



# Education Act 2002

## 2002 CHAPTER 32

### PART 8

#### TEACHERS

##### *Teachers' pay and conditions*

#### **119 School Teachers' Review Body**

- (1) The body established under section 1 of the School Teachers' Pay and Conditions Act 1991 (c. 49) (review body)—
  - (a) shall continue to exist, and
  - (b) shall be known as the School Teachers' Review Body.
- (2) The Prime Minister shall appoint the chairman of the Review Body.
- (3) The Secretary of State shall appoint other members of the Review Body.
- (4) Schedule 11 (which makes provision about the Review Body) shall have effect.

#### **120 Review Body: function**

- (1) The School Teachers' Review Body shall consider any matter which is referred to them by the Secretary of State and which relates to—
  - (a) the remuneration of school teachers, or
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) In subsection (1) "school teacher" means a person who is a school teacher for the purposes of the Secretary of State's power under section 122 to make orders about remuneration and other conditions of employment.

*Status: Point in time view as at 01/11/2005.*

*Changes to legislation: Education Act 2002, Part 8 is up to date with all changes known to be in force on or before 08 August 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)*

- (3) Following consideration of a matter under subsection (1) the Review Body shall report to the Prime Minister and the Secretary of State in accordance with any direction of the Secretary of State about—
  - (a) a consideration to which they are to have particular regard,
  - (b) matter on which they are to make a recommendation, or
  - (c) the time within which they are to report.
- (4) Where the Prime Minister and the Secretary of State receive a report under subsection (3) they shall arrange for it to be published.
- (5) A direction under subsection (3) may be varied or revoked.

#### Commencement Information

- I1** S. 120 partly in force; s. 120 not in force at Royal Assent, see s. 216; s. 120(1)(3)-(5) in force at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.)
- I2** S. 120(2) in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 121 Consultation by Review Body

- (1) Before reporting on a matter referred to them under section 120(1) the School Teachers' Review Body shall—
  - (a) notify each relevant body,
  - (b) give each relevant body an opportunity to submit evidence and make representations, and
  - (c) give the Secretary of State an opportunity to submit evidence and make representations.
- (2) In relation to a matter referred to the Review Body “relevant body” means such of the following as appear to the Review Body to be appropriate to consult about the matter—
  - (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.
- (3) The Review Body may—
  - (a) determine the manner in which each relevant body is permitted to submit evidence or make representations, and
  - (b) may make different determinations in respect of different relevant bodies.

### 122 Power to prescribe pay and conditions

- (1) The Secretary of State may by order make provision for the determination of—
  - (a) the remuneration of school teachers;
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) Where an order under this section applies to a school teacher—
  - (a) his remuneration shall be determined and paid in accordance with any provision of the order which applies to him,

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- (b) a provision of the order which relates to a condition of employment other than remuneration and which applies to him shall have effect as a term of his contract of employment, and
  - (c) a term of that contract shall have no effect in so far as it makes provision which is prohibited by the order or which is otherwise inconsistent with a provision of the order.
- (3) A person is a school teacher for the purposes of this section if—
- (a) he is a qualified teacher,
  - (b) he provides primary or secondary education under a contract of employment or for services,
  - (c) the other party to the contract is a local education authority or the governing body of a foundation, voluntary aided or foundation special school, and
  - (d) the contract requires him to carry out work of a kind which is specified by regulations under section 133(1).
- (4) A person is also a school teacher for the purposes of this section if he serves as the head teacher of a school maintained by a local education authority.
- (5) A person is also a school teacher for the purposes of this section if his case satisfies paragraphs (b), (c) and (d) of subsection (3) and—
- (a) he possesses a prescribed qualification,
  - (b) he provides education of a prescribed kind or in prescribed circumstances (or both),
  - (c) he is undertaking training of a prescribed kind, or obtaining experience of a prescribed kind, with a view to becoming a qualified teacher,
  - (d) he is within a prescribed class of persons awaiting assessment for the purpose of becoming a qualified teacher, or
  - (e) he is within a prescribed class of persons awaiting the award of a qualification.
- (6) A person providing education in an establishment maintained by a local authority in the exercise of a social services function is not a school teacher for the purposes of this section.
- (7) In the application of subsection (2)—
- (a) it is immaterial whether someone other than the party mentioned in subsection (3)(c) provides or is responsible for providing all or part of a teacher's remuneration,
  - (b) it is immaterial whether someone other than the party mentioned in subsection (3)(c) is treated wholly or partly as a teacher's employer for some or all purposes by virtue of an enactment, and
  - (c) in relation to a person who provides education under a contract for services, a reference to his contract of employment is a reference to the contract for services.
- (8) In this section “prescribed” means prescribed by an order under this section.

