



Education Reform Act 1988

1988 CHAPTER 40

PART II

HIGHER AND FURTHER EDUCATION

^{F1}CHAPTER III

Textual Amendments

- F1** 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 III (ss. 139-155) repealed (1. 4. 1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), ss. 85(1), 93(2), [Sch.9](#); S.I. 1992/831, art. 2, [Sch.3](#).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

139 Schemes for financing locally funded further and higher education.

- (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 140 of this Act.
- (2) The scheme shall provide for—
 - (a) the determination in respect of each financial year of the authority, for each institution required to be covered by the scheme in that year, of the share to be appropriated for that institution in that year of the further and higher education budget of the authority for that year (referred to below in this Chapter, in relation to such an institution, as the institution's budget share); and
 - (b) the delegation by the authority of the management of an institution's budget share for any year to the governing body of the institution where such delegation is required or permitted by or under the scheme.

Status: Point in time view as at 01/02/1991.

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- (3) The scheme shall also set out the principles and procedures to be applied by the authority in planning the educational provision to be made by institutions required to be covered by the scheme.
- (4) For the purposes of this Chapter, an institution is required to be covered in any financial year by a scheme made under this section by a local education authority if—
 - (a) it is an institution providing full-time education; and
 - (b) immediately before the beginning of that year it is, or at any time during that year it becomes, either—
 - (i) an institution maintained by that authority in exercise of their further or higher education functions; or
 - (ii) a designated assisted institution dependent on assistance from that authority.
- (5) In this Chapter—
 - (a) references to an institution in respect of which financial delegation is required for any financial year under a scheme under this section are references to an institution 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 institution's budget share for that year (and the governing body of such an institution are said to have a right to a delegated budget for the year);
 - (b) references to an institution which has a delegated budget are references to an institution conducted by a governing body to whom a local education authority have for the time being delegated the management of the institution'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) any reference, in relation to an institution assisted by a local education authority, to the delegation by that authority to the governing body of that institution of the management of the institution's budget share for any financial year shall be read as a reference to the making by that authority to that body of a grant in respect of the institution of an amount equal to that budget share.
- (6) References in this Act to a designated assisted institution are references to an institution designated by or under regulations made under section 27 of the 1980 Act as an institution substantially dependent for its maintenance on assistance from local education authorities.
- (7) For the purposes of this Part of this Act a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either—
 - (a) it is not assisted by any local education authority; or
 - (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.

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140 Preparation and imposition of further and higher education funding schemes.

- (1) A scheme prepared by a local education authority under section 139 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—
 - (a) comply with any prescribed requirements with respect to the provisions to be included in any such scheme; and
 - (b) take into account any guidance given by the Secretary of State as to the provisions he regards as appropriate for inclusion in any such scheme.
- (3) Guidance given by the Secretary of State for the purposes of subsection (2)(b) above—
 - (a) may be given generally or in relation to any particular local education authority or any class or description of such authorities; and
 - (b) shall be published in such manner as the Secretary of State thinks fit.
- (4) Before preparing such a scheme a local education authority shall consult the governing body of every institution providing full-time education which is either—
 - (a) an institution maintained by the authority in exercise of their further or higher education functions; or
 - (b) a designated assisted institution dependent on assistance from the authority.
- (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.
- (3) The scheme shall also set out the principles and procedures to be applied by the authority in planning the educational provision to be made by institutions required to be covered by the scheme.
- (4) For the purposes of this Chapter, an institution is required to be covered in any financial year by a scheme made under this section by a local education authority if—
 - (a) it is an institution providing full-time education; and
 - (b) immediately before the beginning of that year it is, or at any time during that year it becomes, either—
 - (i) an institution maintained by that authority in exercise of their further or higher education functions; or
 - (ii) a designated assisted institution dependent on assistance from that authority.
- (5) In this Chapter—
 - (a) references to an institution in respect of which financial delegation is required for any financial year under a scheme under this section are references to an institution 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 institution's budget share for that year (and the governing body of such an institution are said to have a right to a delegated budget for the year);

