



# Education Reform Act 1988

## 1988 CHAPTER 40

An Act to amend the law relating to education.

[29th July 1988]

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:—

### Extent Information

- E1** Act extends primarily to England & Wales but see s. 238(3)-(6) for extensions to Scotland and Northern Ireland

### Modifications etc. (not altering text)

- C1** Act applied (Canterbury and York, except Channel Islands and Isle of Man) (1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2\), s. 7\(3\)](#); [Archbishops' Instrument 1991 No. 1](#) (made 26.7.1991)  
Act modified (1.4.1993) by [S.I. 1993/563, art.2](#)  
Act applied (1.6.2001) by [S.I. 2001/1507, reg. 2, Sch. 2 art. 2](#)
- C2** Power to amend Act conferred (1.2.1999) by [School Standards and Framework Act 1998 \(c. 31\), s. 137\(2\)](#) (with ss. 138(9), 144(6)); [S.I. 1999/120, art. 2, Sch. 1](#) (with art. 3)
- C3** Act (except ss. 197, 199, 209, 226, Sch. 8, Sch. 11): powers transferred (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)
- C4** Act: for any reference to the Education Assets Board there is substituted (1.10.1998) a reference to the Education Transfer Council by virtue of [School Standards and Framework Act 1998 \(c. 31\), s. 136](#); [S.I. 1998/2212, art. 2\(1\), Sch. 1 Pt. I](#)

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## PART I

### SCHOOLS

#### CHAPTER I

##### THE CURRICULUM

###### *Preliminary*

### 1 Duties with respect to the curriculum.

(1) It shall be the duty—

- (a) of the Secretary of State as respects every maintained school;
- (b) of every local education authority as respects every school maintained by them; and
- (c) of every governing body or head teacher of a maintained school as respects that school;

to exercise their functions (including, in particular, the functions conferred on them by this Chapter with respect to religious education, religious worship and the National Curriculum) with a view to securing that the curriculum for the school satisfies the requirements of this section.

(2) The curriculum for a maintained school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—

- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
- (b) prepares such pupils for the opportunities, responsibilities and experiences of adult life.

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

- C5** S. 1 applied (with modifications) (1.4.1994) by S.I. 1994/653. reg. 42(1), Sch. Pt.I  
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9

#### *Principal provisions*

### 2 The National Curriculum.

(1) The curriculum for every maintained school shall comprise a basic curriculum which includes—

- (a) provision for religious education for all registered pupils at the school; and
- (b) a curriculum for all registered pupils at the school of compulsory school age (to be known as the National Curriculum) which meets the requirements of subsection (2) below.

(2) The curriculum referred to in subsection (1)(b) above shall comprise the core and other foundation subjects and specify in relation to each of them—

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- (a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (in this Chapter referred to as attainment targets);
- (b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during each key stage (in this Chapter referred to as programmes of study); and
- (c) the arrangements for assessing pupils<sup>[F1]</sup> in respect of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage (in this Chapter referred to as assessment arrangements).

(3) Subsection (1)(a) above shall not apply in the case of a maintained special school.

#### Textual Amendments

**F1** Words in s. 2(2)(c) substituted (27.7.1993) by 1993 c. 35, ss. 240(1), 308(3)

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

**C6** S. 2 except s. 2(1)(a) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9

**C7** S. 2(1)(a) restricted (1.4.1994) by 1993 c. 35, ss. 138(9), 139(2), 140(2) (with s. 155(11)); S.I.

1994/507, art. 3(1)

S. 2(1)(a) modified (1.4.1994) by 1993 c. 35, s. 141(2)-(4) (with s. 155(11)); S.I. 1994/507, art. 3(1)

### 3 Foundation subjects and key stages.

- (1) Subject to subsection (4) below, the core subjects are—
  - (a) mathematics, English and science; and
  - (b) in relation to schools in Wales which are Welsh-speaking schools, Welsh.
- (2) Subject to subsection (4) below, the other foundation subjects are—
  - (a) history, geography, technology<sup>F2</sup> . . . and physical education; <sup>[F3(aa)]</sup> in relation to the first, second and third key stages, art and music;]
  - (b) in relation to the third and fourth key stages, a modern foreign language specified in an order of the Secretary of State; and
  - (c) in relation to schools in Wales which are not Welsh-speaking schools, Welsh.
- (3) Subject to subsections (4) and (5) below, the key stages in relation to a pupil are as follows—
  - (a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven;
  - (b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of eleven;
  - (c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of twelve and ending at the same time as the school year in which the majority of pupils in his class attain the age of fourteen;
  - (d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of fifteen and ending with the majority of pupils in his class ceasing to be of compulsory school age.

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- (4) The Secretary of State may by order—
- (a) amend the foregoing provisions of this section; or
  - (b) provide that, in relation to any subject specified in the order, subsection (3) above shall have effect as if for the ages of seven and eight there mentioned there were substituted such other ages, less than eleven and twelve respectively, as may be so specified.

- (5) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (3) above shall have effect as if any reference to the school year in which the majority of pupils in that pupil's class attained a particular age were a reference to the school year in which that pupil attained that age.

[<sup>F4</sup>(5A) If at any time, in the case of a pupil of compulsory school age, subsection (3) above does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—

- (a) in the case of paragraphs (a) to (c), any reference to the school year in which the majority of pupils in that pupil's class attained a particular age were a reference to the school year in which that pupil attained that age, and
- (b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attained the age of fifteen and ending when he ceases to be of compulsory school age.]

- (6) In this section—

“class”, in relation to a particular pupil and a particular subject, means the teaching group in which he is regularly taught that subject or, where there are two or more such groups, such one of them as may be designated by the head teacher of the school;

“school”, except in subsection (5) above and the above definition, includes part of a school. [<sup>F5</sup>and

<sup>F5</sup>“school year” means the period beginning with the first school term to begin after July and ending with the beginning of the next school year.]

- (7) For the purposes of this section a school in Wales is a Welsh-speaking school if more than one half of the following subjects, namely—

- (a) religious education; and
- (b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school;

are taught (wholly or partly) in Welsh.

#### Textual Amendments

**F2** Words in s. 3(2)(a) repealed (1. 8. 1992) by S.I. 1992/1548, art. 2(a).

**F3** S. 3(2)(aa) inserted (1. 8. 1992) by S.I. 1992/1548, art. 2(b).

**F4** S. 3(5A) inserted (27.7.1993) by 1993 c. 35, s. 240(2).

**F5** Definition of “school year” and the preceding word “and” in s. 3(6) added (27.7.1993) by 1993 c. 35, s. 240(3).

## 4 Duty to establish the National Curriculum by order.

- (1) It shall be the duty of the Secretary of State so to exercise the powers conferred by subsection (2) below as—

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- (a) to establish a complete National Curriculum as soon as is reasonably practicable (taking first the core subjects and then the other foundation subjects); and
  - (b) to revise that Curriculum whenever he considers it necessary or expedient to do so.
- (2) The Secretary of State may by order specify in relation to each of the foundation subjects—
- (a) such attainment targets;
  - (b) such programmes of study; and
  - (c) such assessment arrangements;
- as he considers appropriate for that subject.
- (3) An order made under subsection (2) above may not require—
- (a) that any particular period or periods of time should be allocated during any key stage to the teaching of any programme of study or any matter, skill or process forming part of it; or
  - (b) that provision of any particular kind should be made in school timetables for the periods to be allocated to such teaching during any such stage.
- (4) An order under subsection (2) above may, instead of containing the provisions to be made, refer to provisions in a document published by Her Majesty's Stationery Office and direct that those provisions shall have effect or, as the case may be, have effect as amended by the order.
- [<sup>F6</sup>(5) An order under subsection (2)(c) above—
- (a) may confer or impose such functions on the governing body and the head teacher and (in the case of maintained schools) on the local education authority as appear to the Secretary of State to be required, and
  - (b) may specify any such assessment arrangements as may for the time being be made by a person specified in the order.
- (6) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.
- (7) The duties that may be imposed by virtue of subsection (5)(a) above include, in relation to persons exercising power in pursuance of provision made by virtue of subsection (6) above, the duty to permit them—
- (a) to enter the premises of the school,
  - (b) to observe the implementation of the arrangements, and
  - (c) to inspect, and take copies of, documents and other articles.
- (8) An order under subsection (2)(c) above may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provisions conferring or imposing functions as mentioned in subsection (5) (a) above) as appear to the Secretary of State to be expedient; and any provision made under such an order shall, on being published by Her Majesty's Stationery Office, have effect for the purposes of this Chapter as if made by the order.]

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### Textual Amendments

**F6** S. 4(5)-(8) substituted for s. 4(5) (27.7.1993) by 1993 c. 35, s. 240(4)

### Modifications etc. (not altering text)

**C8** S. 4 restricted (1.9.1994) by 1993 c. 35, s. 241(4); S.I. 1994/2038, art. 3(1), Sch.2.

**C9** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

## 5 Courses leading to external qualifications.

- (1) No course of study leading to a qualification authenticated by an outside person shall be provided for pupils of compulsory school age by or on behalf of any maintained school unless the qualification is for the time being approved by the Secretary of State or by a designated body and either—
  - (a) a syllabus provided by the outside person for the purposes of the course is for the time being approved by such a body; or
  - (b) criteria so provided for determining a syllabus for those purposes are for the time being so approved.
- (2) An approval under this section may be given either generally or in relation to particular cases.
- (3) In this section—
 

“designated ” means designated by the Secretary of State;

“outside person ”, in relation to a school, means a person other than a member of staff of the school.

### Modifications etc. (not altering text)

**C10** S. 5 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I.

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

## *Religious education*

## 6 Collective worship.

- (1) Subject to section 9 of this Act, all pupils in attendance at a maintained school shall on each school day take part in an act of collective worship.
- (2) The arrangements for the collective worship in a school required by this section may, in respect of each school day, provide for a single act of worship for all pupils or for separate acts of worship for pupils in different age groups or in different school groups.
- (3) The arrangements for the collective worship in a county or voluntary school required by this section shall be made—
  - (a) in the case of a county school, by the head teacher after consultation with the governing body; and
  - (b) in the case of a voluntary school, by the governing body after consultation with the head teacher.

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- (4) Subject to subsection (5) below, the collective worship in every maintained school required by this section shall take place on the school premises.
- (5) If the governing body of—
- (a) an aided or special agreement school; or
  - (b) a grant-maintained school;
- are of opinion that it is desirable that any act of collective worship in the school required by this section should, on a special occasion, take place elsewhere than on the school premises, they may make such arrangements for that purpose as they think appropriate.
- (6) The powers of a governing body under subsection (5) above shall not be so exercised as to derogate from the rule that, in every such school as is there mentioned, the collective worship required by this section must normally take place on the school premises.
- (7) For the purposes of this section—
- “maintained school ” does not include a maintained special school; and
- “school group ” means any group in which pupils are taught or take part in other school activities.

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

- C11** S. 6 explained (1.4.1994) by 1993 c. 35, s. 138(2)-(4) (with s. 155(11)); S.I. 1994/507, art.3(1).  
S. 6 power to modify conferred (1.4.1994) by 1993 c. 35, s. 138(7)(b) (with s. 155(11)); S.I. 1994/507, art.3(1).

**7 Special provisions as to collective worship in county schools.**

- (1) Subject to the following provisions of this section, in the case of a county school the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broad Christian character.
- (2) For the purpose of subsection (1) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (3) Every act of collective worship required by section 6 of this Act in the case of a county school need not comply with subsection(1) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (4) Subject to subsections (1) and (3) above—
- (a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection(1) above take place in a county school;
  - (b) the extent to which any act of collective worship in a county school which complies with subsection (1) above reflects the broad traditions of Christian belief; and
  - (c) the ways in which those traditions are reflected in any such act of collective worship;



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shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (5) below.

- (5) Those considerations are—
- (a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropriate in their case; and
  - (b) their ages and aptitudes.
- (6) Where under section 12 of this Act a standing advisory council on religious education determine that it is not appropriate for subsection (1) above to apply in the case of any county school, or in the case of any class or description of pupils at such a school, then, so long as that determination has effect—
- (a) that subsection shall not apply in relation to that school or (as the case may be) in relation to those pupils; and
  - (b) the collective worship required by section 6 of this Act in the case of that school or those pupils shall not be distinctive of any particular Christian or other religious denomination (but this shall not be taken as preventing that worship from being distinctive of any particular faith).

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

C12 Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

**8 Religious education required in the basic curriculum: further provisions.**

- (1) Section 2(1)(a) of this Act is subject to section 9 of this Act.
- (2) The religious education for which provision is required by section 2(1)(a) to be included in the basic curriculum for any particular maintained school shall be religious education of the kind required by such of the provisions of sections 26 to 28 of the 1944 Act or sections 84 to 86 of this Act as apply in the case of that school.
- (3) Any agreed syllabus which after this section comes into force is adopted or deemed to be adopted under Schedule 5 to that Act (which, as amended by this Act, provides for the preparation, adoption and reconsideration of an agreed syllabus of religious education) shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.

**9 Exceptions, special arrangements and supplementary and consequential provisions.**

- (1) It shall not be required, as a condition of any pupil attending any maintained school, that he shall attend or abstain from attending any Sunday school or any place of religious worship.

[<sup>F7</sup>(1A) It shall not be required, as a condition of any person attending any maintained school to receive further education, that he shall attend or abstain from attending any Sunday school or any place of religious worship.]



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- (2) For the purposes of subsections (3) to (10) below “maintained school ” does not include a maintained special school.
- (3) If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused—
- (a) from attendance at religious worship in the school;
  - (b) from receiving religious education given in the school in accordance with the school’s basic curriculum; or
  - (c) both from such attendance and from receiving such education;
- the pupil shall be so excused accordingly until the request is withdrawn.
- (4) Where in accordance with subsection (3) above any pupil has been wholly or partly excused from attendance at religious worship or from receiving religious education in any school, and the responsible authority are satisfied—
- (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused;
  - (b) that the pupil cannot with reasonable convenience be sent to another maintained school where religious education of the kind desired by the parent is provided; and
  - (c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere;
- the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.
- (5) In this section “the responsible authority ” means—
- (a) in relation to a county or voluntary school, the local education authority; and
  - (b) in relation to a grant-maintained school, the governing body.
- (6) A pupil may not be withdrawn from school under subsection (4) above unless the responsible authority are satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session or, if there is more than one, of any school session on that day.
- (7) Where the parent of any pupil who is a boarder at a maintained school requests that the pupil be permitted—
- (a) to attend worship in accordance with the tenets of a particular religious denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs; or
  - (b) to receive religious education in accordance with such tenets outside school hours;
- the governing body of the school shall make arrangements for affording to the pupil reasonable opportunities for doing so.
- (8) Arrangements made under subsection (7) above may provide for affording facilities for such worship or education on the school premises, but the arrangements shall not entail expenditure by the responsible authority.
- (9) In this section—

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- (a) references to religious worship in a school include references to religious worship which under section 6 of this Act takes place otherwise than on the school premises; and
  - (b) references to religious education given in a school in accordance with the school's basic curriculum are references to such education given in accordance with the provision included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (10) Schedule 1 to this Act shall have effect for making amendments of the enactments there mentioned consequential on the provisions of this Chapter relating to religious education.

#### Textual Amendments

- F7** S. 9(1A) inserted (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 12\(4\)](#); S.I. 1992/831, art. 2, [Sch.4](#).

#### *Duties with respect to certain requirements*

### 10 Duties with respect to certain requirements.

- (1) Subject to section 9 of this Act, in relation to any maintained school (other than a maintained special school) and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—
- (a) that all pupils in attendance at the school take part in the daily collective worship required by section 6 of this Act; and
  - (b) that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (2) In relation to any maintained school and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—
- (a) that the National Curriculum as subsisting at the beginning of that year is implemented; and
  - (b) that section 5 of this Act is not contravened.
- (3) In relation to any time before the beginning of the school year following the establishment of the National Curriculum so far as relating to a particular subject and a particular key stage, subsection (2)(a) above shall have effect as if that Curriculum required that subject to be taught for a reasonable time during that stage.

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

- C13** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by [S.I. 1994/1084, reg.9](#)  
**C14** S. 10 except s. 10(1) applied (with modifications) (1.4.1994) by [S.I. 1994/653, reg. 42\(1\), Sch. Pt.I](#).  
**C15** S. 10(3) excluded (*temp.*) (W.) by [S.I. 1990/2187, art. 2](#)

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### *Standing advisory councils on religious education*

## **11 Standing advisory councils on religious education.**

- (1) It shall be the duty of every local education authority to constitute a standing advisory council on religious education—
- (a) to advise the authority upon such matters connected with religious worship in county schools and the religious education to be given in accordance with an agreed syllabus as the authority may refer to the council or as the council may see fit; and
  - (b) to carry out the functions conferred by section 12 of this Act on councils constituted under this section.

References below in this section and in sections 12 and 13 of this Act to the council are references to any council constituted by a local education authority under this section.

- (2) The matters referred to in subsection (1) above include in particular methods of teaching, the choice of materials and the provision of training for teachers.
- (3) The council shall consist of—
- (a) the representative members required by subsection (4) below; and
  - (b) where any agreed syllabus for the time being adopted by the authority is in use at one or more grant-maintained schools, a person appointed by the governing body or (as the case may be) by the governing bodies of the school or schools concerned;
- and may also include co-opted members.
- (4) Subject to subsection (5) below, the representative members required by this subsection are persons appointed by the authority to represent respectively—
- (a) such Christian and other religious denominations as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
  - (b) except in the case of an area in Wales, the Church of England;
  - (c) such associations representing teachers as, in the opinion of the authority, ought, having regard to the circumstances of the area, to be represented; and
  - (d) the authority;

and references below in this section to representative groups on the council are references to the members appointed by virtue of paragraphs (a), (c) and (d) above respectively and, where members are required to be appointed by virtue of paragraph (b) above, the members so appointed.

- (5) Where members are required to be appointed by virtue of paragraph (b) of subsection (4) above, the representative members required by paragraph (a) of that subsection shall not include persons appointed to represent the Church of England.
- (6) On any question to be decided by the council only the representative groups on the council shall be entitled to vote, and each such group shall have a single vote.
- (7) The representative groups on the council, other than that consisting of persons appointed to represent the authority, may at any time require a review of any agreed syllabus for the time being adopted by the authority.

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Each representative group concerned shall have a single vote on the question of whether to require such a review.

- (8) On receipt by the authority of written notification of any such requirement, it shall be the duty of the authority to cause a conference constituted in accordance with the provisions of Schedule 5 to the 1944 Act to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates.
- (9) The council shall in each year publish a report with respect to the exercise of their functions and any action taken by representative groups on the council under subsection (7) above during the last preceding year.
- (10) The council's report shall in particular—
  - (a) specify any matters in respect of which the council have given advice to the authority;
  - (b) broadly describe the nature of the advice given; and
  - (c) where any such matter was not referred to the council by the authority, give the council's reasons for offering advice on that matter.

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

**C16** S. 11 restricted by S.I. 1989/46, art. 3(3)

**C17** Ss. 11, 13 modified by S.I. 1989/46, Sch. 1

**12 Determination by advisory councils of the cases in which the requirement for Christian collective worship is not to apply.**

- (1) It shall be the duty of the council, on an application made by the head teacher of any county school after consultation with the governing body, to consider whether it is appropriate for the requirement for Christian collective worship to apply in the case of that school, or in the case of any class or description of pupils at that school.

References in this section to the requirement for Christian collective worship are references to the requirement imposed by section 7(1) of this Act.

- (2) In determining whether it is appropriate for that requirement to apply in the case of any such school or in the case of any class or description of pupils at such a school, the council shall have regard to any circumstances relating to the family backgrounds of the pupils at the school or of the pupils of the particular class or description in question which are relevant for determining the character of the collective worship appropriate in their case.
- (3) The council shall give any head teacher who has made an application to them under this section written notification of their decision on the application.
- (4) Where the council determine on any application under this section that it is not appropriate for the requirement for Christian collective worship to apply in the case of the school or any class or description of pupils at the school concerned, that determination shall take effect for the purposes of section 7 of this Act on such date as may be specified in the notification of their decision under subsection (3) above.
- (5) Any determination of the council under this section by virtue of which the requirement for Christian collective worship does not for the time being apply in the case of any

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school or any class or description of pupils at any school shall be reviewed by the council—

- (a) at any time on an application made by the head teacher of the school after consultation with the governing body; and
  - (b) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or (where it has since been reviewed under this subsection) with the effective date of the decision on the last such review.
- (6) On any review under subsection (5)(b) above the council shall afford the head teacher an opportunity of making representations with respect to the determination under review; and the head teacher shall consult the governing body before making any such representations.
- (7) On any review under subsection (5) above the council may confirm (with or without variation) or revoke the determination under review (without prejudice, in a case where they revoke the determination, to any further determination under this section); and they shall give the head teacher of the school written notification of their decision specifying the effective date of that decision for the purposes of subsection (5)(b) above.
- (8) Any determination of the council which is required to be reviewed under subsection (5) (b) above shall cease to have effect, if not confirmed on such a review, at the end of the period there mentioned.
- (9) The governing body of any county school, on being consulted by the head teacher under this section, may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.
- (10) Any application made to the council under this section shall be made in such manner and form as the council may require.

VALID FROM 01/04/1994

**[F8]12A Power of Secretary of State to direct advisory council to revoke determination or discharge duty.**

- (1) Where the Secretary of State is satisfied, either on complaint by any person or otherwise, that any standing advisory council on religious education—
  - (a) have acted, or are proposing to act, unreasonably in determining for the purposes of subsection (1) or (5) of section 12 of this Act whether it is appropriate for the requirement for Christian collective worship to apply in the case of any school or any class or description of pupils at a school, or
  - (b) have failed to discharge any duty imposed under that section,
 he may give the council such directions as to the revocation of the determination or the withdrawal of the proposed determination or (as the case may be) the discharge of the duty as appear to him to be expedient; and the council shall comply with the directions.
- (2) Directions under subsection (1) above may provide for the making by the council of a new determination to take effect in place of the determination or proposed determination to be revoked or withdrawn by them.

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- (3) In this section, “requirement for Christian collective worship ” means the requirement imposed by section 7(1) of this Act or, as the case may be, section 138(2) of the Education Act 1993.]

#### Textual Amendments

**F8** S. 12A inserted (1.4.1994) by 1993 c. 35, s.257; S.I. 1994/507, art. 4(1), Sch.2.

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

**C18** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

### 13 Advisory councils: supplementary provisions.

- (1) Before appointing a person to represent any denomination or associations as a member of the council the local education authority concerned shall take all reasonable steps to assure themselves that he is representative of the denomination or associations in question.
- (2) A member of the council appointed by the authority may be removed from membership by the authority if in the opinion of the authority he ceases to be representative of the denomination or associations which he was appointed to represent or (as the case may be) of the authority.
- (3) Any member of the council required by section 11(3)(b) of this Act may at any time be removed from membership by the governing body or (as the case may be) by the governing bodies of the grant-maintained school or schools concerned.
- (4) In subsection (3) of that section “co-opted member ” means a person co-opted as a member of the council by members of the council who have not themselves been so co-opted, and a person so co-opted shall hold office on such terms as may be determined by the members co-opting him.
- (5) Any member of the council may at any time resign his office.
- (6) Subject to subsection (6) of that section, the council and, in relation to any question falling to be decided by members of the council of any particular category, the members of that category may regulate their own proceedings.
- (7) The validity of proceedings of the council or of the members of the council of any particular category shall not be affected—
  - (a) by a vacancy in the office of any member of the council required by subsection (3) of that section; or
  - (b) on the ground that a member of the council appointed to represent any denomination or associations does not at the time of the proceedings represent the denomination or associations in question.

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

**C19** Ss. 11, 13 modified by S.I. 1989/46, Sch. 1

**C20** S. 13(1) saved (1.8.1991) by Diocesan Boards of Education Measure 1991 (No. 2, SIF 41:1), s. 6(1);  
Archbishops' Instrument 1991 No. 1 (made 26.7.1991)

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## Curriculum and Assessment Councils

### 14 Establishment of Councils.

- (1) There shall be established—
- <sup>F9</sup>(a) . . . . .
  - (b) a body corporate known as the Curriculum Council for Wales; <sup>F9</sup> . . .
  - <sup>F9</sup>(c) . . . . .
- <sup>F9</sup> . . . which shall perform the functions assigned to it by this Chapter.
- (2) [<sup>F10</sup>The] Council shall consist of not less than ten or more than fifteen members appointed by the Secretary of State, of whom—
- (a) one shall be so appointed as chairman; and
  - (b) another may be so appointed as deputy chairman;
- and members so appointed shall include persons having relevant knowledge or experience in education.
- (3) The general functions of the [<sup>F11</sup>Council, in relation to Wales, shall be, so far as relevant for the purposes of advancing education]—
- (a) to keep all aspects of the curriculum for maintained schools under review;
  - (b) to advise the Secretary of State on such matters concerned with the curriculum for maintained schools as he may refer to it or as it may see fit;
  - (c) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with the curriculum for schools;
  - (d) to publish and disseminate, and to assist in the publication and dissemination of, information relating to the curriculum for schools; and
  - (e) to carry out such ancillary activities as the Secretary of State may direct.
- <sup>F12</sup>(4) . . . . .
- (5) For the purposes of subsection (3)(e) <sup>F13</sup> . . . above, activities are ancillary activities in relation to [<sup>F14</sup>the] Council if the Secretary of State considers it is appropriate for the Council to carry out those activities for the purposes of or in connection with the exercise by the Council of any of its other functions under that subsection.
- (6) It shall be the duty of [<sup>F15</sup>the] Council—
- (a) to furnish the Secretary of State with such reports and other information with respect to the exercise of its functions as he may require; and
  - (b) in exercising its functions—
    - (i) to comply with any directions given, and to act in accordance with any plans approved, by the Secretary of State; and
    - (ii) to have regard to the requirements of section 1 of this Act.
- (7) Schedule 2 to this Act shall have effect with respect to [<sup>F16</sup>the] Council.

#### Textual Amendments

- F9** Words in s. 14(1) and s. 14(1)(a)(c) repealed (1.1.1994) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S.I. 1993/3106, art. 4, **Sch. 1** (as amended by S.I. 1994/436, art.2).
- F10** Word in s. 14(2) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(a); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, art.2).



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- F11** Words in s. 14(3) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(b); S.I. 1993/1975, art. 9, **Sch. 1**
- F12** S. 14(4) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S. I. 1993/1975, art. 9, **Sch. 1** Appendix
- F13** Words in s. 14(5)(b) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S.I. 1993/1975, art. 9, **Sch. 1** Appendix
- F14** Word in s. 14(5) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(c); S.I. 1993/1975, art. 9, **Sch. 1**
- F15** Word in s. 14(6) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 118(d); S.I. 1993/1975, art. 9, **Sch. 1**
- F16** Word in s. 14(7) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 18(e); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).

## 15 Transfers of property and staff to Councils.

- (1) References below in this section to the Council are references to each of the following bodies—
- the National Curriculum Council;
  - the Curriculum Council for Wales; and
  - the School Examinations and Assessment Council.
- (2) The Secretary of State may by order provide for the transfer to the Council of—
- such of the property of an existing body; and
  - such of the rights and liabilities of such a body (other than rights and liabilities arising under contracts of employment);
- as, in his opinion, require to be so transferred for the purpose of enabling the Council properly to perform its functions; and an order under this subsection may contain such incidental, consequential and supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (3) Subsection (4) below applies to any person who—
- immediately before the establishment of the Council is employed by an existing body; and
  - is as respects the Council designated by order of the Secretary of State.
- (4) The contract of employment between a person to whom this subsection applies and the existing body shall have effect from the commencement date of the order under subsection (3) above as if originally made between him and the Council.
- (5) Without prejudice to subsection (4) above—
- all the existing body's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of that subsection be transferred to the Council on the commencement date of the order under subsection (3) above; and
  - anything done before that date by or in relation to the existing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the Council.
- (6) Subsections (4) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by subsection (4) above.

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- (7) An order under subsection (3) above may designate a person either individually or as a member of a class or description of employees.
- (8) No order under this section shall be made more than six months after the date on which the Council is established; and any order under this section made before that date shall come into force on that date.
- (9) In this section—
- “commencement date”, in relation to an order under subsection (3) above, means the date on which the order comes into force;
- “existing body” means the School Curriculum Development Committee or the Secondary Examinations Council.

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

**C21** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by [S.I. 1994/1084, reg.9](#).

*Special cases*

**16 Development work and experiments.**

- (1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct as respects a particular maintained school that, for such period as may be specified in the direction, the provisions of the National Curriculum—
- (a) shall not apply; or
  - (b) shall apply with such modifications as may be so specified.
- (2) A direction under subsection (1) above may apply either generally or in such cases as may be specified in the direction.
- (3) A direction shall not be given under subsection (1) above except—
- (a) in the case of a county, controlled or maintained special school, on an application—
    - (i) by the governing body with the agreement of the local education authority;
    - (ii) by the local education authority with the agreement of the governing body; or
    - (iii) by the [<sup>F17</sup>appropriate curriculum authority] with the agreement of both the local education authority and the governing body;
  - (b) in the case of a grant-maintained, aided or special agreement school, on an application by the governing body or by the [<sup>F17</sup>appropriate curriculum authority] with the agreement of the governing body.
- (4) The Secretary of State may make it a condition of a direction under subsection (1) above that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.
- (5) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1) above.

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[<sup>F18</sup>(6) In subsection (3) above, “appropriate curriculum authority ” means, in relation to England, the School Curriculum and Assessment Authority and, in relation to Wales, the Curriculum Council for Wales.]

#### Textual Amendments

**F17** Words in s. 16(3)(a)(b) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 119(a); S.I. 1993/1975, art.9, **Sch. 1**

**F18** S. 16(6) added (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 119(b); S.I. 1993/1975, art.9, **Sch. 1**

### 17 Exceptions by regulations.

The Secretary of State may by regulations provide that the provisions of the National Curriculum, or such of those provisions as may be specified in the regulations—

- (a) shall not apply; or
  - (b) shall apply with such modifications as may be so specified;
- in such cases or circumstances as may be so specified.

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

**C22** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

VALID FROM 01/09/1994

### [<sup>F19</sup>17A Exemption from sex education.

If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn.]

#### Textual Amendments

**F19** S. 17A inserted (1.9.1994) by 1993 c. 35, s. 241(3); S.I. 1994/2038, art. 3(1), **Sch.2**.

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

**C23** S. 17A applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 42(1)**, **Sch. Pt.I**.

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

**C24** S. 17A applied (with modifications) (1.9.1994) by S.I. 1994/2103, **reg. 2**, **Sch. 1 Pt. I para. 3(2)**.

### 18 Pupils with statements of special educational needs.

The special educational provision for any pupil specified in a statement under section 7 of the 1981 Act of his special educational needs may include provision—

- (a) excluding the application of the provisions of the National Curriculum; or

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- (b) applying those provisions with such modifications as may be specified in the statement.

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

**C25** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

**19 Temporary exceptions for individual pupils.**

- (1) The Secretary of State may make regulations enabling the head teacher of any maintained school, in such cases or circumstances and subject to such conditions as may be prescribed—
- (a) to direct as respects a registered pupil at the school that, for such period as may be specified in the direction (the “operative period ” of the direction), the provisions of the National Curriculum—
    - (i) shall not apply; or
    - (ii) shall apply with such modifications as may be so specified; and
  - (b) to revoke any direction given by him under the regulations and to vary any such direction except so as to extend its operative period.
- (2) The conditions prescribed by the regulations shall, in particular, limit the period that may be specified in any direction given under the regulations to a maximum period specified in the regulations; and any maximum period specified in the regulations in relation to directions given under the regulations or in relation to directions so given in any circumstances so specified—
- (a) shall be either—
    - (i) a fixed period not exceeding six months; or
    - (ii) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning; and
  - (b) may (without prejudice to section 232(5) of this Act) differ according to whether or not the direction in question is given in respect of a period beginning immediately after the end of the operative period of a previous direction or within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (3) Where a head teacher gives a direction under regulations made under this section in the case of any pupil or varies any direction so given, he shall give the information mentioned in subsection (4) below, in such manner as may be prescribed—
- (a) to the governing body; and
  - (b) where the school is a county, voluntary or maintained special school, to the local education authority;
- and shall take such steps as may be prescribed to give that information also to a parent of the pupil.
- (4) That information is the following—
- (a) the fact that he has taken the action in question, its effect and his reasons for taking it;
  - (b) the provision that is being or is to be made for the pupil’s education during the operative period of the direction; and
  - (c) either—

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- (i) a description of the manner in which he proposes to secure the full implementation in relation to the pupil after the end of that period of the provisions of the National Curriculum; or
  - (ii) an indication of his opinion that the pupil has or probably has special educational needs by virtue of which the local education authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs the authority are for the time being required under section 7 of the 1981 Act to maintain).
- (5) Where the head teacher of a grant-maintained school includes such an indication of opinion as is mentioned in subsection (4)(c)(ii) above in information given to the governing body under subsection (3) above, he shall also give that information, in such manner as may be prescribed, to the local education authority.
- (6) It shall be the duty of a local education authority, on receiving information given to the authority under this section by the head teacher of any maintained school which includes such an indication of opinion with respect to a pupil, to consider whether any action on their part is required in the case of that pupil under section 5 of the 1981 Act (assessment of special educational needs).
- (7) Where the head teacher of a maintained school—
- (a) gives, revokes or varies any direction with respect to a pupil under regulations made under this section;
  - (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed, by the parent of a registered pupil at the school; or
  - (c) fails within such period as may be prescribed following the making of such a request to give, revoke or vary such a direction in accordance with the request;
- the parent of the pupil concerned may appeal to the governing body.
- (8) On any such appeal the governing body may—
- (a) confirm the head teacher's action; or
  - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances;
- and it shall be the duty of the head teacher to comply with any directions of the governing body under paragraph (b) above.
- (9) The governing body shall notify the appellant and the head teacher in writing of their decision on any such appeal.
- (10) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

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

**C26** S. 19 applied (with modifications) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I.**

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9.**

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## Supplementary

### 20 Procedure for making certain orders: England.

- (1) This section applies where the Secretary of State proposes to make—
  - (a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in England; or
  - (b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.
- (2) The Secretary of State shall refer the proposal to the [<sup>F20</sup>School Curriculum and Assessment Authority] (in this section referred to as [<sup>F21</sup>the Authority]) and give to it directions as to the time within which it is to report to him.
- (3) [<sup>F21</sup>the Authority] shall give notice of the proposal—
  - (a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to it to be concerned; and
  - (b) to any other persons with whom consultation appears to it to be desirable; and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (4) The report of [<sup>F21</sup>the Authority] to the Secretary of State shall contain—
  - (a) a summary of the views expressed during the consultations;
  - (b) its recommendations as to the proposal; and
  - (c) such other advice relating to the proposal as it thinks fit;
 and [<sup>F21</sup>the Authority] shall, after submitting its report to the Secretary of State, arrange for the report to be published.
- (5) Where [<sup>F21</sup>the Authority] has reported to the Secretary of State, he shall—
  - (a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
    - (i) a draft of the proposed order or regulations and any associated document; and
    - (ii) a statement explaining his reasons for any failure to give effect to the recommendations of [<sup>F21</sup>the Authority];
  - (b) send copies of the documents mentioned in paragraph (a) above to [<sup>F21</sup>the Authority] and to each of the persons consulted by [<sup>F21</sup>the Authority]; and
  - (c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.
- (6) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

#### Textual Amendments

**F20** Words in s. 20(2) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 122(2); S.I. 1993/1975, art. 9, **Sch.1**

**F21** Words in s. 20 substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 122(3); S.I. 1993/1975, art. 9, **Sch.1**



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

**C27** S. 20 restricted (1.9.1994) by 1993 c. 35, s. 241(4); S.I. 1994/2038, art. 3(1), Sch.2.

S. 20 excluded (1.10.1993) by 1993 c. 35, s. 242(1)(b), 308(3); S.I. 1993/1975, art. 9, Sch. 1

**C28** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

## 21 Procedure for making certain orders: Wales.

- (1) This section applies where the Secretary of State proposes to make—
- (a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in Wales; or
  - (b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.

[<sup>F22</sup>(2) The Secretary of State shall refer the proposal to the Curriculum Council for Wales (in this section referred to as “the Council”) and give to it directions as to the time within which it is to report to him.

- (3) The Council shall give notice of the proposal—
- (a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to it to be concerned; and
  - (b) to any other persons with whom consultation appears to it to be desirable;
- and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.

- (3A) The report of the Council to the Secretary of State shall contain—
- (a) a summary of the views expressed during the consultations;
  - (b) its recommendations as to the proposal; and
  - (c) such other advice relating to the proposal as it thinks fit;
- and the Council shall, after submitting its report to the Secretary of State, arrange for the report to be published.

- (3B) Where the Council has reported to the Secretary of State, he shall—
- (a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
    - (i) a draft of the proposed order or regulations and any associated document; and
    - (ii) a statement explaining his reasons for any failure to give effect to the recommendations of the Council;
  - (b) send copies of the documents mentioned in paragraph (a) above to the Council and to each of the persons consulted by the Council; and
  - (c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.]

- (4) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.



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### Textual Amendments

**F22** S. 21(2)(3)(3A)(3B) substituted for s. 21(2)(3) (1.10.1993) by 1993 c. 35, s.243; S.I. 1993/1975, art.9, sch. 1

### Modifications etc. (not altering text)

**C29** S. 21 excluded (1.10.1993) by 1993 c. 35, s. 242(1)(b); S.I. 1993/1975, art.9, Sch. 1

## 22 Provision of information.

- (1) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—
  - (a) such information relevant for the purposes of this Chapter (including information as to the matters mentioned in subsection (2) below); and
  - (b) such copies of the documents mentioned in subsection (3) below; as may be prescribed.
- (2) The matters referred to in subsection (1) above are as follows—
  - (a) the curriculum for maintained schools;
  - (b) the educational provision made by the school for pupils at the school and any syllabuses to be followed by those pupils; <sup>F23</sup> . . .
  - (c) the educational achievements of pupils at the school (including the results of any assessments of those pupils, whether under this Chapter or otherwise, for the purpose of ascertaining those achievements).

<sup>F24</sup>, and

  - <sup>F24</sup>(d) the educational achievements of pupils at such categories of school as may be prescribed (including results of the kind mentioned in paragraph (c)).]
- (3) The documents referred to in subsection (1) above are as follows—
  - (a) any written statement made by the local education authority under section 17 of the 1986 Act (statement of policy in relation to school curriculum);
  - (b) any written statement made by the governing body in pursuance of provision made under section 18 of that Act (statement of conclusions as to how (if at all) the local education authority’s policy should be modified);
  - (c) any written statement made by the governing body of their policy as to the curriculum for the school; and
  - (d) any report prepared by the governing body under section 30 of that Act (annual reports) or [<sup>F25</sup>paragraph 8 of Schedule 6 to the Education Act 1993].
- (4) Before making regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.
- (5) Regulations under this section shall not require information as to the results of an individual pupil’s assessment (whether under this Chapter or otherwise) to be made available to any persons other than—
  - (a) the parents of the pupil concerned;
  - <sup>F26</sup>(aa) the pupil concerned;

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- <sup>F26</sup>(ab) in the case of a pupil who has transferred to a different school, the head teacher of that school;]
- (b) the governing body of the school; or
- (c) the local education authority;
- and shall not require such information to be made available to the governing body [<sup>F27</sup>the head teacher] or the local education authority except where relevant for the purposes of the performance <sup>F28</sup>. . . of any of their functions.
- (6) Regulations under this section may authorise local education authorities, governing bodies and head teachers to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.
- (7) In relation to any maintained school, it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing that the head teacher complies with any regulations made under this section.

#### Textual Amendments

- F23** Word in s. 22(2) repealed (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(8), **Sch. 5**; S.I. 1992/1157, art. 2, **Sch.**
- F24** S. 22(2): word and s. 22(2)(d) added (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(2)**; S.I. 1992/1157, art. 2, **Sch.**
- F25** Words in s. 22(3) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **sch. 19**, para.123; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).
- F26** S. 22(5)(aa)(ab) inserted (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(3)**; S.I. 1992/1157, art. 2, **Sch.**
- F27** Words in s. 22(5) inserted (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7), **Sch. 4 para. 6(1)(4)(a)**; S.I. 1992/1157, art. 2, **Sch.**
- F28** Words in s. 22(5) repealed (16. 5. 1992) by Education (Schools) Act 1992 (c. 38), s. 21(7)(8), **Sch. 4 para. 6(1)(4)(b)**, **Sch. 5**; S.I. 1992/1157, art. 2, **Sch.**

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

- C30** S. 22 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
- C31** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

## 23 Complaints and enforcement.

- (1) Every local education authority shall, with the approval of the Secretary of State and after consultation with governing bodies of aided schools and of special agreement schools, make arrangements for the consideration and disposal of any complaint made on or after 1st September 1989 which is to the effect that the authority, or the governing body of any county or voluntary school maintained by the authority or of any special school so maintained which is not established in a hospital—
- (a) have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed on them by or under—
- (i) any provision of this Chapter; or
- (ii) any other enactment relating to the curriculum for, or religious worship in, maintained schools other than grant-maintained schools;
- or
- (b) have failed to discharge any such duty.

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- (2) The Secretary of State shall not entertain under section 68 or 99 of the 1944 Act any complaint falling within subsection (1) above, unless a complaint concerning the same matter has been made and disposed of in accordance with arrangements made under that subsection.

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

**C32** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

**C33** S. 23(1) modified by S.I. 1989/46, art. 3(2)

**C34** S. 23(1) restricted by S.I. 1989/46, art. 3(4)

## 24 Extension of certain provisions.

- (1) The Secretary of State may by order direct that the provisions of sections 5 and 10(2) (b) of this Act shall have effect as if—
- (a) any reference to pupils of compulsory school age included a reference to—
    - (i) senior pupils who are of or over that age; and
    - (ii) persons in full-time further education who are of or over that age but have not attained the age of nineteen (referred to below in this section as “FE students”);
  - (b) any reference to a maintained school included [<sup>F29</sup>except in relation to a local education authority, a reference to]
    - (ii) any institution (other than a university [<sup>F30</sup>or an institution within the higher education sector]) which provides further education and is a grant-aided institution;
- [<sup>F31</sup> and
- (iii) [<sup>F31</sup>any institution within the further education sector]
- (c) any reference to the head teacher of such a school included a reference to the principal or other head of such an institution; and
  - (d) any reference to a school year included a reference to an academic year.
- (2) An order under this section may make such consequential modifications of section [<sup>F32</sup>245(1) of the Education Act 1993] as appear to the Secretary of State to be necessary or expedient.
- (3) In relation to FE students in relation to whom sections 5 and 10(2)(b) of this Act have effect by virtue of an order under this section, section 22 of this Act shall have effect—
- (a) with the modifications mentioned in subsection (1)(b) and (c) above;
  - (b) as if the information referred to in paragraph (a) of subsection (1) were information with respect to the following matters—
    - (i) the qualifications authenticated by outside persons (within the meaning of section 5 of this Act) for which courses of study are to be provided by or on behalf of the institution concerned for such students;
    - (ii) the courses of study leading to such qualifications which are to be so provided;
    - (iii) the syllabuses which have been provided or determined for the purposes of those courses; and

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- (iv) the results of the assessments of such students for the purposes of those qualifications;
  - (c) as if in subsection (5)—
    - (i) the reference to the results of an individual pupil’s assessment (whether under this Chapter or otherwise) included a reference to the results of an individual student’s assessment for the purposes of any such qualification; and
    - (ii) the reference to the pupil concerned included a reference to the student concerned; and
  - (d) with the omission of subsections (1)(b), (2) and (3).
- (4) Before making an order under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

#### Textual Amendments

- F29** Words in s. 24(1)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. 1 para. 28(a)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F30** Words in s. 24(1)(b)(ii) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. 1 para. 28(b)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F31** Word "and", and s. 24(1)(b)(iii), added (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. 1 para. 28(c)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F32** Words in s. 24(2) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19**, para.124; S.I. 1993/1975, art.9, **Sch. 1**

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

- C35** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

## 25 Interpretation of Chapter I.

- (1) In this Chapter, except in so far as the context otherwise requires—
- “assess ” includes examine and test, and cognate expressions shall be construed accordingly;
  - “assessment arrangements ”, “attainment targets ” and “programmes of study ” have the meanings given by section 2 of this Act;
  - “core subjects ”, “foundation subjects ” and “key stages ” have the meanings given by section 3 of this Act and “foundation subjects ” includes “core subjects ”;
  - <sup>F33</sup> . . .
  - “maintained school ” means—
    - (a) any county or voluntary school;
    - (b) any maintained special school which is not established in a hospital; and
    - (c) except in relation to a local education authority, any grant-maintained school.
- (2) Nothing in this Chapter shall apply in relation to a nursery school or a nursery class in a primary school.

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### Textual Amendments

**F33** Definition of “Curriculum Council ” in s. 25(1) repealed (1.10.1993) by 1993 c. 35, s. 307(3), **Sch. 21**, Pt. II; S.I. 1993/1975, art.9, **Sch. 1**

### Modifications etc. (not altering text)

**C36** S. 25 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

**C37** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

## CHAPTER II

### ADMISSION OF PUPILS TO COUNTY AND VOLUNTARY SCHOOLS

#### 26 Admissions to county and voluntary schools.

- (1) The authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the relevant standard number.
- (2) Where any number fixed for the purposes of any such arrangements subsisting when subsection (1) above comes into force as the number of pupils in any such age group it is intended to admit to the school concerned in any school year is less than the relevant standard number, the arrangements shall have effect (subject to the following provisions of this section) as if the number so fixed were a number equal to the relevant standard number.
- (3) Notwithstanding any provision of the articles of government of the school, but subject to section 33 of the 1986 Act (consultations about admissions between authorities concerned), the authority responsible for determining the arrangements for the admission of pupils to any such school may fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which exceeds the relevant standard number.
- (4) A proposal may be made in accordance with the following provisions of this section for fixing as the number of pupils in any such age group it is intended to admit to any such school in any school year a number which exceeds both—
  - (a) the relevant standard number; and
  - (b) any number fixed or proposed to be fixed for that purpose by the authority responsible for determining the arrangements for admission of pupils to the school.
- (5) The proposal may be made—
  - (a) where the authority responsible for determining those arrangements is the local education authority, by the governing body of the school; and
  - (b) where that authority is the governing body of the school, by the local education authority.
- (6) Any such proposal—
  - (a) shall be made in writing;
  - (b) may relate to one or more relevant age groups; and

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- (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (7) If the authority to whom such a proposal is made do not give the proposing authority notice in writing rejecting the proposal before the end of the period of two months beginning with the day next following that on which the proposal was received it shall be the duty of the former authority to give effect to the proposal in the admission arrangements.
- (8) Where the authority to whom such a proposal is made give such notice before the end of that period, the proposing authority may within twenty-eight days of receiving that notice make an application to the Secretary of State for an order under section 27(5) of this Act increasing the relevant standard number.
- (9) For the purposes of section 6(3)(a) of the 1980 Act (which excludes the duty to comply with a parent's preference as to the school at which education is to be provided for his child if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources), no such prejudice shall be taken to arise from the admission to a school in any school year of a number of pupils in any relevant age group which does not exceed—
- (a) the relevant standard number; or
  - (b) the number fixed in accordance with this section as the number of pupils in that age group it is intended to admit to the school in that school year;
- whichever is the greater.
- (10) Any reference in this section to the relevant standard number is a reference, in relation to any school and in relation to any relevant age group and school year, to the standard number applying under section 27 of this Act to the school in relation to that year and age group.

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

**C38** Ss. 26–32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

**C39** S. 26(4)-(10) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.

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**Commencement Information**

**II** S. 26 wholly in force; in force for certain purposes at 1.9.1991 and wholly in force for remaining purposes at 1.8.1992 see s. 236 and S.I. 1991/409, **art. 2**.

**27 Standard numbers for admissions.**

- (1) Subject to subsections (3), (4) and (5) below, if pupils in any age group were admitted to any county or voluntary school in the school year immediately preceding the commencement year, the standard number applying to the school for that age group in the commencement year and any subsequent school year shall be—
- (a) the appropriate pre-commencement number; or
  - (b) the number of pupils in that age group admitted in the school year immediately preceding the commencement year;
- whichever is the greater.

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- (2) In this Chapter “the commencement year” means the school year beginning next after section 26(1) of this Act comes into force; and the reference in subsection (1)(a) above to the appropriate pre-commencement number is a reference—
- (a) in the case of a secondary school, to the standard number applying to the school under section 15 of the 1980 Act in relation to the age group in question in the school year immediately preceding the commencement year; and
  - (b) in the case of a primary school, to the number applicable in relation to the school and in relation to the age group in question in accordance with section 29 of this Act.
- (3) Subject to subsections (4) and (5) below, if proposals under section 12 or 13 of the 1980 Act (which impose certain requirements in relation to the establishment and alteration of schools) have fallen to be implemented in relation to any county or voluntary school, the number stated in the proposals in accordance with subsection (2) of section 12 (or that subsection as applied by section 13) for any school year and age group shall be the standard number applying to the school for that age group—
- (a) in any school year to which this subsection applies in relation to which the proposals have been wholly implemented; and
  - (b) subject to any variation made by the Secretary of State, in any such school year in relation to which they have been partly implemented.
- This subsection applies to the commencement year and any subsequent school year.
- (4) The Secretary of State may by order applying to county or voluntary schools of any class or description vary any standard number that would otherwise apply by virtue of the preceding provisions of this section.
- (5) Subject to subsections (6) and (7) below, the Secretary of State may by order vary any standard number that would otherwise apply to an individual school by virtue of the preceding provisions of this section or any order made under subsection (4) above.
- (6) An order under subsection (5) above reducing a standard number may only be made on the application of the authority responsible for determining the arrangements for the admission of pupils to the school, and is subject to the procedure under section 28 of this Act.
- (7) An order under subsection (5) above increasing a standard number may be made on the application of that authority or on an application made by any other authority in accordance with section 26(8) of this Act; and on any such application the Secretary of State may—
- (a) refuse to make such an order;
  - (b) make an order increasing the standard number to the number proposed; or
  - (c) after consultation with both the local education authority and the governing body of the school, make an order increasing the standard number to such number (less than the number proposed) as he thinks desirable.
- (8) The authority responsible for determining the arrangements for the admission of pupils to any such school shall keep under review any standard numbers applying under this section to the school, having regard to any change in the school’s capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which those standard numbers first applied (whether in accordance with this section or section 15 of the 1980 Act).



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- (9) References in subsection (3) above to proposals under section 12 or 13 of the 1980 Act are references to the proposals with any modifications made by the Secretary of State under either of those sections; and any standard number applying under that subsection is without prejudice to the application under that subsection of a new standard number if further proposals fall to be implemented under those sections.

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

- C40** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**  
**C41** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C42** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C43** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C44** S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.  
**C45** S. 27(6) modified by S.I. 1988/1459, **art. 8**  
**C46** S. 27(6) excluded (2.10.1995) by S.I. 1995/2368, **reg. 4(2)**.  
**C47** S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.  
**C48** S. 27(7) modified (2.10.1995) by S.I. 1995/2368, **reg. 5(3)**.

#### Commencement Information

- I2** S. 27 partly in force; s. 27 in force for certain purposes at 12.3.1991, 1.5.1991 and 1.9.1991 see s. 236 and S.I. 1991/409, **arts. 3, 4**

## 28 Procedure for reduction of standard number.

- (1) Where the authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school intend to apply to the Secretary of State for an order under subsection (5) of section 27 of this Act reducing any standard number applying to the school under that section, they shall publish their proposals with respect to the reduction in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals together with their application.
- (2) The published proposals shall be accompanied by a statement which explains the effect of—
- subsections (3) and (4) below, where the proposals are published by a local education authority; or
  - subsection (5) below, where the proposals are published by the governing body of the school.
- (3) In the case of proposals published by a local education authority, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to that authority—
- any ten or more local government electors for the area of that authority;
  - the governing body of any school affected by the proposals; and
  - any other local education authority concerned.
- (4) A local education authority by whom any such proposals are published shall within one month after the end of the period allowed for objections under subsection (3) above transmit to the Secretary of State copies of all objections made (and not withdrawn in writing) in that period, together with their observations on the objections.

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- (5) In the case of proposals made by the governing body of a school, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to the Secretary of State—
- (a) any ten or more local government electors for the area of the local education authority by whom the school is maintained;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (6) Subject to subsection (7) below, where an application is made to the Secretary of State under this section for an order reducing any standard number applying to a school for any age group in any year, the Secretary of State may—
- (a) refuse to make such an order;
  - (b) make an order reducing the standard number to the number proposed; or
  - (c) after consultation with both the local education authority and the governing body of the school, make an order reducing the standard number to such number (greater than the number proposed) as he thinks desirable.
- (7) The Secretary of State shall not make an order reducing any standard number applying to a school for any age group in any year unless he is satisfied that the reduction is necessary, having regard to any reduction in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which the current standard number first applied in relation to that age group (whether in accordance with section 27 of this Act or section 15 of the 1980 Act).
- (8) A local education authority shall not make an application under this section for an order reducing any standard number applying to a school without first consulting the governing body of the school; and the governing body of a school shall not make such an application without first consulting the local education authority.

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

**C49** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

**C50** S. 28(6) modified (2.10.1995) by S.I. 1995/2368, **reg. 4(4)**.

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**Commencement Information**

**I3** S. 28 partly in force: s. 28 in force for certain purposes at 12.3.1991, see s. 236 and S.I. 1991/409, **art. 3**

## 29 Special provisions in relation to admissions to primary schools.

- (1) In the case of a primary school to which section 27(1) of this Act applies, the number applicable in relation to the school and in relation to any age group there mentioned is—
- (a) if the 1980 standard number for that age group is a number determined under subsection (5) of section 15 of the 1980 Act by reference to the number of pupils in that age group admitted to the school in the school year beginning in 1979, the recalculated 1979 admission number;
  - (b) if the 1980 standard number for that age group is a number determined under subsection (6) of section 15 by reference to the number of pupils in that age group admitted to the school in any school year beginning after 1979 (and

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- not varied by the Secretary of State under that subsection), the recalculated post-1979 admission number; and
- (c) if the 1980 standard number for that age group is a number applicable by virtue of subsection (7) of section 15 (number stated in proposals under section 12 of that Act as proposed admission number) which has not been varied by the Secretary of State, the aggregate of the number so applicable and the additional admission number.
- (2) In subsection (1)(a) above, “the recalculated 1979 admission number” means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year beginning in 1979, determined in accordance with subsection (5) below.
- (3) In subsection (1)(b) above, “the recalculated post-1979 admission number” means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year by reference to which the 1980 standard number for that school and age group was determined, determined in accordance with subsection (5) below.
- (4) In subsection (1)(c) above, “the additional admission number” means, in relation to any school and age group, the aggregate of—
- (a) the number of pupils admitted to the school in that age group in the first school year in relation to which the proposals in question had been wholly implemented who—
- (i) were admitted otherwise than for nursery education; and
  - (ii) had not attained the age of four years and six months on the date of their admission; and
- (b) the number of pupils already admitted to the school for nursery education transferred in that year to a reception class at the school.
- (5) For the purposes of—
- (a) the application in relation to any school of subsection (2) or (3) above; and
  - (b) the application in relation to a primary school of any other provision of this Chapter (other than subsection (1) or (4) above) referring to the number of pupils admitted or intended to be admitted to a school in any school year;
- children admitted to the school for nursery education shall be disregarded and children so admitted who are subsequently transferred to a reception class at the school shall be treated as admitted to the school on their transfer.
- (6) Subsection (5) above applies also for the purpose of determining for the purposes of any provision of this Chapter what is a relevant age group in relation to a primary school.
- (7) For the purposes of this section “the 1980 standard number” means, in relation to any school and age group, the standard number applying to the school under section 15 of the 1980 Act in relation to that age group in the school year immediately preceding the commencement year.

