in particular amend, repeal or revoke (with or without savings) any provision of—
- (a) an Act passed or a charter granted; or
  - (b) an instrument under an Act or charter made,
- before the passing of this Act.

## **208 Corresponding provision for Northern Ireland**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of sections 202 to 207 of, and Schedule 11 to, this Act—

- (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## *Grants*

## **209 Grants in respect of mandatory awards**

- (1) For each financial year beginning after the day on which this subsection comes into force the Secretary of State shall pay to each local education authority a grant equal to the aggregate amount paid in that year by the authority under section 1(1) of the

Education Act 1962 (awards for persons attending first degree courses and comparable courses).

- (2) Payments of grants under subsection (1) above shall be made at such times as the Secretary of State may, with the consent of the Treasury, determine.

## **210 Grants for the education of travellers and displaced persons**

- (1) The Secretary of State may by regulations provide for the payment to local education authorities of grants in respect of expenditure incurred or to be incurred by them in making provision the purpose (or main purpose) of which is to promote and facilitate the education of persons to whom this subsection applies.
- (2) Subsection (1) above applies to a person if—
- (a) by reason of his way of life or, in the case of a child, his parent's way of life he either has no fixed abode or leaves his main abode to live elsewhere for significant periods in each year;
  - (b) he fell within paragraph (a) above within a prescribed period immediately preceding the making of the provision in question; or
  - (c) he is for the time being resident in a camp or other accommodation or establishment provided for refugees or for displaced or similar persons.
- (3) Regulations under subsection (1) above may—
- (a) prescribe classes or descriptions of expenditure in respect of which grants are payable under the regulations;
  - (b) provide for the determination of the amount of any grant so payable;
  - (c) provide for the payment of any such grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations; and
  - (d) provide for requiring local education authorities to whom payments have been made under the regulations to comply with such requirements as may be so determined.

## **211 Grants in respect of special provision for immigrants**

The power conferred by section 11 of the Local Government Act 1966 shall apply in relation to the payment of grants by the Secretary of State to—

- (a) the governing body of a grant-maintained school;
- (b) any person who in pursuance of undertakings under an agreement under section 105 of this Act maintains and carries on or provides for the carrying on of an independent school known either as a city technology college or as a city college for the technology of the arts; or
- (c) the governing body of an institution within the PCFC funding sector;

who, in his opinion, make special provision in consequence of the presence within the locality of the school or the institution of substantial numbers of such immigrants as are described in section 11 of that Act as it applies in relation to the payment of grants to a local authority who in his opinion are required to make such provision in exercise of any of their functions in consequence of the presence within their area of substantial numbers of such immigrants.

## **212 Grants relating to aided or special agreement schools**

- (1) The Secretary of State may pay grants to the governing body of any aided school or special agreement school in respect of any preliminary expenditure incurred by them for the purposes of any scheme for the transfer of the school to a new site or the enlargement or alteration of the school premises.
- (2) Where any persons propose or are considering whether to propose—
  - (a) that a school established by them, or by persons whom they represent, should be maintained by a local education authority as an aided school; or
  - (b) that a school which may be so established should be so maintained;
 the Secretary of State may pay grants to them in respect of any preliminary expenditure incurred by them for the purposes of any scheme for the provision of a site for the school or of any buildings which would be school buildings.
- (3) Grants under subsection (1) or (2) above may be paid in respect of any such scheme as is mentioned in that subsection whether or not—
  - (a) the details of any such scheme had been formulated at the time the expenditure was incurred;
  - (b) where such details were not formulated at that time, they are subsequently formulated;
  - (c) the governing body or persons in question had determined to proceed with any such scheme at that time; or
  - (d) where the governing body or persons had not determined so to proceed at that time, they subsequently determine to proceed with any such scheme.
- (4) Expenditure in respect of which such grants are payable includes, in particular, costs incurred in connection with—
  - (a) the preparation of plans and specifications for any proposed construction, enlargement or alteration of buildings which are or would be school buildings; and
  - (b) estimating the sums which would be expended if any such works were carried out;
 but does not include any sums expended in carrying out any such works.
- (5) A grant under subsection (1) or (2) above shall not exceed 85 per cent. of the expenditure in respect of which it is paid.
- (6) Where—
  - (a) a grant is paid under subsection (1) above in the case of any school; or
  - (b) a grant is paid under subsection (2) above in the case of any school which becomes, or is established as, a voluntary school;
 the grant shall for the purposes of section 14 of the 1944 Act or section 98 of this Act be treated as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the school premises.

## **213 Grants: miscellaneous**

- (1) The Secretary of State may by regulations provide for the payment of grants to bodies other than local education authorities whose object or main object is, in his opinion, the promotion of learning or research.
- (2) Regulations under subsection (1) above may provide—

- (a) for the payment of any such grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations; and
  - (b) for requiring bodies to whom payments have been made under the regulations to comply with such requirements as may be so determined.
- (3) In section 100(1)(b) of the 1944 Act (grants to persons other than local education authorities) for the words “for the purposes of educational services provided by them or on their behalf or under their management” there shall be substituted the words “by them for the purposes of, or in connection with, the provision (or proposed provision) of educational services”.

