



# Teaching and Higher Education Act 1998

## 1998 CHAPTER 30

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Inspection of vocational training, etc: Wales*

**[<sup>F2</sup>34 Inspection of vocational training by [<sup>F1</sup>Her Majesty's chief inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru].**

- (1) This section applies to training leading to an external qualification which is provided in Wales in pursuance of arrangements made by the Secretary of State under section 2(2)(f) of the <sup>M1</sup>Employment and Training Act 1973.
- (2) The Chief Inspector shall, if requested to do so by the Secretary of State, arrange for any person providing training to which this section applies to be inspected under this section.
- (3) A request by the Secretary of State under this section may relate to one or more such persons, and shall specify—
  - (a) the person or persons concerned, and
  - (b) the form or forms of vocational training to which the inspection is to relate.
- (4) Before making any such request the Secretary of State shall consult the Chief Inspector as to the matters to be specified in the request in accordance with subsection (3).
- (5) Any inspection under this section shall be conducted by one or more of the following, namely—
  - (a) any of Her Majesty's Inspectors of Schools in Wales, or
  - (b) any additional inspector authorised under paragraph 2 of Schedule 1 to the <sup>M2</sup>School Inspections Act 1996;

but such an inspector or inspectors may be assisted by such other persons (whether or not members of the Chief Inspector's staff) as the Chief Inspector thinks fit.

*Status: Point in time view as at 01/10/2002.*

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- (6) In conducting an inspection under this section, the inspector or inspectors shall act in accordance with any instructions or guidelines given from time to time by the Secretary of State.
- (7) Where an inspection under this section has been completed, the inspector or inspectors shall make a written report on the inspection, and shall send the report to the Secretary of State.
- (8) The Secretary of State may arrange for any report of an inspection under this section to be published in such manner as he considers appropriate; and section 42A(2) to (4) of the School Inspections Act 1996 shall apply in relation to the publication of any such report by the Secretary of State as they apply in relation to the publication of a report by the Chief Inspector under any of the provisions mentioned in section 42A(2).
- (9) In this section—
- “the Chief Inspector” means [<sup>F3</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru];
- “external qualification” means a vocational qualification awarded or authenticated by such person or body as may be specified in or under regulations.]

#### Textual Amendments

- F1** S. 34: words in sidenote substituted (1.1.2001) by virtue of 2000 c. 21, s. 73(a); S.I. 2000/3230, art. 2, Sch.
- F2** S. 34 repealed (28.7.2000 for specified purposes and otherwise 1.4.2001 for W. and 1.9.2001 for E. in relation to Sch. 9 of the amending Act) by 2000 c. 21, ss. 149, 153, 154(5), Sch. 9 para. 76, Sch. 11; S.I. 2001/654, art. 2, Sch. Pt. III; S.I. 2001/1274, art. 2(1), Sch. Pt. I
- F3** Words in s. 34(9) substituted (1.1.2001) by 2000 c. 21, s. 73(a); S.I. 2000/3230, art. 2, Sch.

#### Marginal Citations

- M1** 1973 c. 50.
- M2** 1996 c. 57.

### 35 Inspection of careers services by [<sup>F4</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru].

- (1) This section applies to relevant services provided in Wales in pursuance of arrangements made or directions given by the Secretary of State under section 10 of the <sup>M3</sup>Employment and Training Act 1973.
- (2) The Chief Inspector shall, if requested to do so by the Secretary of State, arrange for any person providing, or arranging for the provision of, relevant services in accordance with such arrangements or directions to be inspected under this section.
- (3) An inspection of any such person under this section shall consist of a review of the way in which he is discharging his responsibilities under or by virtue of the arrangements or directions in question, having regard to any guidance given by the Secretary of State with respect to the provision of relevant services.