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- (b) references to an institution which has a delegated budget are references to an institution conducted by a governing body to whom a local education authority have for the time being delegated the management of the institution'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) any reference, in relation to an institution assisted by a local education authority, to the delegation by that authority to the governing body of that institution of the management of the institution's budget share for any financial year shall be read as a reference to the making by that authority to that body of a grant in respect of the institution of an amount equal to that budget share.
- (6) References in this Act to a designated assisted institution are references to an institution designated by or under regulations made under section 27 of the 1980 Act as an institution substantially dependent for its maintenance on assistance from local education authorities.
- (7) For the purposes of this Part of this Act a designated assisted institution shall be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either—
- (a) it is not assisted by any local education authority; or
 - (b) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution.
- (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 is unsatisfactory and cannot be rendered satisfactory merely by modifying it;
- he may, after consulting such persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 139 of this Act in the case of that authority 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 139 by the local education authority concerned; and
 - (b) shall come into force on such date as may be specified in the scheme.

141 Replacement and variation of further and higher education funding schemes.

- (1) Subject to the following provisions of this section, a scheme may be replaced or varied by a subsequent scheme made under section 139 of this Act by the local education authority concerned.
- (2) Section 139 shall apply for the purposes of a scheme replacing or varying a previous scheme with the omission of subsection (1); and subsection (1) of section 140 of this Act shall not apply in relation to such a scheme.
- (3) A scheme prepared by a local education authority under section 139 which—
 - (a) replaces a previous scheme; or

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- (b) makes any significant variation of a previous scheme;
shall be submitted to the Secretary of State for his approval.
- (4) A scheme under section 139 varying a previous scheme which is not required by subsection (3)(b) above to be submitted to the Secretary of State for his approval is referred to below in this section as a “minor variation scheme”.
- (5) Subsections (4) and (5) of section 140 shall not apply in relation to a minor variation scheme.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of subsection (3)(b) above.
- (7) Where a local education authority propose to make a scheme under section 139 which in their opinion is a minor variation scheme, the authority shall notify the Secretary of State in writing of their proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.
- (8) 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 notification under subsection (7) above of the authority’s proposal, send to him a copy of their proposed scheme; and it shall be for the Secretary of State to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in an order under subsection (6) above.
- (9) A scheme made under section 139 may also be varied by a direction given by the Secretary of State, as from such date as may be specified in the direction.
- (10) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.

142 Delegation to governing body of management of institution’s budget share.

- (1) This section applies where in the case of any local education authority the authority’s financial provision for any institutions maintained or assisted by the authority is subject to regulation by a scheme.
- (2) Subject to section 150(6) of this Act, in the case of any institution in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority—
- (a) in the case of an institution maintained by the authority, to put at the disposal of the governing body of the institution in respect of that year a sum equal to the institution’s budget share for that year; or
- (b) in the case of an institution assisted by the authority, to make to the governing body in respect of that year a grant of such a sum;
- to be spent for the purposes of the institution.
- (3) Any sum which, in accordance with subsection (2)(a) above, is required to be put at the disposal of the governing body of an institution shall be put at their disposal at such times and in such manner as may be provided by or under the scheme.
- (4) Payments in respect of any grant made in accordance with subsection (2)(b) above shall be made at such times and in such manner as may be so provided.

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- (5) In the case of any institution in respect of which financial delegation is required for any financial year, the authority may not—
- (a) delegate to the governing body the power to spend any sum appropriated by the authority for the purposes of the institution in that year; or
 - (b) make to the governing body a grant of any such sum; otherwise than as required under the scheme.
- (6) Subject to section 150(7) of this Act, the governing body of any institution 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 or granted to them in respect of the institution's budget share for any financial year as they think fit for the purposes of the institution; and
 - (b) may delegate to the principal, to such extent as may be permitted by or under the scheme and subject to any provision of the articles of government of the institution, their power under paragraph (a) above in relation to any part of that sum.
- (7) The governors of an institution 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 (6) above.

Modifications etc. (not altering text)

C2 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

143 Further and higher education funding 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 institution 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 institutions so much of the authority's further and higher education budget for that year as is appropriated by the authority for allocation in accordance with the scheme among those institutions.
- (2) In this section "formula" includes methods, principles and rules of any description, however expressed.
- (3) The formula laid down by a scheme in accordance with subsection (1) above—
 - (a) shall include provision for taking into account, in the case of each institution required to be covered by the scheme in any financial year, the student numbers allocated to that institution under the scheme for that year; and
 - (b) may include provision for taking into account any other factors affecting the needs of individual institutions which are subject to variation from institution to institution.
- (4) The student numbers allocated to any institution under a scheme for any financial year shall be determined (and may from time to time be revised) in such manner as may be provided by the scheme.