### *Unrecognised degrees*

## **214 Unrecognised degrees**

- (1) Any person who, in the course of business, grants, offers to grant or issues any invitation relating to any award—
- (a) which may reasonably be taken to be an award granted or to be granted by a United Kingdom institution; and
  - (b) which either—
    - (i) is described as a degree; or
    - (ii) purports to confer on its holder the right to the title of bachelor, master or doctor and may reasonably be taken to be a degree;
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Subsection (1) above does not apply as respects anything done in relation to any recognised award; and for the purposes of this section a “recognised award” means—
- (a) any award granted or to be granted by a university, college or other body which is authorised by Royal Charter or Act of Parliament to grant degrees;
  - (b) any award granted or to be granted by any body for the time being permitted by any body falling within paragraph (a) above to act on its behalf in the granting of degrees; or
  - (c) such other award as the Secretary of State may by order designate as a recognised award for the purposes of this section.
- (3) An order under subsection (2)(c) above may designate as a recognised award either—
- (a) a specified award granted or to be granted by a person named in the order; or
  - (b) any award granted or to be granted by such a person.
- (4) Where in any proceedings for an offence under this section it is shown—
- (a) that the defendant granted, offered to grant or issued an invitation relating to an award; and
  - (b) that an address in the United Kingdom was given in any document issued by the defendant certifying the granting of the award or containing the offer or invitation in question;
- the award shall be presumed to fall within subsection (1)(a) above unless it is shown that the defendant took reasonable steps to inform the person to whom the award was granted or any member of the public or particular individual to whom the offer or invitation was addressed that the award was not granted or to be granted by a United Kingdom institution.

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- (5) In any proceedings for an offence under this section it shall be a defence for the defendant to show—
- (a) that the award in question was granted or to be granted by virtue of authority conferred on or before 5th July 1988 by a foreign institution on the body granting the award; and
  - (b) that the defendant took reasonable steps to inform the person to whom the award was granted or any member of the public or particular individual to whom the offer was addressed that the award was granted or was to be granted by virtue of authority conferred by a foreign institution.
- (6) For the purposes of subsection (5) above, where—
- (a) on or before 5th July 1988 authority was conferred by a foreign institution on a body to grant awards of any description for a period expiring after that date; and
  - (b) new authority is conferred by the institution (whether before or after the expiry of that period) on the body to grant awards of that description;
- the new authority shall be taken to have been granted on or before that date.
- (7) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (8) Proceedings for an offence under this section shall not, in England and Wales, be instituted except by or on behalf of a local weights and measures authority or the chief officer of police for a police area.
- (9) Nothing in this section shall apply in relation to the granting of an award to a candidate who—
- (a) before 12th May 1988 began to undertake a course of education approved by the person granting the award in preparation for an examination to qualify for the award; and
  - (b) whether before or after that date, passes the examination;
- and in this subsection “examination” includes any form of assessment and the reference to passing an examination shall be construed accordingly.
- (10) For the purposes of this section—
- (a) a “United Kingdom institution” means any institution established in the United Kingdom, other than one which is, or is affiliated to or forms part of, an institution whose principal establishment is situated outside the United Kingdom;
  - (b) a “foreign institution” means any institution other than a United Kingdom institution; and
  - (c) the reference to issuing an invitation relating to any award includes in particular the issuing of any circular, prospectus or advertisement relating to an award, whether addressed to the public generally, to any section of the public, or to any particular individual or individuals.

## **215 Unrecognised degrees: enforcement**

- (1) It shall be the duty of every local weights and measures authority to enforce the provisions of section 214 of this Act within their area; and such an authority shall, whenever the Secretary of State so directs, make to him a report on the exercise of their functions under this section and section 214 of this Act in such form and containing such particulars as he may direct.
- (2) A duly authorised officer of a local weights and measures authority may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 214 of this Act has been committed, enter and search any premises which he reasonably believes may be used for or in connection with the carrying on of a business which is concerned with the granting of awards which are not recognised awards;
  - (b) he may, for that purpose, require any person carrying on or employed in connection with any such business to produce any documents or other items relating to the business and may take copies of any such document;
  - (c) he may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reason to believe that it may be evidence of the commission of an offence under that section; and
  - (d) he may seize and detain anything which he has reason to believe may be evidence of the commission of an offence under that section.
- (3) In subsection (2) above “recognised award” has the same meaning as in section 214 of this Act.
- (4) If a justice of the peace, on sworn information in writing—
  - (a) is satisfied that there is reasonable ground to believe that any documents or other items which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 214 of this Act; and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return;

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of a local weights and measures authority to enter the premises, if need be by force.