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- (4) A request by the Secretary of State under this section may relate to one or more such persons, and shall specify both—
- (a) the person or persons concerned, and
  - (b) the relevant services to which the inspection is to relate.
- (5) Before making any such request the Secretary of State shall consult the Chief Inspector as to the matters to be specified in the request in accordance with subsection (4).
- [<sup>F5</sup>(6) Any inspection under this section shall be conducted by one or more of the following—
- (a) any of Her Majesty’s Inspectors of Education and Training in Wales or Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru, or
  - (b) any additional inspector authorised under paragraph 2 of Schedule 1 to the School Inspections Act 1996;
- but such an inspector or inspectors may be assisted by such other persons (whether or not members of the Chief Inspector’s staff) as the Chief Inspector thinks fit.
- (6A) In conducting an inspection under this section, the inspector or inspectors shall act in accordance with any instruction or guidelines given from time to time by the National Assembly for Wales.
- (6B) Where an inspection under this section has been completed, the inspector or inspectors shall make a written report on the inspection and shall send the report to the National Assembly for Wales.
- (6C) The National Assembly for Wales may arrange for any report of an inspection under this section to be published in such manner as the National Assembly for Wales considers appropriate; and section 42A(2) to (4) of the School Inspections Act 1996 shall apply in relation to the publication of any such report by the National Assembly for Wales as they apply to the publication of a report by the Chief Inspector under any of the provisions mentioned in section 42A(2).]
- (7) In this section— “the Chief Inspector” means [<sup>F6</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru]; “relevant services” has the same meaning as in sections 8 and 9 of the <sup>M4</sup>Employment and Training Act 1973 (provision of careers services).

#### Textual Amendments

- F4** s. 35: words in sidenote substituted (1.1.2001) by 2000 c. 21, s. 73(a); S.I. 2000/3230, art. 2, Sch.
- F5** S. 35(6)-(6C) substituted for s. 35(6) (28.7.2000 for specified purposes and otherwise 1.4.2001 (W.) and 1.9.2001 (E.)) by 2000 c. 21, s. 149, Sch. 9 para. 77; S.I. 2001/654, art. 2, Sch. Pt. III; S.I. 2001/1274, art. 2(1), Sch. Pt. I
- F6** Words in s. 35(7) substituted (1.1.2001) by 2000 c. 21, s. 73(a); S.I. 2000/3230, art. 2, Sch.

#### Marginal Citations

- M3** 1973 c. 50.
- M4** 1973 c. 50.

#### [<sup>F7</sup>35A Inspection of other careers services etc. in Wales.

- (1) This section applies if a person (“A”) who provides a relevant service to which section 35(1) applies also provides education, training or an advisory service—

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- (a) in pursuance of arrangements made by the National Assembly for Wales under section 2 of the Employment and Training Act 1973; or
  - (b) with the assistance of a grant or loan made under section 12(1) of the Industrial Development Act 1982.
- (2) The Chief Inspector for Wales shall, if requested to do so by the National Assembly for Wales, arrange for A to be inspected under this section.
- (3) A request may relate to more than one person and shall specify—
- (a) the person or persons concerned, and
  - (b) the education, training or advisory service to which the inspection is to relate.
- (4) An inspection under this section is to consist of a review of the way in which A is providing the education, training or advisory service specified in the request.
- (5) Before making a request, the National Assembly for Wales must consult the Chief Inspector for Wales as to the matters to be specified in the request.
- (6) Subsections (6) to (6C) of section 35 apply in relation to an inspection under this section as they apply in relation to an inspection under that section.
- (7) In this section “the Chief Inspector for Wales” means Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.]

#### Textual Amendments

**F7** S. 35A inserted (1.4.2001 for W.) by 2000 c. 21, ss. 81, 154(2); S.I. 2001/1274, art. 2(1), Sch. Pt. I

#### *Funding Councils: England, Wales and Scotland*

### **36 Power of funding councils in England and Wales to secure provision of certain further education.**

- (1) Section 3 of the <sup>M5</sup>Further and Higher Education Act 1992 (functions with respect to part-time education and full-time education for those over 18) shall be amended as follows.
- (2) For subsection (3) there shall be substituted—
- “(3) A council may secure the provision of facilities for education within paragraph (a) or (b) of subsection (1) above—
- (a) for the population of their area, where they are not required to do so by virtue of that subsection, or
  - (b) for other persons.”
- (3) In subsection (5), for “to which subsection (1) above applies” there shall be substituted “within paragraph (a) or (b) of subsection (1) above”.

