



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Supplementary*

#### **230 Stamp duty.**

- (1) Subject to subsection (4) below, stamp duty shall not be chargeable in respect of any transfer effected under or by virtue of any of the following provisions of this Act, namely—
- section 15(2);
  - section 74 (taken with Schedule 10);
  - section 95(4);
  - section 96(2);
  - section 126 (taken with Schedule 10);
  - section 128(1)(b);
  - section 130 (taken with Schedule 10);
  - section 136(2);
  - section 168(1) and (2);
  - section 180(1);
  - section 190(5);
  - section 192;
  - section 201(5) and (7); and
  - section 228 (taken with Schedule 10).
- (2) Subject to subsection (4) below, stamp duty shall not be chargeable in respect of any transfer to a local education authority under or by virtue of section 95(6) or (7) or 101(2) of this Act of property which immediately after the transfer is held by the authority for the purposes of an institution (or institutions) falling within subsection (3) below.

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- (3) An institution falls within this subsection if it is—
- (a) a university;
  - (b) an institution within the PCFC funding sector;
  - (c) an institution which provides higher education or further education (or both) and is either—
    - (i) maintained by a local education authority; or
    - (ii) designated by or under regulations made under section 27 of the 1980 Act as an institution substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act;
  - (d) a school maintained by a local education authority; or
  - (e) a grant-maintained school.
- (4) No instrument (other than a statutory instrument) made or executed—
- (a) under or in pursuance of any of the provisions mentioned in subsection (1) above; or
  - (b) for the purpose of giving effect to any such transfer as is mentioned in subsection (2) above;

shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the <sup>M1</sup>Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the <sup>M2</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

#### Marginal Citations

**M1** 1982 c. 39.

**M2** 1891 c. 39.

### **231 Power to make incidental, consequential, transitional and supplementary provisions.**

- (1) The Secretary of State may at any time by order make such provision amending, repealing or revoking (with or without savings) any provision of a local Act passed, or an instrument under a local Act made, before the passing of this Act as appears to him to be necessary or expedient in consequence of any of the provisions of this Act.
- (2) The Secretary of State may at any time by order make such incidental, consequential, transitional or supplementary provision as appears to him to be necessary or expedient for the general purposes or any particular purposes of Part III of this Act or in consequence of any of its provisions or for giving full effect to it.
- (3) An order under subsection (2) above may in particular make provision—
  - (a) for enabling any authority or body by whom any powers will become exercisable on the abolition date by virtue of any provision made by or under Part III of this Act to take before that date any steps (such as the establishment of committees, the making of arrangements with other authorities or bodies with respect to the exercise of those powers or the undertaking of consultations) which are necessary or expedient in preparation for the exercise of those powers;

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- (b) for enabling the Secretary of State to take before that date in relation to any such authority or body or in relation to anything done by that authority or body in accordance with any provision made by an order under that subsection any steps which are necessary or expedient for the purpose of the exercise by that authority or body of those powers;
  - (c) for the making before that date of arrangements for securing the satisfactory operation from that date of any provision made by or under that Part and for defraying the cost of any such arrangements;
  - (d) for amending, repealing or revoking (with or without savings) any provision of an Act passed, or an instrument under an Act made, before the abolition date, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act;
  - (e) with respect to the membership of any body so far as consisting of persons elected by, or appointed by or on the nomination of ILEA, whether alone or together with one or more other bodies.
- (4) Without prejudice to the generality of paragraph (d) of subsection (3) above, an order under subsection (2) above making any such provision as is mentioned in any of paragraphs (a) to (c) of subsection (3) above—
- (a) may apply in relation to any inner London council any enactment or instrument relating to the functions of local education authorities as if that council were such an authority; and
  - (b) may apply in relation to any such council any enactment or instrument relating to the functions of local authorities as if that council had before the abolition date any functions specified in the order, being functions which will on that date become exercisable by that council;
- for such purposes and subject to such modifications (if any) as may be specified in the order.
- (5) The amendments that may be made under subsection (3)(d) above—
- (a) shall be in addition and without prejudice to those made by any other provision of this Act; and
  - (b) shall, in particular, include amendments in consequence of functions under provisions applying to the Inner London Education Area becoming exercisable in their respective areas by the inner London councils.
- (6) In this section, expressions to which a meaning is given for the purposes of Part III of this Act have the same meaning as in that Part.
- (7) No other provision of this Act shall be construed as prejudicing the generality of the powers conferred by this section.

## **232 Orders and regulations.**

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument.
- (2) For the purposes of subsection (1) above the excepted provisions are sections 27(5), 34(1), 35(6), 40(4), 53(2), 58(2), 59(1), 91, 94, 102, 140(1), 141(6), 145(6), 151(4), 156(10) and 157, paragraph 1 of Schedule 5, paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.