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

C51 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), Sch. 3

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### Commencement Information

**I4** S. 29 wholly in force at 1.5.1991 see s. 236 and S.I. 1991/409, art. 5

## 30 Special arrangements in respect of admissions to aided or special agreement schools.

- (1) Section 6 of the 1980 Act shall be amended as follows.
- (2) In subsection (3)(b) (which excludes the duty to comply with a parent's preference for an aided or special agreement school if compliance with the preference would be incompatible with arrangements between the governors and the local education authority), for the words "in respect of the admission of pupils to the school" there shall be substituted the words "made under subsection (6) below".
- (3) After subsection (5) there shall be inserted the following subsection—
  - “(6) A local education authority shall, if so requested by the governors of an aided or special agreement school maintained by the authority, make arrangements with the governors in respect of the admission of pupils to the school for preserving the character of the school; and the terms of any such arrangements shall, in default of agreement between the authority and the governors, be determined by the Secretary of State.”

### Modifications etc. (not altering text)

**C52** Ss. 26?32 modified by S.I. 1989/1135, art. 3(1), Sch. 3

## 31 Consequential provisions.

- (1) Section 15 of the 1980 Act (which is superseded by the preceding provisions of this Chapter) shall cease to have effect, and in section 16 of that Act—
  - (a) in subsection (1), for "15" there shall be substituted "14";
  - (b) in subsection (3), for "sections 12 and 15" there shall be substituted "section 12"; and
  - (c) in subsection (3A) (inserted in that section by paragraph 81 of Schedule 12 to this Act), for "13 or 15" there shall be substituted "or 13".
- (2) In section 8(3) of that Act (particulars of admission arrangements required to be published under that section)—
  - (a) for paragraph (a) there shall be substituted the following paragraph—
    - “(a) in the case of each school to which the arrangements relate, the admission number applicable in each school year in relation to the age group in which pupils are normally admitted or, if there is more than one such group, the admission number so applicable in relation to each such group;” and
  - (b) at the end there shall be added the following—
 

“In paragraph (a) above, “admission number” means, in relation to any school year and age group, the standard number applying under section 27 of the Education Reform Act 1988 to the school in

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question in relation to that year and age group or the number fixed in accordance with section 26 of that Act as the number of pupils in that age group it is intended to admit to the school in that school year, whichever is the greater.”

(3) In section 9 of that Act (provisions of sections 6, 7 and 8 of that Act, which relate to parental preferences and admission arrangements, excluded from applying in relation to nursery or special schools, etc.)—

- (a) in subsection (1), at the beginning there shall be inserted the words “Subject to subsection (1A) below”, and the words from “except” to the end shall be omitted; and
- (b) after that subsection there shall be inserted the following subsection—

“(1A) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for the admission to the school of children who will not have attained the age of five years at the time of their proposed admission—

- (a) those sections shall have effect in relation to the admission of such pupils to the school otherwise than for nursery education; and
- (b) the transfer to a reception class at the school of children previously admitted to the school for nursery education shall be treated for the purposes of those sections as the admission of pupils to the school.”

(4) In section 12 of that Act (establishment, discontinuance and alteration of schools by local education authorities)—

- (a) in subsection (2) the words from “excluding” to the end shall be omitted; and
- (b) after that subsection there shall be inserted the following subsection—

“(2A) For the purposes of subsection (2) above—

- (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
- (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.”

(5) In section 13 of that Act (establishment and alteration of voluntary schools)—

- (a) for the words “Subsection (2)” there shall be substituted the words “Subsections (2) and (2A)”; and
- (b) for the words “it applies” there shall be substituted the words “they apply”; and
- (c) after the word “reference” there shall be inserted the words “in subsection (2)”.

(6) In section 38 of that Act, after subsection (5) there shall be inserted the following subsection—

“(5A) For the purposes of this Act—

- (a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and
- (b) “reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under

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or over that age whom it is expedient to educate together with pupils of that age.”

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

**C53** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

#### Commencement Information

**I5** S. 31 partly in force; s. 31(1) in force for certain purposes at 1.8.1992, s. 31(2) in force for certain purposes at 1.9.1991, s. 31(3) wholly in force at 1.8.1991, s. 31(4)-(6) wholly in force at 1.5.1991, see s. 236 and S.I. 1991/409, **art. 6**

## 32 Interpretation of Chapter II.

(1) For the purposes of this Chapter, a school’s capacity to accommodate pupils is changed if—

- (a) as a result of changes in the availability or use of accommodation at the school, there is any change in the amount of accommodation available for use by pupils at the school; or
- (b) as a result of changes in the requirements applicable to the school under regulations made under section 10 of the 1944 Act (requirements as to school premises), there is any change in the number of pupils for whom accommodation may lawfully be provided at the school;

and a school’s capacity to accommodate pupils is reduced if the result of the changes is, in a case within paragraph (a) above, less accommodation or, in a case within paragraph (b) above, a reduction in the number there mentioned.

(2) Any reference in this Chapter to a relevant age group, in relation to a school, is a reference to an age group in which pupils are normally admitted to the school.

(3) In this Chapter “the commencement year” has the meaning given by section 27(2).

(4) If by virtue of any orders made under section 236 of this Act subsection (1) of section 26 of this Act comes into force on different dates in relation to schools of different categories, the reference to the coming into force of that subsection—

- (a) in subsection (2) of that section; and
- (b) in subsection (2) of section 27 of this Act;

shall be read, for the purposes of the application of those sections in relation to schools of any category, as a reference to its coming into force in relation to schools of that category.

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

**C54** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

#### Commencement Information

**I6** S. 32 partly in force; s. 32 in force for certain purposes at 12.3.1991 see s. 236 and S.I. 1991/409, **art. 3**

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## CHAPTER III

### FINANCE AND STAFF

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

- C55** Provisions of Pt. I Ch. III (other than ss. 33, 49 and Sch. 4) modified (25. 2. 1992) by [S.I. 1992/164](#), [reg. 2\(3\)](#).  
 Pt. I Ch. III applied (with modifications) (1.1.1994) by [S.I. 1993/3104](#), [reg.2\(2\)](#)  
 Pt. I Ch. III extended (1.1.1994) by [1993 c. 35](#), [s. 215\(4\)](#); [S.I. 1993/3106](#), [art. 4](#), [Sch. 1](#) (as amended by [S.I. 1994/436](#), [art.2](#)).  
 Pt. I Ch. III applied (1.1.1994) by [1993 c. 35](#), [s. 215\(5\)](#); [S.I. 1993/3106](#), [art. 4](#), [Sch. 1](#) (as amended by [S.I. 1994/436](#), [art.2](#)).  
 Pt. I Ch. III modified (*temp.*) (31.12.1995) by [S.I. 1995/3114](#), [regs.2, 3, 5, 6, 7, 8](#).  
 Pt. I Ch. III modified (31.12.1995) by [S.I. 1995/3114](#), [regs.4, 7](#).

#### *Financing of schools maintained by local education authorities*

### 33 Schemes for financing county and voluntary schools.

- (1) It shall be the duty of every local education authority to prepare a scheme in accordance with this Chapter and submit it for the approval of the Secretary of State in accordance with section 34 of this Act.
- (2) The scheme shall provide for—
  - (a) the determination in respect of each financial year of the authority, for each school required to be covered by the scheme in that year, of the share to be appropriated for that school in that year of the part of the general schools budget of the authority for that year which is available for allocation to individual schools under the scheme (referred to below in this Chapter, in relation to such a school, as the school's budget share); and
  - (b) the delegation by the authority of the management of a school's budget share for any year to the governing body of the school where such delegation is required or permitted by or under the scheme.
- (3) For the purposes of this Chapter, a school is required to be covered in any financial year by a scheme made under this section by a local education authority if either—
  - (a) immediately before the beginning of that year it is a county or voluntary school maintained by that authority; or
  - (b) at any time during that year it becomes a county or voluntary school so maintained (whether by virtue of being established as a new school of that description or by virtue of becoming a county or voluntary school where it was not, immediately before it became so, a school of either description).
- (4) For the purposes of this Chapter—
  - (a) references, in relation to any local education authority, to the general schools budget of the authority for any financial year, are references to the amount appropriated by the authority for meeting expenditure in that year in respect of all schools required to be covered in that year by any scheme made under this section by that authority [<sup>F34</sup>(other than expenditure in respect of the provision of part-time education suitable to the requirements of persons of any age over



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- compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years)]; and
- (b) the part of the general schools budget of any such authority for any financial year which is available for allocation to individual schools under a scheme under this section (referred to below in this Chapter, in relation to any such authority, as the authority's aggregated budget for the year) is the amount remaining after deducting from the amount of the general schools budget of the authority for that year—
- (i) the amount of any expenditure of the authority in that year on heads or items of expenditure which fall in accordance with section 38 of this Act to be left out of account in determining the authority's aggregated budget for the year (referred to below in this Chapter as excepted heads or items of expenditure); and
  - (ii) any other amounts which fall in accordance with the scheme to be deducted in determining the authority's aggregated budget for the year.
- (5) In relation to any scheme under this section, any reference in subsection (4) above to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme; and a scheme under this section must provide for all amounts relevant to the determination of a school's budget share under the scheme for any financial year to be determined initially before the beginning of that year.
- (6) In this Chapter—
- (a) references to a school in respect of which financial delegation is required for any financial year under a scheme under this section are references to a school conducted by a governing body to whom the local education authority concerned are for the time being required by or under the scheme to delegate the management of the school's budget share for that year (and the governing body of such a school are said to have a right to a delegated budget for the year);
  - (b) references to a school which has a delegated budget are references to a school conducted by a governing body to whom a local education authority have for the time being delegated the management of the school's budget share for any financial year in pursuance of such a scheme (whether that delegation is required by the scheme or not); and
  - (c) references, in relation to any scheme under this section, to excluded expenditure under the scheme are references to the aggregate of any amounts which fall in the case of that scheme to be deducted by virtue of subsection (4) (b)(ii) above in determining the aggregated budget of the authority concerned for any financial year.

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#### Textual Amendments

**F34** Words in s. 33(4)(a) inserted (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 12\(5\)](#); S.I. 1992/831, art. 2, [Sch.4](#).

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

**C56** S. 33 modified (21.9.1994) by [1994 c. 30, s. 12\(6\)\(a\)\(7\)](#); S.I. 1994/2204, [art.2\(1\)](#).

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### 34 Preparation and imposition of schemes.

- (1) A scheme prepared by a local education authority under section 33 of this Act shall be submitted to the Secretary of State on or before such date as the Secretary of State may by order direct, either generally or in relation to any local education authority, or any class or description of such authorities, specified in the order.
- (2) In preparing a scheme under that section a local education authority shall take into account any guidance given by the Secretary of State (whether generally or in relation to that authority or to any class or description of local education authorities to which that authority belongs) as to the provisions he regards as appropriate for inclusion in the scheme.
- (3) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.
- [<sup>F35</sup>(4) Before preparing such a scheme a local education authority shall consult—
  - (a) the governing body and the head teacher of every county, voluntary or special school maintained by the authority,
  - (b) the governing body of every grant-maintained school in the area of the authority, and
  - (c) the governing body of every grant-maintained special school which—
    - (i) is established under section 183 of the Education Act 1993 in the authority's area, or
    - (ii) before becoming a grant-maintained special school was a special school maintained by the authority,

but the Secretary of State may, by notice in writing to the authority, dispense with the duty imposed under paragraphs (b) and (c) above in respect of such schools, or class or description of schools, as are specified in the notice.]
- (5) Such a scheme shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve such a scheme—
  - (a) either without modifications or with such modifications as he thinks fit after consulting the authority concerned; and
  - (b) subject to such conditions as he may specify in giving his approval.
- (6) If in the case of any local education authority either—
  - (a) the authority fail to submit a scheme as required by subsection (1) above; or
  - (b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection does not accord with any guidance given by him for the purposes of this section and cannot be made to do so merely by modifying it;

he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 33 of this Act in relation to the financing by the authority of county and voluntary schools as he considers appropriate.
- (7) A scheme imposed by the Secretary of State by virtue of subsection (6) above—
  - (a) shall be treated as if made under section 33 by the local education authority concerned; and
  - (b) shall come into force on such date as may be specified in the scheme.

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**Textual Amendments**

**F35** S. 34(4) substituted (1.1.1994) by 1993 c. 35, s. 274(1); S.I. 1993/3106 art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C57** S. 34 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

[<sup>F36</sup>**35** **Revision of schemes.**

- (1) Subject to the following provisions of this section, a local education authority may revise the whole or any part of any scheme made by them under section 33 of this Act.
- (2) Section 34(2) and (3) of this Act shall apply where the local education authority are preparing any revision under this section as they apply where they are preparing a scheme under section 33 of this Act.
- (3) Where the local education authority propose to make a significant variation of the scheme—
  - (a) they shall first consult every governing body and head teacher whom they are obliged to consult under section 34(4) of this Act, and
  - (b) they shall then submit a copy of their proposals to the Secretary of State for his approval,and where the proposals are so submitted section 34(5) of this Act shall apply to the scheme as revised as it applies to a scheme prepared under section 33.
- (4) A revision which does not make a significant variation of the scheme is referred to in this section as a “minor revision”; and the Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of this section.
- (5) Where a local education authority propose to revise a scheme and the revision is in their opinion a minor revision, the authority shall give the Secretary of State notice in writing of their proposal, giving brief particulars of the nature of the revision proposed to be made.
- (6) In any such case the authority shall, if so required by the Secretary of State before the end of the period of two months beginning with the date on which he receives notice under subsection (5) above of the authority’s proposal, send to him a copy of the scheme as proposed to be revised; and it shall be for the Secretary of State to determine whether or not any revision is a minor revision.
- (7) The Secretary of State may by a direction revise the whole or any part of a scheme made under section 33 of this Act, as from such date as may be specified in the direction.
- (8) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.]

**Textual Amendments**

**F36** S. 35 substituted (1.1.1994) by 1993 c. 35, s. 274(2); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C58** S. 35 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### 36 Delegation to governing body of management of school's budget share.

- (1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Subject to section 37(4) of this Act, in the case of any county or voluntary school maintained by the authority in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority to put at the disposal of the governing body of the school in respect of that year a sum equal to the school's budget share for that year to be spent for the purposes of the school.
- (3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body shall be such as may be provided by or under the scheme.
- (4) Subject to section 49(1) of this Act [<sup>F37</sup>and section 1(4A) of the Education (Grants and Awards) Act 1984 (grants for education support and training)], the authority may not delegate to the governing body of any school required to be covered by the scheme in any financial year the power to spend any sum appropriated by the authority for the purposes of the school in that year otherwise than as required or permitted under the scheme.
- (5) The governing body of any school which has a delegated budget—
  - (a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to them in respect of the school's budget share for any financial year as they think fit for the purposes of the school; and
  - (b) may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their power under paragraph (a) above in relation to any part of that sum.

[<sup>F38</sup>(5A) In subsection (5) above “the purposes of the school” does not include purposes wholly referable to the provision of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years]
- (6) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their power under subsection (5) above.

#### Textual Amendments

**F37** Words in S. 36(4) inserted (3.3.1994) by 1993 c. 35, s. 307(1), **Sch. 19 para. 125(a)**; S.I. 1994/507, art. 2, **Sch.1**

**F38** S. 36(5A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), s. 12(6); S.I. 1992/831, art. 2, **Sch. 4**.

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**F39 37 Withdrawal of delegation.**

- (1) Where it appears to a local education authority, in the case of any school in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the school—
  - (a) have been guilty of a substantial or persistent failure to comply with any requirements applicable under the scheme; or
  - (b) are not managing the appropriation or expenditure of the sum put at their disposal for the purposes of the school in a satisfactory manner;the authority may suspend the governing body’s right to a delegated budget by giving the governing body (subject to subsection (3) below) not less than one month’s notice of suspension.
- (2) Any such notice shall specify the grounds for the proposed suspension, giving particulars of any failure alleged on the part of the governing body to comply with any requirements applicable under the scheme and of any alleged mismanagement on their part; and a copy of the notice shall be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (3) A local education authority may suspend the right to a delegated budget of any governing body to whom they have given notice under subsection (1) above before the expiry of the period of notice if it appears to them to be necessary to do so by reason of gross incompetence or mismanagement on the part of that governing body or other emergency; but in such a case the authority shall immediately give to the Secretary of State written notification of their action and the reasons for it.
- (4) During any period when a governing body’s right to a delegated budget is suspended under this section the duty of the local education authority concerned under section 36(2) of this Act shall not apply in relation to that governing body.
- (5) It shall be the duty of the authority concerned—
  - (a) to review before the beginning of every financial year any suspension under this section which is for the time being in force;
  - (b) for the purposes of that review, to afford the governing body concerned and the head teacher of the school an opportunity of making representations with respect to the suspension and to have regard to any representations made by that body or the head teacher; and
  - (c) to revoke any such suspension where they consider it appropriate to do so.
- (6) The authority shall give the governing body concerned and the head teacher written notification of their decision on any such review.
- (7) The revocation of any such suspension shall take effect as from the beginning of the next following financial year.
- (8) A governing body shall be entitled to appeal to the Secretary of State against—
  - (a) the imposition of any suspension under this section; and
  - (b) any refusal of a local education authority to revoke any such suspension on any review required under this section.
- (9) On any such appeal the Secretary of State—
  - (a) may allow or reject the appeal; and

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- (b) shall have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuance or recurrence.

#### Textual Amendments

**F39** S. 37(8)(a) excluded (1.1.1994) by 1993 c. 35, s. 215(4); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C59** S. 37 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### 38 Schemes: determination of budget shares.

- (1) The provision to be included in a scheme for determining the budget share for any financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of a formula laid down by the scheme for the purpose of dividing among all such schools the aggregated budget for that year of the local education authority concerned.
- (2) In this section “formula” includes methods, principles and rules of any description, however expressed; and references in this Chapter, in relation to a scheme, to the allocation formula under the scheme, are references to the formula laid down by the scheme in accordance with subsection (1) above.
- (3) The allocation formula under a scheme—
- (a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of registered pupils at that school on such date or dates as may be determined by or under the scheme in relation to that year; and
  - (b) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).
- [<sup>F40</sup>(3A) The allocation formula under a scheme shall not include provision for taking into account persons provided with—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years]

(4) In the case of any scheme, the following heads or items of expenditure, so far as taken into account in determining the general schools budget of the local education authority concerned for any financial year, shall be left out of account in determining the authority’s aggregated budget for that year—

    - (a) all expenditure of a capital nature;
    - (b) all expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature;

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- (c) expenditure falling to be taken into account in determining central government grants of any prescribed description; and
- (d) such other items of expenditure as may be prescribed.

#### Textual Amendments

**F40** S. 38(3A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), s. 12(7); S.I. 1992/831, art. 2, Sch.4.

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

**C60** S. 38 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### 39 Schemes: provision for financial delegation.

(1) A scheme shall include provision for requiring, in the case of each [<sup>F41</sup>secondary] school required to be covered by the scheme in any financial year, the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.

[<sup>F42</sup>(2) A scheme shall include provision for requiring, in the case of each primary school required to be covered by the scheme in any financial year which—

- (a) satisfies the qualifying condition on a qualifying date in relation to that year which falls before the beginning of that year; or
- (b) falls in accordance with the scheme to be regarded as qualifying for delegation in respect of that year on the assumption that, if a forecast made in accordance with the scheme of the number of registered pupils it will have on a qualifying date in relation to that year which falls within that year proves to be correct, it will satisfy the qualifying condition on that date;

the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.]

[<sup>F42</sup>(3) For the purposes of this section—

- (a) a primary school is to be treated as satisfying the qualifying condition at any time when it has two hundred or more registered pupils; and
- (b) “qualifying date” means, in relation to any financial year, any date which is a qualifying date in accordance with any provision made by or under the scheme in question.]

(4) References in this Chapter to the delegation requirement under any scheme are references—

- (a) [<sup>F43</sup>in relation to a secondary school required to be covered by the scheme in any financial year], to any provision included in the scheme by virtue of subsection (1) above; and

[<sup>F42</sup>(b) in relation to a primary school required to be covered by the scheme in any financial year, to any provision included in the scheme by virtue of subsection (2) above.]

(5) The application of the delegation requirement under a scheme in relation to any school is subject to section 40 of this Act in the case of any school to which that section applies.



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- [<sup>F42</sup>(6) Subject to subsections (7) and (8) below, once the delegation requirement under a scheme applies in relation to a primary school in respect of any financial year it shall continue to apply in respect of each succeeding financial year.
- (7) Subject to subsection (8) below, the delegation requirement under a scheme shall cease to apply in relation to a primary school to which that requirement for the time being applies if the number of registered pupils at the school—
- (a) falls below the number for the time being required under subsection (3)(a) above for such a school to be treated as satisfying the qualifying condition or, in the case of a school to which that requirement applies by virtue of any provision made under subsection (2)(b) above, either fails to reach or falls below that number; and
  - (b) remains below that number for such period as may be specified in the scheme.
- (8) Where subsection (7) above applies in the case of any primary school the delegation requirement under the scheme in question shall cease to apply in relation to the school as from the beginning of the financial year beginning next after the period mentioned in paragraph (b) of that subsection comes to an end in the case of that school.
- (9) The application of subsections (7) and (8) above in relation to any school is without prejudice to the subsequent application of the delegation requirement under the scheme in question in relation to that school in respect of any financial year subsequent to that mentioned in subsection (8).]
- (10) A scheme may provide for the delegation by the local education authority concerned to the governing body of any school to which the delegation requirement under the scheme does not apply in any financial year of the management of the school's budget share for that year.
- (11) Any delegation by a local education authority under a scheme to the governing body of any school of the management of the school's budget share shall be subject to such conditions as may be imposed by or under the scheme.
- (12) Conditions so imposed may in particular relate to—
- (a) the arrangements to be made for management of the expenditure of any sum made available to the governing body of any school in accordance with the scheme (and in particular for authorising expenditure, or transactions involving commitments to expenditure, to be met from any such sum);
  - (b) the keeping and audit of accounts and records with respect to such expenditure, and the keeping of records with respect to such transactions; and
  - (c) the provision to the local education authority concerned by the governing body of—
    - (i) copies of accounts and records required to be kept by virtue of any condition imposed under paragraph (b) above; and
    - (ii) such other documents and information relating to the application of any such sum as the authority may from time to time require.

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#### Textual Amendments

**F41** Word in s. 39(1) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(1)

**F42** S. 39(2)(3)(4)(b)(6)-(9) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(a)

**F43** Words in s. 39(4)(a) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(b)

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

C61 S. 39 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**40 Initial implementation of delegation requirements under schemes.**

- (1) The delegation requirement under a scheme shall not apply in relation to any school which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.
- (2) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (4) below) is the period of three years beginning with the date on which the scheme <sup>F44</sup>as first made under section 33 of this Act]comes into force.
- (3) Different dates may be specified under subsection (1) above in relation to different schools or categories of school and in relation to schools coming within the scheme in different financial years or at different times within the same financial year; but—
  - (a) each date so specified must coincide with the beginning of a financial year; and
  - (b) no date may be so specified which falls after the beginning of the financial year next following the end of the scheme's initial period.
- (4) The Secretary of State may by order—
  - (a) substitute a date specified in the order for any date specified in a scheme under subsection (1) above (including one so specified by virtue of a previous order under this subsection); and
  - (b) extend any scheme's initial period until such date as may be specified in the order.
- (5) For the purposes of this section, a school—
  - (a) comes within a scheme in any financial year if that financial year is the first financial year in which the school is required to be covered by the scheme; and
  - (b) comes within the scheme at the beginning of that year if it is then a school required to be so covered and otherwise at the time within that year when it first becomes such a school.

**Textual Amendments**

F44 Words in s. 40(2) inserted (1.1.1994) by 1993 c. 35, s. 274(3)(5); S.I. 1993/3106, art. 4 Sch.1 (as amended by S.I. 1994/436, art.2).

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

C62 S. 40 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**41 Extension of delegation requirement under schemes in the case of primary schools.**

- (1) The Secretary of State may by regulations—
  - (a) amend paragraph (a) of subsection (3) of section 39 of this Act by substituting a lower number for the number of registered pupils for the time being required under that paragraph for a primary school to be treated as satisfying the qualifying condition for the purposes of that section; or

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- (b) amend subsection (1) of that section so as to require a scheme to include such provision as is there mentioned in relation to primary schools as well as secondary schools and make in any other provisions of this Chapter such consequential amendments as appear to him to be required.
- (2) Any such regulations may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision made in those regulations by virtue of subsection (1)(a) or (b) above.

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

**C63** S. 41 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**42 Publication of schemes and financial statements, etc.**

- (1) A scheme shall be published in such manner as may be prescribed—
  - (a) on its coming into force; and
  - (b) on such subsequent occasions as may be prescribed.
- (2) The following provisions of this section apply where in the case of any local education authority the authority’s financial provision for county and voluntary schools is subject to regulation by a scheme.
- (3) Before the beginning of each financial year the authority shall prepare a statement of the financial provision they plan to make in that year for county and voluntary schools maintained by them.
- (4) The statement shall contain the following particulars in relation to the financial year in question—
  - (a) the amount of the general schools budget of the authority for that year (as initially determined for the purposes of the scheme);
  - (b) the amount of the authority’s aggregated budget for that year (as so determined);
  - (c) such particulars as may be prescribed of amounts deducted in respect of—
    - (i) excepted heads or items of expenditure; or
    - (ii) excluded expenditure under the scheme;
 in arriving at the amount specified in the statement by virtue of paragraph (b) above;
  - (d) such particulars of the allocation formula under the scheme as may be prescribed;
  - (e) in the case of each school required to be covered by the scheme in that year, the planned expenditure per pupil arising from the division of the school’s budget share (as so determined) by the initial pupil number;
  - F45(f) .....
  - F45(g) .....
  - F45(h) .....
  - F45(i) .....
  - (j) such further information with respect to the financial provision the authority plan to make in that year for county and voluntary schools maintained by them as may be prescribed.

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- (5) For the purposes of subsection (4) above—
- (a) “the initial pupil number” means, in relation to a financial year, the number of registered pupils at the school in question required under the scheme to be used in applying the allocation formula under the scheme for initial determination of the school’s budget share for the year; and
  - <sup>F45</sup>(b) .....
- (6) After the end of each financial year the authority shall prepare a statement containing such information with respect to—
- [<sup>F46</sup>(aa) the planned financial provision in that year specified in the statement prepared by the authority under subsection (3) above]
  - (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the scheme; and
  - (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) A statement prepared under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- [<sup>F47</sup>(8) The authority shall furnish—
- (a) the governing body of each school required to be covered by the scheme in any financial year, and
  - (b) the governing bodies of such grant-maintained schools in the authority’s area and grant-maintained special schools mentioned in section 34(4)(c) of this Act as may be prescribed,
- with a copy of each statement prepared by the authority under this section in relation to that year or, in such circumstances as may be prescribed, with such part or parts of it as may be prescribed.]
- (9) The governing body of each such school shall secure that a copy of any such statement furnished to them under subsection (8) above is available for inspection (at all reasonable times and free of charge) at the school.

**Textual Amendments**

- F45** S. 42(4)(f)-(i) and (5)(b) repealed (1.1.1994) by 1993 c. 35, ss. 275(1)(a)(b), 307(3), **Sch. 21**, Pt.II; S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, art.2).
- F46** S. 42(6)(aa) inserted (1.1.1994) by 1993 c. 35, s. 275(1)(c); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, art.2).
- F47** S. 42(8) substituted (1.1.1994) by 1993 c. 35, s. 275(1)(d); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, art.2).

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

- C64** S. 42 applied by S.I. 1989/1135, art. 6(2)(a)
- C65** S. 42 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

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#### [<sup>F48</sup>42A Certification of statements by Audit Commission.

- (1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Any such local education authority shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 29(1)(d) of the Local Government Finance Act 1982 for certifying such statement or statements prepared by the authority under section 42 of this Act as may be specified in the directions; and any statement under that section shall be treated for the purposes of section 29(1)(d) of that Act as a return by the authority.
- (3) The arrangements made by the Audit Commission in pursuance of subsection (2) above shall include arrangements for sending a copy of any such statement or statements as so certified to the Secretary of State.
- (4) Directions given under subsection (2) above may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.]

#### Textual Amendments

**F48** S. 42A inserted (1.1.1994) by 1993 c. 35, s. 275(2); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C66** S. 42A modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

#### [<sup>F49</sup>43 Application of schemes to special schools.

- (1) The Secretary of State may by regulations require or authorise schemes to cover special schools maintained by local education authorities.
- (2) Sections 39(1) and (10) and 40 of this Act shall not apply to schools required to be covered by a scheme by virtue of regulations under subsection (1) above.
- (3) Regulations under subsection (1) above may require or authorise schemes to include provision for requiring the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for the year—
  - (a) in the case of all schools required to be covered by a scheme in any financial year by virtue of the regulations; or
  - (b) in the case of such schools required to be covered by a scheme in any financial year by virtue of the regulations as the Secretary of State may direct.
- (4) The Secretary of State may by regulations—
  - (a) make in any provisions of this Chapter such amendments as appear to him to be required in consequence of any provision made in regulations under subsection (1) above; and
  - (b) provide that any scheme shall have effect with such modifications as appear to him to be appropriate in consequence of any provision so made.]

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#### Textual Amendments

**F49** S. 43 substituted (1.1.1994) by 1993 c. 35, s.276; S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C67** S. 43 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### *Financial delegation: appointment and dismissal of staff*

#### **44 Staff employed by the local education authority.**

- (1) This section applies to a county, controlled or special agreement school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) sections 34 and 35 of the 1986 Act (determination of staff complement for schools by local education authority and general provisions about appointment and dismissal of staff);
  - (b) any provision made by the articles of government in accordance with any of sections 36 to 41 of that Act (procedure for appointments, suspensions and dismissals); and
  - (c) any provision of section 40 of that Act (appointment and dismissal of clerk to the governing body) other than subsection (5).
- (3) Subject to the following provisions of this section—
  - (a) the appointment, suspension and dismissal of staff at a school to which this section for the time being applies and the determination of their duties, grading and remuneration; and
  - (b) the application in relation to such staff of—
    - (i) any disciplinary rules and procedures; and
    - (ii) any procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;shall be subject to Schedule 3 to this Act.
- (4) Within the period of five years beginning with the date on which the financial year begins in which any county, controlled or special agreement school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions made by the articles in accordance with any of sections 36 to 41 of the 1986 Act (specifying those provisions) are superseded by this section and Schedule 3 to this Act during any period when the school has a delegated budget.
- (5) This section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).

#### **45 Staff at aided schools.**

- (1) This section applies to an aided school at any time when it has a delegated budget.

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- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) section 22(4) of the 1944 Act (power of local education authority to give directions to governors of aided school as to number and conditions of service of school maintenance staff); and
  - (b) any provision of the articles of government conferring any functions on a local education authority with respect to the number of teachers or other staff to be employed at the school or the appointment or dismissal of such teachers or other staff (including any such provision required by section 24(2) of that Act).
- (3) Subject to any provision of the articles of government of any such school other than any provision for the time being excluded by subsection (2) above from applying to the school, the governing body of the school shall have (if they would not otherwise do so apart from any provision of the articles so excluded) power to appoint, suspend and dismiss staff as they think fit.
- (4) Subsection (6) below applies if in the case of any such school—
  - (a) the governing body of the school agree with the local education authority to accord advisory rights to the chief education officer of the authority in relation to the appointment or dismissal of teachers at the school; or
  - (b) in default of such agreement the Secretary of State determines that it would be appropriate in the case of the school that such rights should be accorded to the chief education officer of the authority.
- (5) Advisory rights accorded by an agreement or determination under subsection (4) above in the case of any school may relate to the appointment or dismissal, or both to the appointment and the dismissal, either of head teachers and deputy head teachers alone or of all teachers at the school.
- (6) During any period while an agreement or determination under subsection (4) above is effective in the case of any school, the chief education officer of the authority, or an officer of the authority nominated by him, shall be entitled to attend all proceedings of the governing body relating to any action to which the advisory rights accorded to him extend (including interviews) for the purpose of giving advice to the governing body.
- (7) The agreement of a governing body for the purposes of subsection (4)(a) above shall be given in writing and may only be withdrawn by notice in writing to the local education authority.
- (8) A determination by the Secretary of State for the purposes of subsection (4)(b) above may be withdrawn at any time (without prejudice to a further determination for those purposes).
- (9) The governing body of a school to which this section for the time being applies shall, on dismissing any member of the staff of the school employed by them, notify the local education authority in writing of the reasons for the dismissal.
- (10) Where any member of the staff at any such school is employed by the local education authority, paragraphs 8 to 10 of Schedule 3 to this Act shall have effect in relation to his dismissal or withdrawal from the school as they have effect in relation to the dismissal or withdrawal from a school to which section 44 of this Act applies of a person employed to work at the school.



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- (11) Within the period of five years beginning with the date on which the financial year begins in which any aided school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions of the articles of a kind mentioned in subsection (2)(b) above (specifying those provisions) are superseded by this section during any period when the school has a delegated budget.

#### 46 Staff: further provisions.

- <sup>F50</sup>(1) .....
- (2) Subject to subsection (3) below, it shall be for the governing body of any such school to determine—
- (a) whether any payment should be made by the local education authority concerned in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school; and
  - (b) the amount of any such payment.
- (3) Subsection (2) above does not apply in relation to any payment which the authority are required to make—
- (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or
  - (b) under any statutory provision.
- (4) The local education authority concerned—
- (a) shall take such steps as may be required for giving effect to any determination of the governing body of any such school under subsection (2) above; and
  - (b) shall not make, or agree to make, any payment to which that subsection applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.
- (5) Costs incurred by the local education authority concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of any such school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5) above.

#### Textual Amendments

**F50** S. 46(1) repealed (6. 3. 1992) by [School Teachers' Pay and Conditions Act 1991 \(c. 49, SIF 41:1\)](#), s. 6(3), [Sch.2](#); S.I. 1992/532, [art.3](#).

#### 47 Community Schools.

- (1) This section applies to any school to which section 44 or 45 of this Act for the time being applies which is a community school.

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- (2) For the purposes of this section, a school is a community school if—
- (a) activities other than school activities (“non-school activities”) are carried on on the school premises; and
  - (b) all non-school activities which are so carried on are carried on under the management or control of the governing body of the school.
- (3) A scheme may provide for applying sections 44(3), 45(10) and 46 of and Schedule 3 to this Act in relation to persons employed to work—
- (a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the premises of a school to which this section applies; or
  - (b) solely for the purposes of non-school activities so carried on; as if all activities so carried on were school activities.

#### *Miscellaneous and supplementary*

#### **48 New schools.**

- (1) Schedule 4 to this Act has effect for the purpose of applying the provisions of this Chapter and Schedule 3 to this Act in relation to new schools which have temporary governing bodies.
- (2) In this section and in Schedule 4 to this Act—

“new school” and “relevant proposal” have the same meanings respectively as in Schedule 2 to the 1986 Act (where “new school” covers both a school proposed to be established which will on implementation of the relevant proposal be maintained by a local education authority and a school which will be so maintained on the implementation in relation to an existing school of the relevant proposal); and

“temporary governing body” means a temporary governing body constituted for a new school under an arrangement made under section 12 of that Act (excluding such a governing body who fall by virtue of paragraph 3(5) of that Schedule to be treated as if they were the governing body constituted under the provisions of that Act that apply following the implementation of the relevant proposal).

#### **49 Required financial delegation apart from schemes.**

- (1) In respect of any period during which any county, voluntary or special school maintained by a local education authority does not have a delegated budget it shall be the duty of the authority to make available a sum of money which the governing body of the school are to be entitled to spend at their discretion during that period (but subject to subsection (2) below) on books, equipment, stationery and such other heads of expenditure (if any) as the authority may specify or as may be prescribed.
- (2) A governing body to whom any sum is made available under this section—
- (a) shall comply in spending that sum with such reasonable conditions as the authority think fit to impose; and
  - (b) may delegate to the head teacher, to such extent as they may specify, their powers in relation to that sum.

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- (3) Before making any regulations for the purposes of subsection (1) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned and any local authority with whom consultation appears to him to be desirable.

## **50 Financial statements in respect of schools not covered by statements under section 42.**

- (1) Every local education authority shall prepare a statement under subsection (5) below in respect of any financial year before the first financial year in respect of which the authority are required to prepare a statement under section 42 of this Act (including the financial year current at the time when this section comes into force).
- (2) Subject to subsection (3) below, every local education authority who maintain one or more special schools during the whole or any part of any financial year after the last financial year to which subsection (1) above applies shall prepare a statement under subsection (5) below in respect of that financial year.
- (3) Subsection (2) above shall not apply in relation to such an authority in respect of any financial year in respect of which the authority are required to prepare a statement under section 42 of this Act which, by virtue of any provision made by regulations under section 43 of this Act, is required to include information with respect to the special school or (as the case may be) with respect to each of the special schools concerned.
- (4) The schools required to be covered by a statement prepared by a local education authority under subsection (5) below in respect of any financial year are—
- (a) in the case of a statement required by subsection (1) above, any county, voluntary or special school maintained by the authority during the whole or any part of that year; and
  - (b) in the case of a statement required by subsection (2) above, any special school so maintained other than one in respect of which, by virtue of any provision so made, any information is required to be included in a statement prepared by the authority in respect of that year under section 42 of this Act.
- (5) The statement shall give the following particulars with respect to the financial provision initially planned by the authority in respect of the financial year to which the statement relates for the schools required to be covered by the statement—
- (a) the initial amount appropriated for meeting expenditure in that year in respect of all such schools;
  - (b) the amount remaining (referred to below in this section as the general expenditure amount) after deducting from the amount specified in the statement by virtue of paragraph (a) above the aggregate amount of the initial amounts so appropriated in respect of—
    - (i) expenditure of a capital nature;
    - (ii) expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature; and
    - (iii) expenditure of such other descriptions as may be prescribed;
  - (c) such particulars as may be prescribed of amounts so deducted;
  - (d) in the case of each such school, the share of—

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- (i) the general expenditure amount; and
  - (ii) such of the amounts so deducted by virtue of paragraph (b)(iii) above as may be prescribed;
- which is appropriated by the authority for meeting expenditure for the purposes of the school;
- (e) in the case of each such school, the amount of any expenditure of a capital nature initially planned for the purposes of the school;
  - (f) such particulars of the basis on which the authority determine the share of each such school for the purposes of the information required to be included in the statement under paragraph (d) above as may be prescribed; and
  - (g) such further information with respect to the financial provision initially planned by the authority for the schools required to be covered by the statement as may be prescribed.
- (6) After the end of each financial year in respect of which a local education authority are required to prepare a statement under subsection (5) above the authority shall prepare a statement containing such information with respect to—
- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the statement under subsection (5); and
  - (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) Each statement prepared under this section in respect of any financial year shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (8) The authority shall furnish the governing body of any school required to be covered by a statement prepared under subsection (5) above in respect of any financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (9) A governing body to whom a copy of any such statement is furnished under subsection (8) above shall secure that a copy of the statement is available for inspection (at all reasonable times and free of charge) at the school.
- (10) Where only one school is required to be covered by a statement prepared under subsection (5) above—
- (a) references in this section to all schools required to be so covered shall be read as references to the school in question;
  - (b) that subsection shall apply with the omission of paragraphs (d) to (f); and
  - (c) subsection (6) above shall apply with the omission of paragraph (b).

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

C68 S. 50(1) modified by S.I. 1989/1135, art. 6(2)(b)

## 51 Interpretation of Chapter III and supplementary and consequential provisions.

- (1) In this Chapter—

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“expenditure of a capital nature” means, in relation to a local education authority, expenditure treated by that authority as expenditure of a capital nature; and

“governors’ report” means, in relation to the governing body of any school to which section 30 of the 1986 Act applies, the report they are required to prepare by virtue of that section.

(2) In this Chapter—

- (a) references to a scheme are references—
  - (i) to a scheme made by a local education authority under section 33 of this Act [<sup>F51</sup>as from time to time revised under section 35 of this Act]; and
  - (ii) in a context referring to a particular local education authority, to a scheme so made by that authority;
- (b) references to a school’s budget share for any financial year—
  - (i) shall be read in accordance with subsection (2)(a) of that section; and
  - (ii) include references to that share as from time to time revised in accordance with the scheme under which it is determined;
- (c) references to the general schools budget of a local education authority shall be read in accordance with subsection (4)(a) of that section;
- (d) references to the aggregated budget of a local education authority shall be read in accordance with subsection (4)(b) of that section;
- (e) references to excepted heads or items of expenditure shall be read in accordance with subsection (4)(b)(i) of that section;
- (f) references to a school in respect of which financial delegation is required for any financial year shall be read in accordance with subsection (6)(a) of that section;
- (g) references to a school which has a delegated budget shall be read in accordance with subsection (6)(b) of that section;
- (h) references, in relation to a scheme, to excluded expenditure under the scheme shall be read in accordance with subsection (6)(c) of that section; and
- (i) references to the delegation requirement under a scheme shall be read in accordance with section 39(4).

- (3) During any period when a school has a delegated budget under any scheme any provisions of the articles of government of the school which are inconsistent with the operation during that period of any provisions of this Chapter or of the scheme shall be of no effect to the extent of that inconsistency.

This subsection does not apply to any provision of the articles of government such as is referred to in section 44(2)(b) or 45(2)(b) of this Act (in relation to which provision corresponding to that made by subsections (4) and (5) below is made by sections 44(4) and 45(11) respectively).

- (4) Within the period of five years beginning with the date on which the financial year begins in which any school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned, if the articles of government of the school contain any provision to which subsection (3) above applies, to amend the articles so as to include in relation to that provision or (as the case may be) in relation to each such provision contained in the articles the statement required by subsection (5) below.

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- (5) The statement shall specify—
- (a) the provision or provisions of the articles in question;
  - (b) the provision of this Chapter or of the scheme (the “overriding provision”) with the operation of which any provision of the articles specified under paragraph (a) above is inconsistent; and
  - (c) the extent of the inconsistency;
- and shall indicate that, during any period when the school has a delegated budget, any provision of the articles so specified is superseded by the overriding provision to the extent that it is inconsistent with it.
- (6) Any amendment of the articles of government of a school required by section 44(4) or 45(11) of this Act or by subsection (4) above shall be made by order under section 1 of the 1986 Act; but section 2 of that Act shall not apply in relation to any order made under section 1 by virtue of this subsection.
- [<sup>F52</sup>(7) It shall be for the Secretary of State to determine any question arising under a scheme as to whether a primary school required to be covered by the scheme is within the delegation requirement under the scheme.]
- (8) Section 29 of the 1986 Act (which requires provisions to be contained in articles of government of schools with respect to financial statements and financial delegation and is superseded by the provisions of this Chapter), and any provision included in the articles of government of any school by virtue of that section, shall cease to have effect.
- (9) In section 30(2)(h) of that Act (financial statement to be included in governors’ annual report to parents), for sub-paragraphs (i) and (ii) there shall be substituted the following sub-paragraphs—
- “(i) reproducing or summarising any financial statement of which a copy has been furnished to the governing body by the authority under section 42 or 50 of the Education Reform Act 1988 since the last governors’ report was prepared;
  - (ii) indicating, in general terms, how any sum made available to the governing body by the authority in respect of the school’s budget share within the meaning of Chapter III of Part I of that Act or under section 49 of that Act in the period covered by the report was used;”.

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#### Textual Amendments

**F51** Words in s. 51(2)(a)(i) inserted (1.1.1994) by 1993 c. 35, s. 274(4); S.I. 1993/3106, art. 4, sch.1 (as amended by S.I. 1994/436, art.2).

**F52** S. 51(7) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(c)

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## CHAPTER IV

### GRANT-MAINTAINED SCHOOLS

#### *Duty of Secretary of State to maintain certain schools*

#### [<sup>F53</sup>52 **Duty of Secretary of State to maintain certain schools.**

- (1) Subject to the provisions of this Chapter, and the granting of approval to proposals submitted under section 62(2) below in accordance with the provisions of that section, it shall be the duty of the Secretary of State to maintain any school conducted by a governing body incorporated under this Chapter for the purpose of conducting the school.
- (2) For the purposes of this Chapter, the duty of the Secretary of State to maintain a school is a duty to make such payments in respect of the expenses of maintaining the school as are required by the following provisions of this Chapter.

- <sup>F53</sup>(3) .....
- <sup>F53</sup>(4) .....
- <sup>F53</sup>(5) .....
- (6) ..... <sup>F54</sup>
- <sup>F53</sup>(8) .....
- <sup>F53</sup>(9) .....]

#### **Textual Amendments**

- F53** S. 52 repealed (1.1.1994 in respect of s. 52(3)-(9) and otherwise *prosp.*) by 1993 c. 35, ss. 307(1)(3), 308(3), Sch. 19 para. 126, **Sch. 21 Pt. I**; S.I. 1993/3106, **art. 4**, Sch. 1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**)
- F54** S. 52(6)(7) repealed by S.I. 1990/2031, **art. 3**

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

- C69** S. 52(1)(2) modified (1.1.1994) by S.I. 1993/3103, **reg.3 Sch. 2**

#### *Government, powers and conduct*

#### <sup>F55</sup>53 .....

#### **Textual Amendments**

- F55** S. 53 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, **art. 4, Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

#### <sup>F56</sup>54 .....



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#### Textual Amendments

**F56** S. 54 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F57</sup> **55** .....

#### Textual Amendments

**F57** S. 55 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

<sup>F58</sup> **56** .....

#### Textual Amendments

**F58** S. 56 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).

### 57 Powers of the governing body.

- (1) The governing body of a grant-maintained school shall have power to conduct a school of the same description, subject to any changes authorised under section 89 or 91 of this Act, as the school immediately before it became a grant-maintained school.
- (2) The school conducted by the governing body of a grant-maintained school shall be regarded for the purposes of subsection (1) above as remaining of the same description as the school immediately before it became a grant-maintained school if no changes are made in the character or premises of the school which require to be authorised under either of those sections.
- (3) Subject to subsection (4) below and to any provision made by the instrument or articles of government of the school, the governing body of such a school shall have power to do anything which appears to them to be necessary or expedient for the purpose of or in connection with the conduct of the school as for the time being constituted, including in particular power—
  - (a) to assume the conduct as from the incorporation date in relation to the school of the school as constituted immediately before that date, and for that purpose to receive any property, rights and liabilities transferred to the governing body under section 74 of this Act;
  - (b) to acquire and dispose of land and other property;
  - (c) to enter into contracts, including in particular contracts for the employment of teachers and other staff;
  - (d) to invest any sums not immediately required for the purposes of meeting the expenses of conducting the school or any liability transferred to the governing body under section 74 of this Act; and

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- (e) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for any such purposes.
- (4) Subsection (3) above does not confer power to borrow money; and the power under paragraph (b) of that subsection to dispose of land—
  - (a) does not include power to grant any mortgage, charge or other security in respect of any land; and
  - (b) may only be exercised with the written consent of the Secretary of State.
- (5) Without prejudice to subsection (3) above, but subject to any provision made by the instrument or articles of government of the school, the governing body of a grant-maintained school shall also have power to provide education at the school which is neither primary nor secondary education, provided that
  - [<sup>F59</sup>(a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years; or
  - (b)]they do so as agents for a local education authority under arrangements made with the authority for the purpose.

**Textual Amendments**

**F59** S. 57(5)(a) and word inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), s. 13(1); S.I. 1992/831, art. 2, Sch.4.

<sup>F60</sup>**58** .....

**Textual Amendments**

**F60** S. 58 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, Sch. 21 Pt.I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art.2).

<sup>F61</sup>**59** .....

**Textual Amendments**

**F61** S. 59 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, Sch. 21 Pt.I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art.2).

*Procedure for acquisition of grant-maintained status*

<sup>F62</sup>**60** .....

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**Textual Amendments**

**F62** S. repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F63</sup> **61** .....

**Textual Amendments**

**F63** S. 61 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F64</sup> **62** .....

**Textual Amendments**

**F64** S. repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F65</sup> **63** .....

**Textual Amendments**

**F65** S. 63 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F66</sup> **64** .....

**Textual Amendments**

**F66** S. 64 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

<sup>F67</sup> **65** .....

**Textual Amendments**

**F67** S. 65 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

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F68 **66** .....

**Textual Amendments**

**F68** S. 66 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F69 **67** .....

**Textual Amendments**

**F69** S. 67 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F70 **68** .....

**Textual Amendments**

**F70** S. 68 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F71 **69** .....

**Textual Amendments**

**F71** S. 69 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch.21 Pt. I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F72 **70** .....

**Textual Amendments**

**F72** S. 70 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F73 **71** .....

**Textual Amendments**

**F73** S. 71 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

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F74 72 .....

#### Textual Amendments

**F74** S. 72 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

*Proposals under section 12 or 13 of the 1980 Act in  
 respect of schools eligible for grant-maintained status*

### 73 Proposals for alteration, etc., of schools eligible for grant-maintained status.

- (1) Before formulating in respect of any school which is eligible for grant-maintained status any proposals for a purpose mentioned in section 12(1)(c) or (d) of the 1980 Act (proposals to cease to maintain certain schools or to make significant changes in the character, or enlargements of the premises of, a county school), the local education authority shall consult the governing body of the school.
- (2) No proposals shall be published under section 12 or 13 of that Act in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved.
- (3) Subsection (4) below applies in any case where either—
  - (a) after proposals for acquisition of grant-maintained status have been published in respect of any school which is eligible for grant-maintained status but before those proposals are withdrawn or determined proposals under section 12 or 13 of that Act in respect of the school are first published for the purposes of that section; or
  - (b) after proposals under section 12 or 13 of that Act in respect of any such school have first been published for the purposes of that section but before those proposals are withdrawn or determined the governing body of the school publish proposals for acquisition of grant-maintained status for the school.
- (4) In any case to which this subsection applies—
  - (a) the proposals under section 12 or 13 of that Act shall require the approval of the Secretary of State where they would not do so apart from this provision; and
  - (b) the Secretary of State shall consider both sets of proposals together but shall not determine the proposals under section 12 or 13 of that Act until he has made his determination with respect to the proposals for acquisition of grant-maintained status.
- (5) If in any such case the Secretary of State approves the proposals for acquisition of grant-maintained status, he shall reject the proposals under section 12 or 13 of that Act in respect of the school.
- (6) Where proposals under section 12 or 13 of that Act in respect of any school which is eligible for grant-maintained status have first been published for the purposes of that section and have not been withdrawn or determined, the Secretary of State—
  - (a) may determine a period of suspension in relation to the proposals; and

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- (b) may from time to time by a further determination extend any period of suspension previously determined under this subsection.
- (7) A determination under subsection (6) above may be made in relation to all cases to which that subsection applies or in relation to any particular case; and a determination under that subsection which extends the period of suspension previously so determined may be made before or after the expiry of that period.
- (8) Where it is for the local education authority to determine proposals to which a period of suspension determined under subsection (6) above applies, the proposals shall not be determined until the end of that period; and in such a case section 12(7) of the 1980 Act (which requires the authority to make such a determination within four months after the submission of proposals to the Secretary of State) shall have effect as if for the reference to the submission of the proposals to the Secretary of State there were substituted a reference to the end of that period.
- (9) Where proposals to which a period of suspension determined under that subsection applies require the approval of the Secretary of State, he may suspend his consideration of the proposals—
- (a) where proposals for acquisition of grant-maintained status for the school are published before the end of the period of suspension, until the end of the period of two months beginning with the date of publication of those proposals; or
- (b) in any other case, until the end of the period of suspension.
- (10) Where the Secretary of State makes a determination under subsection (6) above in relation to proposals under section 12 or 13 of the 1980 Act made in respect of any school, he shall give written notification of the determination—
- (a) to the governing body of the school; and
- (b) in the case of proposals under section 12 of that Act, to the local education authority.
- (11) The power of the Secretary of State under subsection (6) above shall not apply in relation to proposals under section 12 or 13 of that Act published on or after such date as may be appointed for the purposes of this section by order made by the Secretary of State.
- (12) Where—
- (a) proposals under section 12 or 13 of that Act with respect to a change in the character or an enlargement of the premises of any school have been approved; and
- (b) the school becomes a grant-maintained school before those proposals have been implemented;
- those proposals shall be treated for the purposes of this Chapter as if they had been published and approved under section 89 of this Act.

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

**C70** S. 73(2)(12) modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

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*Transfer of property and staff, etc.*

F75<sup>74</sup> .....

**Textual Amendments**  
F75 S. 74 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F76<sup>75</sup> .....

**Textual Amendments**  
F76 S. 75 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F77<sup>76</sup> .....

**Textual Amendments**  
F77 S. 76 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F78<sup>77</sup> .....

**Textual Amendments**  
F78 S. 77 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).

F79<sup>78</sup> .....

**Textual Amendments**  
F79 S. 78 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 126, **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, **art.2**).



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## Finance

### 79 Maintenance grants, special purpose grants and capital grants.

- (1) The payments the Secretary of State is required to make in pursuance of his duty to maintain a grant-maintained school are annual grants to the governing body of the school in respect of expenditure for the purposes of the school incurred or to be incurred by the governing body in the financial year to which any such grant relates (to be known as maintenance grants).
- (2) The amount of the maintenance grant payable in respect of such a school for any financial year shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this Chapter as grant regulations).
- (3) Grant regulations may also provide for the payment to the governing bodies of such schools—
  - (a) of grants (to be known as special purpose grants) in respect of expenditure incurred or to be incurred by them of any class or description specified in the regulations—
    - (i) for or in connection with educational purposes of any class or description so specified;
    - (ii) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the Secretary of State to be required for meeting any special needs of the population of the area served by the school; or
    - (iii) in respect of expenses of any class or description so specified, being expenses which it appears to the Secretary of State the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant; and
  - (b) of grants (to be known as capital grants) in respect of expenditure of a capital nature incurred or to be incurred by them of any class or description so specified.
- (4) Grant regulations may provide for special purpose grants to be payable on a regular basis in respect of expenditure of a recurrent kind or by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.
- (5) The amount of any capital grant shall be equal to 100 per cent. of the expenditure in respect of which it is made.
- (6) The descriptions of expenditure which are to be regarded for the purposes of subsection (3)(b) above as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (7) A governing body to whom any payments in respect of maintenance grant or special purpose grants are made shall comply with such requirements as the Secretary of State may from time to time impose, being requirements—
  - (a) specified in grant regulations as requirements which may be imposed by the Secretary of State on governing bodies to whom such payments are made; or
  - (b) determined in accordance with such regulations by the Secretary of State.

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- (8) A governing body to whom any payments in respect of capital grant are made shall comply with such requirements determined by the Secretary of State as he may from time to time impose.
- (9) Requirements imposed under subsection (7) or (8) above—
- (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed; and
  - (b) may at any time be waived or removed or, subject to subsection (10) below, varied by the Secretary of State.
- (10) The power of the Secretary of State to vary such a requirement—
- (a) does not apply to a requirement imposed under subsection (7)(a) above; and
  - (b) is subject, in the case of a requirement imposed under subsection (7)(b) above, to the provisions of the regulations with respect to the determination of the requirements that may be so imposed in the case of payments in respect of the grants in question.
- (11) The requirements—
- (a) which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grants; or
  - (b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grants are made;
- include in particular requirements with respect to the repayment, in whole or in part, of payments made in respect of those grants if any other requirement imposed under subsection (7) or (8) above by reference to payments of such grants (whether imposed before, at or after the time when the payments subject to the repayment requirement are made) is not complied with.
- (12) Subject to—
- (a) any requirements imposed by the Secretary of State under subsection (7) above; and
  - (b) any requirements with respect to the application of maintenance grant contained in the articles of government of the school;
- it shall be the duty of the governing body of a grant-maintained school to apply any payments made to them in respect of maintenance grant solely for the purposes of the school.
- [<sup>F80</sup>(13) In this section “the purposes of the school” do not include purposes wholly referable to the provision of—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years]

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**Textual Amendments**

**F80** S. 79(13) added (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 13\(2\)](#); S.I. 1992/831, art. 2, Sch.4.

