



Nursery Education and Grant-Maintained Schools Act 1996

1996 CHAPTER 50

An Act to provide for the making of grants in respect of nursery education and to permit borrowing by grant-maintained schools. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Grants in respect of nursery education

1 Arrangements for making grants

- (1) The Secretary of State may make arrangements for the making of grants in respect of nursery education.
- (2) For the purposes of this Act “nursery education” is education provided for children (whether at schools or other premises)—
 - (a) before their first school term starting after they have attained the age of five years (or, if they do not attend school, before such broadly corresponding time as may be prescribed), but
 - (b) after such earlier time as may be prescribed (whether by reference to their having attained a particular age or any other circumstances).
- (3) Grants may be made under arrangements under this section—
 - (a) to local education authorities in respect of nursery education provided at schools maintained by them, and
 - (b) to authorities and other persons of such descriptions as may be prescribed in respect of nursery education provided by them.
- (4) The amount of a grant made under arrangements under this section shall be determined in such manner as may be prescribed; and regulations may, in particular, provide for

the determination to be made by reference to an amount (or amounts) specified for the purpose by the Secretary of State.

- (5) The times at which, and the manner in which, grants made under arrangements under this section are paid shall be such as may be determined by the arrangements.
- (6) Nothing shall be taken to prevent, or to afford any right of appeal against, a refusal by any authority or person to provide (or continue to provide) a child with a place for nursery education at a maintained school if the reason for the refusal is that a relevant condition has not been complied with in relation to the child; and this subsection applies even if the child has been provided with, or offered, a place at the school before the commencement of this subsection.

In this subsection—

- (a) “a maintained school” means a school maintained by a local education authority, a grant-maintained school or a grant-maintained special school, and
 - (b) “a relevant condition” means a prescribed condition designed to facilitate the determination of the amount of grants payable under arrangements under this section.
- (7) This section does not affect any power of the Secretary of State to make grants in respect of nursery education under any other enactment.

2 Delegation

- (1) Arrangements under section 1 may provide for grants to be made, or other functions relating to grants to be exercised, otherwise than by the Secretary of State.
- (2) Arrangements under section 1 which so provide may make provision for the functions concerned to be so exercised—
 - (a) either wholly or to such extent as may be specified in the arrangements, and
 - (b) either generally or in such cases or circumstances as may be so specified,but shall not prevent the functions concerned from being exercised by the Secretary of State.

3 Requirements

- (1) An authority or other person to whom a grant is made under arrangements under section 1 shall comply with such requirements as may be imposed by or in accordance with the arrangements.
- (2) Such requirements—
 - (a) may be imposed on, or at any time after, the making of any grant by reference to which they are imposed, and
 - (b) may at any time be varied, waived or removed.
- (3) Such requirements may in particular, if any specified conditions are satisfied, require the repayment of the whole or any part of any grant to which they relate.

4 Children with special educational needs

- (1) It shall be the duty of—
 - (a) any authority or other person providing funded nursery education, and

- (b) any person employed by such an authority or other person in the provision of such education,
(except where a duty is already imposed by subsection (2) of section 157 of the Education Act 1993) to have regard to the provisions of the code of practice issued under that section (practical guidance in respect of the discharge of functions under Part III of that Act).
- (2) That code of practice may include practical guidance in respect of the provision of funded nursery education for children with special educational needs in circumstances where functions under Part III of the Education Act 1993 do not fall to be discharged.
- (3) But unless that code of practice includes provision made by virtue of subsection (2)—
- (a) the Secretary of State shall publish a document explaining how the practical guidance contained in that code applies in circumstances where functions under Part III of the Education Act 1993 do not fall to be discharged, and
- (b) the duty imposed by subsection (1) includes a duty to have regard to the provisions of that document.
- (4) In this section “funded nursery education” means nursery education in respect of which the Secretary of State is making (or is to make) grants under arrangements under section 1.

5 Inspections

Schedule 1 (nursery education grants: inspections etc.) shall have effect.