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- (5) A scheme must provide for all amounts and student numbers relevant to the determination of an institution's budget share under the scheme for any financial year to be determined initially before the beginning of that year.

Modifications etc. (not altering text)

C3 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

144 Further and higher education funding schemes: provision for financial delegation.

- (1) A scheme shall include provision for requiring, in the case of each institution required to be covered by the scheme in any financial year which satisfies the qualifying condition on a qualifying date in relation to that year, the delegation by the local education authority concerned to the governing body of the institution of the management of the institution's budget share for that year.
- (2) For the purposes of this section—
- (a) an institution is to be treated as satisfying the qualifying condition at any time when its total full-time equivalent enrolment number is two hundred or more; 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.
- (3) References in this Chapter to the delegation requirement under any scheme are references to any provision included in the scheme by virtue of subsection (1) above.
- (4) The application of the delegation requirement under a scheme in relation to any institution is subject to section 145 of this Act in the case of any institution to which that section applies.
- (5) Subject to subsections (6) and (7) below, once the delegation requirement under a scheme applies in relation to an institution in respect of any financial year it shall continue to apply in respect of each succeeding financial year.
- (6) Subject to subsection (7) below, the delegation requirement under a scheme shall cease to apply in relation to any institution to which that requirement for the time being applies if the institution's total full-time equivalent enrolment number—
- (a) falls below the number an institution's total full-time equivalent enrolment number is for the time being required under subsection (2)(a) above to equal or exceed for the institution to be treated as satisfying the qualifying condition; and
 - (b) remains below that number for such period as may be specified in the scheme.
- (7) Where subsection (6) above applies in the case of any institution the delegation requirement under the scheme in question shall cease to apply in relation to the institution 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 institution.
- (8) The application of subsections (6) and (7) above in relation to any institution is without prejudice to the subsequent application of the delegation requirement under

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the scheme in question in relation to that institution if it satisfies the qualifying condition on a qualifying date in relation to any financial year subsequent to that mentioned in subsection (7).

- (9) In the case of any institution required to be covered by a scheme in any financial year to which the delegation requirement under the scheme does not apply, the scheme may provide for the delegation by the local education authority concerned to the governing body of the institution of the management of the institution's budget share for that year.
- (10) Any delegation by a local education authority under a scheme to the governing body of any institution of the management of the institution's budget share for any financial year shall be subject to such conditions as may be imposed by or under the scheme.
- (11) Conditions so imposed may (in particular) relate to the application of the whole of the budget share of any institution or of any part of the budget share of any institution determined by or under the scheme, and different conditions may be imposed in relation to any parts so determined.
- (12) The governing body of any institution required to be covered by a scheme shall give to the local education authority concerned such information as the authority may from time to time require for the purposes of the exercise of their functions under this Chapter.

145 Initial implementation of further and higher education funding schemes.

- (1) The delegation requirement under a scheme shall not apply in relation to any institution which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.
- (2) A scheme may include provision—
 - (a) for modifying or excluding the application in relation to any such institution of any of its provisions other than the delegation requirement; and
 - (b) for modifying the delegation requirement as it applies in relation to any such institution from any date specified under subsection (1) above;
 until a date specified in the scheme.
- (3) The provision authorised by subsection (2)(b) above includes in particular provision limiting the delegation requirement to delegation for such purposes, and in relation to expenditure of such descriptions, as may be specified in the scheme.
- (4) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (6) below) is the period of three years beginning with the date on which the scheme comes into force.
- (5) Different dates may be specified under subsection (1) or (2) above in relation to different institutions or categories of institution and different purposes of any modification or exclusion made under subsection (2) above, and in relation to institutions 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.
- (6) The Secretary of State may by order—

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- (a) substitute a date specified in the order for any date specified in a scheme under subsection (1) or (2) 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.
- (7) For the purposes of this section, an institution—
- (a) comes within a scheme in any financial year if that financial year is the first financial year in which the institution is required to be covered by the scheme; and
 - (b) comes within the scheme at the beginning of that year if it is then an institution required to be so covered and otherwise at the time within that year when it first becomes such an institution.