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- (3) No order shall be made under section 3(4)(a), 24 or 227 of this Act unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing—
  - (a) an Order in Council made under section 207 of this Act which amends or repeals any provision of an Act; or
  - (b) any order or regulations made by the Secretary of State under this Act, other than an order under section 3(4)(a), 4(2)(c), 24, 52(7), 214, 216, 227 or 236;
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Orders or regulations under this Act may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.
- (6) Without prejudice to subsection (5) above, orders under this Act, and regulations under any provision of this Act other than section 218(1)(a), (b) or (c), (5) or (6), may make in relation to Wales provision different from that made in relation to England.

### **233 Expenses.**

There shall be defrayed out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

### **234 Meaning of “assisted” for the purposes of the 1944 Act and Acts construed as one with it.**

- (1) Neither a university nor any institution within the PCFC funding sector shall be regarded for the purposes of the 1944 Act (or any Act construed as one with it) as an institution assisted by a local education authority by virtue of the making to that university or institution by any such authority of any grant in respect of the university or institution or any payment in consideration of the provision of educational facilities at the university or institution.
- (2) Accordingly, in section 114 of that Act (interpretation)—
  - (a) at the beginning of subsection (2) (which provides in paragraph (b) that a school or institution is to be deemed for the purposes of that Act to be assisted by a local education authority if any such grant or payment is made by the authority to the persons responsible for the maintenance of the school or institution) there shall be inserted the words “Subject to subsection (2A) of this section”; and
  - (b) the following subsection shall be inserted after that subsection—
 

“(2A) Neither a university nor any institution within the PCFC funding sector shall be deemed under subsection (2)(b) of this section to be assisted by a local education authority by virtue of the making by that authority to the persons responsible for the maintenance of that university or institution of any such grant or payment as is there mentioned.”.

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- (3) In paragraph (b) of that subsection—
- (a) for the words “training college or other institution which is not so maintained” there shall be substituted the words “institution other than a school”; and
  - (b) the word “college”, in the second and third places where it occurs, shall be omitted.
- (4) In subsection (1) of that section, in the definition of “assist” (which refers to the meaning assigned by subsection (2) of that section)—
- (a) the word “college” shall be omitted; and
  - (b) for the words “subsection (2)” there shall be substituted the words “subsections (2) and (2A)”.

### **235 General interpretation.**

- (1) In this Act, except where the context otherwise requires—
- “the 1944 Act” means the <sup>M3</sup>Education Act 1944;
  - “the 1980 Act” means the <sup>M4</sup>Education Act 1980;
  - “the 1981 Act” means the <sup>M5</sup>Education Act 1981;
  - “the 1986 Act” means the <sup>M6</sup>Education (No. 2) Act 1986;
  - “contract of employment”, “employee” and “employer” have the same meaning as in the <sup>M7</sup>Employment Protection (Consolidation) Act 1978, and “employed” means employed under a contract of employment;
  - “financial year” means a period of twelve months ending with 31st March;
  - “functions” includes powers and duties;
  - “higher education” has the meaning given by section 120(1);
  - “land” includes buildings and other structures, land covered with water, and any interest in land;
  - “liability” includes obligation;
  - “local authority” means a county council, a district council, a London borough council or the Common Council of the City of London;
  - “modifications” includes additions, alterations and omissions and “modify” shall be construed accordingly;
  - “statutory provision” means a provision of an enactment or a statutory instrument;
  - “transfer date” has the meaning given by section 74(9), 123(2), 130(8) or 228(10) as the context may require;
  - “university” includes a university college and any college, or institution in the nature of a college, in a university.
- (2) In this Act—
- (a) references to an institution within the PCFC funding sector shall be read in accordance with section 120(8);
  - (b) references to a higher education corporation shall be read in accordance with section 123(1);
  - (c) references to an institution which is or was grant-aided at any time are references to an institution maintained by persons who have received any grants under regulations made under section 100(1)(b) of the 1944 Act in respect of expenditure incurred or to be incurred for any academic year of that institution current at the time in question;

