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Education Reform Act 1988

1988 CHAPTER 40

PART I

SCHOOLS

CHAPTER I

THE CURRICULUM

Preliminary

1 Duties with respect to the curriculum.

(1) It shall be the duty—

(a) of the Secretary of State as respects every maintained school;

(b) of every local education authority as respects every school maintained by them; and

(c) of every governing body or head teacher of a maintained school as respects that school;

to exercise their functions (including, in particular, the functions conferred on them by this Chapter with respect to religious education, religious worship and the National Curriculum) with a view to securing that the curriculum for the school satisfies the requirements of this section.

(2) The curriculum for a maintained school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—

(a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and

(b) prepares such pupils for the opportunities, responsibilities and experiences of adult life.

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Modifications etc. (not altering text)

C1 S. 1 applied (with modifications) (1.4.1994) by S.I. 1994/653. reg. 42(1), Sch. Pt.I
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**

Principal provisions

2 The National Curriculum.

(1) The curriculum for every maintained school shall comprise a basic curriculum which includes—

(a) provision for religious education for all registered pupils at the school

[[F1](aa) in the case of a secondary school, provision for sex education for all registered pupils at the school;

(ab) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education**]**; and

(b) a curriculum for all registered pupils at the school of compulsory school age (to be known as the National Curriculum) which meets the requirements of subsection (2) below.

(2) The curriculum referred to in subsection (1)(b) above shall comprise the core and other foundation subjects and specify in relation to each of them—

(a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (in this Chapter referred to as attainment targets);

(b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during each key stage (in this Chapter referred to as programmes of study); and

(c) the arrangements for assessing pupils **[**[F2]in respect**]** of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage (in this Chapter referred to as assessment arrangements).

(3) Subsection (1)(a) above shall not apply in the case of a maintained special school.

Textual Amendments

F1 S. 2(1)(aa)(ab) inserted (1.9.1994) by 1993 c. 35, **s. 241(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

F2 Words in s. 2(2)(c) substituted (27.7.1993) by 1993 c. 35, **ss. 240(1)**, 308(3)

Modifications etc. (not altering text)

C2 S. 2 except s. 2(1)(a) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) s. 2(1)(a) applied (9.5.1994) by S.I. 1994/1084, **reg. 9**

C3 S. 2(1)(ab) extended (1.9.1994) by S.I. 1994/2103, reg. 2(1), **Sch. 1 Pt. I para. 3(1)**.

C4 S. 2(1)(a) restricted (1.4.1994) by 1993 c. 35, **ss. 138(9)**, 139(2), 140(2) (with s. 155(11)); S.I. 1994/507, **art. 3(1)**
S. 2(1)(a) modified (1.4.1994) by 1993 c. 35, **s. 141(2)-(4)** (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

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3 Foundation subjects and key stages.

(1) Subject to subsection (4) below, the core subjects are—

(a) mathematics, English and science; and

(b) in relation to schools in Wales which are Welsh-speaking schools, Welsh.

(2) Subject to **[**[F3]subsections (2A), (2B) and (4)**]** below, the other foundation subjects are—

(a) [F4]. . . technology [F5]. . . and physical education;**[**[F6](aa) in relation to the first, second and third key stages, **[**[F7]history, geography**]**,art and music;**]**

(b) in relation to the third and fourth key stages, a modern foreign language specified in an order of the Secretary of State; and

(c) in relation to schools in Wales which are not Welsh-speaking schools, Welsh.

[[F8](2A) In relation to schools in England—

(a) a modern foreign language is not a foundation subject in relation to the fourth key stage before—

(i) 1st August 1996, in the case of pupils entering the first year of the key stage in 1996; and

(ii) 1st August 1997 in the case of all other pupils.

(b) technology is a foundation subject in relation to pupils who entered the first year of the fourth key stage in 1993 but is otherwise not a foundation subject in relation to the fourth key stage before—

(i) 1st August 1996 in the case of pupils entering the first year of the key stage in 1996; and

(ii) 1st August 1997, in the case of all other pupils.

(2B) In relation to schools in Wales—

(a) a modern foreign language is not a foundation subject in relation to the fourth key stage;

(b) technology is a foundation subject in relation to pupils who entered the first year of the fourth key stage in 1993 but is otherwise not a foundation subject in relation to the fourth key sage.**]**

(3) Subject to subsections (4) **[**[F9](5) and (5A)**]** below, the key stages in relation to a pupil are as follows—

(a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven;

(b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of eleven;

(c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of twelve and ending at the same time as the school year in which the majority of pupils in his class attain the age of fourteen;

(d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of fifteen and ending with the majority of pupils in his class ceasing to be of compulsory school age.

(4) The Secretary of State may by order—

(a) amend the foregoing provisions of this section; or

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(b) provide that, in relation to any subject specified in the order, subsection (3) above shall have effect as if for the ages of seven and eight there mentioned there were substituted such other ages, less than eleven and twelve respectively, as may be so specified.

(5) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (3) above shall have effect as if any reference to the school year in which the majority of pupils in that pupil's class attained a particular age were a reference to the school year in which that pupil attained that age.

[[F10](5A) If at any time, in the case of a pupil of compulsory school age, subsection (3) above does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—

(a) in the case of paragraphs (a) to (c), any reference to the school year in which the majority of pupils in that pupil's class attained a particular age were a reference to the school year in which that pupil attained that age, and

(b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attained the age of fifteen and ending when he ceases to be of compulsory school age.**]**

(6) In this section—

"class ", in relation to a particular pupil and a particular subject, means the teaching group in which he is regularly taught that subject or, where there are two or more such groups, such one of them as may be designated by the head teacher of the school;

"school ", except in subsection (5) above and the above definition, includes part of a school. **[**[F11]and

"school year " means the period beginning with the first school term to begin after July and ending with the beginning of the next school year.**]**

(7) For the purposes of this section a school in Wales is a Welsh-speaking school if more than one half of the following subjects, namely—

(a) religious education; and

(b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school;

are taught (wholly or partly) in Welsh.

Textual Amendments

F3 Words in s. 3(2) substituted (1.8.1994) by S.I. 1994/1814, **art. 2(2)**.

F4 Words in s. 3(2)(a) omitted (1.8.1994) by virtue of S.I. 1994/1814, **art. 2(3)**.

F5 Words in s. 3(2)(a) repealed (1.8.1992) by S.I. 1992/1548, **art. 2(a)**.

F6 S. 3(2)(aa) inserted (1.8.1992) by S.I. 1992/1548, **art. 2(b)**.

F7 Words in s. 3(2)(aa) inserted (1.8.1994) by S.I. 1994/1814, **art. 2(4)**.

F8 S. 3(2A)(2B) inserted (1.8.1994) by S.I. 1994/1814, **art. 2(5)**.

F9 Words in s. 3(3) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 113(a)**; S.I. 1994/507, art. 4(1), **Sch. 2**.

F10 S. 3(5A) inserted (27.7.1993) by 1993 c. 35, **s. 240(2)**

F11 Definition of "school year " and the preceding word "and " in s.3(6) added (27.7.1993) by 1993 c. 35, **s. 240(3)**

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Modifications etc. (not altering text)

C5 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg. 9**.

4 Duty to establish the National Curriculum by order.

(1) It shall be the duty of the Secretary of State so to exercise the powers conferred by subsection (2) below as—

(a) to establish a complete National Curriculum as soon as is reasonably practicable (taking first the core subjects and then the other foundation subjects); and

(b) to revise that Curriculum whenever he considers it necessary or expedient to do so.

(2) The Secretary of State may by order specify in relation to each of the foundation subjects—

(a) such attainment targets;

(b) such programmes of study; and

(c) such assessment arrangements;

as he considers appropriate for that subject.

(3) An order made under subsection (2) above may not require—

(a) that any particular period or periods of time should be allocated during any key stage to the teaching of any programme of study or any matter, skill or process forming part of it; or

(b) that provision of any particular kind should be made in school timetables for the periods to be allocated to such teaching during any such stage.

(4) An order under subsection (2) above may, instead of containing the provisions to be made, refer to provisions in a document published by Her Majesty's Stationery Office and direct that those provisions shall have effect or, as the case may be, have effect as amended by the order.

[[F12](5) An order under subsection (2)(c) above—

(a) may confer or impose such functions on the governing body and the head teacher and (in the case of maintained schools) on the local education authority as appear to the Secretary of State to be required, and

(b) may specify any such assessment arrangements as may for the time being be made by a person specified in the order.

(6) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.

(7) The duties that may be imposed by virtue of subsection (5)(a) above include, in relation to persons exercising power in pursuance of provision made by virtue of subsection (6) above, the duty to permit them—

(a) to enter the premises of the school,

(b) to observe the implementation of the arrangements, and

(c) to inspect, and take copies of, documents and other articles.

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(8) An order under subsection (2)(c) above may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provisions conferring or imposing functions as mentioned in subsection (5)(a) above) as appear to the Secretary of State to be expedient; and any provision made under such an order shall, on being published by Her Majesty's Stationery Office, have effect for the purposes of this Chapter as if made by the order.**]**

Textual Amendments

F12 S. 4(5)-(8) substituted for s. 4(5) (27.7.1993) by 1993 c. 35, **s. 240(4)**

Modifications etc. (not altering text)

C6 S. 4 restricted (1.9.1994) by 1993 c. 35, **s. 241(4)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C7 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

5 Courses leading to external qualifications.

(1) No course of study leading to a qualification authenticated by an outside person shall be provided for pupils of compulsory school age by or on behalf of any maintained school unless the qualification is for the time being approved by the Secretary of State or by a designated body and either—

(a) a syllabus provided by the outside person for the purposes of the course is for the time being approved by such a body; or

(b) criteria so provided for determining a syllabus for those purposes are for the time being so approved.

(2) An approval under this section may be given either generally or in relation to particular cases.

(3) In this section—

"designated " means designated by the Secretary of State;

"outside person ", in relation to a school, means a person other than a member of staff of the school.

Modifications etc. (not altering text)

C8 S. 5 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

Religious education

6 Collective worship.

(1) Subject to section 9 of this Act, all pupils in attendance at a maintained school shall on each school day take part in an act of collective worship.

(2) The arrangements for the collective worship in a school required by this section may, in respect of each school day, provide for a single act of worship for all pupils or for separate acts of worship for pupils in different age groups or in different school groups.

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(3) The arrangements for the collective worship in a county or voluntary school required by this section shall be made—

(a) in the case of a county school, by the head teacher after consultation with the governing body; and

(b) in the case of a voluntary school, by the governing body after consultation with the head teacher.

(4) Subject to subsection (5) below, the collective worship in every maintained school required by this section shall take place on the school premises.

(5) If the governing body of—

(a) an aided or special agreement school; or

(b) a grant-maintained school;

are of opinion that it is desirable that any act of collective worship in the school required by this section should, on a special occasion, take place elsewhere than on the school premises, they may make such arrangements for that purpose as they think appropriate.

(6) The powers of a governing body under subsection (5) above shall not be so exercised as to derogate from the rule that, in every such school as is there mentioned, the collective worship required by this section must normally take place on the school premises.

(7) For the purposes of this section—

"maintained school " does not include a maintained special school; and

"school group " means any group in which pupils are taught or take part in other school activities.

Modifications etc. (not altering text)

C9 S. 6 explained (1.4.1994) by 1993 c. 35, **s. 138(2)-(4)** (with s. 155(11)); S.I. 1994/507, **art.3(1)**.
S. 6 power to modify conferred (1.4.1994) by 1993 c. 35, **s. 138(7)(b)** (with s. 155(11)); S.I. 1994/507, **art.3(1)**.

7 Special provisions as to collective worship in county schools.

(1) Subject to the following provisions of this section, in the case of a county school the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broad Christian character.

(2) For the purpose of subsection (1) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.

(3) Every act of collective worship required by section 6 of this Act in the case of a county school need not comply with subsection(1) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.

(4) Subject to subsections (1) and (3) above—

(a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection(1) above take place in a county school;

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(b) the extent to which any act of collective worship in a county school which complies with subsection (1) above reflects the broad traditions of Christian belief; and

(c) the ways in which those traditions are reflected in any such act of collective worship;

shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (5) below.

(5) Those considerations are—

(a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropiate in their case; and

(b) their ages and aptitudes.

(6) Where under section 12 of this Act a standing advisory council on religious education determine that it is not appropriate for subsection (1) above to apply in the case of any county school, or in the case of any class or description of pupils at such a school, then, so long as that determination has effect—

(a) that subsection shall not apply in relation to that school or(as the case may be) in relation to those pupils; and

(b) the collective worship required by section 6 of this Act in the case of that school or those pupils shall not be distinctive of any particular Christian or other religious denomination(but this shall not be taken as preventing that worship from being distinctive of any particular faith).

Modifications etc. (not altering text)

C10 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

8 Religious education required in the basic curriculum: further provisions.

(1) Section 2(1)(a) of this Act is subject to section 9 of this Act.

(2) The religious education for which provision is required by section 2(1)(a) to be included in the basic curriculum for any particular maintained school shall be religious education of the kind required by such of the provisions of sections 26 to 28 of the 1944 Act or sections[**F13**138 to 140 of the Education Act 1993] as apply in the case of that school.

(3) Any agreed syllabus which after this section comes into force is adopted or deemed to be adopted under Schedule 5 to that Act (which, as amended by this Act, provides for the preparation, adoption and reconsideration of an agreed syllabus of religious education) shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.

Textual Amendments

F13 Words in s. 8(2) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para.114**; S.I. 1994/507, art. 4(1), **Sch.2**.

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Modifications etc. (not altering text)

C11 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

9 Exceptions, special arrangements and supplementary and consequential provisions.

(1) It shall not be required, as a condition of any pupil attending any maintained school, that he shall attend or abstain from attending any Sunday school or any place of religious worship.

[[F14](1A) It shall not be required, as a condition of any person attending any maintained school to receive further education **[**[F15]or teacher training**]**, that he shall attend or abstain from attending any Sunday school or any place of religious worship.**]**

(2) For the purposes of subsections (3) to (10) below "maintained school " does not include a maintained special school.

(3) If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused—

(a) from attendance at religious worship in the school;

(b) from receiving religious education given in the school in accordance with the school's basic curriculum; or

(c) both from such attendance and from receiving such education;

the pupil shall be so excused accordingly until the request is withdrawn.

(4) Where in accordance with subsection (3) above any pupil has been wholly or partly excused from attendance at religious worship or from receiving religious education in any school, and the responsible authority are satisfied—

(a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused;

(b) that the pupil cannot with reasonable convenience be sent to another maintained school where religious education of the kind desired by the parent is provided; and

(c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere;

the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.

(5) In this section "the responsible authority " means—

(a) in relation to a county or voluntary school, the local education authority; and

(b) in relation to a grant-maintained school, the governing body.

(6) A pupil may not be withdrawn from school under subsection (4) above unless the responsible authority are satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session or, if there is more than one, of any school session on that day.

(7) Where the parent of any pupil who is a boarder at a maintained school requests that the pupil be permitted—

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(a) to attend worship in accordance with the tenets of a particular[F16religion or] religious denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs; or

(b) to receive religious education in accordance with such tenets outside school hours;

the governing body of the school shall make arrangements for affording to the pupil reasonable opportunities for doing so.

(8) Arrangements made under subsection (7) above may provide for affording facilities for such worship or education on the school premises, but the arrangements shall not entail expenditure by the responsible authority.

(9) In this section—

(a) references to religious worship in a school include references to religious worship which under section 6 of this Act takes place otherwise than on the school premises; and

(b) references to religious education given in a school in accordance with the school's basic curriculum are references to such education given in accordance with the provision included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.

(10) Schedule 1 to this Act shall have effect for making amendments of the enactments there mentioned consequential on the provisions of this Chapter relating to religious education.

Textual Amendments

F14 S. 9(1A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 12(4)**; S.I. 1992/831, art. 2, **Sch. 4**.

F15 Words in s. 9(1A) inserted (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(2)**; S.I. 1994/2204, **art.2(1)**.

F16 Words in s. 9(7) inserted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 115**; S.I. 1994/507, art. 4(1), **Sch. 2**.

Modifications etc. (not altering text)

C12 S. 9 except s. 9(3)-(10) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.

C13 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg. 9**.

Duties with respect to certain requirements

10 Duties with respect to certain requirements.

(1) Subject to section 9 of this Act, in relation to any maintained school (other than a maintained special school) and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—

(a) that all pupils in attendance at the school take part in the daily collective worship required by section 6 of this Act; and

(b) that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.

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(2) In relation to any maintained school and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—

(a) that the National Curriculum as subsisting at the beginning of that year is implemented; and

(b) that section 5 of this Act is not contravened.

(3) In relation to any time before the beginning of the school year following the establishment of the National Curriculum so far as relating to a particular subject and a particular key stage, subsection (2)(a) above shall have effect as if that Curriculum required that subject to be taught for a reasonable time during that stage.

Modifications etc. (not altering text)

C14 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**

C15 S. 10 except s. 10(1) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C16 S. 10(3) excluded (*temp.*) (W.) by S.I. 1990/2187, **art. 2**

Standing advisory councils on religious education

11 Standing advisory councils on religious education.

(1) It shall be the duty of every local education authority to constitute a standing advisory council on religious education—

(a) to advise the authority upon such matters connected with religious worship in county schools and the religious education to be given in accordance with an agreed syllabus as the authority may refer to the council or as the council may see fit; and

(b) to carry out the functions conferred by section 12 of this Act on councils constituted under this section.

References below in this section and in sections 12 and 13 of this Act to the council are references to any council constituted by a local education authority under this section.

(2) The matters referred to in subsection (1) above include in particular methods of teaching, the choice of materials and the provision of training for teachers.

(3) The council shall consist of—

(a) the representative members required by subsection (4) below; and

[[F17](b) a person appointed by the governing bodies of the grant-maintained schools within the area of the authority to which section 138 or 139 of the Education Act 1993 applies.**]**

and may also include co-opted members.

(4) Subject to subsection (5) below, the representative members required by this subsection are persons appointed by the authority to represent respectively—

(a) such Christian **[**[F18]denominations and other religions and denominations of such religions**]** as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;

(b) except in the case of an area in Wales, the Church of England;

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(c) such associations representing teachers as, in the opinion of the authority, ought, having regard to the circumstances of the area, to be represented; and

(d) the authority;

and references below in this section to representative groups on the council are references to the members appointed by virtue of paragraphs (a), (c) and (d) above respectively and, where members are required to be appointed by virtue of paragraph (b) above, the members so appointed.

(5) Where members are required to be appointed by virtue of paragraph (b) of subsection (4) above, the representative members required by paragraph (a) of that subsection shall not include persons appointed to represent the Church of England.

(6) On any question to be decided by the council only the representative groups on the council shall be entitled to vote, and each such group shall have a single vote.

(7) The representative groups on the council, other than that consisting of persons appointed to represent the authority, may at any time require a review of any agreed syllabus for the time being adopted by the authority.

Each representative group concerned shall have a single vote on the question of whether to require such a review.

(8) On receipt by the authority of written notification of any such requirement, it shall be the duty of the authority to cause a conference constituted in accordance with the provisions of Schedule 5 to the 1944 Act to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates.

(9) The council shall in each year publish a report with respect to the exercise of their functions and any action taken by representative groups on the council under subsection (7) above during the last preceding year.

(10) The council's report shall in particular—

(a) specify any matters in respect of which the council have given advice to the authority;

(b) broadly describe the nature of the advice given; and

(c) where any such matter was not referred to the council by the authority, give the council's reasons for offering advice on that matter.

[[F19](11) The council shall send to the head teacher of any grant-maintained school to which section 138 of the Education Act 1993 applies and which is in the area of the authority a copy of advice which they give to the authority upon matters connected with religious worship.

(12) The council shall send a copy of advice which they give to the authority on the religious education to be given in accordance with an agreed syllabus to the head teacher of any grant-maintained school which is in the area of the authority and which—

(a) is required, by virtue of section 138 or 140 of the Education Act 1993 (religious education in certain grant-maintained schools), to provide religious education in accordance with an agreed syllabus, or

(b) was a controlled school immediately before it became grant-maintained.**]**

[[F20](13) The council shall send a copy of each report published by them under subsection (9) above—

(a) in the case of a council for an area in England, to the School Curriculum and Assessment Authority, and

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(b) in the case of a council for an area in Wales, to **[**[F21]the Curriculum and Assessment Authority for Wales**].]**

Textual Amendments

F17 S. 11(3)(b) substituted (1.4.1994) by 1993 c. 35 s. 147(1), (with s. 155(11)); S.I. 1994/507, **art. 3(1)**.

F18 Words in s. 11(4)(a) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 116(a)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F19 S. 11(11)(12) added (1.4.1994) by 1993 c. 35, **s. 147(2)** (with s. 155(11)); S.I. 1994/507, **art. 3(1)**.

F20 S. 11(13) added (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 116(b)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F21 Words in s. 11(13) substituted (1.4.1994) by 1993 c. 35, s. 253, **Sch. 15 para. 4(2)**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C17 S. 11 restricted by S.I. 1989/46, **art. 3(3)**

C18 Ss. 11, 13 modified by S.I. 1989/46, **Sch. 1**
S. 11 modified (1.4.1994) by 1993 c. 35, **s. 16(2)(3)**; S.I. 1994/507, **art. 3(1)**.
S. 11 modified (1.4.1994) by 1993 c. 35, **s. 255(2)**; S.I. 1994/507, art. 4(1), **Sch.2**.

C19 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

C20 S. 11(3)(b) restricted (1.4.1994) by S.I. 1994/507, **arts. 3**,4, Sch. 3 Pt. para. 3

12 Determination by advisory councils of the cases in which the requirement for Christian collective worship is not to apply.

(1) It shall be the duty of the council, on an application made by

[[F22](a) the head teacher of any county school; or

(b) the head teacher of any grant-maintained school to which section 138 of the Education Act 1993 applies and which is in the area of the local education authority which constituted the council**]**

after consultation with the governing body, to consider whether it is appropriate for the requirement for Christian collective worship to apply in the case of that school, or in the case of any class or description of pupils at that school.

References in this section to the requirement for Christian collective worship are references to the requirement imposed by section 7(1) of this Act **[**[F23]or, as the case may be, section 138(2) of the Education Act 1993**]**.

(2) In determining whether it is appropriate for that requirement to apply in the case of any such school or in the case of any class or description of pupils at such a school, the council shall have regard to any circumstances relating to the family backgrounds of the pupils at the school or of the pupils of the particular class or description in question which are relevant for determining the character of the collective worship appropriate in their case.

(3) The council shall give any head teacher who has made an application to them under this section written notification of their decision on the application.

(4) Where the council determine on any application under this section that it is not appropriate for the requirement for Christian collective worship to apply in the case of the school or any class or description of pupils at the school concerned, that determination shall take effect for the purposes of section 7 **[**[F24]of this Act or, as the

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case may be, section 138 of the Education Act 1993**]**of this Act on such date as may be specified in the notification of their decision under subsection (3) above.

(5) Any determination of the council under this section by virtue of which the requirement for Christian collective worship does not for the time being apply in the case of any school or any class or description of pupils at any school shall be reviewed by the council—

(a) at any time on an application made by the head teacher of the school after consultation with the governing body; and

(b) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or (where it has since been reviewed under this subsection) with the effective date of the decision on the last such review.

(6) On any review under subsection (5)(b) above the council shall afford the head teacher an opportunity of making representations with respect to the determination under review; and the head teacher shall consult the governing body before making any such representations.

(7) On any review under subsection (5) above the council may confirm (with or without variation) or revoke the determination under review (without prejudice, in a case where they revoke the determination, to any further determination under this section); and they shall give the head teacher of the school written notification of their decision specifying the effective date of that decision for the purposes of subsection (5)(b) above.

(8) Any determination of the council which is required to be reviewed under subsection (5)(b) above shall cease to have effect, if not confirmed on such a review, at the end of the period there mentioned.

(9) The governing body of any county school **[**[F25]or of any grant-maintained school to which subsection (1) above applies**]**, on being consulted by the head teacher under this section, may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.

(10) Any application made to the council under this section shall be made in such manner and form as the council may require.

[[F26](11) Where an application is made under subsection (1)(a) above in respect of a school which becomes a grant-maintained school before the application is determined, it shall, unless withdrawn by the head teacher, continue to be considered as if made under subsection (1)(b) above.**]**

Textual Amendments

F22 S. 12(1)(a)(b) substituted for words in s. 12(1) (1.4.1994) by 1993 c. 35, **s. 148(a)(i)**, (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

F23 Words in s. 12(1) inserted (1.4.1994) by 1993 c. 35, **s. 148(a)(ii)**, (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

F24 Words in s. 12(4) inserted (1.4.1994) by 1993 c. 35, **s. 148(b)**, (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

F25 Words in s. 12(9) inserted (1.4.1994) by 1993 c. 35, **s. 148(c)**, (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

F26 S. 12(11) inserted (1.4.1994) by 1993 c. 35, **s. 148(d)**, (with s. 155(11)); S.I. 1994/507, **art. 3(1)**

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Modifications etc. (not altering text)

C21 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

12 Determination by advisory councils of the cases in which the requirement for Christian collective worship is not to apply. E+W

(1) It shall be the duty of the council, on an application made by the head teacher of any county school after consultation with the governing body, to consider whether it is appropriate for the requirement for Christian collective worship to apply in the case of that school, or in the case of any class or description of pupils at that school.

References in this section to the requirement for Christian collective worship are references to the requirement imposed by section 7(1) of this Act.

(2) In determining whether it is appropriate for that requirement to apply in the case of any such school or in the case of any class or description of pupils at such a school, the council shall have regard to any circumstances relating to the family backgrounds of the pupils at the school or of the pupils of the particular class or description in question which are relevant for determining the character of the collective worship appropriate in their case.

(3) The council shall give any head teacher who has made an application to them under this section written notification of their decision on the application.

(4) Where the council determine on any application under this section that it is not appropriate for the requirement for Christian collective worship to apply in the case of the school or any class or description of pupils at the school concerned, that determination shall take effect for the purposes of section 7 of this Act on such date as may be specified in the notification of their decision under subsection (3) above.

(5) Any determination of the council under this section by virtue of which the requirement for Christian collective worship does not for the time being apply in the case of any school or any class or description of pupils at any school shall be reviewed by the council—

(a) at any time on an application made by the head teacher of the school after consultation with the governing body; and

(b) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or (where it has since been reviewed under this subsection) with the effective date of the decision on the last such review.

(6) On any review under subsection (5)(b) above the council shall afford the head teacher an opportunity of making representations with respect to the determination under review; and the head teacher shall consult the governing body before making any such representations.

(7) On any review under subsection (5) above the council may confirm (with or without variation) or revoke the determination under review (without prejudice, in a case where they revoke the determination, to any further determination under this section); and they shall give the head teacher of the school written notification of their decision specifying the effective date of that decision for the purposes of subsection (5)(b) above.

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(8) Any determination of the council which is required to be reviewed under subsection (5)(b) above shall cease to have effect, if not confirmed on such a review, at the end of the period there mentioned.

(9) The governing body of any county school, on being consulted by the head teacher under this section, may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.

(10) Any application made to the council under this section shall be made in such manner and form as the council may require.

[[F27]12A Power of Secretary of State to direct advisory council to revoke determination or discharge duty.

(1) Where the Secretary of State is satisfied, either on complaint by any person or otherwise, that any standing advisory council on religious education—

(a) have acted, or are proposing to act, unreasonably in determining for the purposes of subsection (1) or (5) of section 12 of this Act whether it is appropriate for the requirement for Christian collective worship to apply in the case of any school or any class or description of pupils at a school, or

(b) have failed to discharge any duty imposed under that section,

he may give the council such directions as to the revocation of the determination or the withdrawal of the proposed determination or (as the case may be) the discharge of the duty as appear to him to be expedient; and the council shall comply with the directions.

(2) Directions under subsection (1) above may provide for the making by the council of a new determination to take effect in place of the determination or proposed determination to be revoked or withdrawn by them.

(3) In this section, "requirement for Christian collective worship " means the requirement imposed by section 7(1) of this Act or, as the case may be, section 138(2) of the Education Act 1993.**]**

Textual Amendments

F27 S. 12A inserted (1.4.1994) by 1993 c. 35, **s.257**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C22 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

13 Advisory councils: supplementary provisions.

(1) Before appointing a person to represent any **[**[F28]religion**]**denomination or associations as a member of the council the local education authority concerned shall take all reasonable steps to assure themselves that he is representative of the **[**[F28]religion**]**denomination or associations in question.

(2) A member of the council appointed by the authority may be removed from membership by the authority if in the opinion of the authority he ceases to be representative of the **[**[F28]religion**]**denomination or associations which he was appointed to represent or (as the case may be) of the authority.

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(3) Any member of the council required by section 11(3)(b) of this Act may at any time be removed from membership by the governing body or (as the case may be) by the governing bodies of the grant-maintained school or schools concerned.

(4) In subsection (3) of that section "co-opted member " means a person co-opted as a member of the council by members of the council who have not themselves been so co-opted, and a person so co-opted shall hold office on such terms as may be determined by the members co-opting him.

(5) Any member of the council may at any time resign his office.

(6) Subject to subsection (6) of that section, the council and, in relation to any question falling to be decided by members of the council of any particular category, the members of that category may regulate their own proceedings.

(7) The validity of proceedings of the council or of the members of the council of any particular category shall not be affected—

(a) by a vacancy in the office of any member of the council required by subsection (3) of that section; or

(b) on the ground that a member of the council appointed to represent any **[**[F28]religion**]**denomination or associations does not at the time of the proceedings represent the **[**[F28]religion**]**denomination or associations in question.