In the application of this subsection to Scotland, “justice of the peace” shall be construed as including a sheriff.
- (5) An officer seizing any documents or other items in the exercise of his powers under this section shall inform the person from whom they are seized.
- (6) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any

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premises which he has entered by virtue of a warrant under subsection (4) above he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

- (7) Section 29 of the Trade Descriptions Act 1968 (penalty for obstruction of authorised officers) shall apply as respects the obstruction of an officer acting in pursuance of this section as it applies as respects the obstruction of an officer acting in pursuance of that Act but with the substitution in subsection (1)—
- (a) of a reference to this section for the reference to section 28 of that Act; and
  - (b) of a reference to his functions under this section for the reference to his functions under that Act.
- (8) Nothing in this section shall be taken to compel the production by a solicitor of a document or other item containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such item which is in his possession.
- (9) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

## **216 Identification of bodies granting or providing courses for recognised awards**

- (1) For the purposes of sections 214 and 215 of this Act, any body for the time being designated by order made by the Secretary of State as appearing to him to be a recognised body shall be conclusively presumed to be such a body.
- (2) The Secretary of State shall compile, maintain and publish by order a list including the name of every body which appears to him to fall for the time being within subsection (3) below.
- (3) A body falls within this subsection if it is not a recognised body and either—
- (a) provides any course which is in preparation for a degree to be granted by a recognised body and is approved by or on behalf of the recognised body; or
  - (b) is a constituent college, school or hall or other institution of a university which is a recognised body.
- (4) In this section “recognised body” means a body falling within section 214(2)(a) or (b) of this Act.

## **217 Unrecognised degrees: Northern Ireland and Channel Islands**

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of sections 214 to 216 of this Act—
- (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule; but
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Her Majesty may by Order in Council direct that those sections shall extend to any of the Channel Islands with such adaptations and modifications (if any) as may be specified in the Order.



*Miscellaneous provisions*

**218 School and further and higher education regulations**

- (1) The Secretary of State may by regulations make provision—
- (a) for requiring persons employed as teachers at schools, subject to such exceptions as may be provided for by or under the regulations, to be qualified teachers;
  - (b) for requiring persons employed as teachers at institutions falling within subsection (10) below to possess such qualifications as may be determined by or under the regulations;
  - (c) for requiring persons employed as teachers at schools and such institutions to serve probationary periods;
  - (d) with respect to the teaching staff to be provided in schools and such institutions;
  - (e) for requiring the approval of the Secretary of State to be obtained for the use in schools and such institutions of such materials or apparatus as may be specified in the regulations, being materials or apparatus which could or might involve a serious risk to health;
  - (f) with respect to the keeping, disclosure and transfer of educational records about pupils at schools and such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations;
  - (g) with respect to the duration of the school day and school year at, and the granting of leave of absence from, any schools.
- (2) In subsection (1) above “qualified teacher” means a person who—
- (a) is a qualified teacher in accordance with any provision made by or under the regulations; or
  - (b) is determined to be a qualified teacher by the Secretary of State in accordance with any provision so made;
- and the regulations may provide for any determination by the Secretary of State under the regulations with respect to a person’s status as a qualified teacher to be made so as to have effect, in such cases or circumstances as may be specified in the regulations, from a date earlier than the determination.
- (3) The provision authorised by paragraph (a) of subsection (1) above with respect to exceptions from any requirement imposed by virtue of that paragraph includes in particular provision permitting the employment as there mentioned, in such cases or circumstances and subject to such conditions as may be specified in or determined under the regulations, of persons licensed to teach by the Secretary of State in accordance with any provision made by or under the regulations.
- (4) Regulations made by virtue of subsection (1)(f) above may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.
- (5) The Secretary of State may by regulations make provision for imposing requirements as to the health and physical capacity of—
- (a) teachers at schools and institutions falling within subsection (10) or (11) below;

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- (b) teachers employed by local education authorities otherwise than at schools or such institutions; and
  - (c) persons employed—
    - (i) by local education authorities; or
    - (ii) by the governing bodies of schools or such institutions;
 in work otherwise than as teachers which brings them regularly into contact with persons who have not attained the age of nineteen years.
- (6) The Secretary of State may by regulations make provision for prohibiting or restricting the employment or further employment of persons—
  - (a) as teachers at schools and institutions falling within subsection (10) or (11) below;
  - (b) by local education authorities as teachers otherwise than at schools or such institutions; or
  - (c) by local education authorities or by the governing bodies of schools or such institutions in such work as is mentioned in subsection (5)(c) above;
 on medical grounds, in cases of misconduct and, as respects employment or further employment as a teacher, on educational grounds.
- (7) The Secretary of State may by regulations make provision requiring his approval to be obtained for the provision of new premises for, or the alteration of the premises of—
  - (a) any school or institution falling within subsection (10) below; or
  - (b) any boarding hostel provided by a local education authority for pupils attending any school or any such institution;
 and for the inspection of any such hostel.
- (8) In section 63(2) of the 1944 Act (exemption from building regulations, etc.) references to plans approved by the Secretary of State shall include references to any particulars submitted to and approved by him under regulations made by virtue of subsection (7) above.
- (9) The Secretary of State may by regulations make provision—
  - (a) with respect to the fees to be charged for courses of further education at institutions falling within subsection (10) or (11) below;
  - (b) for requiring his approval to be obtained for the provision at such institutions of courses designated by or under the regulations as courses of initial teacher training;
  - (c) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions; and
  - (d) with respect to institutions in Wales falling within subsection (10) below—
    - (i) for requiring his approval to be obtained for the provision at such institutions of courses of higher education; and
    - (ii) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions.
- (10) An institution falls within this subsection if it provides higher education or further education (or both) and either—
  - (a) it is maintained by a local education authority; or

- (b) it is designated by or under the regulations as an institution substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act.
- (11) An institution falls within this subsection if it is an institution within the PCFC funding sector.
- (12) In this section “school” means any school maintained by a local education authority, any special school not so maintained or any grant-maintained school.
- (13) Section 27 of the 1980 Act (which is superseded by the preceding provisions of this section) shall cease to have effect.

