

SCHEDULES

SCHEDULE 8

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS OF THE EDUCATION ACTS

The Education Act 1944 (c. 31)

- 1 The Education Act 1944 is amended as follows.
- 2 The duty imposed on local education authorities by section 7 (stages and purposes of statutory system of education) does not extend to matters in respect of which the higher education funding councils or the further education funding councils have a duty.
- 3 Section 8(3) is omitted.
- 4 In section 9(1) for “duties” there is substituted “functions”.
- 5 In section 55 (provision of transport and other facilities)—
 - (a) for subsection (1) there is substituted—

“(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary or as the Secretary of State may direct for the purpose of facilitating the attendance of persons receiving education—

 - (a) at schools,
 - (b) at any institution maintained or assisted by them which provides higher education or further education (or both),
 - (c) at any institution within the further education sector, or
 - (d) at any institution outside the further education sector and higher education sector, where a further education funding council has secured provision for those persons at the institution under section 4(3) or (5) of the Further and Higher Education Act 1992;

and any transport provided in pursuance of such arrangements shall be provided free of charge.”
 - (b) in subsection (2) for “pupil in attendance” there is substituted “person receiving education”,
 - (c) in subsection (3) for “pupil”, in each place, there is substituted “person”,
 - (d) for subsection (4) there is substituted—

“(4) Arrangements made by a local education authority under subsection (1) above shall make provision—

Status: This is the original version (as it was originally enacted).

- (a) 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,
 - (b) for persons receiving full-time education at any institution within the further education sector which is no less favourable than the provision made in pursuance of the arrangements for pupils of the same age at schools maintained by a local education authority, and
 - (c) for persons receiving full-time education at institutions mentioned in subsection (1)(d) above which is no less favourable than the provision made in pursuance of the arrangements—
 - (i) for persons of the same age with learning difficulties (within the meaning of section 41(9) of this Act) at schools maintained by a local education authority, or
 - (ii) where there are no such arrangements, for such persons for whom the authority secures the provision of education at any other institution.”, and
- (e) after subsection (4) there is added—
- “(5) Regulations under section 8(5) of the Education Act 1980 may require publication, within the meaning of that section, by every local education authority of such information as may be required by the regulations with respect to the authority’s policy and arrangements for provision under this section for persons attending institutions mentioned in subsection (1)(c) or (d) above who are over compulsory school age and who have not attained the age of nineteen years.”
- 6 At the end of section 56 (power to provide primary and secondary education otherwise than at school) (which becomes subsection (1)) there is added—
- “(2) In this section “secondary education” includes any full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years and, for the purposes of the Education Acts 1944 to 1992—
- (a) any such education, or education similar in other respects but less than full-time, provided in pursuance of this section is to be treated as secondary education; and
 - (b) any person for whom education is provided in pursuance of this section is to be treated as a pupil.”
- 7 In section 62(1) (duties of Secretary of State and of local education authorities as to the training of teachers), after “grant-maintained schools” there is inserted “institutions within the further education sector”.
- 8 Section 67(4A) (determination of disputes and questions - part-time senior education and post-school age education) is omitted.
- 9 Section 68 (power of Secretary of State to prevent unreasonable exercise of functions) shall apply in relation to a further education funding council or the

Status: This is the original version (as it was originally enacted).

- governing body of an institution within the further education sector as it applies in relation to a local education authority or, as the case may be, the governors of a county or voluntary school.
- 10 Section 77 (inspection of educational establishments) shall cease to have effect in relation to any institution other than a school.
- 11 In section 81 (power of local education authorities to give assistance by means of scholarships and otherwise)—
- (a) for “pupils” (where it first appears) there is substituted “persons”, and
 - (b) in paragraph (c)—
 - (i) for “pupils” (where it first appears) there is substituted “persons”, and
 - (ii) the words from “including” to the end are omitted.
- 12 In section 85(2) and (3) (power of local education authorities to accept gifts for educational purposes), the words “for providing primary or secondary education” are omitted.
- 13 (1) Section 114 (interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) in the definition of “further education”, after “section forty-one of this Act” there is added “as read with section 14 of the Further and Higher Education Act 1992”,
 - (b) the definitions of “part-time senior education” and “post-school age education” are omitted,
 - (c) for the definition of “primary school” there is substituted—
““Primary school” means, subject to regulations under section 1 of the Education Act 1964, a school for providing primary education, whether or not it also provides further education”,
 - (d) for the definition of “pupil” there is substituted—
““Pupil” has the meaning assigned to it by section 14(6) of the Further and Higher Education Act 1992”,
 - (e) for the definition of “school” there is substituted—
““School” has the meaning assigned to it by section 14(5) of the Further and Higher Education Act 1992”,
 - (f) in the definition of “secondary education”, for “eight of this Act” there is substituted “14 of the Further and Higher Education Act 1992”, and
 - (g) for the definition of “secondary school” there is substituted—
““Secondary school” means, subject to regulations under section 1 of the Education Act 1964, a school for providing secondary education, whether or not it also provides primary or further education”.
- (3) Subsections (1A), (1B) and (1C) are omitted.
- (4) In subsection (2A)—
- (a) for “PCFC funding sector” there is substituted “higher education sector other than a university”, and
 - (b) after “any institution” there is inserted “within the further education sector or”.