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

- C71** Power to transfer functions conferred on s. 79 (*prosp.*) by 1993 c. 35, ss. 307(2), 308(3), **Sch. 20 para.2**  
Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**80 Grants: further provisions.**

- (1) The times at which, and the manner in which, payments are made in respect of—
- (a) maintenance grant for any grant-maintained school in respect of any financial year;
  - (b) special purpose grants; and
  - (c) capital grants;
- shall be such as may be determined from time to time by the Secretary of State.
- (2) Payments in respect of maintenance grant for any such school in respect of any financial year may be made, before any amount has been determined in accordance with grant regulations as the amount of such grant payable for that year in respect of that school, by reference to an estimate of the amount which will be so payable made by the Secretary of State.
- (3) Where in respect of any financial year any over-payment of maintenance grant is made to the governing body of such a school a sum equal to the amount of that over-payment shall be recoverable from the governing body by the Secretary of State.
- (4) Where any sum is payable by the governing body of such a school to the Secretary of State—
- (a) in respect of any over-payment of maintenance grant in respect of any financial year; or
  - (b) by way of repayment of special purpose grant or capital grant (whether by virtue of any such requirement as is mentioned in section 79(11) of this Act or otherwise);
- the Secretary of State may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by him to the governing body.
- (5) References in this section, in relation to any such school, to an overpayment of maintenance grant in respect of any financial year are references to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in respect of that year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

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

- C72** Power to transfer functions conferred on s. 80 (*prosp.*) by 1993 c. 35, ss. 307(2), 308(3), **Sch. 20 para.2**  
Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3, **Sch.2**

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## **81 Recovery from local funds of sums in respect of maintenance grant.**

- (1) The Secretary of State may in respect of any financial year recover from the former maintaining authority sums in respect of the maintenance grant payable for that year to the governing body of a grant-maintained school.
- (2) Subject to subsection (5) below, sums recoverable by virtue of subsection (1) above in respect of any school for any financial year—
  - (a) shall be of such amounts; and
  - (b) shall fall due on such date or dates;
 as may be determined by the Secretary of State.
- (3) The total amount so recoverable shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this section as recoupment regulations).
- (4) Subject to any provision made by such regulations by virtue of subsection (6) below, recoupment regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the maintenance grant payable in respect of the school and the financial year in question (as from time to time revised).
- (5) The amount of any sum so recoverable shall be determined—
  - (a) where before the determination of the amount of that sum any amount has been determined under recoupment regulations as the total amount recoverable by virtue of subsection (1) above in respect of the school and financial year in question, by reference to any amount so determined as the total amount so recoverable; and
  - (b) in any other case, by reference to any amount estimated by the Secretary of State as the amount which will initially be so determined as the total amount so recoverable;
 which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) Recoupment regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from any authority by virtue of subsection (1) above in respect of any school for any financial year by reference to any excess amounts recovered under this section in respect of any previous financial year.
- (7) For the purposes of subsection (6) above an excess amount is recovered under this section in respect of any financial year if the aggregate amount of the sums recovered under this section for that year from the former maintaining authority for any grant-maintained school—
  - (a) in respect of any school in respect of which sums are recoverable from the authority under this section; or
  - (b) where there is more than one such school, in respect of both or all of those schools;
 exceeds the total amount recoverable under this section in accordance with recoupment regulations in respect of that school or (as the case may be) in respect of both or all of those schools for that year.
- (8) The Secretary of State may recover sums due to him under this section from such an authority in either or both of the following ways—

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- (a) by requiring the authority to pay the whole or any part of any such sum at such time or times as he thinks fit; and
  - (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whether passed before or after this Act) [<sup>F81</sup>or from any amount payable by him to the authority under Part III of Schedule 8 to the Local Government Finance Act 1988 (which makes provision in respect of redistributed non-domestic rates)].
- (9) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

#### Textual Amendments

**F81** Words in s. 81(8)(b) added (1. 4. 1993) by [Local Government Finance Act 1992 \(c. 14\), s. 117\(1\), Sch. 13 para. 58\(1\)](#) (with s. 118(1)(2)(4)); S.I. 1992/2454, [art.3](#).

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

**C73** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

## 82 Provisions consequential on section 81.

- (1) For the purposes of determining the grant related expenditure of a local authority in accordance with Part VI of the <sup>M1</sup>Local Government, Planning and Land Act 1980—
- (a) the provision of education for registered pupils at any grant-maintained school in respect of which sums are recoverable from the authority under section 81 of this Act shall be regarded as a function of the authority; but
  - (b) no account shall be taken of the authority's actual expenditure in any year under that section in determining so much of the authority's notional total expenditure for that year as is referable to the notional exercise of that function.
- (2) Subsection (1)(b) above applies notwithstanding that the whole or any part of the actual expenditure there mentioned falls in accordance with section 3 of the <sup>M2</sup>Local Government Finance Act 1987 to be taken into account in determining the authority's total expenditure in relation to the year in question for the purposes of Part VI.
- (3) In subsections (1) and (2) above—
- “local authority” means a body which is a local authority for the purposes of Part VI; and
  - “year” has the same meaning as in that Part;
- and the reference in subsection (1)(a) above to the provision of education includes a reference to the provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (4) For the purposes of sections 51 and 52 of the 1986 Act (recoupment for provision for education of pupils belonging to, or having connection with, area of another authority) the provision for education made in any financial year in respect of a registered pupil at a grant-maintained school shall be taken to have been made by the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school and that year.

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- (5) The reference in subsection (4) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (6) The governing body of a grant-maintained school shall provide the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school with such information relating to the registered pupils at the school as the authority may require for the purposes of claiming any amount in respect of any such pupil from another authority under section 51 of the 1986 Act or by virtue of regulations under section 52 of that Act.

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

**C74** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**Marginal Citations**

**M1** 1980 c. 65.

**M2** 1987 c. 6.

*Admissions*

**83 Admissions.**

- (1) The governing body of a grant-maintained school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the approved admission number for that age group.
- (2) Subject to subsection (3) below, for the purposes of subsection (1) above, as it applies in relation to any such school—
  - (a) the approved admission number in relation to any relevant age group is the number specified in the proposals for acquisition of grant-maintained status for the school in accordance with section 62(8) of this Act;
  - (b) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (c) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (3) The approved admission number in relation to any relevant age group may be varied in the case of any such school with the approval of the Secretary of State.

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

**C75** Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

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### *Religious education*

#### **84 Religious education in former county schools.**

- (1) This section applies to a grant-maintained school which was a county school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) Subject to the following provisions of this section, in the case of a school to which this section applies the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broadly Christian character.
- (3) For the purposes of subsection (2) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (4) Every act of collective worship required by section 6 of this Act in the case of a school to which this section applies need not comply with subsection (2) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (5) Subject to subsections (2) and (4) above—
  - (a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection (2) above take place in such a school;
  - (b) the extent to which any act of collective worship in such a school which complies with subsection (2) above reflects the broad traditions of Christian belief; and
  - (c) the ways in which those traditions are reflected in any such act of collective worship;shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (6) below.
- (6) Those considerations are—
  - (a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropriate in their case; and
  - (b) their ages and aptitudes.
- (7) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education in accordance with the appropriate agreed syllabus.
- (8) That syllabus shall not provide for religious education to be given to pupils at such a school by means of any catechism or formulary which is distinctive of any particular religious denomination; but this provision is not to be taken as prohibiting provision in that syllabus for the study of such catechisms or formularies.
- (9) Subject to section 88(3) of this Act, for the purposes of subsection (7) above "the appropriate agreed syllabus" is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school



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became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.

- (10) The arrangements for the collective worship in a school to which this section applies required by section 6 of this Act shall be made by the head teacher after consultation with the governing body.
- (11) Subsection (12) below applies where a secondary school to which this section applies is so situated that arrangements cannot conveniently be made for the withdrawal of pupils from the school in accordance with section 9 of this Act to receive religious education elsewhere.
- (12) If in any such case the governing body are satisfied—
- (a) that the parents of pupils in attendance at the school desire them to receive religious education in the school in accordance with the tenets of a particular religious denomination; and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school and for securing that the cost of providing such education to those pupils in the school will not fall upon the governing body;
- the governing body shall, unless they are satisfied that owing to any special circumstances it would be unreasonable to do so, provide facilities for the carrying out of those arrangements.
- (13) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in, or from being otherwise employed for the purposes of, a school to which this section applies.
- (14) No teacher in a school to which this section applies shall be required to give religious education or receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious education or by reason of his religious opinions or of his attending or omitting to attend religious worship.
- (15) References in this section to acts of collective worship in a school to which this section applies include references to any such act which under section 6 of this Act takes place otherwise than on the school premises.

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

**C76** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**85 Religious education in former controlled schools.**

- (1) This section applies to a grant-maintained school which was a controlled school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) Where the parents of any pupils in attendance at a school to which this section applies have requested (whether before or after the school became a grant-maintained school) that they may receive religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school; or

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- (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a controlled school; the foundation governors shall, unless they are satisfied that owing to special circumstances it would be unreasonable so to do, make arrangements for securing that such religious education is given to those pupils at the school during not more than two periods in each week.
- (3) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
- (a) in accordance with any arrangements made under subsection (2) above; or
- (b) subject to any such arrangements, in accordance with the appropriate agreed syllabus.
- (4) Subject to section 88(3) of this Act, for the purposes of subsection (3) above "the appropriate agreed syllabus" is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.
- (5) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.
- (6) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

C77 Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

## 86 Religious education in former aided or special agreement schools.

- (1) This section applies to a grant-maintained school which was an aided or special agreement school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
- (a) in accordance with any provisions of the trust deed relating to the school or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school; or
- (b) in accordance with any arrangements made under this section.
- (3) Where the parents of pupils in attendance at such a school—
- (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority for the area in which the school is situated for use in schools maintained by the authority; and

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(b) cannot with reasonable convenience cause those pupils to attend any school at which that syllabus is in use;

then, unless the governing body are satisfied that owing to any special circumstances it would be unreasonable to do so, they shall make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.

(4) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.

(5) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

**C78** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**87 Changes in religious education.**

(1) Where, in the case of a grant-maintained school to which section 84(2) to (8) or 85(3) of this Act for the time being applies, proposals that the required provision for religious education should be provision for religious education in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—

- (a) the required provision for religious education shall (subject to subsection (2) below) be provision for religious education either in accordance with the tenets of that religious denomination or in accordance with any arrangements made under section 86(3) of this Act (as applied by paragraph (b) below);
- (b) section 86(3) to (5) of this Act shall apply in relation to the school; and
- (c) subject to section 88(5) of this Act, any provisions of section 84 or 85 of this Act which apply in relation to the school shall cease to apply in relation to it.

(2) Where, in the case of any grant-maintained school, proposals that the required provision for religious education should be provision for religious education otherwise than in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—

- (a) section 84(2) to (8) and (10) to (15) of this Act shall apply in relation to the school; and
- (b) any provisions of section 85 or 86 of this Act which apply in relation to the school shall cease to apply in relation to it.

(3) Subject to section 88(3) of this Act, for the purposes of section 84(7) of this Act in its application to a school by virtue of subsection (2) above "the appropriate agreed syllabus" in relation to a school or to any pupils at the school is—

- (a) the agreed syllabus adopted, or deemed to be adopted, under Schedule 5 to the 1944 Act by the local education authority for the area in which the school is

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- situated for use in the schools maintained by the authority at the time at which the proposals referred to in that subsection fall to be implemented; or
- (b) where at that time that authority have adopted, or are deemed to have adopted, under that Schedule for use in those schools more than one agreed syllabus, whichever of them the governing body shall determine.
- (4) In this section “the required provision for religious education”, in relation to a school, means the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school’s basic curriculum.

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

C79 Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**88 Religious education: supplementary.**

- (1) Subsections (2) and (3) below shall have effect where any agreed syllabus for the time being adopted by a local education authority which is in use at a grant-maintained school (or for any pupils at the school) falls to be reconsidered under Schedule 5 to the 1944 Act.
- (2) The conference convened under that Schedule to reconsider the syllabus shall consult the governing body of the grant-maintained school before making any recommendation.
- (3) Where any new syllabus is adopted, or deemed to be adopted, by the authority under that Schedule in substitution for the existing syllabus, then, for the purposes of section 84(7) of this Act (including that subsection in its application to a school by virtue of section 87(2) of this Act) or 85(3) of this Act “the appropriate agreed syllabus” in relation to the grant-maintained school (or to the pupils in question) shall be—
- (a) the new syllabus so adopted, or deemed to be adopted; or
- (b) if more than one new syllabus is so adopted, or deemed to be adopted, whichever of them the governing body shall determine.
- (4) Where, in accordance with section 84, 85 or 86 of this Act or any proposals approved under section 89 of this Act, religious education is given to pupils at a grant-maintained school otherwise than in accordance with an agreed syllabus, such religious education shall not be subject to inspection under section 77 of the 1944 Act.
- (5) Without prejudice to sections 85(5) and (6) and 86(4) and (5) of this Act, where—
- (a) immediately before a school to which section 85 or 86 of this Act applies became a grant-maintained school any of the provisions of section 30 of the 1944 Act applied with respect to a teacher in the school; or
- (b) the provisions of section 84(13) and (14) of this Act apply with respect to a teacher employed in a grant-maintained school falling within subsection (1) of section 87 of this Act immediately before any proposals such as are referred to in that subsection fall to be implemented;
- those provisions shall continue to apply to him until he ceases to be employed as a teacher in the school.

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

**C80** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

*Control over alteration and change of site*

**89 Change of character or enlargement of grant-maintained school.**

(1) Subject to subsection (2) below, where the governing body of a grant-maintained school intend to make a significant change in the character, or significant enlargement of the premises, of the school they shall publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals.

[<sup>F82</sup>(1A) The reference in subsection (1) above to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with part-time education suitable to the requirements of persons of any age over compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years, but it shall be the duty of the governing body of any grant-maintained school which provides such education to secure that it is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed.]

(2) No proposals shall be published under this section for the purpose of making a significant change in the religious character of such a school unless the trustees of the school (if any) have given their consent in writing to the change in question.

(3) Proposals published under this section shall include particulars—

- (a) of the time or times at which it is intended to implement the proposals; and
- (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented.

(4) For the purposes of subsection (3)(b) above—

- (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
- (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.

(5) Proposals published under this section shall be accompanied by a statement—

- (a) describing any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs; and
- (b) explaining the effect of subsection (6) below.

(6) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the proposals to the Secretary of State—

- (a) any ten or more local government electors;
- (b) the governing body of any school affected by the proposals; and
- (c) any local education authority concerned.

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- (7) The proposals shall require the approval of the Secretary of State; and he may reject them, approve them without modification or, after consultation with the governing body by whom they were made, approve them with such modifications as he thinks desirable.
- (8) It shall be the duty of the governing body of a grant-maintained school to implement any proposals with respect to the school which have been approved by the Secretary of State under this section; but the Secretary of State may, at the request of the governing body, modify any proposals which they are required to implement by virtue of this subsection.
- (9) Neither the governing body of a grant-maintained school nor any other person shall do or undertake anything for which proposals are required to be published and submitted in accordance with this section until such proposals have been so published and submitted and approved by the Secretary of State.
- (10) The Secretary of State may in any case allow such steps to be taken by the governing body of a grant-maintained school pending compliance with the requirements of this section and the giving by him of his approval of any such proposals as he considers reasonable in the circumstances of the case.
- (11) No decision taken at a meeting of the governing body of a grant-maintained school that would result in the submission of proposals under this section shall have effect unless it is confirmed at a second meeting of the governing body held not less than twenty-eight days after the first.

#### Textual Amendments

**F82** S. 89(1A) inserted (1. 8. 1993) by Further and Higher Education Act 1992 (c. 13), s. 13(3); S.I. 1992/831, art. 2, Sch. 4.

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

**C81** Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

**C82** S. 89(2) saved (1.8.1991) by Diocesan Boards of Education Measure 1991 (No. 2, SIF 41:1), s. 3(5); Archbishops' Instrument 1991 No. 1 (made 26.7.1991)

## 90 Approval of school premises on change of character or enlargement.

- (1) Where the governing body of a grant-maintained school submit proposals under section 89 of this Act, they shall, at such time and in such form and manner as the Secretary of State may direct, submit to him for his approval—
  - (a) particulars of the access provision made or to be made with respect to the premises or proposed premises of the school indicating the extent to which the provision conforms with the minimum requirements of the Design Note so far as they are relevant to school premises; and
  - (b) such other particulars with respect to the premises or proposed premises of the school as he may require.
- (2) In subsection (1)(a) above—

“access provision”, in relation to school premises, means provision as to the means of access both to and within the premises; and



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“the Design Note” means Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or any document replacing that Note prescribed by regulations under [<sup>F83</sup>the Town and Country Planning Act 1990].

- (3) Where the proposals are approved, the governing body shall implement the proposals in accordance with the particulars submitted under this section as approved by the Secretary of State.
- (4) In section 63(2) of the 1944 Act (exemption from building regulations, etc.) references to plans approved by the Secretary of State shall include references to any particulars submitted to and approved by him under this section.

#### **Textual Amendments**

**F83** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 78](#)

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

**C83** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

## **91 Change of site.**

The Secretary of State may by order authorise the transfer of a grant-maintained school to a new site; and no such school shall be transferred to a new site without the authority of an order under this section.

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

**C84** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

### *Discontinuance of grant-maintained schools*

## **92 Discontinuance by governing body.**

- (1) The governing body of a grant-maintained school shall not discontinue the school except in pursuance of proposals published and approved under this section.
- (2) Where the governing body of such a school—
  - (a) decide by a resolution passed at a meeting of that body (“the first resolution”) to publish proposals under this section for the discontinuance of the school and confirm that decision by a resolution (“the second resolution”) passed at a subsequent meeting of that body held not less than twenty-eight days after that at which the first resolution was passed; and
  - (b) give notice in writing of the second resolution to the local education authority for the area in which the school is situated;
 they may within the period of six months beginning with the date of the second resolution publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and shall submit to him a copy of the published proposals.



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- (3) The notice required by subsection (2)(b) above shall be given as soon as practicable after the passing of the resolution to which it refers.
- (4) The published proposals—
  - (a) shall specify the proposed date of discontinuance of the school; and
  - (b) shall be accompanied by a statement—
    - (i) indicating whether or not any proposals with respect to the establishment of a new school on the premises of the school have been published under section 12 or 13 of the 1980 Act (which relate respectively to county schools and voluntary schools); and
    - (ii) explaining the effect of subsection (5) below.
- (5) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the Secretary of State—
  - (a) any ten or more local government electors;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (6) The Secretary of State may reject any proposals under this section, approve them without modification or, after consultation with the governing body, approve them with the substitution of a different date for the date of discontinuance proposed.
- (7) If the Secretary of State approves proposals under this section with respect to a grant-maintained school—
  - (a) the governing body of the school shall cease to conduct the school; and
  - (b) the Secretary of State’s duty to maintain the school shall cease;on the date of discontinuance specified in the proposals as approved or on any other date subsequently specified by the Secretary of State at the request of the governing body (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously specified under this subsection).

### **93 Withdrawal of grant by Secretary of State.**

- (1) The Secretary of State may cease to maintain a grant-maintained school by giving notice of his intention to do so to the governing body of the school under this section; and on the date specified in any such notice as the date on which the Secretary of State intends to cease to maintain the school the Secretary of State’s duty to maintain the school shall cease.
- (2) Subject to the following provisions of this section—
  - (a) a notice under this section may not specify as the date on which the Secretary of State intends to cease to maintain such a school a date falling less than seven years after the date of the notice; and
  - (b) before giving such a notice the Secretary of State shall consult—
    - (i) the governing body of the school;
    - (ii) the local education authority for the area in which the school is situated;
    - (iii) the statutory diocesan body responsible for schools in the diocese in which the school is situated; and
    - (iv) the former maintaining authority, if that authority is not the local education authority for the area in which the school is situated.

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- (3) Subsection (2) above shall not apply where the Secretary of State is satisfied, in the case of any grant-maintained school, that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school on all or any of the following grounds—
- (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost;
  - (b) that the governing body have failed for a significant period of time to carry out their duties under Chapter I of this Part;
  - (c) that the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under this Act or any other enactment.
- (4) In any case within subsection (3) above, the Secretary of State may give to the governing body of the school a notice stating the grounds on which he considers that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school together with full particulars of the matters relevant to each such ground.
- (5) Where any of the matters of which particulars are given in a notice under subsection (4) above are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall also state that the Secretary of State intends to cease to maintain the school on a date specified in the notice.
- (6) Where subsection (5) above does not apply in the case of any notice under subsection (4) above, the notice shall—
- (a) state that the Secretary of State intends to cease to maintain the school unless the matters of which particulars are given in the notice are remedied;
  - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters; and
  - (c) specify the time, not being less than six months after the date of the notice, within which the governing body are required to take those measures.
- (7) Where the governing body of a grant-maintained school fail to take the measures required by a notice under subsection (4) above within the time specified in the notice or allowed by any previous notice under this subsection, the Secretary of State shall within the period of two months beginning with the date next following the end of that time either—
- (a) give notice to the governing body extending the time within which those measures are required to be taken; or
  - (b) after consulting the local education authority for the area in which the school is situated, give notice that he intends to cease to maintain the school on a date specified in the notice.
- (8) The Secretary of State may by notice given to the governing body—
- (a) withdraw any notice under subsection (1), (4) or (7)(b) above; or
  - (b) vary—
    - (i) any notice under subsection (1) or (7)(b) above; or
    - (ii) any notice under subsection (4) above to which subsection (5) above applies;
 by substituting a later date for the date for the time being specified in the notice as the date on which he intends to cease to maintain the school; or

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- (c) vary any notice under subsection (4) above to which subsection (6) above applies, so far as relates to the measures required by the notice to remedy the matters of which particulars are given in the notice.
- (9) If by virtue of subsection (8)(c) above the Secretary of State varies any notice under subsection (4) above so as to require different measures to be taken he shall also substitute for the time specified in the notice as the time within which the governing body are required to take the measures specified in the notice as varied a time ending—
  - (a) not less than six months after the date of the notice of variation; and
  - (b) where the time so specified has been extended under subsection (7) above, not earlier than that time as so extended.
- (10) Any variation under subsection (9) above of the time specified in a notice under subsection (4) above is without prejudice to any further extension of that time under subsection (7) above.
- (11) Any notice under this section shall be in writing; and references in this section to the date of any such notice given to a governing body under this section are references to the date on which it is given to the governing body.

#### *Winding up and disposal of property*

### **94 Winding up.**

- (1) Where in the case of any grant-maintained school—
  - (a) proposals for discontinuance of the school have been approved under section 92 of this Act; or
  - (b) the Secretary of State has given notice to the governing body of the school under section 93 of this Act specifying a date on which he intends to cease to maintain the school;the Secretary of State may by order make provision for the winding up of the governing body of the school and the disposal of the school property.
- (2) An order made under this section may—
  - (a) set out a proposed timetable for the winding up and, in particular, for—
    - (i) securing that all property belonging to the governing body or held by any trustees on trust for the purposes of the school is brought into the custody or control of that body or those trustees (as the case may require);
    - (ii) discharging any liabilities of the governing body;
    - (iii) making any provision mentioned in paragraphs (d) to (f) below; and
    - (iv) the preparation and audit of the governing body's final accounts;
  - (b) make provision with respect to the exercise of the functions of the governing body in relation to the school, including in particular—
    - (i) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State;
    - (ii) provision authorising any of those functions to be exercised by any member of the governing body specified in the order; and
    - (iii) provision for the application of the seal of the governing body to be authenticated by the signature of any person so specified;

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- (c) make provision for conferring or imposing functions on the governing body in relation to the winding up and the management and disposal of the school property;
  - (d) make any provision authorised by section 95 of this Act for or in connection with the transfer of the school property;
  - (e) make any provision authorised by section 97 of this Act with respect to the discharge of the liabilities of the governing body and the payment of the costs of the winding up;
  - (f) make any provision authorised by section 98 or 99 of this Act in relation to capital expenditure in respect of the school premises;
  - (g) require the governing body to give to persons employed by them notice terminating their contracts of employment as from a date specified in the order; and
  - (h) appoint a date on which the governing body is to be dissolved.
- (3) Below in this Chapter—
- (a) references to a governing body in liquidation are references to a governing body in respect of whom any order has been made under this section; and
  - (b) references, in relation to any such governing body or the grant-maintained school conducted, or formerly conducted, by any such body, to the dissolution date are references to the date appointed in relation to that governing body by virtue of subsection (2)(h) above.
- (4) The Secretary of State may make grants to a governing body in liquidation for the purpose of—
- (a) discharging any liabilities of that governing body (other than section 105 loan liabilities); and
  - (b) meeting any costs incurred by that governing body for the purposes of the winding up under this section.
- (5) The Secretary of State may impose on a governing body to whom any such payment is made such requirements as he may from time to time determine (whether before, at or after the time when the payment in question is made).
- (6) The Secretary of State shall not by an order under this section appoint a date on which a governing body in liquidation is to be dissolved unless he is satisfied that—
- (a) all liabilities of the governing body (other than any section 105 loan liabilities which fall to be transferred or terminated under section 97 of this Act) have been discharged;
  - (b) all costs of the winding up have been met; and
  - (c) any provision authorised by any of sections 95 to 99 of this Act which is possible and expedient in the circumstances of the case has been made and anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.
- (7) In this Chapter—
- (a) references, in relation to a governing body in liquidation, to section 105 loan liabilities are references to any liabilities in respect of any loans made under section 105 of the 1944 Act (loans by Secretary of State towards initial capital expenditure) which were transferred to the governing body under section 74 of this Act;

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- (b) references, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, to the school property are references to—
  - (i) the premises used or formerly used for the purposes of the school;
  - (ii) any interest belonging to the governing body or held by any trustees on trust for the purposes of the school in any dwelling-house used or held or formerly used or held for occupation by a person employed to work at the school; and
  - (iii) all other equipment and property used or held or formerly used or held for the purposes of the school, with the exception of money and any investments to which section 96 of this Act applies; and
- (c) references to a grant-maintained school formerly conducted by a governing body in liquidation apply in circumstances where the school has been discontinued before the dissolution date and refer to the school as conducted immediately before discontinuance (and “formerly” in sub-paragraphs (i) to (iii) of paragraph (b) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).

## 95 Disposal of school property.

- (1) Subject to subsection (7) below, where—
  - (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) proposals under section 13 of the 1980 Act that any school proposed to be established on the premises of the grant-maintained school should be maintained by a local education authority as a voluntary school have been approved;

an order under section 94 of this Act may vest the school property or any part of it in persons specified in the order to be held on trust for the purposes of the proposed school, subject to the payment by those persons of the appropriate consideration.

- (2) Subject to subsection (7) below, where—
  - (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) any persons propose to establish on the premises of the school a new independent school;

an order under section 94 of this Act may vest the school property or any part of it in the persons proposing to establish the new school, subject to the payment by those persons of the appropriate consideration.

- (3) In any case within subsection (1) or (2) above, the appropriate consideration is payable to the former maintaining authority, subject to any provision made by virtue of section 97 or 99 of this Act.
- (4) Where in the case of a grant-maintained school conducted or formerly conducted by a governing body in liquidation which was a voluntary school immediately before it became a grant-maintained school proposals by a local education authority for the establishment of a new county school on the premises of the school have been published under section 12 of the 1980 Act and either—

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- (a) the proposals have been approved by the Secretary of State under that section; or
- (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section;

an order under section 94 of this Act may vest any part of the school property which is held by persons on trust for the purposes of the school or, where all the school property is so held, the whole of the school property in the local education authority concerned beneficially, subject to the payment by that authority of the appropriate consideration.

- (5) In any case within subsection (4) above the appropriate consideration is payable to the persons from whom the property is transferred, subject to any provision made by virtue of section 97 or 98 of this Act.
- (6) Subject to subsections (7) and (10) below, any school property held by a governing body in liquidation immediately before the dissolution date shall vest on that date in the former maintaining authority.
- (7) Subsections (1), (2) and (6) above shall not apply to any school property which is held by persons on trust for the purposes of the grant-maintained school concerned; but an order under section 94 of this Act may vest the whole or any part of any property excluded from the application of subsection (1), (2) or (6) above by virtue of this subsection in such local education authority or other person as may be specified in the order.
- (8) Where it appears to the Secretary of State that any school property to be vested in a local education authority by an order made by virtue of subsection (7) above—
  - (a) was wholly or mainly provided at the expense of a local education authority or a former authority; or
  - (b) will be held by the authority for the purposes of a county or voluntary school proposed to be established on the premises of the grant-maintained school concerned;
 the order may vest the property in the authority beneficially.
- (9) Subject to subsection (8) above, an order made by virtue of subsection (7) above shall vest the school property in the local education authority or other person concerned on trust for such purposes as may be specified in the order.
- (10) Subsection (6) above shall not apply to any items of property excluded from transfer by the Secretary of State; and the Secretary of State may exclude any item, or any class or description of items, of property from transfer if he is satisfied that that item, or items of that class or description, were procured otherwise than at the expense of the authority concerned and that it is appropriate on that account to exclude them from transfer to that authority.
- (11) An order under section 94 of this Act may vest any property excluded from a transfer under subsection (6) above by virtue of subsection (10) above in such persons as may be specified in the order on such terms as may be so specified.
- (12) Any property vested in any person by an order made by virtue of this section shall so vest on such date as may be specified in the order as the transfer date.
- (13) In this section “the appropriate consideration” means, in relation to any school property—

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- (a) so far as it consists of premises (including any interest in a dwelling-house such as is mentioned in section 94(7)(b)(ii) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at the transfer date or as at a date no earlier than six months before that date; and
  - (b) so far as it consists of other property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.
- (14) Nothing in any provision included in an order under section 94 of this Act by virtue of this section shall affect any interest or right of any person in, to or over any school property which is held by that person otherwise than for the purposes of the school.

## 96 Surplus money and investments.

- (1) Subject to subsection (2) below—
- (a) any money held by a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the <sup>M3</sup>Banking Act 1979); and
  - (b) any investments to which this section applies held by such a governing body; after discharge of all their liabilities (other than any not required to be discharged before the dissolution date is appointed) and all costs of the winding up shall be paid or (as the case may be) transferred to the Secretary of State.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
- (a) that the money or that part of it was derived or (as the case may be) those investments were acquired otherwise than from grants paid by him under this Chapter; and
  - (b) that it ought to be paid, or the investments ought to be transferred, to a local education authority or to some other person;
- he may require the governing body to pay that money, or an amount equal to the part in question, or to transfer those investments, to such local education authority or other person as he may specify, either beneficially or to be held on trust for such purposes as he may specify.
- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the <sup>M4</sup>Financial Services Act 1986 which falls within—
- (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.
- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of that Act which amends those paragraphs for the purposes of all the provisions of that Act.

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### Marginal Citations

M3 1979 c. 37.



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**M4** 1986 c. 60.

## **97 Discharge, transfer and termination of liabilities, etc.**

- (1) Subsection (2) below applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises (“the new owners”).
- (2) Where this subsection applies, an order under section 94 of this Act may do either or both of the following things, that is to say—
  - (a) require the new owners to discharge any liabilities of the governing body in respect of redundancy payments; and
  - (b) require an amount equal to the whole or any part of the amount required for—
    - (i) discharging any liabilities of the governing body other than liabilities required by virtue of paragraph (a) above to be discharged by the new owners; and
    - (ii) meeting the costs of the winding up under section 94 of this Act; to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the new owners to the Secretary of State.
- (3) This subsection applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation proposals under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school have been approved.
- (4) Where in any case to which subsection (3) above applies the school was an aided or special agreement school immediately before it became a grant-maintained school—
  - (a) if the Secretary of State has directed that the proposed school shall be an aided school, any section 105 loan liabilities of the governing body shall on the dissolution date be transferred to and become liabilities of the temporary governing body of the new school (subject to any variation of the terms applicable in relation to the loans in question immediately before that date that may be agreed between the Secretary of State and that governing body); and
  - (b) in any other case, any such liabilities shall be terminated on the dissolution date.
- (5) Where—
  - (a) a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of a discontinued grant-maintained school; and
  - (b) any liabilities of the governing body of that grant-maintained school have been terminated under subsection (4)(b) above;
 the amount of those liabilities shall be treated for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.
- (6) Where in any case to which subsection (3) above applies the school premises are vested in any persons by an order made by virtue of section 95(1) of this Act, an order under section 94 of this Act may require an amount equal to the whole or any part of the amount required for discharging any liabilities of the governing body and meeting the

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costs of the winding up to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the persons in whom the premises are so vested to the Secretary of State.

- (7) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation the premises of the school are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school, an order under section 94 of this Act may require an amount equal to the amount of any section 105 loan liabilities of the governing body to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the authority to the Secretary of State.
- (8) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation—
- (a) the premises of the school—
    - (i) are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school;
    - (ii) are vested beneficially in such an authority by an order made by virtue of section 95(7) and (8) of this Act; or
    - (iii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
  - (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);

the Secretary of State may require the authority to pay to him the whole or any part of the compensation or purchase money paid in respect of the acquisition in or towards repayment of any expenditure incurred by him in making grants for the purpose of discharging any liabilities of the governing body and meeting the costs of the winding up.

## **98 Capital expenditure: former voluntary schools.**

- (1) This section applies where a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a voluntary school immediately before it became a grant-maintained school.
- (2) Subsection (3) below applies where in any such case—
- (a) an order is made by virtue of section 95(4) of this Act vesting the premises of the school in a local education authority for the purposes of a new county school; or
  - (b) no such order has been made and no proposals have been approved under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school;
- provided that, where paragraph (b) above applies, the Secretary of State is satisfied that no proposals for the establishment on those premises of a new county school are likely to be published, and no such proposals under section 13 are likely to be published or approved, before the date he proposes to appoint as the dissolution date.
- (3) Where this subsection applies, an order under section 94 of this Act shall determine—
- (a) the amount of any expenditure incurred by the Secretary of State in paying capital grant to the governing body of the school (“the capital grant amount”);

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- (b) the amount of any expenditure incurred by him, otherwise than in connection with repairs, in respect of any premises used for the purposes of the school before it became a grant-maintained school (“the prior expenditure amount”); and
- (c) an amount representing the appropriate share in the value of the school premises of the former maintaining authority (“the locally funded amount”).

For the purposes of paragraph (c) above the appropriate share of a local education authority in the value of any school premises is such part of the value of those premises as the Secretary of State determines to be appropriate having regard to the extent to which those premises were provided at the expense of the local education authority concerned or a former authority.

- (4) Subject to subsection (7) below, in a case within subsection (2)(a) above, an order under section 94 of this Act may—
  - (a) require an amount equal to the whole or any part of—
    - (i) the capital grant amount; and
    - (ii) the prior expenditure amount;
 to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the local education authority concerned to the Secretary of State; and
  - (b) either—
    - (i) where the local education authority concerned are the former maintaining authority, provide for the consideration otherwise so payable to be reduced by an amount equal to the locally funded amount; or
    - (ii) in any other case, require an amount equal to the locally funded amount to be deducted from that consideration and paid by the local education authority concerned to the former maintaining authority.
- (5) Subject to subsection (7) below, in a case within subsection (2)(b) above, an order under section 94 of this Act may require any persons in whom the school premises are vested—
  - (a) to pay to the Secretary of State an amount equal to the whole or any part of—
    - (i) the capital grant amount; and
    - (ii) the prior expenditure amount; and
  - (b) to pay to the former maintaining authority an amount equal to the locally funded amount.
- (6) Subject to subsection (7) below, where in a case within subsection (2)(b) above—
  - (a) no requirement has been imposed by virtue of subsection (5) above; and
  - (b) any person acquires the school premises or any part of them (whether compulsorily or otherwise) from the persons in whom they were vested immediately before an order was made under section 94 of this Act (or, where more than one such order has been made, before the first of them) or their successors;

the Secretary of State may impose on the persons from whom the school premises were acquired any requirement that could have been imposed by virtue of subsection (5) above.

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- (7) No provision may be made in an order under section 94 of this Act by virtue of subsection (4) or (5) above, and no requirement may be imposed by virtue of subsection (6) above, in any case where—
- (a) that section applies in relation to the school in question by virtue of the fact that the Secretary of State has given notice to the governing body of the school specifying a date on which he intends to cease to maintain the school; and
  - (b) the notice was given in accordance with section 93(2) of this Act.
- (8) Where in any case to which this section applies a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of the grant-maintained school, any capital expenditure incurred by the Secretary of State in relation to the grant-maintained school shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure so incurred (otherwise than in connection with repairs) in respect of the premises of the new school.
- (9) In subsection (8) above “capital expenditure” means any such expenditure as is mentioned in subsection (3)(a) or (b) above.

## **99 Capital expenditure: former county schools.**

- (1) This section applies where—
- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) the Secretary of State has incurred any expenditure in paying capital grant to the governing body of the school (“the capital grant expenditure”).
- (2) Where in any case to which this section applies—
- (a) an order is made by virtue of section 95(1) of this Act vesting the school premises in any persons to be held on trust for the purposes of a proposed voluntary school; and
  - (b) the Secretary of State has directed that the proposed school shall be an aided school;
- an order under section 94 of this Act may provide for the consideration otherwise payable by virtue of section 95 to the local education authority concerned to be reduced by an amount equal to the whole or any part of the capital grant expenditure.
- (3) Any reduction by virtue of subsection (2) above shall be disregarded in determining the amount of any sums expended by the persons in whom the school premises are vested by the order on the provision of a site for the new school or of the school buildings; but an amount equal to the amount of that reduction shall be treated as having been paid by the Secretary of State to the governing body of the new school—
- (a) as to so much of it as does not exceed 85 per cent. of the amount of the sums so expended, by way of a grant under section 1(2)(a) of the <sup>M5</sup>Education Act 1967; and
  - (b) as to the balance (if any), by way of a loan made under section 105 of the 1944 Act on such terms as the Secretary of State may specify.
- (4) Where in any case to which this section applies—
- (a) an order is made as mentioned in subsection (2)(a) above; but

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(b) no direction that the proposed school shall be an aided school has been given before the dissolution date;

subsection (5) below shall apply in relation to the capital grant expenditure.

(5) Where this subsection applies the capital grant expenditure shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.

(6) Where in any case to which this section applies an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises, an order under section 94 of this Act may require an amount equal to the whole or any part of the capital grant expenditure to be deducted from the consideration otherwise payable by virtue of section 95 to the local education authority concerned and paid by the persons in whom the property is so vested to the Secretary of State.

(7) Where in any case to which this section applies—

(a) the school premises—

(i) are vested beneficially in a local education authority by an order made by virtue of section 95(7) and (8) of this Act; or

(ii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and

(b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);

the Secretary of State may require the authority to pay to him the whole or any part of the consideration or purchase money paid in respect of the acquisition in or towards repayment of the capital grant expenditure.

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**Marginal Citations**

M5 1967 c. 3.

*Miscellaneous and supplementary*

**100 Provision of benefits and services for pupils by local education authorities.**

(1) Where—

(a) a local education authority are under a duty, or have power (whether by virtue of this section or otherwise), to provide any benefits or services for pupils; and

(b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools maintained by a local education authority and in relation to pupils at grant-maintained schools;

the authority shall in performing the duty, or exercising the power, treat pupils 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 pupils at schools maintained by a local education authority.

[<sup>F84</sup>(1A) Where—

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- (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.]

- (2) In section 50(1) of the 1944 Act (power of local education authority to provide board and lodging for pupils) after the words “voluntary school” there shall be inserted the words “grant-maintained school”.
- (3) In section 55 of the 1944 Act (provision of transport and other facilities), after subsection (3) there shall be inserted the following subsection—
  - “(4) Arrangements made by a local education authority under subsection (1) above shall make provision for pupils at grant-maintained schools which is no less favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority.”

This subsection is without prejudice to the generality of subsection (1) above.

- (4) In section 5 of the <sup>M6</sup>Education (Miscellaneous Provisions) Act 1948 (power of local education authority to provide clothing for pupils)—
  - (a) in subsection (1), the words “or at a grant-maintained school” shall be inserted at the end of paragraphs (a) and (c); and
  - (b) the words “or a grant-maintained school” shall be inserted at the end of subsection (2)(a), after the words “maintained by them” in subsection (3)(a) and after the words “special school” in subsection (4).

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**Textual Amendments**

**F84** S. 100(1A) inserted (1.8.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para.29; S.I. 1992/831, art. 2, Sch.4.

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

**C85** Ss. 100-101 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

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**Marginal Citations**

**M6** 1948 c. 40.

## 101 Application of proceeds of disposal of premises.

- (1) Where—
  - (a) the Secretary of State pays capital grant in respect of any transfer of a grant-maintained school to a new site authorised under section 91 of this Act; and
  - (b) the governing body or any trustees of the school possess, or are or may become entitled to, any sum representing the proceeds of disposal of other premises which have been used for the purposes of the school;

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the governing body or (as the case may be) the trustees or their successors shall pay to the Secretary of State the whole of that sum, if it is equal to or less than the amount of the capital grant, and otherwise so much of it as is required to repay that amount.

Any sum so paid shall, in a case where any interest in the new site has vested in any trustees of the school, be treated for the purposes of section 14 of the <sup>M7</sup>Schools Sites Act 1841 (sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.

(2) Subject to subsection (4) below, where the governing body of any grant-maintained school apply to the Secretary of State for his consent to the disposal of—

- (a) any premises transferred to the governing body under section 74 of this Act from the former maintaining authority; or
- (b) any premises acquired wholly or partly from the proceeds of the disposal of any premises so transferred or of any premises so acquired;

he may require the premises or any part of the premises to be transferred to that authority, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.

(3) Subject to subsection (4) below, where the governing body dispose of any premises within subsection (2)(a) or (b) above the Secretary of State may require the governing body to pay to the former maintaining authority the whole or any part of the proceeds of disposal in any case where he does not impose any requirement under subsection (2) above.

(4) Subsection (2) above shall not apply where the occasion of any disposal of premises by the governing body is a transfer of the school to a new site in respect of which the Secretary of State has paid capital grant; and in relation to any disposal occasioned by such a transfer the reference in subsection (3) above to the proceeds of disposal shall be read as a reference to such part (if any) of those proceeds as remains after repayment of the amount of that capital grant in accordance with subsection (1) above.

(5) For the purposes of this section the Secretary of State is to be regarded as paying capital grant in respect of the transfer of a grant-maintained school to a new site if he pays such grant in respect of the acquisition of the new site or the provision on that site of the school buildings or of any other buildings forming part of the new school premises.

(6) For the purposes of this section—

- (a) the governing body or trustees of a grant-maintained school are to be regarded as disposing of any premises if those premises are acquired from them, whether compulsorily or otherwise; and
- (b) references to the proceeds of disposal are references, in relation to any disposal of premises by any such governing body or trustees, to the compensation or purchase money paid in respect of the acquisition from them of those premises.

(7) In subsection (6) above—

- (a) references to the acquisition of premises from the governing body or the trustees of a grant-maintained school include, in the case of any premises held under a tenancy to which Part II of the <sup>M8</sup>Landlord and Tenant Act 1954 applies, the termination of that tenancy under that Part of that Act; and
- (b) the reference to the purchase money paid in respect of such an acquisition includes a reference to any compensation paid by the landlord on the quitting of any such premises by the governing body or the trustees of the school



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(whether or not the compensation is required to be paid by section 37 of that Act).

In this subsection expressions to which a meaning is given for the purposes of that Act have the same meaning as in that Act.

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

**C86** Ss. 100-101 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**Marginal Citations**

**M7** 1841 c. 38.

**M8** 1954 c. 56.

**F85** 102 .....

**Textual Amendments**

**F85** S. 102 repealed (1.1.1994) by 1993 c. 35, s. 307(3), Sch. 21 Pt.I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, art.2).

**F86** 103 .....

**Textual Amendments**

**F86** S. 103 repealed (1.1.1994) by 1993 c. 35, s. 307(3), Sch. 21 Pt.I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2 ) (as amended by S.I. 1994/436, art.2).

**[104 Interpretation of Chapter IV.**

(1) In this Chapter—

**F87**(a) .....

**F87**(b) .....

(c) references to the character of a school are references to the kind of school it is determined by reference to any matter relating to—

(i) the provision of education at the school; or

(ii) the arrangements for admission of pupils to the school;

the alteration of which would amount to a change in the character of the school;

(d) references to a change in the character of a school include, in particular, changes in character resulting from education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls or for girls as well as boys, or from the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude;

(e) references to a relevant age group are references to an age group in which pupils are or will normally be admitted to the school in question;

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- F87 (f) .....
- F87 (g) .....
- F87 (h) .....
- (i) references, in relation to a grant-maintained school, to the former maintaining authority shall be read, in any case where—
  - (i) the school was maintained by ILEA immediately before it became a grant-maintained school; and
  - (ii) the functions formerly exercisable by ILEA in relation to, or in relation to registered pupils at, the school are by virtue of section 166(7) of this Act exercisable by an inner London council or any other local education authority;
 as references to that council or authority; and
- (j) references, in relation to such a school, to school property include, in the case of such property as is mentioned in section 94(7)(b)(iii) of this Act, references to any right to such property.

F87(2) .....

(3) In this Chapter—

F87

“premises” includes any interest in or easement, right or charge in, to or over premises.

(4) The following table shows provisions defining or otherwise explaining expressions used in this Chapter (other than provisions defining or explaining an expression used only in the same section)—

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dissolution date	section 94(3)(b)
eligible governor of an elected category	section 71
first governor	section 53(8) or 64(5) (as the context may require)
former maintaining authority	section 74(8) and subsection (1)(i) above.
foundation governor	section 53(8) or 64(5) (as the context may require)
governing body and initial governing body of a grant-maintained school	section 53(11) and (12)
governing body in liquidation	section 94(3)(a)
grant-maintained school formerly conducted by a governing body in liquidation	section 94(7)(c)
grant regulations	section 79(2)
parent governor	section 53(8) or 64(5) (as the context may require)
proposals for acquisition of grant-maintained status	section 52(4)(a)

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pending proposals for acquisition of grant-maintained status	section 68(2)
the relevant particulars	section 62(16)
section 105 loan liabilities	section 94(7)(a)
school property	section 94(7)(b) and subsection (1)(j) above
a school which is eligible for grant-maintained status	section 52(5) to (9)
teacher governor	section 53(8) or 64(5) (as the context may require)

- (5) Any notification to the governing body of a school for the purposes of any provision of this Chapter may be given, and withdrawn, in such manner as the governing body may require.
- (6) In subsection (1)(i) above, “ILEA” and “inner London council” have the same meanings as in Part III of this Act.]

#### Textual Amendments

**F87** S. 104 repealed (1.1.1994 in respect of s. 104(1)(a)(b)(f)-(h),(2) and in subsection (3) the definition of “incorporation tax” and otherwise *prosp.*) by 1993 c. 35 ss. 307(1)(3), 308(3), Sch. 19 para. 126, Sch. 21Pt. I; S.I. 1993/3106, art. 4, Sch. 1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art.2).

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

**C87** S. 104(1)(c)-(e)(3)-(5) modified (1.1.1994) by S.I. 1993/3103, reg. 3, Sch.2

## CHAPTER V

### MISCELLANEOUS

#### *City colleges*

#### **105 Agreements for establishment, etc., of city technology colleges and city colleges for the technology of the arts.**

- (1) The Secretary of State may enter into an agreement with any person under which—
- (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of either—
    - (i) an independent school to be known as a city technology college; or
    - (ii) an independent school to be known as a city college for the technology of the arts;
 and having (in each case) such characteristics as are specified in the agreement and in subsection (2) below; and
  - (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.

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- (2) The characteristics mentioned above are that the school—
- (a) is situated in an urban area;
  - (b) provides education for pupils of different abilities who have attained the age of eleven years<sup>F88</sup> . . . and who are wholly or mainly drawn from the area in which the school is situated; and
  - (c) has a broad curriculum with an emphasis—
    - (i) in the case of a school to be known as a city technology college, on science and technology; or
    - (ii) in the case of a school to be known as a city college for the technology of the arts, on technology in its application to the performing and creative arts.
- (3) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—
- (a) conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school; and
  - (b) such other conditions and requirements with respect to the school as are specified in the agreement.
- (4) Payments under an agreement under this section may be in respect of capital or current expenditure and, in so far as they relate to the latter, the agreement shall provide for their continuance (subject to the fulfilment of the conditions and requirements mentioned in subsection (3) above) for a period of not less than seven years or for an indefinite period terminable by the Secretary of State by not less than seven years written notice.
- (5) Where such payments relate to capital expenditure, the agreement shall provide for the repayment to the Secretary of State, in the event at any time of the school discontinuing or ceasing to have the characteristics specified in the agreement and in subsection (2) above, of sums determined by reference to—
- (a) the value at that time of the school premises and other assets held for the purposes of the school; and
  - (b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement.
- (6) Without prejudice to subsection (4) above an agreement under this section may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure—
- (a) incurred by that person in carrying out the undertakings mentioned in subsection (1) above; or
  - (b) incurred by that person (otherwise than by virtue of subsection (5) above) in consequence of the termination of the agreement.

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#### Textual Amendments

**F88** Words in s. 105(2)(b) repealed (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), ss. 12(8), 93(2), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.4](#).

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### *Charges in maintained schools*

#### **106 Prohibition of charges, etc., in maintained schools.**

(1) No charge shall be made in respect of admission to any maintained school.

[<sup>F89</sup>(1A) Subsection (1) above shall not apply to the admission of any person to any maintained school for the purpose of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years]

(2) Subject to subsection (3) below and section 107 of this Act, no charge shall be made in respect of the education provided for registered pupils at any such school during school hours.

(3) Subsection (2) above shall not apply in relation to—

- [<sup>F90</sup>(a) tuition in playing any musical instrument, where the tuition is provided either individually or to a group of no more than four pupils; or]
- (b) any education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.

(4) No charge shall be made in respect of education provided for a registered pupil at any maintained school where the education is education to which subsection (2) above does not apply if it is—

- (a) required as part of any syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school; or
- (b) provided in pursuance of any of the duties imposed by section 10(1)(b) or (2)(a) of this Act;

but this subsection shall not apply in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.

(5) No charge shall be made in respect of the entry of a registered pupil at any maintained school for any prescribed public examination in any syllabus for that examination for which the pupil has been prepared at the school.

(6) Neither the parent of any such pupil nor the pupil himself shall be required to pay for or supply any materials, books, instruments or other equipment for use for the purposes of or in connection with—

- (a) education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or
- (b) any syllabus for a prescribed public examination which is a syllabus for which the pupil has been prepared at the school.

(7) No charge shall be made in respect of transport provided for a registered pupil at any such school where the transport is either—

- (a) incidental to education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or
- (b) provided for the purpose of enabling him to meet any examination requirement for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school.

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- (8) For the purposes of subsection (7)(a) above, transport is incidental to education provided for registered pupils at any such school if it is provided for the purpose of carrying such pupils—
- (a) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises; or
  - (b) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place.
- (9) Nothing in this section shall be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at any such school on a residential trip.
- (10) In this Chapter “residential trip ” means any trip—
- (a) which is arranged for registered pupils at any maintained school by or on behalf of the governing body or the local education authority; and
  - (b) which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation.
- (11) For the purposes of this section, a pupil shall be regarded as having been prepared at a school for a syllabus for any prescribed public examination if any part of the education provided with a view to preparing him for that examination in that syllabus has been provided for him at that school.

#### Textual Amendments

**F89** S. 106(1A) inserted (1.8.1993) by Further and Higher Education Act 1992 (c. 13), s. 12(9); S.I. 1992/831, art. 2, Sch. 4.

**F90** S. 106(3)(a) substituted (1.10.1993) by 1993 c. 35, s.280; S.I. 1993/1975, art.9, Sch. 1

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

**C88** S. 106 modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), Sch. 18 para. 9(1)

### 107 Provision for cases where education is provided partly during and partly outside school hours.

- (1) Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours—
- (a) if fifty per cent. or more of the time occupied by that period together with any connected school travelling time falls during school hours, so much of the education provided during that period as is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and
  - (b) in any other case, so much of the education provided during that period as is provided during school hours shall be treated for those purposes as provided outside school hours.
- (2) In this section “school travelling time ” means time spent on travel during school hours; and for the purposes of subsection (1)(a) above, such time is connected school

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travelling time in relation to any educational activity if it is spent by the pupils taking part in the activity in getting to or from the place where the activity takes place.

- (3) Where any education provided at a maintained school is provided on a residential trip—
- (a) if the number of school sessions taken up by the trip is equal to or greater than fifty per cent. of the number of half days spent on the trip, any education provided on the trip which is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and
  - (b) in any other case, any education provided on the trip which is provided during school hours shall be treated for those purposes as provided outside school hours.
- (4) In this section a “half day ” means any period of twelve hours ending with noon or midnight on any day.
- (5) Where fifty per cent. or more of a half day is spent on a residential trip, the whole of that half day shall be treated for the purposes of subsection (3) above as spent on the trip.
- (6) For the purposes of that subsection, a school session on any day on which such a session takes place at the school concerned shall be treated as taken up by a residential trip on which education is provided for registered pupils at the school if the time spent on the trip occupies fifty per cent. or more of the time allowed for that session at the school.

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

**C89** S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

**C90** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.  
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

**108 Recovery of wasted examination fees.**

- (1) Notwithstanding section 106(5) of this Act, where—
- (a) the governing body of any maintained school or the local education authority have paid or are liable to pay any fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination; and
  - (b) the pupil fails without good reason to meet any examination requirement for that syllabus;
- that body or authority may recover the amount of the fee from the pupil’s parent.
- (2) It shall be for the body or authority who have paid or are liable to pay the fee in question to determine for the purposes of this section any question whether a pupil who has failed to meet any such examination requirement had good reason for the failure.

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

**C91** S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

**C92** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.



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Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt.I

## 109 Permitted charges.

- (1) Subject to subsection (2) below, a charge may be made in respect of—
  - (a) education or transport provided for a registered pupil at any maintained school other than education or transport in respect of which by virtue of section 106 of this Act or section 55(1) of the 1944 Act no charge may be made;
  - (b) the entry of any such pupil for a public examination in any syllabus for that examination otherwise than in circumstances in which by virtue of section 106(5) of this Act no charge may be made; and
  - (c) board and lodging provided for any such pupil on a residential trip.
- (2) A charge may not be made—
  - (a) by virtue of subsection (1)(a) above in respect of the provision for a pupil of education or transport; or
  - (b) by virtue of subsection (1)(b) above in respect of the entry of a pupil for an examination in any syllabus for that examination;

unless the education or transport is provided or the pupil is entered for the examination in that syllabus by agreement with his parent; and any education, transport or examination entry in respect of which a charge may be made by virtue of either of those provisions is referred to below in this section as an “optional extra”.
- (3) The following provisions of this section apply in relation to any charge permitted under this section, other than a charge in respect of education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act; and any charge to which those provisions apply is referred to in those provisions as a regulated charge.
- (4) The amount of any regulated charge shall be payable by the parent of the pupil concerned.
- (5) A regulated charge shall not exceed the cost of the provision of the optional extra or the board and lodging in question.
- (6) Without prejudice to the generality of subsection (5) above, the cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs—
  - (a) incurred in respect of the provision of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra;
  - (b) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra; or
  - (c) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it.
- (7) Subject to subsection (8) below, the cost of the provision of an optional extra shall not be taken as including any costs attributable to the provision of teaching staff other than staff engaged as mentioned in subsection (6)(c) above.
- (8) Where the optional extra in question consists of tuition in playing any musical instrument the cost of its provision shall include costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition.

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- (9) Where charging is permitted under this section and the charge would be a regulated charge, the question of whether any charge in respect of the optional extra or the board and lodging should be made, and the amount of any charge to be made, shall be determined—
- (a) in a case where the cost of the provision of the optional extra or board and lodging is met by, or from funds at the disposal of, the governing body, by the governing body; and
  - (b) in any other case, by the local education authority.
- (10) The whole or any part of the amount of any charge the local education authority determine under subsection (9)(b) above to make—
- (a) shall, if the governing body so determine, be met by, or from funds at the disposal of, the governing body; and
  - (b) shall not, to the extent that it is so met, be payable by the parent of the pupil concerned.

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

**C93** Ss. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

**C94** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

**C95** Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

## 110 Charges and remissions policies.

- (1) Every governing body of a maintained school and every local education authority shall determine and keep under review a policy with respect to the provision of, and the classes or descriptions of case in which they propose to make charges for, any optional extra or board and lodging in respect of which charges are permitted by section 109 of this Act, other than education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.
- (2) No such body or authority shall make such a charge unless they have both—
- (a) determined a policy under subsection (1) above with respect to the making of such charges (their “charging policy”); and
  - (b) determined a policy (their “remissions policy”)—
    - (i) setting out any circumstances in which they propose to remit (in whole or in part) any charge which would otherwise be payable to them in accordance with their charging policy; and
    - (ii) in the case of such a policy determined by the governing body of any school other than a grant-maintained school, setting out also any circumstances in which the governing body propose to meet (in whole or in part) any charge payable to the local education authority in accordance with the authority’s charging policy for any optional extra or board and lodging provided for a registered pupil at the school.
- (3) Any remissions policy determined by the governing body of a maintained school or by a local education authority shall provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip if—

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- (a) the education provided on the trip is education in respect of which by virtue of section 106 no charge may be made; and
  - (b) his parents are in receipt of income support [<sup>F91</sup>, family credit or disability working allowance] in respect of any period wholly or partly comprised in the time spent on the trip.
- (4) Any such body or authority shall keep under review any remissions policy determined by them under this section.
- (5) In this section “optional extra ” has the same meaning as in section 109 of this Act.

