

## SCHEDULES

### SCHEDULE 8

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### PART I

##### AMENDMENTS OF THE EDUCATION ACTS

##### *The Education Reform Act 1988 (c. 40)*

- 27 The Education Reform Act 1988 is amended as follows.
- 28 In section 24(1)(b) (extension of certain provisions)—
- (a) for the words from “a reference” to second “and” there is substituted “except in relation to a local education authority, a reference to”,
  - (b) in sub-paragraph (ii) after “a university” there is inserted “or an institution within the higher education sector”, and
  - (c) after that sub-paragraph there is added—
    - “ and
    - (iii) any institution within the further education sector”.
- 29 In section 100 (provision of benefits and services for pupils by local education authorities), after subsection (1) there is inserted—
- “(1A) Where—
- (a) a local education authority are under a duty, or have power, to provide any benefits or services for persons, other than pupils, receiving education at a school; and
  - (b) the duty is to be performed, or the power may be exercised, both in relation to such persons at schools maintained by a local education authority and in relation to such persons at grant-maintained schools;
- the authority shall in performing the duty, or in exercising the power, treat such persons at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than such persons at schools maintained by a local education authority.”
- 30 In section 120 (functions of local education authorities with respect to higher and further education)—
- (a) subsection (2) is omitted,
  - (b) in subsection (3)(b) for “living outside their area” there is substituted “from other areas”,
  - (c) in subsection (4)—

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- (i) for “universities, institutions within the PCFC funding sector” there is substituted “institutions within the higher education sector”, and
  - (ii) after “sector” there is inserted “or the further education sector”, and
  - (d) subsections (6), (7), (8), (9)(a)(ii) and (9)(b) are omitted.
- 31 In section 122 (orders incorporating higher education institutions maintained by local education authorities) subsections (2) to (5) are omitted.
- 32 In section 123 (provisions supplementary to sections 121 and 122)—
- (a) at the end of subsection (1) there is added “or which has become a higher education corporation by virtue of section 122A of this Act”, and
  - (b) for subsection (3) there is substituted—
    - “(3) Schedule 7 to this Act has effect with respect to each higher education corporation established before the appointed day (within the meaning of section 124A of this Act) unless an instrument of government for the corporation made under that section has effect.
    - (4) A higher education corporation established under section 122 of this Act on or after that day for the purpose of conducting any institution shall be established initially under the name given in the order under that section establishing the corporation.”
- 33 In section 124 (powers of a higher education corporation)—
- (a) in subsection (2)(b) for “disabled students” there is substituted “students having learning difficulties within the meaning of section 41(9) of the Education Act 1944”, and
  - (b) subsection (4) is omitted.
- 34 In section 128 (dissolution of higher education corporations)—
- (a) in subsection (1)(b)—
    - (i) for sub-paragraphs (iii) and (iv) there is substituted—
      - “(iii) a higher education funding council”, and
    - (ii) after those sub-paragraphs there is inserted—
      - “(v) a further education funding council”,
  - (b) for subsection (4)(b) there is substituted—
    - “(b) the higher education funding council”, and
  - (c) after subsection (5) there is added—
    - “(6) An order under this section may apply section 127 of this Act with such modifications as the Secretary of State may consider necessary or desirable.”
- 35 Sections 131, 132 and 134 (Universities Funding Council and Polytechnics and Colleges Funding Council) are omitted.
- 36 In section 135 (inspection of accounts)—
- (a) for subsection (1)(c) there is substituted—
    - “(c) any designated institution within the meaning of section 129A of this Act”, and
  - (b) in subsection (2) for the words from “grants” to the end there is substituted “financial support has been given to them under section 65 of the Further and Higher Education Act 1992.”