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

- C1** S. 122(3)(d) excluded (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 6\(2\)](#)

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### Commencement Information

**I3** S. 122 in force at 1.8.2003 by S.I. 2003/1667, art. 2

## 123 Order under section 122: scope

- (1) An order under section 122 may, in particular—
- (a) confer discretion on a local education authority or a governing body;
  - (b) confer a function (which may include the administration of a test or assessment, the exercise of a discretion or the exercise of a supervisory or appellate jurisdiction) on the Secretary of State or on a specified person who has agreed with the Secretary of State to perform that function;
  - (c) require a discretion or function conferred under paragraph (a) or (b) to be exercised having regard to guidance given by the Secretary of State or another specified person;
  - (d) make provision for the determination of a teacher's remuneration by reference to any matter including, in particular, his qualifications, experience, duties, aptitude or previous salary;
  - (e) make provision for a right of appeal specified by or determined in accordance with the order;
  - (f) limit the aggregate amount of an allowance, or of a number of allowances, payable to teachers in a school;
  - (g) set a lower or upper limit on the number or proportion of teachers in a school who are paid on a specified scale;
  - (h) set a lower or upper limit on the number or proportion of teachers in a school who are paid a specified allowance;
  - (i) provide for special provisions to apply in relation to a description of school specified by or determined in accordance with the order;
  - (j) provide for the determination of a question of the interpretation or application of a provision of the order.
- (2) Provision under subsection (1)(e) or (j) may—
- (a) confer jurisdiction on a court, tribunal, person or body;
  - (b) provide for a matter to be settled by agreement between, or in a manner agreed between, teachers and local education authorities or teachers and governing bodies.
- (3) An order under section 122 may make retrospective provision, but not so as to—
- (a) reduce remuneration in respect of a period wholly or partly before the making of the order, or
  - (b) alter a condition of employment to the detriment of a teacher in respect of a period wholly or partly before the making of the order.
- (4) The Secretary of State may by order provide—
- (a) that a payment or entitlement of a specified kind is or is not to be treated as remuneration for the purpose of section 122(1);
  - (b) that a specified matter is or is not to be treated for that purpose as relating to the professional duties of school teachers;
  - (c) that a specified matter is or is not to be treated for that purpose as relating to the working time of school teachers.

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#### Commencement Information

**I4** S. 123 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 124 Order under section 122: supplemental

- (1) An order under section 122 may—
  - (a) make provision which applies generally or only in a specified case or in specified circumstances;
  - (b) make different provision for different cases or circumstances;
  - (c) make transitional provision.
- (2) An order under section 122 may make provision by reference to the exercise of another power under this Act.
- (3) An order under section 122 may make provision by reference to a document; and—
  - (a) an order which makes provision by reference to a document must include provision about publication of the document, and
  - (b) a reference in this section to an order includes a reference to a document referred to by an order.

#### Commencement Information

**I5** S. 124 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 125 Reference to Review Body

- (1) An order under section 122 may make provision about a matter only if the Secretary of State has—
  - (a) referred the matter to the School Teachers' Review Body under section 120, and
  - (b) considered their report.
- (2) But subsection (1) shall not apply—
  - (a) to subsidiary provision, or
  - (b) in a case where the Secretary of State has consulted the chairman of the Review Body about disapplying that subsection.
- (3) Provision is subsidiary for the purpose of subsection (2)(a) if the Secretary of State thinks that it—
  - (a) concerns only the criteria for entry into or exit from a particular class of teachers for purposes of remuneration,
  - (b) concerns only the criteria for moving from one scale of remuneration to another,
  - (c) concerns only the implementation or application of a system or principle on which the Review Body has reported,
  - (d) prescribes a matter for the purpose of section 122(5),
  - (e) is made under section 123(4), or

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- (f) is minor, consequential, temporary, transitional or designed to resolve an anomaly.
- (4) The Secretary of State may by order provide that provision of a specified kind (which may be described wholly or partly by reference to an opinion of the Secretary of State or another person)—
  - (a) shall be subsidiary for the purpose of subsection (2)(a), or
  - (b) shall cease to be subsidiary for that purpose.
- (5) An order under subsection (4) may amend subsection (3).

