



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART II

#### HIGHER AND FURTHER EDUCATION

#### CHAPTER IV

##### MISCELLANEOUS AND SUPPLEMENTARY

#### **156 Government and conduct of certain further and higher education institutions**

- (1) This section applies to any institution which is—
  - (a) a designated assisted institution providing full-time education; or
  - (b) an institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council.
- (2) Where any institution to which this section applies is conducted by a company, the articles of association of the company shall incorporate—
  - (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and
  - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).
- (3) Where any such institution is so conducted—
  - (a) the Secretary of State may give to the persons who appear to him to have effective control over the company such directions as he thinks fit for securing that—
    - (i) the memorandum or articles of association of the company; or
    - (ii) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company;are amended in such manner as he may specify in the direction; and

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- (b) no amendment of the memorandum or articles of association of any such company (other than one required under paragraph (a)(i) above) shall take effect until it has been submitted to the Secretary of State for his approval and he has notified his approval to the company.
- (4) Before giving any directions under subsection (3)(a) above the Secretary of State shall consult the persons who appear to him to have effective control over the company concerned.
- (5) Where it is proposed to form a company to conduct any institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions, the proposed memorandum and articles of association of the company shall be submitted to the Secretary of State for his approval before the company is formed and amended in any manner he may require.
- (6) For every institution to which this section applies which is not conducted by a company, there shall be—
  - (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
  - (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government).
- (7) The instrument and articles of government of any institution within subsection (6) above shall be made by the responsible authority with the approval of the Secretary of State.
- (8) The instrument of government of any institution within subsection (6) above, and the instrument containing the articles of government of any such institution, may each include provision for its amendment or replacement subject to the approval of the Secretary of State.
- (9) In this section, “the responsible authority” means, in relation to the instrument or articles of government of any institution within subsection (6) above—
  - (a) where any existing instrument or articles of government of the institution, or any other instrument relating to or regulating the institution, confers power on any persons to amend or replace that instrument or those articles, the persons on whom that power is so conferred; and
  - (b) in any other case, the persons responsible for the management of the institution.
- (10) The Secretary of State may by order amend the instrument and articles of government of any institution within subsection (6) above in such manner as he thinks fit.
- (11) Before making any amendments of the instrument or articles of government of any institution under subsection (10) above the Secretary of State shall consult—
  - (a) the responsible authority; and
  - (b) the persons responsible for the management of the institution, in any case where those persons are not the responsible authority;
 in so far as it appears to him to be practicable to do so.

## **157 Variation of trust deeds, etc**

- (1) The Secretary of State may by order make such modifications as he thinks fit in any trust deed or other instrument—

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- (a) relating to or regulating any such institution as is mentioned in subsection (2) below; or
  - (b) relating to any land or other property held by any person for the purposes of any such institution.
- (2) The institutions referred to in subsection (1) above are—
- (a) any institution conducted by a higher education corporation;
  - (b) any designated assisted institution providing full-time education; and
  - (c) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council.
- (3) Before making any modifications under subsection (1) above of any trust deed or other instrument the Secretary of State shall consult—
- (a) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any persons to amend or replace that deed or instrument—
    - (i) the persons on whom that power is so conferred; and
    - (ii) if different, the persons responsible for the management of the institution; and
  - (b) in any other case, the persons so responsible;
- in so far as it appears to him to be practicable to do so.
- (4) Any provision of any instrument relating to any land or other property held for the purposes of any institution maintained or assisted by a local education authority to which this subsection applies which—
- (a) confers on any person an option to acquire an interest in that land or other property; or
  - (b) provides (in whatever terms) for the determination or forfeiture of any such interest;
- in the event of the institution's ceasing to be maintained or assisted by a local education authority or (as the case may be) by the authority in question shall, if the institution becomes an institution within the PCFC funding sector or a grant-aided institution, have effect as if the event referred to were the institution's ceasing to be a publicly funded institution.
- (5) Subsection (4) above applies—
- (a) to an institution maintained by a local education authority if it is an institution providing full-time education which is maintained by the authority in exercise of their further or higher education functions; and
  - (b) to an institution assisted by a local education authority if it is a designated assisted institution providing full-time education.
- (6) In that subsection “publicly funded institution” means an institution which is an institution of any one or more of the following descriptions, that is to say—
- (a) an institution maintained or assisted by a local education authority;
  - (b) an institution within the PCFC funding sector; and
  - (c) a grant-aided institution.

