



# 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 1944 to 1992] the Board shall comply with any directions given to them by the Secretary of State.
  - (7) Any local education authority shall give the Board such information as the Board may require for the purposes of the exercise of any of their functions under this Act.
- [<sup>F3</sup>(7A) A local education authority shall give the Board, within such reasonable time as the Board may specify, such information as the Board may require for the purposes of the

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exercise of any of their functions under the Further and Higher Education Act 1992 or under section 126 or 130 of this Act.

<sup>F3</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 the Education Acts 1944 to 1992.]

(8) The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or property held on behalf of, the Crown.

(9) Schedule 8 to this Act has effect with respect to the Board.

#### Textual Amendments

- 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 (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 43\(b\)](#); S.I. 1992/831, art. 2, [Sch.1](#).
- F3** S. 197(7A)(7B) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 43\(c\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

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

- C1** S. 197(7B) modified (1.4.1993) by [S.I. 1993/563, art. 2\(b\)\(ii\)](#), [Sch.2](#)

## 198 Transfers under Parts I and II.

(1) This section applies to any transfer under section 74, 126 or 130 of this Act, and each of those sections is subject to Schedule 10 to this Act.

(2) That Schedule has effect for the purpose of—

- (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or other educational institution;
- (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer;
- (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred; and
- (d) making supplementary and consequential provisions in relation to transfers to which this section applies.

(3) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.

(4) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—

- (a) it may not be done by the transferee; and

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- (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee;
- and in a case where the transferee is a body corporate established under this Act 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.
- (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, the Board shall provide the Polytechnics and Colleges Funding Council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.
- (6) If in any case within subsection (5) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide that Council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

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

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

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- (5) The Board shall notify the Secretary of State if it appears to them that it is unlikely the case of any matter on which agreement is required to be reached under subsection (3) above that such an agreement will be reached.
- (6) Where the Secretary of State has received a notification from the Board under subsection (5) above he may, whether before or after the operative date, give a direction determining the matter, and may include in the direction any provision which might have been included in an agreement under subsection (3) above.
- (7) The Secretary of State shall consult the authority before giving a direction under this section.
- (8) The Board shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this section.
- (9) The Board shall deliver any agreement made under subsection (3) above to the default transferee.
- (10) Any such agreement shall be treated as made between the authority and the default transferee.

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

**C2** S. 199(1)(3): functions conferred by S.I. 1991/1457, **arts.2, 3**

**200 Grant-maintained schools: school property.**

- (1) The Secretary of State shall consult the Education Assets Board before making any determination to which this section applies; and it shall be the duty of the Board to give the Secretary of State such assistance and advice as he may require for the purpose of making any such determination.
- (2) This section applies to—
  - (a) a determination for the purposes of section 95 of this Act of the appropriate consideration for any transfer of school property of a grant-maintained school conducted or formerly conducted by a governing body in liquidation;
  - (b) a determination for the purposes of section 98 of this Act of an amount representing the appropriate share of a local education authority in the value of the school premises of a grant-maintained school conducted or formerly conducted by such a body;
  - (c) a determination for the purposes of section 101(2) of this Act of the amount of any sum to be paid by such an authority by way of consideration for any premises required under that section to be transferred by the governing body of a grant-maintained school to the authority;
  - (d) a determination for the purposes of section 101(3) of this Act of the amount of any payment required under that section to be made to such an authority by a governing body of such a school; and
  - (e) a determination for the purposes of paragraph 8 of Schedule 1 to the <sup>M1</sup>Education Act 1946 of the amount required to be paid under that paragraph to such an authority from money paid in respect of the acquisition of premises from the trustees of a grant-maintained school.

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- (3) Expressions used in this section to which a meaning is given for the purposes of Chapter IV of Part I of this Act have the same meaning in this section.

**Marginal Citations**

M1 1946 c. 50.

**201 Wrongful disposals.**

- (1) This section applies where a local education authority have made any disposal to which section 137 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by a notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by a notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local education authority concerned.
- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above)—
- (a) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal; . . . <sup>F4</sup>
  - (b) . . . . . <sup>F5</sup>
- (6) The <sup>M2</sup>Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local education authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
- (a) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) used or held by the local education authority concerned for the purposes of an institution falling within section 121(2) of this Act; or
    - (ii) obtained by that authority for the purpose of being so used or held; the higher education corporation established under this Act to conduct that institution; and
  - (b) where the interest disposed of, or the land in which the interest was granted, was—

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- (i) so used or held for the purposes of an institution falling within section 129(3) of this Act; or
- (ii) obtained by the authority concerned for the purpose of being so used or held;

the appropriate transferee within the meaning of section 130(2) of this Act in relation to that institution.

- (9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local education authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the <sup>M3</sup>Compulsory Purchase Act 1965; and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

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**Textual Amendments**

**F4** Word repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), **Sch. 12 Part I**

**F5** Ss. 190(5)(b), 201(5)(b) repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), **Sch. 12 Part I**

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**Marginal Citations**

**M2** 1981 c. 67.

**M3** 1965 c. 56.

**Status:**

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