146 Extension of further and higher education funding schemes.

- (1) The Secretary of State may by regulations—
- (a) amend paragraph (a) of subsection (2) of section 144 of this Act by substituting a lower number for the number an institution's total full-time equivalent enrolment number is for the time being required to equal or exceed for the institution to be treated as satisfying the qualifying condition for the purposes of that section; or
 - (b) amend subsection (1) of that section so as to require a scheme to include such provision as is there mentioned in relation to all institutions required to be covered by the scheme without exception.
- (2) The Secretary of State may by regulations provide for—
- (a) requiring or authorising schemes to cover institutions providing further or higher education (or both) of any description specified in the regulations;
 - (b) providing for delegation requirements under schemes in relation to institutions of any description so specified which by virtue of any regulations made under paragraph (a) above are required to be covered by the schemes;
 - (c) authorising local education authorities to delegate to their respective governing bodies, in such circumstances as may be determined by or under schemes, the management of the budget shares of institutions of any description so specified which by virtue of any regulations so made are required or authorised to be covered by the schemes;
- subject to any requirements imposed by the regulations with respect to the conditions institutions providing further or higher education (or both) of any description so specified must satisfy in order to be covered by a scheme or to fall within any provision for delegation made by virtue of paragraph (b) or (c) above.
- (3) The requirements that may be imposed in relation to such institutions by regulations made under subsection (2) above include, in particular, requirements with respect to the government of, and the approval by the Secretary of State of instruments and articles of government for, such institutions.
- (4) Regulations under this section—
- (a) may make in any provisions of this Chapter such amendments as appear to the Secretary of State to be required in consequence of any provision made in those regulations by virtue of subsection (1) or (2) above; and

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- (b) 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 so made.

147 Publication of further and higher education funding schemes and annual information as to their operation.

- (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 Secretary of State may by regulations require every local education authority operating a scheme to publish, before the beginning of every financial year, such information as to the operation of the scheme as may be required by the regulations.
- (3) The information shall be published in such form and manner as may be prescribed.
- (4) For the purposes of subsection (2) above a local education authority is an authority operating a scheme if the authority's financial provision for any institutions maintained or assisted by the authority is subject to regulation by a scheme.

Appointment and dismissal of staff during financial delegation

148 Delegation of powers as to appointment and dismissal of staff.

- (1) This section applies to an institution maintained by a local education authority at any time when either—
 - (a) financial delegation is required in respect of the institution for the current financial year under any scheme; or
 - (b) it has a delegated budget under any scheme though that delegation is not required under the scheme;
 subject, in a case within paragraph (a) above, to any suspension, limitation or restriction under section 150 of this Act of the powers conferred on the governing body under or by virtue of this section or section 149 of this Act.
- (2) A scheme may include provision with respect to the appointment and dismissal of staff at any institution to which this section for the time being applies and (without prejudice to the inclusion of other provisions as to staff and other costs to be met from the budget share of any such institution) with respect to costs incurred by the local education authority in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff.
- (3) Subject to any provision of the relevant scheme or the articles of government of the institution and the following provisions of this section, in the case of any institution to which this section for the time being applies—
 - (a) it shall be for the governing body of the institution—
 - (i) to determine what staff (both full-time and part-time) are for the time being required for the purposes of the institution, and to select all such staff for appointment by the local education authority;
 - (ii) to determine the duties to be performed by members of the staff (including, in the case of part-time staff, their hours of work) and the grading (according to the scale of grades currently applicable in