6 Disclosure of information

Schedule 2 (nursery education grants: disclosure of information) shall have effect.

Borrowing by grant-maintained schools

7 Power to borrow

- (1) Section 68 of the Education Act 1993 (powers of governing body of grant-maintained school) is amended as follows.
- (2) In subsection (5), after paragraph (b) insert—
- “(ba) to borrow such sums as the governing body think fit and, in connection with such borrowing, to grant any mortgage, charge or other security over any land or other property of the governing body,”.
- (3) For subsection (6) substitute—
- “(6) The power to borrow sums and grant security mentioned in subsection (5) (ba) above may only be exercised with the written consent of the Secretary of State (which may be given for particular borrowing or for borrowing of a particular class); but this subsection does not apply in relation to loans under section 92 of this Act.”
- (4) In subsection (7), for the words from “above” to “may” substitute “above may”.

Supplementary

8 Orders and regulations

- (1) In this Act “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) Any power to make an order or regulations under this Act shall be exercised by statutory instrument.
- (3) A statutory instrument containing any regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any regulations made under this Act—
 - (a) may make different provision for different cases or different areas, and
 - (b) may contain such incidental, supplementary, saving or transitional provisions as the Secretary of State considers appropriate.

9 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
 - (a) any sums required by the Secretary of State for making grants under arrangements under section 1 or for making payments to any person exercising any function by virtue of section 2,
 - (b) any administrative expenses incurred by the Secretary of State under this Act, and
 - (c) any increase attributable to this Act in sums payable out of money provided by Parliament under any other Act.
- (2) There shall be paid into the Consolidated Fund—
 - (a) sums received by the Secretary of State by virtue of section 3(3), and
 - (b) fees received by Her Majesty’s Chief Inspector of Schools in England, or Her Majesty’s Chief Inspector of Schools in Wales, under Schedule 1.

10 Consequential amendments and repeals

Schedule 3 (consequential amendments) and Schedule 4 (repeals) shall have effect.

11 Citation, interpretation, commencement and extent

- (1) This Act may be cited as the Nursery Education and Grant-Maintained Schools Act 1996.
- (2) This Act shall be construed as one with the Education Act 1944 and shall be included among the Acts which may be cited as the Education Acts 1944 to 1996.
- (3) The provisions of this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions and for different purposes.
- (4) Apart from section 6 and Schedule 2 and this section, this Act extends to England and Wales only.

SCHEDULES

SCHEDULE 1

Section 5.

NURSERY EDUCATION GRANTS: INSPECTIONS ETC

Introductory

- 1 In this Schedule—
- (a) “funded nursery education” means nursery education in respect of which the Secretary of State is making (or is to make) grants under arrangements under section 1 of this Act, and
 - (b) “nursery education under consideration for funding” means nursery education in respect of which the Secretary of State is considering whether to make such grants.
- 2 (1) In this Schedule “the Chief Inspector” means—
- (a) as respects nursery education provided in England, Her Majesty’s Chief Inspector of Schools in England, and
 - (b) as respects nursery education provided in Wales, Her Majesty’s Chief Inspector of Schools in Wales.
- (2) In this Schedule references to registered nursery education inspectors are to persons registered under paragraph 8.
- (3) In this Schedule “members of the Inspectorate” means—
- (a) the Chief Inspector,
 - (b) Her Majesty’s Inspectors, and
 - (c) additional inspectors with whom the Chief Inspector has made arrangements to give him assistance under paragraph 2 of Schedule 1 to the Education (Schools) Act 1992.
- (4) In sub-paragraph (3)(b) “Her Majesty’s Inspectors” means—
- (a) as respects nursery education provided in England, Her Majesty’s Inspectors of Schools in England, and
 - (b) as respects nursery education provided in Wales, Her Majesty’s Inspectors of Schools in Wales.

General functions of the Chief Inspector

- 3 The Chief Inspector has the general duty of keeping the Secretary of State informed about—
- (a) the quality and standards of funded nursery education, and
 - (b) the spiritual, moral, social and cultural development of children for whom funded nursery education is provided.

