



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

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

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

- (1) There shall be established a body corporate to be known as the Education Assets Board.
- (2) The Board shall consist of a chairman and not less than two nor more than ten other members appointed by the Secretary of State.
- (3) In appointing the members of the Board the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, property management, local government or education.
- (4) The principal functions of the Board are those conferred or imposed on them under sections 198 to 201 of and Schedule 10 to this Act [<sup>F1</sup>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 [<sup>F2</sup>the Education Acts] the Board shall comply with any directions given to them by the Secretary of State.
- (7) Any [<sup>F3</sup>local authority][<sup>F4</sup>and any governing body of a maintained <sup>F5</sup>. . . school] shall give the Board such information as the Board may require for the purposes of the exercise of any of their functions under [<sup>F6</sup>the Education Acts].

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- [<sup>F7</sup>(7A) A [<sup>F3</sup>local 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.
- <sup>F7</sup>(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 [<sup>F8</sup>the Education Acts].]
- (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.
- <sup>F9</sup>[(10) In this section “the Education Acts” has the meaning given by section 578 of the Education Act 1996.]

#### Textual Amendments

- F1** 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**.
- F2** Words in s. 197(6) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 1 Pt. I para. 74(2)** (with ss. 1(4), 561, 562, **Sch. 39**).
- F3** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 4(2)**
- F4** 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); (which insertion is continued after the repeal of 1993 c. 35 by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, **Sch. 39**)).
- F5** Words in s. 197(7) repealed (1.9.1999) by 1998 c. 31, s. 140(3), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F6** Words in s. 197(7) substituted (1.11.1996) by virtue of 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 74(3)** (with ss. 1(4), 561, 562, **Sch. 39**).
- F7** 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**.
- F8** Words in s. 197(7B) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 74(4)** (with ss. 1(4), 561, 562, **Sch. 39**).
- F9** S. 197(10) added (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 74(5)** (with ss. 1(4), 561, 562, **Sch. 39**).

#### Modifications etc. (not altering text)

- C1** Power to amend s. 197 conferred (1.2.1999) by 1998 c. 31, s. 137(4)(a) (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1**.
- C2** S. 197(7) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.
- C3** S. 197(7) applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**.
- C4** 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.

- <sup>F10</sup>[(1) This section applies to any transfer under any of the following provisions, namely—
- (a) section 126 or 130 of this Act,

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- (b) Schedule 21 to the School Standards and Framework Act 1998 (“the 1998 Act”), or
- (c) any regulations made—
  - (i) under section 21(5) or (9) of that Act, or
  - (ii) under paragraph 10 of Schedule 2 or paragraph 5 of Schedule 8 to that Act; <sup>F11</sup>or
- (d) Part 3 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013;]

and those provisions, so far as relating to transfers under them, shall in each case have effect subject to Schedule 10 to this Act.

(1A) However, nothing in—

- (a) the provisions of that Schedule other than paragraph 2(4), or
- (b) subsection (3) below,

applies in relation to any transfer agreement falling to be made under paragraph 4 or 7 of Schedule 21 to the 1998 Act or any corresponding provision of regulations under that Act.

(2) Schedule 10 to this Act 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 by a transferor authority or body 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 transferred under a transfer to which this section applies; and
- (d) making supplementary and consequential provisions in relation to such transfers.

(3) In carrying out the functions conferred or imposed on them by that Schedule—

- (a) the Education Transfer Council—
  - (i) shall, subject to subsection (4) below, not act on behalf of the transferor, the transferee or any other interested person, but
  - (ii) shall seek to ensure that all such persons’ interests are protected; and
- (b) it shall be the duty of the Council, so far as it is reasonably practicable for them to do so, to secure that each transfer to which this section applies is, so far as possible, fully effective on the date on which it takes effect under this Act or under or by virtue of the 1998 Act.

(4) Where the transferor under any such transfer is a local authority and in accordance with that Schedule anything falls to be or may be done by the Council for the purposes of or in connection with that transfer—

- (a) it may not be done by the transferee; and
- (b) in doing it the Council 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 or the 1998 Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act or the 1998 Act.]