Textual Amendments

F28 Words in s. 13(1)(2)(7)(b) inserted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 117**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C23 Ss. 11, 13 modified by S.I. 1989/46, **Sch. 1**

C24 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

C25 S. 13(1) saved (1.8.1991) by Diocesan Boards of Education Measure 1991 (No. 2, SIF 41:1), **s. 6(1)**; Archbishops' Instrument 1991 No. 1 (made 26.7.1991)

Curriculum and Assessment Councils

14 Establishment of Councils.

(1) There shall be established—

[F29](a) . . . . . .

(b) a body corporate known as **[**[F30]Awdurdod Cwricwlwm ac Asesu Cymru or the Curriculum and Assessment Authority for Wales**]**; [F29]. . .

[F29](c) . . . . . .

[F29]. . . which shall perform the functions assigned to it by this Chapter.

(2) **[**[F31]The**][**[F32]Authority**]**shall consist of not less than ten or more than fifteen members appointed by the Secretary of State, of whom—

(a) one shall be so appointed as chairman; and

(b) another may be so appointed as deputy chairman;

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and members so appointed shall include persons having relevant knowledge or experience in education.

(3) The general functions of the **[**[F33]**[**[F32]Authority**]**, in relation to Wales, shall be, so far as relevant for the purposes of advancing education**]**—

(a) to keep all aspects of the curriculum for maintained schools under review;

(b) to advise the Secretary of State on such matters concerned with the curriculum for maintained schools as he may refer to it or as it may see fit;

(c) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with the curriculum for schools;

(d) to publish and disseminate, and to assist in the publication and dissemination of, information relating to the curriculum for schools; and

(e) to carry out such ancillary activities as the Secretary of State may direct.

[F34](4) . . . . . .

(5) For the purposes of subsection (3)(e) [F35]. . . above, activities are ancillary activities in relation to **[**[F36]the**]****[**[F32]Authority**]** if the Secretary of State considers it is appropriate for the **[**[F32]Authority**]**to carry out those activities for the purposes of or in connection with the exercise by the **[**[F32]Authority**]** of any of its other functions under that subsection.

(6) It shall be the duty of **[**[F37]the**]****[**[F32]Authority**]**—

(a) to furnish the Secretary of State with such reports and other information with respect to the exercise of its functions as he may require; and

(b) in exercising its functions—

(i) to comply with any directions given, and to act in accordance with any plans approved, by the Secretary of State; and

(ii) to have regard to the requirements of section 1 of this Act.

(7) Schedule 2 to this Act shall have effect with respect to **[**[F38]the**]****[**[F32]Authority**]**.

Textual Amendments

F29 Words in s. 14(1) and s. 14(1)(a)(c) repealed (1.1.1994) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, **art. 2**).

F30 Words in s. 14(1)(1b) substituted (1.4.1994) by 1993 c. 35, **s. 253(1)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F31 Word in s. 14(2) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(a); S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, **art. 2**).

F32 Words in s. 14 substituted (1.4.1994) by 1993 c. 35, s. 253, **Sch. 15**, para. 4(3); S.I. 1994/507, art. 4(1), **Sch.2**.

F33 Words in s. 14(3) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(b); S.I. 1993/1975, art. 9, **Sch. 1**

F34 S. 14(4) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S. I. 1993/1975, art. 9, **Sch. 1** Appendix

F35 Words in s. 14(5)(b) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S.I. 1993/1975, art. 9, **Sch. 1** Appendix

F36 Word in s. 14(5) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(c); S.I. 1993/1975, art. 9, **Sch. 1**

F37 Word in s. 14(6) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(d); S.I. 1993/1975, art. 9, **Sch. 1**

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F38 Word in s. 14(7) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 18(e); S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, **art. 2**).

Modifications etc. (not altering text)

C26 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

C27 S. 14(3) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

15 Transfers of property and staff to Councils.

(1) References below in this section to the Council are references to each of the following bodies—

(a) the National Curriculum Council;

(b) the Curriculum Council for Wales; and

(c) the School Examinations and Assessment Council.

(2) The Secretary of State may by order provide for the transfer to the Council of—

(a) such of the property of an existing body; and

(b) such of the rights and liabilities of such a body (other than rights and liabilities arising under contracts of employment);

as, in his opinion, require to be so transferred for the purpose of enabling the Council properly to perform its functions; and an order under this subsection may contain such incidental, consequential and supplementary provisions as appear to the Secretary of State to be necessary or expedient.

(3) Subsection (4) below applies to any person who—

(a) immediately before the establishment of the Council is employed by an existing body; and

(b) is as respects the Council designated by order of the Secretary of State.

(4) The contract of employment between a person to whom this subsection applies and the existing body shall have effect from the commencement date of the order under subsection (3) above as if originally made between him and the Council.

(5) Without prejudice to subsection (4) above—

(a) all the existing body's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of that subsection be transferred to the Council on the commencement date of the order under subsection (3) above; and

(b) anything done before that date by or in relation to the existing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the Council.

(6) Subsections (4) and (5) 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 subsection (4) above.

(7) An order under subsection (3) above may designate a person either individually or as a member of a class or description of employees.

(8) No order under this section shall be made more than six months after the date on which the Council is established; and any order under this section made before that date shall come into force on that date.

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(9) In this section—

"commencement date ", in relation to an order under subsection (3) above, means the date on which the order comes into force;

"existing body " means the School Curriculum Development Committee or the Secondary Examinations Council.

Modifications etc. (not altering text)

C28 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

Special cases

16 Development work and experiments.

(1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct as respects a particular maintained school that, for such period as may be specified in the direction, the provisions of the National Curriculum—

(a) shall not apply; or

(b) shall apply with such modifications as may be so specified.

(2) A direction under subsection (1) above may apply either generally or in such cases as may be specified in the direction.

(3) A direction shall not be given under subsection (1) above except—

(a) in the case of a county, controlled or maintained special school, on an application—

(i) by the governing body with the agreement of the local education authority;

(ii) by the local education authority with the agreement of the governing body; or

(iii) by the **[**[F39]appropriate curriculum authority**]** with the agreement of both the local education authority and the governing body;

(b) in the case of a grant-maintained, aided or special agreement school, on an application by the governing body or by the **[**[F39]appropriate curriculum authority**]** with the agreement of the governing body.

(4) The Secretary of State may make it a condition of a direction under subsection (1) above that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.

(5) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1) above.

[[F40](6) In subsection (3) above, "appropriate curriculum authority " means, in relation to England, the School Curriculum and Assessment Authority and, in relation to Wales, the **[**[F41]the Curriculum and Assessment Authority for Wales**]**.**]**

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Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F39 Words in s. 16(3)(a)(b) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 119(a); S.I. 1993/1975, art. 9, **Sch. 1**

F40 S. 16(6) added (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 119(b); S.I. 1993/1975, art. 9, **Sch. 1**

F41 Words in s. 16(6) substituted (1.4.1994) by 1993 c. 35, s. 253, **Sch. 15 para. 4(4)**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C29 S. 16 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

17 Exceptions by regulations.

The Secretary of State may by regulations provide that the provisions of the National Curriculum, or such of those provisions as may be specified in the regulations—

(a) shall not apply; or

(b) shall apply with such modifications as may be so specified;

in such cases or circumstances as may be so specified.

Modifications etc. (not altering text)

C30 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

[F42 17A Exemption from sex education.

If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn.**]**

Textual Amendments

F42 S. 17A inserted (1.9.1994) by 1993 c. 35, **s. 241(3)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

Modifications etc. (not altering text)

C31 S. 17A applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

C32 S. 17A applied (with modifications) (1.9.1994) by S.I. 1994/2103, reg. 2, **Sch. 1 Pt. I para. 3(2)**.

18 Pupils with statements of special educational needs.

The special educational provision for any pupil specified in a statement under section **[**F43 168 of the Education Act 1993**]** of his special educational needs may include provision—

(a) excluding the application of the provisions of the National Curriculum; or

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(b) applying those provisions with such modifications as may be specified in the statement.

Textual Amendments

F43 Words in s. 18 substituted (1.9.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para.120**; S.I. 1994/2038, art. 3(1), **Sch.2**.

Modifications etc. (not altering text)

C33 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg. 9**.

19 Temporary exceptions for individual pupils.

(1) The Secretary of State may make regulations enabling the head teacher of any maintained school, in such cases or circumstances and subject to such conditions as may be prescribed—

(a) to direct as respects a registered pupil at the school that, for such period as may be specified in the direction (the "operative period " of the direction), the provisions of the National Curriculum—

(i) shall not apply; or

(ii) shall apply with such modifications as may be so specified; and

(b) to revoke any direction given by him under the regulations and to vary any such direction except so as to extend its operative period.

(2) The conditions prescribed by the regulations shall, in particular, limit the period that may be specified in any direction given under the regulations to a maximum period specified in the regulations; and any maximum period specified in the regulations in relation to directions given under the regulations or in relation to directions so given in any circumstances so specified—

(a) shall be either—

(i) a fixed period not exceeding six months; or

(ii) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning; and

(b) may (without prejudice to section 232(5) of this Act) differ according to whether or not the direction in question is given in respect of a period beginning immediately after the end of the operative period of a previous direction or within such period after the end of the operative period of a previous direction as may be specified in the regulations.

(3) Where a head teacher gives a direction under regulations made under this section in the case of any pupil or varies any direction so given, he shall give the information mentioned in subsection (4) below, in such manner as may be prescribed—

(a) to the governing body; and

(b) where the school is a county, voluntary or maintained special school, to the local education authority;

and shall take such steps as may be prescribed to give that information also to a parent of the pupil.

(4) That information is the following—

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(a) the fact that he has taken the action in question, its effect and his reasons for taking it;

(b) the provision that is being or is to be made for the pupil's education during the operative period of the direction; and

(c) either—

(i) a description of the manner in which he proposes to secure the full implementation in relation to the pupil after the end of that period of the provisions of the National Curriculum; or

(ii) an indication of his opinion that the pupil has or probably has special educational needs by virtue of which the local education authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs the authority are for the time being required under section **[**[F44]168 of the Education Act 1993**]** to maintain).

(5) Where the head teacher of a grant-maintained school includes such an indication of opinion as is mentioned in subsection (4)(c)(ii) above in information given to the governing body under subsection (3) above, he shall also give that information, in such manner as may be prescribed, to the local education authority.

(6) It shall be the duty of a local education authority, on receiving information given to the authority under this section by the head teacher of any maintained school which includes such an indication of opinion with respect to a pupil, to consider whether any action on their part is required in the case of that pupil under section **[**[F45]167 of the Education Act 1993**]** (assessment of special educational needs).

(7) Where the head teacher of a maintained school—

(a) gives, revokes or varies any direction with respect to a pupil under regulations made under this section;

(b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed, by the parent of a registered pupil at the school; or

(c) fails within such period as may be prescribed following the making of such a request to give, revoke or vary such a direction in accordance with the request;

the parent of the pupil concerned may appeal to the governing body.

(8) On any such appeal the governing body may—

(a) confirm the head teacher's action; or

(b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances;

and it shall be the duty of the head teacher to comply with any directions of the governing body under paragraph (b) above.

(9) The governing body shall notify the appellant and the head teacher in writing of their decision on any such appeal.

(10) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

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Textual Amendments

F44 Words in s. 19(4)(c)(ii) substituted (1.9.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 121(a)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

F45 Words in s. 19(6) substituted (1.9.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 121(b)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

Modifications etc. (not altering text)

C34 S. 19 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**

Supplementary

20 Procedure for making certain orders: England.

(1) This section applies where the Secretary of State proposes to make—

(a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in England; or

(b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.

(2) The Secretary of State shall refer the proposal to the **[**[F46]School Curriculum and Assessment Authority**]** (in this section referred to as **[**[F47]the Authority**]**) and give to it directions as to the time within which it is to report to him.

(3) **[**[F47]the Authority**]** shall give notice of the proposal—

(a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to it to be concerned; and

(b) to any other persons with whom consultation appears to it to be desirable;

and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.

(4) The report of **[**[F47]the Authority**]** to the Secretary of State shall contain—

(a) a summary of the views expressed during the consultations;

(b) its recommendations as to the proposal; and

(c) such other advice relating to the proposal as it thinks fit;

and **[**[F47]the Authority**]** shall, after submitting its report to the Secretary of State, arrange for the report to be published.

(5) Where **[**[F47]the Authority**]** has reported to the Secretary of State, he shall—

(a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—

(i) a draft of the proposed order or regulations and any associated document; and

(ii) a statement explaining his reasons for any failure to give effect to the recommendations of **[**[F47]the Authority**]**;

(b) send copies of the documents mentioned in paragraph (a) above to **[**[F47]the Authority**]** and to each of the persons consulted by **[**[F47]the Authority**]**; and

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(c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.

(6) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

Textual Amendments

F46 Words in s. 20(2) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 122(2); S.I. 1993/1975, art. 9, **Sch.1**

F47 Words in s. 20 substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 122(3); S.I. 1993/1975, art. 9, **Sch.1**

Modifications etc. (not altering text)

C35 S. 20 restricted (1.9.1994) by 1993 c. 35, **s. 241(4)**; S.I. 1994/2038, art. 3(1), **Sch.2**.
S. 20 excluded (1.10.1993) by 1993 c. 35, **s. 242(1)(b)**, 308(3); S.I. 1993/1975, art. 9, **Sch. 1**

C36 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

21 Procedure for making certain orders: Wales.

(1) This section applies where the Secretary of State proposes to make—

(a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in Wales; or

(b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.

[[F48](2) The Secretary of State shall refer the proposal to the **[**[F49]the Curriculum and Assessment Authority for Wales**]** (in this section referred to as **[**[F50]the Authority**]**) and give to it directions as to the time within which it is to report to him.

(3) **[**[F50]The Authority**]** shall give notice of the proposal—

(a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to it to be concerned; and

(b) to any other persons with whom consultation appears to it to be desirable;

and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.

(3A) The report of **[**[F50]the Authority**]** to the Secretary of State shall contain—

(a) a summary of the views expressed during the consultations;

(b) its recommendations as to the proposal; and

(c) such other advice relating to the proposal as it thinks fit;

and **[**[F50]the Authority**]** shall, after submitting its report to the Secretary of State, arrange for the report to be published.

(3B) Where **[**[F50]the Authority**]** has reported to the Secretary of State, he shall—

(a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—

(i) a draft of the proposed order or regulations and any associated document; and

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(ii) a statement explaining his reasons for any failure to give effect to the recommendations of **[**[F50]the Authority**]**;

(b) send copies of the documents mentioned in paragraph (a) above to **[**[F50]the Authority**]** and to each of the persons consulted by **[**[F50]the Authority**]**; and

(c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.**]**

(4) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

Textual Amendments

F48 S. 21(2)(3)(3A)(3B) substituted for s. 21(2)(3) (1.10.1993) by 1993 c. 35, **s. 243**; S.I. 1993/1975, art. 9, **sch. 1**

F49 Words in s. 21(2) substituted (1.4.1994) by 1993 c. 35, s. 253, **Sch. 15 para. 4(5)(a)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F50 Words in s. 21 substituted (1.4.1994) by 1993 c. 35, s. 253, **Sch. 15 para. 4(5)(b)**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C37 S. 21 excluded (1.10.1993) by 1993 c. 35, **s. 242(1)(b)**; S.I. 1993/1975, art. 9, **Sch. 1**
S. 21 restricted (1.9.1994) by 1993 c. 35, **s. 241(4)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C38 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

22 Provision of information.

(1) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—

(a) such information relevant for the purposes of this Chapter (including information as to the matters mentioned in subsection (2) below); and

(b) such copies of the documents mentioned in subsection (3) below;

as may be prescribed.

(2) The matters referred to in subsection (1) above are as follows—

(a) the curriculum for maintained schools;

(b) the educational provision made by the school for pupils at the school and any syllabuses to be followed by those pupils; [F51]. . .

(c) the educational achievements of pupils at the school (including the results of any assessments of those pupils, whether under this Chapter or otherwise, for the purpose of ascertaining those achievements).

[[F52]; and

[F52](d) the educational achievements of pupils at such categories of school as may be prescribed (including results of the kind mentioned in paragraph (c)).**]**

(3) The documents referred to in subsection (1) above are as follows—

(a) any written statement made by the local education authority under section 17 of the 1986 Act (statement of policy in relation to school curriculum);

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(b) any written statement made by the governing body in pursuance of provision made under section 18 of that Act (statement of conclusions as to how (if at all) the local education authority's policy should be modified);

(c) any written statement made by the governing body of their policy as to the curriculum for the school; and

(d) any report prepared by the governing body under section 30 of that Act (annual reports) or **[**[F53]paragraph 8 of Schedule 6 to the Education Act 1993**]**.

(4) Before making regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

(5) Regulations under this section shall not require information as to the results of an individual pupil's assessment (whether under this Chapter or otherwise) to be made available to any persons other than—

(a) the parents of the pupil concerned;

[[F54](aa) the pupil concerned;

[F54](ab) in the case of a pupil who has transferred to a different school, the head teacher of that school;**]**

(b) the governing body of the school; or

(c) the local education authority;

and shall not require such information to be made available to the governing body **[**[F55]the head teacher**]** or the local education authority except where relevant for the purposes of the performance [F56]. . . of any of their functions.

(6) Regulations under this section may authorise local education authorities, governing bodies and head teachers to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.

(7) In relation to any maintained school, it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing that the head teacher complies with any regulations made under this section.

Textual Amendments

F51 Word in s. 22(2) repealed (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(8), **Sch. 5**; S.I. 1992/1157, art. 2, **Sch.**

F52 S. 22(2): word and s. 22(2)(d) added (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(2)**; S.I. 1992/1157, art. 2, **Sch.**

F53 Words in s. 22(3) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **sch. 19**, para.123; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

F54 S. 22(5)(aa)(ab) inserted (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(3)**; S.I. 1992/1157, art. 2, **Sch.**

F55 Words in s. 22(5) inserted (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(4)(a)**; S.I. 1992/1157, art. 2, **Sch.**

F56 Words in s. 22(5) repealed (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7)(8), Sch. 4 para. 6(1)(4)(b), **Sch. 5**; S.I. 1992/1157, art. 2, **Sch.**

Modifications etc. (not altering text)

C39 S. 22 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C40 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

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23 Complaints and enforcement.

(1) Every local education authority shall, with the approval of the Secretary of State and after consultation with governing bodies of aided schools and of special agreement schools, make arrangements for the consideration and disposal of any complaint made on or after 1st September 1989 which is to the effect that the authority, or the governing body of any county or voluntary school maintained by the authority or of any special school so maintained which is not established in a hospital—

(a) have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed on them by or under—

(i) any provision of this Chapter; or

(ii) any other enactment relating to the curriculum for, or religious worship in, maintained schools other than grant-maintained schools; or

(b) have failed to discharge any such duty.

(2) The Secretary of State shall not entertain under section 68 or 99 of the 1944 Act any complaint falling within subsection (1) above, unless a complaint concerning the same matter has been made and disposed of in accordance with arrangements made under that subsection.

Modifications etc. (not altering text)

C41 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

C42 S. 23(1) modified by S.I. 1989/46, **art. 3(2)**

C43 S. 23(1) restricted by S.I. 1989/46, **art. 3(4)**

24 Extension of certain provisions.

(1) The Secretary of State may by order direct that the provisions of sections 5 and 10(2)(b) of this Act shall have effect as if—

(a) any reference to pupils of compulsory school age included a reference to—

(i) senior pupils who are of or over that age; and

(ii) persons in full-time further education who are of or over that age but have not attained the age of nineteen (referred to below in this section as "FE students ");

(b) any reference to a maintained school included **[**[F57]except in relation to a local education authority, a reference to**]**

(ii) any institution (other than a university **[**[F58]or an institution within the higher education sector**]**) which provides further education and is a grant-aided institution;

[[F59] and

(iii) [F59]any institution within the further education sector**]**

(c) any reference to the head teacher of such a school included a reference to the principal or other head of such an institution; and

(d) any reference to a school year included a reference to an academic year.

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(2) An order under this section may make such consequential modifications of section **[**[F60]245(1) of the Education Act 1993**]** as appear to the Secretary of State to be necessary or expedient.

(3) In relation to FE students in relation to whom sections 5 and 10(2)(b) of this Act have effect by virtue of an order under this section, section 22 of this Act shall have effect—

(a) with the modifications mentioned in subsection (1)(b) and (c) above;

(b) as if the information referred to in paragraph (a) of subsection (1) were information with respect to the following matters—

(i) the qualifications authenticated by outside persons (within the meaning of section 5 of this Act) for which courses of study are to be provided by or on behalf of the institution concerned for such students;

(ii) the courses of study leading to such qualifications which are to be so provided;

(iii) the syllabuses which have been provided or determined for the purposes of those courses; and

(iv) the results of the assessments of such students for the purposes of those qualifications;

(c) as if in subsection (5)—

(i) the reference to the results of an individual pupil's assessment (whether under this Chapter or otherwise) included a reference to the results of an individual student's assessment for the purposes of any such qualification; and

(ii) the reference to the pupil concerned included a reference to the student concerned; and

(d) with the omission of subsections (1)(b), (2) and (3).

(4) Before making an order under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

Textual Amendments

F57 Words in s. 24(1)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 28(a)**; S.I. 1992/831, art. 2, **Sch. 3**.

F58 Words in s. 24(1)(b)(ii) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 28(b)**; S.I. 1992/831, art. 2, **Sch. 3**.

F59 Word "and", and s. 24(1)(b)(iii), added (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. 1 para. 28(c)**; S.I. 1992/831, art. 2, **Sch. 3**.

F60 Words in s. 24(2) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para.124; S.I. 1993/1975, art.9, **Sch. 1**

Modifications etc. (not altering text)

C44 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

25 Interpretation of Chapter I.

(1) In this Chapter, except in so far as the context otherwise requires—

"assess " includes examine and test, and cognate expressions shall be construed accordingly;

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"assessment arrangements ", "attainment targets " and "programmes of study " have the meanings given by section 2 of this Act;

"core subjects ", "foundation subjects " and "key stages " have the meanings given by section 3 of this Act and "foundation subjects " includes "core subjects ";

F61 . . .

"maintained school " means—

(a) any county or voluntary school;

(b) any maintained special school which is not established in a hospital; and

(c) except in relation to a local education authority, any grant-maintained school.

(2) Nothing in this Chapter shall apply in relation to a nursery school or a nursery class in a primary school.

Textual Amendments

F61 Definition of "Curriculum Council " in s. 25(1) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**,Pt. II; S.I. 1993/1975, art.9, **Sch. 1**

Modifications etc. (not altering text)

C45 S. 25 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C46 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

CHAPTER II

ADMISSION OF PUPILS TO COUNTY AND VOLUNTARY SCHOOLS

26 Admissions to county and voluntary schools.

(1) The authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the relevant standard number.

(2) Where any number fixed for the purposes of any such arrangements subsisting when subsection (1) above comes into force as the number of pupils in any such age group it is intended to admit to the school concerned in any school year is less than the relevant standard number, the arrangements shall have effect (subject to the following provisions of this section) as if the number so fixed were a number equal to the relevant standard number.

(3) Notwithstanding any provision of the articles of government of the school, but subject to section 33 of the 1986 Act (consultations about admissions between authorities concerned), the authority responsible for determining the arrangements for the admission of pupils to any such school may fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which exceeds the relevant standard number.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A proposal may be made in accordance with the following provisions of this section for fixing as the number of pupils in any such age group it is intended to admit to any such school in any school year a number which exceeds both—

(a) the relevant standard number; and

(b) any number fixed or proposed to be fixed for that purpose by the authority responsible for determining the arrangements for admission of pupils to the school.

(5) The proposal may be made—

(a) where the authority responsible for determining those arrangements is the local education authority, by the governing body of the school; and

(b) where that authority is the governing body of the school, by the local education authority.

(6) Any such proposal—

(a) shall be made in writing;

(b) may relate to one or more relevant age groups; and

(c) may relate to a particular school year or to each school year falling within any period specified in the proposal.

(7) If the authority to whom such a proposal is made do not give the proposing authority notice in writing rejecting the proposal before the end of the period of two months beginning with the day next following that on which the proposal was received it shall be the duty of the former authority to give effect to the proposal in the admission arrangements.

(8) Where the authority to whom such a proposal is made give such notice before the end of that period, the proposing authority may within twenty-eight days of receiving that notice make an application to the Secretary of State for an order under section 27(5) of this Act increasing the relevant standard number.

(9) For the purposes of section 6(3)(a) of the 1980 Act (which excludes the duty to comply with a parent's preference as to the school at which education is to be provided for his child if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources), no such prejudice shall be taken to arise from the admission to a school in any school year of a number of pupils in any relevant age group which does not exceed—

(a) the relevant standard number; or

(b) the number fixed in accordance with this section as the number of pupils in that age group it is intended to admit to the school in that school year;

whichever is the greater.

(10) Any reference in this section to the relevant standard number is a reference, in relation to any school and in relation to any relevant age group and school year, to the standard number applying under section 27 of this Act to the school in relation to that year and age group.

Modifications etc. (not altering text)

C47 Ss. 26–32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

C48 S. 26(4)-(10) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I1 S. 26 wholly in force; in force for certain purposes at 1.9.1991 and wholly in force for remaining purposes at 1.8.1992 see s. 236 and S.I. 1991/409, **art. 2**.

27 Standard numbers for admissions.

(1) Subject to subsections (3), (4) and (5) below, if pupils in any age group were admitted to any county or voluntary school in the school year immediately preceding the commencement year, the standard number applying to the school for that age group in the commencement year and any subsequent school year shall be—

(a) the appropriate pre-commencement number; or

(b) the number of pupils in that age group admitted in the school year immediately preceding the commencement year;

whichever is the greater.

(2) In this Chapter "the commencement year" means the school year beginning next after section 26(1) of this Act comes into force; and the reference in subsection (1)(a) above to the appropriate pre-commencement number is a reference—

(a) in the case of a secondary school, to the standard number applying to the school under section 15 of the 1980 Act in relation to the age group in question in the school year immediately preceding the commencement year; and

(b) in the case of a primary school, to the number applicable in relation to the school and in relation to the age group in question in accordance with section 29 of this Act.

(3) Subject to subsections (4) and (5) below, if proposals under section 12 or 13 of the 1980 Act (which impose certain requirements in relation to the establishment and alteration of schools) have fallen to be implemented in relation to any county or voluntary school, the number stated in the proposals in accordance with subsection (2) of section 12 (or that subsection as applied by section 13) for any school year and age group shall be the standard number applying to the school for that age group—

(a) in any school year to which this subsection applies in relation to which the proposals have been wholly implemented; and

(b) subject to any variation made by the Secretary of State, in any such school year in relation to which they have been partly implemented.

This subsection applies to the commencement year and any subsequent school year.

(4) The Secretary of State may by order applying to county or voluntary schools of any class or description vary any standard number that would otherwise apply by virtue of the preceding provisions of this section.

(5) Subject to subsections (6) and (7) below, the Secretary of State may by order vary any standard number that would otherwise apply to an individual school by virtue of the preceding provisions of this section or any order made under subsection (4) above.

(6) An order under subsection (5) above reducing a standard number may only be made on the application of the authority responsible for determining the arrangements for the admission of pupils to the school, and is subject to the procedure under section 28 of this Act.

(7) An order under subsection (5) above increasing a standard number may be made on the application of that authority or on an application made by any other authority in

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accordance with section 26(8) of this Act; and on any such application the Secretary of State may—

(a) refuse to make such an order;

(b) make an order increasing the standard number to the number proposed; or

(c) after consultation with both the local education authority and the governing body of the school, make an order increasing the standard number to such number (less than the number proposed) as he thinks desirable.

(8) The authority responsible for determining the arrangements for the admission of pupils to any such school shall keep under review any standard numbers applying under this section to the school, having regard to any change in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which those standard numbers first applied (whether in accordance with this section or section 15 of the 1980 Act).

(9) References in subsection (3) above to proposals under section 12 or 13 of the 1980 Act are references to the proposals with any modifications made by the Secretary of State under either of those sections; and any standard number applying under that subsection is without prejudice to the application under that subsection of a new standard number if further proposals fall to be implemented under those sections.

Modifications etc. (not altering text)

C49 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**
C50 S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**
C51 S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**
C52 S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**
C53 S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.
C54 S. 27(6) modified by S.I. 1988/1459, **art. 8**
C55 S. 27(6) excluded (2.10.1995) by S.I. 1995/2368, **reg. 4(2)**.
C56 S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.
C57 S. 27(7) modified (2.10.1995) by S.I. 1995/2368, **reg. 5(3)**.

Commencement Information

I2 S. 27 partly in force; s. 27 in force for certain purposes at 12.3.1991, 1.5.1991 and 1.9.1991 see s. 236 and S.I. 1991/409, **arts. 3**, 4

28 Procedure for reduction of standard number.

(1) Where the authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school intend to apply to the Secretary of State for an order under subsection (5) of section 27 of this Act reducing any standard number applying to the school under that section, they shall publish their proposals with respect to the reduction in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals together with their application.

(2) The published proposals shall be accompanied by a statement which explains the effect of—

(a) subsections (3) and (4) below, where the proposals are published by a local education authority; or

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(b) subsection (5) below, where the proposals are published by the governing body of the school.

(3) In the case of proposals published by a local education authority, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to that authority—

(a) any ten or more local government electors for the area of that authority;

(b) the governing body of any school affected by the proposals; and

(c) any other local education authority concerned.

(4) A local education authority by whom any such proposals are published shall within one month after the end of the period allowed for objections under subsection (3) above transmit to the Secretary of State copies of all objections made (and not withdrawn in writing) in that period, together with their observations on the objections.

(5) In the case of proposals made by the governing body of a school, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to the Secretary of State—

(a) any ten or more local government electors for the area of the local education authority by whom the school is maintained;

(b) the governing body of any school affected by the proposals; and

(c) any local education authority concerned.