#### Textual Amendments

**F91** Words in s. 110 substituted (the substitution coming into force 19.11.1991 for the purposes referred to in art. 2(b) of S.I. 1991/2617; 10.3.1991 for the purposes referred to in art. 2(e) of that S.I. and 6.4.1992 for all other purposes) by [Disability Living Allowance and Disability Working Allowance Act 1991 \(c. 21, SIF 113:1\)](#), s. 7, [Sch. 3, Pt. II, para.12](#); S.I. 1991/2617, art. 2(b)(e)(f), [Sch.](#)

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

**C96** S. 110 modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), [Sch. 18, para.9\(1\)](#)

### 111 Charges for board and lodging at boarding schools.

- (1) Subject to the following provisions of this section, where any registered pupil at any maintained school is provided at the school with board and lodging at the expense of a local education authority or the governing body of the school, charges shall be payable in respect of the board and lodging by the parent of the pupil concerned to that authority or body.
- (2) Where the board and lodging are provided for the pupil—
- (a) at a school maintained by a local education authority; and
  - (b) under arrangements made by the authority on the ground mentioned in subsection (4) below;
- the authority shall remit the whole of the charges payable under this section.
- (3) Where the board and lodging are provided for the pupil—
- (a) at a grant-maintained school; and
  - (b) under arrangements made by a local education authority on the ground mentioned in subsection (4) below;
- the whole of the charges payable under this section shall be payable by the authority instead of by the pupil’s parent.
- (4) The ground referred to in subsections (2)(b) and (3)(b) above is that, in the opinion of the authority concerned, education suitable to the pupil’s age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided by the authority for him.
- (5) Where a local education authority are satisfied that payment of the full charges payable under this section would involve financial hardship to the parent of the pupil concerned, the authority—
- (a) in the case of charges payable to the authority, shall remit so much of those charges as falls in accordance with subsection (6) below to be so remitted; and

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- (b) in the case of charges payable to the governing body of a grant-maintained school in respect of board and lodging provided under arrangements made by the authority, shall pay so much of those charges as falls in accordance with that subsection to be so paid.
- (6) In the case of any such charges, the amount that falls to be remitted or paid by a local education authority by virtue of subsection (5) (a) or (b) above is—
- (a) such part of those charges as the authority consider ought not to be paid by the pupil's parent in order to avoid such hardship as is mentioned in that subsection; or
  - (b) if in their opinion such hardship cannot otherwise be avoided, the whole of those charges.

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

- C97** S. 111 modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), **Sch. 18**, para.9(1)  
S. 111 excluded (*prosp.*) by 1993 c. 35, ss. 12, 308(3), Sch. 2 Pt. III paras. 4, 13(1)(c) (with **Sch. 18**, para. 12).
- C98** S. 111(2)-(6) excluded (*prosp.*) by 1993 c. 35, ss. 12, 308(3), Sch. 2 Pt. I para. 1(2) (with **Sch. 18**, para. 12).
- C99** S. 111(2)(b) modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), **Sch. 18 para.9(2)**

*Miscellaneous*

**112 Extension of powers as to trusts for religious education.**

(1) Section 2 of the <sup>M9</sup>Education Act 1973 (special powers as to certain trusts for religious education) shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsections—

“(1) Where the premises of a voluntary school or a grant-maintained school have ceased (whether before or after the passing of the Education Reform Act 1988) to be used for a voluntary school or, as the case may be, a grant-maintained school, or in the opinion of the Secretary of State it is likely they will cease to be so used, then subject to subsections (2) to (4) below, he may by order made by statutory instrument make new provision as to the use of any endowment if it is shown either—

- (a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religious denomination; or
- (b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that (subject to subsection (1C) below) the requirements of subsection (1A) below are fulfilled.

(1A) The requirements of this subsection are—

- (a) that the school was or has been maintained as a voluntary school since 1st April 1945 (the coming into force of Part II of the Education Act 1944) or, in the case of a grant-maintained school, was so maintained from that date until immediately before it became a grant-maintained school; and

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- (b) that religious education in accordance with the tenets of the denomination concerned—
- (i) is, and from that date has been, provided at the school; or
  - (ii) where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used;
- in pursuance of section 27 or 28 of that Act (religious education in voluntary schools) or section 85 or 86 of the Education Reform Act 1988 (religious education in grant-maintained schools which were formerly voluntary schools).
- (1B) For the purposes of this section—
- “endowment ” includes property not subject to any restriction on the expenditure of capital; and
- “shown ” means shown to the satisfaction of the Secretary of State.
- (1C) For the purposes of this section—
- (a) where in the case of any school falling within subsection (1A)(a) above it is shown—
    - (i) that religious education in accordance with the tenets of a particular denomination is provided at the school; or
    - (ii) where the premises have ceased to be used for the purposes of the school, such religious education was so provided immediately before the premises ceased to be so used;
 such religious education shall be taken to have been provided at the school from 1st April 1945; and
  - (b) where religious education in accordance with such tenets is shown to have been given to any pupils at a controlled school or a grant-maintained school which was a controlled school immediately before it became a grant-maintained school, the religious education shall be taken to have been given to them at the request of their parents;
- unless the contrary is shown.”
- (3) In subsection (4) for the words from “in connection with voluntary schools or ” to “such a school ” there shall be substituted the following paragraphs—
- “(a) in connection with schools which are voluntary schools or grant-maintained schools; or
  - (b) partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the voluntary school or grant-maintained school at the premises that have gone or are to go out of use for such a school;”.

#### Marginal Citations

M9 1973 c. 16.

### 113 Schemes under the Endowed Schools Acts.

- (1) Where under any provision (however expressed) of a scheme made under the Endowed Schools Acts 1869 to 1948 the power of the trustees under the scheme to apply any

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property to which the scheme relates for purposes authorised by the scheme is subject to the approval or order of any other person—

- (a) the scheme shall have effect as if no such approval or order was required; and
  - (b) no liability shall be deemed to have been incurred in respect of any failure before the passing of this Act to obtain any such approval or order.
- (2) The Secretary of State may, on the application of any person whose approval or order would but for this section be required under such a scheme, direct that that requirement shall continue to have effect notwithstanding subsection (1)(a) above; but no liability shall be deemed to have been incurred in respect of any failure before the making of such a direction to obtain any such approval or order.

#### 114 Extension of power to require local education authority to defray expenses of establishing controlled school.

In section 2 of the <sup>M10</sup>Education (Miscellaneous Provisions) Act 1953 (power to require local education authority to defray expenses of establishing controlled school), in paragraph (b) (which limits the power conferred by that section to cases where the new school is required for pupils for whom accommodation in some other voluntary or grant-maintained school has ceased to be available) after the words “for whom ” there shall be inserted the words “or for a substantial proportion of whom ”.

#### Marginal Citations

M10 1953 c. 33.

#### 115 Power to determine times of school sessions, etc.

The following section shall be substituted for section 21 of the 1986 Act—

##### “21 Terms, holidays and sessions.

- (1) The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the local education authority to determine the dates at which the school terms and holidays are to begin and end.
- (2) The articles of government for every such school shall provide for it to be the duty of the governing body to determine the times at which the school session or, if there is more than one, each school session is to begin and end on any day and, where the governing body propose to make any change in those times, for it to be their duty—
  - (a) to consult the local education authority and the head teacher before taking any of the actions mentioned in paragraphs (b) to (g) below;
  - (b) to include a statement in the report they are required to prepare by virtue of section 30 of this Act—
    - (i) indicating that they propose to make a change in those times;
    - (ii) specifying the proposed change and when they propose that it should take effect; and
    - (iii) drawing attention to any comment on the proposal included as an annex to the report by virtue of paragraph (c) below and

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- including such response to the comment as they may consider appropriate;
- (c) if so required by the local education authority, to include as an annex to that report such written comment on the proposal as the authority may provide for that purpose;
  - (d) to provide an opportunity for discussion of the proposal at a parents' meeting held by virtue of section 31 of this Act;
  - (e) to consider any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification;
  - (f) not to effect any change in those times except at the beginning of a school year; and
  - (g) not less than three months before any change in those times is to take effect—
    - (i) to inform the local education authority; and
    - (ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are informed; of the change and of when it is to take effect.
- (3) For the purposes of any provision included in the articles of government for any such school by virtue of subsection (2) above, the times determined by the local education authority immediately before the coming into force of section 115 of the Education Reform Act 1988 as the times at which the school session or, if there is more than one, each school session is to begin and end on any day shall be taken to have been determined by the governing body.
- (4) The articles of government for every aided and special agreement school shall provide for it to be the duty of the governing body to determine—
- (a) the dates and times at which the school terms and holidays are to begin and end; and
  - (b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day.
- (5) The articles of government for every county, voluntary and maintained special school shall provide for the governing body to have power to require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.”

## **116 Provision for delegation of functions by governing bodies of county, voluntary and maintained special schools.**

In section 8 of the 1986 Act (proceedings and tenure of office of governors of county, voluntary or maintained special school), in subsection (7) (provision that may be included in regulations made by the Secretary of State as to meetings and proceedings of governing bodies, etc.) the following paragraphs shall be inserted after paragraph (a)

- “(aa) for the establishment of committees by the governing bodies of such schools (whether or not including persons who are not members of the governing body concerned) and for the constitution, meetings and proceedings of such committees;



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- (ab) for the delegation of functions of the governing body of any such school in prescribed circumstances to committees established by that body, to any member of that body or to the head teacher;”.

*Chapter V: general and supplementary provisions*

**117 Obligation to enter pupils for prescribed public examinations.**

- (1) Subject to the following provisions of this section, the governing body of every maintained school shall secure that each registered pupil at the school is entered, at such time as they consider appropriate, for each prescribed public examination for which he is being prepared at the school at the time in question in each syllabus for that examination for which he is being so prepared.
- (2) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination, or for any examination in any syllabus for that examination, if either—
- (a) the governing body consider that there are educational reasons in the case of that particular pupil for not entering him for that examination or (as the case may be) for not entering him for that examination in that syllabus; or
- (b) the parent of the pupil requests in writing that the pupil should not be entered for that examination or (as the case may be) for that examination in that syllabus.<sup>F92</sup> but this subsection does not apply to an examination which is part of the assessment arrangements for key stage four and applies in the case of that pupil; and in this subsection, in relation to that pupil, “assessment arrangements ” has the meaning given by section 2(2)(c) of this Act and “key stage four ” means the period referred to in section 3(3)(d) of this Act]
- (3) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination in any syllabus for that examination if the governing body have secured that pupil’s entry for another prescribed public examination in a corresponding syllabus.
- (4) For the purposes of subsection (3) above, a syllabus for any such examination shall be regarded as corresponding to a syllabus for another such examination if the same course of study is provided at the school concerned in preparation for both syllabuses.
- (5) As soon as practicable after determining whether or not to secure the entry of any pupil for a prescribed public examination in any syllabus for which he is being prepared at the school the governing body of a maintained school shall notify the parent of the pupil in writing of their determination in relation to each such syllabus.

**Textual Amendments**

**F92** Words in s. 117(2) inserted (27.7.1993) by 1993 c. 35, s. 240(5)

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

**C100** S. 117 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I.**

S. 117 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch.2.**

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## 118 General and supplementary provisions relating to charges.

- (1) Nothing in the provisions of this Chapter relating to charges shall be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of any maintained school or any local education authority for voluntary contributions for the benefit of the school or any school activities.
- (2) Any request or invitation made by or on behalf of any such body or authority for contributions for the benefit of any school or school activities shall not be regarded for the purposes of subsection (1) above as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made—
  - (a) that there is no obligation to make any contribution; and
  - (b) that registered pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.
- (3) Nothing in section 106(6) of this Act shall prevent the parent of a registered pupil at a maintained school from being required to pay for or supply any materials for use for the purposes of the production in the course of the provision of education for the pupil at the school of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil.
- (4) Nothing in this Chapter relating to charges with respect to a registered pupil at a maintained school shall be read as relating to—
  - (a) charges made by persons other than the governing body or the local education authority; or
  - (b) charges to be paid by persons other than the parent of the pupil or the pupil himself.
- (5) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—
  - (a) such information relevant for the purposes of this Chapter as to the school hours at the school; and
  - (b) such information as to the policies determined under section 110 which apply in relation to the school;
 as may be prescribed.
- (6) Any sum payable under section 108, 109 or 111 of this Act by the parent of any registered pupil at a maintained school shall be recoverable summarily as a civil debt.
- (7) In this Chapter—
  - (a) “equipment ” does not include clothing;
  - (b) “the local education authority ” means, in relation to a maintained school which is a school maintained by a local education authority, the authority by whom the school is maintained;
  - (c) “maintained school ” means—
    - (i) any school maintained by a local education authority; and
    - (ii) any grant-maintained school;
  - (d) references to a public examination (including a prescribed public examination) are references to such an examination as it applies in relation to

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- persons entered for any syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment for the purposes of determining the achievements of persons entered for that examination takes place;
- (e) references to an examination requirement for a syllabus for any such examination are references to any requirement a pupil must meet in order to qualify for assessment for the purposes of determining his achievements in that examination in that syllabus; and
- (f) “residential trip ” has the meaning given by section 106(10) of this Act.
- (8) For the purposes of subsection (7) above an assessment for the purposes of determining the achievements of persons entered for any examination is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for any syllabus in that examination who has met the examination requirements for that syllabus whether that person has passed or failed and, if grades are assigned for the purposes of the examination, the grade to be assigned in his case.

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

**C101** S. 118 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

**C102** S. 118 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

S. 118 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

*Interpretation of Part I*

**119 Interpretation of Part I.**

- (1) For the purposes of this Part of this Act—
- (a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and
- (b) “reception class ” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate together with pupils of that age.
- (2) References in this Part, in relation to proposals under section 28, [F93 . . . , 89 or 92] of this Act, to the date of publication of the proposals are references—
- (a) to the date on which the requirements of this Act, or of regulations under this Act, with respect to the publication of the proposals (or of any notice relating to the proposals) are satisfied; or
- (b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different dates, to the last of those dates;
- and references to the time at which such proposals are published shall be construed accordingly.
- (3) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (2) above be taken to be satisfied on the first date in respect of which it is satisfied.

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**Textual Amendments**

**F93** Words in s. 119 repealed (1.1.1994 for “52(4) ” otherwise *prosp.*) by 1993 c. 35, ss. 307(3), 308(3), **Sch. 21**, Pt. I; Which repeal was in force at 1.1.1994 for specified words by S.I. 1993/3106, art. 4, **Sch.1** Appendix (with art. 5 Sch. 2) (as amended by S.I. 1994/436, **art.2**).

**PART II**

HIGHER AND FURTHER EDUCATION

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

**C103 Pt. II** (ss. 120-161) modified (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 84(2); S.I. 1992/831, art. 2, **Sch.1**.

**CHAPTER I**

LOCAL EDUCATION AUTHORITY FUNCTIONS WITH  
 RESPECT TO HIGHER AND FURTHER EDUCATION

**120**

(1) A local education authority shall no longer be under a duty to secure the provision for their area of facilities for higher education, that is to say, education provided by means of a course of any description mentioned in Schedule 6 to this Act.

<sup>F94</sup>(2) . . . . .

(3) A local education authority shall have power—

- (a) to secure the provision for their area of such facilities for higher education as appear to them to be appropriate for meeting the needs of the population of their area;
- (b) to secure the provision of higher education for persons [<sup>F95</sup>from other areas]; and
- (c) to do anything which appears to them to be necessary or expedient for the purposes of or in connection with such provision.

(4) In exercising their power under subsection (3)(a) above a local education authority shall have regard to any facilities for higher education provided by [<sup>F96</sup>institutions within the higher education sector][<sup>F97</sup>or the further education sector] and other bodies which are provided for, or available for use by persons living in, their area.

(5) In the 1944 Act—

- (a) section 42 (which contains provisions relating to schemes for regulating the provision by local education authorities of further education and is no longer required for the purposes of section 41 of that Act as substituted by this section); and
- (b) sections 43 to 46 (which relate to county colleges and have never been put into operation);

shall cease to have effect.

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- F98(6) .....
- F98(7) .....
- F98(8) .....
- (9) In section 114 of the 1944 Act (interpretation)—
- (a) in subsection (1)—
- (i) after the definition of “further education” there shall be inserted the following definition—
- ““Higher education” has the meaning assigned to it by section 120(1) of the Education Reform Act 1988;” and
- F99(ii) .....
- F99(b) .....
- (10) The Secretary of State may by order amend Schedule 6 to this Act.

#### Textual Amendments

- F94** S. 120(2) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(a), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.
- F95** Words in s. 120(3)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(b)**; S.I. 1992/831, art. 2, **Sch.3**.
- F96** Words in s. 120(4) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(c)(i)**; S.I. 1992/831, art. 2, **Sch.3**.
- F97** Words in s. 120(4) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 30(c)(ii)**; S.I. 1992/831, art. 2, **Sch.3**.
- F98** S. 120(6)-(8) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(d), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.
- F99** S. 120(9)(a)(ii)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 30(d), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

## CHAPTER II

### REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

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

- C104** Pt. II Ch. II (ss. 121-138) modified (temp. until 31. 3. 1993) (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 64(1); S.I. 1992/831, art. 2, **Schs.1** and 3.

#### *The higher education corporations*

### **121 Initial incorporation of higher education institutions maintained by local education authorities.**

- (1) Before such date as may be appointed for the purposes of this section the Secretary of State shall by order specify each institution maintained by a local education authority which appears to him to fall within subsection (2) below; and on that date a

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body corporate shall be established for the purpose of conducting each institution so specified as from the transfer date applicable in relation to bodies corporate established under this section.

- (2) An institution falls within this subsection if on 1st November 1985 either—
- (a) its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55 per cent. of its total full-time equivalent enrolment number; or
  - (b) its full-time equivalent enrolment number for such courses exceeded 2,500.
- (3) Where an institution maintained by a local education authority has been established since that date by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) above if it would have done so if the merger had taken place before that date.
- (4) References in this Part of this Act to courses of advanced further education are references to courses designated by Schedule 2 to the <sup>M11</sup>Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

#### Marginal Citations

M11 [S.I. 1981/1086](#).

## 122 Orders incorporating higher education institutions maintained by local education authorities.

- (1) Subject to subsection (2) below, if at any time it appears to the Secretary of State, in the case of any institution maintained by a local education authority, that its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number he may make an order under this section with respect to that institution.

F100(2) .....

F100(3) .....

F100(4) .....

F100(5) .....

- (6) An order under this section with respect to any institution shall make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date applicable in relation to that body corporate.

#### Textual Amendments

F100 S. 122(2)-(5) repealed (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 31, [Sch. 9](#); [S.I. 1992/831](#), art. 2, [Sch. 1](#)

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

C105 S. 122 applied by [S.I. 1991/1391](#), art. 2

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[<sup>F101</sup> **122A Orders transferring further education corporations to higher education sector.**

- (1) The Secretary of State may by order provide for the transfer of a further education corporation to the higher education sector if it appears to him that the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number.
- (2) Where an order under this section is made in respect of a further education corporation, sections 124A and 125 of this Act shall have effect as if—
  - (a) on the date the order has effect, the corporation were established as a higher education corporation, and
  - (b) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation.
- (3) In determining in pursuance of subsection (2)(b) above the number of members to appoint within each variable category of members, the Secretary of State shall secure that at least half of all the members of the higher education corporation as first constituted are independent members; and in this subsection “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (4) On such date as may be specified in the order the corporation shall cease to be a further education corporation and become a higher education corporation and any member of the further education corporation who is not re-appointed by the Secretary of State in pursuance of subsection (2)(b) above shall cease to hold office on that date.

**Textual Amendments**

**F101** S. 122A inserted (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(1\)](#); S.I. 1992/831, art. 2, [Sch. 3](#)

**123 Provisions supplementary to sections 121 and 122.]**

- (1) References in this Act to a higher education corporation are references to a body corporate established under section 121 or 122 of this Act [<sup>F102</sup> or which has become a higher education corporation by virtue of section 122A of this Act].
- (2) In this Act “transfer date” means, in relation to a higher education corporation, the date appointed under section 126 of this Act in relation to the transfer under that section of property, rights and liabilities to that corporation.
- [<sup>F103</sup> (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.
- [<sup>F103</sup> (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.]



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### Textual Amendments

- F101** S. 122A inserted (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(1\)](#); S.I. 1992/831, art. 2, [Sch. 3](#)
- F102** Words in s. 123(1) added (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\)](#), [Sch. 8 Pt. I para. 32\(a\)](#); S.I. 1992/831, art. 2, [Sch.3](#).
- F103** S. 123(3)(4) substituted for s. 123(3) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\)](#), [Sch. 8 Pt. I para. 32\(b\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

## 124 Powers of a higher education corporation.

- (1) A higher education corporation shall have power—
- (a) to provide higher education;
  - (b) to provide further education; and
  - (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit.
- (2) A higher education corporation shall also have power to do anything which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on the corporation by subsection (1) above, including in particular power—
- (a) to conduct an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, to assume the conduct as from the transfer date applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities transferred to the corporation under section 126 of this Act;
  - (b) to provide facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of <sup>F104</sup>students having learning difficulties within the meaning of section 41(9) of the Education Act 1944];
  - (c) to supply goods and services;
  - (d) to acquire and dispose of land and other property;
  - (e) to enter into contracts, including in particular—
    - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any such activities; and
    - (ii) contracts with respect to the carrying on by the corporation of any such activities;
  - (f) to form or take part in forming a body corporate for carrying on any such activities;
  - (g) to borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under section 126 of this Act and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the corporation;
  - (h) to invest any sums not immediately required for any of the purposes mentioned in paragraph (g) above;



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- (i) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
  - (j) to do anything incidental to the conduct of an educational institution providing higher or further education.
- (3) The power under subsection (2)(j) above includes in particular power—
- (a) to found scholarships or exhibitions; and
  - (b) to make grants and give prizes.

<sup>F105</sup>(4) . . . . .

**Textual Amendments**

**F104** Words in s. 124(2)(b) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 33\(a\)](#); S.I. 1992/831, art. 2, [Sch.3](#).

**F105** S. 124(4) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 33\(b\), Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

[<sup>F106</sup>**124A Constitution and conduct of corporations.**

- (1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—
  - (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
  - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation—
  - (a) shall comply with the requirements of Schedule 7A to this Act; and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, shall be received in evidence

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and be treated, without further proof, as being so made or issued unless the contrary is shown.

- (8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.
- (9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.
- (10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

#### Textual Amendments

**F106** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(1); S.I. 1992/831, art. 2, [Sch. 1](#)

#### 124B Accounts.

- (1) It shall be the duty of each corporation—
  - (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
  - (a) give a true and fair account of the state of the corporation’s affairs at the end of the financial year and of the corporation’s income and expenditure in the financial year; and
  - (b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.
- (4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.
- (5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.
- (6) No person shall be qualified to be appointed auditor under that subsection 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.
- (7) In this section, in relation to a corporation—

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“the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

“financial year” means that period and each successive period of twelve months.

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**Textual Amendments**

**F106** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

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

**C106** S. 124B(7): power to exclude conferred (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 78\(2\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

**124C Initial and transitional arrangements.**

- (1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.
- (2) In subsection (1) above “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.
- (4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.
- (5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

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**Textual Amendments**

**F106** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

**124D Exercise of Powers by Privy Council.**

- (1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.
- (2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.

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- (3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.
- (4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.
- (5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.

#### Textual Amendments

**F106** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

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

**C107** S. 124D extended (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 76\(7\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

## 125 Articles of government.]

- (1) Any institution conducted by a higher education corporation shall be conducted in accordance with articles of government, to be made by the corporation with the approval of [<sup>F107</sup>the Privy Council].
- (2) The articles of government—
  - (a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the academic board of the institution; and
  - (b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.
- (3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies), and may make provision with respect to—
  - (a) procedures for the appointment, promotion, suspension and dismissal of staff;
  - (b) procedures for the admission, suspension and expulsion of students; and
  - (c) the appointment and functions of a clerk to the board of governors.
- (4) The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—
  - (a) the conduct of students and staff or either of them; and
  - (b) any such procedures as are mentioned in subsection (3)(a) or (b) above.
- (5) Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of [<sup>F107</sup>the Privy Council].

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- (6) [<sup>F107</sup>The Privy Council] may by a direction under this section require higher education corporations, any class of such corporations specified in the direction or any particular higher education corporation so specified—
- (a) to amend their articles of government; or
  - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are amended by the board of governors;
- in any manner so specified.
- (7) Before giving a direction under this section, [<sup>F107</sup>the Privy Council] shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.

#### Textual Amendments

**F106** Ss. 124A-124D inserted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), s. 71(1); S.I. 1992/831, art. 2, Sch. 1

**F107** Words in s. 125(1)(5)-(7) substituted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), s. 71(2); S.I. 1992/831, art. 2, Sch. 1

VALID FROM 01/10/1998

#### [<sup>F108</sup>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>M12</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.

#### Textual Amendments

**F108** S. 125A inserted (1.10.1998) by 1998 c. 30, s. 41(1); S.I. 1998/2215, art. 2

#### Marginal Citations

**M12** 1993 c. 10.

#### 126 Transfer of property, etc., to higher education corporations.]

- (1) In the case of a higher education corporation established under section 121 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to the corporations so established.

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- (2) In the case of a higher education corporation established under section 122 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to that corporation.
- (3) Subject to subsection (5) below and section 198 of this Act, on the transfer date applicable in relation to a higher education corporation the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, that corporation.
- (4) The property, rights and liabilities referred to in subsection (3) above are—
  - (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the transferred institution; and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (5) Subsection (3) above shall not apply to—
  - (a) rights and liabilities under any contract of employment;
  - (b) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) In this section “the transferred institution” means, in relation to any higher education corporation, the institution the corporation is established to conduct.

#### **Textual Amendments**

**F108** S. 125A inserted (1.10.1998) by 1998 c. 30, s. 41(1); S.I. 1998/2215, art. 2

### **127 Transfer of staff to higher education corporations.**

- (1) This section applies to any person who immediately before the transfer date applicable in relation to a higher education corporation—
  - (a) is employed by the transferor authority to work solely at the institution the corporation is established to conduct; or
  - (b) is employed by that authority to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the corporation.
- (3) Without prejudice to subsection (2) above—
  - (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the transfer date; and
  - (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.



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- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a higher education corporation, to the transferor authority, are references to the local education authority by whom the institution that corporation is established to conduct is maintained immediately before the transfer date.

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

- C108** S. 127 applied (with modifications) (1.9.1992) by [S.I. 1992/1849, art.4.](#)  
**C109** S. 127 applied (with modifications) (1.10.1992) by [S.I. 1992/2151, art.4.](#)  
**C110** S. 127 applied (with modifications) (1.3.1995) by [S.I. 1995/183, art.4.](#)  
**C111** S. 127 applied (with modifications) (1.8.1996) by [S.I. 1996/1225, art.4.](#)  
S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/1383, art. 3](#)  
S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/355, art. 3](#)  
S. 127 applied (with modifications) (1.8.2001) by [S.I. 2001/1340, art. 3](#)

**128 Dissolution of higher education corporations.**

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for—
  - (a) the dissolution of any higher education corporation; and
  - (b) the transfer of property, rights and liabilities of the corporation to—
    - (i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;
    - (ii) any body corporate established for purposes which include the provision of such facilities or services;
    - <sup>[F109]</sup>(iii) a higher education funding council
    - <sup>[F110]</sup>(v) a further education funding council
- (2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.
- (4) Before making an order under this section in respect of a higher education corporation the Secretary of State shall consult—
  - (a) the corporation; and
  - <sup>[F111]</sup>(b) the higher education funding council

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(5) In this section “charity” and “charitable purposes” have the same meanings as in <sup>F112</sup>the Charities Act 1993].

<sup>F113</sup>(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.]

#### Textual Amendments

**F109** S. 128(1)(b)(iii) substituted for s. 128(1)(b)(iii)(iv) (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(a)(i)**; S.I. 1992/831, art. 2, **Sch. 1**.

**F110** S. 128(1)(b)(v) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(a)(ii)**; S.I. 1992/831, art. 2, **Sch. 1**.

**F111** S. 128(4)(b) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(b)**; S.I. 1992/831, art. 2, **Sch. 1**.

**F112** Words in s. 128(5) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6**, para.30

**F113** S. 128(6) added (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 34(c)**; S.I. 1992/831, art. 2, **Sch. 1**.

*Designation of certain institutions for funding by  
the Polytechnics and Colleges Funding Council, etc.*

#### 129 Designation of institutions.

<sup>F114</sup>(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by a higher education funding council—

- (a) any institution which appears to him to fall within subsection (2) below; and
- (b) any institution which is, or is to be, conducted by a successor company to a higher education corporation.

<sup>F114</sup>(2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number]

<sup>F115</sup>(3) .....

<sup>F115</sup>(4) .....

(5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if-

- (a) it is a company limited by a guarantee formed and registered under the <sup>M13</sup>Companies Act 1985;
- (b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation;
- (c) its objects—
  - (i) are exclusively charitable according to the law of England and Wales; and
  - (ii) include the conduct of the institution which was at that time conducted by that corporation;
- (d) its memorandum and articles of association have been approved by the Secretary of State; and



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- (e) an order has been made under section 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this section is made).

#### Textual Amendments

- F114** S. 129(1)(2) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 72\(1\)\(a\)](#); S.I. 1992/831, art. 2, [Sch.1](#).  
**F115** S. 129(3)(4) repealed (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), ss. 72\(1\)\(b\), 93\(2\)](#), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).

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

- C112** S. 129 extended (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 74\(2\)](#); S.I. 1992/831, art. 2, [Sch.3](#).

#### Marginal Citations

- M13** 1985 c. 6.

### [<sup>F116</sup>129A] **Government and conduct of designated institutions.**

- (1) This section has effect in relation to any designated institution, other than an institution conducted by a company.
- (2) For each such institution there shall be—
- an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
  - an instrument in accordance with which the institution is to be conducted (to be known as the articles of government),
- each of which meets the requirements of subsection (3) below.
- (3) Those requirements are that the instrument—
- was in force when the designation took effect; or
  - is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below,
- and is approved for the purposes of this section by the Privy Council.
- (4) In this section “regulatory instrument”, in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.
- (5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the body of persons responsible for the management of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.
- (6) If an instrument approved by the Privy Council for the purposes of this section—
- falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it; or
  - was made by the body of persons responsible for the management of the institution,

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the instrument may be modified by those persons.

- (7) Either of the instruments referred to in subsection (2) above may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of this section may be modified by any other person without the Privy Council's consent.
- (8) Before exercising any power under subsection (7) above in relation to any instrument the Privy Council shall consult—
- (a) the governing body of the institution, and
  - (b) where there is such a power as is mentioned in subsection (3)(b) above to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,
- so far as it appears to them to be practicable to do so.
- (9) Nothing in this section requires further approval for any instrument approved by the Secretary of State for the purposes of section 156 of this Act, and references in this section to instruments approved by the Privy Council for the purposes of this section include instruments so approved by the Secretary of State.
- (10) In this section and section 129B “designated institution” means an institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect but does not include any institution established by Royal Charter.]

#### Textual Amendments

**F116** Ss. 129A, 129B inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 73(1); S.I. 1992/831, art. 2, Sch.1.

#### **129B** <sup>F117</sup> **Designated institutions conducted by companies.**

- (1) This section has effect in relation to any designated institution conducted by a company.
- (2) 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) The Privy Council may give to the persons who appear to them to have effective control over the company such directions as they think fit for securing that—
- (a) the memorandum or articles of association of the company; or
  - (b) 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 they may specify in the direction.
- (4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Privy Council for their approval and they have notified their approval to the company.

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- (5) Before giving any directions under subsection (3) above the Privy Council shall consult the persons who appear to them to have effective control over the company.

#### Textual Amendments

**F117** Ss. 129A, 129B inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 73(1); S.I. 1992/831, art. 2, Sch.1.

### 130 Transfer of property, etc., to certain designated institutions.

- (1) This section applies to an institution designated under section 129 of this Act in any case where—
- (a) the order designating the institution under that section so provides; and
  - (b) immediately before the date on which the designation takes effect (referred to below in this section, in relation to such an institution, as the designation date) the institution is an institution assisted by a local education authority (referred to below in this section as the former assisting authority).
- (2) Subject to subsection (4) below and section 198 of this Act, on the designation date in relation to any institution to which this section applies the property, rights and liabilities mentioned in subsection (3) below shall be transferred to, and by virtue of this Act vest in, the appropriate transferee.
- (3) The property, rights and liabilities referred to in subsection (2) above are—
- (a) all land or other property which, immediately before that date, was property of the former assisting authority used or held for the purposes of that institution; and
  - (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (4) Subsection (2) above shall not apply to—
- (a) any liability of the former assisting authority in respect of the principal of, or any interest on, any loan; or
  - (b) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them.
- (5) In subsection (2) above, “the appropriate transferee” means—
- (a) in relation to an institution conducted by a body corporate, that body; and
  - (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution.
- (6) Subject to subsection (7) below, where any persons so specified are the appropriate transferee for the purposes of subsection (2) above—
- (a) any land or other property or rights transferred to them under this section shall be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution; and
  - (b) they shall incur no personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.

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**Changes to legislation:** Education Reform Act 1988 is up to date with all changes known to be in force on or before 01 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (7) Subsection (6)(a) above shall not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution.
- (8) In this Act, “transfer date” means, in relation to an institution to which this section applies, the designation date in relation to that institution.

*New arrangements for funding higher education*

**F118 131** .....

**Textual Amendments**

**F118** S. 131 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 35, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

**F119 132** .....

**Textual Amendments**

**F119** S. 132 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 35, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

**133 Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education.**

[<sup>F120</sup>(1) A higher education funding council shall have power to make payments, subject to such terms and conditions as the council think fit, to—

- (a) any local education authority in their area;
- (b) the London Residuary Body;
- (c) the London Pensions Fund Authority; and
- (d) the governing body of any institution designated under section 129 of this Act, as originally enacted;

in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.]

(2) In subsection (1) above “relevant expenditure” means—

- (a) in relation to a local education authority [<sup>F121</sup>the London Residuary Body or the London Pensions Fund Authority], expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and
- (b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution.

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- (3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date [<sup>F122</sup>and in any other case the reference to further education shall be read as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect on that date].
- (4) Each of the following, that is to say—
- (a) a local education authority;
  - <sup>F123</sup>(aa) the London Residuary Body;
  - <sup>F123</sup>(ab) the London Pensions Fund Authority; and]
  - (b) the governing body of any institution so designated;
- shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.

#### Textual Amendments

- F120** S. 133(1) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(1\)](#); S.I. 1992/831, art. 2, [Sch.3](#).
- F121** Words in s. 133(2)(a) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(2\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).
- F122** Words in s. 133(3) added (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(3\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).
- F123** S. 133(4)(aa)(ab) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(4\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).

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

- C113** S. 133 amended(*retrospectively*) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(5\)](#); S.I. 1992/831, art. 2, [Sch. 1](#).
- S. 133 modified (1.4.1993) by S.I. 1993/563, art. 2(b)(i), [Sch.1](#)

<sup>F124</sup>**134** .....

#### Textual Amendments

- F124** S. 134 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 93, Sch. 8 Pt. I para. 35, Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

### Supplementary

<sup>F125</sup>**135 Inspection of accounts.**

- (1) The accounts of—
- (a) any university;
  - (b) any higher education corporation; or
  - <sup>F126</sup>(c) any designated institution within the meaning of section 129A of this Act]

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shall be open to the inspection of the Comptroller and Auditor General.

- (2) In the case of any higher education corporation or of any such institution as is mentioned in subsection (1)(a) or (c) above—
- (a) the power conferred by subsection (1) above; and
  - (b) the powers under sections 6 and 8 of the <sup>M14</sup>National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act;

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which [<sup>F127</sup>financial support has been given to them under section 65 of the Further and Higher Education Act 1992.]

**Textual Amendments**

- F125** S. 135(2) modified by [S.I. 1993/563](#) art. 2(b)(i), Sch.1 as amended (19.4.1993) by 1993/870, art.2
- F126** S. 135(1)(c) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 36(a)**; [S.I. 1992/831](#), art. 2, **Sch. 1**.
- F127** Words in s. 135(2) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 36(b)**; [S.I. 1992/831](#), art. 2, **Sch.3**.

**Marginal Citations**

- M14** 1983 c. 44.

**136 Transfer to Polytechnics and Colleges Funding Council of property and staff of NAB.**

- (1) In this section “NAB” means the company limited by guarantee registered under the Companies Acts 1948 to 1983 under the name of the National Advisory Body for Public Sector Higher Education.
- (2) Notwithstanding anything in the memorandum of association of NAB, if upon the winding up or dissolution of NAB any property remains after the satisfaction of all its debts and liabilities the property shall be transferred to, and by virtue of this Act vest in, the [<sup>F128</sup>Higher Education Funding Council for England].

- <sup>F129</sup>(3) .....
- <sup>F129</sup>(4) .....
- <sup>F129</sup>(5) .....
- <sup>F129</sup>(6) .....
- <sup>F129</sup>(7) .....

**Textual Amendments**

- F128** Words in s. 136(2) substituted (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(1), **Sch. 8 Pt. I para. 37(a)**; [S.I. 1992/831](#), art. 2, **Sch.3**.



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**F129** S. 136(3)-(7) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 37(b), Sch. 9; S.I. 1992/831, art. 2, Sch. 1.

### 137 Control of disposals of land.

- (1) Subject to subsection (9) below, this section applies to any disposal after 22nd July 1987—
  - (a) of land which, immediately before that date, was used or held for the purposes of any relevant institution; or
  - (b) of land which was obtained before that date for the purpose of being so used or held and had not before that date been appropriated to any other use.
- (2) For the purposes of subsection (1) above, an institution is a relevant institution if it falls within section 121(2)<sup>F130</sup> . . . of this Act.
- (3) Except with the consent of the Secretary of State, no local education authority shall after the passing of this Act make a disposal to which this section applies; and if at any time after 22nd July 1987 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the preceding provisions of this subsection if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.
- (4) Any consent for the purposes of subsection (3) above may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.
- (5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of subsection (3) above as a consent, or a consent subject to those conditions, given under this section.
- (6) This section has effect notwithstanding anything in section 123 of the <sup>M15</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 201 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given or complied with.
- (8) In this section references to disposing of land include references to—
  - (a) granting or disposing of any interest in land;
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  - (c) granting an option to acquire any land or any such interest.
- (9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

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**Textual Amendments**  
**F130** Words in s. 137(2) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 38, Sch.9; S.I. 1992/831, art. 2, Sch.1.  
**Marginal Citations**  
**M15** 1972 c. 70.

**138 Construction of references to land held for the purposes of an institution.**

- (1) This section applies for the purpose of the construction of the following provisions of this Act—
  - (a) section 126(4)(a);
  - (b) section 130(3)(a); and
  - (c) section 137(1)(a).
- (2) Where at any time any land is used for the purposes of an institution to which any of those provisions applies, any interest of a local education authority in that land subsisting at that time shall be taken for the purposes of that provision to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

<sup>F131</sup>CHAPTER III

**Textual Amendments**  
**F131** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), Sch.9; S.I. 1992/831, art. 2, Sch.3.

*Further and higher education funding schemes*

<sup>F132</sup>139 .....

**Textual Amendments**  
**F132** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), Sch.9; S.I. 1992/831, art. 2, Sch.3.

<sup>F133</sup>140 .....

**Textual Amendments**  
**F133** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), Sch.9; S.I. 1992/831, art. 2, Sch.3.



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F134 **141** .....

**Textual Amendments**

**F134** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F135 **142** .....

**Textual Amendments**

**F135** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F136 **143** .....

**Textual Amendments**

**F136** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F137 **144** .....

**Textual Amendments**

**F137** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F138 **145** .....

**Textual Amendments**

**F138** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F139 **146** .....

**Textual Amendments**

**F139** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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F140 **147** .....

**Textual Amendments**

**F140** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

*Appointment and dismissal of staff during financial delegation*

F141 **148** .....

**Textual Amendments**

**F141** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F142 **149** .....

**Textual Amendments**

**F142** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

*Withdrawal of delegated powers*

F143 **150** .....

**Textual Amendments**

**F143** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

*Government and conduct of maintained further and higher education institutions*

F144 **151** .....

**Textual Amendments**

**F144** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

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F145 **152** .....

**Textual Amendments**

**F145** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

*Government of designated assisted institutions*

F146 **153** .....

**Textual Amendments**

**F146** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

*Miscellaneous and supplementary*

F147 **154** .....

**Textual Amendments**

**F147** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

F148 **155** .....

**Textual Amendments**

**F148** Pt. II Ch. III (ss. 139-155) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), ss. 85(1), 93(2), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

**CHAPTER IV**

MISCELLANEOUS AND SUPPLEMENTARY

F149 **156** **Government and conduct of certain further and higher education institutions.**

.....

*Status:* Point in time view as at 03/03/1994. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* Education Reform Act 1988 is up to date with all changes known to be in force on or before 01 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F149** S. 156 repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93(2), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

### Modifications etc. (not altering text)

**C114** S. 156: by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 85(1); S.I. 1992/831, art. 2, [Sch.3](#), it is provided (1. 4. 1993) that s. 156 shall cease to have effect in relation to designated assisted institutions.

## 157 Variation of trust deeds, etc.

- <sup>F150</sup>(1) An order of the Privy Council may modify any trust deed or other instrument—
- (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.
- <sup>F150</sup>(2) The institutions referred to in subsection (1) above are—
- (a) any institution conducted by a higher education corporation; and
  - (b) any institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect, other than an institution established by Royal Charter.
- <sup>F150</sup>(3) Before making any modifications under subsection (1) above of any trust deed or other instrument the Privy Council shall so far as it appears to them to be practicable to do so consult—
- (a) the governing body of the institution;
  - (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons; and
  - (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in paragraphs (a) and (b) above, the trustees.]
- (4) Any provision of any instrument relating to any land or other property held for the purposes of any institution maintained <sup>F151</sup> . . . 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 <sup>F151</sup> . . . by a local education authority or (as the case may be) by the authority in question shall, if the institution becomes <sup>F152</sup> an institution within the further education sector] an institution within <sup>F153</sup> the higher education 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

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<sup>F154</sup>(b) .....

- (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) [<sup>F155</sup>an institution within the further education sector or]an institution within [<sup>F156</sup>the higher education sector]; and
  - (c) a grant-aided institution.

**Textual Amendments**

- F150** S. 157(1)-(3) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 75; S.I. 1992/831, art. 2, Sch. 1.
- F151** Words in s. 157(4) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 39(a)(i), Sch.9; S.I. 1992/831, art. 2, Sch.3.
- F152** Words in s. 157(4) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 39(a)(ii); S.I. 1992/831, art. 2, Sch.3.
- F153** Words in s. 157(4) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 39(a)(iii); S.I. 1992/831, art. 2, Sch.3.
- F154** S. 157(5)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 39(b), Sch.9; S.I. 1992/831, art. 2, Sch.3.
- F155** Words in s. 157(6)(b) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 39(c)(i); S.I. 1992/831, art. 2, Sch.3.
- F156** Words in s. 157(6)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 39(c)(ii); S.I. 1992/831, art. 2, Sch.3.

**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—
    - <sup>F157</sup>(i) .....
    - (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
    - <sup>F157</sup>(iii) .....
  - <sup>F157</sup>(b) .....

**Textual Amendments**

- F157** S. 158(2)(a)(i)(iii)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 40, Sch.9; S.I. 1992/831, art. 2, Sch.3.

*Status: Point in time view as at 03/03/1994. This version of this Act contains provisions that are not valid for this point in time.*

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**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
  - <sup>F158</sup>(b) .....
- (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.

**Textual Amendments**

**F158** S. 159(2)(b) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 41, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

**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 <sup>M16</sup>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).
- (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

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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.

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**Marginal Citations**

**M16** 1980 c. 65.

**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);
- <sup>F159</sup>(c) .....
- (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.

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**Textual Amendments**

**F159** S. 161(1)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 42, Sch.9; S.I. 1992/831, art. 2, Sch.3.

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## PART III

### EDUCATION IN INNER LONDON

#### *Reorganisation of provision of education in inner London*

#### **162 Abolition of ILEA.**

- (1) On 1st April 1990 the following shall cease to exist—
  - (a) the Inner London Education Authority (in this Part referred to as “ILEA”) and any education committee established by that Authority; and
  - (b) the Inner London Education Area.
- (2) That date is in this Part referred to as the “abolition date”.

#### **163 New local education authorities for areas in inner London.**

- (1) On the abolition date each inner London council shall become the local education authority for its area, and references to a local education authority in the Education Acts 1944 to [F1601993] or in any other enactment shall be construed accordingly.
- (2) In this Part, “inner London council” means the council of an inner London borough or (in their capacity as a local authority) the Common Council of the City of London.

#### **Textual Amendments**

**F160** Words in s. 163(1) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19 para.131**; S.I. 1993/1975, **art. 9 Sch. 1**

#### **164 Extension of functions of London Residuary Body.**

- (1) For the purpose of enabling it to discharge the functions conferred or imposed on it by or under the following provisions of this Part in connection with the abolition of ILEA, the London Residuary Body shall not be required in accordance with section 67 of the 1985 Act to submit to the Secretary of State a scheme for its winding up, but shall, subject to the provisions of this Part, continue in existence notwithstanding the completion of its work under that Act and the disposal of any of its functions, property, rights and liabilities to which that section applies.
- (2) That section shall apply in relation to the London Residuary Body with the following modifications—
  - (a) references to its functions and work shall not apply to its functions and work under this Part;
  - (b) references to property, rights and liabilities shall not apply to property, rights and liabilities transferred to it, or held, acquired or incurred by it by virtue of, or in the exercise of any of its functions under, this Part; and
  - (c) in subsection (1)(b) the words “the winding up of the residuary body and” shall be omitted.
- (3) In this Part “the 1985 Act” means the <sup>M17</sup>Local Government Act 1985.



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**Marginal Citations**

M17 1985 c. 51.

*Disposal of functions and property of ILEA*

**165 Development plans for education.**

- (1) Not later than such date as the Secretary of State may direct each inner London council shall prepare and publish a plan (referred to in this section as a “development plan”)—
  - (a) describing the manner in which the council proposes to perform the functions of a local education authority for its area (in this Part referred to, in relation to each such council, as the council’s “LEA functions”); and
  - (b) giving the additional information required by subsection (2) below.
- (2) A council’s development plan shall—
  - (a) list the property belonging to ILEA which, in the council’s opinion, needs to be transferred to it for the purpose of enabling it properly to perform its LEA functions;
  - (b) specify—
    - (i) all schools situated inside the council’s area which are currently maintained by ILEA; and
    - (ii) any schools situated outside the council’s area which are currently so maintained and which the council would wish to maintain in exercise of its LEA functions; and
  - (c) give particulars of the management structure (within the meaning of section 169 of this Act) which the council proposes to adopt for the purpose of the exercise of those functions.
- (3) In preparing a development plan, a council shall—
  - (a) consult the local authorities for adjacent areas; and
  - (b) take into account any guidance given by the Secretary of State (whether as to the contents of the plan or as to consultation with any other persons, and whether as to such plans generally or as to the particular council’s plan).
- (4) Guidance given by the Secretary of State for the purposes of subsection (3)(b) above shall be published in such manner as the Secretary of State thinks fit.
- (5) A development plan shall be published in such manner as the council concerned considers likely to bring it to the attention of persons (both inside and outside its area) who may be affected by the performance by the council of its LEA functions, and the council shall make copies of the plan readily available, during office hours, to persons wishing to inspect it.

**166 Responsibility for schools.**

- (1) The Secretary of State shall by an order or orders made at any time before the abolition date designate in relation to each inner London council—
  - (a) the ILEA maintained schools which it is to be that council’s duty to maintain; and

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- (b) the ILEA grant-maintained schools in respect of which functions exercisable by ILEA are to be exercisable instead by that council.
- (2) The Secretary of State may by an order or orders so made designate in relation to any local education authority specified in the order (other than an inner London council)—
- (a) any ILEA maintained school which it is to be that authority’s duty to maintain; or
  - (b) any ILEA grant-maintained school in respect of which functions exercisable by ILEA are to be exercisable instead by that authority;
- and shall so designate any such school which is not designated by an order under subsection (1) above.
- (3) For the purposes of this section—
- (a) a school is an ILEA maintained school if it is a county, voluntary, nursery or special school maintained by ILEA; and
  - (b) a school is an ILEA grant-maintained school if it is a grant-maintained school which was maintained by ILEA immediately before it became a grant-maintained school.
- (4) A school may be designated—
- (a) in relation to a council by an order under subsection (1) above; or
  - (b) in relation to a local education authority by an order under subsection (2) above;
- whether it is inside or outside the area of that council or authority.
- (5) Subject to subsection (6) below, as from the abolition date each inner London council and any other local education authority shall maintain and, except in accordance with the Education Acts 1944 to [F161 1993], shall not cease to maintain any school—
- (a) which is designated in relation to that council or authority by an order under subsection (1)(a) or (2)(a) above; and
  - (b) which immediately before that date was maintained by ILEA.
- (6) Any such council or authority may, with the consent of the Secretary of State, agree with any other local education authority for the maintenance by that authority of any school which by virtue of subsection (5) above would otherwise fall to be maintained by the council or the first-mentioned authority.
- (7) Any functions which, immediately before the abolition date, were exercisable by ILEA in relation to, or in relation to registered pupils at, any school which is designated in relation to any such council or in relation to any other local education authority by an order under subsection (1)(b) or (2)(b) above shall, as from that date, be exercisable instead by that council or (as the case may be) by that authority.
- (8) Where after the date on which an order under subsection (1) or (2) above is made any school designated under paragraph (a) of either of those subsections becomes a grant-maintained school, it shall be treated for the purposes of subsection (7) above as having been designated under paragraph (b) of subsection (1) or (2) (as the case may require).

#### Textual Amendments

**F161** Words in s. 166(5) substituted (1.10.1993) by 1993 c. 35, s. 307(1), **Sch. 19 para.132**; S.I. 1993/1975, art. 9, **Sch.1**.

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## **167 Removal of certain governors.**

- (1) On the abolition date—
  - (a) any person appointed by ILEA as governor of any institution to which this subsection applies; and
  - (b) any person co-opted as governor of any such institution;shall cease to hold office.
- (2) Subsection (1) above applies to the following institutions—
  - (a) any school which immediately before the abolition date was maintained by ILEA; and
  - (b) any institution other than a school which immediately before that date was maintained or assisted by ILEA.
- (3) On that date any person appointed by an inner London council as governor of a primary school by virtue of any provision included in the instrument of government of the school in accordance with section 7(1) of the 1986 Act (appointment of governor by minor authority) shall cease to hold office.
- (4) On and after that date the instrument of government of any school to which that section applies shall have effect as if it made the provision that would have been required by section 3 of that Act if section 7(1) had not applied (and with the omission of any provision included by virtue of subsection (6)(a) of section 7).
- (5) Neither subsection (1) nor subsection (3) above shall be taken as prejudicing any subsequent appointment or co-option as governor of the school or other institution concerned of a person who by virtue of that subsection ceases to hold office as governor of that school or institution.

## **168 Transfers of property, rights and liabilities.**

- (1) The Secretary of State may by an order or orders made at any time before the abolition date provide for the transfer to each inner London council of—
  - (a) such of the property, rights and liabilities of ILEA (other than excepted rights and liabilities) as, in his opinion, need to be so transferred for the purpose of enabling that council properly to perform its LEA functions; and
  - (b) such of the rights and liabilities of ILEA (other than excepted rights and liabilities) as, in his opinion, it is appropriate to transfer to that council for the purposes of or in connection with the exercise by that council by virtue of section 166 of this Act of functions in relation to, or in relation to registered pupils at, any grant-maintained school which were formerly exercisable by ILEA.
- (2) The Secretary of State may by such an order or orders provide for the transfer to any local authority other than an inner London council of such of the property, rights and liabilities of ILEA (other than excepted rights and liabilities) as do not in his opinion fall to be transferred to such a council by virtue of subsection (1) above.
- (3) Any transfer for which provision is made by order under this section may be on such terms, including financial terms, as the Secretary of State thinks fit and the Secretary of State may by order create or impose such new rights or liabilities in respect of what is transferred as appear to him to be necessary or expedient.

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- (4) The Secretary of State may by order confer on any inner London council or local authority to which property is transferred by or under the order any statutory functions which before the abolition date were exercisable in relation to that property by ILEA.
- (5) In this section “excepted rights and liabilities” means rights and liabilities arising under contracts of employment between ILEA and its employees.

## **169 Approval of management structure and senior appointments in initial period.**

- (1) References in this section to the management structure of an inner London council for the purpose of the exercise of its LEA functions are references to any aspect of the council’s organisation and its arrangements for managing its affairs in relation to the exercise of those functions which the Secretary of State determines ought to be subject to approval under this section with a view to securing the proper performance by the council of those functions during the initial period.

In this section “the initial period” means the period of five years beginning with the abolition date.

- (2) The reference in subsection (1) above to a council’s organisation and its arrangements for managing its affairs in relation to the exercise of its LEA functions includes in particular its staffing arrangements and the determination of the duties to be performed by its employees concerned in the exercise of those functions.
- (3) It shall be the duty of each inner London council to adopt and to maintain during the initial period a management structure for the purpose of the exercise of its LEA functions which is for the time being approved by the Secretary of State under this section.
- (4) Such a council shall not before the end of the initial period make an appointment to which this subsection applies except after consultation with the Secretary of State.
- (5) Subsection (4) above applies to the appointment of a person—
  - (a) to be the chief education officer of the council; or
  - (b) to any designated post forming part of the management structure of the council for the time being approved under this section.
- (6) In subsection (5)(b) above “designated” means designated for the purposes of subsection (4) above by a direction given by the Secretary of State.
- (7) For the purposes of the consultation required by subsection (4) above a council proposing to make an appointment to which that subsection applies shall send to the Secretary of State particulars showing the name, previous experience and qualifications of the persons from whom the council proposes to make a selection.
- (8) If the Secretary of State is of opinion that any person whose name is submitted to him under subsection (7) above is not a fit person to hold the appointment in question, he may give a direction prohibiting that person’s appointment.

### *Staff*

## **170 Establishment and functions of staff commission.**

- (1) The Secretary of State shall establish a staff commission for the purpose of—

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- (a) advising the Secretary of State on the steps necessary to safeguard the interests of the staff employed by relevant authorities so far as affected by any provision made by or under this Part;
  - (b) considering and keeping under review—
    - (i) the arrangements for the recruitment of staff by those authorities in consequence of any such provision; and
    - (ii) the arrangements for any transfer of the staff of those authorities in consequence of any such provision; and
  - (c) considering such staffing problems arising in consequence of, and such other matters relating to staff of any body affected by, any such provision as may be referred to the commission by the Secretary of State.
- (2) The Secretary of State may give directions to the staff commission as to their procedure and to any relevant authority with respect to—
- (a) the implementation of any advice given by the commission; and
  - (b) the payment by a relevant authority of any expenses incurred by the commission in doing anything requested by the authority;
- and it shall be the duty of the commission and of a relevant authority to comply with any direction given to it under this subsection.
- (3) Any expenses incurred by the staff commission under this section and not recovered from a relevant authority shall be paid by the Secretary of State.
- (4) The relevant authorities for the purposes of this section are—
- (a) ILEA and the inner London councils;
  - (b) the London Residuary Body; and
  - (c) any local authority other than an inner London council to which functions or property of ILEA will be or have been transferred by order under section 168 of this Act.