Status: This is the original version (as it was originally enacted).

The Education Act 1946 (c. 50)

14 In the First Schedule to the Education Act 1946 (maintenance of voluntary schools) after paragraph 8 there is added—

“9 Paragraph 8 of this Schedule shall not apply in the case of an institution which is or has at any time been within the further education sector.”

The Education (Miscellaneous Provisions) Act 1948 (c. 40)

15 Section 3(3) of the Education (Miscellaneous Provisions) Act 1948 (allocation between primary and secondary education of children between ten and a half and twelve years old - definition of secondary education) is omitted.

16 In section 5(3) of that Act (amendment and consolidation of enactments as to provision of clothing) after paragraph (a) there is inserted—

“(aa) for persons who have not attained the age of nineteen years and who are receiving education at an institution within the further education sector”.

The Education Act 1980 (c. 20)

17 After section 22(3A) of the Education Act 1980 (school meals - England and Wales) there is inserted—

“(3B) Subsection (1) above applies in relation to persons, other than pupils, who receive education at a school maintained by a local education authority or a grant-maintained school, and in relation to the authority maintaining the school or the governing body of the grant-maintained school, as it applies in relation to pupils at a school maintained by a local education authority and the authority maintaining the school; and an authority or governing body must charge for anything so provided and must charge every such person the same price for the same quantity of the same item.”

The Education Act 1981 (c. 60)

18 In section 14(2) of the Education Act 1981 (discontinuance of maintained special schools - notice) after paragraph (a) there is inserted—

“(aa) the appropriate further education funding council”.

The Education (Fees and Awards) Act 1983 (c. 40)

19 In section 1(3) of the Education (Fees and Awards) Act 1983 (fees at universities and further education establishments)—

(a) for paragraph (b) there is substituted—

“(b) any institution within the higher education sector”, and

(b) after paragraph (c) there is inserted—

“(ca) any institution within the further education sector”.

The Further Education Act 1985 (c. 47)

20 At the end of section 1 of the Further Education Act 1985 (supply of goods and services through further education establishments) there is added—

Status: This is the original version (as it was originally enacted).

“(4) In this Act “institution” does not include a school.”

21 (1) In section 2(2) of that Act (power of LEAs to lend money for those purposes) for paragraphs (a) to (d) there is substituted—

- “(a) to a higher education corporation or further education corporation (within the meaning of the Further and Higher Education Act 1992);
- (b) in the case of the following institutions—
 - (i) an institution within the higher education sector which is not conducted by a higher education corporation;
 - (ii) an institution within the further education sector which is not conducted by a further education corporation; or
 - (iii) an institution which provides higher education or further education and is assisted by a local education authority, to the governing body of the institution or, if it is conducted by a company, to the company; or
- (c) 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”.

(2) In subsection (8) of that section for “(2)(d)” there is substituted “(2)(c)”.

The Education (No. 2) Act 1986 (c. 61)

22 In section 43 of the Education (No. 2) Act 1986 (freedom of speech in universities, etc.)—

- (a) in subsection (5)—
 - (i) for paragraph (aa) there is substituted—

“(aa) any institution other than a university within the higher education sector”,
 - (ii) after paragraph (b) there is inserted—

“(ba) any institution within the further education sector”, and
 - (iii) paragraph (c) is omitted, and
- (b) in subsection (7) paragraph (b) and “or authorities maintaining or (as the case may be) assisting the establishment” are omitted.