## **219 Powers of Secretary of State in relation to certain educational institutions**

- (1) Section 67(1) of the 1944 Act (determination of disputes and questions) shall apply in relation to—
  - (a) the governing body of an institution which is maintained by a local education authority and provides higher education or further education (or both); and
  - (b) the governing body of a designated assisted institution;as it applies in relation to the governors of a school.
- (2) Section 68 of the 1944 Act (power of Secretary of State to prevent unreasonable exercise of functions) shall apply in relation to—
  - (a) the governors of a special school maintained by a local education authority;
  - (b) the governing body of a grant-maintained school;
  - (c) the governing body of an institution which is maintained by a local education authority and provides higher education or further education (or both);
  - (d) the governing body of a designated assisted institution; and
  - (e) a higher education corporation;as it applies in relation to the governors of a county or voluntary school.
- (3) Section 99(1) and (2) of the 1944 Act (powers of Secretary of State in default of local education authorities and governors)—
  - (a) shall apply in relation to a special school maintained by a local education authority and the governors of such a school;
  - (b) shall apply in relation to a grant-maintained school and the governing body of such a school; and
  - (c) shall apply in relation to—
    - (i) an institution which is maintained by a local education authority and provides higher education or further education (or both); and
    - (ii) a designated assisted institution;and in relation to the governing body of such an institution;as it applies in relation to a county or voluntary school and the governors of such a school.

## **220 Extension of functions of Audit Commission**

- (1) The Audit Commission for Local Authorities in England and Wales (the Commission) may, at the request of the appropriate body, promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of

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the Polytechnics and Colleges Funding Council, a higher education corporation or the governing body of a grant-maintained school.

- (2) For the purposes of subsection (1) above “the appropriate body” is—
  - (a) with respect to studies relating to the Polytechnics and Colleges Funding Council, the Council;
  - (b) with respect to studies relating to a higher education corporation, that Council or the corporation; and
  - (c) with respect to studies relating to the governing body of a grant-maintained school, the governing body.
- (3) The Commission may, at the Council’s request, give the Council advice in connection with the discharge of the Council’s functions under paragraph 18(2)(b) of Schedule 7 to this Act.
- (4) The Commission may, at the request of a higher education corporation or the governing body of a grant-maintained school—
  - (a) advise them in connection with the appointment of persons to audit their accounts; and
  - (b) arrange for their accounts for any financial year to be audited by such of the Commission’s officers as the corporation or governing body may appoint.
- (5) References in subsection (4) above to the accounts of a higher education corporation include references to any statement of accounts prepared by the corporation under paragraph 18 of Schedule 7 to this Act.
- (6) The Commission shall charge the body at whose request any services are provided under this section such fees as will cover the full cost of providing them.

## **221 Avoidance of certain contractual terms**

- (1) This section applies to any contract made after 20th November 1987 between—
  - (a) a local education authority in their capacity as such an authority;
  - (b) the governing body of an aided or grant-maintained school; or
  - (c) the governing body of a relevant institution;
 and any person employed by them, not being a contract made in contemplation of the employee’s pending dismissal by reason of redundancy.
- (2) In so far as a contract to which this section applies provides that the employee—
  - (a) shall not be dismissed by reason of redundancy; or
  - (b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay him under section 81 of the Employment Protection (Consolidation) Act 1978,
 the contract shall be void and of no effect.
- (3) In this section—
 

“governing body”, in relation to an institution, includes a body corporate established for the purpose of conducting that institution;

“relevant institution” means any institution within the PCFC funding sector and any institution (other than an institution falling within section 202(3) of this Act) which—

  - (a) provides higher education or further education (or both); and

- (b) is either a designated assisted institution or an institution which is grant-aided or eligible to receive aid by way of grant.

## **222 Application of employment law during financial delegation**

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment and, in particular, in any enactment—
  - (a) conferring powers or imposing duties on employers;
  - (b) conferring rights on employees; or
  - (c) otherwise regulating the relations between employers and employees;as he considers necessary or expedient in consequence of the operation of any of the provisions of this Act mentioned in subsection (2) below.
- (2) Those provisions are—
  - (a) sections 44(2) and (3) and 45(10), section 46(1), (2) and (4), Schedule 3, paragraph 4 of Schedule 4 and section 48 so far as relating to that paragraph; and
  - (b) subsections (2) to (9) of section 148 and subsections (1) and (3) of section 149.
- (3) Before making any order under this section, the Secretary of State shall consult—
  - (a) such associations of local authorities;
  - (b) such bodies representing the interests of governors of voluntary schools; and
  - (c) such organisations representing staff in schools required to be covered by schemes under section 33 of this Act or institutions required to be covered by schemes under section 139 of this Act;as appear to him to be concerned.

