



# 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.

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

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

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**F14 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**).

**F15 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**

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