(6) Subject to subsection (7) below, where an application is made to the Secretary of State under this section for an order reducing any standard number applying to a school for any age group in any year, the Secretary of State may—

(a) refuse to make such an order;

(b) make an order reducing the standard number to the number proposed; or

(c) after consultation with both the local education authority and the governing body of the school, make an order reducing the standard number to such number (greater than the number proposed) as he thinks desirable.

(7) The Secretary of State shall not make an order reducing any standard number applying to a school for any age group in any year unless he is satisfied that the reduction is necessary, having regard to any reduction in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which the current standard number first applied in relation to that age group (whether in accordance with section 27 of this Act or section 15 of the 1980 Act).

(8) A local education authority shall not make an application under this section for an order reducing any standard number applying to a school without first consulting the governing body of the school; and the governing body of a school shall not make such an application without first consulting the local education authority.

Modifications etc. (not altering text)

C58 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

C59 S. 28(6) modified (2.10.1995) by S.I. 1995/2368, **reg. 4(4)**.

Commencement Information

I3 S. 28 partly in force: s. 28 in force for certain purposes at 12.3.1991, see s. 236 and S.I. 1991/409, **art. 3**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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29 Special provisions in relation to admissions to primary schools.

(1) In the case of a primary school to which section 27(1) of this Act applies, the number applicable in relation to the school and in relation to any age group there mentioned is—

(a) if the 1980 standard number for that age group is a number determined under subsection (5) of section 15 of the 1980 Act by reference to the number of pupils in that age group admitted to the school in the school year beginning in 1979, the recalculated 1979 admission number;

(b) if the 1980 standard number for that age group is a number determined under subsection (6) of section 15 by reference to the number of pupils in that age group admitted to the school in any school year beginning after 1979 (and not varied by the Secretary of State under that subsection), the recalculated post-1979 admission number; and

(c) if the 1980 standard number for that age group is a number applicable by virtue of subsection (7) of section 15 (number stated in proposals under section 12 of that Act as proposed admission number) which has not been varied by the Secretary of State, the aggregate of the number so applicable and the additional admission number.

(2) In subsection (1)(a) above, "the recalculated 1979 admission number" means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year beginning in 1979, determined in accordance with subsection (5) below.

(3) In subsection (1)(b) above, "the recalculated post-1979 admission number" means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year by reference to which the 1980 standard number for that school and age group was determined, determined in accordance with subsection (5) below.

(4) In subsection (1)(c) above, "the additional admission number" means, in relation to any school and age group, the aggregate of—

(a) the number of pupils admitted to the school in that age group in the first school year in relation to which the proposals in question had been wholly implemented who—

(i) were admitted otherwise than for nursery education; and

(ii) had not attained the age of four years and six months on the date of their admission; and

(b) the number of pupils already admitted to the school for nursery education transferred in that year to a reception class at the school.

(5) For the purposes of—

(a) the application in relation to any school of subsection (2) or (3) above; and

(b) the aplication in relation to a primary school of any other provision of this Chapter (other than subsection (1) or (4) above) referring to the number of pupils admitted or intended to be admitted to a school in any school year;

children admitted to the school for nursery education shall be disregarded and children so admitted who are subsequently transferred to a reception class at the school shall be treated as admitted to the school on their transfer.

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(6) Subsection (5) above applies also for the purpose of determining for the purposes of any provision of this Chapter what is a relevant age group in relation to a primary school.

(7) For the purposes of this section "the 1980 standard number" means, in relation to any school and age group, the standard number applying to the school under section 15 of the 1980 Act in relation to that age group in the school year immediately preceding the commencement year.

Modifications etc. (not altering text)
C60 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

Commencement Information
I4 S. 29 wholly in force at 1.5.1991 see s. 236 and S.I. 1991/409, **art. 5**

30 Special arrangements in respect of admissions to aided or special agreement schools.

(1) Section 6 of the 1980 Act shall be amended as follows.

(2) In subsection (3)(b) (which excludes the duty to comply with a parent's preference for an aided or special agreement school if compliance with the preference would be incompatible with arrangements between the governors and the local education authority), for the words "in respect of the admission of pupils to the school" there shall be substituted the words "made under subsection (6) below".

(3) After subsection (5) there shall be inserted the following subsection—

"(6) A local education authority shall, if so requested by the governors of an aided or special agreement school maintained by the authority, make arrangements with the governors in respect of the admission of pupils to the school for preserving the character of the school; and the terms of any such arrangements shall, in default of agreement between the authority and the governors, be determined by the Secretary of State."

Modifications etc. (not altering text)
C61 Ss. 26?32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

31 Consequential provisions.

(1) Section 15 of the 1980 Act (which is superseded by the preceding provisions of this Chapter) shall cease to have effect, and in section 16 of that Act—

(a) in subsection (1), for "15" there shall be substituted "14";

(b) in subsection (3), for "sections 12 and 15" there shall be substituted "section 12"; and

(c) in subsection (3A) (inserted in that section by paragraph 81 of Schedule 12 to this Act), for "13 or 15" there shall be substituted "or 13".

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(2) In section 8(3) of that Act (particulars of admission arrangements required to be published under that section)—

(a) for paragraph (a) there shall be substituted the following paragraph—

"(a) in the case of each school to which the arrangements relate, the admission number applicable in each school year in relation to the age group in which pupils are normally admitted or, if there is more than one such group, the admission number so applicable in relation to each such group;" and

(b) at the end there shall be added the following—

"In paragraph (a) above, "admission number" means, in relation to any school year and age group, the standard number applying under section 27 of the Education Reform Act 1988 to the school in question in relation to that year and age group or the number fixed in accordance with section 26 of that Act as the number of pupils in that age group it is intended to admit to the school in that school year, whichever is the greater."

(3) In section 9 of that Act (provisions of sections 6, 7 and 8 of that Act, which relate to parental preferences and admission arrangements, excluded from applying in relation to nursery or special schools, etc.)—

(a) in subsection (1), at the beginning there shall be inserted the words "Subject to subsection (1A) below", and the words from "except" to the end shall be omitted; and

(b) after that subsection there shall be inserted the following subsection—

"(1A) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for the admission to the school of children who will not have attained the age of five years at the time of their proposed admission—

(a) those sections shall have effect in relation to the admission of such pupils to the school otherwise than for nursery education; and

(b) the transfer to a reception class at the school of children previously admitted to the school for nursery education shall be treated for the purposes of those sections as the admission of pupils to the school."

(4) In section 12 of that Act (establishment, discontinuance and alteration of schools by local education authorities)—

(a) in subsection (2) the words from "excluding" to the end shall be omitted; and

(b) after that subsection there shall be inserted the following subsection—

"(2A) For the purposes of subsection (2) above—

(a) pupils intended to be admitted to the school for nursery education shall be disregarded; and

(b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer."

(5) In section 13 of that Act (establishment and alteration of voluntary schools)—

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(a) for the words "Subsection (2)" there shall be substituted the words "Subsections (2) and (2A)";
(b) for the words "it applies" there shall be substituted the words "they apply"; and
(c) after the word "reference" there shall be inserted the words "in subsection (2)".

(6) In section 38 of that Act, after subsection (5) there shall be inserted the following subsection—

"(5A) For the purposes of this Act—
(a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and
(b) "reception class" means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate together with pupils of that age."

Modifications etc. (not altering text)
C62 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

Commencement Information
I5 S. 31 partly in force; s. 31(1) in force for certain purposes at 1.8.1992, s. 31(2) in force for certain purposes at 1.9.1991, s. 31(3) wholly in force at 1.8.1991, s. 31(4)-(6) wholly in force at 1.5.1991, see s. 236 and S.I. 1991/409, **art. 6**

32 Interpretation of Chapter II.

(1) For the purposes of this Chapter, a school's capacity to accommodate pupils is changed if—
(a) as a result of changes in the availability or use of accommodation at the school, there is any change in the amount of accommodation available for use by pupils at the school; or
(b) as a result of changes in the requirements applicable to the school under regulations made under section 10 of the 1944 Act (requirements as to school premises), there is any change in the number of pupils for whom accommodation may lawfully be provided at the school;

and a school's capacity to accommodate pupils is reduced if the result of the changes is, in a case within paragraph (a) above, less accommodation or, in a case within paragraph (b) above, a reduction in the number there mentioned.

(2) Any reference in this Chapter to a relevant age group, in relation to a school, is a reference to an age group in which pupils are normally admitted to the school.

(3) In this Chapter "the commencement year" has the meaning given by section 27(2).

(4) If by virtue of any orders made under section 236 of this Act subsection (1) of section 26 of this Act comes into force on different dates in relation to schools of different categories, the reference to the coming into force of that subsection—
(a) in subsection (2) of that section; and
(b) in subsection (2) of section 27 of this Act;

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shall be read, for the purposes of the application of those sections in relation to schools of any category, as a reference to its coming into force in relation to schools of that category.

Modifications etc. (not altering text)

C63 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

Commencement Information

I6 S. 32 partly in force; s. 32 in force for certain purposes at 12.3.1991 see s. 236 and S.I. 1991/409, **art. 3**

CHAPTER III

FINANCE AND STAFF

Modifications etc. (not altering text)

C64 Provisions of Pt. I Ch. III (other than ss. 33, 49 and Sch. 4) modified (25. 2. 1992) by S.I. 1992/164, **reg. 2(3)**.
Pt. I Ch. III applied (with modifications) (1.1.1994) by S.I. 1993/3104, **reg.2(2)**
Pt. I Ch. III extended (1.1.1994) by 1993 c. 35, **s. 215(4)**; S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, **art.2**).
Pt. I Ch. III applied (1.1.1994) by 1993 c. 35, **s. 215(5)**; S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, **art.2**).
Pt. I Ch. III modified (*temp.*) (31.12.1995) by S.I. 1995/3114, **regs.2**, 3, 5, 6, 7, 8.
Pt. I Ch. III modified (31.12.1995) by S.I. 1995/3114, **regs.4**, 7.

Financing of schools maintained by local education authorities

33 Schemes for financing county and voluntary schools.

(1) It shall be the duty of every local education authority to prepare a scheme in accordance with this Chapter and submit it for the approval of the Secretary of State in accordance with section 34 of this Act.

(2) The scheme shall provide for—

(a) the determination in respect of each financial year of the authority, for each school required to be covered by the scheme in that year, of the share to be appropriated for that school in that year of the part of the general schools budget of the authority for that year which is available for allocation to individual schools under the scheme (referred to below in this Chapter, in relation to such a school, as the school's budget share); and

(b) the delegation by the authority of the management of a school's budget share for any year to the governing body of the school where such delegation is required or permitted by or under the scheme.

(3) For the purposes of this Chapter, a school is required to be covered in any financial year by a scheme made under this section by a local education authority if either—

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(a) immediately before the beginning of that year it is a county or voluntary school maintained by that authority; or

(b) at any time during that year it becomes a county or voluntary school so maintained (whether by virtue of being established as a new school of that description or by virtue of becoming a county or voluntary school where it was not, immediately before it became so, a school of either description).

(4) For the purposes of this Chapter—

(a) references, in relation to any local education authority, to the general schools budget of the authority for any financial year, are references to the amount appropriated by the authority for meeting expenditure in that year in respect of all schools required to be covered in that year by any scheme made under this section by that authority **[**[F62](other than expenditure in respect of the provision of part-time education suitable to the requirements of persons of any age over compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years)**]**; and

(b) the part of the general schools budget of any such authority for any financial year which is available for allocation to individual schools under a scheme under this section (referred to below in this Chapter, in relation to any such authority, as the authority's aggregated budget for the year) is the amount remaining after deducting from the amount of the general schools budget of the authority for that year—

(i) the amount of any expenditure of the authority in that year on heads or items of expenditure which fall in accordance with section 38 of this Act to be left out of account in determining the authority's aggregated budget for the year (referred to below in this Chapter as excepted heads or items of expenditure); and

(ii) any other amounts which fall in accordance with the scheme to be deducted in determining the authority's aggregated budget for the year.

(5) In relation to any scheme under this section, any reference in subsection (4) above to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme; and a scheme under this section must provide for all amounts relevant to the determination of a school's budget share under the scheme for any financial year to be determined initially before the beginning of that year.

(6) In this Chapter—

(a) references to a school in respect of which financial delegation is required for any financial year under a scheme under this section are references to a school conducted by a governing body to whom the local education authority concerned are for the time being required by or under the scheme to delegate the management of the school's budget share for that year (and the governing body of such a school are said to have a right to a delegated budget for the year);

(b) references to a school which has a delegated budget are references to a school conducted by a governing body to whom a local education authority have for the time being delegated the management of the school's budget share for any financial year in pursuance of such a scheme (whether that delegation is required by the scheme or not); and

(c) references, in relation to any scheme under this section, to excluded expenditure under the scheme are references to the aggregate of any amounts

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which fall in the case of that scheme to be deducted by virtue of subsection (4)(b)(ii) above in determining the aggregated budget of the authority concerned for any financial year.

Textual Amendments

F62 Words in s. 33(4)(a) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 12(5)**; S.I. 1992/831, art. 2, **Sch.4**.

Modifications etc. (not altering text)

C65 S. 33 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

34 Preparation and imposition of schemes.

(1) A scheme prepared by a local education authority under section 33 of this Act shall be submitted to the Secretary of State on or before such date as the Secretary of State may by order direct, either generally or in relation to any local education authority, or any class or description of such authorities, specified in the order.

(2) In preparing a scheme under that section a local education authority shall take into account any guidance given by the Secretary of State (whether generally or in relation to that authority or to any class or description of local education authorities to which that authority belongs) as to the provisions he regards as appropriate for inclusion in the scheme.

(3) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.

[[F63](4) Before preparing such a scheme a local education authority shall consult—

(a) the governing body and the head teacher of every county, voluntary or special school maintained by the authority,

(b) the governing body of every grant-maintained school in the area of the authority, and

(c) the governing body of every grant-maintained special school which—

(i) is established under section 183 of the Education Act 1993 in the authority's area, or

(ii) before becoming a grant-maintained special school was a special school maintained by the authority,

but the Secretary of State may, by notice in writing to the authority, dispense with the duty imposed under paragraphs (b) and (c) above in respect of such schools, or class or description of schools, as are specified in the notice.**]**

(5) Such a scheme shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve such a scheme—

(a) either without modifications or with such modifications as he thinks fit after consulting the authority concerned; and

(b) subject to such conditions as he may specify in giving his approval.

(6) If in the case of any local education authority either—

(a) the authority fail to submit a scheme as required by subsection (1) above; or

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(b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection does not accord with any guidance given by him for the purposes of this section and cannot be made to do so merely by modifying it;

he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 33 of this Act in relation to the financing by the authority of county and voluntary schools as he considers appropriate.

(7) A scheme imposed by the Secretary of State by virtue of subsection (6) above—

(a) shall be treated as if made under section 33 by the local education authority concerned; and

(b) shall come into force on such date as may be specified in the scheme.

Textual Amendments

F63 S. 34(4) substituted (1.1.1994) by 1993 c. 35, **s. 274(1)**; S.I. 1993/3106 art. 4, Sch.1 (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C66 S. 34 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

[F64 35 Revision of schemes.

(1) Subject to the following provisions of this section, a local education authority may revise the whole or any part of any scheme made by them under section 33 of this Act.

(2) Section 34(2) and (3) of this Act shall apply where the local education authority are preparing any revision under this section as they apply where they are preparing a scheme under section 33 of this Act.

(3) Where the local education authority propose to make a significant variation of the scheme—

(a) they shall first consult every governing body and head teacher whom they are obliged to consult under section 34(4) of this Act, and

(b) they shall then submit a copy of their proposals to the Secretary of State for his approval,

and where the proposals are so submitted section 34(5) of this Act shall apply to the scheme as revised as it applies to a scheme prepared under section 33.

(4) A revision which does not make a significant variation of the scheme is referred to in this section as a “minor revision”; and the Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of this section.

(5) Where a local education authority propose to revise a scheme and the revision is in their opinion a minor revision, the authority shall give the Secretary of State notice in writing of their proposal, giving brief particulars of the nature of the revision proposed to be made.

(6) In any such case the authority shall, if so required by the Secretary of State before the end of the period of two months beginning with the date on which he receives

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notice under subsection (5) above of the authority's proposal, send to him a copy of the scheme as proposed to be revised; and it shall be for the Secretary of State to determine whether or not any revision is a minor revision.

(7) The Secretary of State may by a direction revise the whole or any part of a scheme made under section 33 of this Act, as from such date as may be specified in the direction.

(8) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.**]**

Textual Amendments

F64 S. 35 substituted (1.1.1994) by 1993 c. 35, **s. 274(2)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C67 S. 35 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

36 Delegation to governing body of management of school's budget share.

(1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.

(2) Subject to section 37(4) of this Act, in the case of any county or voluntary school maintained by the authority in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority to put at the disposal of the governing body of the school in respect of that year a sum equal to the school's budget share for that year to be spent for the purposes of the school.

(3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body shall be such as may be provided by or under the scheme.

(4) Subject to section 49(1) of this Act **[**[F65]and section 1(4A) of the Education (Grants and Awards) Act 1984 (grants for education support and training)**]**, the authority may not delegate to the governing body of any school required to be covered by the scheme in any financial year the power to spend any sum appropriated by the authority for the purposes of the school in that year otherwise than as required or permitted under the scheme.

(5) The governing body of any school which has a delegated budget—

(a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to them in respect of the school's budget share for any financial year as they think fit for the purposes of the school; and

(b) may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their power under paragraph (a) above in relation to any part of that sum.

[[F66](5A) In subsection (5) above "the purposes of the school" does not include purposes wholly referable to the provision of—

(a) part-time education suitable to the requirements of persons of any age over compulsory school age; or

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(b) full-time education suitable to the requirements of persons who have attained the age of nineteen years**]**

[[F67](5B) Any such governing body shall not exercise their powers under subsection (5) above to pay to governors any allowances other than travelling and subsistence allowances.**]**

(6) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their power under subsection (5) above.

Textual Amendments

F65 Words in S. 36(4) inserted (3.3.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 125(a)**; S.I. 1994/507, art. 2, **Sch. 1**

F66 S. 36(5A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 12(6)**; S.I. 1992/831, art. 2, **Sch. 4**.

F67 S. 36(5B) inserted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 125(b)**; S.I. 1994/507, art. 4(1), **Sch.2**.

Modifications etc. (not altering text)

C68 S. 36 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

[F68]37 Withdrawal of delegation.

(1) Where it appears to a local education authority, in the case of any school in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the school—

(a) have been guilty of a substantial or persistent failure to comply with any requirements applicable under the scheme; or

(b) are not managing the appropriation or expenditure of the sum put at their disposal for the purposes of the school in a satisfactory manner;

the authority may suspend the governing body's right to a delegated budget by giving the governing body (subject to subsection (3) below) not less than one month's notice of suspension.

(2) Any such notice shall specify the grounds for the proposed suspension, giving particulars of any failure alleged on the part of the governing body to comply with any requirements applicable under the scheme and of any alleged mismanagement on their part; and a copy of the notice shall be given to the head teacher of the school at the same time as the notice is given to the governing body.

(3) A local education authority may suspend the right to a delegated budget of any governing body to whom they have given notice under subsection (1) above before the expiry of the period of notice if it appears to them to be necessary to do so by reason of gross incompetence or mismanagement on the part of that governing body or other emergency; but in such a case the authority shall immediately give to the Secretary of State written notification of their action and the reasons for it.

(4) During any period when a governing body's right to a delegated budget is suspended under this section the duty of the local education authority concerned under section 36(2) of this Act shall not apply in relation to that governing body.

(5) It shall be the duty of the authority concerned—

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(a) to review before the beginning of every financial year any suspension under this section which is for the time being in force;

(b) for the purposes of that review, to afford the governing body concerned and the head teacher of the school an opportunity of making representations with respect to the suspension and to have regard to any representations made by that body or the head teacher; and

(c) to revoke any such suspension where they consider it appropriate to do so.

(6) The authority shall give the governing body concerned and the head teacher written notification of their decision on any such review.

(7) The revocation of any such suspension shall take effect as from the beginning of the next following financial year.

(8) A governing body shall be entitled to appeal to the Secretary of State against—

(a) the imposition of any suspension under this section; and

(b) any refusal of a local education authority to revoke any such suspension on any review required under this section.

(9) On any such appeal the Secretary of State—

(a) may allow or reject the appeal; and

(b) shall have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuance or recurrence.

Textual Amendments

F68 S. 37(8)(a) excluded (1.1.1994) by 1993 c. 35, **s. 215(4)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C69 S. 37 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

38 Schemes: determination of budget shares.

(1) The provision to be included in a scheme for determining the budget share for any financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of a formula laid down by the scheme for the purpose of dividing among all such schools the aggregated budget for that year of the local education authority concerned.

(2) In this section "formula" includes methods, principles and rules of any description, however expressed; and references in this Chapter, in relation to a scheme, to the allocation formula under the scheme, are references to the formula laid down by the scheme in accordance with subsection (1) above.

(3) The allocation formula under a scheme—

(a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of registered pupils at that school on such date or dates as may be determined by or under the scheme in relation to that year; and

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(b) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).

[[F69](3A) The allocation formula under a scheme shall not include provision for taking into account persons provided with—

(a) part-time education suitable to the requirements of persons of any age over compulsory school age; or

(b) full-time education suitable to the requirements of persons who have attained the age of nineteen years**]**

(4) In the case of any scheme, the following heads or items of expenditure, so far as taken into account in determining the general schools budget of the local education authority concerned for any financial year, shall be left out of account in determining the authority's aggregated budget for that year—

(a) all expenditure of a capital nature;

(b) all expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature;

(c) expenditure falling to be taken into account in determining central government grants of any prescribed description; and

(d) such other items of expenditure as may be prescribed.

Textual Amendments

F69 S. 38(3A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 12(7)**; S.I. 1992/831, art. 2, **Sch.4**.

Modifications etc. (not altering text)

C70 S. 38 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

39 Schemes: provision for financial delegation.

(1) A scheme shall include provision for requiring, in the case of each **[**[F70]secondary**]** school required to be covered by the scheme in any financial year, the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.

[[F71](2) A scheme shall include provision for requiring, in the case of each primary school required to be covered by the scheme in any financial year which—

(a) satisfies the qualifying condition on a qualifying date in relation to that year which falls before the beginning of that year; or

(b) falls in accordance with the scheme to be regarded as qualifying for delegation in respect of that year on the assumption that, if a forecast made in accordance with the scheme of the number of registered pupils it will have on a qualifying date in relation to that year which falls within that year proves to be correct, it will satisfy the qualifying condition on that date;

the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.**]**

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[[F71](3) For the purposes of this section—

(a) a primary school is to be treated as satisfying the qualifying condition at any time when it has two hundred or more registered pupils; and

(b) "qualifying date" means, in relation to any financial year, any date which is a qualifying date in accordance with any provision made by or under the scheme in question.**]**

(4) References in this Chapter to the delegation requirement under any scheme are references—

(a) **[**[F72]in relation to a secondary school required to be covered by the scheme in any financial year**]**, to any provision included in the scheme by virtue of subsection (1) above; and

[[F71](b) in relation to a primary school required to be covered by the scheme in any financial year, to any provision included in the scheme by virtue of subsection (2) above.**]**

(5) The application of the delegation requirement under a scheme in relation to any school is subject to section 40 of this Act in the case of any school to which that section applies.

[[F71](6) Subject to subsections (7) and (8) below, once the delegation requirement under a scheme applies in relation to a primary school in respect of any financial year it shall continue to apply in respect of each succeeding financial year.

(7) Subject to subsection (8) below, the delegation requirement under a scheme shall cease to apply in relation to a primary school to which that requirement for the time being applies if the number of registered pupils at the school—

(a) falls below the number for the time being required under subsection (3)(a) above for such a school to be treated as satisfying the qualifying condition or, in the case of a school to which that requirement applies by virtue of any provision made under subsection (2)(b) above, either fails to reach or falls below that number; and

(b) remains below that number for such period as may be specified in the scheme.

(8) Where subsection (7) above applies in the case of any primary school the delegation requirement under the scheme in question shall cease to apply in relation to the school as from the beginning of the financial year beginning next after the period mentioned in paragraph (b) of that subsection comes to an end in the case of that school.

(9) The application of subsections (7) and (8) above in relation to any school is without prejudice to the subsequent application of the delegation requirement under the scheme in question in relation to that school in respect of any financial year subsequent to that mentioned in subsection (8).**]**

(10) A scheme may provide for the delegation by the local education authority concerned to the governing body of any school to which the delegation requirement under the scheme does not apply in any financial year of the management of the school's budget share for that year.

(11) Any delegation by a local education authority under a scheme to the governing body of any school of the management of the school's budget share shall be subject to such conditions as may be imposed by or under the scheme.

(12) Conditions so imposed may in particular relate to—

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(a) the arrangements to be made for management of the expenditure of any sum made available to the governing body of any school in accordance with the scheme (and in particular for authorising expenditure, or transactions involving commitments to expenditure, to be met from any such sum);

(b) the keeping and audit of accounts and records with respect to such expenditure, and the keeping of records with respect to such transactions; and

(c) the provision to the local education authority concerned by the governing body of—

(i) copies of accounts and records required to be kept by virtue of any condition imposed under paragraph (b) above; and

(ii) such other documents and information relating to the application of any such sum as the authority may from time to time require.

Textual Amendments

F70 Word in s. 39(1) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(1)**

F71 S. 39(2)(3)(4)(b)(6)-(9) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(2)(a)**

F72 Words in s. 39(4)(a) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(2)(b)**

Modifications etc. (not altering text)

C71 S. 39 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

40 Initial implementation of delegation requirements under schemes.

(1) The delegation requirement under a scheme shall not apply in relation to any school which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.

(2) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (4) below) is the period of three years beginning with the date on which the scheme **[**[F73]as first made under section 33 of this Act**]**comes into force.

(3) Different dates may be specified under subsection (1) above in relation to different schools or categories of school and in relation to schools coming within the scheme in different financial years or at different times within the same financial year; but—

(a) each date so specified must coincide with the beginning of a financial year; and

(b) no date may be so specified which falls after the beginning of the financial year next following the end of the scheme's initial period.

(4) The Secretary of State may by order—

(a) substitute a date specified in the order for any date specified in a scheme under subsection (1) above (including one so specified by virtue of a previous order under this subsection); and

(b) extend any scheme's initial period until such date as may be specified in the order.

(5) For the purposes of this section, a school—

(a) comes within a scheme in any financial year if that financial year is the first financial year in which the school is required to be covered by the scheme; and

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(b) comes within the scheme at the beginning of that year if it is then a school required to be so covered and otherwise at the time within that year when it first becomes such a school.

Textual Amendments

F73 Words in s. 40(2) inserted (1.1.1994) by 1993 c. 35, **s. 274(3)(5)**; S.I. 1993/3106, **art. 4 Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C72 S. 40 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

41 Extension of delegation requirement under schemes in the case of primary schools.

(1) The Secretary of State may by regulations—

(a) amend paragraph (a) of subsection (3) of section 39 of this Act by substituting a lower number for the number of registered pupils for the time being required under that paragraph for a primary school to be treated as satisfying the qualifying condition for the purposes of that section; or

(b) amend subsection (1) of that section so as to require a scheme to include such provision as is there mentioned in relation to primary schools as well as secondary schools and make in any other provisions of this Chapter such consequential amendments as appear to him to be required.

(2) Any such regulations may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision made in those regulations by virtue of subsection (1)(a) or (b) above.

Modifications etc. (not altering text)

C73 S. 41 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

42 Publication of schemes and financial statements, etc.

(1) A scheme shall be published in such manner as may be prescribed—

(a) on its coming into force; and

(b) on such subsequent occasions as may be prescribed.

(2) The following provisions of this section apply where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.

(3) Before the beginning of each financial year the authority shall prepare a statement of the financial provision they plan to make in that year for county and voluntary schools maintained by them.

(4) The statement shall contain the following particulars in relation to the financial year in question—

(a) the amount of the general schools budget of the authority for that year (as initially determined for the purposes of the scheme);

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(b) the amount of the authority's aggregated budget for that year (as so determined);

(c) such particulars as may be prescribed of amounts deducted in respect of—

(i) excepted heads or items of expenditure; or

(ii) excluded expenditure under the scheme;

in arriving at the amount specified in the statement by virtue of paragraph (b) above;

(d) such particulars of the allocation formula under the scheme as may be prescribed;

(e) in the case of each school required to be covered by the scheme in that year, the planned expenditure per pupil arising from the division of the school's budget share (as so determined) by the initial pupil number;

[F74](f) . . . . . .

[F74](g) . . . . . .

[F74](h) . . . . . .

[F74](i) . . . . . .

(j) such further information with respect to the financial provision the authority plan to make in that year for county and voluntary schools maintained by them as may be prescribed.

(5) For the purposes of subsection (4) above—

(a) "the initial pupil number" means, in relation to a financial year, the number of registered pupils at the school in question required under the scheme to be used in applying the allocation formula under the scheme for initial determination of the school's budget share for the year; and

[F74](b) . . . . . .

(6) After the end of each financial year the authority shall prepare a statement containing such information with respect to—

[[F75](aa) the planned financial provision in that year specified in the statement prepared by the authority under subsection (3) above**]**

(a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the scheme; and

(b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;

as may be prescribed.

(7) A statement prepared under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.

[[F76](8) The authority shall furnish—

(a) the governing body of each school required to be covered by the scheme in any financial year, and

(b) the governing bodies of such grant-maintained schools in the authority's area and grant-maintained special schools mentioned in section 34(4)(c) of this Act as may be prescribed,

with a copy of each statement prepared by the authority under this section in relation to that year or, in such circumstances as may be prescribed, with such part or parts of it as may be prescribed.**]**

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(9) The governing body of each such school shall secure that a copy of any such statement furnished to them under subsection (8) above is available for inspection (at all reasonable times and free of charge) at the school.