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- (5) Not later than the end of the period of six months beginning with the transfer date applicable in relation to any transfer to a higher education corporation under section 126 of this Act, [<sup>F12</sup>the Council] shall provide [<sup>F13</sup>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 [<sup>F12</sup>the Council].
- (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, [<sup>F12</sup>the Council] 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

- F10** S. 198(1)-(4) substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para. 2(2)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1**.
- F11** S. 198(1)(d) and word inserted (W.) (1.10.2013) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 14(2)**; S.I. 2013/1800, art. 3(j)
- F12** Words in s. 198(5)(6) substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para. 2(3)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F13** 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)

- C5** Power to amend conferred (1.2.1999) by School Standards and Framework Act 1998 c. 31, s. **137(4)(a)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- C6** S. 198 applied (with modifications) (1.9.1999) by School Standards and Framework Act 1998 c. 31, s. 74, **Sch. 21 Pt. I para. 2(3)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- C7** S. 198 applied (with modifications) (10.3.1999) by The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 (S.I. 1999/362), **regs. 54(6)(a)**, 54A, 54C (as amended (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**; and (W.) (31.7.2000) by S.I. 2000/1867, **reg. 2, Sch.**)
- S. 198 applied (with modifications) (1.1.2001) by The Education (New Procedures for Property Transfers) Regulations 2000 (S.I. 2000/3209), **regs. 5, 6, 15, 16, Sch. 1, Sch. 3**
- C8** S. 198 applied (E.) (25.5.2007) by The School Governance (Federations) (England) Regulations 2007 (S.I. 2007/960), **regs. 1(1), 41(2), 46(2)**
- C9** S. 198 applied (W.) (12.4.2010) by The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 (S.I. 2010/638), **regs. 1(1), 10(2), 80(2), 86(2)**
- C10** S. 198 applied (1.9.2012) by The School Governance (Federations) (England) Regulations 2012 (S.I. 2012/1035), **regs. 1, 13(2), 33(2), 39(2)** (with **reg. 2**)
- C11** S. 198 applied (22.5.2014) by The Federation of Maintained Schools (Wales) Regulations 2014 (S.I. 2014/1132), **regs. 1(1), 13(2), 84(2), 91(2)**

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

- (1) The amount of any liability of a [<sup>F3</sup>local 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.

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- (2) This section applies to any institution conducted by a higher education corporation and any institution designated under section 129 of this Act; and in relation to any such institution—
  - (a) a liability is an excepted liability for the purposes of this section if it would have been transferred under section 126(3) but for subsection (5)(b) of that section or (as the case may be) under section 130(2) of this Act but for subsection (4)(a) of that section; and
  - (b) references, in relation to an excepted liability, to the default transferee and the operative date are references respectively to the body or persons to whom and the date on which that liability would have been so transferred.
- (3) It shall be the duty of the authority and the Board, whether before or after the operative date, so far as practicable to arrive at such written agreements as may be necessary for determining the amount of any excepted liability and the terms to apply in relation to the liability imposed on the default transferee under this section by reference to that liability.
- (4) Notwithstanding any terms agreed or determined as mentioned in subsection (1) above, any liability in respect of any sum treated by virtue of that subsection as having been borrowed from a [<sup>F3</sup>local 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.

#### **Textual Amendments**

**F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 4(2)**

#### **Modifications etc. (not altering text)**

**C12** S. 199(1)(3): functions conferred by [S.I. 1991/1457](#), **arts.2, 3**

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#### <sup>F14</sup>**200 Grant-maintained schools: school property.**

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##### **Textual Amendments**

**F14** S. 20 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 135, 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).

