



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *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

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beginning 1st August 1987, grants are or have been made by the Secretary of State.

(4) Schedule 11 to this Act shall have effect with respect to the Commissioners.

### **203 Duty of Commissioners.**

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

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- institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or
- (b) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish.
- (6) For the purposes of this section “good cause”, in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which he was appointed or employed to do; and in this subsection—
- (a) “capability”, in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and
- (b) “qualifications”, in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him.
- (7) In this section—
- “appropriate”, in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution;
- “dismiss” and “dismissal”—
- (a) include remove or, as the case may be, removal from office; and
- (b) in relation to employment under a contract, shall be construed in accordance with [F1Part 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.

**Annotations:**

**Amendments (Textual)**

- F1** 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

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which provides for a maximum rate of remuneration (his former pay scale) and on or after that date the terms of his appointment, or of his contract of employment, are varied (whether with effect before or after that date) so that—

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

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

- (1) This section applies where the Commissioners propose to exercise the powers conferred on them by section 204 of this Act in relation to a qualifying institution.
- (2) The Commissioners shall send a copy of the proposed modifications to each of the following persons, namely—

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- (a) the body appearing to the Commissioners to have responsibility for the management and administration of the institution's revenue and property and the conduct of its affairs;
- (b) such bodies representing qualifying institutions as appear to them to be concerned;
- (c) such organisations representing staff of such institutions as appear to them to be concerned;

[<sup>F2</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>F3</sup>(6) .....

**Annotations:**

**Amendments (Textual)**

- F2** S. 205(2)(d) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 45(a)**; S.I. 1992/831, art. 2, **Sch.3**.
- F3** S. 205(6) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 45(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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

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

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in accordance with procedures established in pursuance of section 203(1)(d) and (e) of this Act.

(4) In this section—

- (a) “the relevant date”, in relation to a qualifying institution, means the date on which the statutes of the institution include such provision as is mentioned in section 203(1)(d) and (e) of this Act; and
- (b) the reference to a member of the academic staff includes a reference to a person who is treated as such a member for the purposes of that section.

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

(1) Her Majesty may at any time by Order in Council make such incidental, consequential or supplementary provision as appears to Her necessary or expedient—

- (a) for the general purposes or any particular purposes of any exercise of the Commissioners’ powers under section 204 of this Act;
- (b) in consequence of any exercise of those powers or for the purpose of giving full effect to any such exercise; or
- (c) in consequence of the provisions of section 206 of this Act.

(2) An Order in Council under this section may in particular amend, repeal or revoke (with or without savings) any provision of—

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

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

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <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.

#### **Annotations:**

#### **Marginal Citations**

**M1** 1974 c. 28.

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#### Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act Education Acts modified (temp.) by 2006 c. 40 Sch. 6 para. 3(3)
- Act applied by S.I. 2005/397 Sch. 2 para. 2
- Act modified by 2005 c. 18 s. 96(2)
- Act words substituted by S.I. 2010/1158 Sch. 2 para. 4(2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 122ZA inserted by 2017 c. 29 Sch. 8 para. 3
- s. 123A 123B inserted by 2017 c. 29 Sch. 8 para. 6
- s. 124(2)(f) (fa) substituted for s. 124(2)(f) by 2007 c. 25 s. 26(2)
- s. 124(2)(fa) words substituted by 2011 c. 25 Sch. 7 para. 49
- s. 124(7) inserted by 2007 c. 25 s. 26(3)
- s. 124B(5A) inserted by 2004 c. 23 Sch. 2 para. 9(1) (3)
- s. 124E inserted by 2017 c. 29 Sch. 8 para. 12
- s. 124ZA 124ZB inserted by 2017 c. 29 Sch. 8 para. 8
- s. 127A inserted by 2017 c. 29 Sch. 8 para. 16
- s. 128(1)(b)(iia)(iib) inserted by S.I. 2010/1080 Sch. 1 para. 16(a)
- s. 128(1)(b) (iib) omitted by 2011 c. 21 Sch. 16 para. 8
- s. 128(1)(b)(iia) omitted by 2015 c. 20 Sch. 14 para. 35
- s. 161(1)(e)(f) inserted by 2017 c. 29 Sch. 8 para. 20(b)
- s. 161(1)(ba)(bb) inserted by 2017 c. 29 Sch. 8 para. 20(a)
- s. 198(1)(d) and word inserted by 2013 anaw 1 Sch. 5 para. 14(2)
- s. 214(2)(za)(zb) inserted by 2017 c. 29 s. 53(2)
- s. 214(9ZA) inserted by 2017 c. 29 s. 53(5)
- s. 214(10)(a)(ii) and word inserted by 2017 c. 29 s. 53(7)(b)
- s. 215(1A) inserted by 2015 c. 15 Sch. 6 para. 47(2)
- s. 215(1B) inserted by 2017 c. 29 s. 54(3)
- s. 216(1)(1A) substituted for s. 216(1) by 2017 c. 29 s. 54(5)
- s. 216(2ZA) inserted by 2017 c. 29 s. 54(7)
- s. 216(3)(za) inserted by 2017 c. 29 s. 54(9)(b)
- s. 219(3A) inserted by 2013 anaw 1 Sch. 5 para. 1(3)
- s. 232(4A) inserted by 2017 c. 29 s. 54(14)
- Sch. 7 para. 4(8) inserted by S.I. 2010/1158 Sch. 2 para. 4(7)
- Sch. 7A para. 3(7) inserted by S.I. 2010/1158 Sch. 2 para. 4(8)
- Sch. 10 para. 1(6) inserted by S.I. 2010/1158 Sch. 2 para. 4(9)(b)

#### Commencement Orders yet to be applied to the Education Reform Act 1988

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2003/124 art. 2-5 commences (2002 c. 32)
- S.I. 2003/1115 art. 2 3 commences (2002 c. 32)
- S.I. 2003/1667 art. 2-5 commences (2002 c. 32)
- S.I. 2003/1718 art. 4-6 Sch. commences (2002 c. 32)
- S.I. 2003/2961 art. 4-7 Sch. commences (2002 c. 32)
- S.I. 2004/2202 art. 2 3 commences (2004 c. 5)
- S.I. 2004/2593 art. 2 commences (2004 c. 5)
- S.I. 2004/2781 art. 2-4 commences (2004 c. 8)
- S.I. 2004/3144 art. 4 5 commences (2004 c. 8)
- S.I. 2005/558 art. 2 Sch. 1 commences (2004 c. 23)
- S.I. 2005/2034 art. 2-9 commences (2005 c. 18)
- S.I. 2006/879 art. 4 Sch. commences (2002 c. 32)

- S.I. 2006/2895 art. 2 commences (2002 c. 32)
- S.I. 2007/935 art. 2-7 commences (2006 c. 40)
- S.I. 2007/3611 art. 4 Sch. commences (2002 c. 32)
- S.I. 2008/172 art. 2-9 commences (2007 c. 28)
- S.I. 2008/3267 art. 2 Sch. commences (2006 c. 50)
- S.I. 2009/107 art. 2-5 Sch. 1-5 Commencement Order
- S.I. 2011/1725 Sch. para. 6 commences ()
- S.S.I. 2005/419 art. 2 commences (2005 asp 6)