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- 4 When asked to do so by the Secretary of State, the Chief Inspector shall give advice to the Secretary of State on such matters relating to funded nursery education as may be specified in the Secretary of State's request.
- 5 The Chief Inspector may at any time give advice to the Secretary of State on any matter connected with—
- (a) funded nursery education generally, or
 - (b) funded nursery education, or nursery education under consideration for funding, provided at particular premises.

Inspections

- 6 (1) The Chief Inspector—
- (a) shall secure that funded nursery education provided at any premises is inspected by a registered nursery education inspector at such intervals as may be prescribed,
 - (b) shall secure that funded nursery education, or nursery education under consideration for funding, provided at any premises is inspected by a registered nursery education inspector at any time when the Secretary of State requires the Chief Inspector to secure its inspection, and
 - (c) may secure that funded nursery education, or nursery education under consideration for funding, provided at any premises is inspected by a registered nursery education inspector at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected.
- (2) Sub-paragraph (1)(a) does not apply to nursery education provided at a school to which section 9 of the Education (Schools) Act 1992 (inspections of certain schools by inspectors registered under that Act) applies.
- (3) The Chief Inspector may comply with sub-paragraph (1) either by organising inspections or by making arrangements with others for them to organise inspections.
- (4) Where an inspection under this paragraph is to be undertaken of nursery education provided at premises which are also liable to inspection under section 76 of the Children Act 1989 (inspection by person authorised by local authority of premises on which child minding is being carried on or day care is being provided for children), the person organising the inspection under this paragraph shall, before that inspection is undertaken, consult the local authority with power to authorise an inspection of the premises under that section.
- (5) In prescribing the intervals mentioned in sub-paragraph (1)(a) the Secretary of State may make provision as to the period within which the first inspection of education provided at any premises is to take place.
- (6) A requirement such as is mentioned in sub-paragraph (1)(b) may be imposed in relation to particular premises or a class of premises.
- 7 A person conducting an inspection under paragraph 6 shall report on the quality and standards of the nursery education provided and, so far as it is reasonably practicable to do so, on the spiritual, moral, social and cultural development of the children for whom the education is provided.

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Registration of nursery education inspectors

- 8 (1) Her Majesty's Chief Inspector of Schools in England shall establish and maintain a register of nursery education inspectors for England and Her Majesty's Chief Inspector of Schools in Wales shall establish and maintain a register of nursery education inspectors for Wales.
- (2) The Chief Inspector—
- (a) shall give guidance to registered nursery education inspectors and such other persons as he considers appropriate in connection with inspections under paragraph 6 and the making of reports of such inspections, and
 - (b) shall keep under review the system of inspections under paragraph 6 and, in particular, the standard of such inspections and of the reports made of them.
- (3) The Chief Inspector shall not register a person under this paragraph unless, having regard to any conditions that he proposes to impose under sub-paragraph (5)(c), it appears to him that the person—
- (a) is a fit and proper person for discharging the functions of a registered nursery education inspector, and
 - (b) will be capable of conducting inspections under paragraph 6 competently and effectively.
- (4) An application for registration under this paragraph—
- (a) shall be made in such manner, and be accompanied by such particulars, as the Chief Inspector may direct, and
 - (b) shall be accompanied by such fee (if any) as may be prescribed.
- (5) On an application duly made under this paragraph the Chief Inspector may—
- (a) register the applicant,
 - (b) refuse to register him, or
 - (c) register him subject to such conditions as the Chief Inspector considers it appropriate to impose.
- (6) Conditions imposed under sub-paragraph (5)(c) may be conditions applying generally in relation to all cases, or particular classes of case, or such conditions together with specific conditions applying in the particular case.
- (7) Where a person is registered subject to conditions imposed under sub-paragraph (5)(c), he shall be taken to be authorised to act as a registered nursery education inspector only so far as those conditions permit.
- (8) The period for which any registration is to have effect shall be determined by the Chief Inspector and shall be entered in the register kept by him.
- (9) Nothing in sub-paragraph (8) is to be taken as preventing a registered nursery education inspector from applying for a fresh registration to take effect immediately on the expiry of his current registration.
- 9 (1) If the Chief Inspector is satisfied that any of the conditions mentioned in sub-paragraph (2) is satisfied with respect to a nursery education inspector registered in his register, he may remove the name of that inspector from that register.
- (2) The conditions are that—
- (a) he is no longer a fit and proper person for discharging the functions of a registered nursery education inspector under paragraph 6,