## **171 Remuneration of employees.**

- (1) If—
- (a) ILEA proposes to fix for any employee or class of employees of ILEA a rate of remuneration greater than the rate for the time being applicable to that employee or class of employees; and
  - (b) the new rate is to take effect as from a date (“the proposed date of increase”) falling after 30th September 1989;
- ILEA shall notify each inner London council in writing of the proposal and the proposed date of increase.
- (2) The employee or class of employees to whom any such proposal relates shall not be paid at the new rate—
- (a) until the end of the period of four weeks beginning with the date immediately following the notification date; and
  - (b) where a complaint is made in accordance with subsection (3) below, unless payment at the new rate is authorised by the Secretary of State.
- (3) Before the end of the period of two weeks beginning with the date immediately following the notification date, any three or more of the inner London councils may complain to the Secretary of State if they consider that the new rate is excessive having

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regard to levels of remuneration applicable in the case of persons employed by local authorities on work comparable to that on which the employee or class of employees concerned is employed.

- (4) On receipt of such a complaint the Secretary of State—
- (a) shall notify ILEA in writing of the complaint; and
  - (b) shall afford—
    - (i) to ILEA;
    - (ii) to each of the inner London councils; and
    - (iii) to such persons appearing to him to be representative of employees of ILEA as he considers appropriate in relation to the employee or class of employees concerned;
 an opportunity of making representations to him with respect to the proposal.
- (5) After considering any representations made to him under subsection (4)(b) above, the Secretary of State may—
- (a) authorise payment at the new rate; or
  - (b) refuse to authorise such payment.
- (6) The Secretary of State shall give written notification of his decision to ILEA, to each of the inner London councils, and to any other persons who made representations to him with respect to the proposal under subsection (4)(b) above.
- (7) Subsection (8) below applies where by virtue of subsection (2) above the employee or class of employees to whom any proposal to which subsection (1) above relates is not paid at the new rate until after the proposed date of increase, and either—
- (a) no complaint is made in accordance with subsection (3) above in respect of the new rate; or
  - (b) such a complaint is made but payment at the new rate is authorised by the Secretary of State.
- (8) In any case to which this subsection applies, for the purpose of determining—
- (a) the terms of any contract affected by section 172 of this Act; and
  - (b) any compensation payable in accordance with section 173 of this Act;
- the employee or class of employees concerned shall be regarded as having been entitled under his or their contracts of employment with ILEA to remuneration at the new rate as from the proposed date of increase.
- (9) In this section “the notification date” means, in relation to any proposal to which subsection (1) above applies, the date by which all the inner London councils have received notification of the proposal under that subsection.

## **172 Power to transfer staff.**

- (1) This section applies to any person who—
- (a) immediately before the abolition date is in the service of ILEA under a contract of employment which would have continued but for the abolition of ILEA; and
  - (b) is designated for the purposes of this section by an order made by the Secretary of State.

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- (2) The contract of employment between a person to whom this section applies and ILEA shall not be terminated by the abolition of ILEA but shall have effect as from the abolition date as if originally made between him and such successor authority (“the new employer”) as may be specified in relation to that person by the order designating him for the purposes of this section.
- (3) Without prejudice to subsection (2) above—
  - (a) all ILEA’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred on the abolition date to the new employer; and
  - (b) anything done before that date by or in relation to ILEA in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the new employer.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) In this section “successor authority” means—
  - (a) an inner London council;
  - (b) the London Residuary Body; and
  - (c) any local authority other than an inner London council to which functions or property of ILEA are transferred by order under section 168 of this Act.

### **173 Compensation for loss of employment or loss or diminution of emoluments.**

- (1) This section applies to any person who suffers loss of employment or loss or diminution of emoluments which—
  - (a) is attributable to any provision made by or under this Part; and
  - (b) occurs in the circumstances mentioned in subsection (2) below.
- (2) Those circumstances are—
  - (a) in the case of loss of employment, the employment in question is employment with ILEA or the London Residuary Body and the loss is suffered on or after the abolition date; and
  - (b) in the case of loss or diminution of emoluments, the loss or diminution arises from the termination of the employment of the person concerned with ILEA or that Body and is suffered on or after such date as may be specified in regulations made for the purposes of this section under section 24 of the <sup>M18</sup>Superannuation Act 1972 (“compensation regulations”).
- (3) Compensation in respect of any such loss or diminution suffered by a person to whom this section applies shall, subject to subsection (4) below, be paid only in accordance with compensation regulations; and accordingly neither ILEA nor the London Residuary Body shall pay any such compensation under any other statutory provision, by virtue of any provision in a contract or otherwise.
- (4) Subsection (3) above shall not preclude the making of any payment to which a person is entitled by virtue of contractual rights acquired by him before 21st November 1987.



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- (5) Compensation regulations shall not provide compensation for a person to whom this section applies in respect of any such loss or diminution as is mentioned in subsection (1) above so far as attributable to the termination on or before the abolition date of a contract made after 17th February 1988 which provides for the employment of that person for a fixed term extending beyond the abolition date.
- (6) For the purpose of determining under section 82(5) or (6) or 84(3) of the <sup>M19</sup>Employment Protection (Consolidation) Act 1978—
- (a) whether the provisions of a new contract offered to a person employed by ILEA or the London Residuary Body differ from the corresponding provisions of his previous contract; and
  - (b) whether employment under the new contract is suitable in relation to that person;
- there shall be treated as forming part of the remuneration payable under the new contract any compensation to which that person is or, if he accepted the offer, would be entitled in accordance with this section.
- (7) Except as provided in subsection (6) above, nothing in this section shall be construed as affecting any entitlement to a redundancy payment under Part VI of the Act of 1978 mentioned above or to any payment by virtue of any provision of the Act of 1972 mentioned above other than section 24.

#### Marginal Citations

**M18** 1972 c. 11.

**M19** 1978 c. 44.

#### **174 Continuity of employment in certain cases of voluntary transfer.**

- (1) This section applies to a person who at any time on or after such date as may be specified by order made by the Secretary of State ceases to be employed by ILEA or the London Residuary Body (his “former employer”) if—
- (a) the termination of his employment is attributable to any provision made by or under this Part;
  - (b) he is subsequently employed by another person (his “new employer”); and
  - (c) by virtue of section 84, 94 or 95 of the <sup>M20</sup>Employment Protection (Consolidation) Act 1978 (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under Part VI of that Act.
- (2) Where this section applies to a person Schedule 13 to that Act (computation of period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions, that is to say—
- (a) the period of employment of that person with his former employer shall count as a period of employment with his new employer; and
  - (b) the change of employer shall not break the continuity of the period of employment.
- (3) Where this section applies to a person the period of his employment with his former employer shall count as a period of employment with his new employer for the

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purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

**Marginal Citations**

M20 1978 c. 44.

**175 Offers of employment by inner London councils.**

- (1) If at any time after such date as may be specified for the purposes of this section by an order made by the Secretary of State ("the specified date") an inner London council proposes to engage a person who is currently in the employment of ILEA it shall, if reasonably practicable, enter into, or offer to enter into, a contract of employment with him that meets the requirements of subsection (2) below.
- (2) The contract must be such that the employment of the person concerned by the council will or would take effect either immediately on the ending of his employment by ILEA or after an interval of not more than four weeks after the ending of that employment.
- (3) If an inner London council enters into a contract of employment with a person who has received or is entitled to receive a redundancy payment under Part VI of the Employment Protection (Consolidation) Act 1978—
  - (a) by reason of his dismissal by ILEA at any time after the specified date; or
  - (b) by virtue of section 178(1) of this Act;the council shall, if the Secretary of State so directs, pay to the London Residuary Body an amount equal to that payment.
- (4) The Secretary of State shall not give a direction under subsection (3) above in respect of the employment of any person by an inner London council if the council satisfies him—
  - (a) that it could not reasonably have made that person an offer of employment on the terms and conditions of the contract mentioned in that subsection which, if accepted by him, would have precluded his entitlement to the redundancy payment; or
  - (b) that the council has made such an offer but that the person concerned acted reasonably in refusing it or that he could reasonably have refused such an offer if it had been made by the council.
- (5) In any case in which an amount is payable by a council under subsection (3) above the council shall also pay to the London Residuary Body an amount equal to any compensation under the regulations referred to in section 173(2) of this Act which has been paid or is payable to the person concerned before the time when he enters into the contract.
- (6) A former member of an inner London council shall not be disqualified by virtue of section 116 of the <sup>M21</sup>Local Government Act 1972 for being appointed by that council to a paid office if—
  - (a) he is, or at any time between the passing of this Act and the abolition date has been, in the employment of ILEA; and
  - (b) he is appointed not later than twelve months after that date and with the consent of the Secretary of State.

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- (7) For the purposes of subsection (2) above employment ending on a Friday or a Saturday shall be treated as ending immediately before the following Monday and the interval of four weeks shall be calculated as if any such employment had ended at that time.

**Marginal Citations**

**M21** 1972 c. 70.

*Functions of London Residuary Body*

**176 Provision of services and facilities by London Residuary Body.**

- (1) Subject to subsection (3) below, the Secretary of State may at any time by a direction require the London Residuary Body to provide, for the inner London councils and such other authorities or bodies or classes of authorities or bodies as may be specified in the direction, services or facilities of any description so specified.
- (2) Any such direction shall specify the date (which must be a date falling on or after the abolition date) as from which the services or facilities in question are to be provided.
- (3) The descriptions of services or facilities that may be so specified—
  - (a) must be services or facilities of a description provided by ILEA at the date of the direction or (where the direction is given on or after the abolition date) immediately before the abolition date; and
  - (b) subject to paragraph (a) above, include services or facilities of any description involving the provision for any council, authority or body of supplies required by them for the purposes of or in connection with the exercise of any of their functions (whether or not relating to education).
- (4) It shall be the duty of the London Residuary Body to provide any services or facilities to which a direction under subsection (1) above relates—
  - (a) as from the date specified in the direction under subsection (2) above; and
  - (b) on such terms (including terms requiring the making of payments to the London Residuary Body by any council, authority or body to whom such services or facilities are provided) as may be specified in the direction.
- (5) Any such direction may require such services or facilities to be provided on different terms for—
  - (a) the inner London councils and any other authorities or bodies or classes of authorities or bodies specified in the direction; and
  - (b) different authorities or bodies or classes of authorities or bodies so specified.
- (6) Subject to subsection (7) below, the London Residuary Body may by agreement with one or more inner London councils, and on such terms as to payment or otherwise as the parties consider appropriate, provide the council or councils concerned with services or facilities of any description it would be within the power of the council or councils concerned to provide themselves in the exercise of any of their functions (whether or not relating to education).
- (7) Any such agreement shall be subject to the approval of the Secretary of State.

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### 177 Repayment by London Residuary Body of loans to ILEA.

- (1) Except so far as otherwise provided by any provision made under this Part, all the rights and liabilities of ILEA on the abolition date in respect of money borrowed by ILEA shall on that date become rights and liabilities of the London Residuary Body and those liabilities (both as respects principal and interest) shall be charged on the revenues of that body.
- (2) For the purpose of providing the London Residuary Body with money to discharge those liabilities each inner London council shall on the abolition date be deemed to have borrowed from that body such sum as may be specified by or determined in accordance with an order made by the Secretary of State.
- (3) That sum shall be deemed to have been borrowed on such terms as to repayment and the payment of interest as may be so specified or determined.
- (4) ..... <sup>F162</sup>
- (5) An inner London council may, during the period within which it is required to discharge its liabilities in respect of principal under subsection (2) above, borrow money for the purpose of discharging those liabilities.
- (6) In subsection (1) above the reference to money borrowed by ILEA includes a reference to any money borrowed by any other authority whose rights and liabilities in respect of that money have been transferred to ILEA.

#### Textual Amendments

**F162** S. 177(4) repealed with saving by [Local Government and Housing Act 1989](#) (c. 42, SIF 81:1), s. 194(2), **Sch. 12 Part I**, S.I. 1990/431, Sch. 1 para. 1(a) (as amended by S.I. 1990/762, **art. 4(a)**)

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

**C115** S. 177(2)(3) restricted (1. 4. 1992) by S.I. 1992/501, **arts. 1(1), 4(1)(2)** (revoking S.I. 1990/775)

### 178 Liability of London Residuary Body for redundancy and compensation payments.

- (1) Any person who—
  - (a) immediately before the abolition date is in the service of ILEA under a contract of employment which would have continued but for the abolition of ILEA; and
  - (b) is not designated for the purposes of section 172 of this Act;shall be entitled to receive from the London Residuary Body any redundancy payment under Part VI of the <sup>M22</sup>Employment Protection (Consolidation) Act 1978 which he would have been entitled to receive from ILEA if ILEA had not been abolished but had dismissed him by reason of redundancy immediately before the abolition date.
- (2) As respects any such redundancy payment—
  - (a) the London Residuary Body shall be treated as the employer of the person concerned for the purposes of sections 101, 102, 104, 108 and 119 of that Act (ancillary provisions about redundancy payments);

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- (b) references to the relevant date in sections 81(4), 82(1) and 101 of that Act and in Schedule 4 to that Act shall be construed as references to the day before the abolition date; and
  - (c) the calculation date for the purposes of Part II of Schedule 14 to that Act (calculation of a week's pay) shall be the day before the abolition date.
- (3) Any person who—
- (a) immediately before the abolition date is in the service of ILEA under a contract of employment made on or before 17th February 1988 which is a contract for a fixed term extending beyond the abolition date; and
  - (b) is not designated for the purposes of section 172 of this Act;
- shall, if the contract made no provision for its prior termination by ILEA, be entitled to receive from the London Residuary Body an amount equal to any damages which he would have been entitled to recover from ILEA if ILEA had not been abolished but had dismissed him immediately before the abolition date.
- (4) Any person who—
- (a) immediately before the abolition date is in the service of ILEA under a contract of employment (whether or not for a fixed term) providing for its termination by ILEA on payment of compensation for loss of employment; and
  - (b) is not designated for the purposes of section 172 of this Act;
- shall be entitled to receive from the London Residuary Body an amount equal to the compensation which he would have been entitled to receive from ILEA if ILEA had not been abolished but had terminated the contract immediately before that date.
- (5) In subsection (4) above “compensation for loss of employment” does not include any payment to be made under the contract in lieu of notice.
- (6) Where the amount of compensation payable under a contract differs according to the reasons for its termination the amount payable under subsection (4) above shall be determined on the assumption that the contract was terminated by reason of redundancy within the meaning of the <sup>M23</sup>Employment Protection (Consolidation) Act 1978.

**Marginal Citations**

**M22** 1978 c. 44.

**M23** 1978 c. 44.

**179 Payment of pensions and pensions increase by London Residuary Body.**

- (1) All liabilities of ILEA in respect of pensions payable by it shall on the abolition date become liabilities of the London Residuary Body.
- (2) The reference in subsection (1) above to pensions includes a reference to allowances, grants or other benefits in respect of past service, death, injury or disease (whether of the pensioner or another person) and any such compensation as is mentioned in section 8(1)(b) or (c) of the <sup>M24</sup>Pensions (Increase) Act 1971.
- (3) At the end of Part II of Schedule 2 to that Act (pensions payable out of local funds) there shall be inserted—

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“64C A pension payable by the London Residuary Body, being a pension which would fall within any of the foregoing paragraphs of this Part of this Schedule if references to a local authority had continued to include references to the Inner London Education Authority.”

- (4) In paragraph 1(5) of Schedule 3 to that Act (cases where increase of pension is to be reimbursed by the last employing authority) after “64B” there shall be inserted the words “and 64C”.
- (5) The London Residuary Body shall pay—
- (a) any increase which by virtue of regulations under section 5(2) of that Act would have been payable on or after the abolition date by ILEA; and
  - (b) any payment which is analogous to a pensions increase and would have been payable on or after that date by ILEA by virtue of regulations under section 13(3) of that Act.

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

**C116** S. 179: functions, rights and liabilities of the London Residuary Body transferred to the London Pension Fund Authority (1. 4. 1992) by S.I. 1992/331, arts. 1(1), 2(1)(e)(4), 3, 7

**Marginal Citations**

**M24** 1971 c. 56.

**180 Custody of residuary property, etc.**

- (1) On the abolition date all residuary property, rights and liabilities of ILEA shall vest in the London Residuary Body.
- (2) In subsection (1) above “residuary property, rights and liabilities” means—
- (a) any property for the vesting of which provision is not otherwise made by or under this Part; and
  - (b) subject to subsection (3) below, any rights and liabilities which are not transferred, extinguished or otherwise dealt with by any provision so made.
- (3) This section shall not be construed—
- (a) as continuing in force any contract of employment made by ILEA; or
  - (b) as imposing any liability on the London Residuary Body in respect of the termination of any such contract by the abolition of ILEA;
- but the rights and liabilities to which this section applies shall include any rights and liabilities attributable to anything done or omitted under or in respect of such a contract before the abolition date except any liability to make a payment prohibited by section 173(3) of this Act.
- (4) The Secretary of State may by order confer on the London Residuary Body any statutory functions which before the abolition date were exercisable by ILEA in relation to any property, rights or liabilities which are vested in that body by this section.



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- (5) Without prejudice to section 232(5) of this Act, the provision that may be made by an order under subsection (4) above includes provision amending any enactment or any instrument made under any enactment.

## **181 Power of London Residuary Body to pay compensation.**

- (1) The London Residuary Body may pay compensation—
- (a) to any former officer of ILEA who sustained an injury in the course of his employment with ILEA; or
  - (b) to the widow or widower or child of any former officer of ILEA who, in the course of his employment with ILEA, died or sustained an injury resulting in death.
- (2) Subsection (1) above applies irrespective of whether the employment with ILEA of the officer in question came to an end on or before the abolition date.
- (3) The London Residuary Body may pay compensation to any person in respect of loss suffered by him in consequence of any damage to property in respect of which it appears to them that a claim might have been brought against ILEA had ILEA not been abolished.
- (4) Any compensation payable under this section may be paid either—
- (a) by way of a lump sum; or
  - (b) by way of periodical payments of such amounts and payable at such times and for such periods as the London Residuary Body may from time to time determine having regard to all the circumstances of the case.
- (5) The payment of compensation under this section shall not affect any right or claim to damages or compensation which—
- (a) any such officer as is mentioned in subsection (1)(a) or (b) above or his widow or widower or child; or
  - (b) any such person as is mentioned in subsection (3) above;
- may have against any person other than the London Residuary Body or, except so far as may be agreed when the compensation is granted, against the London Residuary Body by virtue of section 180 of this Act.

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

**C117** S. 181: functions, rights and liabilities of the London Residuary Body transferred to the London Pensions Fund Authority (1. 4. 1992) by S.I. 1992/331, arts. 1(1), 2(1)(f)(4), 3, 7

## **182 Preparation of ILEA's final accounts.**

- (1) It shall be for the London Residuary Body to discharge in relation to ILEA's accounts for any period ending before the abolition date—
- (a) any functions under the regulations in force under Part III of the <sup>M25</sup>Local Government Finance Act 1982 which would have fallen to be discharged on or after that date by ILEA or any of its officers; and
  - (b) any functions under those regulations which fell to be so discharged before that date but have not been discharged.



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- (2) As respects anything falling to be done on or after the abolition date in relation to those accounts the provisions of Part III of that Act shall have effect as if those accounts were accounts of the London Residuary Body but so that—
  - (a) the documents to which an auditor has the right of access under section 16(1) shall include any documents relating to ILEA which are in the possession of an inner London council; and
  - (b) the persons who may be required to give information or an explanation under section 16(2) or 28(1) shall include any person who was an officer or member of ILEA at any time during the period to which the accounts relate and who is an officer or member of such a council.
- (3) Any requirement under section 29(1) of that Act in respect of a claim, return or account of ILEA, and any consent under section 30(1)(a) of that Act in respect of information relating to ILEA, may, on or after the abolition date, be made or given by the London Residuary Body.
- (4) That body shall have a right of access at all reasonable times to all such documents as are mentioned in subsection (2)(a) above which appear to it to be needed for the purpose of discharging its functions under this section and may require any such person as is mentioned in subsection (2)(b) above to give it any such information or explanation as it thinks necessary for that purpose.
- (5) Any person who without reasonable excuse fails to comply with any requirement under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and to an additional fine not exceeding £40 for each day on which the offence continues after his conviction of the offence.

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**Marginal Citations**

M25 1982 c. 32.

**183 Directions of Secretary of State.**

- (1) In exercising the functions conferred on it by or under this Part the London Residuary Body shall comply with any directions given to it by the Secretary of State.
- (2) No transaction entered into by that body in exercise of any of those functions shall be invalid by reason only of a failure to comply with any direction given under this section.
- (3) The Secretary of State shall publish any directions given by him under this section.

*Financial provisions and winding up of London Residuary Body*

**184 Preparatory expenditure of inner London councils.**

- (1) Without prejudice to the powers conferred by section 137 of the <sup>M26</sup>Local Government Act 1972 (which authorises a local authority to incur expenditure which it considers is in the interests of its area or inhabitants of its area), an inner London council may incur expenditure in making preparations for the exercise on and after the abolition date of its LEA functions.

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- (2) Where before the passing of this Act any such council has incurred such expenditure, that expenditure shall be treated after the passing of this Act as authorised by subsection (1) above.
- (3) The Secretary of State may pay grants to an inner London council in respect of such expenditure incurred or to be incurred by the council in any financial year ending before the abolition date.
- (4) The Secretary of State may make any payment in respect of such a grant subject to compliance by the council concerned with such conditions as he may determine.

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**Marginal Citations**

**M26** 1972 c. 70.

**185 London Residuary Body: financial provisions.**

- (1) The London Residuary Body may in respect of any financial year beginning on or after the abolition date make levies on the rating authorities in inner London to meet all liabilities falling by virtue of this Part to be discharged by it for which provision is not otherwise made.
- (2) The amount to be levied by that body in respect of any financial year from each such authority shall be determined by apportioning the total amount to be levied by that body under this section in respect of that year between those authorities in proportion to the population of their respective areas.
- (3) For the purposes of subsection (2) above the population of any area shall be taken to be—
  - (a) in relation to any financial year in respect of which the London Residuary Body makes any levy under section 74 of the 1985 Act, the number applicable by virtue of subsection (2) of that section; and
  - (b) in relation to any other financial year, the number estimated by the Registrar General and certified by him to the Secretary of State by reference to such date as the Secretary of State may from time to time direct.
- (4) In section 74 of the 1985 Act, as it applies in relation to the London Residuary Body—
  - (a) subsection (1) shall not apply in relation to liabilities of that body to which subsection (1) above applies; and
  - (b) the reference in subsection (2) to the total amount to be levied by that body in respect of any financial year shall not include any amount to be so levied by virtue of this section;

but subsections (3) to (5) of that section (procedure for the levy and application of enactments relating to precepts and rates) shall apply in relation to a levy under this section as they apply in relation to a levy under that section.
- (5) A demand issued under subsection (3) of that section to a rating authority in inner London relating to a payment or payments in respect of a levy under that section may relate also to a payment or payments in respect of a levy under this section, but if it does so shall state separately the payment or payments required in respect of each levy.
- (6) Without prejudice to the borrowing powers of the London Residuary Body by virtue of section 75 of the 1985 Act but subject to subsection (7) below, that body may borrow

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by way of temporary loan or overdraft from a bank or otherwise any sums which it may require for the purpose of defraying any expenses incurred by it before the abolition date which are attributable to any provision made by or under this Part.

- (7) The sums borrowed by that body under subsection (6) above—
  - (a) shall not exceed such amount as the Secretary of State may determine; and
  - (b) shall be repaid before the end of the financial year beginning with the abolition date.
- (8) Section 77 of the 1985 Act (treatment and distribution of capital and other money) shall apply in relation to capital money received by the London Residuary Body of any description specified for the purposes of this section by an order made by the Secretary of State as if—
  - (a) subsection (2) were omitted and any reference to an authority or authorities to which subsection (1) of that section applies were a reference to a [F163 charging authority] or (as the case may be) the [F163 charging authorities] in inner London; and
  - (b) the references in subsection (4) of that section to the area for which that body is established and to a levy were respectively references to inner London and to a levy under this section.
- (9) Except as provided by subsection (8) above section 77 shall not apply in relation to capital money of a description within that subsection.
- (10) The Secretary of State may by order provide, in relation to capital money received by the London Residuary Body of any description not within subsection (8) above, for the application of that money, or of such part of that money as may be specified in the order, for such purposes connected with the abolition of ILEA as may be so specified.
- (11) In this section—
  - (a) references to inner London are references to the area comprising the areas of all the inner London councils; and
  - (b) “capital money” has the same meaning as in section 77 of the 1985 Act.

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**Textual Amendments**

**F163** Words substituted by S.I. 1990/268, art. 2(1), Sch.

**186 Transitional functions of London Residuary Body in respect of block grant.**

- (1) Any payment which by virtue of any provision of Part VI of the <sup>M27</sup>Local Government, Planning and Land Act 1980 would but for this Act have fallen to be made on or after the abolition date by or to ILEA in respect of block grant payable for a year ending before that date shall instead be made by or to the London Residuary Body.
- (2) Any information, notice, representation or request under section 65, 66 or 67 of that Act which but for this Act would have fallen to be given or made by or to ILEA on or after the abolition date in respect of block grant payable for a year ending before that date shall instead be given or made by or to the London Residuary Body.

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### Marginal Citations

M27 1980 c. 65

## 187 Winding-up of London Residuary Body.

- (1) Except as respects any of its functions under this Part for the discharge of which provision will be or is likely to be required after the end of the period of three years beginning with the abolition date, it shall be the duty of the London Residuary Body to use its best endeavours to secure that its work under this Part is completed as soon as practicable and in any event before the end of that period.
- (2) As respects—
  - (a) any such functions; and
  - (b) any property, rights and liabilities transferred to it, or held, acquired or incurred by it by virtue of, or in the exercise of any of its functions under, this Part;

that body shall if it considers it appropriate to do so make such arrangements as are practicable for their transfer to a local authority or to some other body or bodies or submit proposals to the Secretary of State for effecting such transfers by orders made by him for the purpose.
- (3) Any such arrangements or proposals shall be made or (as the case may be) submitted, so far as practicable, before the end of the period of two years beginning with the abolition date.
- (4) Not later than the end of that period of two years, the London Residuary Body shall submit to the Secretary of State a scheme for the winding up of that body and the disposal of its remaining functions, property, rights and liabilities so far as not dealt with in pursuance of subsection (2) above.
- (5) The Secretary of State may by order provide—
  - (a) for any such transfer or disposal as is mentioned in subsection (2) above; and
  - (b) for giving effect (with or without modifications) to any scheme submitted to him under subsection (4) above.
- (6) The power under subsection (5)(a) above applies irrespective of whether or not the London Residuary Body has submitted proposals with respect to the transfer or disposal in question and, if it has, whether the provision made is in accordance with those proposals or not.
- (7) Without prejudice to the generality of the power under subsection (5) above and to section 232(5) of this Act, the provision that may be made by an order under subsection (5) above includes provision—
  - (a) amending any enactment or any instrument made under an enactment; or
  - (b) establishing new bodies corporate to receive any functions, property, rights or liabilities transferred by the order.

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### *Control of ILEA's contracts and disposals*

#### **188 Control of contracts.**

- (1) This section applies to any contract in respect of which the consideration exceeds £15,000 and which is entered into after 22nd July 1987.
- (2) Except with the consent of the Secretary of State, ILEA shall not after the passing of this Act enter into a contract to which this section applies.
- (3) Subject to section 191(3)(b) of this Act, if at any time after 22nd July 1987 and before the passing of this Act ILEA has entered into a contract which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by ILEA.
- (4) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any contract to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to those conditions, given under this section.
- (6) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 190(2) of this Act) a person entering into a contract with ILEA shall not be concerned to enquire whether any consent required by this section has been given or complied with.
- (7) Where the consideration or any of the consideration under a contract is not in money, the limit specified in subsection (1) above shall apply to the value of the consideration.
- (8) This section does not apply to—
  - (a) a contract to dispose of land or to grant or dispose of any interest in land; or
  - (b) a contract of employment between ILEA and a person employed by it.

#### **189 Control of disposals.**

- (1) Subject to subsection (9) below, this section applies to any disposal of land which is made after 22nd July 1987.
- (2) Except with the consent of the Secretary of State, ILEA shall not after the passing of this Act make a disposal to which this section applies.
- (3) Subject to section 191(3)(b) of this Act, if at any time after 22nd July 1987 and before the passing of this Act ILEA has made a disposal which would have been in contravention of the provisions of subsection (2) above if they had then been in force, the same consequences shall follow as if those provisions had been contravened by ILEA.
- (4) Any consent for the purposes of this section may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.

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- (5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies shall be treated for the purposes of this section as a consent, or a consent subject to those conditions, given under this section.
- (6) This section has effect notwithstanding anything in section 123 of the <sup>M28</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 190 of this Act) a person acquiring land, or entering into a contract to acquire land, from ILEA shall not be concerned to enquire whether any consent required by this section has been given or complied with.
- (8) In this section references to disposing of land include references to—
  - (a) granting or disposing of any interest in land;
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  - (c) granting an option to acquire any land or any such interest.
- (9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

**Marginal Citations**

**M28** 1972 c. 70.

**190 Wrongful contracts or disposals.**

- (1) This section applies where ILEA—
  - (a) has entered into any contract to which section 188 of this Act applies; or
  - (b) has made any disposal to which section 189 of this Act applies;
 in contravention of that section (referred to below in this section as a wrongful contract or, as the case may be, a wrongful disposal).
- (2) In the case of a wrongful contract or a wrongful disposal which consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the aggrieved body may by notice in writing served on the other party to the contract repudiate the contract—
  - (a) in the case of a wrongful contract, at any time before the contract is performed;
  - (b) in the case of a wrongful disposal, at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) In the case of a wrongful disposal which consists in granting an option to acquire any land or interest in land, the aggrieved body may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by ILEA.

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- (5) In the case of a wrongful disposal which consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above)—
- (a) the aggrieved body may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal; . . . <sup>F164</sup>
  - (b) . . . . . <sup>F165</sup>
- (6) The <sup>M29</sup>Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above by an aggrieved body (other than the London Residuary Body) as if references in sections 12 and 13 of that Act to every owner of the land included references to the London Residuary Body.
- (7) Where an aggrieved body (other than the London Residuary Body) acquires any interest in land by a compulsory purchase under subsection (5) above, the body shall be entitled to recover from the London Residuary Body an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the council in respect of that compensation in accordance with section 11 of the <sup>M30</sup>Compulsory Purchase Act 1965; and
  - (b) the amount of the costs and expenses incurred by the body in connection with the making of the compulsory purchase order.
- (8) A body is an aggrieved body for the purposes of this section—
- (a) in relation to a wrongful contract, if rights or liabilities under the contract have been transferred to, or have vested in, the body by or under this Part;
  - (b) in relation to a wrongful disposal of a description falling within subsection (2) or (3) above, if the land proposed to be disposed of, or in which an interest is proposed to be granted, has been so transferred or has so vested;
  - (c) in relation to a disposal of a description falling within subsection (5) above, if (but for the disposal)—
    - (i) the interest disposed of would have been so transferred or would have so vested; or
    - (ii) where the disposal consists in the granting of an interest in land, the land in which the interest was granted would have been so transferred, or would have so vested, free of the interest.

**Textual Amendments**

**F164** Word repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), [Sch. 12 Part I](#)

**F165** Ss. 190(5)(b), 201(5)(b) repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), [Sch. 12 Part I](#)

**Marginal Citations**

**M29** 1981 c. 67.

**M30** 1965 c. 56.



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## 191 Penalties for contravention of section 188 or 189.

- (1) If, on an application under this section, it appears to the High Court that ILEA has entered into a contract in contravention of section 188 of this Act or has made a disposal in contravention of section 189 of this Act, the court may order any person responsible for authorising the contract or disposal who is, or was at the time of the conduct in question, a member of ILEA—
  - (a) to be disqualified for being a member of ILEA; and
  - (b) to be disqualified for a specified period for being a member of any local authority.
- (2) Where the court has power to make an order under subsection (1) above in respect of any person, it may also order him to pay to ILEA or, in the case of an order made on or after the abolition date, to the London Residuary Body a sum not exceeding—
  - (a) in the case of a contract in contravention of section 188, an amount equal to the amount or value of the consideration under the contract;
  - (b) in the case of a disposal in contravention of section 189, an amount equal to the amount or value of the consideration for the disposal or, if there is no consideration or it is less than the market value of what was disposed of, an amount equal to that market value.
- (3) No order shall be made under this section in respect of any person—
  - (a) if the court is satisfied that he acted in the belief that the contract or disposal had the consent of the Secretary of State and that any conditions attached to the consent had been complied with; or
  - (b) where the contract was entered into, or the disposal was made, on or before 17th February 1988.
- (4) An application under this section may be made by any of the following—
  - (a) an inner London council;
  - (b) a local government elector for the area of such a council;
  - (c) the London Residuary Body; and
  - (d) any local authority other than an inner London council to which property, rights or liabilities of ILEA will be or have been transferred by order under section 168 of this Act.
- (5) In sections 80(1)(e), 86(b) and 87(1)(d) of the <sup>M31</sup>Local Government Act 1972 references to Part III of the <sup>M32</sup>Local Government Finance Act 1982 shall include references to this section.

### Marginal Citations

**M31** 1972 c. 70.

**M32** 1982 c. 32.

*Miscellaneous and supplementary*

## 192 Charities.

- (1) Where immediately before the abolition date—

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- (a) any property is held exclusively for charitable purposes by ILEA as sole trustee; and
  - (b) the charity is primarily for the benefit of the area of a single inner London council;that property shall on that date vest for the like purposes in that council.
- (2) Where immediately before that date any power with respect to any such charity as is mentioned in subsection (1)(b) above was under the trusts of the charity vested in, or in the holder of any office connected with, ILEA, that power shall on that date vest in, or in the holder of the corresponding office connected with, the inner London council concerned.
- (3) Where in the case of any such power vested in the holder of any office connected with ILEA there is no corresponding office connected with the inner London council concerned, that power shall on that date vest in the holder of such other office connected with that council as the Charity Commissioners may with the consent of that council and the office-holder concerned appoint.
- (4) Where immediately before that date—
  - (a) any property is held exclusively for charitable purposes by ILEA as sole trustee; and
  - (b) subsection (1) above does not apply to that property;that property shall on that date vest for the like purposes in the London Residuary Body or in such other person as the Charity Commissioners may appoint.
- (5) Where immediately before that date any power with respect to any charity, other than any such charity as is mentioned in subsection (1)(b) above, was under the trusts of the charity vested in, or in the holder of any office connected with, ILEA, that power shall on that date vest in the London Residuary Body or in such other person as the Charity Commissioners may appoint.
- (6) References above in this section to a power with respect to a charity shall not include references to any power of any person by virtue of being a charity trustee of that charity; but where under the trusts of any charity the charity trustees immediately before the abolition date included ILEA or the holder of an office connected with ILEA then, as from that date, those trustees shall instead include—
  - (a) such of the inner London councils;
  - (b) the holder of such office connected with such of those councils; or
  - (c) such other person;as the Charity Commissioners may appoint.
- (7) If in any case an appointment is not made by the Charity Commissioners for the purposes of any of subsections (3) to (6) above before the abolition date, the London Residuary Body shall be treated as having been so appointed pending the making of such an appointment by those Commissioners; but an appointment made by those Commissioners after the abolition date must be made before the end of the period of two years beginning with that date.
- (8) References in subsections (2), (5) and (6) above to a charity shall not include a charity which is a company within the meaning of the <sup>M33</sup>Companies Act 1985 or incorporated by charter.
- (9) For the purposes of this section, a charity is a charity primarily for the benefit of the area of a single inner London council if the charity is established for purposes which

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are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of an area which falls wholly or mainly within that council's area.

- (10) Nothing in this section shall affect the power of Her Majesty, the court or any other person to alter the trusts of any charity.
- (11) In this section “charity”, “charitable purposes”, “charity trustees”, “court” and “trusts” have the same meanings as in [<sup>F166</sup>the Charities Act 1993].

#### Textual Amendments

**F166** Words in s. 192(11) substituted (1.8.1993) by 1993 c. 10, s. 98(1), Sch. 6, para.30

#### Marginal Citations

**M33** 1985 c. 6.

### 193 Information and access to documents.

- (1) For the purpose of facilitating the implementation of any provision made by or under this Part, ILEA and its officers shall furnish any body mentioned in subsection (2) below or, as the case may be, the Secretary of State with all such information relating to ILEA or its functions as that body or the Secretary of State may request.
- (2) The bodies referred to in subsection (1) above are—
- (a) an inner London council;
  - (b) the London Residuary Body;
  - (c) any local authority other than an inner London council to which functions, property, rights or liabilities of ILEA will be transferred by order under section 168 of this Act; and
  - (d) the staff commission established by section 170 of this Act.
- (3) Any information required to be furnished under subsection (1) above shall be furnished within one month of the making of the request or, if that is not reasonably practicable, as soon as reasonably practicable after the expiry of that month.
- (4) Any person authorised in that behalf by the London Residuary Body shall be entitled on producing, if so required, evidence of his authority—
- (a) at all reasonable times to inspect and make copies of any document belonging to or under the control of ILEA; and
  - (b) to require copies of any such document to be delivered to him.
- (5) References in subsection (4) above to copies of a document include references to copies of part of it.
- (6) In subsections (4) and (5) above “document” includes any record of information and, where the record is not in legible form, the rights conferred by subsection (4) above include the right to require the information to be made available in legible form for inspection or copying and to require copies of it in that form to be delivered.

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#### **194 Concurrent employment.**

- (1) A person in the service of ILEA may enter into a contract of employment with a successor authority for the rendering of services by him to that authority concurrently with his service to ILEA.
- (2) Subsection (1) above has effect notwithstanding anything in a person's contract of employment with ILEA and neither his entering into a contract of employment with a successor authority nor anything done by him in pursuance of such a contract shall be a ground for ILEA to terminate his employment.
- (3) In this section "successor authority" means—
  - (a) an inner London council;
  - (b) the London Residuary Body; and
  - (c) any local authority other than an inner London council to which functions or property of ILEA will be transferred by order under section 168 of this Act.

#### **195 Continuity of exercise of functions.**

- (1) The abolition of ILEA shall not affect the validity of anything done by ILEA before the abolition date.
- (2) Anything which at that date is in process of being done by or in relation to ILEA in the exercise of or in connection with any statutory functions which by virtue of any provision made by or under this Part become functions of the inner London councils in respect of their respective areas or (as the case may be) of some other local authority or of the London Residuary Body may be continued by or in relation to the successor authority.
- (3) References in this section, in relation to any statutory functions, to the successor authority are references to the inner London council or other local authority or body by which those functions become exercisable or (as the case may be) become exercisable in respect of the area in question.
- (4) Any instrument made by ILEA in exercise of or in connection with any functions to which subsection (2) above applies, and any other thing done by or in relation to ILEA before the abolition date in exercise of or in connection with any such functions shall, so far as required for continuing its effect on and after that date, have effect as if made by, or done by or in relation to, the successor authority.
- (5) Any reference above in this section to any instrument made by, or to any other thing done by or in relation to, ILEA includes a reference to any instrument or other thing which by virtue of any enactment is treated as having been made by, or done by or in relation to, ILEA.
- (6) So far as is required for giving effect to the preceding provisions of this section—
  - (a) any reference in any document to ILEA shall be construed as a reference to the successor authority; and
  - (b) any reference in any document to ILEA's area (whether as the Inner London Education Area or otherwise), or to any part of that area comprising the successor authority's area, shall be construed as a reference to the successor authority's area.
- (7) For the purposes of subsection (6)(b) above, the London Residuary Body's area shall be taken to be the area comprising the areas of all the inner London councils.

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- (8) Any question under this section as to which is the successor authority in respect of any particular functions may be determined by a direction given by the Secretary of State.
- (9) The preceding provisions of this section—
- (a) are without prejudice to any provision made by this Part in relation to any particular functions; and
  - (b) shall not be construed as continuing in force any contract of employment made by ILEA.
- (10) The Secretary of State may, in relation to any particular functions, by order exclude, modify or supplement any of the preceding provisions of this section or make such other transitional provision as he thinks necessary or expedient.

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

**C118** S. 195(2), (4)–(8) modified by S.I. 1990/124, art. 12(2)

**196 Interpretation of Part III.**

- (1) In this Part—
- “the 1985 Act” has the meaning given by section 164(3);
  - “the abolition date” has the meaning given by section 162(2);
  - “ILEA” has the meaning given by section 162(1)(a);
  - “inner London council” has the meaning given by section 163(2); and
  - “statutory functions” means functions conferred or imposed by an enactment or a statutory instrument.
- (2) References in this Part, in relation to an inner London council, to its LEA functions shall be read in accordance with section 165(1)(a).

**PART IV**

MISCELLANEOUS AND GENERAL

*Establishment and functions of Education Assets Board*

**197 Education Assets Board.**

- (1) There shall be established a body corporate to be known as the Education Assets Board.
- (2) The Board shall consist of a chairman and not less than two nor more than ten other members appointed by the Secretary of State.
- (3) In appointing the members of the Board the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, property management, local government or education.
- (4) The principal functions of the Board are those conferred or imposed on them under sections 198 to 201 of and Schedule 10 to this Act [F167] and section 36 of and Schedule 5

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- to the Further and Higher Education Act 1992]; and the Board may also undertake such other activities as they consider it necessary or expedient to undertake for the purposes of or in connection with carrying out any of their functions.
- (5) The Secretary of State may make grants to the Board of such amounts and subject to such conditions as he may determine.
- (6) In exercising their functions under [<sup>F168</sup>the Education Acts 1944 to [<sup>F169</sup>1993]] the Board shall comply with any directions given to them by the Secretary of State.
- (7) Any local education authority [<sup>F170</sup>and any governing body of a maintained or grant-maintained school] shall give the Board such information as the Board may require for the purposes of the exercise of any of their functions under [<sup>F171</sup>the Education Acts 1944 to 1993].
- [<sup>F172</sup>(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.
- <sup>F172</sup>(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.]
- (8) The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or property held on behalf of, the Crown.
- (9) Schedule 8 to this Act has effect with respect to the Board.

#### Textual Amendments

- F167** Words in s. 197(4) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(a)**; S.I. 1992/831, art. 2, **Sch. 1**.
- F168** Words in s. 197(6) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(b)**; S.I. 1992/831, art. 2, **Sch. 1**.
- F169** Words in s. 197(6) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para.133; S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (as amended by S.I. 1994/436, **art.2**).
- F170** Words in s. 197(7) inserted (1.1.1994) by 1993 c. 35, s. 47(5); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, **art.2**).
- F171** Words in s. 197(7) substituted (1.1.1994) by 1993 c. 35, s. 47(5); S.I. 1993/3106, art. 4, **Sch. 1** (amended by S.I. 1994/436, **art.2**).
- F172** S. 197(7A)(7B) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 43(c)**; S.I. 1992/831, art. 2, **Sch. 1**.

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

- C119** S. 197(7) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
- C120** S. 197(7) applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**.
- C121** S. 197(7B) modified (1.4.1993) by S.I. 1993/563, art. 2(b)(ii), **Sch.2**

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## 198 Transfers under Parts I and II.

- (1) This section applies to any transfer under section <sup>F173</sup> . . . , 126 or 130 of this Act [<sup>F174</sup>or section 38 of the Education Act 1993], and each of those sections is subject to Schedule 10 to this Act.
- (2) That Schedule has effect for the purpose of—
  - (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or other educational institution;
  - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer;
  - (c) providing for identifying and defining the property, rights and liabilities which fall to be so transferred; and
  - (d) making supplementary and consequential provisions in relation to transfers to which this section applies.
- (3) In carrying out the functions conferred or imposed on them by that Schedule, it shall be the duty of the Education Assets Board to secure that each transfer to which this section applies is, so far as practicable, fully effective on the date on which it takes effect under this Act.
- (4) Where in accordance with that Schedule anything falls to be or may be done by the Board for the purposes of or in connection with any such transfer—
  - (a) it may not be done by the transferee; and
  - (b) in doing it the Board shall be regarded as acting on behalf and in the name of the transferee;

and in a case where the transferee is a body corporate established under this Act [<sup>F175</sup>or under the Education Act 1993] paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act [<sup>F175</sup>or under the Education Act 1993].
- (5) Not later than the end of the period of six months beginning with the transfer date applicable in relation to any transfer to a higher education corporation under section 126 of this Act, the Board shall provide [<sup>F176</sup>the higher education funding council] with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Board.
- (6) If in any case within subsection (5) above full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under that subsection, the Board shall provide that Council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for them to do so.

### Textual Amendments

**F173** Words in s. 198(1) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19, para. 134(a)(i), Sch. 21, Pt. I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art.2).

**F174** Words in s. 198(1) inserted (1.1.1994) by 1993 c. 35, s.307(1), Sch. 19, para. 134(a)(ii); S.I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art.2).



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**F175** Words in s. 198(4) inserted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 134(b); S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).

**F176** Words in s. 198(5) substituted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 44**; S.I. 1992/831, art. 2, **Sch. 3**.

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

**C122** S. 198 modified (1.1.1994) by 1993 c. 35, s. 45(4)(5) (with s. 155(11)); S.I. 1993/3106, art. 4, **Sch.1** (as amended by S.I. 1994/436, art.2).

## 199 Loan liabilities excepted from transfer under Part II.

- (1) The amount of any liability of a local education authority in respect of the principal of any loan which is an excepted liability in relation to an institution to which this section applies shall be treated on and after the operative date as having been borrowed from that authority by the default on such terms as to repayment and the payment of interest as may be agreed between the Education Assets Board and the authority or determined by the Secretary of State under this section.
- (2) This section applies to any institution conducted by a higher education corporation and any institution designated under section 129 of this Act; and in relation to any such institution—
  - (a) a liability is an excepted liability for the purposes of this section if it would have been transferred under section 126(3) but for subsection (5)(b) of that section or (as the case may be) under section 130(2) of this Act but for subsection (4)(a) of that section; and
  - (b) references, in relation to an excepted liability, to the default transferee and the operative date are references respectively to the body or persons to whom and the date on which that liability would have been so transferred.
- (3) It shall be the duty of the authority and the Board, whether before or after the operative date, so far as practicable to arrive at such written agreements as may be necessary for determining the amount of any excepted liability and the terms to apply in relation to the liability imposed on the default transferee under this section by reference to that liability.
- (4) Notwithstanding any terms agreed or determined as mentioned in subsection (1) above, any liability in respect of any sum treated by virtue of that subsection as having been borrowed from a local education authority may at any time be discharged by a single payment of a sum equal to the aggregate of—
  - (a) the amount of the principal of the loan outstanding at the time of the payment; and
  - (b) the amount of any interest accrued before that time.
- (5) The Board shall notify the Secretary of State if it appears to them that it is unlikely the case of any matter on which agreement is required to be reached under subsection (3) above that such an agreement will be reached.
- (6) Where the Secretary of State has received a notification from the Board under subsection (5) above he may, whether before or after the operative date, give a direction determining the matter, and may include in the direction any provision which might have been included in an agreement under subsection (3) above.

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- (7) The Secretary of State shall consult the authority before giving a direction under this section.
- (8) The Board shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this section.
- (9) The Board shall deliver any agreement made under subsection (3) above to the default transferee.
- (10) Any such agreement shall be treated as made between the authority and the default transferee.

**Modifications etc. (not altering text)**  
**C123** S. 199(1)(3): functions conferred by S.I. 1991/1457, arts.2, 3

<sup>F177</sup>**200 Grant-maintained schools: school property.**

**Textual Amendments**  
**F177** S. 20 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 135, Sch. 21Pt. I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

**201 Wrongful disposals.**

- (1) This section applies where a local education authority have made any disposal to which section 137 of this Act applies in contravention of that section (referred to below in this section as a wrongful disposal).
- (2) Where a wrongful disposal consists in entering into a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by a notice in writing served on the other party to the contract repudiate the contract at any time before the conveyance or grant of the land or interest in land to which it relates is completed or executed.
- (3) Where a wrongful disposal consists in granting an option to acquire any land or any interest in land, the Education Assets Board may by a notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if made by the local education authority concerned.
- (5) Where a wrongful disposal consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier disposal of a description falling within subsection (2) or (3) above)—
  - (a) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal; . . . <sup>F178</sup>
  - (b) . . . . . <sup>F179</sup>

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- (6) The <sup>M34</sup>Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local education authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the appropriate transferee.
- (8) In subsection (7) above, “the appropriate transferee” means—
- (a) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) used or held by the local education authority concerned for the purposes of an institution falling within section 121(2) of this Act; or
    - (ii) obtained by that authority for the purpose of being so used or held; the higher education corporation established under this Act to conduct that institution; and
  - (b) where the interest disposed of, or the land in which the interest was granted, was—
    - (i) so used or held for the purposes of an institution falling within section 129(3) of this Act; or
    - (ii) obtained by the authority concerned for the purpose of being so used or held;
- the appropriate transferee within the meaning of section 130(2) of this Act in relation to that institution.
- (9) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local education authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the <sup>M35</sup>Compulsory Purchase Act 1965; and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.

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#### Textual Amendments

**F178** Word repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), **Sch. 12 Part I**

**F179** Ss. 190(5)(b), 201(5)(b) repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(2), **Sch. 12 Part I**

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#### Marginal Citations

**M34** 1981 c. 67.

**M35** 1965 c. 56.

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### *Academic tenure*

## **202 The University Commissioners.**

- (1) There shall be a body of Commissioners known as the University Commissioners (in this section and sections 203 to 207 of this Act referred to as “the Commissioners”) who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned to them by those sections.
- (2) In exercising those functions, the Commissioners shall have regard to the need—
  - (a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;
  - (b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and
  - (c) to apply the principles of justice and fairness.
- (3) The following are qualifying institutions for the purposes of this section and sections 203 to 206 of this Act, namely—
  - (a) any university or other institution to which, during the period of three years beginning 1st August 1987, grants in aid are or have been made by the Universities Funding Council, or by the Secretary of State acting on the advice of the University Grants Committee;
  - (b) any constituent college, school or hall or other institution of a university falling within paragraph (a) above; and
  - (c) any institution not falling within paragraph (a) above which is authorised by charter to grant degrees and to which, during the period of three years beginning 1st August 1987, grants are or have been made by the Secretary of State.
- (4) Schedule 11 to this Act shall have effect with respect to the Commissioners.

## **203 Duty of Commissioners.**

- (1) The Commissioners shall exercise the powers conferred by section 204 of this Act with a view to securing that the statutes of each qualifying institution include—
  - (a) provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;
  - (b) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause;
  - (c) provision establishing disciplinary procedures determined by the Commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment;
  - (d) provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in paragraph (a) or (b) above) or who are otherwise disciplined; and

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- (e) provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment.
- (2) No provision such as is mentioned in subsection (1)(a) or (b) above which is included in the statutes of a qualifying institution by virtue of section 204 of this Act shall enable any member of the academic staff to be dismissed unless the reason for his dismissal may in the circumstances (including the size and administrative resources of the institution) reasonably be treated as a sufficient reason for dismissing him.
- (3) Where any such provision as is mentioned in subsection (1) above is included in the statutes of a qualifying institution (whether by virtue of section 204 of this Act or otherwise) and—
  - (a) there is no requirement for any instrument which would have the effect of modifying the provision to be approved by Her Majesty in Council or to be laid before both Houses of Parliament; and
  - (b) but for this subsection, there would be no requirement for such an instrument to be approved by the Privy Council;the Commissioners shall exercise the powers conferred by that section with a view to securing that no instrument which would have the effect of modifying the provision shall have that effect unless it has been approved by the Privy Council.
- (4) Any reference in this section to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of this section.
- (5) For the purposes of this section the dismissal of a member of staff shall be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to—
  - (a) the fact that the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or
  - (b) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish.
- (6) For the purposes of this section “good cause”, in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which he was appointed or employed to do; and in this subsection—
  - (a) “capability”, in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and
  - (b) “qualifications”, in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him.

- (7) In this section—

“appropriate”, in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution;

“dismiss” and “dismissal”—

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- (a) include remove or, as the case may be, removal from office; and
  - (b) in relation to employment under a contract, shall be construed in accordance with section 55 of the <sup>M36</sup>Employment Protection (Consolidation) Act 1978.
- (8) In this section and sections 204 to 206 of this Act “statutes”, in relation to an institution, includes any regulations, ordinances or other instruments which, in the opinion of the Commissioners, serve as statutes for the purposes of that institution and are designated as such by the Commissioners.

#### Marginal Citations

**M36** 1978 c. 44.

### 204 Powers of Commissioners.

- (1) For the purpose of performing the duty imposed on them by section 203 of this Act, the Commissioners may make such modifications of the statutes of any qualifying institution as they consider necessary or expedient.
- (2) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of section 203(1)(a) of this Act shall not apply in relation to a person unless—
  - (a) his appointment is made, or his contract of employment is entered into, on or after 20th November 1987; or
  - (b) he is promoted on or after that date.
- (3) For the purposes of this section a person shall be taken to be promoted on or after 20th November 1987 if (and only if) immediately before that date he is paid on a scale which provides for a maximum rate of remuneration (his former pay scale) and on or after that date the terms of his appointment, or of his contract of employment, are varied (whether with effect before or after that date) so that—
  - (a) his rate of remuneration is increased to a rate which exceeds the highest point on his former pay scale at the date on which the increase takes effect; or
  - (b) he is paid on another scale on which the highest point at the date the variation takes effect exceeds the highest point on his former pay scale at that date; or
  - (c) he is paid on a basis which does not provide for a maximum rate of remuneration.
- (4) For the purposes of subsection (3) above references, in relation to a pay scale, to the highest point on the scale at any date are references to the maximum rate of remuneration payable at that date in accordance with the scale whether on a regular or a discretionary basis.
- (5) For the purposes of this section a person holding an office or position of any description shall not be taken to be promoted by reason only of any general variation of the terms of appointment or of contracts of employment of persons holding offices or positions of that description.
- (6) Modifications such as are mentioned in subsection (2) above shall not apply in relation to a person who held an office or position at the institution in question immediately before 20th November 1987 by reason only of the fact that—

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- (a) he is appointed to, or employed in, a different office or position at the institution instead of his former office or position if the terms of his appointment or of his contract of employment which relate to remuneration are the same as those of his former appointment or contract of employment;
  - (b) he is appointed to, or employed in, an additional office or position at the institution which carries no remuneration; or
  - (c) he is promoted or is appointed to, or employed in, a different office or position at the institution if he is so promoted, appointed or employed only on a temporary basis for a particular purpose with an expectation that the promotion will cease to have effect, or that he will resume his former office or position, when that purpose is accomplished.
- (7) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of section 203(1)(b) of this Act shall not apply in relation to anything done or omitted to be done before the date on which the instrument making the modifications is approved under subsection (9) below.
- (8) Subject to subsections (2) to (7) above, the Commissioners' powers under this section include power to make such incidental, supplementary and transitional provision as they consider necessary or expedient.
- (9) No instrument made in the exercise of the Commissioners' powers under this section shall have effect unless it has been approved by Her Majesty in Council.

## **205 Procedure for exercise of Commissioners' powers.**

- (1) This section applies where the Commissioners propose to exercise the powers conferred on them by section 204 of this Act in relation to a qualifying institution.
- (2) The Commissioners shall send a copy of the proposed modifications to each of the following persons, namely—
- (a) the body appearing to the Commissioners to have responsibility for the management and administration of the institution's revenue and property and the conduct of its affairs;
  - (b) such bodies representing qualifying institutions as appear to them to be concerned;
  - (c) such organisations representing staff of such institutions as appear to them to be concerned;
  - [<sup>F180</sup>(d) the higher education funding council]
  - (e) such other persons appearing to the Commissioners to be concerned as they consider it would be appropriate to consult;
- and shall afford those persons a reasonable opportunity of making representations as to the issues arising.
- (3) After taking into account any representations made by those persons, the Commissioners shall submit the modifications, with or without revisions, to Her Majesty in Council.
- (4) Her Majesty in Council may remit for reconsideration by the Commissioners any modifications submitted under subsection (3) above; and any remission under this subsection shall be accompanied by a declaration of the reasons for it.



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- (5) The Commissioners shall reconsider and revise any modifications remitted under subsection (4) above; and subsections (2) to (4) above shall apply in relation to any modifications so revised as they apply in relation to modifications originally proposed.

<sup>F181</sup>(6) .....