23 In section 49(3) of that Act (appraisal of performance of teachers)—

- (a) paragraphs (d) and (da) are omitted,
- (b) after paragraph (da) there is inserted—

“(db) at any institution within the further education sector”, and
- (c) in paragraph (e) for “(da)” there is substituted “(db)”.

24 In section 51 of that Act (recoupment)—

- (a) in subsection (2)(b) the words from “made” to the end are omitted,
- (b) subsections (5) and (6) are omitted,
- (c) in subsection (8) for “(1) to (6)” there is substituted “(1) and (2)”, and
- (d) after subsection (12) there is added—

“(13) References in this section to a pupil, in relation to any school or other institution, include any person who receives education at the school or institution.”

Status: This is the original version (as it was originally enacted).

- 25 In section 52(1)(a) and (3) of that Act (recoupment : cross-border provisions) for “pupil”, in each place, there is substituted “person”.
- 26 In section 58 of that Act (travelling and subsistence allowances for governors of schools and establishments of further education)—
- (a) subsections (3), (4) and (5)(a) are omitted, and
 - (b) in subsection (5)(ab) “and are not designated establishments of higher or further education” is omitted.

The Education Reform Act 1988 (c. 40)

- 27 The Education Reform Act 1988 is amended as follows.
- 28 In section 24(1)(b) (extension of certain provisions)—
- (a) for the words from “a reference” to second “and” there is substituted “except in relation to a local education authority, a reference to”,
 - (b) in sub-paragraph (ii) after “a university” there is inserted “or an institution within the higher education sector”, and
 - (c) after that sub-paragraph there is added—
 - “ and
 - (iii) any institution within the further education sector”.
- 29 In section 100 (provision of benefits and services for pupils by local education authorities), after subsection (1) there is inserted—
- “(1A) Where—
- (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.”
- 30 In section 120 (functions of local education authorities with respect to higher and further education)—
- (a) subsection (2) is omitted,
 - (b) in subsection (3)(b) for “living outside their area” there is substituted “from other areas”,
 - (c) in subsection (4)—
 - (i) for “universities, institutions within the PCFC funding sector” there is substituted “institutions within the higher education sector”, and
 - (ii) after “sector” there is inserted “or the further education sector”, and
 - (d) subsections (6), (7), (8), (9)(a)(ii) and (9)(b) are omitted.

Status: This is the original version (as it was originally enacted).

- 31 In section 122 (orders incorporating higher education institutions maintained by local education authorities) subsections (2) to (5) are omitted.
- 32 In section 123 (provisions supplementary to sections 121 and 122)—
- (a) at the end of subsection (1) there is added “or which has become a higher education corporation by virtue of section 122A of this Act”, and
 - (b) for subsection (3) there is substituted—
 - “(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.
 - (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.”
- 33 In section 124 (powers of a higher education corporation)—
- (a) in subsection (2)(b) for “disabled students” there is substituted “students having learning difficulties within the meaning of section 41(9) of the Education Act 1944”, and
 - (b) subsection (4) is omitted.
- 34 In section 128 (dissolution of higher education corporations)—
- (a) in subsection (1)(b)—
 - (i) for sub-paragraphs (iii) and (iv) there is substituted—
 - “(iii) a higher education funding council”, and
 - (ii) after those sub-paragraphs there is inserted—
 - “(v) a further education funding council”,
 - (b) for subsection (4)(b) there is substituted—
 - “(b) the higher education funding council”, and
 - (c) after subsection (5) there is added—
 - “(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.”
- 35 Sections 131, 132 and 134 (Universities Funding Council and Polytechnics and Colleges Funding Council) are omitted.
- 36 In section 135 (inspection of accounts)—
- (a) for subsection (1)(c) there is substituted—
 - “(c) any designated institution within the meaning of section 129A of this Act”, and
 - (b) in subsection (2) for the words from “grants” to the end there is substituted “financial support has been given to them under section 65 of the Further and Higher Education Act 1992.”
- 37 In section 136 (transfer to Polytechnics and Colleges Funding Council of property and staff of National Advisory Body for Public Sector Higher Education)—
- (a) in subsection (2) for “Polytechnics and Colleges Funding Council” there is substituted “Higher Education Funding Council for England”, and
 - (b) subsections (3) to (7) are omitted.

Status: This is the original version (as it was originally enacted).