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- (d) references to an institution which is eligible to receive aid by way of grant are references to an institution maintained by persons other than local education authorities who for the time being satisfy any requirements of regulations so made with respect to the eligibility of such persons to receive grants under those regulations;
  - (e) references to courses of higher education are references to courses of any description mentioned in Schedule 6 to this Act;
  - (f) references to dismissal by reason of redundancy shall, except in section 203, be read in accordance with section 81 of the <sup>M8</sup>Employment Protection (Consolidation) Act 1978;
  - (g) references to an interest in land include references to any easement, right or charge in, to or over land; and
  - (h) references to a designated assisted institution shall be read in accordance with section 139(6).
- (3) For the purposes of this Act—
- (a) a person employed by a local education authority is to be regarded as employed to work at a school or other institution if his employment with the authority for the time being involves work at that school or institution; and
  - (b) subject to section 75(2) of this Act, a person employed by such an authority is to be regarded as employed to work solely at a school or other institution if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school or institution.
- (4) For the purposes of this Act the City of London shall be deemed to include the Inner Temple and the Middle Temple.
- (5) Any reference in section 74, 126, 130 or 228 of this Act to liabilities incurred by a local education authority shall not be read as including liabilities of such an authority to make payments to or in respect of any person in pursuance of any duty imposed on the authority under any statutory provision.
- (6) Nothing in any provision of this Act or of any order made under this Act relating to the trusts subject to which any land or other property or rights transferred under this Act are to be held by the transferee shall be taken as prejudicing any modification of those trusts after that transfer under any provision of this Act or otherwise.
- (7) Subject to subsection (8) below, this Act shall be construed as one with the 1944 Act.
- (8) Where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the 1944 Act, the meaning given for the purposes of the 1944 Act shall not apply for the purposes of that provision.

#### Marginal Citations

- M3** 1944 c. 31.
- M4** 1980 c. 20.
- M5** 1981 c. 60.
- M6** 1986 c. 61.
- M7** 1978 c. 44.
- M8** 1978 c. 44.

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## 236 Commencement.

- (1) The following provisions of this Act, namely—
- section 1;
  - section 2(1)(b) and (2);
  - sections 3 and 4;
  - sections 14 and 15 and Schedule 2;
  - sections 20 to 22 and 23(1);
  - section 25;
  - sections 33 to 45 and Schedule 3;
  - sections 46 to 104 and Schedules 4 and 5;
  - section 105;
  - sections 112 and 113;
  - section 116;
  - section 119;
  - sections 137 to 151;
  - sections 153 to 201, Schedule 8 so far as relating to the Education Assets Board, Schedules 9 and 10 and paragraph 67 of Schedule 12;
  - sections 202 to 208 and Schedule 11;
  - sections 212 and 213;
  - section 217;
  - section 219 so far as relating to grant-maintained schools;
  - sections 221 to 225 and 227 (1);
  - sections 230 to 235 and Schedule 6;
  - this section;
  - Part I of Schedule 12, paragraphs 60, 81, 82 and 102 of that Schedule and section 237(1) so far as relating to those provisions; and
  - section 238;
- shall come into force on the passing of this Act.
- (2) Notwithstanding anything in section 120 of this Act, until the end of the year 1989 any education provided by an institution for which immediately before the passing of this Act there is in force an instrument of government made under section 1 of the <sup>M9</sup>Education (No. 2 Act 1968 (government and conduct of colleges of education and other institutions providing further education) shall for the purposes of—
- (a) the Education Acts 1944 to 1988; and
  - (b) any other enactment referring to further education within the meaning of those Acts or of the 1944 Act;
- be treated as further education, and not as secondary education, within the meaning of that Act.
- (3) Sections 2(1)(a) and (3), 6, 8, 9, 10(1), 11 and 13 and Schedule 1 shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) Part II of Schedule 12, and section 237(1) so far as relating to that Part, shall come into force on 1st April 1990.
- (5) Part I of Schedule 13, and section 237(2) so far as relating to that Part, shall come into force on 1st April 1990.

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- (6) Except as provided above in this section, this Act shall come into force on such date or dates as the Secretary of State may by order appoint.
- (7) Different dates may be appointed in relation to different provisions of this Act and for different purposes of the same provision, including (in particular) for the purpose of bringing particular provisions into force only in relation to particular educational institutions or categories of educational institutions.
- (8) Any order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (9) Any such order may include such adaptations of the provisions which it brings into force, or of any other provisions of this Act then in force, as appear to the Secretary of State to be necessary or expedient for the purpose or in consequence of the operation of any provision of this Act (including, in particular, the provisions which the order brings into force) before the coming into force of any other provision.

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

**C1** Power of appointment conferred by s. 236(6) partly exercised: [S.I. 1988/1459](#), 1794, 2002, 2271; 1989/164, 501, 719; 1990/391

**Marginal Citations**

**M9** [1968 c. 37](#).

**237 Amendments and repeals.**

- (1) Schedule 12 to this Act (which makes minor and consequential amendments) shall have effect.
- (2) The enactments mentioned in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

**238 Citation, extent etc.**

- (1) This Act may be cited as the Education Reform Act 1988.
- (2) This Act and the Education Acts 1944 to 1986 may be cited together as the Education Acts 1944 to 1988.
- (3) Subject to subsections (4) to (6) below, this Act does not extend to Scotland or Northern Ireland.
- (4) Sections 131, 134, 202 to 205, 207, 214 to 216, 231, 232, 235 and 236, this section and Schedules 8 and 11 extend to Scotland.
- (5) Sections 208 and 217(1) extend to Northern Ireland.
- (6) The amendment by this Act of an enactment which extends to Scotland or Northern Ireland also extends there.



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