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- (b) he is no longer capable of conducting inspections under that paragraph competently and effectively,
 - (c) there has been a significant failure on his part to comply with any condition imposed under paragraph 8(5)(c) subject to which his registration has effect,
 - (d) he has knowingly or recklessly produced a report of an inspection under paragraph 6 which is, in whole or in part, seriously misleading.
- (3) The Chief Inspector may vary any condition subject to which the registration of an inspector has effect, or vary the registration of an inspector by imposing a condition subject to which it will have effect, if he is satisfied—
- (a) that he is authorised by sub-paragraph (1) to remove the name of the inspector from his register, or
 - (b) that it would otherwise be in the public interest for him to do so.
- (4) References in this Schedule to a condition imposed under paragraph 8(5)(c) include a condition imposed under sub-paragraph (3).
- (5) Either Chief Inspector may, in exercising his functions under this paragraph with respect to a registered nursery education inspector, have regard to any action taken by the other Chief Inspector with respect to that inspector.
- 10 (1) Any person who is aggrieved by—
- (a) the refusal of the Chief Inspector to renew his registration under paragraph 8,
 - (b) the imposition or variation of any condition subject to which he is registered under that paragraph, or
 - (c) the removal of his name from the register under paragraph 9,
- may appeal against the Chief Inspector’s decision.
- (2) An appeal under sub-paragraph (1) shall be made to a tribunal with the same constitution as a tribunal to hear an appeal under section 12 of the Education (Schools) Act 1992; and paragraph 2 (procedure) and paragraph 3(1) (staff) of Schedule 3 to that Act apply to tribunals to hear appeals under sub-paragraph (1) as they apply to tribunals to hear appeals under that section.
- (3) No decision against which an appeal may be made under sub-paragraph (1) shall have effect until—
- (a) any appeal against it which is duly made is disposed of, or
 - (b) the period within which an appeal may be made expires without an appeal being made.
- (4) Sub-paragraph (3) shall not apply where the Chief Inspector—
- (a) is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately or earlier than would otherwise be the case, and
 - (b) notifies the person concerned to that effect.
- (5) On determining any appeal under this paragraph, the tribunal may—
- (a) confirm, reverse or vary the decision appealed against, or
 - (b) remit the case to the Chief Inspector with directions as to the action to be taken by him.

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Training

- 11 (1) A registered nursery education inspector shall not conduct an inspection under paragraph 6 unless he has, in the opinion of the Chief Inspector, satisfactorily completed a course of training provided by, or complying with arrangements approved by, the Chief Inspector.
- (2) Sub-paragraph (1) shall not apply in such circumstances as may be specified, either generally or in relation to a particular case or class of case, by the Chief Inspector.
- (3) Where the Chief Inspector provides such training he may charge such fees as are reasonable for the purpose of recovering the whole, or part, of the cost of providing it.

Impartiality

- 12 A person shall not undertake an inspection under paragraph 6 of nursery education provided by a person at any premises, or accompany a person undertaking such an inspection, if he has, or has at any time had, any connection with—
- (a) the person by whom the education is provided (or, where it is provided by a body, any member of the body), or
- (b) any person employed by that person (whether or not at the premises), of a kind which might reasonably be taken to raise doubts about his ability to act impartially.

Reports of inspections

- 13 (1) Where a person has conducted an inspection under paragraph 6 he shall make his report in writing to the Chief Inspector within such period as may be prescribed, subject to any extension not exceeding three months which the Chief Inspector may consider necessary.
- (2) Once the report of an inspection has been made to the Chief Inspector under sub-paragraph (1) he shall without delay send a copy of it to such authorities and persons as may be prescribed.