#### Textual Amendments

**F180** S. 205(2)(d) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 45(a)**; S.I. 1992/831, art. 2, **Sch.3**.

**F181** S. 205(6) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 45(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

### 206 Exclusion of visitor’s jurisdiction.

- (1) The visitor of a qualifying institution shall not have jurisdiction in respect of any dispute relating to a member of the academic staff which concerns his appointment or employment or the termination of his appointment or employment.
- (2) Subsection (1) above does not apply in relation to any dispute which is referred to the visitor of a qualifying institution before—
- (a) the relevant date; or
  - (b) the date on which this section comes into force;
- whichever is the later.
- (3) Subsection (1) above shall not be taken to prevent any person who is the visitor of a qualifying institution—
- (a) from hearing or determining appeals; or
  - (b) from hearing or redressing grievances;
- in accordance with procedures established in pursuance of section 203(1)(d) and (e) of this Act.
- (4) In this section—
- (a) “the relevant date”, in relation to a qualifying institution, means the date on which the statutes of the institution include such provision as is mentioned in section 203(1)(d) and (e) of this Act; and
  - (b) the reference to a member of the academic staff includes a reference to a person who is treated as such a member for the purposes of that section.

### 207 Power to make incidental, etc., provisions by Order in Council.

- (1) Her Majesty may at any time by Order in Council make such incidental, consequential or supplementary provision as appears to Her necessary or expedient—
- (a) for the general purposes or any particular purposes of any exercise of the Commissioners’ powers under section 204 of this Act;
  - (b) in consequence of any exercise of those powers or for the purpose of giving full effect to any such exercise; or
  - (c) in consequence of the provisions of section 206 of this Act.
- (2) An Order in Council under this section may in particular amend, repeal or revoke (with or without savings) any provision of—

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- (a) an Act passed or a charter granted; or
- (b) an instrument under an Act or charter made,  
before the passing of this Act.

## 208 Corresponding provision for Northern Ireland.

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M37</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of sections 202 to 207 of, and Schedule 11 to, this Act—

- (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 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

M37 1974 c. 28.

## Grants

## 209 Grants in respect of mandatory awards.

- (1) For each financial year beginning after the day on which this subsection comes into force the Secretary of State shall pay to each local education authority a grant equal to the aggregate amount paid in that year by the authority under section 1(1) of the Education Act 1962 (awards for persons attending first degree courses and comparable courses).
- (2) Payments of grants under subsection (1) above shall be made at such times as the Secretary of State may, with the consent of the Treasury, determine.

### Modifications etc. (not altering text)

C124 S. 209 extended and restricted by S.I. 1990/773, art. 2

## 210 Grants for the education of travellers and displaced persons.

- (1) The Secretary of State may by regulations provide for the payment to local education authorities [<sup>F182</sup>or institutions within the further education sector] of grants in respect of expenditure incurred or to be incurred by them in making provision the purpose (or main purpose) of which is to promote and facilitate the education of persons to whom this subsection applies. <sup>M38</sup>
- (2) Subsection (1) above applies to a person if—
  - (a) by reason of his way of life or, in the case of a child, his parent's way of life he either has no fixed abode or leaves his main abode to live elsewhere for significant periods in each year;
  - (b) he fell within paragraph (a) above within a prescribed period immediately preceding the making of the provision in question; or

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- (c) he is for the time being resident in a camp or other accommodation or establishment provided for refugees or for displaced or similar persons.
- (3) Regulations under subsection (1) above may—
- (a) prescribe classes or descriptions of expenditure in respect of which grants are payable under the regulations;
  - (b) provide for the determination of the amount of any grant so payable;
  - (c) provide for the payment of any such grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations; and
  - (d) provide for requiring local education authorities [<sup>F182</sup>or institutions within the further education sector] to whom payments have been made under the regulations to comply with such requirements as may be so determined.

#### Textual Amendments

**F182** Words in s. 210(1)(3)(d) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para.46; S.I. 1992/831, art. 2, Sch.3.

#### Marginal Citations

**M38** 1962 c. 12.

## 211 Grants in respect of special provision for immigrants

The power conferred by section 11 of the <sup>M39</sup>Local Government Act 1966 shall apply in relation to the payment of grants by the Secretary of State to—

- (a) the governing body of a grant-maintained school;
- (b) any person who in pursuance of undertakings under an agreement under section 105 of this Act maintains and carries on or provides for the carrying on of an independent school known either as a city technology college or as a city college for the technology of the arts; or [<sup>F183</sup>(ba) the governing body of an institution within the further education sector]
- <sup>F184</sup>(c) . . . . .

who, in his opinion, make special provision in consequence of the presence within the locality of the school or the institution of substantial numbers of such immigrants as are described in section 11 of that Act as it applies in relation to the payment of grants to a local authority who in his opinion are required to make such provision in exercise of any of their functions in consequence of the presence within their area of substantial numbers of such immigrants.

#### Textual Amendments

**F183** S. 211(ba) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 47(a); S.I. 1992/831, art. 2, Sch.3.

**F184** S. 211(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 47(b), Sch.9; S.I. 1992/831, art. 2, Sch.3.

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

**C125** S. 211 (1)(ba) modified (1.4.1993) by S.I. 1993/563, art. 2, Sch.1

**C126** S. 211 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I.

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**C127** S. 211 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt.I.

#### Marginal Citations

**M39** 1966 c. 42.

## 212 Grants relating to aided or special agreement schools.

- (1) The Secretary of State may pay grants to the governing body of any aided school or special agreement school in respect of any preliminary expenditure incurred by them for the purposes of any scheme for the transfer of the school to a new site or the enlargement or alteration of the school premises.
- (2) Where any persons propose or are considering whether to propose—
  - (a) that a school established by them, or by persons whom they represent, should be maintained by a local education authority as an aided school; or
  - (b) that a school which may be so established should be so maintained;the Secretary of State may pay grants to them in respect of any preliminary expenditure incurred by them for the purposes of any scheme for the provision of a site for the school or of any buildings which would be school buildings.
- (3) Grants under subsection (1) or (2) above may be paid in respect of any such scheme as is mentioned in that subsection whether or not—
  - (a) the details of any such scheme had been formulated at the time the expenditure was incurred;
  - (b) where such details were not formulated at that time, they are subsequently formulated;
  - (c) the governing body or persons in question had determined to proceed with any such scheme at that time; or
  - (d) where the governing body or persons had not determined so to proceed at that time, they subsequently determine to proceed with any such scheme.
- (4) Expenditure in respect of which such grants are payable includes, in particular, costs incurred in connection with—
  - (a) the preparation of plans and specifications for any proposed construction, enlargement or alteration of buildings which are or would be school buildings; and
  - (b) estimating the sums which would be expended if any such works were carried out;but does not include any sums expended in carrying out any such works.
- (5) A grant under subsection (1) or (2) above shall not exceed 85 per cent. of the expenditure in respect of which it is paid.
- (6) Where—
  - (a) a grant is paid under subsection (1) above in the case of any school; or
  - (b) a grant is paid under subsection (2) above in the case of any school which becomes, or is established as, a voluntary school;the grant shall for the purposes of section 14 of the 1944 Act or section 98 of this Act be treated as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the school premises.

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### 213 Grants: miscellaneous.

- (1) The Secretary of State [<sup>F185</sup>, the Minister for the Civil Service or the Chancellor of the Duchy of Lancaster] may by regulations provide for the payment of grants to bodies other than local education authorities whose object or main object is, in his opinion, the promotion of learning or research.
- (2) Regulations under subsection (1) above may provide—
  - (a) for the payment of any such grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations; and
  - (b) for requiring bodies to whom payments have been made under the regulations to comply with such requirements as may be so determined.
- (3) In section 100(1)(b) of the 1944 Act (grants to persons other than local education authorities) for the words “for the purposes of educational services provided by them or on their behalf or under their management” there shall be substituted the words “by them for the purposes of, or in connection with, the provision (or proposed provision) of educational services”.

#### Textual Amendments

**F185** Words in s. 213(1) inserted (6. 7. 1992) by S.I. 1992/1296, art. 6(1), **Sch. para. 6(1)**.

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

**C128** S. 213(1): functions of the Secretary of State made exercisable concurrently (6. 7. 1992) by S.I. 1992/1296, **arts. 2(3)(b), 3**.

### *Unrecognised degrees*

### 214 Unrecognised degrees.

- (1) Any person who, in the course of business, grants, offers to grant or issues any invitation relating to any award—
  - (a) which may reasonably be taken to be an award granted or to be granted by a United Kingdom institution; and
  - (b) which either—
    - (i) is described as a degree; or
    - (ii) purports to confer on its holder the right to the title of bachelor, master or doctor and may reasonably be taken to be a degree;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Subsection (1) above does not apply as respects anything done in relation to any recognised award; and for the purposes of this section a “recognised award” means—
  - (a) any award granted or to be granted by a university, college or other body which is authorised by Royal Charter or [<sup>F186</sup>by or under] Act of Parliament to grant degrees;
  - (b) any award granted or to be granted by any body for the time being permitted by any body falling within paragraph (a) above to act on its behalf in the granting of degrees; or

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- (c) such other award as the Secretary of State may by order designate as a recognised award for the purposes of this section.
- (3) An order under subsection (2)(c) above may designate as a recognised award either—
- (a) a specified award granted or to be granted by a person named in the order; or
  - (b) any award granted or to be granted by such a person.
- (4) Where in any proceedings for an offence under this section it is shown—
- (a) that the defendant granted, offered to grant or issued an invitation relating to an award; and
  - (b) that an address in the United Kingdom was given in any document issued by the defendant certifying the granting of the award or containing the offer or invitation in question;
- the award shall be presumed to fall within subsection (1)(a) above unless it is shown that the defendant took reasonable steps to inform the person to whom the award was granted or any member of the public or particular individual to whom the offer or invitation was addressed that the award was not granted or to be granted by a United Kingdom institution.
- (5) In any proceedings for an offence under this section it shall be a defence for the defendant to show—
- (a) that the award in question was granted or to be granted by virtue of authority conferred on or before 5th July 1988 by a foreign institution on the body granting the award; and
  - (b) that the defendant took reasonable steps to inform the person to whom the award was granted or any member of the public or particular individual to whom the offer was addressed that the award was granted or was to be granted by virtue of authority conferred by a foreign institution.
- (6) For the purposes of subsection (5) above, where—
- (a) on or before 5th July 1988 authority was conferred by a foreign institution on a body to grant awards of any description for a period expiring after that date; and
  - (b) new authority is conferred by the institution (whether before or after the expiry of that period) on the body to grant awards of that description;
- the new authority shall be taken to have been granted on or before that date.
- (7) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (8) Proceedings for an offence under this section shall not, in England and Wales, be instituted except by or on behalf of a local weights and measures authority or the chief officer of police for a police area.
- (9) Nothing in this section shall apply in relation to the granting of an award to a candidate who—
- (a) before 12th May 1988 began to undertake a course of education approved by the person granting the award in preparation for an examination to qualify for the award; and

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(b) whether before or after that date, passes the examination;  
 and in this subsection “examination” includes any form of assessment and the reference to passing an examination shall be construed accordingly.

(10) For the purposes of this section—

- (a) a “United Kingdom institution” means any institution established in the United Kingdom, other than one which is, or is affiliated to or forms part of, an institution whose principal establishment is situated outside the United Kingdom;
- (b) a “foreign institution” means any institution other than a United Kingdom institution; and
- (c) the reference to issuing an invitation relating to any award includes in particular the issuing of any circular, prospectus or advertisement relating to an award, whether addressed to the public generally, to any section of the public, or to any particular individual or individuals.

#### Textual Amendments

**F186** Words in s. 214(2)(a) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para.48](#); S.I. 1992/831, art. 2, [Sch.1](#).

## 215 Unrecognised degrees: enforcement.

- (1) It shall be the duty of every local weights and measures authority to enforce the provisions of section 214 of this Act within their area; and such an authority shall, whenever the Secretary of State so directs, make to him a report on the exercise of their functions under this section and section 214 of this Act in such form and containing such particulars as he may direct.
- (2) A duly authorised officer of a local weights and measures authority may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 214 of this Act has been committed, enter and search any premises which he reasonably believes may be used for or in connection with the carrying on of a business which is concerned with the granting of awards which are not recognised awards;
  - (b) he may, for that purpose, require any person carrying on or employed in connection with any such business to produce any documents or other items relating to the business and may take copies of any such document;
  - (c) he may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reason to believe that it may be evidence of the commission of an offence under that section; and
  - (d) he may seize and detain anything which he has reason to believe may be evidence of the commission of an offence under that section.
- (3) In subsection (2) above “recognised award” has the same meaning as in section 214 of this Act.
- (4) If a justice of the peace, on sworn information in writing—



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- (a) is satisfied that there is reasonable ground to believe that any documents or other items which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 214 of this Act; and
- (b) is also satisfied either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
  - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return;

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of a local weights and measures authority to enter the premises, if need be by force.

In the application of this subsection to Scotland, “justice of the peace” shall be construed as including a sheriff.

- (5) An officer seizing any documents or other items in the exercise of his powers under this section shall inform the person from whom they are seized.
- (6) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (4) above he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (7) Section 29 of the <sup>M40</sup>Trade Descriptions Act 1968 (penalty for obstruction of authorised officers) shall apply as respects the obstruction of an officer acting in pursuance of this section as it applies as respects the obstruction of an officer acting in pursuance of that Act but with the substitution in subsection (1)—
  - (a) of a reference to this section for the reference to section 28 of that Act; and
  - (b) of a reference to his functions under this section for the reference to his functions under that Act.
- (8) Nothing in this section shall be taken to compel the production by a solicitor of a document or other item containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such item which is in his possession.
- (9) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

**Marginal Citations**

M40 1968 c. 29.

**216 Identification of bodies granting or providing courses for recognised awards.**

- (1) For the purposes of sections 214 and 215 of this Act, any body for the time being designated by order made by the Secretary of State as appearing to him to be a recognised body shall be conclusively presumed to be such a body.

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- (2) The Secretary of State shall compile, maintain and publish by order a list including the name of every body which appears to him to fall for the time being within subsection (3) below.
- (3) A body falls within this subsection if it is not a recognised body and either—
  - (a) provides any course which is in preparation for a degree to be granted by a recognised body and is approved by or on behalf of the recognised body; or
  - (b) is a constituent college, school or hall or other institution of a university which is a recognised body.
- (4) In this section “recognised body” means a body falling within section 214(2)(a) or (b) of this Act.

### **217 Unrecognised degrees: Northern Ireland and Channel Islands.**

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M41</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of sections 214 to 216 of this Act—
  - (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule; but
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Her Majesty may by Order in Council direct that those sections shall extend to any of the Channel Islands with such adaptations and modifications (if any) as may be specified in the Order.

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#### **Marginal Citations**

**M41** 1974 c. 28.

### *Miscellaneous provisions*

### **218 School and further and higher education regulations.**

- (1) The Secretary of State may by regulations make provision—
  - (a) for requiring persons employed as teachers at schools, subject to such exceptions as may be provided for by or under the regulations, to be qualified teachers;
  - (b) for requiring persons employed as teachers at institutions falling within subsection (10) below to possess such qualifications as may be determined by or under the regulations;
  - (c) for requiring persons employed as teachers at schools and such institutions to serve probationary periods;
  - (d) with respect to the teaching staff to be provided in schools and such institutions;
  - (e) for requiring the approval of the Secretary of State to be obtained for the use in schools and such institutions of such materials or apparatus as may be

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specified in the regulations, being materials or apparatus which could or might involve a serious risk to health;

- (f) with respect to the keeping, disclosure and transfer of educational records about [<sup>F187</sup>persons receiving education] at schools and such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations;
- (g) with respect to the duration of the school day and school year at, and the granting of leave of absence from, any schools.

(2) In subsection (1) above “qualified teacher” means a person who—

- (a) is a qualified teacher in accordance with any provision made by or under the regulations; or
- (b) is determined to be a qualified teacher by the Secretary of State in accordance with any provision so made;

and the regulations may provide for any determination by the Secretary of State under the regulations with respect to a person’s status as a qualified teacher to be made so as to have effect, in such cases or circumstances as may be specified in the regulations, from a date earlier than the determination.

[<sup>F188</sup>(2A) The regulations may impose requirements on persons carrying on city technology colleges or city colleges for the technology of the arts as to the training and teaching experience of persons employed as teachers at such colleges who seek to become (in relation to schools) qualified teachers; and such requirements shall have effect for the purposes of section 105 of this Act as requirements of the agreements under which the colleges are maintained.]

(3) The provision authorised by paragraph (a) of subsection (1) above with respect to exceptions from any requirement imposed by virtue of that paragraph includes in particular provision permitting the employment as there mentioned, in such cases or circumstances and subject to such conditions as may be specified in or determined under the regulations, of persons licensed to teach by the Secretary of State in accordance with any provision made by or under the regulations.

(4) Regulations made by virtue of subsection (1)(f) above may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

(5) The Secretary of State may by regulations make provision for imposing requirements as to the health and physical capacity of—

- (a) teachers at schools and institutions falling within subsection (10) or (11) below;
- (b) teachers employed by local education authorities otherwise than at schools or such institutions; and
- (c) persons employed—
  - (i) by local education authorities; or
  - (ii) by the governing bodies of schools or such institutions;

in work otherwise than as teachers which brings them regularly into contact with persons who have not attained the age of nineteen years.

(6) The Secretary of State may by regulations make provision for prohibiting or restricting the employment or further employment of persons—

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- (a) as teachers at schools and institutions falling within subsection (10) or (11) below;
  - (b) by local education authorities as teachers otherwise than at schools or such institutions; <sup>F189</sup> . . .
  - (c) by local education authorities or by the governing bodies of schools or such institutions in such work as is mentioned in subsection (5)(c) above; [<sup>F190</sup>or]
  - <sup>F190</sup>(d) by the proprietors of independent schools or at such schools as teachers or in any such work]
- on medical grounds, in cases of misconduct and, as respects employment or further employment as a teacher, on educational grounds.
- (7) The Secretary of State may by regulations make provision requiring his approval to be obtained for the provision of new premises for, or the alteration of the premises of—
- (a) any school or institution falling within subsection (10) below; or
  - (b) any boarding hostel provided by a local education authority for [<sup>F191</sup>persons receiving education at] any school or any such institution;
- and for the inspection of any such hostel.
- (8) In section 63(2) of the 1944 Act (exemption from building regulations, etc.) references to plans approved by the Secretary of State shall include references to any particulars submitted to and approved by him under regulations made by virtue of subsection (7) above.
- (9) The Secretary of State may by regulations make provision—
- (a) with respect to the fees to be charged for courses of further education at institutions falling within subsection (10) or (11) below;
  - (b) for requiring his approval to be obtained for the provision at such institutions of courses designated by or under the regulations as courses of initial teacher training;
  - (c) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions; and
  - (d) with respect to institutions in Wales falling within subsection (10) below—
    - (i) for requiring his approval to be obtained for the provision at such institutions of courses of higher education; and
    - (ii) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions.
- (10) An institution falls within this subsection if it provides higher education or further education (or both) and either—
- (a) it is maintained by a local education authority; or [<sup>F192</sup>(aa) it is within the further education sector]
  - <sup>F193</sup>(b) . . . . .
- (11) An institution falls within this subsection if it is an institution within [<sup>F194</sup>the higher education sector in receipt of financial support under section 65 of the Further and Higher Education Act 1992].
- (12) In this section [<sup>F195</sup>other than in subsection (6)(d) above]“school” means any school maintained by a local education authority, any special school not so maintained or any grant-maintained school.

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- (13) Section 27 of the 1980 Act (which is superseded by the preceding provisions of this section) shall cease to have effect.

#### Textual Amendments

- F187** Words in s. 218(1)(f) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(a)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F188** S. 218(2A) inserted (1.1.1994) by 1993 c. 35, s.291; S.I. 1993/3106, art. 4, **Sch.1** (amended by S.I. 1994/436, **art.2**).
- F189** Word in s. 218(6)(b) omitted by virtue of s. 290(3)(a); S.I. 1993/3106, art. 4, **Sch.1** (amended by S.I. 1994/436, **art.2**).
- F190** S. 218(6)(d) and the preceding word “or” inserted (1.1.1994) by 1993 c. 35, s. 290(3)(b); S.I. 1993/3106, art. 9, **Sch.1** (amended by S.I. 1994/436, **art.2**).
- F191** Words in s. 218(7)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(b)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F192** S. 218(10)(aa) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(c)(i)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F193** S. 218(10)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 49(c)(ii), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F194** Words in s. 218(11) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, **Sch. 8 Pt. I para. 49(d)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F195** Words in s. 218(12) inserted (1.1.1994) by 1993 c. 35, s. 290(3)(c); S.I. 1993/3106, art. 9, **Sch.1** (amended by S.I. 1994/436, **art.2**).

VALID FROM 11/01/2001

#### <sup>F196</sup> 218A Regulations under section 218(6): further provision.

- (1) The power to make regulations under subsection (6) of section 218 above includes power to provide that a person may appeal to the Tribunal against—
- a decision to prohibit or restrict the person’s employment or further employment on the grounds mentioned in subsection (6ZA)(a) to (d) of that section; or
  - a decision not to revoke or vary such a decision as is mentioned in paragraph (a) above.
- (2) The regulations may—
- make provision as to the circumstances in which the Tribunal shall allow an appeal under the regulations and as to the powers available to it on allowing such an appeal;
  - provide that, where a person has been convicted of an offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under the regulations.
- (3) The power to make regulations under subsection (6) of that section also includes power to make provision for a person who has been subject, for a prescribed period, to a prohibition or restriction imposed by virtue of that subsection on relevant grounds to apply, with the leave of the Tribunal, for a review of the prohibition or restriction.
- (4) The regulations may make provision as to—

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- (a) the circumstances in which an application for leave, or a review, under the regulations shall be determined in the person’s favour;
  - (b) the powers available to the Tribunal on determining a review in the person’s favour.
- (5) In this section—
- (a) “relevant grounds” means the grounds mentioned in section 218(6ZA)(c) above;
  - (b) “the Tribunal” means the Tribunal established under section 1 of the <sup>M42</sup>Protection of Children Act 1999.]

**Textual Amendments**  
**F196** S. 218A inserted (11.1.2001) by 2000 c. 43, ss. 74, **Sch. 7 Pt. II para. 83**; S.I. 2000/3302, **art. 2(b)**

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**Marginal Citations**  
**M42** 1999 c. 14.

**219 Powers of Secretary of State in relation to certain educational institutions.**

- (1) Section 67(1) of the 1944 Act (determination of disputes and questions) shall apply in relation to—
- (a) the governing body of an institution which is maintained by a local education authority and provides higher education or further education (or both); and
  - <sup>F197</sup>(b) .....  
as it applies in relation to the governors of a school.
- (2) Section 68 of the 1944 Act (power of Secretary of State to prevent unreasonable exercise of functions) shall apply in relation to—
- (a) the governors of a special school maintained by a local education authority;
  - (b) the governing body of a grant-maintained school;
  - (c) the governing body of an institution which is maintained by a local education authority and provides higher education or further education (or both);
  - <sup>F198</sup>(d) .....
  - <sup>F199</sup>(e) .....
- as it applies in relation to the governors of a county or voluntary school.
- (3) Section 99(1) and (2) of the 1944 Act (powers of Secretary of State in default of local education authorities and governors)—
- (a) shall apply in relation to a special school maintained by a local education authority and the governors of such a school;
  - (b) shall apply in relation to a grant-maintained school and the governing body of such a school; and
  - (c) shall apply in relation to—
    - (i) an institution which is maintained by a local education authority and provides higher education or further education (or both); and
    - <sup>F200</sup>(ii) .....  
and in relation to the governing body of such an institution;

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as it applies in relation to a county or voluntary school and the governors of such a school.

#### Textual Amendments

- F197** S. 219(1)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.
- F198** S. 219(2)(d) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.
- F199** S. 219(2)(e) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.
- F200** S. 219(3)(c)(ii) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 50, **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

## 220 Extension of functions of Audit Commission.

- (1) The Audit Commission for Local Authorities in England and Wales (the Commission) may, at the request of the appropriate body, promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of
- [<sup>F201</sup>(a) a higher education funding council or the governing body of an institution within the higher education sector] or
  - [(b) <sup>F202</sup>a further education funding council or the governing body of an institution within the further education sector, or
  - (c) the governing body]
- of a grant-maintained school.
- (2) For the purposes of subsection (1) above “the appropriate body” is—
- [<sup>F203</sup>(a) with respect to studies relating to a higher education funding council, the council;
  - <sup>F203</sup>(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]
  - [<sup>F204</sup>(ba) with respect to studies relating to a further education funding council, the council;
  - (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] and
  - (c) with respect to studies relating to the governing body of a grant-maintained school, the governing body.
- [<sup>F205</sup>(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.]
- (4) The Commission may, at the request of a higher education corporation [<sup>F206</sup>a further education corporation] or the governing body of a grant-maintained school—
- (a) advise them in connection with the appointment of persons to audit their accounts; and



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- (b) arrange for their accounts for any financial year to be audited by such of the Commission’s officers as the corporation or governing body may appoint.
- (5) References in subsection (4) above to the accounts of a higher education corporation include references to any statement of accounts prepared by the corporation under paragraph 18 of Schedule 7 to this Act.
- (6) The Commission shall charge the body at whose request any services are provided under this section such fees as will cover the full cost of providing them.

**Textual Amendments**

**F201** S. 220(1)(a) substituted (6. 5. 1992) for words in s. 220(1) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(2\)\(a\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F202** S. 220(1)(b) and (c) substituted (6. 5. 1992) for words in s. 220(1) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(2\)\(b\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F203** S. 220(2)(a)(b) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(3\)\(a\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F204** S. 220(2)(ba)(bb) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(3\)\(b\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F205** S. 220(3) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(4\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F206** Words in s. 220(4) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 51\(5\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

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

**C129** S. 220 modified (1.4.1993) by [S.I. 1993/563, art. 2, Sch.1](#)

**221 Avoidance of certain contractual terms.**

- (1) This section applies to any contract made after 20th November 1987 between—
  - (a) a local education authority in their capacity as such an authority;
  - (b) the governing body of an aided or grant-maintained school; or
  - <sup>F207</sup>(c) . . . . .
 and any person employed by them, not being a contract made in contemplation of the employee’s pending dismissal by reason of redundancy.
- (2) In so far as a contract to which this section applies provides that the employee—
  - (a) shall not be dismissed by reason of redundancy; or
  - (b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay him under section 81 of the <sup>M43</sup>Employment Protection (Consolidation) Act 1978,
 the contract shall be void and of no effect.
- (3) In this section—
  - “governing body”, in relation to an institution, includes a body corporate established for the purpose of conducting that institution;
  - <sup>F208</sup> . . . . .
  - (a) provides higher education or further education (or both); and
  - (b) is either a designated assisted institution or an institution which is grant-aided or eligible to receive aid by way of grant.

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**Textual Amendments**

- F207** S. 221(1)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, Sch.9; S.I. 1992/831, art. 2, Sch.3.
- F208** Definition in s. 221(3) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, Sch.9; S.I. 1992/831, art. 2, Sch.3.

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

- C130** S. 221 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I.
- C131** S. 221 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. Pt.I.

**Marginal Citations**

- M43** 1978 c. 44.

**222 Application of employment law during financial delegation.**

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment and, in particular, in any enactment—
- (a) conferring powers or imposing duties on employers;
  - (b) conferring rights on employees; or
  - (c) otherwise regulating the relations between employers and employees;
- as he considers necessary or expedient in consequence of the operation of any of the provisions of this Act mentioned in subsection (2) below.
- (2) Those provisions are—
- (a) sections 44(2) and (3) and 45(10), section 46(1), (2) and (4), Schedule 3, paragraph 4 of Schedule 4 and section 48 so far as relating to that paragraph; and
  - <sup>F209</sup>(b) .....
- (3) Before making any order under this section, the Secretary of State shall consult—
- (a) such associations of local authorities;
  - (b) such bodies representing the interests of governors of voluntary schools; and
  - (c) such organisations representing staff in schools required to be covered by schemes under section 33 of this Act <sup>F210</sup> . . .;
- as appear to him to be concerned.

**Textual Amendments**

- F209** S. 222(2)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 53, Sch.9; S.I. 1992/831, art. 2, Sch.3.
- F210** Words in s. 222(3)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 53, Sch.9; S.I. 1992/831, art. 2, Sch.3.

**223 Temporary exclusion of section 5 of Data Protection Act 1984 in relation to data transferred to new bodies.**

- (1) Where personal data are transferred under any provision of this Act to a body corporate established under this Act, section 5(1) of the <sup>M44</sup>Data Protection Act 1984 (prohibition

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of unregistered holding, etc., of personal data) shall not apply in relation to the holding by that body corporate of the data so transferred or any data of the same description as the data so transferred until the end of the period of six months beginning with the transfer date.

- (2) Expressions used in subsection (1) above to which a meaning is given for the purposes of that Act have the same meaning in that subsection.

**Marginal Citations**

**M44** 1984 c. 35.

**224 Superannuation for staff of Further Education Unit.**

- (1) The persons to whom section 1 of the <sup>M45</sup>Superannuation Act 1972 applies (persons to or in respect of whom benefits may be provided by schemes under that section) shall include—

- (a) persons who at any time after the passing of this Act are serving in employment with the company formed and registered under the <sup>M46</sup>Companies Act 1948 and known at the passing of this Act as the Further Education Unit; and
- (b) persons who at any time before the passing of this Act have ceased to serve in employment with that company;

and accordingly a reference to that company shall be inserted at the appropriate point in the alphabetical list of “Other Bodies” in Schedule 1 to that Act.

- (2) That company shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to this section in the sums payable out of money provided by Parliament under that Act.

**Marginal Citations**

**M45** 1972 c. 11.

**M46** 1948 c. 38.

**225 Recoupment as between local education authorities.**

- (1) Notwithstanding the repeal by the 1986 Act of section 31 of the 1980 Act and section 31(8) of the <sup>M47</sup>London Government Act 1963 (which relate to recoupment by local education authorities in respect of provision for education in respect of out of area pupils and were replaced by section 51 of the 1986 Act) those provisions shall (subject to subsection (2) below) have effect, and be deemed always to have had effect, in relation to recoupment by local education authorities in respect of any provision for education made by them before 7th January 1987 (the coming into force of section 51) as if the 1986 Act had not been enacted.

- (2) Where a local education authority makes such a claim as is mentioned in subsection (1) or (3) of section 31 of the 1980 Act (whether before or after the passing of this Act), in determining for the purposes of that subsection whether the claim has been made within the prescribed period no account shall be taken of the period beginning on 7th January 1987 and ending on the day on which this Act is passed.

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**Marginal Citations**

M47 1963 c. 33.

**226 Services for schools in other member States providing education for British children.**

- (1) This section applies to any school which—
  - (a) is situated in a member State other than the United Kingdom;
  - (b) provides education for pupils who are British citizens, have attained the age of five years but not the age of nineteen years and are residing in that member State;
  - (c) has a curriculum which, in the case of any pupil at the school, is broadly similar to the curriculum which he would follow if he were a pupil at a maintained school in England and Wales; and
  - (d) has such other characteristics as may be prescribed.
- (2) In the case of a school to which this section applies the Secretary of State shall—
  - (a) on a regular basis provide the persons responsible for the management of the school with such information relating to educational developments in England and Wales as he thinks appropriate; and
  - (b) if those persons so request, make arrangements for inspections to be made of the school [<sup>F211</sup>by, or under the direction of, one or more of Her Majesty’s Inspectors of Schools for England].
- (3) The Secretary of State shall charge the persons at whose request any inspection of a school is made under this section such fees as will cover the full cost of the inspection.
- (4) In this section “maintained school” means any county or voluntary school or any grant-maintained school.

**Textual Amendments**

**F211** Words in s. 226(2)(b) substituted (31. 8. 1992) by [Education \(Schools\) Act 1992 \(c. 38\), s. 21\(7\), Sch. 4 para.7](#); S.I. 1992/1157, [art. 2](#), Sch.

*Wales*

**227 Application to Wales.**

- (1) The Secretary of State may incur expenses in connection with the commissioning by him of such work, including programmes of research, development and dissemination, as he may require to be carried out for the purpose of facilitating the discharge, in relation to Wales, of any of his functions under sections 3 and 4 of this Act.

<sup>F212</sup>(2) .....

<sup>F212</sup>(3) .....

<sup>F212</sup>(4) .....

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### Textual Amendments

**F212** S. 227(2)-(4) repealed (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 54, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).

## 228 Transfer of property to grant-aided institutions in Wales.

- (1) This section applies to any institution in Wales which—
  - (a) is conducted by a body corporate; and
  - (b) has a full-time equivalent enrolment number for courses of higher education which exceeds 55 per cent. of its total full-time equivalent enrolment number.
- (2) Where in the case of any institution to which this section applies—
  - (a) the Secretary of State proposes to make to the body conducting the institution grants under regulations made under section 100(1)(b) of the 1944 Act; and
  - (b) any land or other property of a local education authority is for the time being used or held, or any subsisting rights or liabilities of such an authority were acquired or incurred, for the purposes of the institution;

the Secretary of State may by order designate the institution for the purposes of this section.
- (3) Subject to the following provisions of this section, on the date on which any designation of an institution under this section takes effect the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, the body corporate by whom the institution is conducted.
- (4) The property, rights and liabilities referred to in subsection (3) above are—
  - (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the designated institution; and
  - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (5) Subsection (3) above shall not apply to—
  - (a) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
  - (b) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) Section 198 of this Act shall apply to a transfer under this section; and the preceding provisions of this section are subject to Schedule 10 to this Act.
- (7) In the application of that Schedule in relation to a transfer under this section references in paragraph 1 to a relevant institution shall include references to an institution designated under this section.
- (8) Section 199 of this Act shall apply to an institution designated under this section; and for the purposes of that section as it applies by virtue of this section subsection (2) of that section shall apply as if paragraph (a) defined an excepted liability as one which would have been transferred under subsection (3) of this section but for subsection (5) (a) of this section.

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- (9) Expressions used in this section to which a meaning is given for the purposes of Part II of this Act have the same meaning in this section; and section 138 of this Act shall apply for the purpose of the construction of subsections (2)(b) and (4)(a) above.
- (10) In this Act “transfer date” means, in relation to an institution designated under this section, the date on which the designation of that institution takes effect.

**229 Power to make different provision for Wales in regulations under the 1944 and 1967 Acts.**

- (1) After section 111 of the 1944 Act there shall be inserted the following section—

**“111A Regulations: different provision for Wales.**

- (1) Regulations under this Act may make in relation to Wales provision different from that made in relation to England.
- (2) Subsection (1) above is without prejudice to any express or implied power to make different provision for different cases or circumstances.”
- (2) In section 4 of the <sup>M48</sup>Education Act 1967 (loans for capital expenditure for purposes of colleges of education), after subsection (3) there shall be inserted the following subsection—
- “(3A) Regulations under this section may make in relation to Wales provision different from that made in relation to England.”

**Marginal Citations**

M48 1967 c. 3.

*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);
  - [<sup>F213</sup> . . .
  - section 95(4);
  - section 96(2);]
  - section 126 (taken with Schedule 10);
  - section 128(1)(b);
  - section 130 (taken with Schedule 10);
  - <sup>F214</sup> . . .
  - section 168(1) and (2);
  - section 180(1);
  - section 190(5);
  - section 192;

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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.
- (3) An institution falls within this subsection if it is—
- (a) a university;
  - <sup>F215</sup>(b) an institution within the higher education sector
  - (c) an institution which provides higher education or further education (or both) and is either—
    - (i) maintained by a local education authority; or
    - <sup>F216</sup>(ii) [. . . . .]
  - <sup>F217</sup>(ca) an institution within the further education sector]
  - (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>M49</sup>Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the <sup>M50</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.

#### Textual Amendments

- F213** Words in s. 230(1) repealed (1.1.1994 in respect of repeals of “section 74(taken with Schedule 10)” and otherwise *prosp.*) by 1993 c. 35, ss. 307(1)(3), 308(3), Sch. 19, para. 137(a), **Sch. 21**, Pt. I; S.I. 1993/3106, art. 4, Sch.1 (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art.2**).
- F214** Words in s. 230(1) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 55(a), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F215** S. 230(3)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 55(b)(i)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F216** S. 230(3)(c)(ii) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 55(b)(ii), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F217** S. 230(3)(ca) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 55(b)(iii)**; S.I. 1992/831, art. 2, **Sch. 3**.

#### Marginal Citations

- M49** 1982 c. 39.  
**M50** 1891 c. 39.



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### **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;
  - (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—

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- (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), [F218 35(4)], 40(4), [F219 53(2), F219 . . . , 91, 94, F219 . . . ], F220 . . . and 157, paragraph 1 of Schedule 5, paragraph 1(4) of Schedule 7 and paragraph 4 of Schedule 9.
- (3) No order shall be made under section 3(4)(a), 24 F221 . . . 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, F222 . . . , 214, 216, F223 . . . 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.

#### Textual Amendments

- F218** Words in s. 232(2) substituted (1.1.1994) by 1993 c. 35, s. 307(1), **sch. 19**, para. 138(a); S.I. 1993/3106, art. 4, **Sch.1** (amended by S.I. 1994/436, **art.2**).
- F219** Words in s. 232(2) repealed (1.1.1994 in respect of repeals of “58(2), 59(1),” and “102” and otherwise *prosp.*) by 1993 c. 35, ss. 307(1)(3), 308(3), **Sch. 19** para. 138(b)(i), **Sch. 21**, Pt. I; S.I. 1993/3106, art. 4, **Sch.1** Appendix (amended by S.I. 1994/436, **art.2**).
- F220** Words in s. 232(2) repealed (1. 4. 1993) by **Further and Higher Education Act 1992** (c. 13), s. 93, **Sch. 8 Pt. I** para. 56(a), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F221** Words in s. 232(3) repealed (6. 5. 1992) by **Further and Higher Education Act 1992** (c. 13), s. 93, **Sch. 8 Pt. I** para. 56(b), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.
- F222** Words in s. 232(4)(b) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), **Sch. 19** para. 138(b)(ii), **Sch. 21 Pt.I**; S.I. 1993/3106, art. 4, **Sch. 1** Appendix (as amended by S.I. 1994/436, **art.2**).

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**F223** Word in s. 232(4)(b) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(c), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

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

**C132** S. 232(4) restricted (*prosp.*) by 1993 c. 35, **ss. 241(4), 308(3)**.

## 232 Orders and regulations. **E+W+S**

- (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.
- (3) No order shall be made under section 3(4)(a), 24<sup>F291</sup> . . . 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,<sup>F292</sup> . . . 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.

**Textual Amendments**

**F291** Words in s. 232(3) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(b), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

**F292** Word in s. 232(4)(b) repealed (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 56(c), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 1**.

## 233 Expenses.

There shall be defrayed out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State [<sup>F224</sup>, the Minister for the Civil Service or the Chancellor of the Duchy of Lancaster] under this Act; and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

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### Textual Amendments

**F224** Words in s. 233(a) inserted (6. 7. 1992) by S.I. 1992/1296, art. 6(1), **Sch. para. 6(2)**.

## 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 [<sup>F225</sup>the higher education sector other than a university] 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
- <sup>F226</sup>(b) .....
- (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)”.

### Textual Amendments

**F225** Words in s. 234(1) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 57(a)**; S.I. 1992/831, art. 2, **Sch.3**.

**F226** S. 234(2)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 57(b), **Sch.9**; S.I. 1992/831, art. 2, **Sch.3**.

## 235 General interpretation.

- (1) In this Act, except where the context otherwise requires—
- “the 1944 Act” means the <sup>M51</sup>Education Act 1944;
- “the 1980 Act” means the <sup>M52</sup>Education Act 1980;
- “the 1981 Act” means the <sup>M53</sup>Education Act 1981;
- “the 1986 Act” means the <sup>M54</sup>Education (No. 2) Act 1986;

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- “contract of employment”, “employee” and “employer” have the same meaning as in the <sup>M55</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 [<sup>F227</sup>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—

- <sup>F228</sup>(a) .....
- (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;
- (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>M56</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
- <sup>F228</sup>(h) .....

(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) <sup>F229</sup> . . . 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

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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 <sup>F230</sup> . . . , 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.
- [<sup>F231</sup>(5A) Any reference in any provision of this Act which extends to Scotland to a higher education funding council shall, in the application of that provision to Scotland, be construed as a reference to the Scottish Higher Education Funding Council.]
- (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.

#### Textual Amendments

- F227** Words in definition of “transfer date” in s. 235(1) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 139(a)(ii), Sch. 21, Pt. I; S.I. 1993/3106, art. 4, Sch.1, Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).
- F228** S. 235(2)(a)(h) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 58, Sch. 9; S.I. 1992/831, art. 2, Sch. 3.
- F229** Words in s. 235(3)(b) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 139(b), Sch. 21, Pt. I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).
- F230** Words in s. 235(5) repealed (1.1.1994) by 1993 c. 35, s. 307(1)(30), Sch. 19 para. 139(c), Sch. 21, Pt. I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).
- F231** S. 235(5A) inserted (1. 6. 1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), Sch. 9 para. 10; S.I. 1992/817, art. 3(2), Sch. 2.

#### Marginal Citations

- M51** 1944 c. 31.  
**M52** 1980 c. 20.  
**M53** 1981 c. 60.  
**M54** 1986 c. 61.  
**M55** 1978 c. 44.  
**M56** 1978 c. 44.

## 236 Commencement.

- (1) The following provisions of this Act, namely—  
 section 1;  
 section 2(1)(b) and (2);

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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>M57</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.
- (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.



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- (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)**

**C133** 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**

**M57** [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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## SCHEDULES

### SCHEDULE 1

#### CONSEQUENTIAL AMENDMENTS RELATING TO RELIGIOUS EDUCATION

##### *The Education Act 1944 (c. 31)*

- 1 The following section shall be substituted for section 26 of the 1944 Act—
- “26 Special provisions as to religious education in county schools.**
- (1) In the case of a county school the provision for religious education for pupils at the school which is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school’s basic curriculum shall be provision for religious education in accordance with an agreed syllabus adopted for the school or for those pupils.
- (2) No such syllabus shall provide for religious education to be given to pupils at such a school by means of any catechism or formulary which is distinctive of any particular religious denomination; but this provision is not to be taken as prohibiting provision in such a syllabus for the study of such catechisms or formularies.
- (3) Subsection (4) below applies where a county secondary school is so situated that arrangements cannot conveniently be made for the withdrawal of pupils from the school in accordance with section 9 of that Act to receive religious education elsewhere.
- (4) If in any such case the local education authority are satisfied—
- (a) that the parents of pupils in attendance at the school desire them to receive religious education in the school in accordance with the tenets of a particular religious denomination; and
- (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school, and for securing that the cost of providing such education to those pupils in the school will not fall upon the authority;
- the authority shall, unless they are satisfied that owing to any special circumstances it would be unreasonable to do so, provide facilities for the carrying out of those arrangements.”
- 2 (1) In section 27 of that Act (special provisions as to religious education in controlled schools), the word “education” shall be substituted for the word “instruction” in each place where it occurs in subsections (1), (2), (4) and (5).
- (2) The following subsection shall be substituted for subsection (6) of that section—

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- “(6) In the case of a controlled school the provision for religious education for pupils at the school which is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school’s basic curriculum shall be provision for religious education—
- (a) in accordance with any arrangements made under subsection (1) of this section; or
  - (b) subject to any such arrangements, in accordance with an agreed syllabus adopted for the school or for those pupils.”
- 3 (1) In section 28 of that Act (special provisions as to religious education in aided schools and in special agreement schools), the following subsections shall be substituted for subsection (1)—
- “(1) In the case of an aided or special agreement school the provision for religious education for pupils at the school which is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school’s basic curriculum shall be provision for religious education—
- (a) in accordance with any provision of the trust deed relating to the school or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school; or
  - (b) in accordance with any arrangements under this section.
- (1A) Subject to subsection (1C) of this section, the religious education given to pupils at such a school shall be under the control of the governors of the school.
- (1B) Where the parents of pupils in attendance at such a school—
- (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority; and
  - (b) cannot with reasonable convenience cause those pupils to attend any school at which that syllabus is in use;
- then, unless the authority are satisfied that owing to any special circumstances it would be unreasonable to do so, arrangements shall be made for religious education in accordance with that syllabus to be given to those pupils in the school during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school’s basic curriculum by virtue of section 2(1)(a) of that Act.
- (1C) Those arrangements shall be made by the governors of the school, unless the local education authority are satisfied that the governors are unwilling to make the arrangements, in which case they shall be made by the authority.”
- (2) The word “education” shall be substituted for the word “instruction” in each place where it occurs in subsections (2) to (4) of that section.
- 4 The word “education” shall be substituted for the word “instruction”—
- (a) in section 29(1) of that Act (preparation, etc., of agreed syllabus);

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- (b) in each place where it occurs in section 30 of that Act (saving as to position of teachers); and
  - (c) in section 67(3) of that Act (determination of question as to whether religious education is in accordance with trust deed relating to a voluntary school).
  
- 5 In section 77 of that Act (inspection of educational establishments)—
  - (a) the word “education” shall be substituted for the word “instruction” in both places where it occurs in subsection (5); and
  - (b) in subsection (6), for the words “instruction in a voluntary school in accordance with the provisions of this Act” there shall be substituted the words “receiving religious education in a voluntary school in accordance with section 9 of the Education Reform Act 1988”.
  
- 6 In section 114(1) of that Act (interpretation) the word “education” shall be substituted for the word “instruction” in the definition of “agreed syllabus”.
  
- 7 (1) In Schedule 5 to that Act (procedure for preparing and bringing into operation an agreed syllabus of religious education) the word “education” shall be substituted for the word “instruction” in each place where it occurs in paragraphs 1, 5, 6 and 9 to 11.  
(2) In paragraph 2 (representative committees constituting the conference), for sub-paragraph (a) there shall be substituted the following sub-paragraph—
  - “(a) such Christian and other religious denominations as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;”.
  
- (3) For paragraph 12 of that Schedule there shall be substituted the following paragraphs—

#### **Reconsideration of agreed syllabus**

- “12 Whenever a local education authority are of opinion (whether upon representations made to them or otherwise) that any agreed syllabus for the time being adopted by them ought to be reconsidered, the authority shall cause to be convened for that purpose a conference constituted in accordance with the provisions of this Schedule.
  
- “13 (1) The following provisions of this paragraph apply where a local education authority cause such a conference to be convened for the purpose of reconsidering any agreed syllabus, whether under paragraph 12 of this Schedule or under section 11(8) of the Education Reform Act 1988 (obligation of authority to cause such a conference to be convened if required to do so by representative groups on standing advisory council for religious education).
  - (2) If the conference unanimously recommend that the existing syllabus should continue to be the agreed syllabus, the authority may give effect to the recommendation.
  - (3) If—

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- (a) the conference unanimously recommend a new syllabus to be adopted in substitution for the existing syllabus; and
- (b) it appears to the authority that the new syllabus complies with section 8(3) of that Act (new agreed syllabus to reflect mainly Christian religious traditions);

the authority may give effect to the recommendation.

(4) If either—

- (a) the authority report to the Secretary of State that the conference are unable to reach unanimous agreement; or
- (b) it appears to the Secretary of State that the authority have failed to exercise their power under sub-paragraph (2) or (3) above to give effect to the unanimous recommendation of the conference;

the Secretary of State shall proceed in accordance with the provisions of paragraph 10 of this Schedule, and paragraph 11 of this Schedule shall apply accordingly.”

*The Child Care Act 1980 (c. 5)*

8 In the Child Care Act 1980 the word “education” shall be substituted for the word “instruction” in—

- (a) section 39(2)(b) (regulations with respect to facilities for religious education in community homes); and
- (b) section 42(5) (determination of questions as to religious education to be given in a controlled or assisted community home).

*The Education Act 1981 (c. 60)*

9 In section 12 of the 1981 Act (approval of special schools), for subsection (4) (provision to be made in regulations as to religious worship and instruction in special schools) there shall be substituted the following subsection—

“(4) Provision shall be made in the regulations to secure that, so far as practicable, every pupil attending a special school will attend religious worship and receive religious education, or will be withdrawn from attendance at such worship or from receiving such education, in accordance with the wishes of his parent.”.

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## SCHEDULE 2

Section 14.

### THE CURRICULUM AND ASSESSMENT COUNCILS

#### *Preliminary*

.....  
F232<sup>1</sup>

#### **Textual Amendments**

**F232** Sch. 2 para. 1 repealed (1.1.1994) by 1993 c. 35, s. 307(3), Sch. 21Pt. II; S.I. 1993/3106, art. 9, Sch. 1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).

#### *Status*

- 2 The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

#### *Powers*

- 3 The Council shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the exercise or performance of any of its functions including, in particular, power—
- (a) to acquire or dispose of land or other property;
  - (b) to enter into contracts;
  - (c) to form bodies corporate or to subscribe for shares or stock;
  - (d) to invest any sums not immediately required for the purpose of the discharge of its functions;
  - (e) to accept gifts of money, land or other property; and
  - (f) to borrow money.
- 4 (1) The Council shall also have power to furnish assistance, other than financial assistance, to any person or body, whether within or outside the United Kingdom.
- (2) Assistance may be provided on such terms and subject to such conditions (if any) as the Council may determine.
- (3) In particular assistance may be provided free of charge or on such terms as to payment as the Council may determine.
- (4) The consent of the Secretary of State shall be required for the exercise of any power conferred by this paragraph.

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### *Chief officer*

- 5 (1) The Council shall have a chief officer who shall be appointed—
- (a) in the case of a person who is also chairman of the Council, by the Secretary of State;
  - (b) in any other case, by the Council with the approval of the Secretary of State.
- (2) The appointment of the chief officer shall be on such terms and conditions as the Secretary of State or, as the case may be, the Council with the approval of the Secretary of State may determine.
- (3) No member of the Council other than the chairman shall be appointed as chief officer.

### *Qualifications of members and tenure of office*

- 6 (1) A person shall hold and vacate office as a member or as chairman or deputy chairman of the Council in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for reappointment.
- (2) A person may at any time by notice in writing to the Secretary of State resign his office as a member or as chairman or deputy chairman of the Council.
- 7 (1) If the Secretary of State is satisfied that a member of the Council—
- (a) has been absent from meetings of the Council for a period longer than six consecutive months without the permission of the Council; or
  - (b) is unable or unfit to discharge the functions of a member;
- the Secretary of State may by notice in writing to that member remove him from office.
- (2) If the chairman or deputy chairman of the Council ceases to be a member of the Council, he shall also cease to be chairman or deputy chairman.

### *Salaries, allowances and pensions for members*

- 8 (1) The Council—
- (a) shall pay the members of the Council such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine; and
  - <sup>[F233]</sup>(b) shall, as regards any member of the Council in whose case the Secretary of State may so determine, pay, or make provision for the payment of, such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.]
- (2) If a person ceases to be a member of the Council and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Council to make to that person a payment of such amount as the Secretary of State may determine.



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- (3) A determination or direction of the Secretary of State under sub-paragraph (1) or (2) above requires the approval of the Treasury.

#### Textual Amendments

**F233** Sch. 2 para. 8(1)(b) substituted (1.10.1993) by 1993 c. 35, s. 307(1), Sch. 19 para.141; S.I. 1993/1975, art. 9 Sch.1

#### House of Commons disqualification

- [<sup>F234</sup> In Part III of Schedule 1 to the <sup>M58</sup>House of Commons Disqualification Act 1975 (disqualifying offices), there shall be inserted at the appropriate places the following entries—

**F234**

. . .

A member of the Curriculum Council for Wales established under section 14 of the Education Reform Act 1988 who is in receipt of remuneration.

**F234**

. . .]

#### Textual Amendments

**F234** Sch. 2 para. 9 repealed (1.1.1994 in respect of repeals of the entries relating to membership of the National Curriculum Council and the School Examinations and Assessment Council in Sch. 2 para. 9 and otherwise *prosp.*) by 1993 c. 35, ss. 307(3), 308(3), Sch. 21, Pt. II; S.I. 1993/3106, art. 4, Sch.1, Appendix (with art. 5, Sch. 2)

#### Marginal Citations

**M58** 1975 c. 24.

#### Staff

- 10 (1) The Council may, with the approval of the Secretary of State as to numbers given with the consent of the Treasury, appoint such employees as it thinks fit.
- (2) The Council shall pay to its employees such remuneration and allowances as it may determine.
- (3) The employees of the Council shall be appointed on such terms and conditions as the Council may determine.
- (4) A determination under sub-paragraph (2) or (3) above requires the approval of the Secretary of State given with the consent of the Treasury.
- (5) Employment with the Council shall be included among the kinds of employment to which a scheme under section 1 of the <sup>M59</sup>Superannuation Act 1972 can apply, [<sup>F235</sup> and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of “Other Bodies” there shall be inserted the following entries—

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F235cc . . .

Curriculum Council for Wales.

F235 . . .”]

- (6) The Council shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to subparagraph (5) above in the sums payable out of money provided by Parliament under that Act.
- (7) Where an employee of the Council is, by reference to that employment, a participant in a scheme under section 1 of that Act and is also a member of the Council the Treasury may determine that his service as such a member shall be treated for the purposes of the scheme as service as an employee of the Council (whether or not any benefits are payable to or in respect of him by virtue of paragraph 8 above).

#### Textual Amendments

**F235** Words in [Sch. 2 para. 10\(5\)](#) repealed (1.1.1994 in relation to repeals of the entries relating to the National Curriculum Council and the School Examinations and Assessment Council and otherwise *prosp.*) by [1993 c. 35, ss. 307\(3\), 308\(3\), Sch. 21 Pt. II; S.I. 1993/3106, art. 4, Sch.1](#), Appendix (with art. 5, Sch. 21)

#### Marginal Citations

**M59** [1972 c. 11](#).

[<sup>F236</sup> *Finance*]

#### Textual Amendments

**F236** [Sch. 2 para. 11](#) and marginal heading “Finance” substituted for [Sch. 2 para. 11](#) and marginal heading “Expenses” (1.10.1993) by [1993 c. 35, s.249; S.I. 1993/1975, art. 9, Sch.1](#)

- [<sup>F237</sup> 11 (1) The Secretary of State may make grants to the Council of such amount as he thinks fit in respect of expenses incurred or to be incurred by it in carrying out its functions.
- (2) The payment of grant under this paragraph shall be subject to the fulfilment of such conditions as the Secretary of State may determine.
- (3) The Secretary of State may also impose such requirements as he thinks fit in connection with the payment of grant under this paragraph.]

#### Textual Amendments

**F237** [Sch. 2 para. 11](#) and marginal heading “Finance” substituted for [Sch. 2 para. 11](#) and marginal heading “Expenses” (1.10.1993) by [1993 c. 35, s.249; S.I. 1993/1975, art. 9, Sch.1](#)

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### *Committees*

- 12 (1) The Council may establish a committee for any purpose.
- (2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Council.
- (3) Such a committee may include persons who are not members of the Council.
- (4) The Council shall keep under review the structure of committees established under this paragraph and the scope of each committee's activities.

### *Delegation of functions*

- 13 The Council may authorise the chairman, the deputy chairman, the chief officer or any committee established under paragraph 12 above to exercise such of its functions as it may determine.

[<sup>F238</sup>13(1)] The chairman of the School Curriculum and Assessment Authority, or a representative of his, shall be entitled to attend and take part in deliberations (but not in decisions) at meetings of the Council or any committee of the Council.

- (2) The Council shall provide the chairman of the School Curriculum and Assessment Authority with such copies of any documents distributed to members of the Council or of any such committee as he may require.]

#### **Textual Amendments**

**F238** Sch. 2 para. 13A inserted (1.10.1993) by 1993 c. 35, s.250; S.I. 1993/1975, art. 9 Sch.1

### *Proceedings*

- 14 The validity of proceedings of the Council shall not be affected by a vacancy among the members or any defect in the appointment of a member.
- 15 The Council shall have power to regulate its own procedure and that of any of its committees.

### *Application of seal and proof of instruments*

- 16 The application of the seal of the Council shall be authenticated by the signature of the chairman or deputy chairman and that of one other member.
- 17 Any document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or

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executed by a person authorised by the Council in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### *Accounts*

- 18 (1) It shall be the duty of the Council—
- (a) to keep proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each financial year of the Council a statement of accounts <sup>F239</sup> . . . ; and
  - (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.