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- relation to employment with the authority) of both full-time and part-time posts at the institution; and
- (iii) to exercise any discretion of the authority with respect to the remuneration to be paid to any person appointed by the authority in accordance with paragraph (b) below; and
- (b) it shall be the duty of the authority to appoint staff selected by the governing body on such terms, in the case of each appointment, as to give effect, so far as relates to any matter which by virtue of paragraph (a)(ii) or (iii) above falls to be decided by the governing body, to any decisions of the governing body in relation to any such matter which are applicable in relation to that appointment.
- (4) For the purposes of subsection (3)(a)(iii) above, the authority are to be regarded as having a discretion with respect to the remuneration to be paid to a person appointed to a post at any such institution 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.
- (5) The authority shall not be required by virtue of subsection (3)(b) above to appoint any person if he does not meet any requirements of any regulations made under section 27 of the 1980 Act (school and further education regulations) which are applicable in relation to his appointment.
- (6) Subject to any provision of the relevant scheme or the articles of government of the institution, where the governing body of an institution to which this section for the time being applies notify the local education authority concerned in writing that they have determined that any person employed to work at the institution should cease to work there—
- (a) if the person concerned is employed to work solely at the institution, the authority shall, before the end of the period of fourteen days beginning with the date on which the notification is given in relation to him, either—
- (i) give him such notice terminating his contract of employment with the authority as is required under that contract; or
- (ii) terminate that contract without notice if the circumstances are such that they are entitled to do so by reason of his conduct; and
- (b) in any other case, the authority shall require the person concerned to cease to work at the institution.
- (7) The articles of government of an institution to which this section for the time being applies shall provide for it to be the duty of the governing body to consult the chief education officer of the local education authority concerned before making any decisions about the selection of senior staff or any determination which would have the effect of removing such staff from work at the institution.
- In this subsection "senior staff" means staff who fall in accordance with the articles to be treated as senior staff for the purposes of any such provision.
- (8) It shall be the duty of the chief education officer to offer advice when consulted in accordance with any such provision, and the duty of the governing body to consider any advice so offered.
- (9) Subject to any provision of the articles of government of the institution—

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- (a) the regulation of conduct and discipline in relation to the staff of an institution to which this section 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; and
 - (b) where the implementation of any determination made by the governing body in the exercise of that control requires any action which—
 - (i) is not within the functions exercisable by the governing body by virtue of this Chapter; but
 - (ii) is within the powers 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.
- (10) References in this section to the chief education officer of a local education authority include references to any officer of the authority nominated by the chief education officer.

Modifications etc. (not altering text)

C4 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

149 Costs of dismissal, premature retirement or voluntary severance.

- (1) Subject to any provision of the relevant scheme or the articles of government of the institution and subsection (2) below, it shall be for the governing body of any institution to which section 148 of this Act for the time being applies 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 institution; and
 - (b) the amount of any such payment.
- (2) Subsection (1) 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.
- (3) 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 institution under subsection (1) 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 institution otherwise than in accordance with any such determination.
- (4) Subject to any provision of the relevant scheme or the articles of government of the institution, 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 institution shall not be met from the institution'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.

Status: Point in time view as at 01/02/1991.

Changes to legislation: Education Reform Act 1988, Chapter III is up to date with all changes known to be in force on or before 04 June 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)

- (5) 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 (4) above.

Modifications etc. (not altering text)

C5 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

Withdrawal of delegated powers

150 Withdrawal of delegated powers for mismanagement, etc.

- (1) Where it appears to a local education authority, in the case of any institution in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the institution—
- (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 or granted to them for the purposes of the institution in a satisfactory manner;
- the authority may take any action permitted by subsection (2) below.
- (2) The actions so permitted are—
- (a) complete suspension of the governing body’s right to a delegated budget;
 - (b) the limitation of that right to part only of the budget share of the institution concerned; and
 - (c) the restriction, in any manner that appears to the authority to be appropriate in the circumstances, of the discretion of the governing body to spend any sum made available or granted to them in respect of the institution’s budget share or any part of it as they think fit for the purposes of the institution.
- (3) Subject to subsection (5) below, a local education authority shall give the governing body of any institution in respect of which they propose to take any action permitted by subsection (2) above not less than one month’s notice of the action they propose.
- (4) Any such notice shall specify the grounds for the proposed action, 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.
- (5) A local education authority may take the action to which such a notice relates 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 the governing body concerned 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.
- (6) During any period when a governing body’s right to a delegated budget is subject to any suspension or limitation imposed under this section the duty of the local education authority concerned under section 142(2) of this Act shall not apply in relation to that governing body or (as the case may require) shall apply only in relation to such part of the budget share of the institution concerned as is not subject to the limitation.

Status: Point in time view as at 01/02/1991.