Textual Amendments

F74 S. 42(4)(f)-(i) and (5)(b) repealed (1.1.1994) by 1993 c. 35, ss. 275(1)(a)(b), 307(3), **Sch. 21**, Pt.II; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

F75 S. 42(6)(aa) inserted (1.1.1994) by 1993 c. 35, **s. 275(1)(c)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

F76 S. 42(8) substituted (1.1.1994) by 1993 c. 35, **s. 275(1)(d)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C74 S. 42 applied by S.I. 1989/1135, **art. 6(2)(a)**

C75 S. 42 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

[F77 42A Certification of statements by Audit Commission.

(1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.

(2) Any such local education authority shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 29(1)(d) of the Local Government Finance Act 1982 for certifying such statement or statements prepared by the authority under section 42 of this Act as may be specified in the directions; and any statement under that section shall be treated for the purposes of section 29(1)(d) of that Act as a return by the authority.

(3) The arrangements made by the Audit Commission in pursuance of subsection (2) above shall include arrangements for sending a copy of any such statement or statements as so certified to the Secretary of State.

(4) Directions given under subsection (2) above may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.**]**

Textual Amendments

F77 S. 42A inserted (1.1.1994) by 1993 c. 35, **s. 275(2)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C76 S. 42A modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

[F78 43 Application of schemes to special schools.

(1) The Secretary of State may by regulations require or authorise schemes to cover special schools maintained by local education authorities.

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(2) Sections 39(1) and (10) and 40 of this Act shall not apply to schools required to be covered by a scheme by virtue of regulations under subsection (1) above.

(3) Regulations under subsection (1) above may require or authorise schemes to include provision for requiring the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for the year—

(a) in the case of all schools required to be covered by a scheme in any financial year by virtue of the regulations; or

(b) in the case of such schools required to be covered by a scheme in any financial year by virtue of the regulations as the Secretary of State may direct.

(4) The Secretary of State may by regulations—

(a) make in any provisions of this Chapter such amendments as appear to him to be required in consequence of any provision made in regulations under subsection (1) above; and

(b) provide that any scheme shall have effect with such modifications as appear to him to be appropriate in consequence of any provision so made.**]**

Textual Amendments

F78 S. 43 substituted (1.1.1994) by 1993 c. 35, **s.276**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

Modifications etc. (not altering text)

C77 S. 43 modified (21.9.1994) by 1994 c. 30, **s. 12(6)(a)(7)**; S.I. 1994/2204, **art.2(1)**.

Financial delegation: appointment and dismissal of staff

44 Staff employed by the local education authority.

(1) This section applies to a county, controlled or special agreement school at any time when it has a delegated budget.

(2) None of the following shall have effect in relation to a school to which this section for the time being applies—

(a) sections 34 and 35 of the 1986 Act (determination of staff complement for schools by local education authority and general provisions about appointment and dismissal of staff);

(b) any provision made by the articles of government in accordance with any of sections 36 to 41 of that Act (procedure for appointments, suspensions and dismissals); and

(c) any provision of section 40 of that Act (appointment and dismissal of clerk to the governing body) other than subsection (5).

(3) Subject to the following provisions of this section—

(a) the appointment, suspension and dismissal of staff at a school to which this section for the time being applies and the determination of their duties, grading and remuneration; and

(b) the application in relation to such staff of—

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(i) any disciplinary rules and procedures; and

(ii) any procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;

shall be subject to Schedule 3 to this Act.

(4) Within the period of five years beginning with the date on which the financial year begins in which any county, controlled or special agreement school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions made by the articles in accordance with any of sections 36 to 41 of the 1986 Act (specifying those provisions) are superseded by this section and Schedule 3 to this Act during any period when the school has a delegated budget.

(5) This section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).

45 Staff at aided schools.

(1) This section applies to an aided school at any time when it has a delegated budget.

(2) None of the following shall have effect in relation to a school to which this section for the time being applies—

(a) section 22(4) of the 1944 Act (power of local education authority to give directions to governors of aided school as to number and conditions of service of school maintenance staff); and

(b) any provision of the articles of government conferring any functions on a local education authority with respect to the number of teachers or other staff to be employed at the school or the appointment or dismissal of such teachers or other staff (including any such provision required by section 24(2) of that Act).

(3) Subject to any provision of the articles of government of any such school other than any provision for the time being excluded by subsection (2) above from applying to the school, the governing body of the school shall have (if they would not otherwise do so apart from any provision of the articles so excluded) power to appoint, suspend and dismiss staff as they think fit.

(4) Subsection (6) below applies if in the case of any such school—

(a) the governing body of the school agree with the local education authority to accord advisory rights to the chief education officer of the authority in relation to the appointment or dismissal of teachers at the school; or

(b) in default of such agreement the Secretary of State determines that it would be appropriate in the case of the school that such rights should be accorded to the chief education officer of the authority.

(5) Advisory rights accorded by an agreement or determination under subsection (4) above in the case of any school may relate to the appointment or dismissal, or both to the appointment and the dismissal, either of head teachers and deputy head teachers alone or of all teachers at the school.

(6) During any period while an agreement or determination under subsection (4) above is effective in the case of any school, the chief education officer of the authority, or an officer of the authority nominated by him, shall be entitled to attend all proceedings of

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the governing body relating to any action to which the advisory rights accorded to him extend (including interviews) for the purpose of giving advice to the governing body.

(7) The agreement of a governing body for the purposes of subsection (4)(a) above shall be given in writing and may only be withdrawn by notice in writing to the local education authority.

(8) A determination by the Secretary of State for the purposes of subsection (4)(b) above may be withdrawn at any time (without prejudice to a further determination for those purposes).

(9) The governing body of a school to which this section for the time being applies shall, on dismissing any member of the staff of the school employed by them, notify the local education authority in writing of the reasons for the dismissal.

(10) Where any member of the staff at any such school is employed by the local education authority, paragraphs 8 to 10 of Schedule 3 to this Act shall have effect in relation to his dismissal or withdrawal from the school as they have effect in relation to the dismissal or withdrawal from a school to which section 44 of this Act applies of a person employed to work at the school.

(11) Within the period of five years beginning with the date on which the financial year begins in which any aided school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions of the articles of a kind mentioned in subsection (2)(b) above (specifying those provisions) are superseded by this section during any period when the school has a delegated budget.

46 Staff: further provisions.

[F79](1) . . . . . .

(2) Subject to subsection (3) below, it shall be for the governing body of any such school to determine—

(a) whether any payment should be made by the local education authority concerned in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school; and

(b) the amount of any such payment.

(3) Subsection (2) above does not apply in relation to any payment which the authority are required to make—

(a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or

(b) under any statutory provision.

(4) The local education authority concerned—

(a) shall take such steps as may be required for giving effect to any determination of the governing body of any such school under subsection (2) above; and

(b) shall not make, or agree to make, any payment to which that subsection applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.

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(5) Costs incurred by the local education authority concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of any such school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.

(6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5) above.

Textual Amendments

F79 S. 46(1) repealed (6. 3. 1992) by School Teachers' Pay and Conditions Act 1991 (c. 49, SIF 41:1), s. 6(3), **Sch.2**; S.I. 1992/532, **art.3**.

47 Community Schools.

(1) This section applies to any school to which section 44 or 45 of this Act for the time being applies which is a community school.

(2) For the purposes of this section, a school is a community school if—

(a) activities other than school activities ("non-school activities") are carried on on the school premises; and

(b) all non-school activities which are so carried on are carried on under the management or control of the governing body of the school.

(3) A scheme may provide for applying sections 44(3), 45(10) and 46 of and Schedule 3 to this Act in relation to persons employed to work—

(a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the premises of a school to which this section applies; or

(b) solely for the purposes of non-school activities so carried on;

as if all activities so carried on were school activities.

Miscellaneous and supplementary

48 New schools.

(1) Schedule 4 to this Act has effect for the purpose of applying the provisions of this Chapter and Schedule 3 to this Act in relation to new schools which have temporary governing bodies.

(2) In this section and in Schedule 4 to this Act—

"new school" and "relevant proposal" have the same meanings respectively as in Schedule 2 to the 1986 Act (where "new school" covers both a school proposed to be established which will on implementation of the relevant proposal be maintained by a local education authority and a school which will be so maintained on the implementation in relation to an existing school of the relevant proposal); and

"temporary governing body" means a temporary governing body constituted for a new school under an arrangement made under section 12 of

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that Act (excluding such a governing body who fall by virtue of paragraph 3(5) of that Schedule to be treated as if they were the governing body constituted under the provisions of that Act that apply following the implementation of the relevant proposal).

49 Required financial delegation apart from schemes.

(1) In respect of any period during which any county, voluntary or special school maintained by a local education authority does not have a delegated budget it shall be the duty of the authority to make available a sum of money which the governing body of the school are to be entitled to spend at their discretion during that period (but subject to subsection (2) below) on books, equipment, stationery and such other heads of expenditure (if any) as the authority may specify or as may be prescribed.

(2) A governing body to whom any sum is made available under this section—
   (a) shall comply in spending that sum with such reasonable conditions as the authority think fit to impose; and
   (b) may delegate to the head teacher, to such extent as they may specify, their powers in relation to that sum.

(3) Before making any regulations for the purposes of subsection (1) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned and any local authority with whom consultation appears to him to be desirable.

50 Financial statements in respect of schools not covered by statements under section 42.

(1) Every local education authority shall prepare a statement under subsection (5) below in respect of any financial year before the first financial year in respect of which the authority are required to prepare a statement under section 42 of this Act (including the financial year current at the time when this section comes into force).

(2) Subject to subsection (3) below, every local education authority who maintain one or more special schools during the whole or any part of any financial year after the last financial year to which subsection (1) above applies shall prepare a statement under subsection (5) below in respect of that financial year.

(3) Subsection (2) above shall not apply in relation to such an authority in respect of any financial year in respect of which the authority are required to prepare a statement under section 42 of this Act which, by virtue of any provision made by regulations under section 43 of this Act, is required to include information with respect to the special school or (as the case may be) with respect to each of the special schools concerned.

(4) The schools required to be covered by a statement prepared by a local education authority under subsection (5) below in respect of any financial year are—
   (a) in the case of a statement required by subsection (1) above, any county, voluntary or special school maintained by the authority during the whole or any part of that year; and
   (b) in the case of a statement required by subsection (2) above, any special school so maintained other than one in respect of which, by virtue of any provision

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so made, any information is required to be included in a statement prepared by the authority in respect of that year under section 42 of this Act.

(5) The statement shall give the following particulars with respect to the financial provision initially planned by the authority in respect of the financial year to which the statement relates for the schools required to be covered by the statement—

(a) the initial amount appropriated for meeting expenditure in that year in respect of all such schools;

(b) the amount remaining (referred to below in this section as the general expenditure amount) after deducting from the amount specified in the statement by virtue of paragraph (a) above the aggregate amount of the initial amounts so appropriated in respect of—

(i) expenditure of a capital nature;

(ii) expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature; and

(iii) expenditure of such other descriptions as may be prescribed;

(c) such particulars as may be prescribed of amounts so deducted;

(d) in the case of each such school, the share of—

(i) the general expenditure amount; and

(ii) such of the amounts so deducted by virtue of paragraph (b)(iii) above as may be prescribed;

which is appropriated by the authority for meeting expenditure for the purposes of the school;

(e) in the case of each such school, the amount of any expenditure of a capital nature initially planned for the purposes of the school;

(f) such particulars of the basis on which the authority determine the share of each such school for the purposes of the information required to be included in the statement under paragraph (d) above as may be prescribed; and

(g) such further information with respect to the financial provision initially planned by the authority for the schools required to be covered by the statement as may be prescribed.

(6) After the end of each financial year in respect of which a local education authority are required to prepare a statement under subsection (5) above the authority shall prepare a statement containing such information with respect to—

(a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the statement under subsection (5); and

(b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;

as may be prescribed.

(7) Each statement prepared under this section in respect of any financial year shall be prepared in such form, and published in such manner and at such times, as may be prescribed.

(8) The authority shall furnish the governing body of any school required to be covered by a statement prepared under subsection (5) above in respect of any financial year with a copy of each statement prepared by the authority under this section in relation to that year.

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(9) A governing body to whom a copy of any such statement is furnished under subsection (8) above shall secure that a copy of the statement is available for inspection (at all reasonable times and free of charge) at the school.

(10) Where only one school is required to be covered by a statement prepared under subsection (5) above—

(a) references in this section to all schools required to be so covered shall be read as references to the school in question;

(b) that subsection shall apply with the omission of paragraphs (d) to (f); and

(c) subsection (6) above shall apply with the omission of paragraph (b).

Modifications etc. (not altering text)

C78 S. 50(1) modified by S.I. 1989/1135, **art. 6(2)(b)**

51 Interpretation of Chapter III and supplementary and consequential provisions.

(1) In this Chapter—

"expenditure of a capital nature" means, in relation to a local education authority, expenditure treated by that authority as expenditure of a capital nature; and

"governors' report" means, in relation to the governing body of any school to which section 30 of the 1986 Act applies, the report they are required to prepare by virtue of that section.

(2) In this Chapter—

(a) references to a scheme are references—

(i) to a scheme made by a local education authority under section 33 of this Act **[**[F80]as from time to time revised under section 35 of this Act**]**; and

(ii) in a context referring to a particular local education authority, to a scheme so made by that authority;

(b) references to a school's budget share for any financial year—

(i) shall be read in accordance with subsection (2)(a) of that section; and

(ii) include references to that share as from time to time revised in accordance with the scheme under which it is determined;

(c) references to the general schools budget of a local education authority shall be read in accordance with subsection (4)(a) of that section;

(d) references to the aggregated budget of a local education authority shall be read in accordance with subsection (4)(b) of that section;

(e) references to excepted heads or items of expenditure shall be read in accordance with subsection (4)(b)(i) of that section;

(f) references to a school in respect of which financial delegation is required for any financial year shall be read in accordance with subsection (6)(a) of that section;

(g) references to a school which has a delegated budget shall be read in accordance with subsection (6)(b) of that section;

(h) references, in relation to a scheme, to excluded expenditure under the scheme shall be read in accordance with subsection (6)(c) of that section; and

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(i) references to the delegation requirement under a scheme shall be read in accordance with section 39(4).

(3) During any period when a school has a delegated budget under any scheme any provisions of the articles of government of the school which are inconsistent with the operation during that period of any provisions of this Chapter or of the scheme shall be of no effect to the extent of that inconsistency.

This subsection does not apply to any provision of the articles of government such as is referred to in section 44(2)(b) or 45(2)(b) of this Act (in relation to which provision corresponding to that made by subsections (4) and (5) below is made by sections 44(4) and 45(11) respectively).

(4) Within the period of five years beginning with the date on which the financial year begins in which any school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned, if the articles of government of the school contain any provision to which subsection (3) above applies, to amend the articles so as to include in relation to that provision or (as the case may be) in relation to each such provision contained in the articles the statement required by subsection (5) below.

(5) The statement shall specify—

(a) the provision or provisions of the articles in question;

(b) the provision of this Chapter or of the scheme (the "overriding provision") with the operation of which any provision of the articles specified under paragraph (a) above is inconsistent; and

(c) the extent of the inconsistency;

and shall indicate that, during any period when the school has a delegated budget, any provision of the articles so specified is superseded by the overriding provision to the extent that it is inconsistent with it.

(6) Any amendment of the articles of government of a school required by section 44(4) or 45(11) of this Act or by subsection (4) above shall be made by order under section 1 of the 1986 Act; but section 2 of that Act shall not apply in relation to any order made under section 1 by virtue of this subsection.

[[F81](7) It shall be for the Secretary of State to determine any question arising under a scheme as to whether a primary school required to be covered by the scheme is within the delegation requirement under the scheme.**]**

(8) Section 29 of the 1986 Act (which requires provisions to be contained in articles of government of schools with respect to financial statements and financial delegation and is superseded by the provisions of this Chapter), and any provision included in the articles of government of any school by virtue of that section, shall cease to have effect.

(9) In section 30(2)(h) of that Act (financial statement to be included in governors' annual report to parents), for sub-paragraphs (i) and (ii) there shall be substituted the following sub-paragraphs—

"(i) reproducing or summarising any financial statement of which a copy has been furnished to the governing body by the authority under section 42 or 50 of the Education Reform Act 1988 since the last governors' report was prepared;

(ii) indicating, in general terms, how any sum made available to the governing body by the authority in respect of the school's

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budget share within the meaning of Chapter III of Part I of that Act or under section 49 of that Act in the period covered by the report was used;".

Textual Amendments

F80 Words in s. 51(2)(a)(i) inserted (1.1.1994) by 1993 c. 35, **s. 274(4)**; S.I. 1993/3106, art. 4, **sch.1** (as amended by S.I. 1994/436, **art.2**).

F81 S. 51(7) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(2)(c)**

CHAPTER IV

GRANT-MAINTAINED SCHOOLS

Duty of Secretary of State to maintain certain schools

[F82]52 . . . . . .

Textual Amendments

F82 S. 52 repealed (1.1.1994 in respect of s. 52(3)-(9) and otherwise 1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch. 1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art. 2**); S.I. 1994/507, art. 4(1), **Sch.2**, Appendix (with arts. 3,4, Sch. 3)

Government, powers and conduct

[F83]53 . . . . . .

Textual Amendments

F83 S. 53 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F84]54 . . . . . .

Textual Amendments

F84 S. 54 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F85]55 . . . . . .

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Textual Amendments

F85 S. 55 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F86]56 . . . . . .

Textual Amendments

F86 S. 56 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F87]57 . . . . . .

Textual Amendments

F87 S. 57 repealed (1.4.1994) by 1993 c. 35, ss. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F88]58 . . . . . .

Textual Amendments

F88 S. 58 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F89]59 . . . . . .

Textual Amendments

F89 S. 59 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

Procedure for acquisition of grant-maintained status

[F90]60 . . . . . .

Textual Amendments

F90 S. repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

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[F91]61 . . . . . .

Textual Amendments

F91 S. 61 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F92]62 . . . . . .

Textual Amendments

F92 S. repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F93]63 . . . . . .

Textual Amendments

F93 S. 63 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F94]64 . . . . . .

Textual Amendments

F94 S. 64 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F95]65 . . . . . .

Textual Amendments

F95 S. 65 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F96]66 . . . . . .

Textual Amendments

F96 S. 66 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

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[F97]67 . . . . . .

Textual Amendments

F97 S. 67 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F98]68 . . . . . .

Textual Amendments

F98 S. 68 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F99]69 . . . . . .

Textual Amendments

F99 S. 69 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch.21 Pt. I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F100]70 . . . . . .

Textual Amendments

F100 S. 70 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F101]71 . . . . . .

Textual Amendments

F101 S. 71 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F102]72 . . . . . .

Textual Amendments

F102 S. 72 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

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Proposals under section 12 or 13 of the 1980 Act in respect of schools eligible for grant-maintained status

F103 73 . . . . . .

Textual Amendments

F103 S. 73 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**Appendix.

Transfer of property and staff, etc.

F104 74 . . . . . .

Textual Amendments

F104 S. 74 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F105 75 . . . . . .

Textual Amendments

F105 S. 75 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F106 76 . . . . . .

Textual Amendments

F106 S. 76 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F107 77 . . . . . .

Textual Amendments

F107 S. 77 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F108 78 . . . . . .

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Textual Amendments

F108 S. 78 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

Finance

F109 79 . . . . . .

Textual Amendments

F109 S. 79 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix (with saving in Sch. 3 para. 10).

Modifications etc. (not altering text)

C79 Power to transfer functions conferred on s. 79 as saved (1.4.1994) by 1993 c. 35, s. 307(2), **Sch. 20 para. 2**; S.I. 1994/507, art. 4(1), **Sch.2**

F110 80 . . . . . .

Textual Amendments

F110 S. 80 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix (with saving in Sch. 3 para. 10).

Modifications etc. (not altering text)

C80 Power to transfer functions conferred on s. 80 as saved (1.4.1994), s.307(2), Sch. 20, para. 2; S.I. 1994/507, art. 4(1), **Sch.2**

F111 81 . . . . . .

Textual Amendments

F111 S. 81 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch.2** Appendix (with saving in Sch. 3 para. 11)

F112 82 . . . . . .

Textual Amendments

F112 S. 82 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

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Admissions

[F113]83 . . . . . .

Textual Amendments

F113 S. 83 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Religious education

[F114]84 . . . . . .

Textual Amendments

F114 S. 84 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F115]85 . . . . . .

Textual Amendments

F115 S. 85 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F116]86 . . . . . .

Textual Amendments

F116 S. 86 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F117]87 . . . . . .

Textual Amendments

F117 S. 87 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F118]88 . . . . . .

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Textual Amendments

F118 S. 88 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Control over alteration and change of site

F119 89 . . . . . .

Textual Amendments

F119 S. 89 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

F120 90 . . . . . .

Textual Amendments

F120 S. 90 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

F121 91 . . . . . .

Textual Amendments

F121 S. 91 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para.126, **Sch. 21 Pt. I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Discontinuance of grant-maintained schools

F122 92 . . . . . .

Textual Amendments

F122 S. 92 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

F123 93 . . . . . .

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Textual Amendments

F123 S. 93 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Winding up and disposal of property

[F124]94 . . . . . .

Textual Amendments

F124 S. 94 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F125]95 . . . . . .

Textual Amendments

F125 S. 95 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para.126, **Sch. 21 Pt. I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F126]96 . . . . . .

Textual Amendments

F126 S. 96 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F127]97 . . . . . .

Textual Amendments

F127 S. 97 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F128]98 . . . . . .

Textual Amendments

F128 S. 98 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

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[F129]99 . . . . . .

Textual Amendments

F129 S. 99 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Miscellaneous and supplementary

[F130]100 . . . . . .

Textual Amendments

F130 S. 100 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F131]101 . . . . . .

Textual Amendments

F131 S. 101 repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

[F132]102 . . . . . .

Textual Amendments

F132 S. 102 repealed (1.1.1994) by 1993 c. 35, s. 307(3), **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F133]103 . . . . . .

Textual Amendments

F133 S. 103 repealed (1.1.1994) by 1993 c. 35, s. 307(3), **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

[F134]104 . . . . . .

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Textual Amendments

F134 S. 104 repealed (1.1.1994 in respect of s. 104(1)(a)(b)(f)-(h),(2) and in subsection (3) the definition of "incorporation tax" and otherwise 1.4.1994) by 1993 c. 35 s. 307(1)(3), Sch. 19 para. 126, Sch. 21 Pt.I; S.I. 1993/3106, art. 4, **Sch. 1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art. 2**); S.I. 1994/507, art. 4(1), **Sch.2**, Appendix (with arts. 3,4, Sch. 3)

CHAPTER V

MISCELLANEOUS

City colleges

105 Agreements for establishment, etc., of city technology colleges and city colleges for the technology of the arts.

(1) The Secretary of State may enter into an agreement with any person under which—

(a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of either—

(i) an independent school to be known as a city technology college; or

(ii) an independent school to be known as a city college for the technology of the arts;

and having (in each case) such characteristics as are specified in the agreement and in subsection (2) below; and

(b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.

(2) The characteristics mentioned above are that the school—

(a) is situated in an urban area;

(b) provides education for pupils of different abilities who have attained the age of eleven years [F135]. . . and who are wholly or mainly drawn from the area in which the school is situated; and

(c) has a broad curriculum with an emphasis—

(i) in the case of a school to be known as a city technology college, on science and technology; or

(ii) in the case of a school to be known as a city college for the technology of the arts, on technology in its application to the performing and creative arts.

(3) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—

(a) conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school; and

(b) such other conditions and requirements with respect to the school as are specified in the agreement.

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(4) Payments under an agreement under this section may be in respect of capital or current expenditure and, in so far as they relate to the latter, the agreement shall provide for their continuance (subject to the fulfilment of the conditions and requirements mentioned in subsection (3) above) for a period of not less than seven years or for an indefinite period terminable by the Secretary of State by not less than seven years written notice.

(5) Where such payments relate to capital expenditure, the agreement shall provide for the repayment to the Secretary of State, in the event at any time of the school discontinuing or ceasing to have the characteristics specified in the agreement and in subsection (2) above, of sums determined by reference to—

(a) the value at that time of the school premises and other assets held for the purposes of the school; and

(b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement.

(6) Without prejudice to subsection (4) above an agreement under this section may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure—

(a) incurred by that person in carrying out the undertakings mentioned in subsection (1) above; or

(b) incurred by that person (otherwise than by virtue of subsection (5) above) in consequence of the termination of the agreement.

Textual Amendments

F135 Words in s. 105(2)(b) repealed (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 12(8), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.4**.

Charges in maintained schools

106 Prohibition of charges, etc., in maintained schools.

(1) No charge shall be made in respect of admission to any maintained school.

[[F136](1A) Subsection (1) above shall not apply to the admission of any person to any maintained school for the purpose of—

(a) part-time education suitable to the requirements of persons of any age over compulsory school age; or

(b) full-time education suitable to the requirements of persons who have attained the age of nineteen years**][**; or**]**

[[F137](c) teacher training.**]**

(2) Subject to subsection (3) below and section 107 of this Act, no charge shall be made in respect of the education provided for registered pupils at any such school during school hours.

(3) Subsection (2) above shall not apply in relation to—

[[F138](a) tuition in playing any musical instrument, where the tuition is provided either individually or to a group of no more than four pupils; or**]**

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(b) any education provided at a grant-maintained school in pursuance of arrangements made under section **[**[F139]68(8) of the Education Act 1993**]**.

(4) No charge shall be made in respect of education provided for a registered pupil at any maintained school where the education is education to which subsection (2) above does not apply if it is—

(a) required as part of any syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school; or

(b) provided in pursuance of any of the duties imposed by section 10(1)(b) or (2)(a) of this Act;

but this subsection shall not apply in relation to education provided at a grant-maintained school in pursuance of arrangements made under section **[**[F139]68(8) of the Education Act 1993**]**.

(5) No charge shall be made in respect of the entry of a registered pupil at any maintained school for any prescribed public examination in any syllabus for that examination for which the pupil has been prepared at the school.

(6) Neither the parent of any such pupil nor the pupil himself shall be required to pay for or supply any materials, books, instruments or other equipment for use for the purposes of or in connection with—

(a) education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or

(b) any syllabus for a prescribed public examination which is a syllabus for which the pupil has been prepared at the school.

(7) No charge shall be made in respect of transport provided for a registered pupil at any such school where the transport is either—

(a) incidental to education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or

(b) provided for the purpose of enabling him to meet any examination requirement for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school.

(8) For the purposes of subsection (7)(a) above, transport is incidental to education provided for registered pupils at any such school if it is provided for the purpose of carrying such pupils—

(a) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises; or

(b) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place.

(9) Nothing in this section shall be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at any such school on a residential trip.

(10) In this Chapter "residential trip " means any trip—

(a) which is arranged for registered pupils at any maintained school by or on behalf of the governing body or the local education authority; and

(b) which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation.

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(11) For the purposes of this section, a pupil shall be regarded as having been prepared at a school for a syllabus for any prescribed public examination if any part of the education provided with a view to preparing him for that examination in that syllabus has been provided for him at that school.

Textual Amendments

F136 S. 106(1A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 12(9)**; S.I. 1992/831, art. 2, **Sch. 4**.

F137 S. 106(1A)(c) and the preceding word ";or " inserted (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(3)**; S.I. 1994/2204, **art.2(1)**.

F138 S. 106(3)(a) substituted (1.10.1993) by 1993 c. 35, **s. 280**; S.I. 1993/1975, art. 9, **Sch. 1**

F139 Words in s. 106 substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 127**; S.I. 1994/507, art. 4(1), **Sch. 2**.

Modifications etc. (not altering text)

C81 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para. 9(1)**; S.I. 1994/2038, art. 3(1), **Sch. 2**.

C82 S. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.
S. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, **reg. 9**.

107 Provision for cases where education is provided partly during and partly outside school hours.

(1) Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours—

(a) if fifty per cent. or more of the time occupied by that period together with any connected school travelling time falls during school hours, so much of the education provided during that period as is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and

(b) in any other case, so much of the education provided during that period as is provided during school hours shall be treated for those purposes as provided outside school hours.

(2) In this section "school travelling time " means time spent on travel during school hours; and for the purposes of subsection (1)(a) above, such time is connected school travelling time in relation to any educational activity if it is spent by the pupils taking part in the activity in getting to or from the place where the activity takes place.

(3) Where any education provided at a maintained school is provided on a residential trip—

(a) if the number of school sessions taken up by the trip is equal to or greater than fifty per cent. of the number of half days spent on the trip, any education provided on the trip which is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and

(b) in any other case, any education provided on the trip which is provided during school hours shall be treated for those purposes as provided outside school hours.

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(4) In this section a "half day " means any period of twelve hours ending with noon or midnight on any day.

(5) Where fifty per cent. or more of a half day is spent on a residential trip, the whole of that half day shall be treated for the purposes of subsection (3) above as spent on the trip.

(6) For the purposes of that subsection, a school session on any day on which such a session takes place at the school concerned shall be treated as taken up by a residential trip on which education is provided for registered pupils at the school if the time spent on the trip occupies fifty per cent. or more of the time allowed for that session at the school.

Modifications etc. (not altering text)

C83 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C84 Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

108 Recovery of wasted examination fees.

(1) Notwithstanding section 106(5) of this Act, where—

(a) the governing body of any maintained school or the local education authority have paid or are liable to pay any fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination; and

(b) the pupil fails without good reason to meet any examination requirement for that syllabus;

that body or authority may recover the amount of the fee from the pupil's parent.

(2) It shall be for the body or authority who have paid or are liable to pay the fee in question to determine for the purposes of this section any question whether a pupil who has failed to meet any such examination requirement had good reason for the failure.