#### <sup>F15</sup>**201 Wrongful disposals.**

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##### **Textual Amendments**

**F15** S. 201 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

### *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.

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## **203 Duty of Commissioners.**

- (1) The Commissioners shall exercise the powers conferred by section 204 of this Act with a view to securing that the statutes of each qualifying institution include—
  - (a) provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;
  - (b) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause;
  - (c) provision establishing disciplinary procedures determined by the Commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment;
  - (d) provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in paragraph (a) or (b) above) or who are otherwise disciplined; and
  - (e) provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment.
- (2) No provision such as is mentioned in subsection (1)(a) or (b) above which is included in the statutes of a qualifying institution by virtue of section 204 of this Act shall enable any member of the academic staff to be dismissed unless the reason for his dismissal may in the circumstances (including the size and administrative resources of the institution) reasonably be treated as a sufficient reason for dismissing him.
- (3) Where any such provision as is mentioned in subsection (1) above is included in the statutes of a qualifying institution (whether by virtue of section 204 of this Act or otherwise) and—
  - (a) there is no requirement for any instrument which would have the effect of modifying the provision to be approved by Her Majesty in Council or to be laid before both Houses of Parliament; and
  - (b) but for this subsection, there would be no requirement for such an instrument to be approved by the Privy Council;the Commissioners shall exercise the powers conferred by that section with a view to securing that no instrument which would have the effect of modifying the provision shall have that effect unless it has been approved by the Privy Council.
- (4) Any reference in this section to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of this section.
- (5) For the purposes of this section the dismissal of a member of staff shall be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to—
  - (a) the fact that the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or
  - (b) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of

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a particular kind in that place, have ceased or diminished or are expected to cease or diminish.

- (6) For the purposes of this section “good cause”, in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which he was appointed or employed to do; and in this subsection—
- (a) “capability”, in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and
  - (b) “qualifications”, in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him.
- (7) In this section—
- “appropriate”, in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution;
- “dismiss” and “dismissal”—
- (a) include remove or, as the case may be, removal from office; and
  - (b) in relation to employment under a contract, shall be construed in accordance with <sup>F16</sup>Part X of the Employment Rights Act 1996].
- (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.

#### Textual Amendments

**F16** Words in s. 203(7) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 37(3)** (with ss. 191-195, 202).

## 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



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

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

- (1) This section applies where the Commissioners propose to exercise the powers conferred on them by section 204 of this Act in relation to a qualifying institution.
- (2) The Commissioners shall send a copy of the proposed modifications to each of the following persons, namely—
  - (a) the body appearing to the Commissioners to have responsibility for the management and administration of the institution's revenue and property and the conduct of its affairs;
  - (b) such bodies representing qualifying institutions as appear to them to be concerned;

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(c) such organisations representing staff of such institutions as appear to them to be concerned;

[<sup>F17</sup>(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;

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.

<sup>F18</sup>(6) .....

**Textual Amendments**

**F17** S. 205(2)(d) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. 1 para. 45\(a\)](#); S.I. 1992/831, art. 2, [Sch.3](#).

**F18** S. 205(6) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93, Sch. 8 Pt. 1 para. 45\(b\), Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

<sup>F19</sup>**206 Exclusion of visitor’s jurisdiction.**

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**Textual Amendments**

**F19** S. 206 repealed (1.1.2005 for E., 1.1.2005 for W.) by [Higher Education Act 2004 \(c. 8\), ss. 46\(4\), 52\(6\), Sch. 7](#); S.I. 2004/2781, art. 4 (with art. 5); S.I. 2004/3144, art. 5, Sch. Pt. 2 (with art. 6)

**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; <sup>F20</sup>...

<sup>F20</sup>(c) .....

(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

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- (b) an instrument under an Act or charter made, before the passing of this Act.

**Textual Amendments**

**F20** S. 207(1)(c) and preceding word repealed (1.1.2005 for E., 1.1.2005 for W.) by [Higher Education Act 2004 \(c. 8\), s. 52\(6\), Sch. 7](#); [S.I. 2004/2781, art. 4](#); [S.I. 2004/3144, art. 5, Sch. Pt. 2](#)

**208 Corresponding provision for Northern Ireland.**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M1</sup>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**

**M1** 1974 c. 28.

*Grants*

**F21 209** .....

**Textual Amendments**

**F21** S. 209 repealed (1.1.1999) by [1998 c. 30, s. 44\(2\), Sch.4](#) (with [s. 42\(8\)](#)); [S.I. 1998/3237, art.2](#) (with [art. 3](#)).