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- (7) During any period when a governing body's discretion to spend the budget share of the institution concerned is subject to any restriction imposed under this section, the power of the governing body under subsection (6)(a) of that section shall be subject to that restriction.
- (8) In imposing any suspension, limitation or restriction under subsection (2) above in relation to the governing body of any institution to which section 148 of this Act applies a local education authority may also impose such suspension, limitation or restriction as appears to them to be appropriate in that connection on the powers conferred on the governing body under or by virtue of that section or section 149 of this Act.
- (9) Without prejudice to subsection (8) above, in imposing any such suspension, limitation or restriction in relation to any institution such an authority may exclude or modify, for the period during which the suspension, limitation or restriction applies, any provision of the articles of government of the institution which appears to them to be inconsistent with the operation of the suspension, limitation or restriction.
- (10) It shall be the duty of the authority concerned—
- (a) to review before the beginning of every financial year any suspension, limitation or restriction under this section which is for the time being in force;
 - (b) for the purposes of that review, to afford the governing body concerned an opportunity of making representations with respect to that suspension, limitation or restriction and to have regard to any representations made by that body; and
 - (c) to revoke any such suspension, limitation or restriction where they consider it appropriate to do so.
- (11) The authority shall give the governing body concerned written notification of their decision on any such review.
- (12) The revocation of any such suspension, limitation or restriction shall take effect as from the beginning of the next following financial year.
- (13) A governing body shall be entitled to appeal to the Secretary of State against—
- (a) the imposition of any suspension, limitation or restriction under this section; and
 - (b) any refusal of a local education authority to revoke any such suspension, limitation or restriction on any review required under this section.
- (14) On any such appeal the Secretary of State 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.
- (15) On any such appeal the Secretary of State—
- (a) may allow or reject the appeal; and
 - (b) may give such directions as he thinks fit to the authority for giving effect to his determination.

Modifications etc. (not altering text)

C6 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

Status: Point in time view as at 01/02/1991.

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Government and conduct of maintained further and higher education institutions

151 Instrument and articles of government required for maintained further and higher education institutions.

- (1) For every institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions there shall be—
 - (a) an instrument providing for the constitution of a governing body of the institution (to be known as the instrument of government); and
 - (b) an instrument in accordance with which the institution is to be conducted (to be known as the articles of government).
- (2) Subject to subsection (4) below, the instrument of government and articles of government shall be made by order of the local education authority with the approval of the Secretary of State (which may be given subject to such conditions as the Secretary of State thinks fit).
- (3) The Secretary of State may direct a local education authority to amend the instrument or articles of government of any institution to which this section applies in such manner, or for such purpose, as may be specified in the direction; and any amendment made in pursuance of such a direction shall be made by order under subsection (2) above.
- (4) The Secretary of State may by order amend the instrument or articles of government of any institution to which this section applies.
- (5) An order made under subsection (4) above may relate to all such institutions, to any category of such institutions specified in the order, or to any institution so specified.
- (6) Before giving any direction under subsection (3) above or making any order under subsection (4) above the Secretary of State shall consult such persons as he thinks fit.

Modifications etc. (not altering text)

C7 Ss. 151, 152 modified by S.I. 1989/1470, art. 2(1)

152 Provision required in instrument and articles of government.

- (1) The instrument of government of any institution to which section 151 of this Act applies shall provide for the governing body to consist of not more than twenty-five members selected and appointed or (as the case may be) co-opted in accordance with the instrument of government, of whom—
 - (a) not less than fifty per cent. shall be members of one or other of the categories mentioned in subsection (2) below; and
 - (b) not more than twenty per cent. shall be persons selected and appointed by the local education authority.
- (2) The categories of members referred to in subsection (1)(a) above are—
 - (a) members selected from among persons appearing to the person or persons selecting them—

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- (i) to be, or to have been, engaged or employed in business, industry or any profession or in any other field of employment relevant to the activities of the institution; or
 - (ii) to represent persons so engaged or employed; and
 - (b) members co-opted by the governing body.
- (3) The instrument of government shall provide that persons who are—
- (a) members of, or of any committee or sub-committee of, any local authority or local education authority; or
 - (b) employed by any local authority or local education authority;
- are disqualified for being members of the governing body of either category mentioned in subsection (2) above.
- (4) The provision made by the instrument of government by virtue of subsection (3)(a) above shall not be such as to disqualify a member of the governing body for being such a member by reason only of the fact that he becomes, by virtue of that office, a member of a committee or sub-committee of a local authority or local education authority.
- (5) The articles of government of any such institution—
- (a) shall determine the functions to be exercised respectively, in relation to the institution, by the local education authority, the governing body, the principal, and the academic board (if any); and
 - (b) may regulate the constitution and functions of committees of the governing body and of any academic board of the institution, and of sub-committees of such committees, and provide for the delegation of functions of the governing body and any such academic board to such committees, to the principal or to such other persons as may be specified by or determined in accordance with the articles.
- (6) Notwithstanding any provision made by the instrument of government by virtue of any of the preceding provisions of this section, the local education authority concerned shall appoint all the members of the governing body of any such institution as first constituted in accordance with this section.
- (7) In making those appointments, the authority—
- (a) shall first appoint all members other than members of the category mentioned in subsection (2)(b) above; and
 - (b) shall appoint as the members of that category persons nominated in accordance with the instrument of government by the members already appointed.
- (8) In the case of the initial members within the category mentioned in subsection (2)(a) above, the local education authority shall appoint persons nominated by bodies—
- (a) determined by the authority in accordance with subsection (9) below; and
 - (b) approved by the Secretary of State.
- (9) In determining the bodies who are to be entitled to nominate such persons for appointment, the authority shall consult—
- (a) the governing body of the institution; and
 - (b) such bodies representing business or industrial interests, the professions, trade unions or persons engaged in any field of employment relevant to the activities of the institution as the authority consider appropriate.