[<sup>F240</sup>(1A) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the information to be contained in it;
- (b) the manner in which the information contained in it is to be presented; or
- (c) the methods and principles according to which the statement is to be prepared.]

(2) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.

(3) In this paragraph “financial year” means the period beginning with the date on which the Council is established and ending with the second 31st March following that date, and each successive period of twelve months.

#### **Textual Amendments**

**F239** Words in *Sch. 2 para. 18(1)(b)* repealed (1.10.1993) by 1993 c. 35, ss. 251(2), 307, *Sch. 21Pt. II*; S.I. 1993/1975, art. 9, *Sch.1*, Appendix

**F240** *Sch. 2 para. 18(1A)* inserted (1.10.1993) by 1993 c. 35, s. 251(3); S.I. 1993/1975, art. 9, *Sch.1*

## SCHEDULE 3

Section 44.

### APPOINTMENT AND DISMISSAL OF SCHOOL STAFF, ETC., DURING FINANCIAL DELEGATION

#### *Appointment of head teacher and deputy head teacher*

- 1 (1) This paragraph applies in relation to any appointment to fill a vacancy in the post of head teacher or deputy head teacher of a school to which section 44 of this Act for the time being applies.
- (2) References in this Schedule to a vacancy in any post include a prospective vacancy in the post.

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- (3) The governing body shall notify the local education authority of the vacancy in writing before taking any of the steps mentioned below.
- (4) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the following provisions of this paragraph before the date on which it falls vacant—
  - (a) the governing body shall recommend a person for appointment as acting head teacher; and
  - (b) the authority shall appoint the person recommended unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (5) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the following provisions of this paragraph before the date on which it falls vacant—
  - (a) the governing body may recommend a person for appointment as acting deputy head teacher; and
  - (b) the authority shall appoint the person recommended unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (6) References in this Schedule to staff qualification requirements are references to any requirements with respect to—
  - (a) qualifications;
  - (b) health and physical capacity; or
  - (c) fitness on educational grounds or in any other respect;of teachers and other persons employed in work which brings them regularly into contact with persons who have not attained the age of nineteen years which for the time being apply under regulations made under section 27 of the 1980 Act (school and further education regulations).
- (7) Before recommending any person for appointment as head teacher or deputy head teacher, the governing body shall advertise the vacancy in such publications circulating throughout England and Wales as they consider appropriate.
- (8) The governing body shall appoint a selection panel consisting of at least three of their members to perform the functions conferred on the panel under this paragraph.
- (9) The selection panel shall—
  - (a) interview such applicants for the post as they think fit;
  - (b) where they consider that it is appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by them; and
  - (c) if their recommendation is approved by the governing body, recommend the applicant in question to the authority for appointment.
- (10) If the selection panel are unable to agree on a person to recommend to the governing body or the governing body do not approve their recommendation, the governing body—

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- (a) may, if they think fit, re-advertise the vacancy in the manner required by sub-paragraph (7) above; and
  - (b) whether or not they re-advertise the vacancy, may require the panel to repeat the steps mentioned in sub-paragraph (9) above.
- (11) The authority shall appoint the person recommended by the panel for appointment as head teacher or (as the case may be) as deputy head teacher unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (12) Where the authority decline to appoint a person recommended by the governing body for appointment as acting head teacher, the governing body shall recommend another person for appointment.
- (13) Where the authority decline to appoint a person recommended by a selection panel appointed under sub-paragraph (8) above for appointment as head teacher or deputy head teacher, sub-paragraph (10) above shall apply as it applies in the cases there mentioned.

#### *Appointment of other teachers*

- 2
- (1) Subject to sub-paragraph (2) below, sub-paragraphs (4) to (11) below apply in relation to any appointment to fill a vacancy in any teaching post (whether full-time or part-time) at a school to which section 44 of this Act for the time being applies, other than a post to which paragraph 1 above applies.
- (2) Sub-paragraphs (4) to (11) below do not apply in relation to a temporary appointment to fill such a vacancy for a period not exceeding four months or where it appears to the governing body that the period for which the person appointed will hold the post in question will not exceed four months.
- (3) Where it appears to the governing body in the case of any post that it would be appropriate to make such an appointment as is mentioned in sub-paragraph (2) above—
- (a) they may recommend a person for appointment to the post on such terms as to the duration of the appointment as they may specify; and
  - (b) the local education authority shall appoint the person recommended on the terms specified unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (4) Before taking any of the steps mentioned below, the governing body shall—
- (a) determine a specification for the post in consultation with the head teacher; and
  - (b) send a copy of the specification to the authority.
- (5) The authority may nominate for consideration for appointment to the post any person who appears to them to be qualified to fill the post and who either—
- (a) is at the time of his nomination an employee of theirs or has been appointed to take up employment with them at a future date; or
  - (b) is at the time of his nomination employed by the governing body of an aided school maintained by the authority;

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- subject, in a case within paragraph (b) above, to the consent of the governing body of the school concerned.
- (6) The governing body may advertise the vacancy at any time after they have sent a copy of the specification for the post to the authority in accordance with sub-paragraph (4) above, and shall do so unless either—
- (a) they accept for appointment to the post a person nominated by the authority under sub-paragraph (5) above; or
  - (b) they decide to recommend to the authority for appointment to the post a person who is already employed to work at the school.
- (7) Where the governing body advertise the vacancy, they shall do so in a manner likely in their opinion to bring it to the notice of persons (including employees of the authority) who are qualified to fill the post.
- (8) Where the governing body advertise the vacancy, they shall—
- (a) interview such applicants for the post and such of the persons (if any) nominated by the authority under sub-paragraph (5) above as they think fit; and
  - (b) where they consider it is appropriate to do so—
    - (i) recommend to the authority for appointment one of the applicants interviewed by them; or
    - (ii) notify the authority that they accept for appointment any person so nominated;as the case may require.
- (9) If the governing body are unable to agree on a person to recommend or accept for appointment, they may repeat the steps mentioned in paragraphs (a) and (b) of sub-paragraph (8) above, with or without first re-advertising the vacancy in accordance with sub-paragraph (7) above.
- (10) The authority shall appoint the person recommended or accepted for appointment to the post by the governing body unless (in the case of a person other than one nominated by the authority) he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (11) Where the authority decline to appoint a person recommended by the governing body for appointment the governing body shall repeat such of the steps mentioned in paragraphs (a) and (b) of sub-paragraph (8) above as they think fit, with or without first re-advertising the vacancy in accordance with sub-paragraph (7) above.
- (12) The governing body may delegate any of their functions under this paragraph, in relation to the filling of a particular vacancy or a vacancy of a kind specified by them, to—
- (a) one or more governors;
  - (b) the head teacher; or
  - (c) one or more governors and the head teacher acting together.

*Appointments: advice of chief education officer and head teacher*

- 3 (1) The chief education officer of the local education authority concerned shall be entitled to attend, for the purpose of giving advice, all proceedings—

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- (a) of the governing body;
- (b) of any selection panel appointed under paragraph 1 above; or
- (c) of any persons to whom any functions of the governing body under paragraph 2 above are delegated;

relating to appointments to which paragraph 1 or (as the case may be) paragraph 2 above applies (including in each case any interviews).

- (2) The chief education officer shall also be under a duty—
- (a) to offer such advice as he considers appropriate with respect to the appointment of a head teacher, a deputy head teacher, an acting head teacher or an acting deputy head teacher or any matter arising in connection with any such appointment; and
  - (b) to give such advice as he considers appropriate with respect to any appointment to which paragraph 2 above applies if requested to do so by the governing body.
- (3) Each of the following, that is to say—
- (a) the governing body;
  - (b) any selection panel appointed under paragraph 1 above; and
  - (c) any persons to whom any functions of the governing body under paragraph 2 above are delegated;

shall consider any advice given by the chief education officer with respect to any matter it falls to them to determine relating to any appointment before determining that matter, whether or not the advice was given at their request.

- (4) Except in relation to the appointment of a head teacher—
- (a) sub-paragraph (1) above shall apply in relation to the head teacher (if not otherwise entitled to be present at the proceedings there mentioned) as it applies in relation to the chief education officer; and
  - (b) sub-paragraph (3) above shall apply in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer.

#### *Appointment of non-teaching staff*

- 4 (1) Where the governing body of any school to which section 44 of this Act for the time being applies wish to appoint a person to work in a non-teaching post at the school, they may recommend a person to the local education authority concerned for appointment to the post.
- (2) Such a recommendation shall be in writing and shall specify—
- (a) the duties to be performed by the person appointed (including, where the post is part-time, his hours of work);
  - (b) the grade (on the scale of grades currently applicable in relation to employment with the authority) which the governing body consider appropriate for the post; and
  - (c) where the authority have any discretion with respect to the remuneration to be paid to a person appointed to the post, the determination of any matter to which that discretion applies which the governing body consider appropriate in the case of the person recommended for appointment.



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- (3) Before selecting a person to recommend for appointment to such a post and determining in relation to any such recommendation any matters mentioned in sub-paragraph (2) above, the governing body shall consult—
  - (a) the head teacher (where he would not otherwise be involved in the decision); and
  - (b) in any case where the post involves or, in the case of a new post, it is proposed that it should involve, work at the school for sixteen hours a week or more, the chief education officer of the authority.
- (4) The authority shall appoint a person recommended for appointment to a non-teaching post at such a school by the governing body on such terms as to give effect, so far as relates to any matter mentioned in sub-paragraph (2) above, to the governing body's recommendation with respect to that matter unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (5) For the purposes of sub-paragraph (2)(c) above, the authority are to be regarded as having a discretion with respect to the remuneration to be paid to a person appointed to any such post if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either—
  - (a) do not apply in relation to that appointment; or
  - (b) leave to the authority any degree of discretion with respect to rate of remuneration or allowances in the case of that appointment.

#### *The clerk to the governing body*

- 5 (1) In the case of any vacancy in the office of clerk to the governing body of a school to which section 44 of this Act for the time being applies, the local education authority concerned shall appoint a person selected by the governing body.
- (2) Before selecting a person to recommend for such appointment, the governing body shall consult the chief education officer of the authority.

#### *Discipline*

- 6 (1) The regulation of conduct and discipline in relation to the staff of any school to which section 44 of this Act for the time being applies, and any procedures for affording to members of the staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the governing body.
- (2) The governing body of any such school shall establish—
  - (a) disciplinary rules and procedures; and
  - (b) procedures such as are mentioned in sub-paragraph (1) above;and shall take such steps as appear to them to be appropriate for making them known to the staff at the school.
- (3) Where the implementation of any determination made by the governing body in the exercise of their control over the conduct and discipline of the staff of any such school requires any action which—

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- (a) is not within the functions exercisable by the governing body by virtue of this Act; but
  - (b) is within the power of the local education authority concerned;
- it shall be the duty of the authority to take that action at the request of the governing body.

#### *Suspension*

- 7 (1) In the case of any school to which section 44 of this Act for the time being applies, the governing body and the head teacher shall both have power to suspend any person employed to work at the school where, in the opinion of the governing body or (as the case may be) of the head teacher, his exclusion from the school is required.
- (2) The governing body or head teacher, when exercising that power, shall immediately inform the local education authority concerned and the head teacher or (as the case may be) the governing body.
- (3) Any suspension under this paragraph may only be ended by the governing body; and the governing body shall, on ending such a suspension, immediately inform the local education authority concerned and the head teacher.
- (4) In this paragraph “suspend” means suspend without loss of emoluments.

#### *Dismissal, etc.*

- 8 (1) Where the governing body of any school to which section 44 of this Act for the time being applies determine—
- (a) that any person employed to work at the school should cease to work there; or
  - (b) that the clerk to the governing body should be dismissed;
- they shall notify the local education authority concerned in writing of their determination and the reasons for it.
- (2) If in a case within sub-paragraph (1)(a) above—
- (a) the person concerned is employed to work solely at the school; and
  - (b) he does not resign;
- the authority shall, before the end of the period of fourteen days beginning with the date on which the notification under sub-paragraph (1) above is given in relation to him, either give him such notice terminating his contract of employment with the authority as is required under that contract or terminate that contract without notice if the circumstances are such that they are entitled to do so by reason of his conduct.
- (3) If in a case within sub-paragraph (1)(a) above the person concerned is not employed to work solely at the school the authority shall require him to cease to work at the school.
- (4) In any case within sub-paragraph (3) above no part of the costs incurred by the authority in respect of the emoluments of the person concerned, so far as relates to any period falling after the expiration of his contractual notice period, shall be met from the school’s budget share.

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- (5) In relation to any such person, the reference in sub-paragraph (4) above to his contractual notice period is a reference to the period of notice that would have been required under his contract of employment with the authority for termination of that contract if such notice had been given on the date on which the notification under sub-paragraph (1) above was given in relation to him.
- (6) In a case within sub-paragraph (1)(b) above the authority shall dismiss the clerk to the governing body on receipt of the notification from the governing body.
- (7) The governing body of such a school shall make arrangements for affording to any person in respect of whom they propose to make any determination under sub-paragraph (1) above an opportunity of making representations with respect to the action they propose to take, including (if he so wishes) oral representations to such person or persons as the governing body may appoint for the purpose, and shall have regard to any representations made by him.
- (8) The governing body of such a school shall also make arrangements for affording to any person in respect of whom they have made such a determination an opportunity of appealing against it before they notify the authority of the determination.
- (9) The head teacher (except where he is the person concerned) and the chief education officer of the authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the governing body relating to any determination under sub-paragraph (1) above; and the governing body shall consider any advice given by a person entitled to attend such proceedings under this sub-paragraph before making any such determination.

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

C134 Sch. 3 para. 8 amended by S.I. 1989/1503, art. 25(3)

- 9
  - (1) Subject to sub-paragraph (2) below, a local education authority shall not dismiss a person employed by the authority to work solely at a school to which section 44 of this Act for the time being applies except as provided by paragraph 8 above.
  - (2) Sub-paragraph (1) above shall not apply in any case where the dismissal of the person in question is required under any regulations made under section 27 of the 1980 Act.

*School meal staff*

- 10 Nothing in paragraphs 4 and 6 to 9 above shall apply in relation to the appointment of a person to work at a school to which section 44 of this Act for the time being applies, or in relation to a person so employed, where—
  - (a) the person concerned is to be, or is, employed to work solely in connection with the provision of meals; and
  - (b) no allowance is made for expenditure on or in connection with the provision of meals in determining the school's budget share.

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### *Interpretation*

- 11 (1) References in this Schedule to a vacancy in any post shall be read in accordance with paragraph 1(2) above.
- (2) References in this Schedule to staff qualification requirements shall be read in accordance with paragraph 1(6) above.
- (3) References in this Schedule to the chief education officer of a local education authority include references to any officer of the authority nominated by the chief education officer.

## SCHEDULE 4

Section 48.

### NEW SCHOOLS

#### *New county and voluntary schools: general*

- 1 (1) This paragraph applies to any new school other than one which will be a special school.
- (2) For the purposes of the application (in accordance with the following provisions of this Schedule) of any provisions of Chapter III of Part I of this Act and Schedule 3 to this Act in relation to such schools—
- (a) references to a school conducted by a governing body shall be read as including references to a new school which has a temporary governing body (and other references to the governing body of a school shall be read as including references to the temporary governing body of a new school);
- (b) references to a county or voluntary school maintained by a local education authority (or to county or voluntary schools) shall be read as including references to a new school which on implementation of the relevant proposal will be a county or voluntary school so maintained; and
- (c) references to a voluntary school of any particular category shall be read as including references to a new school which on implementation of the relevant proposal will be a voluntary school of that category.

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

C135 Sch. 4 paras. 1-3 applied (31.12.1995) by S.I. 1995/3114, reg. 2(2)

#### *Application of schemes in relation to new schools*

- 2 (1) For the purposes of that Chapter, a new school to which paragraph 1 above applies is required to be covered in any financial year by a scheme made under section 33 of this Act by a local education authority if it has a temporary governing body during

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the whole or any part of that year; but the provisions of that Chapter apply in the case of such a school subject to the modifications provided for below in this paragraph.

- (2) Where a school required to be covered by a scheme in any financial year is a new school during the whole or any part of that year, the provision required by section 38(3)(a) of this Act shall not apply in relation to the determination of the school's budget share for that year so far as that share falls in accordance with the scheme to be treated as referable to planned expenditure by the authority concerned for the purposes of the school in respect of any period falling before the implementation of the relevant proposal.
- (3) Accordingly, in the case of any school to which sub-paragraph (2) above applies—
  - (a) paragraph (e) of subsection (4) of section 42 of this Act shall apply as if it referred to such part (if any) of the school's budget share for the financial year in question as falls to be determined in accordance with the provision required by section 38(3)(a);
  - F241(b) .....
  - F241(c) .....and the statement under subsection (3) of that section shall include in relation to any such school the additional particulars mentioned in sub-paragraph (4) below.
- (4) Those particulars are—
  - (a) the amount of such part (if any) of the school's budget share for the financial year in question (as initially determined for the purposes of the scheme) as falls in accordance with the scheme to be treated as referable to planned expenditure such as is mentioned in sub-paragraph (2) above;
  - F241(b) .....
  - F241(c) .....
- (5) Sub-paragraph (2) above shall not be taken as prejudicing the inclusion in the allocation formula under a scheme by virtue of section 38(3)(b) of this Act of provision taking into account in relation to a new school any forecast made in accordance with the scheme of the number of registered pupils it will have on implementation of the relevant proposal.
- (6) The delegation requirement under a scheme shall not apply in relation to a new school [F242which is a secondary school], other than a school to which section 40 of this Act applies, until such date as may be determined by or under the scheme.
- F243(7) In the case of a new school which is a primary school, section 39(2)(b) of this Act shall apply as if for references to a qualifying date in relation to the financial year in question which falls within that year there were substituted references to the date of implementation of the relevant proposal.]
- (8) Section 40 of this Act shall have effect, in relation to any new school to which it applies, with the omission of paragraph (a) of subsection (3).
- (9) Section 42(9) of this Act shall not apply in relation to the temporary governing body of a new school.
- (10) Paragraph 18 of Schedule 2 to the 1986 Act (which requires the local education authority to consult the temporary governing body of a new school and the head teacher about their proposed expenditure on books, equipment and stationery) shall not apply where the new school has a delegated budget.

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#### Textual Amendments

**F241** Sch. 4 para. 2(3)(b)(c),(4)(b)(c) repealed (1.1.1994) by 1993 c. 35, ss. 275(3), 307(3), **Sch. 21Pt.II**; S.I. 1993/3106, art. 4, **sch.1** Appendix (with art.5, Sch. 2) (amended by S.I. 1994/436, **art. 2**).

**F242** Words in Sch. 4, para. 2(6) omitted (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(3)**

**F243** Sch. 4, para. 2(7) omitted (30.9.1991) by virtue of S.I. 1991/1890, **reg. 2(3)**

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

**C136** Sch. 4 para. 2(2)-(5)(6)(9)(10) modified (1.1.1994) by S.I. 1993/3104, **reg.2(3)(a)(b)**

**C137** Sch. 4 paras. 1-3 applied (31.12.1995) by S.I. 1995/3114, **reg. 2(2)**

**C138** Sch. 4 para. 2(2)-(10) extended (25. 2. 1992) by S.I. 1992/164, **reg. 2(4)(a)**

### *New special schools*

- 3 (1) In sections 43 and 50 of this Act—
- (a) any reference—
    - (i) to special schools maintained by local education authorities;
    - (ii) to a special school maintained by such an authority; and
    - (iii) to special schools;
 shall be read as including a reference to any new school proposed to be established by a local education authority which will be a special school and which has a temporary governing body; and
  - (b) any reference to the governing body of a special school shall be read as including a reference to the temporary governing body of such a new school.
- (2) References in section 50 of this Act to a local education authority who maintain one or more special schools shall be read as including references to a local education authority who by virtue of paragraph 28 of Schedule 2 to the 1986 Act are under a duty to defray the expenses there mentioned in relation to the temporary governing body of one or more new schools such as are mentioned in sub-paragraph (1)(a) above.

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

**C139** Sch. 4 paras. 1-3 applied (31.12.1995) by S.I. 1995/3114, **reg. 2(2)**

### *Staff*

- 4 (1) Subject to the following provisions of this paragraph, section 44 or (as the case may be) section 45 of this Act shall apply to a new school which on implementation of the relevant proposal will be a school of a category to which that section applies not only at any time when (by virtue of the preceding provisions of this Schedule) it has a delegated budget but also at any time when it has a temporary governing body and either—
- (a) the delegation requirement under the scheme will apply to the school on or before the implementation of the relevant proposal; or

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- (b) the authority propose to exercise any power under the scheme to delegate the management of the school's budget share for any financial year by making such a delegation—
  - (i) to the temporary governing body before the implementation of that proposal; or
  - (ii) to the governing body of the school on implementation of that proposal.
- (2) The provisions of sections 44 and 45 of and Schedule 3 to this Act shall apply, in the case of a new school, for the purposes only of—
  - (a) the appointment of staff at the school; and
  - (b) the taking of such steps with respect to any other matters referred to in those provisions as may be appropriate in preparation for the conduct of the school following implementation of the relevant proposal.
- (3) In the case of a new school which is a proposed county, controlled [<sup>F244</sup>aided or special] school, no appointments of staff for the school shall be made by the local education authority before the constitution of a temporary governing body for the school.
- (4) None of the provisions of paragraphs 21 to 25, 26(1) and (2) and 30(2) of Schedule 2 to the 1986 Act (provisions as to appointment of staff at new schools and related information to be given to temporary governing bodies) shall have effect in relation to a new school to which section 44 of this Act for the time being applies.
- (5) Paragraphs 20 and 30(3) of that Schedule shall not have effect in relation to a new school to which section 45 of this Act for the time being applies.
- (6) Neither section 44(4) nor section 45(11) of this Act shall apply in the case of a new school; but it shall be the duty of the local education authority concerned to incorporate—
  - (a) the statement mentioned in section 44(4) in the articles of government for a new school to which section 44 applies which will be a county or controlled school; and
  - (b) the statement mentioned in section 45(11) in the articles of government for a new school to which section 45 applies which will be an aided school.
- (7) Section 46(2) and (5) of this Act shall not apply in relation to a new school.
- (8) Any provision included in a scheme by virtue of section 47(3) of this Act, so far as relates to the appointment of staff at a school to which that section applies, shall apply in relation to a new school which on implementation of the relevant proposal will be a school to which that section applies.

#### Textual Amendments

**F244** Words in Sch. 4 para. 4(3) substituted (25.2.1992) by S.I. 1992/164, regs. 1(2), 4(3).

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

**C140** Sch. 4 para. 4(1)(6)(a) modified (1.1.1994) by S.I. 1993/3104, reg.2(3)(b)(c)

**C141** Sch. 4 para. 4(6)(a) extended (25.2.1992) by S.I. 1992/164, reg. 2(4)(b)(i).

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*Financial delegation and statements apart from schemes*

- 5 Section 49 of this Act shall not apply in relation to a new school.
- 6 Section 50(9) of this Act shall not apply in relation to the temporary governing body of a new school.

*Supplementary*

- 7 (1) Section 51(4) of this Act shall not apply in the case of a new school.
- (2) If the articles of government of a new county or voluntary school contain any provision to which section 51(3) of this Act would apply during any period when the school had a delegated budget, they shall also include in relation to any such provision the statement required by section 51(5) of this Act.

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

- C142** Sch. 4 para. 7(2) extended (25. 2. 1992) by S.I. 1992/164, reg. 2(4)(b)(ii).  
Sch. 4 para. 7(2) modified (1.1.1994) by S.I. 1993/3104, reg.2(3)(c)(ii)

<sup>F245</sup>SCHEDULE 5

Section 72.

**Textual Amendments**

- F245** Sch. 5 repealed (1.1.1994) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 143, Sch. 21 Pt.I; S.I. 1993/3106, art. 4, Sch.1 Appendix (with art. 5, Sch. 2) (as amended by S.I. 1994/436, art. 2).

SCHEDULE 6

Section 120.

COURSES OF HIGHER EDUCATION

- 1 The descriptions of courses referred to in sections 120(1) and 235(2)(e) of this Act are the following—
- (a) a course for the further training of teachers or youth and community workers;
  - (b) a post-graduate course (including a higher degree course);
  - (c) a first degree course;
  - (d) a course for the Diploma of Higher Education;



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- (e) a course for the Higher National Diploma or Higher National Certificate of the Business & Technician Education Council, or the Diploma in Management Studies;
  - (f) a course for the Certificate in Education;
  - (g) a course in preparation for a professional examination at higher level;
  - (h) a course providing education at a higher level (whether or not in preparation for an examination).
- 2 For the purposes of paragraph 1(g) above a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business & Technician Education Council.
- 3 For the purposes of paragraph 1(h) above a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in paragraph 2 above.

## SCHEDULE 7

Section 123.

### THE HIGHER EDUCATION CORPORATIONS

#### *Preliminary*

- 1 (1) A higher education corporation established under section 121 of this Act for the purpose of conducting any institution shall be established initially under the name given as the name of that institution in the order under that section specifying that institution.
- (2) A higher education corporation established under section 122 of this Act shall be established initially under the name given in the order under that section establishing the corporation.
- (3) Below in this Schedule—
- (a) references to a corporation are references to any higher education corporation; and
  - (b) references, in relation to a corporation, to the institution are references—
    - (i) in relation to any time before the transfer date applicable in relation to the corporation, to the institution the corporation is established to conduct; and
    - (ii) in relation to any later time, to any institution for the time being conducted by the corporation in exercise of their powers under this Act.
- [<sup>F246</sup>(4) A corporation may change their name with the consent of the Privy Council.]

#### **Textual Amendments**

**F246** Sch. 7 para. 1(4) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 59(a); S.I. 1992/831, art. 2, Sch.1.

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### *Initial constitution*

- 2 (1) Paragraphs 3 and 4 below provide for the initial constitution of a corporation and are subject to paragraph 6 below.
- (2) References below in this Schedule, in relation to a corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with paragraphs 3 and 4 below is subject to variation.
- 3 (1) A corporation shall consist of—
- (a) not less than twelve and not more than twenty-four members appointed in accordance with the following provisions of this Schedule; and
  - (b) the person who is for the time being the principal of the institution, unless he chooses not to be a member.
- (2) Of the appointed members—
- (a) up to thirteen (referred to below in this Schedule as the independent members) shall be persons appearing to the appointing authority to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession;
  - (b) not less than four and not more than eight (referred to below in this Schedule as the initial nominee members) shall be persons nominated in accordance with this Schedule otherwise than by other members of the corporation;
  - (c) at least one and not more than four (referred to below in this Schedule as the additional nominee members) shall be persons nominated in accordance with this Schedule by the members of the corporation who are either independent members or initial nominee members and the principal of the institution (if he is a member).
- (3) The members of the corporation for the time being shall be known as the board of governors of the institution.
- 4 (1) The initial nominee members of a corporation shall consist of—
- (a) at least one and not more than three local authority nominees;
  - (b) one teacher nominee;
  - (c) one general staff nominee; and
  - (d) one student nominee;
- and may include up to two academic nominees.
- (2) In this Schedule—
- “local authority nominee” means a person, other than a person employed at the institution (whether or not as a teacher) or a student at the institution, nominated by a local authority specified in relation to the corporation in an order made by the Secretary of State;
- “teacher nominee” means a teacher at the institution nominated by the teachers at the institution;
- “general staff nominee” means a person employed at the institution otherwise than as a teacher and nominated by the persons so employed;
- “student nominee” means a student at the institution nominated by the students at the institution; and
- “academic nominee” means a teacher at the institution nominated by the academic board.

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- (3) Of the additional nominee members of a corporation—
- (a) the one required by paragraph 3(2)(c) above shall be a person who has experience in the provision of education; and
  - (b) the three others permitted by paragraph 3(2)(c) are—
    - (i) one person who has such experience; and
    - (ii) two persons who need not have such experience.
- (4) In the case of any corporation, a person who is—
- (a) employed at the institution (whether or not as a teacher);
  - (b) a full-time student at the institution; or
  - (c) an elected member of any local authority;
- is not eligible for appointment as an independent member or as an additional nominee member of the corporation.
- (5) For the purposes of this paragraph, a person who is not for the time being enrolled as a student at the institution shall be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution.
- (6) It shall be for the appointing authority to determine any question as to whether any person is qualified in accordance with the preceding provisions of this paragraph for appointment as a member of a corporation of any description or category.
- (7) Before making an order specifying local authorities in relation to any corporation for the purposes of sub-paragraph (1)(a) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned.

#### *Initial appointments*

- 5 (1) The Secretary of State is the appointing authority for the purposes of this Schedule in relation to the appointment of the first members of a corporation.
- (2) In determining the number of members to appoint within each variable category, he shall secure that at least half of all the members of the corporation as first constituted are independent members.

#### *Determination of membership numbers*

- 6 (1) Following the appointment by the Secretary of State of the first members of a corporation, the corporation shall make a determination with respect to their membership numbers under this paragraph.
- (2) Such a determination shall fix the number of members of each variable category of which the corporation are to consist, subject to the limits applicable in relation to that category under paragraphs 3 and 4 above.
- (3) In making a determination under this paragraph, the corporation shall secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be independent members.

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- (4) A determination under this paragraph shall not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect.
- (5) A determination under this paragraph may be varied by a subsequent determination under this paragraph.

#### *Subsequent appointments*

- 7 (1) Appointments of members of a corporation at any time after the appointment by the Secretary of State of the first members shall be subject to this paragraph.
- (2) No such appointment may be made before the first determination of the corporation under paragraph 6 above takes effect.
- (3) The corporation are the appointing authority for the purposes of this Schedule in relation to the appointment of any member of the corporation other than an independent member.
- (4) Where an appointment of an additional independent member of the corporation falls to be made in consequence of a determination under paragraph 6 above, the appointing authority for the purposes of this Schedule in relation to the appointment—
  - (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of the determination; or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (5) Where a vacancy in the office of an independent member of the corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office—
  - (a) his successor shall not be appointed more than six months before the expiry of that term; and
  - (b) the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—
    - (i) shall be the corporation if the appointment is made not less than three months before the expiry of that term; or
    - (ii) if the appointment is not so made, shall be the current independent members of the corporation.
- (6) Where a vacancy in the office of an independent member of the corporation arises on the death of any such member or on any such member ceasing to hold office under paragraph 8(2) or 10 below, the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—
  - (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of death or the date of the notice under paragraph 8(2) or 10 below (as the case may be); or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (7) No appointment of an independent member of the corporation by the corporation under sub-paragraph (4)(a), (5)(a) or (6)(a) above shall be made unless the

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appointment has been approved by the current independent members of the corporation.

- [<sup>F247</sup>(8) If the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum]

#### Textual Amendments

**F247** Sch. 7 para. 7(8) added (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 71(3)(a); S.I. 1992/831, art. 2, Sch.1.

#### *General provisions with respect to qualifications of members and tenure of office*

- 8 (1) A member of a corporation shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A member of a corporation may at any time by notice in writing to the corporation resign his office.
- (3) Where a member of a corporation appointed as a teacher nominee, an academic nominee, a general staff nominee or a student nominee ceases before the end of his term of office to be qualified in accordance with paragraph 4 above for appointment as a nominee of the description in question his office shall thereupon become vacant.
- 9 (1) Subject to the following provisions of this paragraph, a person is not qualified for appointment as a member of a corporation at any time when he is under the age of eighteen or over the age of seventy.
- (2) A person over the age of seventy shall not by virtue of sub-paragraph (1) above be disqualified for appointment as a member of the corporation where—
- (a) the appointing authority in relation to the appointment is the Secretary of State; or
- (b) the appointing authority in relation to the appointment determine to make the appointment by a vote representing an absolute majority of all the members of that authority (whether or not taking part in the vote).
- (3) It shall be for the appointing authority in relation to the appointment in question to determine any question arising under sub-paragraph (1) above with respect to a person's qualification for appointment as a member of the corporation.
- 10 If at any time a corporation are satisfied that any member of the corporation—
- (a) has been absent from meetings of the corporation for a period longer than twelve consecutive months without the permission of the corporation; or
- (b) is unable or unfit to discharge the functions of a member;
- the corporation may by notice in writing to that member remove him from office; and thereupon the office shall become vacant.

#### *Allowances to members*

- 11 A corporation shall have power to pay to the members of the corporation such travelling, subsistence or other allowances as the corporation may determine.

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### *Election of chairman*

- 12 (1) The members of a corporation shall elect a chairman from among their number.
- (2) The chairman shall hold office for such period as the corporation may determine.
- (3) A member of a corporation who is employed at the institution or a student at the institution is not eligible for election as chairman of the corporation.

### *Committees*

- 13 (1) A corporation may establish a committee for any purpose.
- (2) The number of members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the corporation.
- (3) Such a committee may include persons who are not members of the corporation.

### *Proceedings*

- 14 The validity of any proceedings of a corporation or of any committee of a corporation shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- 15 In the event of an equality of votes at any meeting of a corporation the chairman of the corporation shall have a second or casting vote.

### *Application of seal and proof of instruments*

- 16 The application of the seal of the corporation shall be authenticated by the signature of the chairman of the corporation or of some other member authorised either generally or specially by the corporation to act for that purpose together with that of any other member.
- 17 Every document purporting to be an instrument made or issued by or on behalf of a corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### *Accounts*

- 18 (1) It shall be the duty of each corporation—
- (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
- (a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and
  - (b) comply with any directions given by [F248 the higher education funding council] as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.

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[<sup>F249</sup>(2A) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.]

(3) The accounts (including any statement prepared under this paragraph) shall be audited by persons appointed in respect of each financial year by the corporation.

(4) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities in England and Wales before appointing any auditor under sub-paragraph (3) above in respect of their first financial year.

[<sup>F250</sup>(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.]

(6) In this paragraph, in relation to a corporation—

“the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

“financial year” means that period and each successive period of twelve months.

#### Textual Amendments

**F248** Words in Sch. 7 para. 18(2)(b) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 59\(b\)\(i\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F249** Sch. 7 para. 18(2A) inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(3\)\(b\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

**F250** Sch. 7 para. 18(5) substituted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 93\(1\), Sch. 8 Pt. I para. 59\(b\)\(ii\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

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

**C143** Sch. 7 para. 18: power to exclude conferred (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 78\(2\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

### *Efficiency studies*

<sup>F251</sup>19 . . . . .

#### Textual Amendments

**F251** [Sch. 7 para. 19](#) repealed (6. 5. 92) by [Further and Higher Education Act 1992 \(c. 13\), s. 93, Sch. 8 Pt. I para. 59\(c\), Sch.9](#); S.I. 1992/831, art. 2, [Sch.1](#).

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## [<sup>F252</sup>SCHEDULE 7A

### INSTRUMENTS OF GOVERNMENT MADE BY PRIVY COUNCIL

#### Textual Amendments

**F252** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\), Sch.6; S.I. 1992/831, art. 2, Sch.1.](#)

#### *Name of corporation*

<sup>F253</sup><sub>1</sub> The instrument shall empower the corporation to change their name with the consent of the Privy Council.

#### Textual Amendments

**F253** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\), Sch.6; S.I. 1992/831, art. 2, Sch.1.](#)

#### *Membership*

<sup>F254</sup><sub>2</sub> The instrument shall make provision for the membership of the corporation which meets all the requirements of paragraphs 3 to 5 below.

#### Textual Amendments

**F254** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\), Sch.6; S.I. 1992/831, art. 2, Sch.1.](#)

<sup>F255</sup><sub>3</sub> (1) The corporation shall consist of—

- (a) not less than twelve and not more than twenty-four members appointed in accordance with the following provisions; and
- (b) the person who is for the time being the principal of the institution, unless he chooses not to be a member.

(2) Of the appointed members—

- (a) up to thirteen (referred to below in this Schedule as the “independent members”) shall be persons appearing to the appointing authority to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession;
- (b) up to two may be teachers at the institution nominated by the academic board and up to two may be students at the institution nominated by the students at the institution; and
- (c) at least one and not more than nine (referred to below in this Schedule as the “co-opted members”) shall be persons nominated by the members of the corporation who are not co-opted members.

(3) The co-opted member required by sub-paragraph (2)(c) above shall be a person who has experience in the provision of education.



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- (4) A person (other than a person appointed in pursuance of sub-paragraph (2)(b) above) who is—
- (a) employed at the institution (whether or not as a teacher);
  - (b) a full-time student at the institution; or
  - (c) an elected member of any local authority,
- is not eligible for appointment as a member of the corporation otherwise than as a co-opted member.
- (5) For the purposes of this paragraph, a person who is not for the time being enrolled as a student at the institution shall be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution.
- (6) It shall be for the appointing authority to determine any question as to whether any person is qualified in accordance with the preceding provisions of this paragraph for appointment as a member of the corporation of any description or category.

#### Textual Amendments

**F255** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\)](#), [Sch.6](#); [S.I. 1992/831, art. 2](#), [Sch.1](#).

#### Numbers

- <sup>F256</sup>4 (1) The corporation shall make a determination with respect to their membership numbers.
- (2) Such a determination shall fix the number of members of each variable category of which the corporation are to consist, subject to the limits applicable in relation to that category in accordance with paragraph 3 above.
- (3) In making such a determination, the corporation shall secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be independent members.
- (4) Such a determination shall not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect.
- (5) Such a determination may be varied by a subsequent determination.

#### Textual Amendments

**F256** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\)](#), [Sch.6](#); [S.I. 1992/831, art. 2](#), [Sch.1](#).

#### Appointments

- <sup>F257</sup>5 (1) Subject to section 124C of this Act, no appointment of members of the corporation may be made before the first determination of the corporation in accordance with paragraph 4 above takes effect.

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- (2) Subject to that section, the corporation are the appointing authority in relation to the appointment of any member of the corporation other than an independent member.
- (3) Where an appointment of an additional independent member of the corporation falls to be made in consequence of a determination in accordance with paragraph 4 above, the appointing authority in relation to the appointment—
  - (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of the determination; or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (4) Where a vacancy in the office of an independent member of the corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office—
  - (a) his successor shall not be appointed more than six months before the expiry of that term; and
  - (b) the appointing authority in relation to the appointment of his successor—
    - (i) shall be the corporation if the appointment is made not less than three months before the expiry of that term; or
    - (ii) if the appointment is not so made, shall be the current independent members of the corporation.
- (5) Where a vacancy in the office of an independent member of the corporation arises on the death of any such member or on any such member ceasing to hold office in accordance with the instrument, the appointing authority in relation to the appointment of his successor—
  - (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of death or the the date on which the office becomes vacant (as the case may be); or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (6) No appointment of an independent member of the corporation by the corporation in accordance with sub-paragraph (3)(a), (4)(b)(i) or (5)(a) above shall be made unless the appointment has been approved by the current independent members of the corporation.
- (7) If the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum.

#### Textual Amendments

**F257** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(4\)](#), [Sch.6](#); [S.I. 1992/831](#), art. 2, [Sch.1](#).

#### *Tenure of office etc.*

**F258**<sup>6</sup>

Subject to any other requirements of this Act, the instrument may provide for the eligibility of persons for membership of the corporation and shall provide for their period of office and the circumstances in which they are to cease to hold office.

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#### Textual Amendments

**F258** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(4), [Sch.6](#); S.I. 1992/831, art. 2, [Sch.1](#).

#### *Officers*

**F2597** The instrument shall provide for one or more officers to be chosen from among the members.

#### Textual Amendments

**F259** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(4), [Sch.6](#); S.I. 1992/831, art. 2, [Sch.1](#).

#### *Committees*

**F2608** The instrument may provide for the corporation to establish committees and permit such committees to include persons who are not members of the corporation.

#### Textual Amendments

**F260** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(4), [Sch.6](#); S.I. 1992/831, art. 2, [Sch.1](#).

#### *Allowances*

**F2619** The instrument may provide for the corporation to pay allowances to its members.

#### Textual Amendments

**F261** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(4), [Sch.6](#); S.I. 1992/831, art. 2, [Sch.1](#).

#### *Seal of corporation*

**F26210** The instrument shall provide for the authentication of the application of the seal of the corporation.

#### Textual Amendments

**F262** Sch. 7A inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(4), [Sch.6](#); S.I. 1992/831, art. 2, [Sch.1](#).

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### Interpretation

- F263 11 References in this Schedule, in relation to a corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with paragraph 3 above is subject to variation.]

#### Textual Amendments

- F263** Sch. 7A inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 71(4), **Sch.6**; S.I. 1992/831, art. 2, **Sch.1**.

## SCHEDULE 8

Sections 134 and 197.

### THE FUNDING COUNCILS AND THE ASSETS BOARD

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

- C144** Power to amend Sch. 8 conferred (1.2.1999) by 1998 c. 31, s. 137(4)(a) (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1**.
- C145** Sch. 8 repealed (1.4.1993 with effect in so far as it relates to the Universities Funding Council and the Polytechnics and Colleges Funding Council) by 1992 c. 13, s. 93(1), **Sch. 8 Pt. I para. 60**; S.I. 1992/831, art. 2, **Sch. 3**.

### Preliminary

- 1 References below in this Schedule to the Corporation are references to each of the following bodies—
- (a) the Universities Funding Council;
  - (b) the Polytechnics and Colleges Funding Council; and
  - (c) the Education Assets Board.

### Supplementary powers

- 2 (1) Subject to sub-paragraph (2) below, the Corporation shall have power to do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular power—
- (a) to acquire and dispose of land and other property;
  - (b) to enter into contracts;
  - (c) to invest any sums not immediately required for the purpose of the discharge of their functions; and
  - (d) to accept gifts of money, land or other property.
- (2) Sub-paragraph (1) above does not confer power to borrow money, except in the case of the Education Assets Board; but the power of that Board to borrow money shall be subject to the approval of the Secretary of State in the case of each transaction.

### Chief officer

- 3 (1) One of the members of the Corporation shall be the chief officer of the Corporation.

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- (2) The first chief officer of the Corporation shall be appointed as such by the Secretary of State and shall hold and vacate office in accordance with the terms of his appointment.
- (3) Each subsequent chief officer shall be appointed by the Corporation with the approval of the Secretary of State on such terms and conditions (including terms with respect to tenure and vacation of office) as the Corporation may with the approval of the Secretary of State determine.
- (4) On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the Corporation and the terms and conditions of his appointment, the Secretary of State shall—
  - (a) if that person is not already a member of the Corporation, appoint him as a member for the same term as the term of his appointment as chief officer; or
  - (b) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer.

#### *Qualifications of members and tenure of office*

- 4 (1) A person shall hold and vacate office as a member or as chairman or chief officer of the Corporation in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A person may at any time by notice in writing to the Secretary of State resign his office as a member or as chairman of the Corporation.
- 5 If the Secretary of State is satisfied that a member of the Corporation—
  - (a) has been absent from meetings of the Corporation for a period longer than six consecutive months without the permission of the Corporation; or
  - (b) is unable or unfit to discharge the functions of a member;the Secretary of State may by notice in writing to that member remove him from office; and thereupon the office shall become vacant.

#### *Salaries, allowances and pensions for members*

- 6 (1) The Corporation—
  - (a) shall pay to the members of the Corporation such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine; and
  - (b) shall pay, or make such payments towards the provision of, such pension to or in respect of any member of the Corporation as the Secretary of State may determine.
- (2) If a person ceases to be a member of the Corporation and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Corporation to make to that person a payment of such amount as the Secretary of State may determine.
- (3) A determination or direction of the Secretary of State under sub-paragraph (1) or (2) above requires the approval of the Treasury.

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### *House of Commons disqualification*

7 In Part III of Schedule 1 to the <sup>M60</sup>House of Commons Disqualification Act 1975 (disqualifying offices), there shall be inserted at the appropriate places the following entries—

“Any member of the Universities Funding Council in receipt of remuneration.

Any member of the Polytechnics and Colleges Funding Council in receipt of remuneration.

Any member of the Education Assets Board in receipt of remuneration.”

#### **Marginal Citations**

**M60** 1975 c. 24.

### *Staff*

- 8 (1) The Corporation may appoint such employees as the Corporation think fit.
- (2) The Corporation shall pay to their employees such remuneration and allowances as the Corporation may determine.
- (3) The employees shall be appointed on such other terms and conditions as the Corporation may determine.
- (4) A determination under sub-paragraph (2) or (3) above requires the approval of the Secretary of State given with the consent of the Treasury.
- (5) Employment with the Corporation shall be included among the kinds of employment to which a scheme under section 1 of the <sup>M61</sup>Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of “Other Bodies” there shall be inserted—
- “Universities Funding Council.
- Polytechnics and Colleges Funding Council.
- Education Assets Board.”
- (6) The Corporation shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to sub-paragraph (5) above in the sums payable out of money provided by Parliament under that Act.
- (7) Where an employee of the Corporation is, by reference to that employment, a participant in a scheme under section 1 of that Act and is also a member of the Corporation the Treasury may determine that his service as such a member shall be treated for the purposes of the scheme as service as an employee of the Corporation (whether or not any benefits are payable to or in respect of him by virtue of paragraph 6 above).

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#### Marginal Citations

M61 1972 c. 11.

#### *Committees*

- 9 (1) The Corporation may establish a committee for any purpose.
- (2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Corporation.
- (3) Such a committee may include persons who are not members of the Corporation.
- (4) The Corporation shall keep under review the structure of committees established under this paragraph and the scope of each committee's activities.

#### *Scottish and Welsh Committees of Universities Funding Council*

- 10 The Universities Funding Council shall establish committees under paragraph 9 above for the purpose of advising the Council on the exercise of their functions in relation to universities in Scotland and universities in Wales respectively.

#### *Delegation of Functions*

- 11 The Corporation may authorise the chairman, the chief officer or any committee established under paragraph 9 above to exercise such of their functions as they may determine.

#### *Proceedings*

- 12 Without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to the Corporation under section 134 of this Act—
- (a) a representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Corporation or of any committee of the Corporation; and
- (b) the Secretary of State shall be entitled to receive copies of any documents distributed to members of the Corporation or of any such committee.
- 13 The validity of any proceedings of the Corporation or of any committee of the Corporation shall not be affected by a vacancy among the members or by any defect in the appointment of a member.
- 14 Subject to the preceding provisions of this Schedule, the Corporation shall have power to regulate their own procedure and that of any of their committees.

#### *Application of seal and proof of instruments*

- 15 The application of the seal of the Corporation shall be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the Corporation to act for that purpose and of one other member.
- 16 Every document purporting to be an instrument made or issued by or on behalf of the Corporation and to be duly executed under the seal of the Corporation, or to be

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signed or executed by a person authorised by the Corporation to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

#### Accounts

- 17 (1) It shall be the duty of the Corporation—
- (a) to keep proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each financial year of the Corporation a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury; and
  - (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.
- (3) In this paragraph “financial year” means the period beginning with the date on which the Corporation is established and ending with the second 31st March following that date, and each successive period of twelve months.

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

**C146** Sch. 8 para. 17 modified (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 64\(4\)](#); [S.I. 1992/831, art. 2, Sch.1](#).

## SCHEDULE 9

Section 161.

### DETERMINATION OF FULL-TIME EQUIVALENT ENROLMENT NUMBERS

#### Full-time equivalent enrolment numbers

- 1 (1) The full-time equivalent enrolment number at any time of any educational institution for courses of any description is the aggregate of—
- (a) the number of full-time students enrolled at that institution at that time to follow courses of that description; and
  - (b) the numbers arrived at under sub-paragraph (2) below for each mode of attendance at such courses specified in column 1 of the table in paragraph 2 below.
- (2) The number for each mode of attendance so specified is that arrived at by multiplying by the appropriate multiplier the number of students enrolled at the institution at the time in question to follow such courses by that mode of attendance.
- (3) In sub-paragraph (2) above “the appropriate multiplier” means, in relation to a mode of attendance so specified, the figure given in relation to that mode of attendance—
- (a) in column 2 of the table, in the case of courses of advanced further education or courses of higher education; and



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(b) in column 3 of the table, in any other case.

*Table for determining full-time equivalents for sandwich courses and part-time study*

2 The following table applies for the purpose of determining the numbers mentioned in paragraph 1(1)(b) above—

<b>(1)</b> <b><i>Mode of attendance</i></b>	<b>(2)</b> <b><i>Multiplier</i></b>	<b>(3)</b> <b><i>Multiplier</i></b>
Sandwich course	0.9	0.75
Block release	0.4	0.3
Day release	0.4	0.3
Part-time (other than day release but including some day-time study)	0.4	0.125
Part-time (evening only study)	0.2	0.075
Open or distance learning	0.2	0.075

*Interpretation of paragraphs 1 and 2*

- 3 (1) For the purposes of paragraph 1(1)(a) above a student is a full-time student in relation to a course of any description if all his studies for the purposes of that course are full-time studies.
- (2) For the purposes of paragraph 2 above—
- (a) a student's mode of attendance at a course of any description is by way of a sandwich course if—
- (i) in following that course, he engages in periods of full-time study for the purposes of the course alternating with periods of full-time work experience which form part of that course; and
  - (ii) his average period of full-time study for the purposes of the course for each academic year included in the course is nineteen weeks or more;
- (b) a student's mode of attendance at a course of any description is by way of block release if—
- (i) the course involves a period of full-time study interrupted by a period of industrial training or employment (whether or not it also includes study on one or two days a week during any other period); and
  - (ii) his average period of full-time study for the purposes of the course for each academic year included in the course is less than nineteen weeks;
- (c) a student's mode of attendance at a course of any description is by way of day release if—
- (i) he is in employment; and

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- (ii) he is released by his employer to follow that course during any part of the working week; and
- (d) a student's mode of attendance at a course of any description is by way of open or distance learning if—
  - (i) he is provided for the purposes of the course with learning material for private study; and
  - (ii) his written work for the purposes of the course is subject to a marking and comment service provided for students following the course by private study (whether or not any additional advisory or teaching services are also provided for such students as part of the course).

*Amendment of paragraphs 1 to 3*

- 4 The Secretary of State may by order amend paragraphs 1 to 3 above except so far as they apply for determining an institution's full-time equivalent enrolment number for any courses or (as the case may be) an institution's total full-time equivalent enrolment number on 1st November 1985.

*Exclusion of non-EEC students*

- 5 For the purpose of determining under those paragraphs the full-time equivalent enrolment number at any time of any educational institution for courses of any description, any student enrolled at the institution whose ordinary place of residence then was or is in a country or territory other than a member State shall be disregarded.

SCHEDULE 10

Sections 198 and 228.

SUPPLEMENTARY PROVISIONS WITH RESPECT TO TRANSFERS

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

**C147** Sch. 10: functions conferred by [The Education \(Inner London Education Authority\) \(Transfer of Functions\) Order 1991 \(S.I.1991/1457\)](#), **arts. 2(b)**, 3

Sch. 10 applied (with modifications) (1.4.1999 in relation to s. 74 of the amending Act and 1.9.1999 in relation to Sch. 21 of the amending Act) by [School Standards and Framework Act 1998 \(c. 31\)](#), s. 74, **Sch. 21 Pt. I para. 2(3)** (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), **Sch. 1**, s. 74; S.I. 1999/2323, art. 2(1), **Sch.**

Power to amend conferred (1.2.1999) by [School Standards and Framework Act 1998 \(c. 31\)](#), s. 137(4) **(a)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Sch. 10 applied (with modifications) (1.1.2001) by [The Education \(New Procedures for Property Transfers\) Regulations 2000 \(S.I. 2000/3209\)](#), regs. 5, 6, 7, **Sch. 1**

Sch. 10 modified (E.) (1.1.2001) by [The Education \(New Procedures for Property Transfers\) Regulations 2000 \(S.I. 2000/3209\)](#), **regs. 15, 17**, (with regs. 18, 19)

Sch. 10 modified (W.) (1.9.2001) by [The Change of Category of Maintained Schools \(Wales\) Regulations 2001 \(S.I. 2001/2678\)](#), reg. 16, **Sch. 4 para. 2**

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*Division and apportionment of property etc.*

- 1 (1) Any property, rights and liabilities of a transferor authority held [<sup>F264</sup>or used] or subsisting—
- (a) for the purposes of more than one relevant institution; or
  - (b) partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority;
- shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor authority and the transferee or transferees, in such proportions as may be appropriate.
- (2) Where any estate or interest in land falls to be so divided—
- (a) any rent payable under a lease in respect of that estate or interest; and
  - (b) any rent charged on that estate or interest;
- shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.
- (3) Any property, right or liability held or subsisting as mentioned in sub-paragraph (1) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority according to—
- (a) in the case of an estate or interest in land, whether on the transfer date the transferor authority or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
  - (b) in the case of any other property or any right or liability, which of them appears on the transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent;
- subject (in either case) to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority and the Education Assets Board or determined by the Secretary of State under paragraph 3 below.
- (4) In this paragraph—
- (a) references to a relevant institution are references to—
    - (i) any school or other institution a body corporate is established under this Act [<sup>F265</sup>or under the Education Act 1993] to conduct; and
    - (ii) any institution to which section 130 of this Act applies; and
  - (b) references to a transferor authority are references to a [<sup>F266</sup>local authority] who are the transferor for the purposes of any transfer to which this Schedule applies.

**Textual Amendments**

**F264** Words in Sch. 10 para. 1(1) inserted (1.1.1994) by 1993 c. 35, s. 47(7)(with s. 155(11); S.I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

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**F265** Words in Sch. 10 para. 1(4)(a)(i) inserted (1.1994) by 1993 c. 35, s. 307(1), Sch. 19, para. 144(a); S.I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

**F266** Words in Sch. 10 para. 1(4)(b) substituted (1.1.1994) by 1993 c. 35, s. 47(9)(with s. 155(11)); S.I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

### *Identification of property, rights and liabilities*

- 2 (1) It shall be the duty of the transferor and the Education Assets Board, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor or for making any such arrangements as are mentioned in paragraph 1(3) above and as will (in a case where the transferor is a [<sup>F267</sup>local authority])—
- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
  - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of this Act [<sup>F268</sup>or of the Education Act 1993] under which the transfer is required on the property, rights and liabilities of the transferor as will best serve the proper discharge of the respective functions of the transferor and the transferee.
- (2) Any such agreement shall provide so far as it is expedient—
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
  - (b) for the granting of indemnities in connection with the severance of leases and other matters;
  - (c) for responsibility for registration of any matter in any description of statutory register.

#### **Textual Amendments**

**F267** Words in Sch. 10 para. 2 substituted (1.1.1994) by 1993 c. 35, s. 47(9) (with s. 155(11)); S. I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

**F268** Words in Sch. 10 para. 2(1)(b) inserted (1.1.1994) by 1993 c. 35, s. 307(1), Sch. 19, para. 144(b); S.I. 1993/3106, art. 4, Sch.1 (with art. 5, Sch. 2) (amended by S.I. 1994/436, art.2).

- 3 (1) The Education Assets Board shall notify the Secretary of State if it appears to them that it is unlikely in the case of any matter on which agreement is required to be reached under paragraph 2(1) above that such an agreement will be reached.
- (2) Where the Secretary of State has received a notification from the Board under subparagraph (1) above, he may, whether before or after the transfer date, give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under paragraph 2(1).

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- (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 Secretary of State shall consult the transferor before giving a direction under this paragraph.
- (5) The Education Assets Board shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this paragraph.

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

**C148** Sch. 10 para. 3 superseded for specified purposes (6. 5. 1992) by [Further and Higher Education Act 1992](#) (c. 13), s. 93(1), [Sch. 8 Pt. I paras.61-64](#); S.I. 1992/831, art. 2, [Sch.1](#) (with art. 4).

#### *Right to production of documents of title*

- 4 <sup>F269</sup>(1) Where a transfer <sup>F270</sup>[<sup>F270</sup>to which this Schedule applies] 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)]

Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor shall be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the <sup>M62</sup>Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

#### Textual Amendments

**F269** Sch. 10 para. 4(1) and word inserted (6. 5. 1992) by [Further and Higher Education Act 1992](#) (c. 13), s. 93(1), [Sch. 8 Pt. I para. 65](#); S.I. 1992/831, art. 2, [Sch. 1](#) (with art. 4).

**F270** Words in Sch. 10 para. 4(1) substituted (1.1.1994) by [1993 c. 35, s. 47\(8\)](#) (with s. 155(11)); S.I. 1993/3106, art. 4, [Sch.1](#) (with art. 5, Sch. 2) (amended by S.I. 1994/436, [art.2](#))(and continued (1.11.1996) by [1996 c. 56, ss. 582\(1\), 583, Sch. 37 Pt. I para. 82\(2\)\(b\)](#) (with ss. 1(4), 561, 562, [Sch. 39](#)).