**F22 210 Grants for the education of travellers and displaced persons.**

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**Textual Amendments**

**F22** S. 210 repealed (1.4.2003 for E., 2.1.2008 for W.) by [Education Act 2002 \(c. 32\), ss. 18\(1\)\(d\), 216\(4\), Sch. 22 Pt. 3](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/124, art. 4](#); [S.I. 2007/3611, art. 4\(1\), Sch. Pt. 1](#)

**F23 211 Grants in respect of special provision for immigrants**

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#### Textual Amendments

**F23** S. 211 repealed (1.4.2003 for E., 2.1.2008 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 18(1)(e), 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2007/3611, art. 4(1), Sch. Pt. 1

<sup>F24</sup>**212** .....

#### Textual Amendments

**F24** S. 212 repealed (1.11.1996) by [1996 c. 56](#), ss. 582(2)(3), 583, [Sch. 38 Pt.I](#). (with ss. 1(4), 561, 562, Sch. 39).

<sup>F25</sup>**213** .....

#### Textual Amendments

**F25** S. 213 repealed (1.11.1996) by [1996 c. 56](#), ss. 582(2)(3), 583, [Sch. 38 Pt.I](#) (with ss. 1(4), 561, 562, Sch. 39).

### *Unrecognised degrees*

#### **214 Unrecognised degrees.**

- (1) Any person who, in the course of business, grants, offers to grant or issues any invitation relating to any award—
  - (a) which may reasonably be taken to be an award granted or to be granted by a United Kingdom institution; and
  - (b) which either—
    - (i) is described as a degree; or
    - (ii) purports to confer on its holder the right to the title of bachelor, master or doctor and may reasonably be taken to be a degree;
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Subsection (1) above does not apply as respects anything done in relation to any recognised award; and for the purposes of this section a “recognised award” means—
  - (a) any award granted or to be granted by a university, college or other body which is authorised by Royal Charter or [<sup>F26</sup>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—

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- (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 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.

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<sup>F27</sup>[(9A) For the purposes of this section and section 215, as they extend to Scotland, the reference to the Secretary of State is to be read as a reference to the Scottish Ministers.]

(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

**F26** 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](#).

**F27** S. 214(9A) inserted (1.7.1999) by [S.I. 1999/1820](#), art. 4, [Sch. 2 Pt. I para. 91\(2\)](#); [S.I. 1998/3178](#), art. 3

## 215 Unrecognised degrees: enforcement.

- (1) It shall be the duty of every local weights and measures authority to enforce the provisions of section 214 of this Act within their area; and such an authority shall, whenever the Secretary of State so directs, make to him a report on the exercise of their functions under this section and section 214 of this Act in such form and containing such particulars as he may direct.
- (2) A duly authorised officer of a local weights and measures authority may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 214 of this Act has been committed, enter and search any premises which he reasonably believes may be used for or in connection with the carrying on of a business which is concerned with the granting of awards which are not recognised awards;
  - (b) he may, for that purpose, require any person carrying on or employed in connection with any such business to produce any documents or other items relating to the business and may take copies of any such document;
  - (c) he may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reason to believe that it may be evidence of the commission of an offence under that section; and
  - (d) he may seize and detain anything which he has reason to believe may be evidence of the commission of an offence under that section.
- (3) In subsection (2) above “recognised award” has the same meaning as in section 214 of this Act.

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- (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 <sup>M2</sup>Trade Descriptions Act 1968 (penalty for obstruction of authorised officers) shall apply as respects the obstruction of an officer acting in pursuance of this section as it applies as respects the obstruction of an officer acting in pursuance of that Act but with the substitution in subsection (1)—
- (a) of a reference to this section for the reference to section 28 of that Act; and
  - (b) of a reference to his functions under this section for the reference to his functions under that Act.
- (8) Nothing in this section shall be taken to compel the production by a solicitor of a document or other item containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such item which is in his possession.
- (9) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

**Marginal Citations**

M2 1968 c. 29.

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## 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.
- <sup>F28</sup>[(2A) For the purposes of this section, as it extends to Scotland, the references in subsections (1) and (2) above to the Secretary of State are to be read as references to the Scottish Ministers.]
- (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.