#### Marginal Citations

**M5** 1992 c. 13.

*Status: Point in time view as at 01/10/2002.*

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### **37 Joint exercise of functions of funding councils in Scotland.**

Before section 60 of the <sup>M6</sup>Further and Higher Education (Scotland) Act 1992 there shall be inserted—

#### **“59A Joint exercise of certain functions.**

- (1) The Scottish Higher Education Funding Council and the Scottish Further Education Funding Council (“the councils”) may, with the approval of the Secretary of State, enter into arrangements for the joint discharge of such of their functions as may be so approved.
- (2) Without prejudice to the generality of subsection (1) above, arrangements under that subsection may include arrangements—
  - (a) for an individual to hold appointments as both—
    - (i) the chief officer of the Scottish Higher Education Funding Council under paragraph 2 of Schedule 7 to this Act; and
    - (ii) an equivalent officer under an order under section 7 of this Act establishing the Scottish Further Education Funding Council;
  - (b) for such functions to be carried out by—
    - (i) a joint committee of the councils,
    - (ii) a member of either of the councils, or
    - (iii) an officer or employee of the councils or of either of them;
  - (c) permitting the creation by the councils of a body corporate to carry out such of their functions to which such arrangements relate as the councils may delegate to it;
  - (d) for staff to be employed jointly by the councils;
  - (e) for the staff of either of the councils—
    - (i) to carry out such functions on behalf of the other council;
    - (ii) to be transferred to any body corporate created in accordance with such arrangements.
- (3) Where a body corporate is created by virtue of subsection (2)(c) above—
  - (a) employment with that body shall be included among the kinds of employment to which a scheme under section 1 of the <sup>M7</sup>Superannuation Act 1972 can apply; and
  - (b) the councils shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to paragraph (a) above in the sums payable out of money provided by Parliament under that Act.
- (4) In this section—

“functions” includes powers and duties; and

“joint committee” includes any sub-committee of such a committee.”

#### **Marginal Citations**

**M6** 1992 c. 37.

**M7** 1972 c. 11.

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F8 38 .....

#### Textual Amendments

**F8** S. 38 repealed (1.9.2002) by 2001 c. 10, ss. 38(15), 42(6), **Sch. 9** (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. Pt. 1**

*Further and higher education institutions: England and Wales*

### 39 Unauthorised use of “university” in title of educational institution, etc.

- (1) A relevant institution in England or Wales shall not, when making available (or offering to make available) educational services, do so under a name which includes the word “university” unless the inclusion of that word in that name is—
  - (a) authorised by or by virtue of any Act or Royal Charter, or
  - (b) approved by the Privy Council for the purposes of this section.
- (2) A person carrying on such an institution shall not, when making available (or offering to make available) educational services through the institution, use with reference either to himself or the institution a name which includes the word “university” unless the inclusion of that word in that name is authorised or approved as mentioned in subsection (1).
- (3) Subsection (1) or (2) applies where the educational services are made available, or (as the case may be) the offer to make such services available is made, in any part of the United Kingdom.
- (4) For the purposes of subsection (1) or (2) the inclusion of the word “university” in any name shall not be taken to be authorised by or by virtue of a Royal Charter relating to a university by reason of any provision of the Charter with respect to—
  - (a) the affiliation or association of other institutions to the university, or
  - (b) the accreditation by the university of educational services provided by other institutions.
- (5) In approving the inclusion of the word “university” in any name for the purposes of this section the Privy Council shall have regard to the need to avoid names which are or may be confusing.
- (6) The Privy Council’s power of approval under subsection (1) or (2) shall not be exercisable in a case where the inclusion of the word “university” in the name in question may be authorised by virtue of any other Act or any Royal Charter.
- (7) In this section— “relevant institution” means an institution within the further education sector or the higher education sector as defined by section 91(3) or (5) of the <sup>M8</sup>Further and Higher Education Act 1992; “university”, in the context of the reference in subsection (4) to a Royal Charter relating to a university, has the meaning given by section 90(3) of that Act.