- 38 In section 137(2) (control of disposals of land) “or 129(3)” is omitted.
- 39 In section 157 (construction of instruments providing for institution ceasing to be maintained or assisted by local education authority)—
- (a) in subsection (4)—
 - (i) the words “or assisted” in both places are omitted,
 - (ii) after “becomes” there is inserted “an institution within the further education sector”, and
 - (iii) for “the PCFC funding sector” there is substituted “the higher education sector”,
 - (b) subsection (5)(b) is omitted, and
 - (c) in subsection (6)—
 - (i) at the beginning of paragraph (b) there is inserted “an institution within the further education sector or”, and
 - (ii) in that paragraph for “the PCFC funding sector” there is substituted “the higher education sector”.
- 40 In section 158(2) (reports and returns) paragraphs (a)(i) and (iii) and (b) are omitted.
- 41 Section 159(2)(b) (information with respect to educational provision in institutions providing further or higher education - designated assisted institutions) is omitted.
- 42 In section 161 (interpretation of Part II) subsection (1)(c) is omitted.
- 43 In section 197 (Education Assets Board)—
- (a) in subsection (4) after “this Act” there is inserted “and section 36 of and Schedule 5 to the Further and Higher Education Act 1992”,
 - (b) in subsection (6) for “this Act” there is substituted “the Education Acts 1944 to 1992”, and
 - (c) after subsection (7) there is inserted—
 - “(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.
 - (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.”
- 44 In section 198(5) (transfers under Parts I and II) for “the Polytechnics and Colleges Funding Council” there is substituted “the higher education funding council”.
- 45 In section 205 (procedure for exercise of University Commissioners' powers)—
- (a) for subsection (2)(d) there is substituted—
 - “(d) the higher education funding council”, and
 - (b) subsection (6) is omitted.
- 46 In section 210 (grants for the education of travellers and displaced persons), after “local education authorities” (in subsections (1) and (3)(d)) there is inserted “or institutions within the further education sector”.
- 47 In section 211 (grants in respect of special provision for immigrants)—

Status: This is the original version (as it was originally enacted).

- (a) after paragraph (b) there is inserted—
 - “(ba) the governing body of an institution within the further education sector”, and
 - (b) paragraph (c) is omitted.
- 48 In section 214(2)(a) (unrecognised degrees) after “Royal Charter or” there is inserted “by or under”.
- 49 In section 218 (school and further and higher education regulations)—
- (a) in subsection (1)(f) for “pupils” there is substituted “persons receiving education”,
 - (b) in subsection (7)(b) for “pupils attending” there is substituted “persons receiving education at”,
 - (c) in subsection (10)—
 - (i) after paragraph (a) there is inserted—
 - “(aa) it is within the further education sector”, and
 - (ii) paragraph (b) is omitted, and
 - (d) in subsection (11) for “the PCFC funding sector” there is substituted “the higher education sector in receipt of financial support under section 65 of the Further and Higher Education Act 1992”.
- 50 In section 219 (powers of Secretary of State in relation to certain educational institutions) subsections (1)(b), (2)(d) and (e) and (3)(c)(ii) are omitted.
- 51 (1) Section 220 (extension of functions of Audit Commission) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Polytechnics and Colleges Funding Council, a higher education corporation” there is substituted—
 - “(a) a higher education funding council or the governing body of an institution within the higher education sector”,
 - (b) for “the governing body” there is substituted—
 - “(b) a further education funding council or the governing body of an institution within the further education sector, or
 - (c) the governing body”.
- (3) In subsection (2)—
- (a) for paragraphs (a) and (b) there is substituted—
 - “(a) with respect to studies relating to a higher education funding council, the council;
 - (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”, and
 - (b) after those paragraphs there is inserted—
 - “(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”.
- (4) For subsection (3) there is substituted—

Status: This is the original version (as it was originally enacted).

“(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.”

(5) In subsection (4) after “a higher education corporation” there is inserted “a further education corporation”.

52 In section 221 (avoidance of certain contractual terms) subsection (1)(c) and, in subsection (3), the definition of “relevant institution” are omitted.

53 In section 222 (application of employment law during financial delegation) subsection (2)(b) and, in subsection (3)(c), “or institutions required to be covered by schemes under section 139 of this Act” are omitted.

54 In section 227 (application to Wales) subsections (2) to (4) are omitted.

55 In section 230 (stamp duty)—

(a) in subsection (1) “section 136(2)” is omitted, and

(b) in subsection (3)—

(i) for paragraph (b) there is substituted—

“(b) an institution within the higher education sector”,

(ii) paragraph (c)(ii) is omitted, and

(iii) after paragraph (c) there is inserted—

“(ca) an institution within the further education sector”.