### Textual Amendments

- F28** S. 216(2A) inserted (1.7.1999) by [S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 91\(3\)](#); [S.I. 1998/3178, art. 3](#).

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

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M3</sup>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

- M3** 1974 c. 28.

### *Miscellaneous provisions*

## <sup>F29</sup>218 School and further and higher education regulations.

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#### Textual Amendments

**F29** S. 218 repealed (31.3.2003, for W. for specified purposes, 1.6.2003 for E. for specified purposes, 1.8.2003 for E. for specified purposes, 1.9.2003 for E. for specified purposes, 1.10.2003 for E. for specified purposes, 1.4.2006 for W. for specified purposes, 6.11.2006 for E. otherwise, 2.1.2008 for W. otherwise) by Education Act 2002 c. 32, ss. 146, 215(2), 216(4), Sch. 22 Pt. 3 (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, Sch. Pt. II; S.I. 2003/1115, art. 3; S.I. 2003/1667, arts. 3-5 (with art. 6, Sch. paras 2, 3); S.I. 2006/879, art. 4, Schedule; S.I. 2006/2895, art. 2 (with art. 3); S.I. 2007/3611, art. 4(1), Sch. Pt. 1 (with art. 5, Sch. Pt 2)

#### <sup>F30</sup>218A Regulations under section 218(6): further provision.

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#### Textual Amendments

**F30** S. 218A repealed (31.3.2003 for W., 1.6.2003 for E.) by Education Act 2002 (c. 32), ss. 146, 216(4), Sch. 22 Pt. 3 (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, Sch. Pt. II; S.I. 2003/1115, art. 3

#### <sup>F31</sup>[219 Powers of the Secretary of State in relation to certain educational institutions.

- (1) This section applies to any institution which is maintained by a [<sup>F3</sup>local authority] and provides higher education or further education (or both).
- (2) Section 495(1) of the Education Act 1996 (determination of disputes by the Secretary of State) shall apply in relation to the governing body of an institution to which this section applies as it applies in relation to the governing body of a school.
- (3) Each of sections 496 and 497 of that Act (power of Secretary of State to prevent unreasonable exercise of functions and Secretary of State's general default powers) shall have effect as if any reference to a body to which that section applies included a reference to the governing body of an institution [<sup>F32</sup>in England] to which this section applies.

[ Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (“the <sup>F33</sup>(3A) 2013 Act”) (intervention in conduct of maintained schools) has effect in relation to an institution in Wales to which this section applies as if—

- (a) a reference to the governing body of a maintained school included a reference to the governing body of an institution to which this section applies;
  - (b) the only relevant grounds for intervention were grounds 5 and 6 in section 2 of the 2013 Act; and
  - (c) sections 3 to 9 and 12 to 16 of the 2013 Act did not apply.]
- (4) Section 498 of that Act (powers of Secretary of State where there is no properly constituted governing body) shall have effect as if any reference to a school to which that section applies included a reference to an institution to which this section applies.]

#### Textual Amendments

**F3** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), Sch. 2 para. 4(2)

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- F31** S. 219 substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para.77** (with ss. 1(4), 561, 562, Sch. 39).
- F32** Words in s. 219(3) inserted (W.) (20.2.2014) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 1(2)**; S.I. 2014/178, art. 2(f) (with art. 3)
- F33** S. 219(3A) inserted (W.) (20.2.2014) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 1(3)**; S.I. 2014/178, art. 2(f) (with art. 3)

## **F34** 220 Extension of functions of Audit Commission.

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### **Textual Amendments**

- F34** S. 220 repealed (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch.5**.

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

- [<sup>F35</sup>(1) This section applies to any contract made after 20th November 1987—
- (a) for purposes connected with a local authority’s education functions, between the authority and a person employed by the authority; or
  - (b) between a governing body of a foundation, voluntary aided or foundation special school and a person employed by the governing body,
- other than 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 [<sup>F36</sup>section 135 of the Employment Rights Act 1996],
- 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;
- <sup>F37</sup> . . .
- (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.