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### **158 Reports and returns to Secretary of State**

- (1) The persons mentioned in subsection (2) below shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purposes of the exercise of any of his functions in relation to education.
- (2) Those persons are—
  - (a) the governing body of—
    - (i) any institution within the PCFC funding sector;
    - (ii) any institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions; or
    - (iii) any designated assisted institution providing full-time education; and
  - (b) the persons appearing to the Secretary of State to have effective control over a company conducting any institution to which section 156 of this Act applies.

### **159 Information with respect to educational provision in institutions providing further or higher education**

- (1) The Secretary of State may make regulations requiring every local education authority to publish, in relation to each relevant institution maintained or assisted by the authority, such information with respect to the matters mentioned in subsection (3) below as may be prescribed.
- (2) For the purposes of this section, an institution is a relevant institution in relation to a local education authority if it is either—
  - (a) an institution providing full-time education which is maintained by that authority in exercise of their further or higher education functions; or
  - (b) a designated assisted institution providing full-time education which is dependent on assistance from that authority.
- (3) The matters referred to in subsection (1) above are—
  - (a) the educational provision made by the institution for students at the institution; and
  - (b) the educational achievements of students at the institution (including the results of examinations, tests and other assessments of those students).
- (4) The information shall be published in such form and manner and at such times as may be prescribed; and the regulations may provide for a local education authority to make arrangements with the governing body of any relevant institution for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution.

### **160 Adjustments of block grant in respect of expenditure on advanced further education**

- (1) The block grant payable to a local authority in England for any year beginning on or after the date appointed for the purposes of section 126(1) of this Act shall not be subject to adjustment in accordance with paragraph 6 of Schedule 10 to the Local Government, Planning and Land Act 1980 (which relates to adjustments of block grant in respect of expenditure on advanced further education as between local authorities).

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- (2) In relation to any expenditure incurred by such an authority on or after that date in the exercise of the authority's functions as a local education authority, sub-paragraphs (3) (a) and (5)(b) of paragraph 5 of that Schedule (which define certain expenditure for the purposes of that paragraph) shall each have effect as if the words "other than that to which paragraph 6 below applies" were omitted.
- (3) On that date Part I of that Schedule (which relates to adjustments of block grant in respect of expenditure on advanced further education as between England and Wales) shall cease to have effect.
- (4) Anything done by the Secretary of State before the passing of this Act for the purpose of making in the block grant payable to a local authority in England adjustments under paragraph 5 or 6 of that Schedule in respect of expenditure incurred in the years beginning in 1985, 1986 and 1987 by local authorities in England in connection with further education of an advanced character (including the training of teachers) shall be deemed to have been done in accordance with that paragraph.
- (5) In this section—
  - "local authority" means a body which is a local authority for the purposes of Part VI of that Act; and
  - "year" has the same meaning as in that Part.

## **161 Interpretation of Part II**

- (1) In this Part of this Act, except where the context otherwise requires—
  - (a) references to courses of advanced further education shall be read in accordance with section 121(4);
  - (b) references to the further or higher education functions of a local education authority are references to the functions of the authority under either or both of the following—
    - (i) section 41 of the 1944 Act (provision of facilities for further education); and
    - (ii) section 120(3) and (4) of this Act (provision of facilities for higher education);
  - (c) references to a designated assisted institution dependent on assistance from a local education authority shall be read in accordance with section 139(7); and
  - (d) "governing body" includes, in relation to any institution, a board of governors of the institution or any persons responsible for the management of the institution (but not formally constituted as such a body or board).
- (2) References in this Part of this Act to the total full-time equivalent enrolment number of any institution at any time are references to the aggregate of its full-time equivalent enrolment numbers at that time for courses of all descriptions then offered by that institution.
- (3) For the purposes of this Part of this Act the full-time equivalent enrolment number at any time of any institution for courses of any description shall be determined in accordance with Schedule 9 to this Act.