Modifications etc. (not altering text)

C85 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C86 Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

109 Permitted charges.

(1) Subject to subsection (2) below, a charge may be made in respect of—

(a) education or transport provided for a registered pupil at any maintained school other than education or transport in respect of which by virtue of section 106 of this Act or section 55(1) of the 1944 Act no charge may be made;

(b) the entry of any such pupil for a public examination in any syllabus for that examination otherwise than in circumstances in which by virtue of section 106(5) of this Act no charge may be made; and

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(c) board and lodging provided for any such pupil on a residential trip.

(2) A charge may not be made—

(a) by virtue of subsection (1)(a) above in respect of the provision for a pupil of education or transport; or

(b) by virtue of subsection (1)(b) above in respect of the entry of a pupil for an examination in any syllabus for that examination;

unless the education or transport is provided or the pupil is entered for the examination in that syllabus by agreement with his parent; and any education, transport or examination entry in respect of which a charge may be made by virtue of either of those provisions is referred to below in this section as an "optional extra ".

(3) The following provisions of this section apply in relation to any charge permitted under this section, other than a charge in respect of education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act; and any charge to which those provisions apply is referred to in those provisions as a regulated charge.

(4) The amount of any regulated charge shall be payable by the parent of the pupil concerned.

(5) A regulated charge shall not exceed the cost of the provision of the optional extra or the board and lodging in question.

(6) Without prejudice to the generality of subsection (5) above, the cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs—

(a) incurred in respect of the provision of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra;

(b) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra; or

(c) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it.

(7) Subject to subsection (8) below, the cost of the provision of an optional extra shall not be taken as including any costs attributable to the provision of teaching staff other than staff engaged as mentioned in subsection (6)(c) above.

(8) Where the optional extra in question consists of tuition in playing any musical instrument the cost of its provision shall include costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition.

(9) Where charging is permitted under this section and the charge would be a regulated charge, the question of whether any charge in respect of the optional extra or the board and lodging should be made, and the amount of any charge to be made, shall be determined—

(a) in a case where the cost of the provision of the optional extra or board and lodging is met by, or from funds at the disposal of, the governing body, by the governing body; and

(b) in any other case, by the local education authority.

(10) The whole or any part of the amount of any charge the local education authority determine under subsection (9)(b) above to make—

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(a) shall, if the governing body so determine, be met by, or from funds at the disposal of, the governing body; and

(b) shall not, to the extent that it is so met, be payable by the parent of the pupil concerned.

Modifications etc. (not altering text)

C87 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C88 Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C89 Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

110 Charges and remissions policies.

(1) Every governing body of a maintained school and every local education authority shall determine and keep under review a policy with respect to the provision of, and the classes or descriptions of case in which they propose to make charges for, any optional extra or board and lodging in respect of which charges are permitted by section 109 of this Act, other than education provided at a grant-maintained school in pursuance of arrangements made under section **[**[F140]68(8) of the Education Act 1993**]**.

(2) No such body or authority shall make such a charge unless they have both—

(a) determined a policy under subsection (1) above with respect to the making of such charges (their "charging policy "); and

(b) determined a policy (their "remissions policy ")—

(i) setting out any circumstances in which they propose to remit (in whole or in part) any charge which would otherwise be payable to them in accordance with their charging policy; and

(ii) in the case of such a policy determined by the governing body of any school other than a grant-maintained school, setting out also any circumstances in which the governing body propose to meet (in whole or in part) any charge payable to the local education authority in accordance with the authority's charging policy for any optional extra or board and lodging provided for a registered pupil at the school.

(3) Any remissions policy determined by the governing body of a maintained school or by a local education authority shall provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip if—

(a) the education provided on the trip is education in respect of which by virtue of section 106 no charge may be made; and

(b) his parents are in receipt of income support **[**[F141], family credit or disability working allowance**]** in respect of any period wholly or partly comprised in the time spent on the trip.

(4) Any such body or authority shall keep under review any remissions policy determined by them under this section.

(5) In this section "optional extra " has the same meaning as in section 109 of this Act.

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Textual Amendments

F140 Words in s. 110(1) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para.128**; S.I. 1994/507, art. 4(1), **Sch.2**.

F141 Words in s. 110 substituted (the substitution coming into force 19.11.1991 for the purposes referred to in art. 2(b) of S.I. 1991/2617; 10.3.1991 for the purposes referred to in art. 2(e) of that S.I. and 6.4.1992 for all other purposes) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 7, **Sch. 3**, Pt. II, para. 12; S.I. 1991/2617, art. 2(b)(e)(f), **Sch.**

Modifications etc. (not altering text)

C90 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para. 9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C91 Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

111 Charges for board and lodging at boarding schools.

(1) Subject to the following provisions of this section, where any registered pupil at any maintained school is provided at the school with board and lodging **[**[F142]there shall be payable in respect of the board and lodging by the parent of the pupil concerned (in the case of a school maintained by a local education authority) to the authority and (in the case of a grant-maintained school) to the governing body charges not exceeding the cost to the authority or governing body of providing the board and lodging**]**.

(2) Where the board and lodging are provided for the pupil—

(a) at a school maintained by a local education authority; and

[[F143](b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,

then, where the school is maintained by the local education authority for his area, that authority shall remit the whole of the charges payable under this section and, in any other case, that authority shall pay the whole of the charges payable under this section to the authority which maintain the school**]**

(3) Where the board and lodging are provided for the pupil—

(a) at a grant-maintained school; and

[[F144](b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him**]**

the whole of the charges payable under this section shall be payable by the authority instead of by the pupil's parent.

[F145](4) . . . . . .

(5) Where **[**[F146]the local education authority for the pupil's area**]** are satisfied that payment of the full charges payable under this section would involve financial hardship to the parent of the pupil concerned, the authority—

(a) in the case of charges payable to the authority, shall remit so much of those charges as falls in accordance with subsection (6) below to be so remitted; and

(b) in the case of charges payable **[**[F147]to another local education authority or**]** to the governing body of a grant-maintained school in respect of board and

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lodging [F148]. . ., shall pay so much of those charges as falls in accordance with that subsection to be so paid.

(6) In the case of any such charges, the amount that falls to be remitted or paid by a local education authority by virtue of subsection (5) (a) or (b) above is—

(a) such part of those charges as the authority consider ought not to be paid by the pupil's parent in order to avoid such hardship as is mentioned in that subsection; or

(b) if in their opinion such hardship cannot otherwise be avoided, the whole of those charges.

Textual Amendments

F142 Words in s. 111 substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 129(a)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F143 S. 111(2)(b) and the words following it substituted (1.4.1994) by 1993 c. 35, ss. 307(1), 308(3), **Sch. 19**, para. 129(b); S.I. 1994/507, art. 4(1), **Sch.2**.

F144 S. 111(3)(b) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 129(c)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F145 S. 111(4) repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 129(d), **Sch. 21**,Pt. II; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

F146 Words in s. 111(5) substituted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 129(e)(i)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F147 Words in s. 111(5)(b) inserted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 129(e)(ii)**; S.I. 1994/507, art. 4(1), **Sch.2**.

F148 Words in s. 111(5)(b) repealed (1.4.1994) by 1993 c. 35, s. 307(3), **Sch. 21**,Pt. II; S.I. 1994/507, art. 4(1), **Sch. 2A**ppendix.

Modifications etc. (not altering text)

C92 S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para. 9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.
S. 111 excluded (1.4.1994) by 1993 c. 35, s. 12, Sch. 2 Pt. III paras. 4, **13(1)(c)** (with s. 298, Sch. 18 para. 12); S.I. 1994/507, art. 4, **Sch.2**.

C93 Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C94 Ss. 106-111 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

C95 S. 111(2)-(6) excluded (1.4.1994) by 1993 c. 35, s. 12, **Sch. 2 Pt. I para. 1(2)** (with s. 298, Sch. 18 para. 12); S.I. 1994/507, art. 4, **Sch. 2**.

C96 S. 111(2)(b) modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para. 9(2)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

Miscellaneous

112 Extension of powers as to trusts for religious education.

(1) Section 2 of the [M1]Education Act 1973 (special powers as to certain trusts for religious education) shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsections—

"(1) Where the premises of a voluntary school or a grant-maintained school have ceased (whether before or after the passing of the Education Reform Act 1988) to be used for a voluntary school or, as the case may be, a grant-maintained

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school, or in the opinion of the Secretary of State it is likely they will cease to be so used, then subject to subsections (2) to (4) below, he may by order made by statutory instrument make new provision as to the use of any endowment if it is shown either—

(a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religious denomination; or

(b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that (subject to subsection (1C) below) the requirements of subsection (1A) below are fulfilled.

(1A) The requirements of this subsection are—

(a) that the school was or has been maintained as a voluntary school since 1st April 1945 (the coming into force of Part II of the Education Act 1944) or, in the case of a grant-maintained school, was so maintained from that date until immediately before it became a grant-maintained school; and

(b) that religious education in accordance with the tenets of the denomination concerned—

(i) is, and from that date has been, provided at the school; or

(ii) where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used;

in pursuance of section 27 or 28 of that Act (religious education in voluntary schools) or section 85 or 86 of the Education Reform Act 1988 (religious education in grant-maintained schools which were formerly voluntary schools).

(1B) For the purposes of this section—

"endowment " includes property not subject to any restriction on the expenditure of capital; and

"shown " means shown to the satisfaction of the Secretary of State.

(1C) For the purposes of this section—

(a) where in the case of any school falling within subsection (1A)(a) above it is shown—

(i) that religious education in accordance with the tenets of a particular denomination is provided at the school; or

(ii) where the premises have ceased to be used for the purposes of the school, such religious education was so provided immediately before the premises ceased to be so used;

such religious education shall be taken to have been provided at the school from 1st April 1945; and

(b) where religious education in accordance with such tenets is shown to have been given to any pupils at a controlled school or a grant-maintained school which was a controlled school immediately before it became a grant-maintained school, the religious education shall be taken to have been given to them at the request of their parents;

unless the contrary is shown."

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(3) In subsection (4) for the words from "in connection with voluntary schools or " to "such a school " there shall be substituted the following paragraphs—

"(a) in connection with schools which are voluntary schools or grant-maintained schools; or

(b) partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the voluntary school or grant-maintained school at the premises that have gone or are to go out of use for such a school;".

Marginal Citations

M1 1973 c. 16.

113 Schemes under the Endowed Schools Acts.

(1) Where under any provision (however expressed) of a scheme made under the Endowed Schools Acts 1869 to 1948 the power of the trustees under the scheme to apply any property to which the scheme relates for purposes authorised by the scheme is subject to the approval or order of any other person—

(a) the scheme shall have effect as if no such approval or order was required; and

(b) no liability shall be deemed to have been incurred in respect of any failure before the passing of this Act to obtain any such approval or order.

(2) The Secretary of State may, on the application of any person whose approval or order would but for this section be required under such a scheme, direct that that requirement shall continue to have effect notwithstanding subsection (1)(a) above; but no liability shall be deemed to have been incurred in respect of any failure before the making of such a direction to obtain any such approval or order.

114 Extension of power to require local education authority to defray expenses of establishing controlled school.

In section 2 of the [M2]Education (Miscellaneous Provisions) Act 1953 (power to require local education authority to defray expenses of establishing controlled school), in paragraph (b) (which limits the power conferred by that section to cases where the new school is required for pupils for whom accommodation in some other voluntary or grant-maintained school has ceased to be available) after the words "for whom " there shall be inserted the words "or for a substantial proportion of whom ".

Marginal Citations

M2 1953 c. 33.

115 Power to determine times of school sessions, etc.

The following section shall be substituted for section 21 of the 1986 Act—

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"**21 Terms, holidays and sessions.**

(1) The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the local education authority to determine the dates at which the school terms and holidays are to begin and end.

(2) The articles of government for every such school shall provide for it to be the duty of the governing body to determine the times at which the school session or, if there is more than one, each school session is to begin and end on any day and, where the governing body propose to make any change in those times, for it to be their duty—

(a) to consult the local education authority and the head teacher before taking any of the actions mentioned in paragraphs (b) to (g) below;

(b) to include a statement in the report they are required to prepare by virtue of section 30 of this Act—

(i) indicating that they propose to make a change in those times;

(ii) specifying the proposed change and when they propose that it should take effect; and

(iii) drawing attention to any comment on the proposal included as an annex to the report by virtue of paragraph (c) below and including such response to the comment as they may consider appropriate;

(c) if so required by the local education authority, to include as an annex to that report such written comment on the proposal as the authority may provide for that purpose;

(d) to provide an opportunity for discussion of the proposal at a parents' meeting held by virtue of section 31 of this Act;

(e) to consider any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification;

(f) not to effect any change in those times except at the beginning of a school year; and

(g) not less than three months before any change in those times is to take effect—

(i) to inform the local education authority; and

(ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are informed;

of the change and of when it is to take effect.

(3) For the purposes of any provision included in the articles of government for any such school by virtue of subsection (2) above, the times determined by the local education authority immediately before the coming into force of section 115 of the Education Reform Act 1988 as the times at which the school session or, if there is more than one, each school session is to begin and end on any day shall be taken to have been determined by the governing body.

(4) The articles of government for every aided and special agreement school shall provide for it to be the duty of the governing body to determine—

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(a) the dates and times at which the school terms and holidays are to begin and end; and

(b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day.

(5) The articles of government for every county, voluntary and maintained special school shall provide for the governing body to have power to require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school."

116 Provision for delegation of functions by governing bodies of county, voluntary and maintained special schools.

In section 8 of the 1986 Act (proceedings and tenure of office of governors of county, voluntary or maintained special school), in subsection (7) (provision that may be included in regulations made by the Secretary of State as to meetings and proceedings of governing bodies, etc.) the following paragraphs shall be inserted after paragraph (a) —

"(aa) for the establishment of committees by the governing bodies of such schools (whether or not including persons who are not members of the governing body concerned) and for the constitution, meetings and proceedings of such committees;

(ab) for the delegation of functions of the governing body of any such school in prescribed circumstances to committees established by that body, to any member of that body or to the head teacher;".

Chapter V: general and supplementary provisions

117 Obligation to enter pupils for prescribed public examinations.

(1) Subject to the following provisions of this section, the governing body of every maintained school shall secure that each registered pupil at the school is entered, at such time as they consider appropriate, for each prescribed public examination for which he is being prepared at the school at the time in question in each syllabus for that examination for which he is being so prepared.

(2) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination, or for any examination in any syllabus for that examination, if either—

(a) the governing body consider that there are educational reasons in the case of that particular pupil for not entering him for that examination or (as the case may be) for not entering him for that examination in that syllabus; or

(b) the parent of the pupil requests in writing that the pupil should not be entered for that examination or (as the case may be) for that examination in that syllabus.**[**[F149] but this subsection does not apply to an examination which is part of the assessment arrangements for key stage four and applies in the case of that pupil; and in this subsection, in relation to that pupil, "assessment arrangements " has the meaning given by section 2(2)(c) of this Act and "key stage four " means the period referred to in section 3(3)(d) of this Act**]**

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(3) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination in any syllabus for that examination if the governing body have secured that pupil's entry for another prescribed public examination in a corresponding syllabus.

(4) For the purposes of subsection (3) above, a syllabus for any such examination shall be regarded as corresponding to a syllabus for another such examination if the same course of study is provided at the school concerned in preparation for both syllabuses.

(5) As soon as practicable after determining whether or not to secure the entry of any pupil for a prescribed public examination in any syllabus for which he is being prepared at the school the governing body of a maintained school shall notify the parent of the pupil in writing of their determination in relation to each such syllabus.

Textual Amendments

F149 Words in s. 117(2) inserted (27.7.1993) by 1993 c. 35, **s. 240(5)**

Modifications etc. (not altering text)

C97 S. 117 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
S. 117 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch.2**.

118 General and supplementary provisions relating to charges.

(1) Nothing in the provisions of this Chapter relating to charges shall be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of any maintained school or any local education authority for voluntary contributions for the benefit of the school or any school activities.

(2) Any request or invitation made by or on behalf of any such body or authority for contributions for the benefit of any school or school activities shall not be regarded for the purposes of subsection (1) above as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made—

(a) that there is no obligation to make any contribution; and

(b) that registered pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.

(3) Nothing in section 106(6) of this Act shall prevent the parent of a registered pupil at a maintained school from being required to pay for or supply any materials for use for the purposes of the production in the course of the provision of education for the pupil at the school of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil.

(4) Nothing in this Chapter relating to charges with respect to a registered pupil at a maintained school shall be read as relating to—

(a) charges made by persons other than the governing body or the local education authority; or

(b) charges to be paid by persons other than the parent of the pupil or the pupil himself.

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(5) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—

(a) such information relevant for the purposes of this Chapter as to the school hours at the school; and

(b) such information as to the policies determined under section 110 which apply in relation to the school;

as may be prescribed.

(6) Any sum payable under section 108, 109 or 111 of this Act by the parent of any registered pupil at a maintained school shall be recoverable summarily as a civil debt.

(7) In this Chapter—

(a) "equipment " does not include clothing;

(b) "the local education authority " means, in relation to a maintained school which is a school maintained by a local education authority, the authority by whom the school is maintained;

(c) "maintained school " means—

(i) any school maintained by a local education authority; and

(ii) any grant-maintained school;

(d) references to a public examination (including a prescribed public examination) are references to such an examination as it applies in relation to persons entered for any syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment for the purposes of determining the achievements of persons entered for that examination takes place;

(e) references to an examination requirement for a syllabus for any such examination are references to any requirement a pupil must meet in order to qualify for assessment for the purposes of determining his achievements in that examination in that syllabus; and

(f) "residential trip " has the meaning given by section 106(10) of this Act.

(8) For the purposes of subsection (7) above an assessment for the purposes of determining the achievements of persons entered for any examination is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for any syllabus in that examination who has met the examination requirements for that syllabus whether that person has passed or failed and, if grades are assigned for the purposes of the examination, the grade to be assigned in his case.

Modifications etc. (not altering text)

C98 S. 118 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

C99 S. 118 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
S. 118 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

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Interpretation of Part I

119 Interpretation of Part I.

(1) For the purposes of this Part of this Act—

(a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and

(b) "reception class " means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate together with pupils of that age.

(2) References in this Part, in relation to proposals under section 28, [[F150]. . ., 89 or 92] of this Act, to the date of publication of the proposals are references—

(a) to the date on which the requirements of this Act, or of regulations under this Act, with respect to the publication of the proposals (or of any notice relating to the proposals) are satisfied; or

(b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different dates, to the last of those dates;

and references to the time at which such proposals are published shall be construed accordingly.

(3) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (2) above be taken to be satisfied on the first date in respect of which it is satisfied.

Textual Amendments

F150 Words in s. 119 repealed (1.1.1994 for "52(4) " otherwise*prosp.*) by 1993 c. 35, ss. 307(3), 308(3), **Sch. 21**,Pt. I; Which repeal was in force at 1.1.1994 for specified words by S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5 Sch. 2) (as amended by S.I. 1994/436, **art.2**).

PART II

HIGHER AND FURTHER EDUCATION

Modifications etc. (not altering text)

C100 Pt. II (ss. 120-161) modified (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 84(2)**; S.I. 1992/831, art. 2, **Sch.1**.

CHAPTER I

LOCAL EDUCATION AUTHORITY FUNCTIONS WITH RESPECT TO HIGHER AND FURTHER EDUCATION

120

(1) A local education authority shall no longer be under a duty to secure the provision for their area of facilities for higher education, that is to say, education provided by means of a course of any description mentioned in Schedule 6 to this Act.

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[F151](2) . . . . . .

(3) A local education authority shall have power—

(a) to secure the provision for their area of such facilities for higher education as appear to them to be appropriate for meeting the needs of the population of their area;

(b) to secure the provision of higher education for persons **[**[F152]from other areas**]**; and

(c) to do anything which appears to them to be necessary or expedient for the purposes of or in connection with such provision.

(4) In exercising their power under subsection (3)(a) above a local education authority shall have regard to any facilities for higher education provided by **[**[F153]institutions within the higher education sector**][**[F154]or the further education sector**]** and other bodies which are provided for, or available for use by persons living in, their area.

(5) In the 1944 Act—

(a) section 42 (which contains provisions relating to schemes for regulating the provision by local education authorities of further education and is no longer required for the purposes of section 41 of that Act as substituted by this section); and

(b) sections 43 to 46 (which relate to county colleges and have never been put into operation);

shall cease to have effect.

[F155](6) . . . . . .

[F155](7) . . . . . .

[F155](8) . . . . . .

(9) In section 114 of the 1944 Act (interpretation)—

(a) in subsection (1)—

(i) after the definition of "further education" there shall be inserted the following definition—

" "Higher education" has the meaning assigned to it by section 120(1) of the Education Reform Act 1988;"; and

[F156](ii) . . . . . .

[F156](b) . . . . . .

(10) The Secretary of State may by order amend Schedule 6 to this Act.

Textual Amendments

F151 S. 120(2) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(a), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F152 Words in s. 120(3)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(b)**; S.I. 1992/831, art. 2, **Sch.3**.

F153 Words in s. 120(4) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(c)(i)**; S.I. 1992/831, art. 2, **Sch.3**.

F154 Words in s. 120(4) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(c)(ii)**; S.I. 1992/831, art. 2, **Sch.3**.

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F155 S. 120(6)-(8) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(d), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F156 S. 120(9)(a)(ii)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(d), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

CHAPTER II

REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

Modifications etc. (not altering text)

C101 Pt. II Ch. II (ss. 121-138) modified (temp. until 31. 3. 1993) (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 64(1)**; S.I. 1992/831, art. 2, **Schs.1** and 3.

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 [M3]Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

Marginal Citations

M3 S.I. 1981/1086.

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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.

F157(2) . . . . . .

F157(3) . . . . . .

F157(4) . . . . . .

F157(5) . . . . . .

(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.

Textual Amendments

F157 S. 122(2)-(5) repealed (6.5.1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 31, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**

Modifications etc. (not altering text)

C102 S. 122 applied by S.I. 1991/1391, **art. 2**

[F158 122A Orders transferring further education corporations to higher education sector.

(1) The Secretary of State may by order provide for the transfer of a further education corporation to the higher education sector if it appears to him that the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number.

(2) Where an order under this section is made in respect of a further education corporation, sections 124A and 125 of this Act shall have effect as if—

(a) on the date the order has effect, the corporation were established as a higher education corporation, and

(b) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation.

(3) In determining in pursuance of subsection (2)(b) above the number of members to appoint within each variable category of members, the Secretary of State shall secure that at least half of all the members of the higher education corporation as first constituted are independent members; and in this subsection "variable category of members" and "independent members" have the same meaning as in Schedule 7A to this Act.

(4) On such date as may be specified in the order the corporation shall cease to be a further education corporation and become a higher education corporation and any member of

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the further education corporation who is not re-appointed by the Secretary of State in pursuance of subsection (2)(b) above shall cease to hold office on that date.

Textual Amendments

F158 S. 122A inserted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), **s. 74(1)**; S.I. 1992/831, art. 2, **Sch. 3**

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 **[**[F159]or which has become a higher education corporation by virtue of section 122A 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.

[[F160](3) Schedule 7 to this Act has effect with respect to each higher education corporation established before the appointed day (within the meaning of section 124A of this Act) unless an instrument of government for the corporation made under that section has effect.

[F160](4) A higher education corporation established under section 122 of this Act on or after that day for the purpose of conducting any institution shall be established initially under the name given in the order under that section establishing the corporation.**]**

Textual Amendments

F158 S. 122A inserted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), **s. 74(1)**; S.I. 1992/831, art. 2, **Sch. 3**

F159 Words in s. 123(1) added (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 32(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F160 S. 123(3)(4) substituted for s. 123(3) (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 32(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

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

(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

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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 **[**[F161]students having learning difficulties within the meaning of section 41(9) of the Education Act 1944**]**);

(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.

[F162](4) . . . . . .

Textual Amendments

F161 Words in s. 124(2)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 33(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F162 S. 124(4) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 33(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[[F163]**124A Constitution and conduct of corporations.**

(1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.

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(2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.

(3) An order of the Privy Council may—
- (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
- (b) modify an instrument made in pursuance of this subsection.

(4) An instrument of government of a higher education corporation—
- (a) shall comply with the requirements of Schedule 7A to this Act; and
- (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.

(5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.

(6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.

(7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

(8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.

(9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.

(10) In this section and section 124C "the appointed day" means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

Textual Amendments

F163 Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(1)**; S.I. 1992/831, art. 2, **Sch. 1**

124B Accounts.

(1) It shall be the duty of each corporation—
- (a) to keep proper accounts and proper records in relation to the accounts; and
- (b) to prepare in respect of each financial year of the corporation a statement of accounts.

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(2) The statement shall—

(a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and

(b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.

(3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.

(4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.

(5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.

(6) No person shall be qualified to be appointed auditor under that subsection except—

(a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;

(b) a member of the Chartered Institute of Public Finance and Accountancy; or

(c) a firm each of the members of which is a member of that institute.

(7) In this section, in relation to a corporation—

"the first financial year" means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

"financial year" means that period and each successive period of twelve months.

Textual Amendments

F163 Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(1)**; S.I. 1992/831, art. 2, **Sch. 1**

Modifications etc. (not altering text)

C103 S. 124B(7): power to exclude conferred (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 78(2)**; S.I. 1992/831, art. 2, **Sch. 1**

124C Initial and transitional arrangements.

(1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.

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(2) In subsection (1) above "variable category of members" and "independent members" have the same meaning as in Schedule 7A to this Act.

(3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.

(4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.

(5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

Textual Amendments

F163 Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(1)**; S.I. 1992/831, art. 2, **Sch. 1**

124D Exercise of Powers by Privy Council.

(1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.

(2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.

(3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.

(4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.

(5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.

Textual Amendments

F163 Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(1)**; S.I. 1992/831, art. 2, **Sch. 1**

Modifications etc. (not altering text)

C104 S. 124D extended (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 76(7)**; S.I. 1992/831, art. 2, **Sch. 1**

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 **[**[F164]the Privy Council**]**.

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(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 **[**[F164]the Privy Council**]**.

(6) **[**[F164]The Privy Council**]** 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, **[**[F164]the Privy Council**]** 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.

Textual Amendments

F163 Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(1)**; S.I. 1992/831, art. 2, **Sch. 1**

F164 Words in s. 125(1)(5)-(7) substituted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 71(2)**; S.I. 1992/831, art. 2, **Sch. 1**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/10/1998

[F165 125A Charitable status of a higher education corporation.

(1) A higher education corporation shall be a charity which is an exempt charity for the purposes of the M4 Charities Act 1993.

(2) So far as it is a charity, any institution which—

(a) is administered by or on behalf of any higher education corporation, and

(b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,

shall also be an exempt charity for the purposes of the Charities Act 1993.

(3) In this section "charity" and "institution" have the same meaning as in the Charities Act 1993.

Textual Amendments

F165 S. 125A inserted (1.10.1998) by 1998 c. 30, **s. 41(1)**; S.I. 1998/2215, **art. 2**

Marginal Citations

M4 1993 c. 10.

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.

(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

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Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Textual Amendments

F165 S. 125A inserted (1.10.1998) by 1998 c. 30, **s. 41(1)**; S.I. 1998/2215, **art. 2**

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

Modifications etc. (not altering text)

C105 S. 127 applied (with modifications) (1.9.1992) by S.I. 1992/1849, **art.4**.

C106 S. 127 applied (with modifications) (1.10.1992) by S.I. 1992/2151, **art.4**.

C107 S. 127 applied (with modifications) (1.3.1995) by S.I. 1995/183, **art.4**.

C108 S. 127 applied (with modifications) (1.8.1996) by S.I. 1996/1225, **art.4**.

S. 127 applied (with modifications) (1.8.2000) by S.I. 2000/1383, **art. 3**

S. 127 applied (with modificaitons) (1.8.2000) by S.I. 2000/355, **art. 3**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

S. 127 applied (with modifications) (1.8.2001) by S.I. 2001/1340, **art. 3**

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;

[[F166](iii) a higher education funding council**]**

[[F167](v) a further education funding council**]**

(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

[[F168](b) the higher education funding council**]**

(5) In this section "charity" and "charitable purposes" have the same meanings as in **[**[F169]the Charities Act 1993**]**.

[[F170](6) An order under this section may apply section 127 of this Act with such modifications as the Secretary of State may consider necessary or desirable.**]**

Textual Amendments

F166 S. 128(1)(b)(iii) substituted for s. 128(1)(b)(iii)(iv) (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(a)(i)**; S.I. 1992/831, art. 2, **Sch. 1**.

F167 S. 128(1)(b)(v) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(a)(ii)**; S.I. 1992/831, art. 2, **Sch. 1**.

F168 S. 128(4)(b) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

F169 Words in s. 128(5) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6**, para.30

F170 S. 128(6) added (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(c)**; S.I. 1992/831, art. 2, **Sch. 1**.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Designation of certain institutions for funding by the Polytechnics and Colleges Funding Council, etc.

129 Designation of institutions.

[[F171](1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by a higher education funding council—

(a) any institution which appears to him to fall within subsection (2) below; and

(b) any institution which is, or is to be, conducted by a successor company to a higher education corporation.

[F171](2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number**]**

[F172](3) . . . . . .

[F172](4) . . . . . .

(5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if-

(a) it is a company limited by a guarantee formed and registered under the [M5]Companies Act 1985;

(b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation;

(c) its objects—

(i) are exclusively charitable according to the law of England and Wales; and

(ii) include the conduct of the institution which was at that time conducted by that corporation;

(d) its memorandum and articles of association have been approved by the Secretary of State; and

(e) an order has been made under section 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this section is made).