### **Textual Amendments**

- F35** S. 221(1) substituted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 4(4)**
- F36** Words in s. 221(2)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 37(4)** (with ss. 191-195, 202).
- F37** 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**.

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**Modifications etc. (not altering text)**

- C13** S. 221 applied (with modifications) (1.4.1994) by [S.I. 1994/653](#), reg. 42(1), **Sch. Pt. I**.
- C14** S. 221 applied (with modifications) (9.5.1994) by [S.I. 1994/1084](#), reg. 8(1), **Sch. Pt. I**.

**F38** **222** .....

**Textual Amendments**

- F38** S. 222 repealed (1.11.1996) by [1996 c. 56](#), ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, [Sch. 39](#)).

**F39** **223** .....

**Textual Amendments**

- F39** S. 223 repealed (1.3.2000) by [1998 c. 29](#), s. 74(2), **Sch.16**; [S.I. 2000/183](#), **art. 2(1)**

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

- (1) The persons to whom section 1 of the <sup>M4</sup>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 <sup>M5</sup>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**

- M4** [1972 c. 11](#).
- M5** [1948 c. 38](#).

**F40** **225** .....

*Status: Point in time view as at 22/05/2014.*

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**Textual Amendments**

**F40** S. 225 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39).

**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 [<sup>F41</sup>by Her Majesty's Chief Inspector of Education, Children's Services and Skills].
- (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 [<sup>F42</sup>any community, foundation or voluntary school.].

**Textual Amendments**

**F41** Words in s. 226(2)(b) substituted (1.4.2007) by **Education and Inspections Act 2006 (c. 40)**, s. 188(3), **Sch. 14 para. 8**; S.I. 2007/935, art. 5(gg)

**F42** Words in s. 226(4) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.19** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

*Wales*

<sup>F43</sup>**227** .....

**Textual Amendments**

**F43** S. 227 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39).

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## **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 [F44section 485 of the Education Act 1996]; and
  - (b) any land or other property of a [F3local 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 [F3local 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.
- (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.

*Status: Point in time view as at 22/05/2014.*

*Changes to legislation: Education Reform Act 1988, Part IV is up to date with all changes known to be in force on or before 14 March 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

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 4(2)**
- F44** Words in s. 228(2)(a) substituted (1.11.1996) by [1996 c. 56, ss. 582\(1\), 583, Sch. 37 Pt. I para.79](#) (with [ss. 1\(4\), 561, 562, Sch. 39](#)).

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

<sup>F45</sup>(1) . . . . .

(2) In section 4 of the <sup>M6</sup>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.”

#### Textual Amendments

- F45** S. 229(1) repealed (1.11.1996) by [1996 c. 56, ss. 582\(2\)\(3\), 583, Sch. 38 Pt.I](#) (with [ss. 1\(4\), 561, 562, Sch. 39](#)).

#### Marginal Citations

- M6** [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—

<sup>F46</sup>  
 . . .

<sup>F47</sup>  
 . . .

<sup>F47</sup>  
 . . .

<sup>F47</sup>  
 . . .

section 126 (taken with Schedule 10);

section 128(1)(b);

section 130 (taken with Schedule 10);

<sup>F48</sup>  
 . . .

section 168(1) and (2);

section 180(1);

<sup>F49</sup>  
 . . .

section 192;

<sup>F50</sup>  
 . . . and

section 228 (taken with Schedule 10).

*Status: Point in time view as at 22/05/2014.*

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<sup>F51</sup>[(2) Subject to subsection (4) below, stamp duty shall not be chargeable in respect of any transfer to a <sup>F3</sup>local authority] under or by virtue of section 95(6) or (7) or 101(2) of this Act of property which immediately after the transfer is held by the authority for the purposes of an institution (or institutions) falling within subsection (3) below.]

<sup>F51</sup>[(3) An institution falls within this subsection if it is—

(a) a university;

<sup>F52</sup>(b) an institution within the higher education sector]

(c) an institution which provides higher education or further education (or both) and is either—

(i) maintained by a <sup>F3</sup>local authority] ; or

<sup>F53</sup>(ii) . . . . .

