



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART II

#### HIGHER AND FURTHER EDUCATION

#### CHAPTER II

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

##### *New arrangements for funding higher education*

#### **131 Universities Funding Council**

- (1) There shall be established a body corporate to be known as the Universities Funding Council.
- (2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—
  - (a) to have experience of, and to have shown capacity in, the provision of higher education; and
  - (b) to be currently engaged in the provision of higher education;and in appointing the remaining members 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, industrial, commercial or financial matters or the practice of any profession.
- (4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purpose of providing financial support for activities eligible for funding under this section.

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- (5) Those activities are—
- (a) the provision of education and the undertaking of research by universities; and
  - (b) the provision of any facilities and the carrying on of any other activities by universities which their governing bodies consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research.
- (6) The Council shall have power to make grants, subject to such terms and conditions as they think fit, to the governing body of any university in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section.
- (7) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any university in respect of which grants are made under subsection (6) above from maintaining or developing its funding from other sources.
- (8) The Council shall also have power—
- (a) to keep under review activities eligible for funding under this section;
  - (b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit;
  - (c) to provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the Department's functions relating to universities in Northern Ireland; and
  - (d) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.
- (9) The governing body of any university shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.
- (10) In this section “governing body” means, in relation to a university, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs.

### **132 Polytechnics and Colleges Funding Council**

- (1) There shall be established a body corporate to be known as the Polytechnics and Colleges Funding Council.
- (2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—
  - (a) to have experience of, and to have shown capacity in, the provision of higher education; and
  - (b) to be currently engaged in the provision of higher education;

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and in appointing the remaining members 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, industrial, commercial or financial matters or the practice of any profession.

- (4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purposes of—
- (a) providing financial support for activities eligible for funding under this section; and
  - (b) making payments in accordance with section 133 of this Act.
- (5) The activities eligible for funding under this section are—
- (a) the provision of education and the undertaking of research by institutions within the PCFC funding sector;
  - (b) the provision of any facilities and the carrying on of any other activities by such institutions which the governing bodies of those institutions consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research; and
  - (c) the provision by institutions maintained or assisted by local education authorities, other than universities, of prescribed courses of higher education.
- (6) The following are to be treated for the purposes of this Act as institutions within the PCFC funding sector—
- (a) any institution conducted by a higher education corporation; and
  - (b) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Council.
- (7) The Council shall have power—
- (a) to make grants to the governing body of any institution within the PCFC funding sector in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (5)(a) or (b) above; and
  - (b) to make grants to any local education authority or other persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in subsection (5)(c) above of prescribed courses of higher education;
- subject in each case to such terms and conditions as the Council think fit.
- (8) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any institution within the PCFC funding sector in respect of which grants are made under subsection (7) above from maintaining or developing its funding from other sources.
- (9) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to them to be for the time being an appropriate balance in their support of such activities as between institutions concerned in those activities which are of a denominational character and other institutions so concerned.
- (10) The Council shall also have power—

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- (a) to keep under review activities eligible for funding under this section;
- (b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit; and
- (c) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.

(11) Each of the following, that is to say—

- (a) a local education authority;
- (b) the governing body of any institution within the PCFC funding sector; and
- (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided;

shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.

(12) For the purposes of subsection (9) above an institution is an institution of a denominational character if it appears to the Council that either—

- (a) a majority of the members of the governing body of the institution are persons appointed to represent the interests of a particular religious denomination; or
- (b) all or most of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a particular religious denomination.

### **133 Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education**

(1) The Polytechnics and Colleges 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; and
- (b) the governing body of any institution designated under section 129 of this Act; 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, 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.

(4) Each of the following, that is to say—

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- (a) a local education 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.

### **134 The Funding Councils: supplementary provisions**

- (1) The Secretary of State may by order confer or impose on either of the Funding Councils such supplementary functions as he thinks fit; and any such functions shall be treated—
  - (a) in the case of functions conferred or imposed on the Universities Funding Council, as functions under section 131 of this Act; and
  - (b) in the case of functions conferred or imposed on the Polytechnics and Colleges Funding Council, as functions under section 132 of this Act.
- (2) For the purposes of subsection (1) above a function is a supplementary function, in relation to either of the Funding Councils, if it is exercisable for the purposes of—
  - (a) the exercise by the Secretary of State of functions of his under any enactment; or
  - (b) the doing by the Secretary of State of anything he has power to do apart from any enactment;and it relates to, or to the activities of, institutions eligible for funding by that Council.
- (3) The terms and conditions on which either of the Funding Councils make any grants or other payments may include in particular conditions—
  - (a) enabling the Council to require the repayment, in whole or in part, of sums paid by the Council if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to the Council in accordance with any other condition remains unpaid;but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council.
- (4) Before exercising their discretion under section 131(6) or (as the case may be) section 132(7)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants each of the Funding Councils shall consult such of the following bodies as it appears to the Council to be appropriate to consult in the circumstances, that is to say—
  - (a) such bodies representing the interests of relevant institutions as appear to the Council to be concerned; and
  - (b) the governing body of any particular relevant institution which appears to the Council to be concerned.
- (5) References in subsection (4) above to relevant institutions are references—
  - (a) in relation to consultations required to be carried out by the Universities Funding Council, to universities; and
  - (b) in relation to consultations required to be carried out by the Polytechnics and Colleges Funding Council, to institutions within the PCFC funding sector.
- (6) Subject to subsection (7) below, the Secretary of State may make grants to each of the Funding Councils of such amounts and subject to such conditions as he may determine.

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- (7) The conditions subject to which grants are made by the Secretary of State to either of the Funding Councils shall not relate to the making of grants or other payments by the Council to any specified institution.
- (8) In exercising their functions under this Part of this Act each of the Funding Councils shall comply with any directions given to them by the Secretary of State.
- (9) Directions given for the purposes of subsection (8) above shall be given by order made by the Secretary of State.
- (10) Neither of the Funding Councils shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of either Council shall not be regarded as property of, or property held on behalf of, the Crown.
- (11) An order under subsection (1) above may exclude the application of subsection (10) above to any extent specified in the order in relation to the exercise of any functions conferred or imposed by the order on either of the Funding Councils.
- (12) Schedule 8 to this Act has effect with respect to each of the Funding Councils.
- (13) In this section “the Funding Councils” means the Universities Funding Council and the Polytechnics and Colleges Funding Council; and the reference in subsection (2) above to institutions eligible for funding by either of those Councils is a reference—
  - (a) in relation to the Universities Funding Council, to universities; and
  - (b) in relation to the Polytechnics and Colleges Funding Council, to—
    - (i) institutions within the PCFC funding sector; and
    - (ii) institutions maintained or assisted by local education authorities, other than universities, at which prescribed courses of higher education are currently provided.