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- 37 In section 136 (transfer to Polytechnics and Colleges Funding Council of property and staff of National Advisory Body for Public Sector Higher Education)—
- (a) in subsection (2) for “Polytechnics and Colleges Funding Council” there is substituted “Higher Education Funding Council for England”, and
  - (b) subsections (3) to (7) are omitted.
- 38 In section 137(2) (control of disposals of land) “or 129(3)” is omitted.
- 39 In section 157 (construction of instruments providing for institution ceasing to be maintained or assisted by local education authority)—
- (a) in subsection (4)—
    - (i) the words “or assisted” in both places are omitted,
    - (ii) after “becomes” there is inserted “an institution within the further education sector”, and
    - (iii) for “the PCFC funding sector” there is substituted “the higher education sector”,
  - (b) subsection (5)(b) is omitted, and
  - (c) in subsection (6)—
    - (i) at the beginning of paragraph (b) there is inserted “an institution within the further education sector or”, and
    - (ii) in that paragraph for “the PCFC funding sector” there is substituted “the higher education sector”.
- 40 In section 158(2) (reports and returns) paragraphs (a)(i) and (iii) and (b) are omitted.
- 41 Section 159(2)(b) (information with respect to educational provision in institutions providing further or higher education - designated assisted institutions) is omitted.
- 42 In section 161 (interpretation of Part II) subsection (1)(c) is omitted.
- 43 In section 197 (Education Assets Board)—
- (a) in subsection (4) after “this Act” there is inserted “and section 36 of and Schedule 5 to the Further and Higher Education Act 1992”,
  - (b) in subsection (6) for “this Act” there is substituted “the Education Acts 1944 to 1992”, and
  - (c) after subsection (7) there is inserted—
    - “(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 exercise of any of their functions under the Further and Higher Education Act 1992 or under section 126 or 130 of this Act.
    - (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.”
- 44 In section 198(5) (transfers under Parts I and II) for “the Polytechnics and Colleges Funding Council” there is substituted “the higher education funding council”.
- 45 In section 205 (procedure for exercise of University Commissioners' powers)—
- (a) for subsection (2)(d) there is substituted—
    - “(d) the higher education funding council”, and

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- (b) subsection (6) is omitted.
- 46 In section 210 (grants for the education of travellers and displaced persons), after “local education authorities” (in subsections (1) and (3)(d)) there is inserted “or institutions within the further education sector”.
- 47 In section 211 (grants in respect of special provision for immigrants)—
- (a) after paragraph (b) there is inserted—
- “(ba) the governing body of an institution within the further education sector”, and
- (b) paragraph (c) is omitted.
- 48 In section 214(2)(a) (unrecognised degrees) after “Royal Charter or” there is inserted “by or under”.
- 49 In section 218 (school and further and higher education regulations)—
- (a) in subsection (1)(f) for “pupils” there is substituted “persons receiving education”,
- (b) in subsection (7)(b) for “pupils attending” there is substituted “persons receiving education at”,
- (c) in subsection (10)—
- (i) after paragraph (a) there is inserted-
- “(aa) it is within the further education sector”, and
- (ii) paragraph (b) is omitted, and
- (d) in subsection (11) for “the PCFC funding sector” there is substituted “the higher education sector in receipt of financial support under section 65 of the Further and Higher Education Act 1992”.
- 50 In section 219 (powers of Secretary of State in relation to certain educational institutions) subsections (1)(b), (2)(d) and (e) and (3)(c)(ii) are omitted.
- 51 (1) Section 220 (extension of functions of Audit Commission) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Polytechnics and Colleges Funding Council, a higher education corporation” there is substituted—
- “(a) a higher education funding council or the governing body of an institution within the higher education sector”,
- (b) for “the governing body” there is substituted—
- “(b) a further education funding council or the governing body of an institution within the further education sector, or
- (c) the governing body”.
- (3) In subsection (2)—
- (a) for paragraphs (a) and (b) there is substituted—
- “(a) with respect to studies relating to a higher education funding council, the council;
- (b) with respect to studies relating to the governing body of an institution within the higher education sector, the higher education funding council or the governing body”, and
- (b) after those paragraphs there is inserted—
- “(ba) with respect to studies relating to a further education funding council, the council;