#### Marginal Citations

**M8** 1992 c. 13.

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**40 University college, etc., not to be treated as university.**

At the end of section 77(4) of the Further and Higher Education Act 1992 (use of “university” in title of institution), there shall be added “, unless in that name that word is immediately followed by the word “college” or “collegiate”.”

**41 Charitable status of further and higher education corporations.**

(1) After section 125 of the <sup>M9</sup>Education Reform Act 1988 there shall be inserted—

**“125A Charitable status of a higher education corporation.**

- (1) A higher education corporation shall be a charity which is an exempt charity for the purposes of the <sup>M10</sup>Charities Act 1993.
- (2) So far as it is a charity, any institution which—
  - (a) is administered by or on behalf of any higher education corporation, and
  - (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,shall also be an exempt charity for the purposes of the Charities Act 1993.
- (3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.”

(2) After section 22 of the Further and Higher Education Act 1992 there shall be inserted—

**“22A Charitable status of a further education corporation.**

- (1) A further education corporation shall be a charity which is an exempt charity for the purposes of the Charities Act 1993.
- (2) So far as it is a charity, any institution which—
  - (a) is administered by or on behalf of any further education corporation, and
  - (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,shall also be an exempt charity for the purposes of the <sup>M11</sup>Charities Act 1993.
- (3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.”

**Marginal Citations**

- M9** 1988 c. 40.  
**M10** 1993 c. 10.  
**M11** 1993 c. 10.

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## General

### 42 Orders and regulations.

- (1) Any power of the Secretary of State to make an order or regulations under this Act shall be exercised by statutory instrument.
- (2) A statutory instrument containing—
  - (a) an order under section 7 or 8 [<sup>F9</sup>or paragraph 18 of Schedule 1], or
  - (b) (subject to the following provisions of this section) any regulations under this Act,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subsection (2) does not apply to the first regulations to be made—
  - (a) in relation to the Council under section 1(5), or
  - (b) in relation to the General Teaching Council for Wales under section 1(5) as applied by an order under section 8(1),
 and no such regulations shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsection (2) does not apply to the first regulations to be made under section 22; and no such regulations shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (5) That subsection also does not apply to—
  - (a) any regulations in relation to which paragraph (b) of section 22(7) applies, or
  - (b) any other regulations under section 22 a draft of which has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.
- (7) Any order or regulations under this Act may make different provision in relation to England and Wales respectively.
- (8) Nothing in this Act shall be read as affecting the generality of subsection (6).
- (9) Once the Council or (as the case may be) the General Teaching Council for Wales have been established, the Secretary of State shall, before making regulations under Chapter I of Part I of this Act, consult the Council to which the regulations will relate.

#### Textual Amendments

- F9** Words in s. 42(2)(a) inserted (1.10.2002 for E. and otherwise *prosp.*) by 2002 c. 32, ss. 148, 216, **Sch. 12 para. 9** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**



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#### 43 General interpretation.

- (1) In this Act— “the Council” means the body corporate referred to in section 1(1); “functions” includes powers and duties; “modifications” includes additions, alterations and omissions, and “modify” shall be construed accordingly; “prescribed” means prescribed by regulations; “registered teacher” means (subject to paragraph 8 of Schedule 2) a person for the time being registered under section 3; “regulations” means regulations made by the Secretary of State under this Act.
- (2) In the following provisions of this Act, namely—
  - (a) sections 12, 15 and 19, and
  - (b) Schedule 2,“employer”, in relation to a teacher, includes a local education authority, governing body or other person who engage (or make arrangements for the engagement of) that person to provide his services as a teacher otherwise than under a contract of employment, and “employed”, “employment” and any expressions relating to the termination of employment shall be construed accordingly.