Textual Amendments

F171 S. 129(1)(2) substituted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 72(1)(a)**; S.I. 1992/831, art. 2, **Sch. 1**

F172 S. 129(3)(4) repealed (6.5.1992) by Further and Higher Education Act 1992 (c. 13), ss. 72(1)(b), 93(2), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**

Modifications etc. (not altering text)

C109 S. 129 extended (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), **s. 74(2)**; S.I. 1992/831, art. 2, **Sch.3**.

Marginal Citations

M5 1985 c. 6.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F173 129A Government and conduct of designated institutions.

(1) This section has effect in relation to any designated institution, other than an institution conducted by a company.

(2) For each such institution there shall be—
   (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
   (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government),

   each of which meets the requirements of subsection (3) below.

(3) Those requirements are that the instrument—
   (a) was in force when the designation took effect; or
   (b) is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below,

   and is approved for the purposes of this section by the Privy Council.

(4) In this section "regulatory instrument", in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.

(5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the body of persons responsible for the management of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.

(6) If an instrument approved by the Privy Council for the purposes of this section—
   (a) falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it; or
   (b) was made by the body of persons responsible for the management of the institution,

   the instrument may be modified by those persons.

(7) Either of the instruments referred to in subsection (2) above may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of this section may be modified by any other person without the Privy Council's consent.

(8) Before exercising any power under subsection (7) above in relation to any instrument the Privy Council shall consult—
   (a) the governing body of the institution, and
   (b) where there is such a power as is mentioned in subsection (3)(b) above to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,

   so far as it appears to them to be practicable to do so.

(9) Nothing in this section requires further approval for any instrument approved by the Secretary of State for the purposes of section 156 of this Act, and references in this section to instruments approved by the Privy Council for the purposes of this section include instruments so approved by the Secretary of State.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) In this section and section 129B "designated institution" means an institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect but does not include any institution established by Royal Charter.**]**

Textual Amendments

F173 Ss. 129A, 129B inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 73(1)**; S.I. 1992/831, art. 2, **Sch.1**.

129B [F174]Designated institutions conducted by companies.

(1) This section has effect in relation to any designated institution conducted by a company.

(2) The articles of association of the company shall incorporate—

(a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and

(b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).

(3) The Privy Council may give to the persons who appear to them to have effective control over the company such directions as they think fit for securing that—

(a) the memorandum or articles of association of the company; or

(b) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company,

are amended in such manner as they may specify in the direction.

(4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Privy Council for their approval and they have notified their approval to the company.

(5) Before giving any directions under subsection (3) above the Privy Council shall consult the persons who appear to them to have effective control over the company.

Textual Amendments

F174 Ss. 129A, 129B inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 73(1)**; S.I. 1992/831, art. 2, **Sch.1**.

130 Transfer of property, etc., to certain designated institutions.

(1) This section applies to an institution designated under section 129 of this Act in any case where—

(a) the order designating the institution under that section so provides; and

(b) immediately before the date on which the designation takes effect (referred to below in this section, in relation to such an institution, as the designation date) the institution is an institution assisted by a local education authority (referred to below in this section as the former assisting authority).

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Subject to subsection (4) below and section 198 of this Act, on the designation date in relation to any institution to which this section applies the property, rights and liabilities mentioned in subsection (3) below shall be transferred to, and by virtue of this Act vest in, the appropriate transferee.

(3) The property, rights and liabilities referred to in subsection (2) above are—
- (a) all land or other property which, immediately before that date, was property of the former assisting authority used or held for the purposes of that institution; and
- (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes.

(4) Subsection (2) above shall not apply to—
- (a) any liability of the former assisting authority in respect of the principal of, or any interest on, any loan; or
- (b) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them.

(5) In subsection (2) above, "the appropriate transferee" means—
- (a) in relation to an institution conducted by a body corporate, that body; and
- (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution.

(6) Subject to subsection (7) below, where any persons so specified are the appropriate transferee for the purposes of subsection (2) above—
- (a) any land or other property or rights transferred to them under this section shall be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution; and
- (b) they shall incur no personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.

(7) Subsection (6)(a) above shall not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution.

(8) In this Act, "transfer date" means, in relation to an institution to which this section applies, the designation date in relation to that institution.

New arrangements for funding higher education

[F175]131 . . . . . .

Textual Amendments

F175 S. 131 repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 35, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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[F176]132 . . . . . .

Textual Amendments

F176 S. 132 repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 35, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

133 Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education.

[[F177](1) A higher education funding council shall have power to make payments, subject to such terms and conditions as the council think fit, to—

(a) any local education authority in their area;

(b) the London Residuary Body;

(c) the London Pensions Fund Authority; and

(d) the governing body of any institution designated under section 129 of this Act, as originally enacted;

in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.**]**

(2) In subsection (1) above "relevant expenditure" means—

(a) in relation to a local education authority **[**[F178]the London Residuary Body or the London Pensions Fund Authority**]**, expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and

(b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution.

(3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date **[**[F179]and in any other case the reference to further education shall be read as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect on that date**]**.

(4) Each of the following, that is to say—

(a) a local education authority;

[[F180](aa) the London Residuary Body;

[F180](ab) the London Pensions Fund Authority; and**]**

(b) the governing body of any institution so designated;

shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F177 S. 133(1) substituted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), **s. 67(1)**; S.I. 1992/831, art. 2, **Sch.3**.

F178 Words in s. 133(2)(a) inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 67(2)**; S.I. 1992/831, art. 2, **Sch. 1**.

F179 Words in s. 133(3) added (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 67(3)**; S.I. 1992/831, art. 2, **Sch. 1**.

F180 S. 133(4)(aa)(ab) inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), **s. 67(4)**; S.I. 1992/831, art. 2, **Sch. 1**.

Modifications etc. (not altering text)

C110 S. 133 amended*(retrospectively)* (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 67(5)**; S.I. 1992/831, art. 2, **Sch. 1**.
S. 133 modified (1.4.1993) by S.I. 1993/563, art. 2(b)(i), **Sch.1**

[F181]134 . . . . . .

Textual Amendments

F181 S. 134 repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 35, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Supplementary

[F182]135 Inspection of accounts.

(1) The accounts of—

(a) any university;

(b) any higher education corporation; or

[[F183](c) any designated institution within the meaning of section 129A of this Act**]** shall be open to the inspection of the Comptroller and Auditor General.

(2) In the case of any higher education corporation or of any such institution as is mentioned in subsection (1)(a) or (c) above—

(a) the power conferred by subsection (1) above; and

(b) the powers under sections 6 and 8 of the [M6]National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act;

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which **[**[F184]financial support has been given to them under section 65 of the Further and Higher Education Act 1992.**]**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education Reform Act 1988 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F182 S. 135(2) modified by S.I. 1993/563 art. 2(b)(i), Sch.1 as amended (19.4.1993) by 1993/870, art.2

F183 S. 135(1)(c) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 36(a)**; S.I. 1992/831, art. 2, **Sch. 1**.

F184 Words in s. 135(2) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 36(b)**; S.I. 1992/831, art. 2, **Sch.3**.

Marginal Citations

M6 1983 c. 44.

136 Transfer to Polytechnics and Colleges Funding Council of property and staff of NAB.

(1) In this section "NAB" means the company limited by guarantee registered under the Companies Acts 1948 to 1983 under the name of the National Advisory Body for Public Sector Higher Education.

(2) Notwithstanding anything in the memorandum of association of NAB, if upon the winding up or dissolution of NAB any property remains after the satisfaction of all its debts and liabilities the property shall be transferred to, and by virtue of this Act vest in, the **[**[F185]Higher Education Funding Council for England**]**.

[F186](3) . . . . . .

[F186](4) . . . . . .

[F186](5) . . . . . .

[F186](6) . . . . . .

[F186](7) . . . . . .

Textual Amendments

F185 Words in s. 136(2) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 37(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F186 S. 136(3)-(7) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 37(b), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

137 Control of disposals of land.

(1) Subject to subsection (9) below, this section applies to any disposal after 22nd July 1987—

(a) of land which, immediately before that date, was used or held for the purposes of any relevant institution; or

(b) of land which was obtained before that date for the purpose of being so used or held and had not before that date been appropriated to any other use.

(2) For the purposes of subsection (1) above, an institution is a relevant institution if it falls within section 121(2) [F187]. . . of this Act.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(3) Except with the consent of the Secretary of State, no local education authority shall after the passing of this Act make a disposal to which this section applies; and if at any time after 22nd July 1987 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the preceding provisions of this subsection if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.

(4) Any consent for the purposes of subsection (3) above may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.

(5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of subsection (3) above as a consent, or a consent subject to those conditions, given under this section.

(6) This section has effect notwithstanding anything in section 123 of the [M7]Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 201 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given or complied with.

(8) In this section references to disposing of land include references to—
   (a) granting or disposing of any interest in land;
   (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
   (c) granting an option to acquire any land or any such interest.

(9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

Textual Amendments

F187 Words in s. 137(2) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 38, **Sch.9**; S.I. 1992/831, art. 2, **Sch.1**.

Marginal Citations

M7 1972 c. 70.

138 Construction of references to land held for the purposes of an institution.

(1) This section applies for the purpose of the construction of the following provisions of this Act—
   (a) section 126(4)(a);
   (b) section 130(3)(a); and

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(c) section 137(1)(a).

(2) Where at any time any land is used for the purposes of an institution to which any of those provisions applies, any interest of a local education authority in that land subsisting at that time shall be taken for the purposes of that provision to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

[F188]CHAPTER III

Textual Amendments

F188 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Further and higher education funding schemes

[F189]139 . . . . . .

Textual Amendments

F189 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F190]140 . . . . . .

Textual Amendments

F190 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F191]141 . . . . . .

Textual Amendments

F191 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F192]142 . . . . . .

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F192 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F193]143 . . . . . .

Textual Amendments

F193 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F194]144 . . . . . .

Textual Amendments

F194 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F195]145 . . . . . .

Textual Amendments

F195 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F196]146 . . . . . .

Textual Amendments

F196 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F197]147 . . . . . .

Textual Amendments

F197 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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Appointment and dismissal of staff during financial delegation

[F198]148 . . . . . .

Textual Amendments

F198 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F199]149 . . . . . .

Textual Amendments

F199 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Withdrawal of delegated powers

[F200]150 . . . . . .

Textual Amendments

F200 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Government and conduct of maintained further and higher education institutions

[F201]151 . . . . . .

Textual Amendments

F201 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F202]152 . . . . . .

Textual Amendments

F202 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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Government of designated assisted institutions

[F203]153 . . . . . .

Textual Amendments

F203 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Miscellaneous and supplementary

[F204]154 . . . . . .

Textual Amendments

F204 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

[F205]155 . . . . . .

Textual Amendments

F205 Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

CHAPTER IV

MISCELLANEOUS AND SUPPLEMENTARY

[F206]156 Government and conduct of certain further and higher education institutions.

. . . . . .

Textual Amendments

F206 S. 156 repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Modifications etc. (not altering text)

C111 S. 156: by Further and Higher Education Act 1992 (c. 13), **s. 85(1)**; S.I. 1992/831, art. 2, **Sch.3**, it is provided (1. 4. 1993) that s. 156 shall cease to have effect in relation to designated assisted institutions.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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157 Variation of trust deeds, etc.

[[F207](1) An order of the Privy Council may modify any trust deed or other instrument—

(a) relating to or regulating any such institution as is mentioned in subsection (2) below; or

(b) relating to any land or other property held by any person for the purposes of any such institution.

[F207](2) The institutions referred to in subsection (1) above are—

(a) any institution conducted by a higher education corporation; and

(b) any institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect, other than an institution established by Royal Charter.

[F207](3) Before making any modifications under subsection (1) above of any trust deed or other instrument the Privy Council shall so far as it appears to them to be practicable to do so consult—

(a) the governing body of the institution;

(b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons; and

(c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in paragraphs (a) and (b) above, the trustees.**]**

(4) Any provision of any instrument relating to any land or other property held for the purposes of any institution maintained [F208]. . . by a local education authority to which this subsection applies which—

(a) confers on any person an option to acquire an interest in that land or other property; or

(b) provides (in whatever terms) for the determination or forfeiture of any such interest;

in the event of the institution's ceasing to be maintained [F208]. . . by a local education authority or (as the case may be) by the authority in question shall, if the institution becomes **[**[F209]an institution within the further education sector**]** an institution within **[**[F210]the higher education sector**]** or a grant-aided institution, have effect as if the event referred to were the institution's ceasing to be a publicly funded institution.

(5) Subsection (4) above applies—

(a) to an institution maintained by a local education authority if it is an institution providing full-time education which is maintained by the authority in exercise of their further or higher education functions; and

[F211](b) . . . . . .

(6) In that subsection "publicly funded institution" means an institution which is an institution of any one or more of the following descriptions, that is to say—

(a) an institution maintained or assisted by a local education authority;

(b) **[**[F212]an institution within the further education sector or**]**an institution within **[**[F213]the higher education sector**]**; and

(c) a grant-aided institution.

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Textual Amendments

F207 S. 157(1)-(3) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), **s. 75**; S.I. 1992/831, art. 2, **Sch. 1**.

F208 Words in s. 157(4) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 39(a)(i), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F209 Words in s. 157(4) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 39(a)(ii)**; S.I. 1992/831, art. 2, **Sch.3**.

F210 Words in s. 157(4) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 39(a)(iii)**; S.I. 1992/831, art. 2, **Sch.3**.

F211 S. 157(5)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 39(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F212 Words in s. 157(6)(b) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 39(c)(i)**; S.I. 1992/831, art. 2, **Sch.3**.

F213 Words in s. 157(6)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 39(c)(ii)**; S.I. 1992/831, art. 2, **Sch.3**.

158 Reports and returns to Secretary of State.

(1) The persons mentioned in subsection (2) below shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purposes of the exercise of any of his functions in relation to education.

(2) Those persons are—

(a) the governing body of—

F214(i) . . . . . .

(ii) any institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions; or

F214(iii) . . . . . .

F214(b) . . . . . .

Textual Amendments

F214 S. 158(2)(a)(i)(iii)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 40, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

159 Information with respect to educational provision in institutions providing further or higher education.

(1) The Secretary of State may make regulations requiring every local education authority to publish, in relation to each relevant institution maintained or assisted by the authority, such information with respect to the matters mentioned in subsection (3) below as may be prescribed.

(2) For the purposes of this section, an institution is a relevant institution in relation to a local education authority if it is either—

(a) an institution providing full-time education which is maintained by that authority in exercise of their further or higher education functions; or

F215(b) . . . . . .

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(3) The matters referred to in subsection (1) above are—

(a) the educational provision made by the institution for students at the institution; and

(b) the educational achievements of students at the institution (including the results of examinations, tests and other assessments of those students).

(4) The information shall be published in such form and manner and at such times as may be prescribed; and the regulations may provide for a local education authority to make arrangements with the governing body of any relevant institution for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution.

Textual Amendments

F215 S. 159(2)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 41, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

160 Adjustments of block grant in respect of expenditure on advanced further education.

(1) The block grant payable to a local authority in England for any year beginning on or after the date appointed for the purposes of section 126(1) of this Act shall not be subject to adjustment in accordance with paragraph 6 of Schedule 10 to the [M8]Local Government, Planning and Land Act 1980 (which relates to adjustments of block grant in respect of expenditure on advanced further education as between local authorities).

(2) In relation to any expenditure incurred by such an authority on or after that date in the exercise of the authority's functions as a local education authority, sub-paragraphs (3)(a) and (5)(b) of paragraph 5 of that Schedule (which define certain expenditure for the purposes of that paragraph) shall each have effect as if the words "other than that to which paragraph 6 below applies" were omitted.

(3) On that date Part I of that Schedule (which relates to adjustments of block grant in respect of expenditure on advanced further education as between England and Wales) shall cease to have effect.

(4) Anything done by the Secretary of State before the passing of this Act for the purpose of making in the block grant payable to a local authority in England adjustments under paragraph 5 or 6 of that Schedule in respect of expenditure incurred in the years beginning in 1985, 1986 and 1987 by local authorities in England in connection with further education of an advanced character (including the training of teachers) shall be deemed to have been done in accordance with that paragraph.

(5) In this section—

"local authority" means a body which is a local authority for the purposes of Part VI of that Act; and

"year" has the same meaning as in that Part.

Marginal Citations

M8 1980 c. 65.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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161 Interpretation of Part II.

(1) In this Part of this Act, except where the context otherwise requires—

(a) references to courses of advanced further education shall be read in accordance with section 121(4);

(b) references to the further or higher education functions of a local education authority are references to the functions of the authority under either or both of the following—

(i) section 41 of the 1944 Act (provision of facilities for further education); and

(ii) section 120(3) and (4) of this Act (provision of facilities for higher education);

F216(c) . . . . . .

(d) "governing body" includes, in relation to any institution, a board of governors of the institution or any persons responsible for the management of the institution (but not formally constituted as such a body or board).

(2) References in this Part of this Act to the total full-time equivalent enrolment number of any institution at any time are references to the aggregate of its full-time equivalent enrolment numbers at that time for courses of all descriptions then offered by that institution.

(3) For the purposes of this Part of this Act the full-time equivalent enrolment number at any time of any institution for courses of any description shall be determined in accordance with Schedule 9 to this Act.

Textual Amendments

F216 S. 161(1)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 42, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

PART III

EDUCATION IN INNER LONDON

Reorganisation of provision of education in inner London

162 Abolition of ILEA.

(1) On 1st April 1990 the following shall cease to exist—

(a) the Inner London Education Authority (in this Part referred to as "ILEA") and any education committee established by that Authority; and

(b) the Inner London Education Area.

(2) That date is in this Part referred to as the "abolition date".

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163 New local education authorities for areas in inner London.

(1) On the abolition date each inner London council shall become the local education authority for its area, and references to a local education authority in the Education Acts 1944 to **[**[F217]1993**]** or in any other enactment shall be construed accordingly.

(2) In this Part, "inner London council" means the council of an inner London borough or (in their capacity as a local authority) the Common Council of the City of London.

Textual Amendments

F217 Words in s. 163(1) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19 para.131**; S.I. 1993/1975, **art. 9 Sch. 1**

164 Extension of functions of London Residuary Body.

(1) For the purpose of enabling it to discharge the functions conferred or imposed on it by or under the following provisions of this Part in connection with the abolition of ILEA, the London Residuary Body shall not be required in accordance with section 67 of the 1985 Act to submit to the Secretary of State a scheme for its winding up, but shall, subject to the provisions of this Part, continue in existence notwithstanding the completion of its work under that Act and the disposal of any of its functions, property, rights and liabilities to which that section applies.

(2) That section shall apply in relation to the London Residuary Body with the following modifications—

(a) references to its functions and work shall not apply to its functions and work under this Part;

(b) references to property, rights and liabilities shall not apply to property, rights and liabilities transferred to it, or held, acquired or incurred by it by virtue of, or in the exercise of any of its functions under, this Part; and

(c) in subsection (1)(b) the words "the winding up of the residuary body and" shall be omitted.

(3) In this Part "the 1985 Act" means the [M9]Local Government Act 1985.

Marginal Citations

M9 1985 c. 51.

Disposal of functions and property of ILEA

165 Development plans for education.

(1) Not later than such date as the Secretary of State may direct each inner London council shall prepare and publish a plan (referred to in this section as a "development plan")—

(a) describing the manner in which the council proposes to perform the functions of a local education authority for its area (in this Part referred to, in relation to each such council, as the council's "LEA functions"); and

(b) giving the additional information required by subsection (2) below.

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(2) A council's development plan shall—

(a) list the property belonging to ILEA which, in the council's opinion, needs to be transferred to it for the purpose of enabling it properly to perform its LEA functions;

(b) specify—

(i) all schools situated inside the council's area which are currently maintained by ILEA; and

(ii) any schools situated outside the council's area which are currently so maintained and which the council would wish to maintain in exercise of its LEA functions; and

(c) give particulars of the management structure (within the meaning of section 169 of this Act) which the council proposes to adopt for the purpose of the exercise of those functions.

(3) In preparing a development plan, a council shall—

(a) consult the local authorities for adjacent areas; and

(b) take into account any guidance given by the Secretary of State (whether as to the contents of the plan or as to consultation with any other persons, and whether as to such plans generally or as to the particular council's plan).

(4) Guidance given by the Secretary of State for the purposes of subsection (3)(b) above shall be published in such manner as the Secretary of State thinks fit.

(5) A development plan shall be published in such manner as the council concerned considers likely to bring it to the attention of persons (both inside and outside its area) who may be affected by the performance by the council of its LEA functions, and the council shall make copies of the plan readily available, during office hours, to persons wishing to inspect it.

166 Responsibility for schools.

(1) The Secretary of State shall by an order or orders made at any time before the abolition date designate in relation to each inner London council—

(a) the ILEA maintained schools which it is to be that council's duty to maintain; and

(b) the ILEA grant-maintained schools in respect of which functions exercisable by ILEA are to be exercisable instead by that council.

(2) The Secretary of State may by an order or orders so made designate in relation to any local education authority specified in the order (other than an inner London council)—

(a) any ILEA maintained school which it is to be that authority's duty to maintain; or

(b) any ILEA grant-maintained school in respect of which functions exercisable by ILEA are to be exercisable instead by that authority;

and shall so designate any such school which is not designated by an order under subsection (1) above.

(3) For the purposes of this section—

(a) a school is an ILEA maintained school if it is a county, voluntary, nursery or special school maintained by ILEA; and

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(b) a school is an ILEA grant-maintained school if it is a grant-maintained school which was maintained by ILEA immediately before it became a grant-maintained school.

(4) A school may be designated—

(a) in relation to a council by an order under subsection (1) above; or

(b) in relation to a local education authority by an order under subsection (2) above;

whether it is inside or outside the area of that council or authority.

(5) Subject to subsection (6) below, as from the abolition date each inner London council and any other local education authority shall maintain and, except in accordance with the Education Acts 1944 to **[**[F218]1993**]**, shall not cease to maintain any school—

(a) which is designated in relation to that council or authority by an order under subsection (1)(a) or (2)(a) above; and

(b) which immediately before that date was maintained by ILEA.

(6) Any such council or authority may, with the consent of the Secretary of State, agree with any other local education authority for the maintenance by that authority of any school which by virtue of subsection (5) above would otherwise fall to be maintained by the council or the first-mentioned authority.

(7) Any functions which, immediately before the abolition date, were exercisable by ILEA in relation to, or in relation to registered pupils at, any school which is designated in relation to any such council or in relation to any other local education authority by an order under subsection (1)(b) or (2)(b) above shall, as from that date, be exercisable instead by that council or (as the case may be) by that authority.

(8) Where after the date on which an order under subsection (1) or (2) above is made any school designated under paragraph (a) of either of those subsections becomes a grant-maintained school, it shall be treated for the purposes of subsection (7) above as having been designated under paragraph (b) of subsection (1) or (2) (as the case may require).

Textual Amendments

F218 Words in s. 166(5) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19 para.132**; S.I. 1993/1975, art. 9, **Sch.1**.

167 Removal of certain governors.

(1) On the abolition date—

(a) any person appointed by ILEA as governor of any institution to which this subsection applies; and

(b) any person co-opted as governor of any such institution;

shall cease to hold office.

(2) Subsection (1) above applies to the following institutions—

(a) any school which immediately before the abolition date was maintained by ILEA; and

(b) any institution other than a school which immediately before that date was maintained or assisted by ILEA.

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(3) On that date any person appointed by an inner London council as governor of a primary school by virtue of any provision included in the instrument of government of the school in accordance with section 7(1) of the 1986 Act (appointment of governor by minor authority) shall cease to hold office.

(4) On and after that date the instrument of government of any school to which that section applies shall have effect as if it made the provision that would have been required by section 3 of that Act if section 7(1) had not applied (and with the omission of any provision included by virtue of subsection (6)(a) of section 7).

(5) Neither subsection (1) nor subsection (3) above shall be taken as prejudicing any subsequent appointment or co-option as governor of the school or other institution concerned of a person who by virtue of that subsection ceases to hold office as governor of that school or institution.

168 Transfers of property, rights and liabilities.

(1) The Secretary of State may by an order or orders made at any time before the abolition date provide for the transfer to each inner London council of—
   (a) such of the property, rights and liabilities of ILEA (other than excepted rights and liabilities) as, in his opinion, need to be so transferred for the purpose of enabling that council properly to perform its LEA functions; and
   (b) such of the rights and liabilities of ILEA (other than excepted rights and liabilities) as, in his opinion, it is appropriate to transfer to that council for the purposes of or in connection with the exercise by that council by virtue of section 166 of this Act of functions in relation to, or in relation to registered pupils at, any grant-maintained school which were formerly exercisable by ILEA.

(2) The Secretary of State may by such an order or orders provide for the transfer to any local authority other than an inner London council of such of the property, rights and liabilities of ILEA (other than excepted rights and liabilities) as do not in his opinion fall to be transferred to such a council by virtue of subsection (1) above.

(3) Any transfer for which provision is made by order under this section may be on such terms, including financial terms, as the Secretary of State thinks fit and the Secretary of State may by order create or impose such new rights or liabilities in respect of what is transferred as appear to him to be necessary or expedient.

(4) The Secretary of State may by order confer on any inner London council or local authority to which property is transferred by or under the order any statutory functions which before the abolition date were exercisable in relation to that property by ILEA.

(5) In this section "excepted rights and liabilities" means rights and liabilities arising under contracts of employment between ILEA and its employees.

169 Approval of management structure and senior appointments in initial period.

(1) References in this section to the management structure of an inner London council for the purpose of the exercise of its LEA functions are references to any aspect of the council's organisation and its arrangements for managing its affairs in relation to the exercise of those functions which the Secretary of State determines ought to be subject

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to approval under this section with a view to securing the proper performance by the council of those functions during the initial period.

In this section "the initial period" means the period of five years beginning with the abolition date.

(2) The reference in subsection (1) above to a council's organisation and its arrangements for managing its affairs in relation to the exercise of its LEA functions includes in particular its staffing arrangements and the determination of the duties to be performed by its employees concerned in the exercise of those functions.

(3) It shall be the duty of each inner London council to adopt and to maintain during the initial period a management structure for the purpose of the exercise of its LEA functions which is for the time being approved by the Secretary of State under this section.

(4) Such a council shall not before the end of the initial period make an appointment to which this subsection applies except after consultation with the Secretary of State.

(5) Subsection (4) above applies to the appointment of a person—
- (a) to be the chief education officer of the council; or
- (b) to any designated post forming part of the management structure of the council for the time being approved under this section.

(6) In subsection (5)(b) above "designated" means designated for the purposes of subsection (4) above by a direction given by the Secretary of State.

(7) For the purposes of the consultation required by subsection (4) above a council proposing to make an appointment to which that subsection applies shall send to the Secretary of State particulars showing the name, previous experience and qualifications of the persons from whom the council proposes to make a selection.

(8) If the Secretary of State is of opinion that any person whose name is submitted to him under subsection (7) above is not a fit person to hold the appointment in question, he may give a direction prohibiting that person's appointment.

Staff

170 Establishment and functions of staff commission.

(1) The Secretary of State shall establish a staff commission for the purpose of—
- (a) advising the Secretary of State on the steps necessary to safeguard the interests of the staff employed by relevant authorities so far as affected by any provision made by or under this Part;
- (b) considering and keeping under review—
  - (i) the arrangements for the recruitment of staff by those authorities in consequence of any such provision; and
  - (ii) the arrangements for any transfer of the staff of those authorities in consequence of any such provision; and
- (c) considering such staffing problems arising in consequence of, and such other matters relating to staff of any body affected by, any such provision as may be referred to the commission by the Secretary of State.

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(2) The Secretary of State may give directions to the staff commission as to their procedure and to any relevant authority with respect to—
  (a) the implementation of any advice given by the commission; and
  (b) the payment by a relevant authority of any expenses incurred by the commission in doing anything requested by the authority;

  and it shall be the duty of the commission and of a relevant authority to comply with any direction given to it under this subsection.

(3) Any expenses incurred by the staff commission under this section and not recovered from a relevant authority shall be paid by the Secretary of State.

(4) The relevant authorities for the purposes of this section are—
  (a) ILEA and the inner London councils;
  (b) the London Residuary Body; and
  (c) any local authority other than an inner London council to which functions or property of ILEA will be or have been transferred by order under section 168 of this Act.

171 Remuneration of employees.

(1) If—
  (a) ILEA proposes to fix for any employee or class of employees of ILEA a rate of remuneration greater than the rate for the time being applicable to that employee or class of employees; and
  (b) the new rate is to take effect as from a date ("the proposed date of increase") falling after 30th September 1989;

  ILEA shall notify each inner London council in writing of the proposal and the proposed date of increase.

(2) The employee or class of employees to whom any such proposal relates shall not be paid at the new rate—
  (a) until the end of the period of four weeks beginning with the date immediately following the notification date; and
  (b) where a complaint is made in accordance with subsection (3) below, unless payment at the new rate is authorised by the Secretary of State.

(3) Before the end of the period of two weeks beginning with the date immediately following the notification date, any three or more of the inner London councils may complain to the Secretary of State if they consider that the new rate is excessive having regard to levels of remuneration applicable in the case of persons employed by local authorities on work comparable to that on which the employee or class of employees concerned is employed.

(4) On receipt of such a complaint the Secretary of State—
  (a) shall notify ILEA in writing of the complaint; and
  (b) shall afford—
    (i) to ILEA;
    (ii) to each of the inner London councils; and
    (iii) to such persons appearing to him to be representative of employees of ILEA as he considers appropriate in relation to the employee or class of employees concerned;

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an opportunity of making representations to him with respect to the proposal.

(5) After considering any representations made to him under subsection (4)(b) above, the Secretary of State may—
  (a) authorise payment at the new rate; or
  (b) refuse to authorise such payment.

(6) The Secretary of State shall give written notification of his decision to ILEA, to each of the inner London councils, and to any other persons who made representations to him with respect to the proposal under subsection (4)(b) above.