Annual reports of the Chief Inspector

- 14 The annual reports of the Chief Inspector required by paragraph (a) of sections 4 and 8 of the Education (Schools) Act 1992 to be made to the Secretary of State shall include an account of the exercise of the functions imposed or conferred on him by this Schedule; and the power conferred by paragraph (b) of those sections to make other reports to the Secretary of State includes a power to make reports with respect to matters which fall within the scope of his functions by virtue of this Schedule.

Reserve powers of the Chief Inspector

- 15 The Chief Inspector may, in any case where it appears to him to be appropriate to do so, secure that any inspection under paragraph 6 is conducted not by a registered nursery education inspector but by one or more members of the Inspectorate.
- 16 If the Chief Inspector elects in the case of an inspection within paragraph (b) or (c) of sub-paragraph (1) of paragraph 6 that the inspection shall be treated as if it were an inspection within paragraph (a) of that sub-paragraph, the inspection shall be so treated.

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- 17 Where an inspection is being conducted by a registered nursery education inspector under paragraph 6, the Chief Inspector may arrange for the inspection to be monitored by one or more members of the Inspectorate.

SCHEDULE 2

Section 6.

NURSERY EDUCATION GRANTS: DISCLOSURE OF INFORMATION

- 1 (1) This Schedule applies to—
- (a) civil servants in the Department for Education and Employment, civil servants in the Welsh Office and any other persons who carry out the administrative work of the Department for Education and Employment or the Welsh Office, and
 - (b) any person exercising any function by virtue of section 2 and any persons who are employed by (or are directors or other officers of) any such person or who carry out the administrative work of any such person.
- (2) In this Schedule “social security information” means information of a prescribed description which was obtained by reason of the exercise by the Secretary of State of any of his functions under the Social Security Contributions and Benefits Act 1992 or the Social Security Administration Act 1992.
- 2 The Secretary of State may supply to any person to whom this Schedule applies any such social security information as the person may require for or in connection with the exercise of any function relating to grants in respect of nursery education.
- 3 (1) A person who is or has been a person to whom this Schedule applies is guilty of an offence if he discloses without lawful authority any social security information relating to a particular person which he acquired while acting as a person to whom this Schedule applies.
- (2) It is not an offence under this paragraph—
- (a) to disclose information in the form of a summary or collection of information so framed as not to enable social security information relating to any particular person to be ascertained from it, or
 - (b) to disclose social security information which has previously been disclosed to the public with lawful authority.
- (3) It is a defence for a person charged with an offence under this paragraph to prove that at the time of the alleged offence—
- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or
 - (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (4) For the purposes of this paragraph a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) by a person in accordance with his official duty as a civil servant,
 - (b) by any other person either—
 - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed

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- by the Secretary of State or by any person authorised by the Secretary of State, or
- (ii) to the Secretary of State or in accordance with an authorisation duly given by the Secretary of State or by any person authorised by the Secretary of State,
- (c) in accordance with any enactment or order of a court,
- (d) for the purposes of instituting, or otherwise for the purposes of, any proceedings before a court, or
- (e) with the consent of the person to whom the information relates or of any person authorised to act on his behalf.
- (5) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

SCHEDULE 3

Section 10.

CONSEQUENTIAL AMENDMENTS

The Education Act 1944 (c. 31)

- 1 In section 76 of the Education Act 1944 (duty to have regard in exercise of functions under Education Acts to principle that pupils be educated in accordance with wishes of their parents), for “1993” substitute “1996”.

The Education (Miscellaneous Provisions) Act 1948 (c. 40)

- 2 In section 4 of the Education (Miscellaneous Provisions) Act 1948 (provisions about children becoming registered school pupils), after subsection (3) insert—
- “(3A) General directions given by a local education authority as respects the time of admission of children as registered pupils shall not prevent the admission to a school of children in respect of whose education grants may be made under arrangements which have been made under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996.”