## **223 Temporary exclusion of section 5 of Data Protection Act 1984 in relation to data transferred to new bodies**

- (1) Where personal data are transferred under any provision of this Act to a body corporate established under this Act, section 5(1) of the Data Protection Act 1984 (prohibition of unregistered holding, etc., of personal data) shall not apply in relation to the holding by that body corporate of the data so transferred or any data of the same description as the data so transferred until the end of the period of six months beginning with the transfer date.
- (2) Expressions used in subsection (1) above to which a meaning is given for the purposes of that Act have the same meaning in that subsection.

## **224 Superannuation for staff of Further Education Unit**

- (1) The persons to whom section 1 of the Superannuation Act 1972 applies (persons to or in respect of whom benefits may be provided by schemes under that section) shall include—
  - (a) persons who at any time after the passing of this Act are serving in employment with the company formed and registered under the Companies Act 1948 and known at the passing of this Act as the Further Education Unit; and
  - (b) persons who at any time before the passing of this Act have ceased to serve in employment with that company;

and accordingly a reference to that company shall be inserted at the appropriate point in the alphabetical list of “Other Bodies” in Schedule 1 to that Act.

- (2) That company shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to this section in the sums payable out of money provided by Parliament under that Act.

## **225 Recoupment as between local education authorities**

- (1) Notwithstanding the repeal by the 1986 Act of section 31 of the 1980 Act and section 31(8) of the London Government Act 1963 (which relate to recoupment by local education authorities in respect of provision for education in respect of out of area pupils and were replaced by section 51 of the 1986 Act) those provisions shall (subject to subsection (2) below) have effect, and be deemed always to have had effect, in relation to recoupment by local education authorities in respect of any provision for education made by them before 7th January 1987 (the coming into force of section 51) as if the 1986 Act had not been enacted.
- (2) Where a local education authority makes such a claim as is mentioned in subsection (1) or (3) of section 31 of the 1980 Act (whether before or after the passing of this Act), in determining for the purposes of that subsection whether the claim has been made within the prescribed period no account shall be taken of the period beginning on 7th January 1987 and ending on the day on which this Act is passed.

## **226 Services for schools in other member States providing education for British children**

- (1) This section applies to any school which—
- (a) is situated in a member State other than the United Kingdom;
  - (b) provides education for pupils who are British citizens, have attained the age of five years but not the age of nineteen years and are residing in that member State;
  - (c) has a curriculum which, in the case of any pupil at the school, is broadly similar to the curriculum which he would follow if he were a pupil at a maintained school in England and Wales; and
  - (d) has such other characteristics as may be prescribed.
- (2) In the case of a school to which this section applies the Secretary of State shall—
- (a) on a regular basis provide the persons responsible for the management of the school with such information relating to educational developments in England and Wales as he thinks appropriate; and
  - (b) if those persons so request, make arrangements for inspections to be made of the school at such intervals as appear to him to be appropriate by persons appointed as inspectors or additional inspectors under section 77(2) of the 1944 Act.
- (3) The Secretary of State shall charge the persons at whose request any inspection of a school is made under this section such fees as will cover the full cost of the inspection.
- (4) In this section “maintained school” means any county or voluntary school or any grant-maintained school.

*Wales*

**227 Application to Wales**

- (1) The Secretary of State may incur expenses in connection with the commissioning by him of such work, including programmes of research, development and dissemination, as he may require to be carried out for the purpose of facilitating the discharge, in relation to Wales, of any of his functions under sections 3 and 4 of this Act.
- (2) Sections 121, 122 and 129 of this Act shall not apply in relation to institutions in Wales.
- (3) The activities eligible for funding under section 132 of this Act shall not include the provision by institutions in Wales of prescribed courses of higher education; and accordingly the power of the Polytechnics and Colleges Funding Council under subsection (7)(b) of that section shall not extend to making grants in respect of expenditure incurred for the purposes of the provision of such courses by institutions in Wales.
- (4) The Secretary of State may by order make provision for applying in relation to institutions in Wales, with such modifications (if any) as he considers appropriate, all or any of the following, that is to say—
  - (a) sections 121, 122 and 129 of this Act; and
  - (b) the powers of the Polytechnics and Colleges Funding Council in relation to the provision of prescribed courses of higher education.

**228 Transfer of property to grant-aided institutions in Wales**

- (1) This section applies to any institution in Wales which—
  - (a) is conducted by a body corporate; and
  - (b) has a full-time equivalent enrolment number for courses of higher education which exceeds 55 per cent. of its total full-time equivalent enrolment number.
- (2) Where in the case of any institution to which this section applies—
  - (a) the Secretary of State proposes to make to the body conducting the institution grants under regulations made under section 100(1)(b) of the 1944 Act; and
  - (b) any land or other property of a local education authority is for the time being used or held, or any subsisting rights or liabilities of such an authority were acquired or incurred, for the purposes of the institution;the Secretary of State may by order designate the institution for the purposes of this section.
- (3) Subject to the following provisions of this section, on the date on which any designation of an institution under this section takes effect the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, the body corporate by whom the institution is conducted.
- (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 designated institution; and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.

