



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *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 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 pupils 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—

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- (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.

- (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—
  - (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; or
  - (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;
 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 pupils attending 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
  - (b) it is designated by or under the regulations as an institution substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act.
- (11) An institution falls within this subsection if it is an institution within the PCFC funding sector.
- (12) In this section “school” means any school maintained by a local education authority, any special school not so maintained or any grant-maintained school.
- (13) Section 27 of the 1980 Act (which is superseded by the preceding provisions of this section) shall cease to have effect.

## **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
  - (b) the governing body of a designated assisted institution;
- 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);

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- (d) the governing body of a designated assisted institution; and
  - (e) a higher education corporation;
- 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
    - (ii) a designated assisted institution;
 and in relation to the governing body of such an institution;
- as it applies in relation to a county or voluntary school and the governors of such a school.

## **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 the Polytechnics and Colleges Funding Council, a higher education corporation or the governing body of a grant-maintained school.
- (2) For the purposes of subsection (1) above “the appropriate body” is—
- (a) with respect to studies relating to the Polytechnics and Colleges Funding Council, the Council;
  - (b) with respect to studies relating to a higher education corporation, that Council or the corporation; and
  - (c) with respect to studies relating to the governing body of a grant-maintained school, the governing body.
- (3) The Commission may, at the Council’s request, give the Council advice in connection with the discharge of the Council’s functions under paragraph 18(2)(b) of Schedule 7 to this Act.
- (4) The Commission may, at the request of a higher 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
  - (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.

## **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
  - (c) the governing body of a relevant institution;
- 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 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;
  - “relevant institution” means any institution within the PCFC funding sector and any institution (other than an institution falling within section 202(3) of this Act) which—
    - (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.

## **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
  - (b) subsections (2) to (9) of section 148 and subsections (1) and (3) of section 149.
- (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 or institutions required to be covered by schemes under section 139 of this Act;
- as appear to him to be concerned.

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**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 Data Protection Act 1984 (prohibition 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.

**224 Superannuation for staff of Further Education Unit**

- (1) The persons to whom section 1 of the 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 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.

**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 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.

**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;

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- (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 at such intervals as appear to him to be appropriate by persons appointed as inspectors or additional inspectors under section 77(2) of the 1944 Act.
- (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.