



Education Reform Act 1988

1988 CHAPTER 40

PART II

HIGHER AND FURTHER EDUCATION

CHAPTER III

FINANCE AND GOVERNMENT OF LOCALLY FUNDED FURTHER AND HIGHER EDUCATION

Further and higher education funding schemes

139 Schemes for financing locally funded further and higher education

- (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 140 of this Act.
- (2) The scheme shall provide for—
 - (a) the determination in respect of each financial year of the authority, for each institution required to be covered by the scheme in that year, of the share to be appropriated for that institution in that year of the further and higher education budget of the authority for that year (referred to below in this Chapter, in relation to such an institution, as the institution's budget share); and
 - (b) the delegation by the authority of the management of an institution's budget share for any year to the governing body of the institution where such delegation is required or permitted by or under the scheme.
- (3) The scheme shall also set out the principles and procedures to be applied by the authority in planning the educational provisions to be made by institutions required to be covered by the scheme.
- (4) For the purposes of this Chapter, an institution is required to be covered in any financial year by a scheme made under this section by a local education authority if—

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- (a) it is an institution providing full-time education; and
 - (b) immediately before the beginning of that year it is, or at any time during that year it becomes, either—
 - (i) an institution maintained by that authority in exercise of their further or higher education functions; or
 - (ii) a designated assisted institution dependent on assistance from that authority.
- (5) In this Chapter—
- (a) references to an institution in respect of which financial delegation is required for any financial year under a scheme under this section are references to an institution 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 institution's budget share for that year (and the governing body of such an institution are said to have a right to a delegated budget for the year);
 - (b) references to an institution which has a delegated budget are references to an institution conducted by a governing body to whom a local education authority have for the time being delegated the management of the institution'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) any reference, in relation to an institution assisted by a local education authority, to the delegation by that authority to the governing body of that institution of the management of the institution's budget share for any financial year shall be read as a reference to the making by that authority to that body of a grant in respect of the institution of an amount equal to that budget share.
- (6) References to this Act to a designated assisted institution are references to an institution designated by or under regulations made under section 27 of the 1980 Act as an institution substantially dependent for its maintenance on assistance from local education authorities.
- (7) For the purposes of this Part of this Act a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by the authority and either—
- (a) it is not assisted by any other local education authority; or
 - (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.

140 Preparation and imposition of further and higher education funding schemes

- (1) A scheme prepared by a local education authority under section 139 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—

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- (a) comply with any prescribed requirements with respect to the provisions to be included in any such scheme; and
 - (b) take into account any guidance given by the Secretary of State as to the provisions he regards as appropriate for inclusion in any such scheme.
- (3) Guidance given by the Secretary of State for the purposes of subsection (2)(b) above—
 - (a) may be given generally or in relation to any particular local education authority or any class or description of such authorities; and
 - (b) shall be published in such manner as the Secretary of State thinks fit.
- (4) Before preparing such a scheme a local education authority shall consult the governing body of every institution providing full-time education which is either—
 - (a) an institution maintained by the authority in exercise of their further or higher education functions; or
 - (b) a designated assisted institution dependent on assistance from the authority.
- (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
 - (b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection is unsatisfactory and cannot be rendered satisfactory merely by modifying it;he may, after consulting such persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 139 of this Act in the case of that authority 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 139 by the local education authority concerned; and
 - (b) shall come into force on such date as may be specified in the scheme.

141 Replacement and variation of further and higher education funding schemes

- (1) Subject to the following provisions of this section, a scheme may be replaced or varied by a subsequent scheme made under section 139 of this Act by the local education authority concerned.
- (2) Section 139 shall apply for the purposes of a scheme replacing or varying a previous scheme with the omission of subsection (1); and subsection (1) of section 140 of this Act shall not apply in relation to such a scheme.
- (3) A scheme prepared by a local education authority under section 139 which—
 - (a) replaces a previous scheme; or
 - (b) makes any significant variation of a previous scheme;shall be submitted to the Secretary of State for his approval.