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- (5) Subsection (3) above shall not apply to—
  - (a) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
  - (b) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) Section 198 of this Act shall apply to a transfer under this section; and the preceding provisions of this section are subject to Schedule 10 to this Act.
- (7) In the application of that Schedule in relation to a transfer under this section references in paragraph 1 to a relevant institution shall include references to an institution designated under this section.
- (8) Section 199 of this Act shall apply to an institution designated under this section; and for the purposes of that section as it applies by virtue of this section subsection (2) of that section shall apply as if paragraph (a) defined an excepted liability as one which would have been transferred under subsection (3) of this section but for subsection (5) (a) of this section.
- (9) Expressions used in this section to which a meaning is given for the purposes of Part II of this Act have the same meaning in this section; and section 138 of this Act shall apply for the purpose of the construction of subsections (2)(b) and (4)(a) above.
- (10) In this Act “transfer date” means, in relation to an institution designated under this section, the date on which the designation of that institution takes effect.

## **229 Power to make different provision for Wales in regulations under the 1944 and 1967 Acts**

- (1) After section 111 of the 1944 Act there shall be inserted the following section—

### **“111A Regulations: different provision for Wales**

- (1) Regulations under this Act may make in relation to Wales provision different from that made in relation to England.
- (2) Subsection (1) above is without prejudice to any express or implied power to make different provision for different cases or circumstances.”
- (2) In section 4 of the Education Act 1967 (loans for capital expenditure for purposes of colleges of education), after subsection (3) there shall be inserted the following subsection—
  - “(3A) Regulations under this section may make in relation to Wales provision different from that made in relation to England.”

### *Supplementary*

## **230 Stamp duty**

- (1) Subject to subsection (4) below, stamp duty shall not be chargeable in respect of any transfer effected under or by virtue of any of the following provisions of this Act, namely—



section 15(2);  
section 74 (taken with Schedule 10);  
section 95(4);  
section 96(2);  
section 126 (taken with Schedule 10);  
section 128(1)(b);  
section 130 (taken with Schedule 10);  
section 136(2);  
section 168(1) and (2);  
section 180(1);  
section 190(5);  
section 192;  
section 201(5) and (7); and  
section 228 (taken with Schedule 10).

(2) Subject to subsection (4) below, stamp duty shall not be chargeable in respect of any transfer to a local education authority under or by virtue of section 95(6) or (7) or 101(2) of this Act of property which immediately after the transfer is held by the authority for the purposes of an institution (or institutions) falling within subsection (3) below.

(3) An institution falls within this subsection if it is—

- (a) a university;
- (b) an institution within the PCFC funding sector;
- (c) an institution which provides higher education or further education (or both) and is either—
  - (i) maintained by a local education authority; or
  - (ii) designated by or under regulations made under section 27 of the 1980 Act as an institution substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act;
- (d) a school maintained by a local education authority; or
- (e) a grant-maintained school.

(4) No instrument (other than a statutory instrument) made or executed—

- (a) under or in pursuance of any of the provisions mentioned in subsection (1) above; or
- (b) for the purpose of giving effect to any such transfer as is mentioned in subsection (2) above;

shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

## **231 Power to make incidental, consequential, transitional and supplementary provisions**

(1) The Secretary of State may at any time by order make such provision amending, repealing or revoking (with or without savings) any provision of a local Act passed,

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or an instrument under a local Act made, before the passing of this Act as appears to him to be necessary or expedient in consequence of any of the provisions of this Act.

(2) The Secretary of State may at any time by order make such incidental, consequential, transitional or supplementary provision as appears to him to be necessary or expedient for the general purposes or any particular purposes of Part III of this Act or in consequence of any of its provisions or for giving full effect to it.

(3) An order under subsection (2) above may in particular make provision—

- (a) for enabling any authority or body by whom any powers will become exercisable on the abolition date by virtue of any provision made by or under Part III of this Act to take before that date any steps (such as the establishment of committees, the making of arrangements with other authorities or bodies with respect to the exercise of those powers or the undertaking of consultations) which are necessary or expedient in preparation for the exercise of those powers;
- (b) for enabling the Secretary of State to take before that date in relation to any such authority or body or in relation to anything done by that authority or body in accordance with any provision made by an order under that subsection any steps which are necessary or expedient for the purpose of the exercise by that authority or body of those powers;
- (c) for the making before that date of arrangements for securing the satisfactory operation from that date of any provision made by or under that Part and for defraying the cost of any such arrangements;
- (d) for amending, repealing or revoking (with or without savings) any provision of an Act passed, or an instrument under an Act made, before the abolition date, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act;
- (e) with respect to the membership of any body so far as consisting of persons elected by, or appointed by or on the nomination of ILEA, whether alone or together with one or more other bodies.