The Education (Work Experience) Act 1973 (c. 23)

- 3 In section 1(4) of the Education (Work Experience) Act 1973 (work experience in last year of compulsory school), in the definition of “the Education Acts”, for “1993” substitute “1996”.

The Sex Discrimination Act 1975 (c. 65)

- 4 In section 23(1) of the Sex Discrimination Act 1975 (prohibition of sex discrimination by LEA in carrying out of functions under Education Acts), for “1993” substitute “1996”.

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The Race Relations Act 1976 (c. 74)

- 5 In section 18(1) of the Race Relations Act 1976 (prohibition of racial discrimination by LEA in carrying out of functions under Education Acts), for “1993” substitute “1996”.

The National Health Service Act 1977 (c. 49)

- 6 In section 28A(2)(c) of the National Health Service Act 1977 (power to make payments to LEA), for “1993” substitute “1996”.

The Education Reform Act 1988 (c. 40)

- 7 In section 163(1) of the Education Reform Act 1988 (references in Education Acts to LEAs to include new LEAs for areas in inner London), for “1993” substitute “1996”.

The Further and Higher Education Act 1992 (c. 13)

- 8 In section 90(1) of the Further and Higher Education Act 1992 (interpretation), in the definition of “the Education Acts”, for “1994” substitute “1996”.

The Local Government Finance Act 1992 (c. 14)

- 9 (1) Section 55 of the Local Government Finance Act 1992 (limitation of council tax: special transitional provisions where local authority’s budget requirement for financial year is to be compared with notional amount rather than authority’s budget requirement for preceding financial year) is amended as follows.
- (2) In subsection (1), after paragraph (c) insert “or
- (d) as regards any financial year to which this paragraph applies and any authority to which grants are made under arrangements under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996.”
- (3) After that subsection insert—
- “(1A) Subsection (1)(d) above applies to—
- (a) the first financial year in which grants are made to any authority under arrangements under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996,
- (b) either or both of the next two financial years if, in the opinion of the Secretary of State, the basis of comparison referred to in section 54(1)(b) above would be inappropriate for the year in the case of the authority concerned because of a change in the basis of distribution (within the meaning of section 78A(2) of the 1988 Act) which is related to the making of grants under such arrangements, and
- (c) any financial year in which grants are first made under such arrangements in respect of education provided for a particular description of children.”

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The Education Act 1993 (c. 35)

- 10 In section 17(2) of the Education Act 1993 (power of Secretary of State to delegate functions to funding authorities), after paragraph (a) insert—
“(aa) section 68(6) (consent to borrowing).”
- 11 In section 130(2) of that Act (transfer of premises to trustees), for “section 68(7) (b)” substitute “section 68(7)”.
- 12 In section 162 of that Act (provision by local education authority of goods and services in connection with special educational needs), after subsection (2) insert—
“(2A) A local education authority may supply goods or services to any authority or other person (other than a governing body within subsection (1) above) for the purpose only of assisting them in making for any child in respect of whose education grants are (or are to be) made under arrangements under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996 any special educational provision which any learning difficulty of the child calls for.”
- 13 In section 305(1) of that Act (interpretation), before the definition of “financial year” insert—
““the Education Acts” means the Education Acts 1944 to 1996.”
- 14 In section 306 of that Act (index), before the entry relating to “financial year” insert—
“the Education Acts section 305(1)”.

The Value Added Tax Act 1994 (c. 23)

- 15 In Note (1)(a) to Group 6 of Schedule 9 to the Value Added Tax Act 1994 (meaning of “school” for purposes of determining whether provision of education is an exempt supply), for “1993” substitute “1996”.

SCHEDULE 4

Section 10.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1993 c. 35.	The Education Act 1993.	In section 308(2), the words “(referred to in this Act as “the Education Acts”)”. In Schedule 19, paragraphs 54(a), 56, 64, 69, 84, 131 and 170.
1994 c. 30.	The Education Act 1994.	In Schedule 2, paragraph 10(3).