<sup>F54</sup>[(ca) an institution within the further education sector]

(d) a school maintained by a <sup>F3</sup>local authority] ; or

(e) a grant-maintained school.

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

(a) under or in pursuance of any of the provisions mentioned in subsection (1) above; or

<sup>F51</sup>[(b) for the purpose of giving effect to any such transfer as is mentioned in subsection (2) above;]

shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the <sup>M7</sup>Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the <sup>M8</sup>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

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 4(2)**
- F46** Words in s. 230(1) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, **Sch. 39**).
- F47** 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.
- F48** 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**.
- F49** Words in s. 230 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **Sch. 1 Pt. 5** Group 4
- F50** Words in s. 230(1) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **Sch. 1 Pt. 7**
- F51** 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.
- F52** S. 230(3)(b) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 55(b)(i)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F53** S. 230(3)(c)(ii) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, **Sch. 8 Pt. I para. 55(b)(ii)**, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F54** S. 230(3)(ca) inserted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 55(b)(iii)**; S.I. 1992/831, art. 2, **Sch. 3**.

*Status: Point in time view as at 22/05/2014.*

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#### Marginal Citations

M7 1982 c. 39.

M8 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 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.

<sup>F55</sup>(4) .....

- (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.



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- (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.

#### Textual Amendments

**F55** S. 231(4) repealed (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 4(5), **Sch. 3 Pt. 1**

### 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 [<sup>F56</sup>section 157], paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.
- <sup>F57</sup>(3) . . . . .
- (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 <sup>F58</sup> . . . <sup>F59</sup> . . . , 214, 216, <sup>F60</sup> . . . 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 <sup>F61</sup> . . . , may make in relation to Wales provision different from that made in relation to England.

#### Textual Amendments

- F56** Words in s. 232(2) substituted (1.11.1996) by [1996 c. 56, ss. 582\(1\), 583](#), **Sch. 37 Pt. I para. 80(a)** (with [ss. 1\(4\), 561, 562](#), [Sch. 39](#)).
- F57** S. 232(3) repealed (1.11.1996) by [1996 c. 56, ss. 582\(1\)\(2\), 583](#), [Sch. 37 Pt. I para. 80\(b\)](#), **Sch. 38 Pt. I** (with [ss. 1\(4\), 561, 562](#), [Sch. 39](#)).
- F58** Words in s. 232(4)(b) repealed (1.11.1996) by [1996 c. 56, ss. 582\(1\)\(2\), 583](#), [Sch. 37 Pt. I para. 80\(c\)](#), **Sch. 38 Pt. I** (with [ss. 1\(4\), 561, 562](#), [Sch. 39](#)).
- F59** 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](#)),
- F60** 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**.
- F61** Words in s. 232(6) repealed (1.10.1998) by [1998 c. 30, s. 44\(2\)](#), [Sch. 3 para. 6](#), **Sch.4** (with [s. 42\(8\)](#)); [S.I. 1998/2215, art.2](#).

*Status: Point in time view as at 22/05/2014.*

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**Modifications etc. (not altering text)**

**C15** 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 <sup>F62</sup> . . . 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**

**F62** Words in s. 233(a) omitted (1.1.1996) by virtue of S.I. 1995/2985, art. 5(1), **Sch. para.5**.

<sup>F63</sup>**234** .....

**Textual Amendments**

**F63** S. 234 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, **Sch. 39**)

**235 General interpretation.**

(1) In this Act, except where the context otherwise requires—

“the 1944 Act” means the <sup>M9</sup>Education Act 1944;

<sup>F64</sup> .....

<sup>F65</sup> .....

“the 1986 Act” means the <sup>M10</sup>Education (No. 2) Act 1986;

“contract of employment”, “employee” and “employer” have the same meaning as in [<sup>F66</sup>the Employment Rights Act 1996], and “employed” means employed under a contract of employment;

“financial year” means a period of twelve months ending with 31st March;

“functions” includes powers and duties;

“higher education” has the meaning given by section 120(1);

“land” includes buildings and other structures, land covered with water, and any interest in land;

“liability” includes obligation;

<sup>F67</sup> ...