- (4) A scheme under section 139 varying a previous scheme which is not required by subsection (3)(b) above to be submitted to the Secretary of State for his approval is referred to below in this section as a “minor variation scheme”.
- (5) Subsections (4) and (5) of section 140 shall not apply in relation to a minor variation scheme.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of subsection (3)(b) above.
- (7) Where a local education authority propose to make a scheme under section 139 which in their opinion is a minor variation scheme, the authority shall notify the Secretary of State in writing of their proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.
- (8) 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 notification under subsection (7) above of the authority’s proposal, send to him a copy of their proposed scheme; and it shall be for the Secretary of State to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in an order under subsection (6) above.
- (9) A scheme made under section 139 may also be varied by a direction given by the Secretary of State, as from such date as may be specified in the direction.
- (10) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.

142 Delegation to governing body of management of institution’s budget share

- (1) This section applies where in the case of any local education authority the authority’s financial provision for any institutions maintained or assisted by the authority is subject to regulation by a scheme.
- (2) Subject to section 150(6) of this Act, in the case of any institution in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority—
 - (a) in the case of an institution maintained by the authority, to put at the disposal of the governing body of the institution in respect of that year a sum equal to the institution’s budget share for that year; or
 - (b) in the case of an institution assisted by the authority, to make to the governing body in respect of that year a grant of such a sum;
 to be spent for the purposes of the institution.
- (3) Any sum which, in accordance with subsection (2)(a) above, is required to be put at the disposal of the governing body of an institution shall be put at their disposal at such times and in such manner as may be provided by or under the scheme.
- (4) Payments in respect of any grant made in accordance with subsection (2)(b) above shall be made at such times and in such manner as may be so provided.
- (5) In the case of any institution in respect of which financial delegation is required for any financial year, the authority may not—
 - (a) delegate to the governing body the power to spend any sum appropriated by the authority for the purposes of the institution in that year; or

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- (b) make to the governing body a grant of any such sum; otherwise than as required under the scheme.
- (6) Subject to section 150(7) of this Act, the governing body of any institution 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 or granted to them in respect of the institution's budget share for any financial year as they think fit for the purposes of the institution; and
 - (b) may delegate to the principal, to such extent as may be permitted by or under the scheme and subject to any provision of the articles of government of the institution, their power under paragraph (a) above in relation to any part of that sum.
- (7) The governors of an institution 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 (6) above.

143 Further and higher education funding 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 institution 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 institutions so much of the authority's further and higher education budget for that year as is appropriated by the authority for allocation in accordance with the scheme among those institutions.
- (2) In this section "formula" includes methods, principles and rules of any description, however expressed.
- (3) The formula laid down by a scheme in accordance with subsection (1) above—
 - (a) shall include provision for taking into account, in the case of each institution required to be covered by the scheme in any financial year, the student numbers allocated to that institution under the scheme for that year; and
 - (b) may include provision for taking into account any other factors affecting the needs of individual institutions which are subject to variation from institution to institution.
- (4) The student numbers allocated to any institution under a scheme for any financial year shall be determined (and may from time to time be revised) in such manner as may be provided by the scheme.
- (5) A scheme must provide for all amounts and student numbers relevant to the determination of an institution's budget share under the scheme for any financial year to be determined initially before the beginning of that year.

144 Further and higher education funding schemes: provision for financial delegation

- (1) A scheme shall include provision for requiring, in the case of each institution required to be covered by the scheme in any financial year which satisfies the qualifying condition on a qualifying date in relation to that year, the delegation by

the local education authority concerned to the governing body of the institution of the management of the institution's budget share for that year.

- (2) For the purposes of this section—
 - (a) an institution is to be treated as satisfying the qualifying condition at any time when its total full-time equivalent enrolment number is two hundred or more; 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.
- (3) References in this Chapter to the delegation requirement under any scheme are references to any provision included in the scheme by virtue of subsection (1) above.
- (4) The application of the delegation requirement under a scheme in relation to any institution is subject to section 145 of this Act in the case of any institution to which that section applies.
- (5) Subject to subsections (6) and (7) below, once the delegation requirement under a scheme applies in relation to an institution in respect of any financial year it shall continue to apply in respect of each succeeding financial year.
- (6) Subject to subsection (7) below, the delegation requirement under a scheme shall cease to apply in relation to any institution to which that requirement for the time being applies if the institution's total full-time equivalent enrolment number—
 - (a) falls below the number an institution's total full-time equivalent enrolment number is for the time being required under subsection (2)(a) above to equal or exceed for the institution to be treated as satisfying the qualifying condition; and
 - (b) remains below that number for such period as may be specified in the scheme.
- (7) Where subsection (6) above applies in the case of any institution the delegation requirement under the scheme in question shall cease to apply in relation to the institution 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 institution.
- (8) The application of subsections (6) and (7) above in relation to any institution is without prejudice to the subsequent application of the delegation requirement under the scheme in question in relation to that institution if it satisfies the qualifying condition on a qualifying date in relation to any financial year subsequent to that mentioned in subsection (7).
- (9) In the case of any institution required to be covered by a scheme in any financial year to which the delegation requirement under the scheme does not apply, the scheme may provide for the delegation by the local education authority concerned to the governing body of the institution of the management of the institution's budget share for that year.
- (10) Any delegation by a local education authority under a scheme to the governing body of any institution of the management of the institution's budget share for any financial year shall be subject to such conditions as may be imposed by or under the scheme.
- (11) Conditions so imposed may (in particular) relate to the application of the whole of the budget share of any institution or of any part of the budget share of any institution