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

**C149** Sch. 10 para. 4 applied (with modifications) (10.3.1999) by S.I. 1999/362, [reg. 54\(6\)\(a\)](#).

Sch. 10 para. 4 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, [regs. 54A\(1\), 54C\(1\)](#), (as substituted (E.) (31.12.1999) by S.I. 1999/3297, [reg. 2](#))

Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, [reg. 54A\(1\)](#) (as substituted (31.7.2000) by 2000/1867, reg. 2, Sch. 2)

Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, [reg. 54A\(1\)](#) (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

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### Marginal Citations

**M62** 1925 c. 20.

### *Proof of title by certificate*

- 5 The Education Assets Board may issue a certificate stating that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of this Act [<sup>F271</sup>or of the Education Act 1993] to any body corporate or persons so specified; and any such certificate shall be conclusive evidence for all purposes of that fact.

### Textual Amendments

**F271** Words in [Sch. 10 para. 5](#) inserted (1.1.1994) by [1993 c. 35, s. 307\(1\)](#), [Sch. 19, para. 144\(c\)](#); [S.I. 1993/3106, art. 4](#), [Sch.1](#) (with [art 5](#), [Sch. 2](#)) (amended by [S.I. 1994/436, art.2](#)).

### *Construction of agreements*

- 6 (1) Where in the case of any transfer to which this Schedule applies any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement shall, unless the context otherwise requires, have effect on and after the transfer date as if—
- (a) the transferee had been a party to the agreement;
  - (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
  - (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement;
  - (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part;
- and paragraph (d) above shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.
- (2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

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

- C150** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para.15; S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art.2**).
- Sch. 10 paras. 6-8 applied (1.11.1996) by 1996 c. 56, ss. 88(1), 583, **Sch. 7 para. 12** (with ss. 1(4), 561, 562, **Sch. 39**).
- Sch. 10 paras. 6-8 applied (1.9.1999) by 1998 c. 31, s. 76, **Sch. 22 Pt. III para. 9(2)** (with s. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- Sch. 10 paras. 6-8 extended (1.9.1999) by S.I. 1999/2243, **reg. 44(2)**.
- Sch. 10 paras. 6-8 applied (1.9.1999) by S.I. 1999/2262, **reg. 44(2)**.
- C151** Sch. 10 paras. 6-8 extended (10.3.1999) by S.I. 1999/362, **reg. 25(2)**.
- C152** Sch. 10 para. 6 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
- Sch. 10 para. 6 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1), 54C(1)**, (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
- Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch. )

- 7 (1) Without prejudice to the generality of paragraph 6 above, the transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of this Act [<sup>F272</sup>or of the Education Act 1993] as he would have had if that right or liability had at all times been a right or liability of the transferee.
- (2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of this Act [<sup>F272</sup>or of the Education Act 1993], or to any agreement relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

#### Textual Amendments

- F272** Words in **Sch. 10 para. 7** inserted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 144(d); S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art.2**).

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

- C153** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para.15; S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art.2**).

- 8 The provisions of paragraphs 6 and 7 above shall have effect for the interpretation of agreements subject to the context, and shall not apply where the context otherwise requires.

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

- C154** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para.15; S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art.2**).



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Sch. 10 paras. 6-8 applied (1.11.1996) by 1996 c. 56, ss. 88(1), 583, **Sch. 7 para. 12** (with ss. 1(4), 561, 562, Sch. 39).

Sch. 10 paras. 6-8 applied (1.9.1999) by 1998 c. 31, s. 76, **Sch. 22 Pt. III para. 9(2)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

Sch. 10 paras. 6-8 extended (1.9.1999) by S.I. 1999/2243, **reg. 44(2)**.

Sch. 10 paras. 6-8 applied (1.9.1999) by S.I. 1999/2262, **reg. 44(2)**.

**C155** Sch. 10 para. 8 extended (10.3.1999) by S.I. 1999/362, **reg. 25**.

**C156** Sch. 10 para. 8 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**

Sch. 10 para. 8 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1), 54C(1)** (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)

Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (31.7.2000) by 2000/1867, reg. 2, Sch. 2)

Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

### *Third parties affected by vesting provisions*

- 9 (1) Without prejudice to the generality of paragraphs 6 to 8 above, any transaction effected between a transferor and a transferee in pursuance of paragraph 2(1) or of a direction under paragraph 3 above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the transferor and the transferee.
- (2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the transferor and as to part by or against the transferee, the Education Assets Board shall give that person written notification of that fact.
- (3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee; and
  - (b) the value of any property or interest of that person is thereby diminished;
- such compensation as may be just shall be paid to that person by the transferor, the transferee or both.
- (4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.
- (5) Where the transferor or the transferee under a transfer to which this Schedule applies purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or other property which before the transfer date belonged to the transferor, or which is an interest in property which before that date belonged to the transferor, the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interest in the property conveyed or transferred.



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- (6) A court shall have the power set out in sub-paragraph (7) below if at any stage in proceedings before it to which the transferor or transferee under a transfer to which this Schedule applies and a person other than the transferor or the transferee are parties it appears to it that the issues in the proceedings—
- (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the Education Assets Board have not yet effected; or
  - (b) raise a question of construction on the relevant provisions of this Act [<sup>F273</sup>or of the Education Act 1993] which would not arise if the transferor and the transferee constituted a single person.
- (7) In any such case the court may, if it thinks fit on the application of a party to the proceedings other than the transferor or the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person.
- (8) Any judgment or order given by a court in proceedings determined on that footing shall bind both the transferor and the transferee accordingly.
- (9) It shall be the duty of the transferor and of the Education Assets Board to keep one another informed of any case where the transferor or the transferee under a transfer to which this Schedule applies may be prejudiced by sub-paragraph (5) above or any judgment or order given by virtue of sub-paragraph (8) above.
- (10) If either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.

#### Textual Amendments

**F273** Words in Sch. 10 para. 9(6)(b) inserted (1.1.1994) by 1993 c. 35, s. 307(1), Sch. 19, para. 144(e); S.I. 1993/3106, art. 4, Sch.1 (amended by S.I. 1994/436, art.2).

#### *Delivery of documents to transferee*

- 10 When it appears to the Education Assets Board, in the case of any transfer, that any agreements and instruments required to be made or executed in pursuance of paragraph 2(1) above or in pursuance of a direction under paragraph 3 above have been made or executed, the Board shall deliver those agreements and instruments (if any) to the transferee.

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## SCHEDULE 11

Section 202.

## THE UNIVERSITY COMMISSIONERS

*Appointment*

- 1 (1) The Secretary of State shall appoint five persons to be the University Commissioners (in this Schedule referred to as “the Commissioners”).
- (2) The Secretary of State may appoint a person to fill the place of any Commissioner (including one appointed under this sub-paragraph) who dies, resigns or is removed from office.
- (3) The name of every person appointed under sub-paragraph (2) above shall be laid before Parliament.

*Tenure of office*

- 2 (1) A person may at any time by notice in writing to the Secretary of State resign his office as Commissioner.
- (2) If the Secretary of State is satisfied that a Commissioner is unable or unfit to discharge the functions of a Commissioner the Secretary of State may by notice in writing to the Commissioner remove him from office.

*Duration*

- 3 (1) Subject to sub-paragraph (2) below, the Commissioners’ duties and powers shall cease at the end of the period of three years beginning with the day on which section 202 of this Act comes into force.
- (2) The Secretary of State may by order provide for the Commissioners’ duties and powers—
- (a) to cease at the end of such shorter period; or
  - (b) to continue for such longer period,
- as may be specified in the order.

*Powers*

- 4 The Commissioners shall have power to do anything which appears to them necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular power to require any officer of a qualifying institution to furnish any information, or to produce any documents, relating to the institution or its instruments of government.

*Remuneration*

- 5 The Secretary of State may pay the Commissioners such remuneration as he may with the consent of the Treasury determine.

*Staff*

- 6 (1) The Commissioners may appoint such employees as they think fit.

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- (2) The Commissioners shall pay to or in respect of their employees such remuneration and allowances as they may determine.
- (3) The employees of the Commissioners shall be appointed on such terms as the Commissioners may determine.
- (4) A determination under sub-paragraph (2) or (3) above shall be ineffective unless made with the approval of the Secretary of State given with the consent of the Treasury.

#### *Expenses*

- 7 The expenses of the Commissioners shall be defrayed by the Secretary of State.

#### *Proceedings*

- 8 (1) The Secretary of State shall appoint one of the Commissioners to be chairman; and if the person so appointed—
  - (a) ceases to be a Commissioner; or
  - (b) is absent from any meeting,the Commissioners present at each meeting shall choose a chairman.
- (2) The powers of the Commissioners may be exercised at a meeting at which two or more of them are present.
- (3) The validity of any proceedings of the Commissioners is not affected by any vacancy among the Commissioners or any defect in the appointment of any Commissioner.

## SCHEDULE 12

Section 237.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

#### AMENDMENTS RELATING TO GRANT-MAINTAINED SCHOOLS

##### *The Education Act 1944 (c. 31)*

- 1 (1) Section 10 of the 1944 Act (requirements as to school premises) shall be amended as follows.
  - (2) In subsection (1), after the word “authorities” there shall be inserted the words “and of grant-maintained schools”.
  - (3) In subsection (2), after the words “maintained by them” there shall be inserted the words “or, in the case of a grant-maintained school, the duty of the governing body of the school to secure that the premises of the school”.

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- 2 In section 48(4) of that Act (medical inspection and treatment of pupils)—
- (a) after the words “education authority” there shall be inserted the words “or, in the case of pupils at a grant-maintained school, the duty of the governing body of the school”;
  - (b) after the words “the authority” there shall be inserted the words “or, as the case may be, to the governing body”.
- 3 Until the coming into force of paragraph 56 below, section 62(1) of that Act (training of teachers) shall have effect as if after the words “service in” there were inserted the words “grant-maintained schools and”.
- 4 (1) Section 67 of that Act (determination of disputes and questions) shall be amended as follows.
- (2) In subsection (3) (determination of question whether religious education is in accordance with trust deed), after the word “voluntary” there shall be inserted the words “or grant-maintained”.
  - (3) In subsection (4) (determination of question whether proposed change in county or voluntary school is significant), for the words “or voluntary” there shall be substituted the words “voluntary or grant-maintained”.
- 5 In section 80(1) of that Act (registration of pupils at schools), after the words “governors thereof” there shall be inserted the words “and in the case of a grant-maintained school the governing body of the school”.
- 6 In section 81(a) of that Act (regulations empowering local education authorities to defray expenses of pupils at county, voluntary or special schools), after the words “voluntary schools” there shall be inserted the words “grant-maintained schools”.
- 7 (1) Section 114(1) of that Act (interpretation) shall be amended as follows.
- (2) In the definition of “independent school”, after the words “not being a school maintained by a local education authority” there shall be inserted the words “a grant-maintained school”.
  - (3) In the definition of “school”, after the words “being a school maintained by a local education authority” there shall be inserted the words “a grant-maintained school”.

*The Education (Miscellaneous Provisions) Act 1953 (c. 33)*

- 8 In section 2(b) of the Education (Miscellaneous Provisions) Act 1953 (power to require local education authority to defray expenses of establishing controlled school limited to case where accommodation would otherwise have been provided in some other voluntary school), for the words “voluntary school” there shall be substituted the words “school which is or was either—
- (i) a voluntary school; or

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- (ii) a grant-maintained school which was or had been a voluntary school immediately before it became a grant-maintained school".

*The Charities Act 1960 (c. 58)*

F274<sup>9</sup> .....

**Textual Amendments**

F274 Sch. 12 para. 9 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch.7

F275<sup>10</sup> .....

**Textual Amendments**

F275 Sch. 12 para. 10 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch.7

*The Local Authorities (Goods and Services) Act 1970 (c. 39)*

- 11 (1) Subject to sub-paragraph (2) below, in the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) “public body” shall include the governing body of any grant-maintained school.
- (2) The provisions of sub-paragraph (1) above shall have effect as if made by an order under section 1(5) of the Local Authorities (Goods and Services) Act 1970 (power to provide that a person or description of persons shall be a public body for the purposes of that Act).
- (3) An order under the said section 1(5) may accordingly vary or revoke the provisions of sub-paragraph (1) above as they apply to the governing body of a grant-maintained school specified in the order.

*The Tribunals and Inquiries Act 1971 (c. 62)*

F276<sup>12</sup> .....

**Textual Amendments**

F276 Sch. 12 Pt. I para. 12 repealed (1. 10. 1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt.I.

*The Local Government Act 1972 (c. 70)*

- 13 In section 134 of the Local Government Act 1972 (use of schoolroom in parish or community), after the word “authority” in subsections (1) and (2) there shall be inserted the words “or of a grant-maintained school”.

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

- 14 In section 1 of the Education (Work Experience) Act 1973 (work experience in last year of compulsory schooling), after the word “authority” there shall be inserted the words “or, in the case of a child at a grant-maintained school, by the governing body of the school”.

*The Sex Discrimination Act 1975 (c. 65)*

- 15 In section 22 of the Sex Discrimination Act 1975 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 3 there shall be inserted the following paragraph—

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“3A. Grant-maintained school.	Governing body.”
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- 16 In section 25(6)(c)(i) of that Act (general duty in public sector of education) after “3”, there shall be inserted “3A”.

- 17 In paragraph 1 of Schedule 2 to that Act (transitional exemption orders for educational admissions) after the words “the Education Act 1980” there shall be inserted the words “or section 89 of the Education Reform Act 1988”.

*The Race Relations Act 1976 (c. 74)*

- 18 In section 17 of the Race Relations Act 1976 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 3 there shall be inserted the following paragraph—

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“3A. Grant-maintained school.	Governing body.”
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- 19 In section 19(6)(c)(i) of that Act (general duty in public sector of education) after “3”, there shall be inserted “3A”.

*The National Health Service Act 1977 (c. 49)*

- 20 In section 5(1)(a) of the National Health Service Act 1977 (duty of Secretary of State to provide medical and dental services for pupils at schools maintained by local education authorities) after the word “authorities” there shall be inserted the words “or at grant-maintained schools”.

- 21 In paragraph 3 of Schedule 1 to that Act (duty of persons conducting schools to make accommodation available to Secretary of State for purposes of medical and

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dental services for pupils) for the words “and of the governors of voluntary schools” there shall be substituted the words “, of the governors of voluntary schools or (as the case may be) of the governing bodies of grant-maintained schools”.

- 22 In paragraph 1(1) of Schedule 8 to that Act (care of mothers and pre-school children), after the words “education authority” there shall be inserted the words “or grant-maintained schools”.

*The Employment Protection (Consolidation) Act 1978 (c. 44)*

- 23 In section 29(1) of the Employment Protection (Consolidation) Act 1978 (persons holding certain offices to be allowed time off for public duties)—
- (a) the word “or” at the end of paragraph (e) shall be omitted; and
  - (b) after that paragraph there shall be inserted the following paragraph—

“(ee) a member of the governing body of a grant-maintained school;”.

*The Education Act 1980 (c. 20)*

- 24 In section 22 of the 1980 Act (provision of meals and refreshments for pupils), after subsection (3) there shall be inserted the following subsection—
- “(3A) Subsections (1) to (3) above apply in relation to pupils at a grant-maintained school and the governing body of the school as they apply in relation to pupils at a school maintained by a local education authority and the authority maintaining the school.”

- 25 Section 27 of that Act shall apply to any grant-maintained school; and subsections (2)(c) and (3)(c) of that section shall apply in relation to persons employed, and the employment or further employment of persons, by the governing bodies of grant-maintained schools in such work as is mentioned in subsection (2)(c) of that section as they apply respectively in relation to persons employed, and the employment or further employment of persons, in such work by local education authorities.

*The Education Act 1981 (c. 60)*

- 26 In section 2 of the 1981 Act (which imposes duties in relation to the provision of special education on governors of schools and on local education authorities)—
- (a) in subsections (5) and (6)(a), after the words “voluntary school” there shall be inserted the words “or a grant-maintained school”; and
  - (b) in subsection (7), after the word “authority” there shall be inserted the words “or in a grant-maintained school”.

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- 27 In section 15 of that Act (school attendance order relating to child with special educational needs), after subsection (6) there shall be inserted the following subsection—

“(7) Where the school to be named in the school attendance order in pursuance of a direction given by the Secretary of State under this section is a grant-maintained school, it shall be the duty of the governing body of the school to admit the child to the school.”

- 28 In section 16 of that Act (amendment and revocation of school attendance order relating to child with special educational needs), after subsection (5) there shall be inserted the following subsection—

“(6) Where, in pursuance of a direction given by the Secretary of State under this section, a school which is to be substituted for that named in the school attendance order is a grant-maintained school, it shall be the duty of the governing body of the school to admit the child to the school.”

*The Local Government (Miscellaneous Provisions) Act 1982 (c. 30)*

- 29 (1) Section 40 of the Local Government (Miscellaneous Provisions) Act 1982 (nuisance and disturbance on educational premises) shall be amended as follows.
- (2) In subsection (2), after paragraph (a) there shall be inserted the following paragraph—
- “(aa) of a grant-maintained school; or”.
- (3) In subsection (4), for the words from “or special” to “governors” there shall be substituted the words “special agreement or grant-maintained school, by a person whom the governing body of the school”.
- (4) In subsection (5), for the words from “school” to the end there shall be substituted the words “or grant-maintained school without first obtaining the consent of the governing body of the school”.
- (5) In subsection (7), for the words from “or special” to “governors” there shall be substituted the words “special agreement or grant-maintained school may be brought by a person whom the governing body of the school”.
- (6) In subsection (8), for the words from “school” to the end there shall be substituted the words “or grant-maintained school without first obtaining the consent of the governing body of the school”.

*The Representation of the People Act 1983 (c. 2)*

- 30 In section 95(2) of the Representation of the People Act 1983 (use of schools for parliamentary election meetings), for the words “and voluntary schools” there shall be substituted the words “voluntary schools and grant-maintained schools”.



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31 In section 96(2)(a) of that Act (use of schools for local election meetings), for the words “or voluntary” there shall be substituted the words “voluntary or grant-maintained”.

32 In paragraph 1(1) of Schedule 5 to that Act (arrangements for use of school room for parliamentary election meetings), after the words “the school” there shall be inserted the words “or, in the case of a room in the premises of a grant-maintained school, with the governing body of the school”.

*The Building Act 1984 (c. 55)*

33 In section 4(1)(a) of the Building Act 1984 (exemption from building regulations for buildings required for purposes of school etc.), after the words “of that Act” there shall be inserted the words “or under section 90 of the Education Reform Act 1988”.

*The Education (No. 2) Act 1986 (c. 61)*

34 After sections 44 to 46 of the 1986 Act (which impose on the governing body and head teacher of a county, voluntary or maintained special school duties relating to sex education and the prevention of political indoctrination) there shall be inserted the following section—

**“46A Application of sections 44 to 46 to grant-maintained schools.**

Sections 44 to 46 of this Act shall apply in relation to the governing body and head teacher of, and the junior pupils and other pupils at, a grant-maintained school as they apply in relation to the governing body and head teacher of, and the junior pupils and other pupils at, a county, voluntary or maintained special school.”

35 In section 47(5)(a) of that Act (abolition of corporal punishment), after subparagraph (ii) there shall be inserted the following subparagraph—  
“(iia) at a grant-maintained school; or”.

36 In section 49(3) of that Act (appraisal of performance of teachers), after paragraph (b) there shall be inserted the following paragraph—  
“(ba) at any grant-maintained school;”

37 In section 62(1)(a) of that Act (access to papers etc. of governing bodies), after the word “voluntary” there shall be inserted the word “grant-maintained”.

*The Teachers’ Pay and Conditions Act 1987 (c. 1)*

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**Textual Amendments**  
**F277** Sch. 12 Pt. I para. 38 repealed (6. 3. 1992) by School Teachers' Pay and Conditions Act 1991 (c. 49, SIF 41:1), s. 6(3), **Sch.2**; S.I. 1992/532, **art.3**.

**F278**<sup>39</sup> .....

**Textual Amendments**  
**F278** Sch. 12 Pt. I para. 39 repealed (6. 3. 1992) by School Teachers' Pay and Conditions Act 1991 (c. 49, SIF 41), s. 6(3), **Sch. 2**; S.I. 1992/532, **art.3**.

**PART II**

AMENDMENTS CONSEQUENTIAL ON ABOLITION OF ILEA

40 ..... **F279**

**Textual Amendments**  
**F279** Sch. 12 para. 40 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Part I**

*The Local Government Act 1972 (c. 70)*

41 In section 70 of the Local Government Act 1972 (restriction on promotion of Bills to change local government areas), for the words “Neither a” there shall be substituted the word “No”.

42 In section 78(2) of that Act (electoral arrangements: supplementary), for the words from “in paragraphs” to the end there shall be substituted the words “in Schedule 11 to this Act”.

43 In section 146A(1)(a) of that Act (miscellaneous powers of local authorities) for the words “local authorities” there shall be substituted the words “a local authority”.

44 In section 177(2) of that Act (allowances to members of local authorities: supplementary), for “(ab)” there shall be substituted “(ac)”.

45 In section 236(1) of that Act (byelaws), for the words from “a metropolitan” to “Education Authority” there shall be substituted the words “or a metropolitan county passenger transport authority”.

46 In section 238 of that Act (evidence of byelaws), for the words from “a metropolitan” to “Education Authority” there shall be substituted the words “or a metropolitan county passenger transport authority”.

47, 48 ..... **F280**

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**Textual Amendments**

**F280** Sch. 12 paras. 47, 48 repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(2), Sch. 12 Part I

49 ..... **F281**

**Textual Amendments**

**F281** Sch. 12 para. 49 repealed (1.1.1991 save as mentioned in S.I. 1990/2437, art. 3(3)) by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21

*The Representation of the People Act 1983 (c. 2)*

50 In section 35(4) of the Representation of the People Act 1983 (returning officers for local elections), for “3A” there shall be substituted “3”.

51 In section 40(2) of that Act (timing as to local elections), for the words “the Local Government Act 1972 and Part III of the Local Government Act 1985” there shall be substituted the words “and the Local Government Act 1972”.

*The Health Service Joint Consultative Committees (Access to Information) Act 1986 (c. 24)*

52 In section 1(1) of the Health Service Joint Consultative Committees (Access to Information) Act 1986 (interpretation), in the definition of “local authority” for the words from “the Common Council” to the end there shall be substituted the words “or the Common Council of the City of London”.

*The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

53 (1) Section 7 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (persons discharged from hospital) shall be amended as follows.

(2) In subsection (1)(c) for the words “or authority” there shall be substituted the words “of that local authority”.

(3) In subsection (9) the following definition shall be substituted for the definition of “the appropriate officer or authority”—

““the appropriate officer” of a local authority is such officer discharging functions of that authority in their capacity as a local education authority, or in Scotland an education authority, as may be appointed by the authority for the purposes of this section;”.

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### PART III

#### OTHER AMENDMENTS

##### *The Education Act 1944 (c. 31)*

- 54 In section 53(1) of the 1944 Act (provision of facilities for recreation and social and physical training) for the words “or college” there shall be substituted the words “or other educational institution”.
- 55 (1) Section 55 of that Act (provision of transport and other facilities) shall be amended as follows.
- (2) In subsection (1), for the words from “county colleges” to “area” there shall be substituted the words “at any institution maintained or assisted by them which provides higher education or further education (or both)”.
- (3) In subsection (2), for the words from “or county college” to “aforesaid” there shall be substituted the words “or at any such institution as is mentioned in subsection (1) above”.
- 56 (1) Section 62 of that Act (duties of Secretary of State and local education authorities as to the training of teachers) shall be amended as follows.
- (2) In subsection (1), for the words from “service in” to the end there shall be substituted the words “service in schools maintained by local education authorities, grant-maintained schools and institutions which are maintained by such authorities and provide higher education or further education (or both)”.
- (3) Subsection (2) shall be omitted.
- 57 In section 77(1) of that Act (inspection of educational establishments), for the words from “a county college” to “by a local education authority” there shall be substituted the words “an institution within the PCFC funding sector or an institution which is maintained or assisted by a local education authority and provides higher education or further education (or both)”.
- 58 In section 80 of that Act (registration of pupils at schools), after subsection (1) there shall be inserted the following subsection—
- “(1A) Without prejudice to the generality of subsection (1) of this section, the prescribed particulars shall include particulars of the name and address of every person known to the proprietor of the school to be a parent of a pupil at the school.”.
- 59 In section 90(1) of that Act (compulsory purchase of land by local education authorities), for the word “college” there shall be substituted the word “institution”.

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*The Education Act 1946 (c. 50)*

60 In section 16(1) of the Education Act 1946 (interpretation) after the definition of “department” there shall be inserted the following definition—

““the principal Act” means the Education Act 1944;”.

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

61 In section 5(3) of the Education (Miscellaneous Provisions) Act 1948—

- (a) in paragraph (a), for the words “a county college or other establishment for further education so maintained” there shall be substituted the words “an institution maintained by them which provides higher education or further education (or both)”; and
- (b) for the words “college or other establishment”, in the second place where they occur, there shall be substituted the words “or institution”.

62 In section 10(2) of that Act (power of local education authorities to purchase land by agreement), for the words “college or other” there shall be substituted the word “or”.

*The Charities Act 1960 (c. 58)*

F282 63 .....

**Textual Amendments**

F282 Sch. 12 para. 63 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch.7

F283 64 .....

**Textual Amendments**

F283 Sch. 12 para. 64 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch.7

*The Factories Act 1961 (c. 34)*

65 In section 97(7) of the Factories Act 1961 (facilities for young employees to attend courses of further education) for the words “further education” there shall be substituted the words “post-school education”; and after that subsection there shall be inserted the following subsection—

“(7A) In subsection (7) above “post-school education” means—

- (a) in England and Wales, “higher education” or “further education” within the meaning of the Education Act 1944; and
- (b) in Scotland, “further education” within the meaning of the Education (Scotland) Act 1980.”

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*The Veterinary Surgeons Act 1966 (c. 36)*

- 66 In Schedule 3 to the Veterinary Surgeons Act 1966 (treatment and operations which may be given or carried out by unqualified persons), in Part 1, for the words from “and in this paragraph “recognised institution”” to the end there shall be substituted the following paragraph—

“In the foregoing paragraph “recognised institution” means—

- (a) as respects England and Wales—
  - (i) an institution maintained or assisted by a local education authority;
  - (ii) any other institution which provides higher education or further education (or both) and as respects which a grant is paid by the Secretary of State; or
  - (iii) an institution recognised by the Secretary of State for the purposes of the foregoing paragraph;
- (b) as respects Scotland—
  - (i) a further education college administered by an education authority;
  - (ii) a central institution within the meaning of the Education (Scotland) Act 1980; or
  - (iii) an institution recognised by the Secretary of State for the purposes of the foregoing paragraph; and
- (c) as respects Northern Ireland, an agricultural college maintained by the Department of Agriculture for Northern Ireland;

and expressions used in paragraph (a) of this paragraph and in the Education Act 1944 have the same meanings as in that Act.”

*The Parliamentary Commissioner Act 1967 (c. 13)*

- 67 In Schedule 2 to the Parliamentary Commissioner Act 1967 (which lists the bodies subject to the jurisdiction of the Parliamentary Commissioner), there shall be inserted (at the appropriate place in alphabetical order)—

“Education Assets Board”.

*The Local Authorities (Goods and Services) Act 1970 (c. 39)*

F284 68 .....

**Textual Amendments**

**F284** Sch. 12 para. 68 repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 66, Sch.9; S.I. 1992/831, art. 2, Sch.3.

*The Chronically Sick and Disabled Persons Act 1970 (c. 44)*

- 69 (1) Section 8(2) of the Chronically Sick and Disabled Persons Act 1970 (access to, and facilities at, educational institutions) shall be amended as follows.

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F285 (2) .....

(3) For paragraph (b) there shall be substituted the following paragraph—

“(b) schools and institutions which provide higher education or further education (or both) and are maintained or assisted by local education authorities”.

(4) After paragraph (c) there shall be inserted the words “and expressions used in paragraphs (aa) and (b) above and in the Education Act 1944 have the same meanings as in that Act”.

**Textual Amendments**

**F285** Sch. 12 para. 69(2) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 66, Sch.9; S.I. 1992/831, art. 2, Sch.3.

F286 70

F287

**Textual Amendments**

**F286** Sch. 12 para. 70 expressed to be repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 66, Sch.9; S.I. 1992/831, art. 2, Sch.3.

**F287** Sch. 12 para. 70 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Part I

*The Local Government Act 1974 (c. 7)*

71 In paragraph 5(2) of Schedule 5 to the Local Government Act 1974 (matters not subject to investigation by Local Commissioner) for the words from “whether”, in the second place where it occurs, to the end there shall be substituted the words “in any school or other educational establishment maintained by the authority”.

*The Sex Discrimination Act 1975 (c. 65)*

72 In section 22 of the Sex Discrimination Act 1975 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 4 there shall be inserted the following paragraph—

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“4A. Institution within the PCFC                      Governing body.”  
funding sector (within the meaning of  
the Education Act 1944).

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73 In section 24(2) of that Act (power to designate institutions)—

- (a) paragraph (a) shall be omitted; and
- (b) in paragraph (c), for the words “in accordance with a scheme approved under section 42” there shall be substituted the words “for the purposes”.

74 In section 25(6)(c) of that Act (general duty in public sector of education)—

- (a) in sub-paragraph (i) after “3” there shall be inserted “4A”; and
- (b) in sub-paragraph (ii) the words “(a) or” shall be omitted.

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75 In section 28 of that Act (exception for physical training), for the words from “further education course” to the end there shall be substituted the words “course in physical education which is a further education course or, in England and Wales, a higher education course within the meaning of the Education Reform Act 1988.”

76 In section 82(1) of that Act (interpretation), in the definition of “further education” for the words “section 41(a)” there shall be substituted the words “section 41(2)(a)”.

77 In paragraph 4 of Schedule 2 to that Act (transitional exemption orders for educational admission) for the words “further education establishment to which that section applies” there shall be substituted the words “institution falling within subsection (7) or (8) of that section”.

*The Race Relations Act 1976 (c. 74)*

78 In section 17 of the Race Relations Act 1976 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 4 there shall be inserted the following paragraph—

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“4A. Institution within PCFC funding      Governing body.”  
sector (within the meaning of the  
Education Act 1944).

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79 In section 19(6)(c) of that Act (general duty in public sector of education)—  
(a) in sub-paragraph (i) after “3” there shall be inserted “4A”; and  
(b) in sub-paragraph (ii) the words “(a) or” shall be omitted.

*The Employment Protection (Consolidation) Act 1978 (c. 44)*

80 In section 29(1) of the Employment Protection (Consolidation) Act 1978 (persons holding certain offices to be allowed time off for public duties), after paragraph (ee) (inserted by paragraph 23 above) there shall be inserted the following paragraph—  
“(ef) a member of the governing body of a higher education corporation;  
or”.

*The Education Act 1980 (c. 20)*

81 In section 16 of the 1980 Act (provisions supplementary to sections 12 to 15 of that Act), the following subsections shall be inserted after subsection (3)—

“(3A) For the purposes of section 12, 13 or 15 above proposals under that section shall be taken to have first been published—  
(a) on the date on which the requirements of regulations under this Act with respect to the publication of the proposals are satisfied; or  
(b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different dates, on the last of those dates;



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and references to the first publication of the proposals shall be construed accordingly.

(3B) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (3A) above be taken to be satisfied on the first date in respect of which it is satisfied.”

82 (1) Section 27 of the 1980 Act (school and further education regulations) shall be amended as follows.

(2) At the end of paragraph (d) of subsection (1) there shall be added the words “and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations.”

(3) After subsection (1) there shall be inserted the following subsection—

“(1A) Regulations made by virtue of subsection (1)(d) above may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.”

*The Education Act 1981 (c. 60)*

83 In section 7 of the 1981 Act (statements of child’s special educational needs) the following subsection shall be substituted for subsection (2)—

“(2) In any case where a local education authority maintain a statement under this section in respect of a child—

- (a) it shall be the duty of the authority to arrange that the special educational provision specified in the statement is made for him; and
- (b) the authority may arrange that any non-educational provision specified in the statement is made for him in such manner as they consider appropriate;

unless his parent has made suitable arrangements.”.

84 In section 8(1) of the 1981 Act (appeals against statements) for the words from “following” to the end there shall be substituted the words “against the special educational provision specified in the statement—

- (a) following the first or any subsequent assessment of the child’s special educational needs under section 5; and
- (b) where the authority make any amendment to the special educational provision specified in the statement otherwise than on the making of any such assessment.”

85 In Schedule 1 Part II of the 1981 Act (form of statement) the following shall be added at the end of paragraph 6(3)—

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“(4) Where a local education authority have made any amendment to the special educational provision specified in a statement, they shall also inform the parent in writing of his right under section 8(1) of this Act to appeal against the special educational provision specified in the statement.”.

*The Agricultural Training Board Act 1982 (c. 9)*

- 86 (1) Section 4 of the Agricultural Training Board Act 1982 (functions of the Agricultural Training Board) shall be amended as follows.
- (2) In subsections (1)(c) and (4)(c), for the words “further education” there shall be substituted the words “post-school education”.
- (3) After subsection (4) there shall be inserted the following subsection—
- “(5) In this section “post-school education” means—
- (a) in England and Wales, “higher education” within the meaning of the Education Act 1944 or “further education” within the meaning of that Act; and
  - (b) in Scotland, “further education” within the meaning of the Education (Scotland) Act 1980.”

*The Industrial Training Act 1982 (c. 10)*

- 87 (1) Section 5 of the Industrial Training Act 1982 (functions of industrial training boards) shall be amended as follows.
- (2) In subsections (1)(c) and (4)(c), for the words “further education” there shall be substituted the words “post-school education”.
- (3) After subsection (6), there shall be inserted the following subsection—
- “(7) In this section “post-school education” means—
- (a) in England and Wales, “higher education” within the meaning of the Education Act 1944 or “further education” within the meaning of that Act; and
  - (b) in Scotland, “further education” within the meaning of the Education (Scotland) Act 1980.”
- 88 In section 13(1) of that Act (proposals for exemption certificates)—
- (a) in paragraph (a) for the words “further education” there shall be substituted the words “post-school education”; and
  - (b) after the words “in this subsection” there shall be inserted the words ““post-school education” has the same meaning as in section 5 above and”.
- 89 In section 14 (exemption certificates), in subsection (1) for the words “further education” there shall be substituted the words “post-school education”; and after that subsection there shall be inserted the following subsection—
- “(1A) In subsection (1) above “post-school education” has the same meaning as in section 5 above.”

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*The Local Government (Miscellaneous Provisions) Act 1982 (c. 30)*

90 In section 40(2) of the Local Government (Miscellaneous Provisions) Act 1982 (nuisance and disturbance on educational premises) for paragraph (b) there shall be substituted the following paragraph—

“(b) of an institution which is maintained by a local education authority and provides higher education or further education (or both);”.

*The Education (Fees and Awards) Act 1983 (c. 40)*

91 (1) Section 1 of the Education (Fees and Awards) Act 1983 (fees at certain further education establishments) shall be amended as follows.

(2) In subsection (3), for paragraphs (b) and (c) there shall be substituted the following paragraphs—

- “(b) any institution within the PCFC funding sector; and
- (c) any institution which provides higher education or further education (or both) and is either maintained by a local education authority or falls within subsection (3A) below; and
- (d) any further education institution in Scotland which is administered by an education authority.”

(3) After that subsection there shall be inserted the following subsection—

“(3A) An institution falls within this subsection if it is substantially dependent for its maintenance on public funds and either is specified in the regulations or is of a class or description so specified.”.

(4) In subsection (4), after the words “Education (Scotland) Act 1980” there shall be inserted the words “and expressions used in this section and in the Education Act 1944 have the same meaning as in that Act”.

*The Further Education Act 1985 (c. 47)*

92 (1) Section 1 of the Further Education Act 1985 (supply of goods and services through further education establishments) shall be amended as follows.

(2) In subsection (1), for the words “a further education establishment” there shall be substituted the words “an institution which provides higher education or further education (or both)”.

(3) In subsection (2), for the word “establishment” there shall be substituted the word “institution”.

93 (1) Section 2 of that Act (powers of local authorities with respect to agreements for supply of goods and services through further education establishments) shall be amended as follows.

(2) In subsection (1)(a), for the words “a further education establishment provided by them” there shall be substituted the words “an institution which is maintained by them and provides higher education or further education (or both)”.

(3) In subsection (2), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

“(a) to a corporation established under section 121 or 122 of the Education Reform Act 1988;

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- (b) to a company responsible for conducting an institution which—
    - (i) provides higher education or further education (or both); and
    - (ii) is either within the PCFC funding sector or is assisted by a local education authority;
  - (c) where such an institution as is mentioned in paragraph (b) above is not conducted by a company, to the governing body of the institution; or
  - (d) to a body corporate in which such a corporation or company as is mentioned in paragraph (a) or (b) above has a holding such as is mentioned in subsection (8) below.”.
- (4) In subsection (2), for the words “establishment which he provides” there shall be substituted the words “institution conducted by the corporation, company or governing body”.
- (5) In subsection (8), for the words “and (2)(b)” there shall be substituted the words “and (2)(d)”.
- 94 In section 3(8)(a) (financial and accounting provisions), for the word “establishment”, in both places where it occurs, there shall be substituted the word “institution”.

*The Housing Act 1985 (c. 68)*

- 95 In paragraph 10(4) of Schedule 1 to the Housing Act 1985 (tenancies which are not secure tenancies), in the definition of “educational establishment”, for the words “establishment of further education” there shall be substituted the words “institution which provides higher education or further education (or both); and for the purposes of this definition “higher education” and “further education” have the same meaning as in the Education Act 1944”.

*The Agricultural Holdings Act 1986 (c. 5)*

- 96 In paragraph 2 of Schedule 6 to the Agricultural Holdings Act 1986 (eligibility to apply for new tenancy on death or retirement of former tenant), for the words “establishment of further education” there shall be substituted the words “establishment of higher or further education”.

*The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 97 (1) Section 5 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (disabled persons leaving special education) shall be amended as follows.
- (2) In subsections (3)(a), (6)(b) and (9), for the words “a further education establishment” there shall be substituted the words “an establishment of higher or further education”.
- (3) In subsection (9), after the definition of “child” there shall be inserted the following definition—
- ““establishment of higher or further education” means an institution which provides higher education or further education (or both);”.

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- 98 In section 6(1) of that Act (review of dates when disabled persons are expected to leave full-time education)—
- (a) for the words “a further education establishment” there shall be substituted the words “an establishment of higher or further education”; and
  - (b) in paragraph (b), for the words “further education establishments” there shall be substituted the words “establishments of higher or further education”.

*The Education (No. 2) Act 1986 (c. 61)*

- 99 In section 18(6)(c)(ii) of the 1986 Act (school curriculum in county, controlled and special agreement schools), the words “or, to the extent to which it is incompatible, is compatible with that policy” shall be omitted.

- 100 (1) Section 43 of that Act (freedom of speech in educational establishments) shall be amended as follows.

<sup>F288</sup>(2) .....

- (3) In subsection (5), for paragraph (b) there shall be substituted the following paragraph—

“(b) any establishment of higher or further education which is maintained by a local education authority;”.

- (4) In subsection (5)(c)—

- (a) for the words “further education” there shall be substituted the words “further or higher education”; and
- (b) for the word “establishment”, in the second place where it occurs, there shall be substituted the word “institution”.

**Textual Amendments**

**F288** Sch. 12 para. 100(2) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. I para. 66, [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).

- 101 (1) Section 49(3) of that Act (appraisal of performance of teachers) shall be amended as follows.

- (2) In paragraph (c), for the words “further education establishment provided” there shall be substituted the words “establishment of higher or further education maintained”.

- (3) In paragraph (d)—

- (a) for the words “further education establishment” there shall be substituted the words “establishment of higher or further education”; and
- (b) for the word “establishment”, in the second place where it occurs, there shall be substituted the word “institution”.

<sup>F289</sup>(4) .....

- (5) In paragraph (e), for the word “(d)” there shall be substituted the word “(da)”.

- (6) In paragraph (f), for the words “further education establishment” there shall be substituted the words “establishment of higher or further education”.

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### Textual Amendments

**F289** Sch. 12 para. 101(4) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 66, Sch.9; S.I. 1992/831, art. 2, Sch.3.

102 In section 54 of that Act (change of status of controlled school to aided school), the following subsections shall be inserted after subsection (12)—

“(13) For the purposes of this section proposals under this section shall be taken to have first been published—

- (a) on the day on which the requirements of regulations under this section with respect to the publication of the proposals are satisfied; or
- (b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different days, on the last of those days.

(14) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (13) above be taken to be satisfied on the first day in respect of which it is satisfied.”

103 (1) Section 58 of that Act (travelling and subsistence allowances for governors of certain educational establishments) shall be amended as follows.

(2) In subsection (1), for paragraph (b) there shall be substituted the following paragraph—

“(b) any establishment of higher or further education which is maintained by a local education authority;”.

(3) In subsection (3), for the words “a designated establishment of further education” there shall be substituted the words “a designated establishment of higher or further education”.

(4) In subsection (4)—

- (a) for the words “establishment of further education”, in each place where they occur, there shall be substituted the words “establishment of higher or further education”; and
- (b) for the word “establishment”, in the third place where it occurs, there shall be substituted the word “institution”.

(5) In subsection (5), for paragraph (a) there shall be substituted the following paragraphs—

- “(a) institutions within the PCFC funding sector;
- (ab) establishments of higher or further education which are not maintained by them and are not designated establishments of higher or further education; or”.

104 In section 61(1) of that Act (minimum age for governors of certain educational establishments), for the words from “(a) which is” to “of government” there shall be substituted the words “which is maintained by a local education authority and which provides higher education or further education (or both)”.

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105 In section 65(1) of that Act (interpretation) after the definition of “co-opted governor” there shall be inserted the following definition—  
““establishment of higher or further education” means an institution which provides higher education or further education (or both);”.

106 The following paragraph shall be substituted for paragraph 16 of Part III of Schedule 2 to that Act—

“16 (1) Pending the coming into force of the articles of government for a new school which will be a county or controlled school—

- (a) the dates at which the school terms and holidays are to begin and end shall be determined by the local education authority; and
- (b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day shall be determined by the temporary governing body after consultation with the authority.

(2) Pending the coming into force of the articles of government for a new school which will be an aided school—

- (a) the dates and times at which the school terms and holidays are to begin and end; and
  - (b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day;
- shall be determined by the temporary governing body.”

*The Local Government Act 1988 (c. 9)*

107 In paragraph 5(4) of Schedule 1 to the Local Government Act 1988 (catering to which the competition provisions of that Act apply) for the words from “for which” to the end there shall be substituted the words “which is maintained by a local education authority and provides higher education or further education (or both)”.

SCHEDULE 13

Section 237.

REPEALS

PART I

REPEALS COMING INTO FORCE ON ABOLITION OF ILEA

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Chapter	Short title	Extent of repeal
2 & 3 Eliz. 2. c. 56.	The Landlord and Tenant Act 1954.	In section 69(1), in the definition of “local authority”, the words “the Inner London Education Authority and”.

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9 & 10 Eliz. 2. c. 62.	The Trustee Investments Act 1961.	In section 11(4)(a) the words “the Inner London Education Authority”.  In Schedule 1, in Part II, paragraph 9(h).
10 & 11 Eliz. 2. c. 56.	The Local Government (Records) Act 1962.	In section 2(6) the words “to the Inner London Education Authority”.  In section 8(1) the words “the Inner London Education Authority”.
1963 c. 33.	The London Government Act 1963.	In section 5(3) the words “the Inner London Education Authority”.  Section 31(10). Section 32(7).  In section 75(4) the words “the Inner London Education Authority and”.  Section 81(9)(a).  In section 83(2) the words “or by the Inner London Education Authority”.  In section 89(1) the definitions of “Inner London Education Area” and “Inner London Education Authority”.
1966 c. 42.	The Local Government Act 1966.	In section 11(3) the words “the Inner London Education Authority and”.
1967 c. 88.	The Leasehold Reform Act 1967.	In section 28(5)(a) the words “the Inner London Education Authority”.  In Schedule 4A, in paragraph 2(2)(b) the words “the Inner London Education Authority or”.
1969 c. 2.	The Local Government Grants (Social Need) Act 1969.	In section 1(3) the words “the Inner London Education Authority and”.
1969 c. 48.	The Post Office Act 1969.	In section 86(1), in the definition of “local authority”, the words “the



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		Inner London Education Authority”.
1969 c. 57.	The Employers’ Liability (Compulsory Insurance) Act 1969.	In section 3(2) the words “the Inner London Education Authority”.
1970 c. 39.	The Local Authorities (Goods and Services) Act 1970.	In section 1(4), in the definition of “local authority”, the words “the Inner London Education Authority”.
1971 c. 78.	The Town and Country Planning Act 1971.	In section 215(8) the words “the Inner London Education Authority”.
		In Schedule 20, in paragraph 1(3), the words “the Inner London Education Authority”.
1972 c. 70.	The Local Government Act 1972.	In section 47(1)(i) the words “or the Inner London Education Area”.
		In section 50, in subsection (2) the words “and the Inner London Education Area” and in subsection (3) the words “or the Inner London Education Area”.
		Section 60(8).
		Section 67(6).
		In section 70, the words “nor the Inner London Education Authority” and the words “or the Inner London Education Area”, in both places where they occur.
		Section 78(1)(c).
		Section 79(3).
		Section 80(6).
		In section 82, the words “III or”.
		Section 83(3A).
		In section 84(2), the words “III or”.
		In section 85(4) the words “and the Inner London Education Authority”.

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In section 86(2), the words “and the Inner London Education Authority”.

Section 87(3).

Section 88(2A).

Section 89(3A).

In section 90, the words “III or”.

In section 92(7) the words “and the Inner London Education Authority”.

In section 98(1A), the words “and the Inner London Education Authority”.

In section 99, the words “the Inner London Education Authority”.

In section 100J, paragraph (a) of subsection (1) and, in subsection (3), the reference to that paragraph.

In section 101(13), the words “the Inner London Education Authority”.

In section 142(1B) the words “the Inner London Education Authority”.

In section 146A, subsection (2) and in subsection (1) the words “and the Inner London Education Authority”.

In section 153(3), the words “and the Inner London Education Authority”.

In section 176(3), the words “and the Inner London Education Authority”.

Section 177(1)(ab) and (2A) (a).

In section 177A(5), the words “and the Inner London Education Authority”.

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In section 223(2), the words “and the Inner London Education Authority”.

In section 224(2), the words “and the Inner London Education Authority”.

In section 225(3), the words “and the Inner London Education Authority”.

In section 228(7A), the words “or the Inner London Education Authority” and the words “in relation to a joint authority”.

In section 229(8), the words “and the Inner London Education Authority”.

In section 230(2), the words “and the Inner London Education Authority”.

In section 231(4), the words “and the Inner London Education Authority”.

In section 232(1A), the words “and the Inner London Education Authority”.

In section 233(11), the words “and the Inner London Education Authority”.

In section 234(4), the words “and the Inner London Education Authority”.

In section 239(4A), the words “and the Inner London Education Authority”.

In section 243(2), the reference to section 19.

In Schedule 11, paragraph 5.

In Schedule 12, paragraph 6A(2), in paragraph 6B the words from “and ten” to the end and in paragraph 46 the words “and the Inner London Education Authority”.

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1973 c. 35.	The Employment Agencies Act 1973.	In section 13(7)(f) the words “the Inner London Education Authority”.
1974 c. 7.	The Local Government Act 1974.	Section 25(1)(cb).
1974 c. 37.	The Health and Safety at Work Act 1974.	In section 28(6) the words “the Inner London Education Authority and”.
1976 c. 57.	The Local Government (Miscellaneous Provisions) Act 1976.	In section 19, subsection (4), in subsection (5) the words “or the Inner London Education Authority”, the words “by a local authority for the purposes of”, in the first place where they occur, and the words from “or as the case may be” to the end, and subsection (5A).  In section 44(1), in the definition of “local authority”, the words “the Inner London Education Authority and”.
1976 c. 57.	The Race Relations Act 1976.	In section 71 the words “the Inner London Education Authority and”.
1976 c. 80.	The Rent (Agriculture) Act 1976.	Section 5(3)(ba).
1977 c. 42.	The Rent Act 1977.	Section 14(ca).
1977 c. 49.	The National Health Service Act 1977.	In section 22(2), in the Table, the words “Also the Inner London Education Authority, if wholly or partly in the area or district of the Authority”.  In Schedule 5, in paragraph 5(1)(a) the words “the Inner London Education Authority”.
1979 c. 55.	The Justices of the Peace Act 1979.	In section 64(6) the words “the Inner London Education Authority”.
1980 c. 20.	The Education Act 1980.	In paragraph 10 of Schedule 3, the words from “and” to the end.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	Section 2(1)(1).

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		In section 20(1), in the definition of “local authority”, the words “the Inner London Education Authority”.
		Section 71(1)(i).
		Section 99(4)(da).
		In Schedule 16, paragraph 5A.
1981 c. 67.	The Acquisition of Land Act 1981.	In section 17(4), in the definition of “local authority”, the words “the Inner London Education Authority”.
1982 c. 30.	The Local Government (Miscellaneous Provisions) Act 1982.	In section 33(9), in paragraph (a) the words “the Inner London Education Authority” and in paragraph (b) the words “in relation to the Inner London Education Authority means the Inner London Education Area”.
		In section 41(13), in the definition of “local authority” paragraph (d) and the word “and” immediately following that paragraph.
		In section 45(2)(aa) the words “or III”.
1982 c. 32.	The Local Government Finance Act 1982.	Section 12(2)(ab).
		In section 19(7) the words “the Inner London Education Authority”.
		In section 20(10) the words “the Inner London Education Authority”.
1982 c. 41.	The Stock Transfer Act 1982.	In Schedule 1, in paragraph 7(2)(a) the words “the Inner London Education Authority”.
1983 c. 2.	The Representation of the People Act 1983.	Section 31(6) and (7).
		Section 35(3A).

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Section 36(3AA) and (4A).

In section 39, subsection (1A) and the words “or Part III of the Local Government Act 1985” in subsections (2) and (6)(a)(ii).”

In section 47(2), the words “or Part III of the Local Government Act 1985”.

Section 76(2)(b)(ia).

In section 82(4)(a) the words “or the Inner London Education Authority”.

In section 203(1), the definition of “council”, the words “the Inner London Education Authority” in the definition of “local authority”, the words “or Part III of the Local Government Act 1985” in the definition of “local government Act” and the words “the Inner London Education Area” in the definition of “local government area”.

In section 203(2), the words “or of elections of members of the Inner London Education Authority”.

1984 c. 28.

The County Courts Act 1984.

In section 60(3), in the definition of “local authority”, the words “the Inner London Education Authority”.

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1985 c. 51.

The Local Government Act 1985.

Sections 18 to 22.

Section 68(2)(b).

Section 81(3).

Section 84(2).

In section 90, subsection (1) and in subsection (2) the words “Subject to subsection (1) above”.

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		Schedule 9.
		In Schedule 14, paragraph 53(a).
1985 c. 68.	The Housing Act 1985.	In section 4(e) the words “the Inner London Education Authority and”.
1985 c. 69.	The Housing Associations Act 1985.	In section 106(1), in the definition of “local authority”, the words “the Inner London Education Authority and”.
1985 c. 70.	The Landlord and Tenant Act 1985.	In section 38, in the definition of “local authority”, the words “the Inner London Education Authority and”.
1986 c. 10.	The Local Government Act 1986.	In section 6(2)(a) the words “the Inner London Education Authority”. In section 9(1)(a) the words “the Inner London Education Authority”. Section 11(5).
1987 c. 31.	The Landlord and Tenant Act 1987.	In section 58(1)(a) the words “the Inner London Education Authority”.
1988 c. 9.	The Local Government Act 1988.	In section 1(1)(j) the words “and the Inner London Education Authority”. In Schedule 2 the words “and the Inner London Education Authority”.
1988 c. 41.	The Local Government Finance Act 1988.	Section 111(2)(d).

#### Textual Amendments

**F290** Sch. 13 Pt. I: entry relating to section 3(10) of the Further Education Act 1985 repealed by S.I. 1990/776, art. 8, Sch. 3 Pt. I para. 27

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## PART II

### OTHER REPEALS

Chapter	Short title	Extent of repeal
7 & 8 Geo. 6. c. 31.	The Education Act 1944.	<p>In section 8(1)(b), the words from “other” to “further education”.</p> <p>Section 25.</p> <p>Section 29(2) to (4).</p> <p>Sections 42 to 46.</p> <p>In section 50, in subsection (1) the words from “or are satisfied” to “county college” and the words “or college” and in subsection (2) the words “or young person” and the words from “or to” to “may be”.</p> <p>In section 52(1), the words “or college”, paragraph (b) of the proviso and the word “and” immediately preceding that paragraph.</p> <p>In section 54, in subsection (1) the words from “and if” to the end, in subsection (2) the words from “or in the” to “upon the pupil”, in subsection (4) the words “or pupil”, in subsection (6) the words “or at a county college”, the words from “or in the” to “own neglect” and the words “or the pupil as the case may be” and in subsection (7) the words “or at any county college”, the words “or college”, in both places where they occur, and the words from “or to” to “may be”.</p> <p>Section 60.</p> <p>Section 61.</p> <p>Section 62(2).</p>



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		In section 69, in subsection (2) the words from “or if” to “upon him” and the words from “or require” to “may be”.
		Section 84.
		In section 114, in subsection (1) the word “college” in the definition of “assist” and the words “or county college” in the definition of “maintain”, in subsection (2)(a) the words “or county college” and the words “or college” and in subsection (2)(b) the word “college” in the second and third places where it occurs.
9 & 10 Geo. 6. c. 50.	The Education Act 1946.	In section 1(1), the words “(hereinafter referred to as “the principal Act”)”.
		Section 7.
		Section 8(3).
1963 c. 33.	The London Government Act 1963.	Section 31(1) and (4).
1964 c. 16.	The Industrial Training Act 1964.	In section 16, the words from “by a” to “1944 or”.
1967 c. 3.	The Education Act 1967.	Section 3.
1968 c. 37.	The Education (No. 2) Act 1968.	The whole Act.
1972 c. 70.	The Local Government Act 1972.	In section 81(4)(a), the word “college”.
		In section 104(2), the word “college”.
1974 c. 7.	The Local Government Act 1974.	Section 8(2) and (3).
1975 c. 65.	The Sex Discrimination Act 1975.	Section 24(2)(a).
		In section 25(6)(c)(ii) the words “(a) or”.
1976 c. 74.	The Race Relations Act 1976.	In section 19(6)(c)(ii) the words “(a) or”.
		In section 78(1), in the definition of “further

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		education”, the words from “for England” to “1944 and”.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In section 29(1)(e), the word “or” at the end.
1980 c. 20.	The Education Act 1980.	In section 9(1), the words from “except” to the end. In section 12(2), the words from “excluding” to the end. Section 15. Section 27. In section 35, in subsection (3) the words “or an order under section 15(8) above” and in subsection (5) the words “section 27(1)(a), (2) or (3) or”. In Schedule 1, paragraph 25. In Schedule 3, paragraph 14.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In Schedule 10, Part I.
1981 c. 60.	The Education Act 1981.	In Schedule 3, paragraph 5.
1985 c. 51.	The Local Government Act 1985.	Section 22.
1986 c. 61.	The Education (No. 2) Act 1986.	In section 17, in subsection (1), paragraph (c) and the word “and” immediately preceding that paragraph, and subsection (4). In section 18, in subsection (3), paragraph (c) and the word “and” immediately preceding that paragraph, subsection (4), in subsection (6)(c)(ii) the words “or, to the extent to which it is incompatible, is compatible with that policy” and, in subsection (8), the words from “and to furnish” onwards. Section 19(3). Section 20. Section 29.

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In section 47(5)(a)(ii), the word “or”.

In section 56, paragraph (b) and the word “and” immediately preceding that paragraph.

In Schedule 4, paragraph 4.

1987 c. 44.

The Local Government Act 1987.

Section 2.

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