Status: Point in time view as at 01/02/1991.

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- (10) In determining the provision to be included in any instrument or articles of government for an institution to which section 151 of this Act applies, a local education authority shall take into account any guidance given by the Secretary of State as to the provisions he regards as appropriate for inclusion in any such instrument or articles.

Modifications etc. (not altering text)

C8 Ss. 151, 152 modified by S.I. 1989/1470, art. 2(1)

Government of designated assisted institutions

153 Government of designated assisted institutions.

- (1) This section applies to any institution providing full-time education which is a designated assisted institution.
- (2) The Secretary of State may by regulations make provision with respect to the government of institutions to which this section applies (including, in particular, provision with respect to the size and composition of governing bodies of such institutions).

Miscellaneous and supplementary

154 New further and higher education institutions.

- (1) This section applies to any institution proposed to be established which in the financial year in which it is established will be required to be covered by a scheme.
- (2) The Secretary of State may by regulations make provision—
- (a) with respect to the government of institutions to which this section applies including in particular provision—
 - (i) requiring the constitution of temporary governing bodies for such institutions pending the constitution of their governing bodies; and
 - (ii) with respect to the size and composition of such temporary governing bodies;
 - (b) applying any of the provisions of this Chapter (including any provision made under section 146) in relation to institutions to which this section applies which have temporary governing bodies constituted in pursuance of any provision made in the regulations by virtue of paragraph (a) above, subject to such modifications as the Secretary of State may think fit.
- (3) Regulations under subsection (2)(b) above may in particular include provision—
- (a) requiring schemes to cover institutions to which this section applies;
 - (b) requiring schemes to provide for the delegation to their respective temporary governing bodies of the management of the budget shares of any such institutions which by virtue of any regulations made under paragraph (a) above are required to be covered by the schemes;
 - (c) authorising the governing bodies of such institutions—

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- (i) to determine what staff (both full-time and part-time) are or will be required for the purposes of such institutions, and to select all such staff for appointment by the local education authority; and
 - (ii) to take such steps with respect to any other matters referred to in section 148 of this Act as may be appropriate in preparation for the conduct of such institutions following their establishment; and
 - (d) prohibiting local education authorities from taking any such steps as are referred to in paragraph (c)(i) or (ii) above which governing bodies are so authorised to take.
- (4) Regulations under this section 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 (2) or (3) above.

155 Interpretation of Chapter III and supplementary provisions.

- (1) In this Chapter—
- (a) references to a scheme are references—
 - (i) to a scheme made by a local education authority under section 139 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 an institution'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 an institution in respect of which financial delegation is required for any financial year shall be read in accordance with subsection (5)(a) of that section;
 - (d) references to an institution which has a delegated budget shall be read in accordance with subsection (5)(b) of that section;
 - (e) any reference to the delegation by a local education authority to the governing body of any institution of the management of the institution's budget share for any financial year shall be read in accordance with subsection (5)(c) of that section, in any case where the institution is an institution assisted by a local education authority; and
 - (f) references to the further and higher education budget of a local education authority for any financial year are references to the amount appropriated by the authority for meeting expenditure in that year for the purposes of the exercise of their further or higher education functions.
- (2) References in this Chapter to the delegation requirement under any scheme shall be read in accordance with section 144(3).
- (3) It shall be for the Secretary of State to determine any question arising under a scheme as to whether an institution required to be covered by the scheme is within the delegation requirement under the scheme.

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

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