



# Teaching and Higher Education Act 1998

## 1998 CHAPTER 30

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **42 Orders and regulations.**

- (1) Any power of the Secretary of State to make an order or regulations under this Act shall be exercised by statutory instrument.
- (2) A statutory instrument containing—
  - (a) an order under section 7 or 8 [<sup>F1</sup>or paragraph 18 of Schedule 1], or
  - (b) (subject to the following provisions of this section) any regulations under this Act,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>F2</sup>(3) .....
- (4) Subsection (2) does not apply to the first regulations to be made under section 22; and no such regulations shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- [<sup>F3</sup>(5) That subsection also does not apply to any other regulations under section 22 a draft of which has been laid before, and approved by a resolution of, each House of Parliament.]
- (6) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

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- (7) Any order or regulations under this Act may make different provision in relation to England and Wales respectively.
- (8) Nothing in this Act shall be read as affecting the generality of subsection (6).
- (9) <sup>F4</sup>... The Secretary of State shall, before making regulations under Chapter I of Part I of this Act, consult the Council <sup>F5</sup>....

#### Textual Amendments

- F1** Words in s. 42(2)(a) inserted (1.10.2002 for E. and otherwise *prosp.*) by 2002 c. 32, ss. 148, 216, **Sch. 12 para. 9** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**
- F2** S. 42(3) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 2 para. 15(a)**; S.I. 2012/924, **art. 2**
- F3** S. 42(5) substituted (14.1.2006 for E.) by Higher Education Act 2004 (c. 8), s. 52(2), **Sch. 6 para. 9**; S.I. 2006/51, **art. 2**
- F4** Words in s. 42(9) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 2 para. 15(b)(i)**; S.I. 2012/924, **art. 2**
- F5** Words in s. 42(9) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 2 para. 15(b)(ii)**; S.I. 2012/924, **art. 2**

### 43 General interpretation.

- (1) In this Act—

“the Council” means the body corporate referred to in section 1(1);

“functions” includes powers and duties;

[<sup>F6</sup>“local authority” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);]

“modifications” includes additions, alterations and omissions, and “modify” shall be construed accordingly;

“prescribed” means prescribed by regulations;

“registered teacher” means (subject to paragraph 8 of Schedule 2) a person for the time being registered under section 3 [<sup>F7</sup>with full or provisional registration];

“regulations” means regulations made by the Secretary of State under this Act.

- (2) In the following provisions of this Act, namely—

(a) sections 12, 15 and 19, and

(b) Schedule 2,

“employer”, in relation to a teacher, includes a [<sup>F8</sup>local authority], governing body or other person who engage (or make arrangements for the engagement of) that person to provide his services as a teacher otherwise than under a contract of employment, and “employed”, “employment” and any expressions relating to the termination of employment shall be construed accordingly.

#### Textual Amendments

- F6** Words in s. 43(1) inserted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **art. 1, Sch. 2 para. 9(4)**

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- F7** Words in s. 43(1) inserted (1.8.2003 for E. for specified purposes, 6.11.2006 so far as not already in force except in relation to W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 12 para. 10** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 3; S.I. 2006/2895, art. 2
- F8** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 9(2)**

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

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

#### **Commencement Information**

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

#### **45 Northern Ireland.**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M1</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to those of sections 22 to 26 and 28 or sections 32 and 33—

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

#### **Marginal Citations**

- M1** 1974 c. 28.

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

- (1) This Act may be cited as the Teaching and Higher Education Act 1998.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the <sup>M2</sup>Education Act 1996.
- (3) In this Act—
  - sections 22 to 31,
  - sections 42 and 43,
  - section 45, and
  - this section,

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come into force on the day on which this Act is passed.

- (4) The remaining provisions of this Act shall come into force on such day as the Secretary of State may by order appoint, and different days may be appointed for different provisions and for different purposes.
- (5) Subject to subsections (6) to (9), this Act extends to England and Wales only.
- (6) The following provisions extend to Scotland only—
- sections 16 and 17,
  - section 21,
  - sections 29 and 30, except that subsections (3) and (11) of section 73B, and section 73A so far as relating to any function exercisable by virtue of those subsections, of the <sup>M3</sup>Education (Scotland) Act 1980 (which are inserted by section 29) shall also extend to England and Wales and Northern Ireland,
  - section 31, and
  - sections 37 and 38.
- (7) The following provisions also extend to Scotland—
- section 22 so far as relating to the making of any provision authorised by subsection (2) (a), (c), (j) or (k), (3)(e) or (5) of that section,
  - section 23 so far as relating to any function exercisable by virtue of any provision so authorised,
  - sections 32 and 33,
  - section 39,
  - section 42, and
  - this section.
- (8) The following provisions extend to Northern Ireland—
- section 22 so far as relating to the making of any provision authorised by subsection (2) (a), (c), (j) or (k), [<sup>F9</sup>(3)(e), (f), (g) or (h)] or (5) of that section,
  - section 23 so far as relating to any function exercisable by virtue of any provision so authorised,
  - section 39,
  - section 45, and
  - this section.
- (9) The amendment or repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.

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### Subordinate Legislation Made

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

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### Textual Amendments

- F9** Words in s. 46(8) substituted (12.1.2010) by [Apprenticeships, Skills, Children and Learning Act 2009](#) (c. 22), [ss. 257\(3\)\(4\)](#), [269\(4\)](#); [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

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### Marginal Citations

- M2** 1996 c. 56.
- M3** 1980 c. 44.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 22(4A)(4B) inserted by [2017 c. 29 s. 86\(4\)](#)
- s. 22(5)(ea) inserted by [2017 c. 29 s. 86\(5\)\(d\)](#)
- s. 22(11) inserted by [2017 c. 29 s. 86\(7\)](#)
- s. 28A inserted by [2022 c. 21 s. 15\(1\)](#)