“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 [<sup>F68</sup>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.

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(2) In this Act—

- <sup>F69</sup>(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 [<sup>F70</sup>or section 485 of the Education Act 1996] 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 [<sup>F3</sup>local 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 [<sup>F71</sup>section 139 of the Employment Rights Act 1996];
- (g) references to an interest in land include references to any easement, right or charge in, to or over land; and
- <sup>F69</sup>(h) .....

(3) For the purposes of this Act—

- (a) a person employed by a [<sup>F3</sup>local 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) <sup>F72</sup> . . . a person employed by such an authority is to be regarded as employed to work solely at a school or other institution if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school or institution.

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

(5) Any reference in section <sup>F73</sup> . . . , 126, 130 or 228 of this Act to liabilities incurred by a [<sup>F3</sup>local 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.

[<sup>F74</sup>(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 [<sup>F75</sup>Scottish Further and 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.

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- (7) Subject to subsection (8) below, this Act shall be construed as one with the [<sup>F76</sup>the Education Act 1996].
- (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 [<sup>F76</sup>the Education Act 1996] shall not apply for the purposes of that provision.

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 4(2)**
- F64** Words in s. 235(1) repealed (1.11.1996) by 1996 c. 56, ss. 582(1)(2), 583, Sch. 37 Pt. I para. 81(2), **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).
- F65** 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**.
- F66** Words in s. 235(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 37(5)(a)** (with ss. 191-195, 202).
- F67** Words in s. 235(1) repealed (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, Sch. 2 para. 4(6), **Sch. 3 Pt. 1**
- F68** 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).
- F69** 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**.
- F70** Words in s. 235(2)(c) inserted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 81(3)** (with ss. 1(4), 561, 562, Sch. 39).
- F71** Words in s. 235(2)(f) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 37(5)(b)** (with ss. 191-195, 202).
- F72** 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).
- F73** 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).
- F74** 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**.
- F75** Words in s. 235(5A) substituted (S.) (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 5**; S.S.I. 2005/419, art. 2(1)
- F76** Words in s. 235(7)(8) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 81(4)** (with ss. 1(4), 561, 562, Sch. 39).

#### Marginal Citations

- M9** 1944 c. 31.  
**M10** 1986 c. 61.

## 236 Commencement.

- <sup>F77</sup>(1) .....
- <sup>F78</sup>(2) .....
- <sup>F78</sup>(3) .....

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F79(4) .....

F80(5) .....

- (6) Except as provided above in this section, this Act shall come into force on such date or dates as the Secretary of State may by order appoint.
- (7) Different dates may be appointed in relation to different provisions of this Act and for different purposes of the same provision, including (in particular) for the purpose of bringing particular provisions into force only in relation to particular educational institutions or categories of educational institutions.
- (8) Any order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (9) Any such order may include such adaptations of the provisions which it brings into force, or of any other provisions of this Act then in force, as appear to the Secretary of State to be necessary or expedient for the purpose or in consequence of the operation of any provision of this Act (including, in particular, the provisions which the order brings into force) before the coming into force of any other provision.

**Textual Amendments**

- F77 S. 236(1) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 7](#)
- F78 S. 236(2)(3) repealed (1.11.1996) by [1996 c. 56, ss. 582\(2\), 583](#), [Sch. 38 Pt. 1](#) (with [ss. 1\(4\), 561, 562, Sch. 39](#)).
- F79 S. 236(4) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 7](#)
- F80 S. 236(5) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 7](#)

**Modifications etc. (not altering text)**

- C16 Power of appointment conferred by s. 236(6) partly exercised: [S.I. 1988/1459](#), 1794, 2002, 2271; 1989/164, 501, 719; 1990/391

**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.

F81(2) .....

- (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.

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- (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.

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**Textual Amendments**

**F81** S. 238(2) repealed (1.11.1996) by 1996 c. 56, ss. 582(2), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39).

**Status:**

Point in time view as at 22/05/2014.

**Changes to legislation:**

Education Reform Act 1988, Part IV is up to date with all changes known to be in force on or before 14 March 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.