(4) Without prejudice to the generality of paragraph (d) of subsection (3) above, an order under subsection (2) above making any such provision as is mentioned in any of paragraphs (a) to (c) of subsection (3) above—

- (a) may apply in relation to any inner London council any enactment or instrument relating to the functions of local education authorities as if that council were such an authority; and
- (b) may apply in relation to any such council any enactment or instrument relating to the functions of local authorities as if that council had before the abolition date any functions specified in the order, being functions which will on that date become exercisable by that council;

for such purposes and subject to such modifications (if any) as may be specified in the order.

(5) The amendments that may be made under subsection (3)(d) above—

- (a) shall be in addition and without prejudice to those made by any other provision of this Act; and
- (b) shall, in particular, include amendments in consequence of functions under provisions applying to the Inner London Education Area becoming exercisable in their respective areas by the inner London councils.

- (6) In this section, expressions to which a meaning is given for the purposes of Part III of this Act have the same meaning as in that Part.
- (7) No other provision of this Act shall be construed as prejudicing the generality of the powers conferred by this section.

## **232 Orders and regulations**

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument.
- (2) For the purposes of subsection (1) above the excepted provisions are sections 27(5), 34(1), 35(6), 40(4), 53(2), 58(2), 59(1), 91, 94, 102, 140(1), 141(6), 145(6), 151(4), 156(10) and 157, paragraph 1 of Schedule 5, paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.
- (3) No order shall be made under section 3(4)(a), 24 or 227 of this Act unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing—
  - (a) an Order in Council made under section 207 of this Act which amends or repeals any provision of an Act; or
  - (b) any order or regulations made by the Secretary of State under this Act, other than an order under section 3(4)(a), 4(2)(c), 24, 52(7), 214, 216, 227 or 236;shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Orders or regulations under this Act may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.
- (6) Without prejudice to subsection (5) above, orders under this Act, and regulations under any provision of this Act other than section 218(1)(a), (b) or (c), (5) or (6), may make in relation to Wales provision different from that made in relation to England.

## **233 Expenses**

There shall be defrayed out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

## **234 Meaning of “assisted” for the purposes of the 1944 Act and Acts construed as one with it**

- (1) Neither a university nor any institution within the PCFC funding sector shall be regarded for the purposes of the 1944 Act (or any Act construed as one with it) as an institution assisted by a local education authority by virtue of the making to that university or institution by any such authority of any grant in respect of the university or institution or any payment in consideration of the provision of educational facilities at the university or institution.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Accordingly, in section 114 of that Act (interpretation)—
- (a) at the beginning of subsection (2) (which provides in paragraph (b) that a school or institution is to be deemed for the purposes of that Act to be assisted by a local education authority if any such grant or payment is made by the authority to the persons responsible for the maintenance of the school or institution) there shall be inserted the words “Subject to subsection (2A) of this section”; and
  - (b) the following subsection shall be inserted after that subsection—
 

“(2A) Neither a university nor any institution within the PCFC funding sector shall be deemed under subsection (2)(b) of this section to be assisted by a local education authority by virtue of the making by that authority to the persons responsible for the maintenance of that university or institution of any such grant or payment as is there mentioned.”
- (3) In paragraph (b) of that subsection—
- (a) for the words “training college or other institution which is not so maintained” there shall be substituted the words “institution other than a school”; and
  - (b) the word “college”, in the second and third places where it occurs, shall be omitted.
- (4) In subsection (1) of that section, in the definition of “assist” (which refers to the meaning assigned by subsection (2) of that section)—
- (a) the word “college” shall be omitted; and
  - (b) for the words “subsection (2)” there shall be substituted the words “subsections (2) and (2A)”.

## **235 General interpretation**

- (1) In this Act, except where the context otherwise requires—
- “the 1944 Act” means the Education Act 1944;
  - “the 1980 Act” means the Education Act 1980;
  - “the 1981 Act” means the Education Act 1981;
  - “the 1986 Act” means the Education (No. 2) Act 1986;
  - “contract of employment”, “employee” and “employer” have the same meaning as in the Employment Protection (Consolidation) Act 1978, and “employed” means employed under a contract of employment;
  - “financial year” means a period of twelve months ending with 31st March;
  - “functions” includes powers and duties;
  - “higher education” has the meaning given by section 120(1);
  - “land” includes buildings and other structures, land covered with water, and any interest in land;
  - “liability” includes obligation;
  - “local authority” means a county council, a district council, a London borough council or the Common Council of the City of London;
  - “modifications” includes additions, alterations and omissions and “modify” shall be construed accordingly;
  - “statutory provision” means a provision of an enactment or a statutory instrument;

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“transfer date” has the meaning given by section 74(9), 123(2), 130(8) or 228(10) as the context may require;

“university” includes a university college and any college, or institution in the nature of a college, in a university.