(7) Subsection (8) below applies where by virtue of subsection (2) above the employee or class of employees to whom any proposal to which subsection (1) above relates is not paid at the new rate until after the proposed date of increase, and either—
  (a) no complaint is made in accordance with subsection (3) above in respect of the new rate; or
  (b) such a complaint is made but payment at the new rate is authorised by the Secretary of State.

(8) In any case to which this subsection applies, for the purpose of determining—
  (a) the terms of any contract affected by section 172 of this Act; and
  (b) any compensation payable in accordance with section 173 of this Act;

the employee or class of employees concerned shall be regarded as having been entitled under his or their contracts of employment with ILEA to remuneration at the new rate as from the proposed date of increase.

(9) In this section "the notification date" means, in relation to any proposal to which subsection (1) above applies, the date by which all the inner London councils have received notification of the proposal under that subsection.

172 Power to transfer staff.

(1) This section applies to any person who—
  (a) immediately before the abolition date is in the service of ILEA under a contract of employment which would have continued but for the abolition of ILEA; and
  (b) 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 ILEA shall not be terminated by the abolition of ILEA but shall have effect as from the abolition date as if originally made between him and such successor authority ("the new employer") as may be specified in relation to that person by the order designating him for the purposes of this section.

(3) Without prejudice to subsection (2) above—
  (a) all ILEA'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 on the abolition date to the new employer; and
  (b) anything done before that date by or in relation to ILEA in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the new employer.

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(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) In this section "successor authority" means—
- (a) an inner London council;
- (b) the London Residuary Body; and
- (c) any local authority other than an inner London council to which functions or property of ILEA are transferred by order under section 168 of this Act.

173 Compensation for loss of employment or loss or diminution of emoluments.

(1) This section applies to any person who suffers loss of employment or loss or diminution of emoluments which—
- (a) is attributable to any provision made by or under this Part; and
- (b) occurs in the circumstances mentioned in subsection (2) below.

(2) Those circumstances are—
- (a) in the case of loss of employment, the employment in question is employment with ILEA or the London Residuary Body and the loss is suffered on or after the abolition date; and
- (b) in the case of loss or diminution of emoluments, the loss or diminution arises from the termination of the employment of the person concerned with ILEA or that Body and is suffered on or after such date as may be specified in regulations made for the purposes of this section under section 24 of the [M10]Superannuation Act 1972 ("compensation regulations").

(3) Compensation in respect of any such loss or diminution suffered by a person to whom this section applies shall, subject to subsection (4) below, be paid only in accordance with compensation regulations; and accordingly neither ILEA nor the London Residuary Body shall pay any such compensation under any other statutory provision, by virtue of any provision in a contract or otherwise.

(4) Subsection (3) above shall not preclude the making of any payment to which a person is entitled by virtue of contractual rights acquired by him before 21st November 1987.

(5) Compensation regulations shall not provide compensation for a person to whom this section applies in respect of any such loss or diminution as is mentioned in subsection (1) above so far as attributable to the termination on or before the abolition date of a contract made after 17th February 1988 which provides for the employment of that person for a fixed term extending beyond the abolition date.

(6) For the purpose of determining under section 82(5) or (6) or 84(3) of the [M11]Employment Protection (Consolidation) Act 1978—
- (a) whether the provisions of a new contract offered to a person employed by ILEA or the London Residuary Body differ from the corresponding provisions of his previous contract; and
- (b) whether employment under the new contract is suitable in relation to that person;

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there shall be treated as forming part of the remuneration payable under the new contract any compensation to which that person is or, if he accepted the offer, would be entitled in accordance with this section.

(7) Except as provided in subsection (6) above, nothing in this section shall be construed as affecting any entitlement to a redundancy payment under Part VI of the Act of 1978 mentioned above or to any payment by virtue of any provision of the Act of 1972 mentioned above other than section 24.

Marginal Citations
M10 1972 c. 11.
M11 1978 c. 44.

174 Continuity of employment in certain cases of voluntary transfer.

(1) This section applies to a person who at any time on or after such date as may be specified by order made by the Secretary of State ceases to be employed by ILEA or the London Residuary Body (his "former employer") if—
  (a) the termination of his employment is attributable to any provision made by or under this Part;
  (b) he is subsequently employed by another person (his "new employer"); and
  (c) by virtue of section 84, 94 or 95 of the [M12]Employment Protection (Consolidation) Act 1978 (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under Part VI of that Act.

(2) Where this section applies to a person Schedule 13 to that Act (computation of period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions, that is to say—
  (a) the period of employment of that person with his former employer shall count as a period of employment with his new employer; and
  (b) the change of employer shall not break the continuity of the period of employment.

(3) Where this section applies to a person the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

Marginal Citations
M12 1978 c. 44.

175 Offers of employment by inner London councils.

(1) If at any time after such date as may be specified for the purposes of this section by an order made by the Secretary of State ("the specified date") an inner London council proposes to engage a person who is currently in the employment of ILEA it shall, if reasonably practicable, enter into, or offer to enter into, a contract of employment with him that meets the requirements of subsection (2) below.

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(2) The contract must be such that the employment of the person concerned by the council will or would take effect either immediately on the ending of his employment by ILEA or after an interval of not more than four weeks after the ending of that employment.

(3) If an inner London council enters into a contract of employment with a person who has received or is entitled to receive a redundancy payment under Part VI of the Employment Protection (Consolidation) Act 1978—
   (a) by reason of his dismissal by ILEA at any time after the specified date; or
   (b) by virtue of section 178(1) of this Act;

   the council shall, if the Secretary of State so directs, pay to the London Residuary Body an amount equal to that payment.

(4) The Secretary of State shall not give a direction under subsection (3) above in respect of the employment of any person by an inner London council if the council satisfies him—
   (a) that it could not reasonably have made that person an offer of employment on the terms and conditions of the contract mentioned in that subsection which, if accepted by him, would have precluded his entitlement to the redundancy payment; or
   (b) that the council has made such an offer but that the person concerned acted reasonably in refusing it or that he could reasonably have refused such an offer if it had been made by the council.

(5) In any case in which an amount is payable by a council under subsection (3) above the council shall also pay to the London Residuary Body an amount equal to any compensation under the regulations referred to in section 173(2) of this Act which has been paid or is payable to the person concerned before the time when he enters into the contract.

(6) A former member of an inner London council shall not be disqualified by virtue of section 116 of the [M13]Local Government Act 1972 for being appointed by that council to a paid office if—
   (a) he is, or at any time between the passing of this Act and the abolition date has been, in the employment of ILEA; and
   (b) he is appointed not later than twelve months after that date and with the consent of the Secretary of State.

(7) For the purposes of subsection (2) above employment ending on a Friday or a Saturday shall be treated as ending immediately before the following Monday and the interval of four weeks shall be calculated as if any such employment had ended at that time.

Marginal Citations
M13 1972 c. 70.

Functions of London Residuary Body

176 Provision of services and facilities by London Residuary Body.

(1) Subject to subsection (3) below, the Secretary of State may at any time by a direction require the London Residuary Body to provide, for the inner London councils and

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such other authorities or bodies or classes of authorities or bodies as may be specified in the direction, services or facilities of any description so specified.

(2) Any such direction shall specify the date (which must be a date falling on or after the abolition date) as from which the services or facilities in question are to be provided.

(3) The descriptions of services or facilities that may be so specified—

(a) must be services or facilities of a description provided by ILEA at the date of the direction or (where the direction is given on or after the abolition date) immediately before the abolition date; and

(b) subject to paragraph (a) above, include services or facilities of any description involving the provision for any council, authority or body of supplies required by them for the purposes of or in connection with the exercise of any of their functions (whether or not relating to education).

(4) It shall be the duty of the London Residuary Body to provide any services or facilities to which a direction under subsection (1) above relates—

(a) as from the date specified in the direction under subsection (2) above; and

(b) on such terms (including terms requiring the making of payments to the London Residuary Body by any council, authority or body to whom such services or facilities are provided) as may be specified in the direction.

(5) Any such direction may require such services or facilities to be provided on different terms for—

(a) the inner London councils and any other authorities or bodies or classes of authorities or bodies specified in the direction; and

(b) different authorities or bodies or classes of authorities or bodies so specified.

(6) Subject to subsection (7) below, the London Residuary Body may by agreement with one or more inner London councils, and on such terms as to payment or otherwise as the parties consider appropriate, provide the council or councils concerned with services or facilities of any description it would be within the power of the council or councils concerned to provide themselves in the exercise of any of their functions (whether or not relating to education).

(7) Any such agreement shall be subject to the approval of the Secretary of State.

177 Repayment by London Residuary Body of loans to ILEA.

(1) Except so far as otherwise provided by any provision made under this Part, all the rights and liabilities of ILEA on the abolition date in respect of money borrowed by ILEA shall on that date become rights and liabilities of the London Residuary Body and those liabilities (both as respects principal and interest) shall be charged on the revenues of that body.

(2) For the purpose of providing the London Residuary Body with money to discharge those liabilities each inner London council shall on the abolition date be deemed to have borrowed from that body such sum as may be specified by or determined in accordance with an order made by the Secretary of State.

(3) That sum shall be deemed to have been borrowed on such terms as to repayment and the payment of interest as may be so specified or determined.

(4) F219

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(5) An inner London council may, during the period within which it is required to discharge its liabilities in respect of principal under subsection (2) above, borrow money for the purpose of discharging those liabilities.

(6) In subsection (1) above the reference to money borrowed by ILEA includes a reference to any money borrowed by any other authority whose rights and liabilities in respect of that money have been transferred to ILEA.

Textual Amendments

F219 S. 177(4) repealed with saving by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**, S.I. 1990/431, Sch. 1 para. 1(a) (as amended by S.I. 1990/762, **art. 4(a)**)

Modifications etc. (not altering text)

C112 S. 177(2)(3) restricted (1. 4. 1992) by S.I. 1992/501, **arts. 1(1)**, 4(1)(2) (revoking S.I. 1990/775)

178 Liability of London Residuary Body for redundancy and compensation payments.

(1) Any person who—

(a) immediately before the abolition date is in the service of ILEA under a contract of employment which would have continued but for the abolition of ILEA; and

(b) is not designated for the purposes of section 172 of this Act;

shall be entitled to receive from the London Residuary Body any redundancy payment under Part VI of the [M14]Employment Protection (Consolidation) Act 1978 which he would have been entitled to receive from ILEA if ILEA had not been abolished but had dismissed him by reason of redundancy immediately before the abolition date.

(2) As respects any such redundancy payment—

(a) the London Residuary Body shall be treated as the employer of the person concerned for the purposes of sections 101, 102, 104, 108 and 119 of that Act (ancillary provisions about redundancy payments);

(b) references to the relevant date in sections 81(4), 82(1) and 101 of that Act and in Schedule 4 to that Act shall be construed as references to the day before the abolition date; and

(c) the calculation date for the purposes of Part II of Schedule 14 to that Act (calculation of a week's pay) shall be the day before the abolition date.

(3) Any person who—

(a) immediately before the abolition date is in the service of ILEA under a contract of employment made on or before 17th February 1988 which is a contract for a fixed term extending beyond the abolition date; and

(b) is not designated for the purposes of section 172 of this Act;

shall, if the contract made no provision for its prior termination by ILEA, be entitled to receive from the London Residuary Body an amount equal to any damages which he would have been entitled to recover from ILEA if ILEA had not been abolished but had dismissed him immediately before the abolition date.

(4) Any person who—

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(a) immediately before the abolition date is in the service of ILEA under a contract of employment (whether or not for a fixed term) providing for its termination by ILEA on payment of compensation for loss of employment; and

(b) is not designated for the purposes of section 172 of this Act;

shall be entitled to receive from the London Residuary Body an amount equal to the compensation which he would have been entitled to receive from ILEA if ILEA had not been abolished but had terminated the contract immediately before that date.

(5) In subsection (4) above "compensation for loss of employment" does not include any payment to be made under the contract in lieu of notice.

(6) Where the amount of compensation payable under a contract differs according to the reasons for its termination the amount payable under subsection (4) above shall be determined on the assumption that the contract was terminated by reason of redundancy within the meaning of the [M15]Employment Protection (Consolidation) Act 1978.

Marginal Citations

M14 1978 c. 44.

M15 1978 c. 44.

179 Payment of pensions and pensions increase by London Residuary Body.

(1) All liabilities of ILEA in respect of pensions payable by it shall on the abolition date become liabilities of the London Residuary Body.

(2) The reference in subsection (1) above to pensions includes a reference to allowances, grants or other benefits in respect of past service, death, injury or disease (whether of the pensioner or another person) and any such compensation as is mentioned in section 8(1)(b) or (c) of the [M16]Pensions (Increase) Act 1971.

(3) At the end of Part II of Schedule 2 to that Act (pensions payable out of local funds) there shall be inserted—

"64C A pension payable by the London Residuary Body, being a pension which would fall within any of the foregoing paragraphs of this Part of this Schedule if references to a local authority had continued to include references to the Inner London Education Authority."

(4) In paragraph 1(5) of Schedule 3 to that Act (cases where increase of pension is to be reimbursed by the last employing authority) after "64B" there shall be inserted the words "and 64C".

(5) The London Residuary Body shall pay—

(a) any increase which by virtue of regulations under section 5(2) of that Act would have been payable on or after the abolition date by ILEA; and

(b) any payment which is analogous to a pensions increase and would have been payable on or after that date by ILEA by virtue of regulations under section 13(3) of that Act.

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Modifications etc. (not altering text)

C113 S. 179: functions, rights and liabilities of the London Residuary Body transferred to the London Pension Fund Authority (1. 4. 1992) by S.I. 1992/331, **arts. 1(1)**, 2(1)(e)(4), 3, 7

Marginal Citations

M16 1971 c. 56.

180 Custody of residuary property, etc.

(1) On the abolition date all residuary property, rights and liabilities of ILEA shall vest in the London Residuary Body.

(2) In subsection (1) above "residuary property, rights and liabilities" means—

(a) any property for the vesting of which provision is not otherwise made by or under this Part; and

(b) subject to subsection (3) below, any rights and liabilities which are not transferred, extinguished or otherwise dealt with by any provision so made.

(3) This section shall not be construed—

(a) as continuing in force any contract of employment made by ILEA; or

(b) as imposing any liability on the London Residuary Body in respect of the termination of any such contract by the abolition of ILEA;

but the rights and liabilities to which this section applies shall include any rights and liabilities attributable to anything done or omitted under or in respect of such a contract before the abolition date except any liability to make a payment prohibited by section 173(3) of this Act.

(4) The Secretary of State may by order confer on the London Residuary Body any statutory functions which before the abolition date were exercisable by ILEA in relation to any property, rights or liabilities which are vested in that body by this section.

(5) Without prejudice to section 232(5) of this Act, the provision that may be made by an order under subsection (4) above includes provision amending any enactment or any instrument made under any enactment.

181 Power of London Residuary Body to pay compensation.

(1) The London Residuary Body may pay compensation—

(a) to any former officer of ILEA who sustained an injury in the course of his employment with ILEA; or

(b) to the widow or widower or child of any former officer of ILEA who, in the course of his employment with ILEA, died or sustained an injury resulting in death.

(2) Subsection (1) above applies irrespective of whether the employment with ILEA of the officer in question came to an end on or before the abolition date.

(3) The London Residuary Body may pay compensation to any person in respect of loss suffered by him in consequence of any damage to property in respect of which it

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appears to them that a claim might have been brought against ILEA had ILEA not been abolished.

(4) Any compensation payable under this section may be paid either—
- (a) by way of a lump sum; or
- (b) by way of periodical payments of such amounts and payable at such times and for such periods as the London Residuary Body may from time to time determine having regard to all the circumstances of the case.

(5) The payment of compensation under this section shall not affect any right or claim to damages or compensation which—
- (a) any such officer as is mentioned in subsection (1)(a) or (b) above or his widow or widower or child; or
- (b) any such person as is mentioned in subsection (3) above;

may have against any person other than the London Residuary Body or, except so far as may be agreed when the compensation is granted, against the London Residuary Body by virtue of section 180 of this Act.

Modifications etc. (not altering text)

C114 S. 181: functions, rights and liabilities of the London Residuary Body transferred to the London Pensions Fund Authority (1. 4. 1992) by S.I. 1992/331, **arts. 1(1)**, 2(1)(f)(4), 3, 7

182 Preparation of ILEA's final accounts.

(1) It shall be for the London Residuary Body to discharge in relation to ILEA's accounts for any period ending before the abolition date—
- (a) any functions under the regulations in force under Part III of the [M17]Local Government Finance Act 1982 which would have fallen to be discharged on or after that date by ILEA or any of its officers; and
- (b) any functions under those regulations which fell to be so discharged before that date but have not been discharged.

(2) As respects anything falling to be done on or after the abolition date in relation to those accounts the provisions of Part III of that Act shall have effect as if those accounts were accounts of the London Residuary Body but so that—
- (a) the documents to which an auditor has the right of access under section 16(1) shall include any documents relating to ILEA which are in the possession of an inner London council; and
- (b) the persons who may be required to give information or an explanation under section 16(2) or 28(1) shall include any person who was an officer or member of ILEA at any time during the period to which the accounts relate and who is an officer or member of such a council.

(3) Any requirement under section 29(1) of that Act in respect of a claim, return or account of ILEA, and any consent under section 30(1)(a) of that Act in respect of information relating to ILEA, may, on or after the abolition date, be made or given by the London Residuary Body.

(4) That body shall have a right of access at all reasonable times to all such documents as are mentioned in subsection (2)(a) above which appear to it to be needed for the purpose of discharging its functions under this section and may require any such

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person as is mentioned in subsection (2)(b) above to give it any such information or explanation as it thinks necessary for that purpose.

(5) Any person who without reasonable excuse fails to comply with any requirement under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and to an additional fine not exceeding £40 for each day on which the offence continues after his conviction of the offence.

Marginal Citations
M17 1982 c. 32.

183 Directions of Secretary of State.

(1) In exercising the functions conferred on it by or under this Part the London Residuary Body shall comply with any directions given to it by the Secretary of State.

(2) No transaction entered into by that body in exercise of any of those functions shall be invalid by reason only of a failure to comply with any direction given under this section.

(3) The Secretary of State shall publish any directions given by him under this section.

Financial provisions and winding up of London Residuary Body

184 Preparatory expenditure of inner London councils.

(1) Without prejudice to the powers conferred by section 137 of the [M18]Local Government Act 1972 (which authorises a local authority to incur expenditure which it considers is in the interests of its area or inhabitants of its area), an inner London council may incur expenditure in making preparations for the exercise on and after the abolition date of its LEA functions.

(2) Where before the passing of this Act any such council has incurred such expenditure, that expenditure shall be treated after the passing of this Act as authorised by subsection (1) above.

(3) The Secretary of State may pay grants to an inner London council in respect of such expenditure incurred or to be incurred by the council in any financial year ending before the abolition date.

(4) The Secretary of State may make any payment in respect of such a grant subject to compliance by the council concerned with such conditions as he may determine.

Marginal Citations
M18 1972 c. 70.

185 London Residuary Body: financial provisions.

(1) The London Residuary Body may in respect of any financial year beginning on or after the abolition date make levies on the rating authorities in inner London to meet

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all liabilities falling by virtue of this Part to be discharged by it for which provision is not otherwise made.

(2) The amount to be levied by that body in respect of any financial year from each such authority shall be determined by apportioning the total amount to be levied by that body under this section in respect of that year between those authorities in proportion to the population of their respective areas.

(3) For the purposes of subsection (2) above the population of any area shall be taken to be—

(a) in relation to any financial year in respect of which the London Residuary Body makes any levy under section 74 of the 1985 Act, the number applicable by virtue of subsection (2) of that section; and

(b) in relation to any other financial year, the number estimated by the Registrar General and certified by him to the Secretary of State by reference to such date as the Secretary of State may from time to time direct.

(4) In section 74 of the 1985 Act, as it applies in relation to the London Residuary Body—

(a) subsection (1) shall not apply in relation to liabilities of that body to which subsection (1) above applies; and

(b) the reference in subsection (2) to the total amount to be levied by that body in respect of any financial year shall not include any amount to be so levied by virtue of this section;

but subsections (3) to (5) of that section (procedure for the levy and application of enactments relating to precepts and rates) shall apply in relation to a levy under this section as they apply in relation to a levy under that section.

(5) A demand issued under subsection (3) of that section to a rating authority in inner London relating to a payment or payments in respect of a levy under that section may relate also to a payment or payments in respect of a levy under this section, but if it does so shall state separately the payment or payments required in respect of each levy.

(6) Without prejudice to the borrowing powers of the London Residuary Body by virtue of section 75 of the 1985 Act but subject to subsection (7) below, that body may borrow by way of temporary loan or overdraft from a bank or otherwise any sums which it may require for the purpose of defraying any expenses incurred by it before the abolition date which are attributable to any provision made by or under this Part.

(7) The sums borrowed by that body under subsection (6) above—

(a) shall not exceed such amount as the Secretary of State may determine; and

(b) shall be repaid before the end of the financial year beginning with the abolition date.

(8) Section 77 of the 1985 Act (treatment and distribution of capital and other money) shall apply in relation to capital money received by the London Residuary Body of any description specified for the purposes of this section by an order made by the Secretary of State as if—

(a) subsection (2) were omitted and any reference to an authority or authorities to which subsection (1) of that section applies were a reference to a **[**[F220]charging authority**]** or (as the case may be) the **[**[F220]charging authorities**]** in inner London; and

(b) the references in subsection (4) of that section to the area for which that body is established and to a levy were respectively references to inner London and to a levy under this section.

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(9) Except as provided by subsection (8) above section 77 shall not apply in relation to capital money of a description within that subsection.

(10) The Secretary of State may by order provide, in relation to capital money received by the London Residuary Body of any description not within subsection (8) above, for the application of that money, or of such part of that money as may be specified in the order, for such purposes connected with the abolition of ILEA as may be so specified.

(11) In this section—
- (a) references to inner London are references to the area comprising the areas of all the inner London councils; and
- (b) "capital money" has the same meaning as in section 77 of the 1985 Act.

Textual Amendments
F220 Words substituted by S.I. 1990/268, art. 2(1), **Sch.**

186 Transitional functions of London Residuary Body in respect of block grant.

(1) Any payment which by virtue of any provision of Part VI of the [M19]Local Government, Planning and Land Act 1980 would but for this Act have fallen to be made on or after the abolition date by or to ILEA in respect of block grant payable for a year ending before that date shall instead be made by or to the London Residuary Body.

(2) Any information, notice, representation or request under section 65, 66 or 67 of that Act which but for this Act would have fallen to be given or made by or to ILEA on or after the abolition date in respect of block grant payable for a year ending before that date shall instead be given or made by or to the London Residuary Body.

Marginal Citations
M19 1980 c. 65

187 Winding-up of London Residuary Body.

(1) Except as respects any of its functions under this Part for the discharge of which provision will be or is likely to be required after the end of the period of three years beginning with the abolition date, it shall be the duty of the London Residuary Body to use its best endeavours to secure that its work under this Part is completed as soon as practicable and in any event before the end of that period.

(2) As respects—
- (a) any such functions; and
- (b) any property, rights and liabilities transferred to it, or held, acquired or incurred by it by virtue of, or in the exercise of any of its functions under, this Part;

that body shall if it considers it appropriate to do so make such arrangements as are practicable for their transfer to a local authority or to some other body or bodies or submit proposals to the Secretary of State for effecting such transfers by orders made by him for the purpose.

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(3) Any such arrangements or proposals shall be made or (as the case may be) submitted, so far as practicable, before the end of the period of two years beginning with the abolition date.

(4) Not later than the end of that period of two years, the London Residuary Body shall submit to the Secretary of State a scheme for the winding up of that body and the disposal of its remaining functions, property, rights and liabilities so far as not dealt with in pursuance of subsection (2) above.

(5) The Secretary of State may by order provide—
  (a) for any such transfer or disposal as is mentioned in subsection (2) above; and
  (b) for giving effect (with or without modifications) to any scheme submitted to him under subsection (4) above.

(6) The power under subsection (5)(a) above applies irrespective of whether or not the London Residuary Body has submitted proposals with respect to the transfer or disposal in question and, if it has, whether the provision made is in accordance with those proposals or not.

(7) Without prejudice to the generality of the power under subsection (5) above and to section 232(5) of this Act, the provision that may be made by an order under subsection (5) above includes provision—
  (a) amending any enactment or any instrument made under an enactment; or
  (b) establishing new bodies corporate to receive any functions, property, rights or liabilities transferred by the order.

Control of ILEA's contracts and disposals

188 Control of contracts.

(1) This section applies to any contract in respect of which the consideration exceeds £15,000 and which is entered into after 22nd July 1987.

(2) Except with the consent of the Secretary of State, ILEA shall not after the passing of this Act enter into a contract to which this section applies.

(3) Subject to section 191(3)(b) of this Act, if at any time after 22nd July 1987 and before the passing of this Act ILEA has entered into a contract which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by ILEA.

(4) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.

(5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any contract to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to those conditions, given under this section.

(6) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 190(2) of this Act) a person entering into a

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contract with ILEA shall not be concerned to enquire whether any consent required by this section has been given or complied with.

(7) Where the consideration or any of the consideration under a contract is not in money, the limit specified in subsection (1) above shall apply to the value of the consideration.

(8) This section does not apply to—
  (a) a contract to dispose of land or to grant or dispose of any interest in land; or
  (b) a contract of employment between ILEA and a person employed by it.

189 Control of disposals.

(1) Subject to subsection (9) below, this section applies to any disposal of land which is made after 22nd July 1987.

(2) Except with the consent of the Secretary of State, ILEA shall not after the passing of this Act make a disposal to which this section applies.

(3) Subject to section 191(3)(b) of this Act, if at any time after 22nd July 1987 and before the passing of this Act ILEA has made a disposal which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by ILEA.

(4) Any consent for the purposes of this section may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.

(5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to those conditions, given under this section.

(6) This section has effect notwithstanding anything in section 123 of the [M20]Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 190 of this Act) a person acquiring land, or entering into a contract to acquire land, from ILEA shall not be concerned to enquire whether any consent required by this section has been given or complied with.

(8) In this section references to disposing of land include references to—
  (a) granting or disposing of any interest in land;
  (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  (c) granting an option to acquire any land or any such interest.

(9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

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Marginal Citations

M20 1972 c. 70.

190 Wrongful contracts or disposals.

(1) This section applies where ILEA—

(a) has entered into any contract to which section 188 of this Act applies; or

(b) has made any disposal to which section 189 of this Act applies;

in contravention of that section (referred to below in this section as a wrongful contract or, as the case may be, a wrongful disposal).

(2) In the case of a wrongful contract or a wrongful disposal which consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the aggrieved body may by notice in writing served on the other party to the contract repudiate the contract—

(a) in the case of a wrongful contract, at any time before the contract is performed;

(b) in the case of a wrongful disposal, at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.

(3) In the case of a wrongful disposal which consists in granting an option to acquire any land or interest in land, the aggrieved body may by 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 ILEA.

(5) In the case of a wrongful disposal which 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 aggrieved body may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal; . . . [F221]

(b) . . . . . [F222]

(6) The [M21]Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above by an aggrieved body (other than the London Residuary Body) as if references in sections 12 and 13 of that Act to every owner of the land included references to the London Residuary Body.

(7) Where an aggrieved body (other than the London Residuary Body) acquires any interest in land by a compulsory purchase under subsection (5) above, the body shall be entitled to recover from the London Residuary Body 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 council in respect of that compensation in accordance with section 11 of the [M22]Compulsory Purchase Act 1965; and

(b) the amount of the costs and expenses incurred by the body in connection with the making of the compulsory purchase order.

(8) A body is an aggrieved body for the purposes of this section—

(a) in relation to a wrongful contract, if rights or liabilities under the contract have been transferred to, or have vested in, the body by or under this Part;

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(b) in relation to a wrongful disposal of a description falling within subsection (2) or (3) above, if the land proposed to be disposed of, or in which an interest is proposed to be granted, has been so transferred or has so vested;

(c) in relation to a disposal of a description falling within subsection (5) above, if (but for the disposal)—

(i) the interest disposed of would have been so transferred or would have so vested; or

(ii) where the disposal consists in the granting of an interest in land, the land in which the interest was granted would have been so transferred, or would have so vested, free of the interest.

Textual Amendments

F221 Word repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**

F222 Ss. 190(5)(b), 201(5)(b) repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**

Marginal Citations

M21 1981 c. 67.

M22 1965 c. 56.

191 Penalties for contravention of section 188 or 189.

(1) If, on an application under this section, it appears to the High Court that ILEA has entered into a contract in contravention of section 188 of this Act or has made a disposal in contravention of section 189 of this Act, the court may order any person responsible for authorising the contract or disposal who is, or was at the time of the conduct in question, a member of ILEA—

(a) to be disqualified for being a member of ILEA; and

(b) to be disqualified for a specified period for being a member of any local authority.

(2) Where the court has power to make an order under subsection (1) above in respect of any person, it may also order him to pay to ILEA or, in the case of an order made on or after the abolition date, to the London Residuary Body a sum not exceeding—

(a) in the case of a contract in contravention of section 188, an amount equal to the amount or value of the consideration under the contract;

(b) in the case of a disposal in contravention of section 189, an amount equal to the amount or value of the consideration for the disposal or, if there is no consideration or it is less than the market value of what was disposed of, an amount equal to that market value.

(3) No order shall be made under this section in respect of any person—

(a) if the court is satisfied that he acted in the belief that the contract or disposal had the consent of the Secretary of State and that any conditions attached to the consent had been complied with; or

(b) where the contract was entered into, or the disposal was made, on or before 17th February 1988.