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- (bb) with respect to studies relating to the governing body of an institution within the further education sector, the appropriate further education funding council or the governing body”.
- (4) For subsection (3) there is substituted—
- “*(3)* The Commission may, at the request of a higher education funding council or a further education funding council, give the council advice in connection with the discharge of the council’s functions under section 124B(2)(b) or paragraph 18(2)(b) of Schedule 7 to this Act.”
- (5) In subsection (4) after “a higher education corporation” there is inserted “a further education corporation”.
- 52 In section 221 (avoidance of certain contractual terms) subsection (1)(c) and, in subsection (3), the definition of “relevant institution” are omitted.
- 53 In section 222 (application of employment law during financial delegation) subsection (2)(b) and, in subsection (3)(c), “or institutions required to be covered by schemes under section 139 of this Act” are omitted.
- 54 In section 227 (application to Wales) subsections (2) to (4) are omitted.
- 55 In section 230 (stamp duty)—
- (a) in subsection (1) “section 136(2)” is omitted, and
- (b) in subsection (3)—
- (i) for paragraph (b) there is substituted—
- “*(b)* an institution within the higher education sector”,
- (ii) paragraph (c)(ii) is omitted, and
- (iii) after paragraph (c) there is inserted—
- “*(ca)* an institution within the further education sector”.
- 56 In section 232 (orders and regulations)—
- (a) in subsection (2) “140(1), 141(6), 145(6), 151(4), 156(10)” is omitted,
- (b) in subsection (3) “or 227” is omitted, and
- (c) in subsection (4)(b) “227” is omitted.
- 57 In section 234 (meaning of “assisted” for the purposes of the 1944 Act and Acts construed as one with it)—
- (a) in subsection (1) for “the PCFC funding sector” there is substituted “the higher education sector other than a university”, and
- (b) subsection (2)(b) is omitted.
- 58 In section 235 (general interpretation) subsection (2)(a) and (h) are omitted.
- 59 In Schedule 7 (Higher Education Corporations)—
- (a) for paragraph 1(4) there is substituted—
- “*(4)* A corporation may change their name with the consent of the Privy Council.”,
- (b) in paragraph 18—
- (i) in sub-paragraph (2)(b) for “the Polytechnics and Colleges Funding Council” there is substituted “the higher education funding council”, and

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(ii) for sub-paragraph (5) there is substituted—

“(5) No person shall be qualified to be appointed auditor under that sub-paragraph except—

- (a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;
- (b) a member of the Chartered Institute of Public Finance and Accountancy; or
- (c) a firm each of the members of which is a member of that institute.”, and

(c) paragraph 19 is omitted.

60 Schedule 8 (the funding councils and the assets board) shall cease to have effect so far as it relates to the Universities Funding Council and the Polytechnics and Colleges Funding Council.

61 Paragraphs 62 to 64 below shall have effect, in place of paragraph 3 of Schedule 10 (supplementary provisions with respect to transfers) in the case of any transfer by virtue of section 126 or 130 and in such a case references to that paragraph of Schedule 10 shall be construed as references to paragraphs 62 to 64 below.

62 (1) The Education Assets Board may, in the case of any matter on which agreement is required to be reached under paragraph 2(1) of that Schedule—

- (a) if it appears to them that it is unlikely that such an agreement will be reached, or
- (b) if such an agreement has not been reached within such period as may be prescribed by regulations,

give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under that paragraph.

(2) A direction under sub-paragraph (1) above may be given before or after the transfer date.

(3) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee shall be regarded as having been transferred to, and by virtue of this Act vested in, the transferee accordingly.

(4) The Board shall, before giving a direction under this paragraph, give the transferor and the transferee such opportunity as may be prescribed by regulations to make representations.

63 (1) The transferor or transferee, if dissatisfied with a determination under paragraph 62 above, may appeal to the Secretary of State.

(2) An appeal under this paragraph shall be made in accordance with regulations.

(3) The Secretary of State shall, before determining an appeal under this paragraph, give the appellant and the respondent such opportunity as may be prescribed by regulations to make representations.

(4) On an appeal under this paragraph the Secretary of State may—

- (a) allow or dismiss the appeal or vary the determination of the Board, and
- (b) give a direction accordingly under paragraph 62 above.

- 64 (1) Regulations may prescribe the procedure to be followed in making any determination under paragraphs 62 and 63 above.
- (2) The regulations may in particular—
- (a) provide for a time limit within which representations and any supporting documents must be submitted,
  - (b) empower the determining authority to proceed to a determination taking into account only such written representations and supporting documents as were submitted within the time limit, and
  - (c) empower the determining authority to proceed to a determination, after giving the transferor and the transferee or, as the case may be, the appellant and the respondent written notice of their intention to do so, notwithstanding that no written representations were made within the time limit, if it appears to the determining authority that they have sufficient material before them to enable them to make a determination.
- (3) In sub-paragraph (2) above the “determining authority” means the Board or the Secretary of State, as the case may be.
- (4) In this paragraph and paragraphs 62 and 63 above “regulations” means regulations made by the Secretary of State.
- 65 In paragraph 4 of that Schedule at the beginning there is inserted—
- “(1) Where a transfer by virtue of section 126 or 130 relates to registered land, it shall be the duty of the transferor to execute any such instrument under the Land Registration Acts 1925 to 1986, to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.
- (2)”.
- 66 In Schedule 12 (minor and consequential amendments) paragraphs 68, 69(2), 70, 100(2) and 101(4) are omitted.