(2) In this Act—

- (a) references to an institution within the PCFC funding sector shall be read in accordance with section 120(8);
- (b) references to a higher education corporation shall be read in accordance with section 123(1);
- (c) references to an institution which is or was grant-aided at any time are references to an institution maintained by persons who have received any grants under regulations made under section 100(1)(b) of the 1944 Act in respect of expenditure incurred or to be incurred for any academic year of that institution current at the time in question;
- (d) references to an institution which is eligible to receive aid by way of grant are references to an institution maintained by persons other than local education authorities who for the time being satisfy any requirements of regulations so made with respect to the eligibility of such persons to receive grants under those regulations;
- (e) references to courses of higher education are references to courses of any description mentioned in Schedule 6 to this Act;
- (f) references to dismissal by reason of redundancy shall, except in section 203, be read in accordance with section 81 of the Employment Protection (Consolidation) Act 1978;
- (g) references to an interest in land include references to any easement, right or charge in, to or over land; and
- (h) references to a designated assisted institution shall be read in accordance with section 139(6).

(3) For the purposes of this Act—

- (a) a person employed by a local education authority is to be regarded as employed to work at a school or other institution if his employment with the authority for the time being involves work at that school or institution; and
- (b) subject to section 75(2) of this Act, a person employed by such an authority is to be regarded as employed to work solely at a school or other institution if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school or institution.

(4) For the purposes of this Act the City of London shall be deemed to include the Inner Temple and the Middle Temple.

(5) Any reference in section 74, 126, 130 or 228 of this Act to liabilities incurred by a local education authority shall not be read as including liabilities of such an authority to make payments to or in respect of any person in pursuance of any duty imposed on the authority under any statutory provision.

(6) Nothing in any provision of this Act or of any order made under this Act relating to the trusts subject to which any land or other property or rights transferred under this Act are to be held by the transferee shall be taken as prejudicing any modification of those trusts after that transfer under any provision of this Act or otherwise.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Subject to subsection (8) below, this Act shall be construed as one with the 1944 Act.
- (8) Where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the 1944 Act, the meaning given for the purposes of the 1944 Act shall not apply for the purposes of that provision.

## **236 Commencement**

- (1) The following provisions of this Act, namely—
- section 1;
  - section 2(1)(b) and (2);
  - sections 3 and 4;
  - sections 14 and 15 and Schedule 2;
  - sections 20 to 22 and 23(1);
  - section 25;
  - sections 33 to 45 and Schedule 3;
  - sections 46 to 104 and Schedules 4 and 5;
  - section 105;
  - sections 112 and 113;
  - section 116;
  - section 119;
  - sections 137 to 151;
  - sections 153 to 201, Schedule 8 so far as relating to the Education Assets Board, Schedules 9 and 10 and paragraph 67 of Schedule 12;
  - sections 202 to 208 and Schedule 11;
  - sections 212 and 213;
  - section 217;
  - section 219 so far as relating to grant-maintained schools;
  - sections 221 to 225 and 227 (1);
  - sections 230 to 235 and Schedule 6;
  - this section;
  - Part I of Schedule 12, paragraphs 60, 81, 82 and 102 of that Schedule and section 237(1) so far as relating to those provisions; and
  - section 238;
- shall come into force on the passing of this Act.
- (2) Notwithstanding anything in section 120 of this Act, until the end of the year 1989 any education provided by an institution for which immediately before the passing of this Act there is in force an instrument of government made under section 1 of the Education (No. 2) Act 1968 (government and conduct of colleges of education and other institutions providing further education) shall for the purposes of—
- (a) the Education Acts 1944 to 1988; and
  - (b) any other enactment referring to further education within the meaning of those Acts or of the 1944 Act;
- be treated as further education, and not as secondary education, within the meaning of that Act.

- (3) Sections 2(1)(a) and (3), 6, 8, 9, 10(1), 11 and 13 and Schedule 1 shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) Part II of Schedule 12, and section 237(1) so far as relating to that Part, shall come into force on 1st April 1990.
- (5) Part I of Schedule 13, and section 237(2) so far as relating to that Part, shall come into force on 1st April 1990.
- (6) Except as provided above in this section, this Act shall come into force on such date or dates as the Secretary of State may by order appoint.
- (7) Different dates may be appointed in relation to different provisions of this Act and for different purposes of the same provision, including (in particular) for the purpose of bringing particular provisions into force only in relation to particular educational institutions or categories of educational institutions.
- (8) Any order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (9) Any such order may include such adaptations of the provisions which it brings into force, or of any other provisions of this Act then in force, as appear to the Secretary of State to be necessary or expedient for the purpose or in consequence of the operation of any provision of this Act (including, in particular, the provisions which the order brings into force) before the coming into force of any other provision.

## **237 Amendments and repeals**

- (1) Schedule 12 to this Act (which makes minor and consequential amendments) shall have effect.
- (2) The enactments mentioned in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **238 Citation, extent etc**

- (1) This Act may be cited as the Education Reform Act 1988.
- (2) This Act and the Education Acts 1944 to 1986 may be cited together as the Education Acts 1944 to 1988.
- (3) Subject to subsections (4) to (6) below, this Act does not extend to Scotland or Northern Ireland.
- (4) Sections 131, 134, 202 to 205, 207, 214 to 216, 231, 232, 235 and 236, this section and Schedules 8 and 11 extend to Scotland.
- (5) Sections 208 and 217(1) extend to Northern Ireland.
- (6) The amendment by this Act of an enactment which extends to Scotland or Northern Ireland also extends there.