determined by or under the scheme, and different conditions may be imposed in relation to any parts so determined.

- (12) The governing body of any institution required to be covered by a scheme shall give to the local education authority concerned such information as the authority may from time to time require for the purposes of the exercise of their functions under this Chapter.

145 Initial implementation of further and higher education funding schemes

- (1) The delegation requirement under a scheme shall not apply in relation to any institution which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.
- (2) A scheme may include provision—
- (a) for modifying or excluding the application in relation to any such institution of any of its provisions other than the delegation requirement; and
 - (b) for modifying the delegation requirement as it applies in relation to any such institution from any date specified under subsection (1) above;
- until a date specified in the scheme.
- (3) The provision authorised by subsection (2)(b) above includes in particular provision limiting the delegation requirement to delegation for such purposes, and in relation to expenditure of such descriptions, as may be specified in the scheme.
- (4) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (6) below) is the period of three years beginning with the date on which the scheme comes into force.
- (5) Different dates may be specified under subsection (1) or (2) above in relation to different institutions or categories of institution and different purposes of any modification or exclusion made under subsection (2) above, and in relation to institutions 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.
- (6) 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) or (2) 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.
- (7) For the purposes of this section, an institution—
- (a) comes within a scheme in any financial year if that financial year is the first financial year in which the institution is required to be covered by the scheme; and
 - (b) comes within the scheme at the beginning of that year if it is then an institution required to be so covered and otherwise at the time within that year when it first becomes such an institution.

146 Extension of further and higher education funding schemes

- (1) The Secretary of State may by regulations—
 - (a) amend paragraph (a) of subsection (2) of section 144 of this Act by substituting a lower number for the number an institution's total full-time equivalent enrolment number is for the time being required to equal or exceed for the institution 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 all institutions required to be covered by the scheme without exception.
- (2) The Secretary of State may by regulations provide for—
 - (a) requiring or authorising schemes to cover institutions providing further or higher education (or both) of any description specified in the regulations;
 - (b) providing for delegation requirements under schemes in relation to institutions of any description so specified which by virtue of any regulations made under paragraph (a) above are required to be covered by the schemes;
 - (c) authorising local education authorities to delegate to their respective governing bodies, in such circumstances as may be determined by or under schemes, the management of the budget shares of institutions of any description so specified which by virtue of any regulations so made are required or authorised to be covered by the schemes;

subject to any requirements imposed by the regulations with respect to the conditions institutions providing further or higher education (or both) of any description so specified must satisfy in order to be covered by a scheme or to fall within any provision for delegation made by virtue of paragraph (b) or (c) above.
- (3) The requirements that may be imposed in relation to such institutions by regulations made under subsection (2) above include, in particular, requirements with respect to the government of, and the approval by the Secretary of State of instruments and articles of government for, such institutions.
- (4) Regulations under this section—
 - (a) may make in any provisions of this Chapter such amendments as appear to the Secretary of State to be required in consequence of any provision made in those regulations by virtue of subsection (1) or (2) above; and
 - (b) 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 so made.

147 Publication of further and higher education funding schemes and annual information as to their operation

- (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 Secretary of State may by regulations require every local education authority operating a scheme to publish, before the beginning of every financial year, such information as to the operation of the scheme as may be required by the regulations.
- (3) The information shall be published in such form and manner as may be prescribed.

- (4) For the purposes of subsection (2) above a local education authority is an authority operating a scheme if the authority's financial provision for any institutions maintained or assisted by the authority is subject to regulation by a scheme.