(4) An application under this section may be made by any of the following—

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(a) an inner London council;
(b) a local government elector for the area of such a council;
(c) the London Residuary Body; and
(d) any local authority other than an inner London council to which property, rights or liabilities of ILEA will be or have been transferred by order under section 168 of this Act.

(5) In sections 80(1)(e), 86(b) and 87(1)(d) of the [M23]Local Government Act 1972 references to Part III of the [M24]Local Government Finance Act 1982 shall include references to this section.

Marginal Citations
M23 1972 c. 70.
M24 1982 c. 32.

Miscellaneous and supplementary

192 Charities.

(1) Where immediately before the abolition date—
(a) any property is held exclusively for charitable purposes by ILEA as sole trustee; and
(b) the charity is primarily for the benefit of the area of a single inner London council;

that property shall on that date vest for the like purposes in that council.

(2) Where immediately before that date any power with respect to any such charity as is mentioned in subsection (1)(b) above was under the trusts of the charity vested in, or in the holder of any office connected with, ILEA, that power shall on that date vest in, or in the holder of the corresponding office connected with, the inner London council concerned.

(3) Where in the case of any such power vested in the holder of any office connected with ILEA there is no corresponding office connected with the inner London council concerned, that power shall on that date vest in the holder of such other office connected with that council as the Charity Commissioners may with the consent of that council and the office-holder concerned appoint.

(4) Where immediately before that date—
(a) any property is held exclusively for charitable purposes by ILEA as sole trustee; and
(b) subsection (1) above does not apply to that property;

that property shall on that date vest for the like purposes in the London Residuary Body or in such other person as the Charity Commissioners may appoint.

(5) Where immediately before that date any power with respect to any charity, other than any such charity as is mentioned in subsection (1)(b) above, was under the trusts of the charity vested in, or in the holder of any office connected with, ILEA, that power shall on that date vest in the London Residuary Body or in such other person as the Charity Commissioners may appoint.

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(6) References above in this section to a power with respect to a charity shall not include references to any power of any person by virtue of being a charity trustee of that charity; but where under the trusts of any charity the charity trustees immediately before the abolition date included ILEA or the holder of an office connected with ILEA then, as from that date, those trustees shall instead include—
  (a) such of the inner London councils;
  (b) the holder of such office connected with such of those councils; or
  (c) such other person;
as the Charity Commissioners may appoint.

(7) If in any case an appointment is not made by the Charity Commissioners for the purposes of any of subsections (3) to (6) above before the abolition date, the London Residuary Body shall be treated as having been so appointed pending the making of such an appointment by those Commissioners; but an appointment made by those Commissioners after the abolition date must be made before the end of the period of two years beginning with that date.

(8) References in subsections (2), (5) and (6) above to a charity shall not include a charity which is a company within the meaning of the [M25]Companies Act 1985 or incorporated by charter.

(9) For the purposes of this section, a charity is a charity primarily for the benefit of the area of a single inner London council if the charity is established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of an area which falls wholly or mainly within that council's area.

(10) Nothing in this section shall affect the power of Her Majesty, the court or any other person to alter the trusts of any charity.

(11) In this section "charity", "charitable purposes", "charity trustees", "court" and "trusts" have the same meanings as in **[**[F223]the Charities Act 1993**]**.

Textual Amendments
F223 Words in s. 192(11) substituted (1.8.1993) by 1993 c. 10, s. 98(1), **Sch. 6**, para.30

Marginal Citations
M25 1985 c. 6.

193 Information and access to documents.

(1) For the purpose of facilitating the implementation of any provision made by or under this Part, ILEA and its officers shall furnish any body mentioned in subsection (2) below or, as the case may be, the Secretary of State with all such information relating to ILEA or its functions as that body or the Secretary of State may request.

(2) The bodies referred to in subsection (1) above are—
  (a) an inner London council;
  (b) the London Residuary Body;
  (c) any local authority other than an inner London council to which functions, property, rights or liabilities of ILEA will be transferred by order under section 168 of this Act; and

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(d) the staff commission established by section 170 of this Act.

(3) Any information required to be furnished under subsection (1) above shall be furnished within one month of the making of the request or, if that is not reasonably practicable, as soon as reasonably practicable after the expiry of that month.

(4) Any person authorised in that behalf by the London Residuary Body shall be entitled on producing, if so required, evidence of his authority—

(a) at all reasonable times to inspect and make copies of any document belonging to or under the control of ILEA; and

(b) to require copies of any such document to be delivered to him.

(5) References in subsection (4) above to copies of a document include references to copies of part of it.

(6) In subsections (4) and (5) above "document" includes any record of information and, where the record is not in legible form, the rights conferred by subsection (4) above include the right to require the information to be made available in legible form for inspection or copying and to require copies of it in that form to be delivered.

194 Concurrent employment.

(1) A person in the service of ILEA may enter into a contract of employment with a successor authority for the rendering of services by him to that authority concurrently with his service to ILEA.

(2) Subsection (1) above has effect notwithstanding anything in a person's contract of employment with ILEA and neither his entering into a contract of employment with a successor authority nor anything done by him in pursuance of such a contract shall be a ground for ILEA to terminate his employment.

(3) In this section "successor authority" means—

(a) an inner London council;

(b) the London Residuary Body; and

(c) any local authority other than an inner London council to which functions or property of ILEA will be transferred by order under section 168 of this Act.

195 Continuity of exercise of functions.

(1) The abolition of ILEA shall not affect the validity of anything done by ILEA before the abolition date.

(2) Anything which at that date is in process of being done by or in relation to ILEA in the exercise of or in connection with any statutory functions which by virtue of any provision made by or under this Part become functions of the inner London councils in respect of their respective areas or (as the case may be) of some other local authority or of the London Residuary Body may be continued by or in relation to the successor authority.

(3) References in this section, in relation to any statutory functions, to the successor authority are references to the inner London council or other local authority or body by which those functions become exercisable or (as the case may be) become exercisable in respect of the area in question.

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(4) Any instrument made by ILEA in exercise of or in connection with any functions to which subsection (2) above applies, and any other thing done by or in relation to ILEA before the abolition date in exercise of or in connection with any such functions shall, so far as required for continuing its effect on and after that date, have effect as if made by, or done by or in relation to, the successor authority.

(5) Any reference above in this section to any instrument made by, or to any other thing done by or in relation to, ILEA includes a reference to any instrument or other thing which by virtue of any enactment is treated as having been made by, or done by or in relation to, ILEA.

(6) So far as is required for giving effect to the preceding provisions of this section—
  (a) any reference in any document to ILEA shall be construed as a reference to the successor authority; and
  (b) any reference in any document to ILEA's area (whether as the Inner London Education Area or otherwise), or to any part of that area comprising the successor authority's area, shall be construed as a reference to the successor authority's area.

(7) For the purposes of subsection (6)(b) above, the London Residuary Body's area shall be taken to be the area comprising the areas of all the inner London councils.

(8) Any question under this section as to which is the successor authority in respect of any particular functions may be determined by a direction given by the Secretary of State.

(9) The preceding provisions of this section—
  (a) are without prejudice to any provision made by this Part in relation to any particular functions; and
  (b) shall not be construed as continuing in force any contract of employment made by ILEA.

(10) The Secretary of State may, in relation to any particular functions, by order exclude, modify or supplement any of the preceding provisions of this section or make such other transitional provision as he thinks necessary or expedient.

Modifications etc. (not altering text)
C115 S. 195(2), (4)–(8) modified by S.I. 1990/124, **art. 12(2)**

196 Interpretation of Part III.

(1) In this Part—

"the 1985 Act" has the meaning given by section 164(3);

"the abolition date" has the meaning given by section 162(2);

"ILEA" has the meaning given by section 162(1)(a);

"inner London council" has the meaning given by section 163(2); and

"statutory functions" means functions conferred or imposed by an enactment or a statutory instrument.

(2) References in this Part, in relation to an inner London council, to its LEA functions shall be read in accordance with section 165(1)(a).

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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 **[**[F224]and section 36 of and Schedule 5 to the Further and Higher Education Act 1992**]**; 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 **[**[F225]the Education Acts 1944 to **[**[F226]1993**]]** the Board shall comply with any directions given to them by the Secretary of State.

(7) Any local education authority **[**[F227]and any governing body of a maintained or grant-maintained school**]** shall give the Board such information as the Board may require for the purposes of the exercise of any of their functions under **[**[F228]the Education Acts 1944 to 1993**]**.

[[F229](7A) A local education authority shall give the Board, within such reasonable time as the Board may specify, such information as the Board may require for the purposes of the exercise of any of their functions under the Further and Higher Education Act 1992 or under section 126 or 130 of this Act.

[F229](7B) The governing body of any institution within the further education sector or the higher education sector shall give the Board, within such reasonable time as the Board may specify, such information as the Board may require for the purpose of the exercise of any of their functions under the Education Acts 1944 to 1992.**]**

(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.

Textual Amendments

F224 Words in s. 197(4) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(a)**; S.I. 1992/831, art. 2, **Sch. 1**.

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F225 Words in s. 197(6) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

F226 Words in s. 197(6) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para.133; S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F227 Words in s. 197(7) inserted (1.1.1994) by 1993 c. 35, **s. 47(5)**; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

F228 Words in s. 197(7) substituted (1.1.1994) by 1993 c. 35, **s. 47(5)**; S.I. 1993/3106, art. 4, **Sch. 1** (amended by S.I. 1994/436, **art.2**).

F229 S. 197(7A)(7B) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(c)**; S.I. 1992/831, art. 2, **Sch. 1**.

Modifications etc. (not altering text)

C116 S. 197(7) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C117 S. 197(7) applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**.

C118 S. 197(7B) modified (1.4.1993) by S.I. 1993/563, art. 2(b)(ii), **Sch.2**

198 Transfers under Parts I and II.

(1) This section applies to any transfer under section [F230]. . ., 126 or 130 of this Act **[**[F231]or section 38 of the Education Act 1993**]**, 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 **[**[F232]or under the Education Act 1993**]** 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 **[**[F232]or under the Education Act 1993**]**.

(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

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section 126 of this Act, the Board shall provide **[**[F233]the higher education 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.

Textual Amendments

F230 Words in s. 198(1) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19, para. 134(a)(i), **Sch. 21**,Pt. I; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F231 Words in s. 198(1) inserted (1.1.1994) by 1993 c. 35, s.307(1), **Sch. 19**, para. 134(a)(ii); S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

F232 Words in s. 198(4) inserted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 134(b); S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art. 2**).

F233 Words in s. 198(5) substituted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 44**; S.I. 1992/831, art. 2, **Sch. 3**.

Modifications etc. (not altering text)

C119 S. 198 modified (1.1.1994) by 1993 c. 35, **s. 45(4)(5)** (with s. 155(11)); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

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

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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.

Modifications etc. (not altering text)

C120 S. 199(1)(3): functions conferred by S.I. 1991/1457, **arts.2**, 3

[F234]200 Grant-maintained schools: school property.

. . . . . .

Textual Amendments

F234 S. 20 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 135, **Sch. 21P**t. I; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art.2**).

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.

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(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; . . . [F235]

(b) . . . . . [F236]

(6) The [M26]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 [M27]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.

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Textual Amendments

F235 Word repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**

F236 Ss. 190(5)(b), 201(5)(b) repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**

Marginal Citations

M26 1981 c. 67.

M27 1965 c. 56.

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;

(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;

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(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—

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(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 [M28]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.

Marginal Citations

M28 1978 c. 44.

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.

(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

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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;

[[F237](d) the higher education funding council**]**

(e) such other persons appearing to the Commissioners to be concerned as they consider it would be appropriate to consult;

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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.

[F238](6) . . . . . .

Textual Amendments

F237 S. 205(2)(d) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 45(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F238 S. 205(6) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 45(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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.

(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.

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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 [M29]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.

Marginal Citations

M29 1974 c. 28.

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.

Modifications etc. (not altering text)

C121 S. 209 extended and restricted by S.I. 1990/773, **art. 2**

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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 **[**[F239]or institutions within the further education sector**]** 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. [M30]

(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 **[**[F239]or institutions within the further education sector**]** to whom payments have been made under the regulations to comply with such requirements as may be so determined.

Textual Amendments

F239 Words in s. 210(1)(3)(d) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, **Sch. 8 Pt. I para.46**; S.I. 1992/831, art. 2, **Sch.3**.

Marginal Citations

M30 1962 c. 12.

211 Grants in respect of special provision for immigrants

The power conferred by section 11 of the [M31]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**[**[F240](ba) the governing body of an institution within the further education sector**]**

[F241](c) . . . . . .

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

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exercise of any of their functions in consequence of the presence within their area of substantial numbers of such immigrants.

Textual Amendments

F240 S. 211(ba) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 47(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F241 S. 211(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 47(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Modifications etc. (not altering text)

C122 S. 211 (1)(ba) modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch.1**

C123 S. 211 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C124 S. 211 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**.

Marginal Citations

M31 1966 c. 42.

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;

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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 [F242]. . .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".

Textual Amendments

F242 Words in s. 213(1) inserted (6.7.1992) by S.I. 1992/1296, art.6(1), **Sch. para. 6(1)** and omitted (1.1.1996) by S.I. 1995/2985, art. 5(1), **Sch. para.5**.

Modifications etc. (not altering text)

C125 S. 213(1): functions of the Secretary of State made exercisable concurrently (6. 7. 1992) by S.I. 1992/1296, **arts. 2(3)(b)**, 3.

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

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(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 **[**[F243]by or under**]**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.

(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

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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.

Textual Amendments

F243 Words in s. 214(2)(a) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para.48**; S.I. 1992/831, art. 2, **Sch.1**.

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;

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(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 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 [M32]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.

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(9) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

Marginal Citations
M32 1968 c. 29.

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 [M33]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.

Marginal Citations
M33 1974 c. 28.

Miscellaneous provisions

218 School and further and higher education regulations.

(1) The Secretary of State may by regulations make provision—

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(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 **[**[F244]persons receiving education**]** 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.

[[F245](2A) Regulations under subsection (2)(a) above may make provision—

(a) by reference to the successful completion of a course of initial training for teachers in schools at an accredited institution; and

(b) conferring on the Teacher Training Agency or the Higher Education Funding Council for Wales such functions in relation to accreditation or otherwise as may be prescribed.**]**

[[F246F246](2B) **[**[F247]Regulations under subsection (2) above**]** may impose requirements on persons carrying on city technology colleges or city colleges for the technology of the arts as to the training and teaching experience of persons employed as teachers at such colleges who seek to become (in relation to schools) qualified teachers; and such requirements shall have effect for the purposes of section 105 of this Act as requirements of the agreements under which the colleges are maintained.**]**

(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 **[**[F248]persons licensed or otherwise authorised to teach by the Secretary of State or the Teacher Training Agency**]** in accordance with any provision made by or under the regulations.

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(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;

(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; [F249]. . .

(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; **[**[F250]or**]**

[[F251](d) by the proprietors of independent schools or at such schools as teachers or in any such work**]**

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 **[**[F252]or, in such cases as may be prescribed, the approval of the funding authority**]**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 **[**[F253]persons receiving education at**]** 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;

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(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 futher education (or both) and either—

(a) it is maintained by a local education authority; or**[**[F254](aa) it is within the further education sector**]**

[F255](b) . . . . . .

(11) An institution falls within this subsection if it is an institution within **[**[F256]the higher education sector in receipt of financial support under section 65 of the Further and Higher Education Act 1992**]**.

(12) In this section **[**[F257]other than in subsection (6)(d) above**]**"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.

Textual Amendments

F244 Words in s. 218(1)(f) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(a)**; S.I. 1992/831, art. 2, **Sch. 3**.

F245 S. 218(2A) inserted (21.9.1994) by 1994 c. 30, **s. 14(1)**; S.I. 1994/2204, **art.2(1)**.

F246 S. 218(2A) inserted (1.1.1994) by 1993 c. 35, **s. 291**; S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**); and the said s. 218(2A) renumbered as (2B) (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(4)(a)**; S.I. 1994/2204, **art.2(1)**.

F247 Words in s. 218(2B) substituted (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(4)(b)**; S.I. 1994/2204, **art.2(1)**.

F248 Words in s. 218(3) substituted (21.9.1994) by 1994 c. 30, **s. 14(3)**; S.I. 1994/2204, **art.2(1)**.

F249 Word in s. 218(6)(b) omitted by virtue of s. 290(3)(a); S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**).

F250 Word in s. 218(6)(c) inserted (1.1.1994) by 1993 c. 35, **s. 290(3)(b)**; S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**).

F251 S. 218(6)(d) inserted (1.1.1994) by 1993 c. 35, **s. 290(3)(b)**; S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**).

F252 Words in s. 218(7) inserted (1.4.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 136**; S.I. 1994/507, art. 4(1), **Sch. 2**.

F253 Words in s. 218(7)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(b)**; S.I. 1992/831, art. 2, **Sch. 3**.

F254 S. 218(10)(aa) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(c)(i)**; S.I. 1992/831, art. 2, **Sch. 3**.

F255 S. 218(10)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 49(c)(ii), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

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F256 Words in s. 218(11) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, **Sch. 8 Pt. I para. 49(d)**; S.I. 1992/831, art. 2, **Sch. 3**.

F257 Words in s. 218(12) inserted (1.1.1994) by 1993 c. 35, **s. 290(3)(c)**; S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**).

VALID FROM 11/01/2001

[F258 218A Regulations under section 218(6): further provision.

(1) The power to make regulations under subsection (6) of section 218 above includes power to provide that a person may appeal to the Tribunal against—

(a) a decision to prohibit or restrict the person's employment or further employment on the grounds mentioned in subsection (6ZA)(a) to (d) of that section; or

(b) a decision not to revoke or vary such a decision as is mentioned in paragraph (a) above.

(2) The regulations may—

(a) make provision as to the circumstances in which the Tribunal shall allow an appeal under the regulations and as to the powers available to it on allowing such an appeal;

(b) provide that, where a person has been convicted of an offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under the regulations.

(3) The power to make regulations under subsection (6) of that section also includes power to make provision for a person who has been subject, for a prescribed period, to a prohibition or restriction imposed by virtue of that subsection on relevant grounds to apply, with the leave of the Tribunal, for a review of the prohibition or restriction.

(4) The regulations may make provision as to—

(a) the circumstances in which an application for leave, or a review, under the regulations shall be determined in the person's favour;

(b) the powers available to the Tribunal on determining a review in the person's favour.

(5) In this section—

(a) "relevant grounds" means the grounds mentioned in section 218(6ZA)(c) above;

(b) "the Tribunal" means the Tribunal established under section 1 of the M34 Protection of Children Act 1999.**]**

Textual Amendments

F258 S. 218A inserted (11.1.2001) by 2000 c. 43, ss. 74, **Sch. 7 Pt. II para. 83**; S.I. 2000/3302, **art. 2(b)**

Marginal Citations

M34 1999 c. 14.

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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

[F259](b) . . . . . .

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);

[F260](d) . . . . . .

[F261](e) . . . . . .

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

[F262](ii) . . . . . .

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.

Textual Amendments

F259 S. 219(1)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F260 S. 219(2)(d) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F261 S. 219(2)(e) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

F262 S. 219(3)(c)(ii) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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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[[F263](a) a higher education funding council or the governing body of an institution within the higher education sector] or

[[F264](aa) a funding agency under Part I of the Education Act 1994 or the governing body of an institution receiving financial support under that Part, or**]**

[(b) [F265]a further education funding council or the governing body of an institution within the further education sector, or

(c) **[**[F266]the Funding Agency for Schools, the Schools Funding Council for Wales or**]]**the governing body

of a grant-maintained school.

(2) For the purposes of subsection (1) above "the appropriate body" is—

[[F267](a) with respect to studies relating to a higher education funding council, the council;

[F267](b) with respect to studies relating to the governing body of an institution within the higher education sector, the higher education funding council or the governing body**]**

[[F268](ba) with respect to studies relating to a further education funding council, the council;

(bb) with respect to studies relating to the governing body of an institution within the further education sector, the appropriate further education funding council or the governing body**]]**

[[F269](bc) with respect to studies relating to the Funding Agency for Schools, the agency;

(bd) with respect to studies relating to the Schools Funding Council for Wales, the council**]**. . .

(c) with respect to studies relating to the governing body of a grant-maintained school, **[**[F270]the funding authority or**]** the governing body.

[[F271](d) with respect to studies relating to a funding agency under Part I of the Education Act 1994, the agency; and

(e) with respect to studies relating to the governing body of an institution receiving financial support under that Part, the appropriate funding agency or the governing body.**]**

[[F272](3) The Commission may, at the request of a higher education funding council or a further education funding council, give the council advice in connection with the discharge of the council's functions under section 124B(2)(b) or paragraph 18(2)(b) of Schedule 7 to this Act.**]**

(4) The Commission may, at the request of a higher education corporation **[**[F273]a further 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.

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Textual Amendments

F263 S. 220(1)(a) substituted (6. 5. 1992) for words in s. 220(1) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(2)(a)**; S.I. 1992/831, art. 2, **Sch. 1**.

F264 S. 220(1)(aa) inserted (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(5)(a)**; S.I. 1994/2204, **art.2(1)**.

F265 S. 220(1)(b) and (c) substituted (6. 5. 1992) for words in s. 220(1) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(2)(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

F266 Words in s. 220(1)(c) inserted (1.4.1994) by 1993 c. 35, **s. 10(2)**; S.I. 1994/507, **art. 3(1)**.

F267 S. 220(2)(a)(b) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(3)(a)**; S.I. 1992/831, art. 2, **Sch. 1**.

F268 S. 220(2)(ba)(bb) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(3)(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

F269 S. 220(2)(bc)(bd) inserted (1.4.1994) by 1993 c. 35, **s. 10(3)**; S.I. 1994/507, **art. 3(1)**.

F270 Words in s. 220(2)(c) inserted (1.4.1994) by 1993 c. 35, **s. 10(4)**; S.I. 1994/507, **art. 3(1)**.

F271 S. 220(2)(d)(e) inserted (21.9.1994) by 1994 c. 30, s. 24, **Sch. 2 para. 8(5)(b)**; S.I. 1994/2204, **art.2(1)**.

F272 S. 220(3) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(4)**; S.I. 1992/831, art. 2, **Sch. 1**.

F273 Words in s. 220(4) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 51(5)**; S.I. 1992/831, art. 2, **Sch. 1**.

Modifications etc. (not altering text)

C126 S. 220 modified (1.4.1993) by S.I. 1993/563, art. 2, **Sch. 1**

C127 S. 220 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.

C128 S. 220 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**.

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

F274(c) . . . . . .

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 M35Employment 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;

F275 . . .

(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.

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Textual Amendments

F274 S. 221(1)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F275 Definition in s. 221(3) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

Modifications etc. (not altering text)

C129 S. 221 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

C130 S. 221 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. Pt.I**.

Marginal Citations

M35 1978 c. 44.

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

[F276](b) . . . . . .

(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 [F277]. . .;

as appear to him to be concerned.

Textual Amendments

F276 S. 222(2)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 53, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F277 Words in s. 222(3)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 53, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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 [M36]Data Protection Act 1984 (prohibition

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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.

Marginal Citations
M36 1984 c. 35.

224 Superannuation for staff of Further Education Unit.

(1) The persons to whom section 1 of the [M37]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 [M38]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.

Marginal Citations
M37 1972 c. 11.
M38 1948 c. 38.

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 [M39]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.

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Marginal Citations

M39 1963 c. 33.

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 **[**[F278]by, or under the direction of, one or more of Her Majesty's Inspectors of Schools for England**]**.

(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.

Textual Amendments

F278 Words in s. 226(2)(b) substituted (31. 8. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para.7**; S.I. 1992/1157, **art. 2**,Sch.

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.

[F279](2) . . . . . .

[F279](3) . . . . . .

[F279](4) . . . . . .

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Textual Amendments

F279 S. 227(2)-(4) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 54, **Sch.9**; S.I. 1992/831, art. 2, **Sch.1**.

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.

(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.

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(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 [M40]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."

Marginal Citations
M40 1967 c. 3.

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);
F280 . . .
F280 . . .
F280 . . .
section 126 (taken with Schedule 10);
section 128(1)(b);
section 130 (taken with Schedule 10);
F281 . . .
section 168(1) and (2);
section 180(1);
section 190(5);
section 192;

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section 201(5) and (7); and
section 228 (taken with Schedule 10).

[F282](2) . . . . . .

[F282](3) . . . . . .

(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

[F282](b) . . . . . .

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 [M41]Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the [M42]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.

Textual Amendments

F280 Words in s. 230(1) repealed (1.1.1994 in respect of repeals of "section 74(taken with Schedule 10)" and otherwise 1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19, para. 137(a), **Sch. 21**, Pt.I ; S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art. 2**); S.I. 1994/507, art. 4, **Sch.2**, Appendix.

F281 Words in s. 230(1) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 55(a), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

F282 S. 230(2)(3)(4b) repealed (1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 137(b), **Sch. 21**, Pt.I; S.I. 1994/507, art. 4, **Sch.2**, Appendix.

Marginal Citations

M41 1982 c. 39.

M42 1891 c. 39.

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, 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

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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), **[**[F283]35(4)**]**, 40(4), [F284]. . . , [F285]. . . and 157, paragraph 1 of Schedule 5, paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.

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(3) No order shall be made under section 3(4)(a), 24 [F286]. . . 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, [F287]. . ., 214, 216, [F288]. . . 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) [F289]. . .(b) or (c), (5) or (6), may make in relation to Wales provision different from that made in relation to England.

Textual Amendments

F283 Words in s. 232(2) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **sch. 19**, para. 138(a); S.I. 1993/3106, art. 4, **sch. 1** (amended by S.I. 1994/436, **art. 2**).

F284 Words in s. 232(2) repealed (1.1.1994 in respect of repeals of "58(2), 59(1)," and "102" and otherwise 1.4.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 138(b)(i), **Sch. 21**, Pt. I; S.I. 1993/3106, art. 4, **Sch. 1** Appendix (amended by S.I. 1994/436, **art. 2**); S.I. 1994/507, art. 4, **Sch. 2**, Appendix.

F285 Words in s. 232(2) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(a), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

F286 Words in s. 232(3) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(b), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

F287 Words in s. 232(4)(b) repealed (1.1.1994) by 1993 c. 35, ss, 307(1)(3), Sch. 19 para. 138(b)(ii), Sch. 21 Pt. I; S.I. 1993/3106, art. 4, **Sch. 1** Appendix (amended by S.I. 1994/436, **art. 2**),

F288 Word in s. 232(4)(b) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(c), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

F289 Word in s. 232(6) omitted (21.9.1994) by virtue of 1994 c. 30, **s. 14(4)**; S.I. 1994/2204, **art.2(1)**.

Modifications etc. (not altering text)

C131 S. 232(4) restricted (1.9.1994) by 1993 c. 35, **s. 241(4)**; S.I. 1994/2038, art. 3(1), **Sch. 2**.

233 Expenses.

There shall be defrayed out of money provided by Parliament—

(a) any expenses incurred by the Secretary of State [F290]. . .under this Act; and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

Textual Amendments

F290 Words in s. 233(a) omitted (1.1.1996) by virtue of S.I. 1995/2985, art. 5(1), **Sch. para.5**.

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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 **[**[F291]the higher education sector other than a university**]** 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.

(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

[F292](b) . . . . . .

(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)".

Textual Amendments

F291 Words in s. 234(1) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 57(a)**; S.I. 1992/831, art. 2, **Sch.3**.

F292 S. 234(2)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 57(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

235 General interpretation.

(1) In this Act, except where the context otherwise requires—

"the 1944 Act" means the [M43]Education Act 1944;

"the 1980 Act" means the [M44]Education Act 1980;

[F293] . . .

"the 1986 Act" means the [M45]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);

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"land" includes buildings and other structures, land covered with water, and any interest in land;

"liability" includes obligation;

"local authority" means a county council, **[**[F294]a county borough 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;

"transfer date" has the meaning given by section [[F295]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—

[F296](a) . . . . . .

(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

[F296](h) . . . . . .

(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) [F297]. . . 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.

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(5) Any reference in section [F298]. . ., 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.

[[F299](5A) Any reference in any provision of this Act which extends to Scotland to a higher education funding council shall, in the application of that provision to Scotland, be construed as a reference to the Scottish Higher Education Funding Council.**]**

(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.

(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.

Textual Amendments

F293 Definition in s. 235(1) repealed (1.9.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 139(a)(i), **Sch. 21 Pt. I**; S.I. 1994/2038, art. 3(1), **Sch. 2**.

F294 Words in s. 235 inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para.83** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1)); S.I. 1996/396, art. 4, **Sch.2**.

F295 Words in definition of "transfer date" in s. 235(1) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 139(a)(ii), **Sch. 21**, Pt. I; S.I. 1993/3106, art. 4, **Sch. 1**, Appendix (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art. 2**).

F296 S. 235(2)(a)(h) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 58, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

F297 Words in s. 235(3)(b) repealed (1.1.1994) by 1993 c. 35,s. 307(1)(3), Sch. 19 para. 139(b), Sch. 21, Pt. I; S.I. 1993/3106, art. 4, **Sch. 1**, Appendix (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art. 2**).

F298 Words in s. 235(5) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(30), Sch. 19 para. 139(c), **Sch. 21**, Pt. I; S.I. 1993/3106, art. 4, **Sch. 1**, Appendix (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art. 2**).

F299 S. 235(5A) inserted (1. 6. 1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 10**; S.I. 1992/817, art. 3(2), **Sch. 2**.

Marginal Citations

M43 1944 c. 31.

M44 1980 c. 20.

M45 1986 c. 61.

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);

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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 [M46]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.

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(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.

Modifications etc. (not altering text)

C132 Power of appointment conferred by s. 236(6) partly exercised: S.I. 1988/1459, 1794, 2002, 2271; 1989/164, 501, 719; 1990/391

Marginal Citations

M46 1968 c. 37.

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.

Status:
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Changes to legislation:
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