56 In section 232 (orders and regulations)—

(a) in subsection (2) “140(1), 141(6), 145(6), 151(4), 156(10)” is omitted,

(b) in subsection (3) “or 227” is omitted, and

(c) in subsection (4)(b) “227” is omitted.

57 In section 234 (meaning of “assisted” for the purposes of the 1944 Act and Acts construed as one with it)—

(a) in subsection (1) for “the PCFC funding sector” there is substituted “the higher education sector other than a university”, and

(b) subsection (2)(b) is omitted.

58 In section 235 (general interpretation) subsection (2)(a) and (h) are omitted.

59 In Schedule 7 (Higher Education Corporations)—

(a) for paragraph 1(4) there is substituted—

“(4) A corporation may change their name with the consent of the Privy Council.”,

(b) in paragraph 18—

(i) in sub-paragraph (2)(b) for “the Polytechnics and Colleges Funding Council” there is substituted “the higher education funding council”, and

(ii) for sub-paragraph (5) there is substituted—

“(5) No person shall be qualified to be appointed auditor under that sub-paragraph except—

Status: This is the original version (as it was originally enacted).

- (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.”, and
 - (c) paragraph 19 is omitted.
- 60 Schedule 8 (the funding councils and the assets board) shall cease to have effect so far as it relates to the Universities Funding Council and the Polytechnics and Colleges Funding Council.
- 61 Paragraphs 62 to 64 below shall have effect, in place of paragraph 3 of Schedule 10 (supplementary provisions with respect to transfers) in the case of any transfer by virtue of section 126 or 130 and in such a case references to that paragraph of Schedule 10 shall be construed as references to paragraphs 62 to 64 below.
- 62 (1) The Education Assets Board may, in the case of any matter on which agreement is required to be reached under paragraph 2(1) of that Schedule—
- (a) if it appears to them that it is unlikely that such an agreement will be reached, or
 - (b) if such an agreement has not been reached within such period as may be prescribed by regulations,
- give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under that paragraph.
- (2) A direction under sub-paragraph (1) above may be given before or after the transfer date.
- (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 Board shall, before giving a direction under this paragraph, give the transferor and the transferee such opportunity as may be prescribed by regulations to make representations.
- 63 (1) The transferor or transferee, if dissatisfied with a determination under paragraph 62 above, may appeal to the Secretary of State.
- (2) An appeal under this paragraph shall be made in accordance with regulations.
- (3) The Secretary of State shall, before determining an appeal under this paragraph, give the appellant and the respondent such opportunity as may be prescribed by regulations to make representations.
- (4) On an appeal under this paragraph the Secretary of State may—
- (a) allow or dismiss the appeal or vary the determination of the Board, and
 - (b) give a direction accordingly under paragraph 62 above.
- 64 (1) Regulations may prescribe the procedure to be followed in making any determination under paragraphs 62 and 63 above.
- (2) The regulations may in particular—

Status: This is the original version (as it was originally enacted).

- (a) provide for a time limit within which representations and any supporting documents must be submitted,
- (b) empower the determining authority to proceed to a determination taking into account only such written representations and supporting documents as were submitted within the time limit, and
- (c) empower the determining authority to proceed to a determination, after giving the transferor and the transferee or, as the case may be, the appellant and the respondent written notice of their intention to do so, notwithstanding that no written representations were made within the time limit, if it appears to the determining authority that they have sufficient material before them to enable them to make a determination.

(3) In sub-paragraph (2) above the “determining authority” means the Board or the Secretary of State, as the case may be.

(4) In this paragraph and paragraphs 62 and 63 above “regulations” means regulations made by the Secretary of State.

65 In paragraph 4 of that Schedule at the beginning there is inserted—

“(1) Where a transfer by virtue of section 126 or 130 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)”.

66 In Schedule 12 (minor and consequential amendments) paragraphs 68, 69(2), 70, 100(2) and 101(4) are omitted.

The Education (Student Loans) Act 1990 (c. 6)

67 In section 1(3)(a) of the Education (Student Loans) Act 1990 (loans for students)—

- (a) for “131 or 132 of the Education Reform Act 1988” there is substituted “65 of the Further and Higher Education Act 1992”, and
- (b) for the words from “institutions designated” to “local education authorities” there is substituted “institutions receiving recurrent grants towards their costs from a further education funding council”.