#### 44 Minor and consequential amendments and repeals.

- (1) The minor and consequential amendments set out in Schedule 3 shall have effect.
- (2) The enactments specified in Schedule 4 are repealed to the extent specified.

##### Commencement Information

- II** S. 44 partly in force; s. 44 not in force at Royal Assent; s. 44(1) in force for certain purposes at 18.7.1998 by [S.I. 1998/1729, art. 2](#); s. 44(2) in force for certain purposes at 13.8.1998 by [S.I. 1998/2004, art. 2](#); s. 44(1)(2) in force at 1.10.1998 for certain purposes by [S.I. 1998/2215, art. 2](#); s. 44(2) in force at 1.1.1999 for certain purposes by [S.I. 1998/3237, art. 2\(1\)](#) (subject to savings in art. 3 and 4) and art. 2(2); s. 44(1) in force at 1.9.1999 so far as it relates to Sch. 3 paras. 10-14 by [S.I. 1999/987, art. 2](#); s. 44(1) in force at 1.9.2000 for certain purposes by 2000/970, art. 3

#### 45 Northern Ireland.

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M12</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to those of sections 22 to 26 and 28 or sections 32 and 33—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

##### Marginal Citations

**M12** 1974 c. 28.

#### 46 Short title, commencement and extent.

- (1) This Act may be cited as the Teaching and Higher Education Act 1998.

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- (2) This Act shall be included in the list of Education Acts set out in section 578 of the <sup>M13</sup>Education Act 1996.
- (3) In this Act—
- sections 22 to 31,
  - sections 42 and 43,
  - section 45, and
  - this section,
- come into force on the day on which this Act is passed.
- (4) The remaining 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.
- (5) Subject to subsections (6) to (9), this Act extends to England and Wales only.
- (6) The following provisions extend to Scotland only—
- sections 16 and 17,
  - section 21,
  - sections 29 and 30, except that subsections (3) and (11) of section 73B, and section 73A so far as relating to any function exercisable by virtue of those subsections, of the <sup>M14</sup>Education (Scotland) Act 1980 (which are inserted by section 29) shall also extend to England and Wales and Northern Ireland,
  - section 31, and
  - sections 37 and 38.
- (7) The following provisions also extend to Scotland—
- section 22 so far as relating to the making of any provision authorised by subsection (2) (a), (c), (j) or (k), (3)(e) or (5) of that section,
  - section 23 so far as relating to any function exercisable by virtue of any provision so authorised,
  - sections 32 and 33,
  - section 39,
  - section 42, and
  - this section.
- (8) The following provisions extend to Northern Ireland—
- section 22 so far as relating to the making of any provision authorised by subsection (2) (a), (c), (j) or (k), (3)(e) or (5) of that section,
  - section 23 so far as relating to any function exercisable by virtue of any provision so authorised,

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section 39,  
section 45, and  
this section.

- (9) The amendment or repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.

#### **Subordinate Legislation Made**

- P1** S. 46(4) power partly exercised (17.7.1998): 18.7.1998 appointed for specified provisions by [S.I. 1998/1729](#)  
S. 46(4) power partly exercised (12.8.1998): 13.8.1998 appointed for specified provisions by [S.I. 1998/2004](#)  
S. 46(4) power partly exercised (3.9.1998): 1.10.1998 and 1.4.1999 appointed for specified provisions by [S.I. 1998/2215](#)  
S. 46(4) power partly exercised (21.12.1998): 1.1.1999, 1.2.1999 and 1.4.1999 appointed for specified provisions by [S.I. 1998/3237](#)  
s. 46(4) power partly exercised (24.3.1999): 1.9.1999 appointed for specified provisions by [S.I. 1999/987](#), **art. 2**  
S. 46(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2000/970](#), **arts. 2, 3**  
S. 46(4) power partly exercised: 15.8.2000 appointed for specified provisions by [S.I. 2000/2199](#), **art. 2**  
S. 46(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2001/1211](#), **arts. 2-4**

#### **Marginal Citations**

- M13** 1996 c. 56.  
**M14** 1980 c. 44.

**Status:**

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**Changes to legislation:**

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