#### Commencement Information

**I6** S. 125 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 126 Consultation by Secretary of State

The Secretary of State may not make an order under section 122 or 125(4)(a) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the content of the order—

- (a) associations of local education authorities,
- (b) local education authorities,
- (c) bodies representing the interests of governing bodies of schools, and
- (d) bodies representing the interests of teachers.

#### Commencement Information

**I7** S. 126 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 127 Guidance

- (1) The Secretary of State may issue guidance about the procedure to be followed in applying provision of an order under section 122.
- (2) The following shall have regard to guidance under subsection (1)—
  - (a) a local education authority, and
  - (b) the governing body of a school.
- (3) Where an employer fails to follow guidance under subsection (1)—
  - (a) the failure shall not give rise to civil liability, but
  - (b) a court or tribunal may take the failure into account in any proceedings.
- (4) The Secretary of State may not issue guidance under subsection (1) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the nature of the guidance—
  - (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.

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#### Commencement Information

**18** S. 127 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 128 Education action zone

- (1) This section applies to a school which forms part of an education action zone for the purposes of Chapter 3 of Part 1 of the School Standards and Framework Act 1998 (c. 31).
- (2) On the application of the governing body of a school, the Secretary of State may by order provide that section 122(2) shall not apply to any school teacher at the school.
- (3) Where an order under subsection (2) is in force in respect of a school—
  - (a) the governing body shall determine the remuneration and other conditions of employment of each school teacher at the school,
  - (b) the local education authority shall do anything necessary to give effect to the governing body’s determination, and
  - (c) pending a determination under paragraph (a), the terms on which a school teacher works at the school shall remain unchanged (irrespective of any new order under section 122).
- (4) A governing body may not make an application under subsection (2) unless they have consulted each school teacher at the school.
- (5) An application under subsection (2) must specify a date for commencement of the order sought; and—
  - (a) the date specified must not precede the expiry of the period of three months beginning with the date on which the application is made, and
  - (b) an order made on the application must provide that it comes into force on the date specified in the application or on a later date which is agreed between the Secretary of State and the governing body and which is specified in the order.
- (6) The Secretary of State may make regulations about the application of section 122(2) where an order under subsection (2) above—
  - (a) is revoked, or
  - (b) lapses (in whole or in part) because one or more schools to which the order relates cease to form part of an education action zone.
- (7) In this section “school teacher” has the same meaning as in section 122.

#### Commencement Information

**19** S. 128 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 129 Transfer of employment

- (1) Section 122(2) shall not apply to a person if—
  - (a) a maintained school is established in place of an independent school in pursuance of proposals published under section 28 or 31 of the School Standards and Framework Act 1998, and

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- (b) the person becomes a school teacher in the maintained school in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794).
- (2) But if the school teacher gives a notice in writing under this subsection to his new employer, section 122(2) shall apply to him in respect of the period beginning with—
  - (a) a date specified in the notice,
  - (b) if no date is specified under paragraph (a), a date agreed between the teacher and the new employer, or
  - (c) if no date is specified under paragraph (a) or agreed under paragraph (b), the date on which the employer receives the notice.
- (3) Where the governing body of a foundation, voluntary aided or foundation special school receive a notice under subsection (2), they shall inform the local education authority.
- (4) In this section “school teacher” has the same meaning as in section 122.
- (5) In subsection (1) “maintained school” means—
  - (a) a community school,
  - (b) a foundation school,
  - (c) a voluntary school,
  - (d) a community special school,
  - (e) a foundation special school, or
  - (f) a maintained nursery school.

#### Commencement Information

**I10** S. 129 in force at 1.8.2003 by [S.I. 2003/1667](#), [art. 2](#)

### 130 Repeal of School Teachers’ Pay and Conditions Act 1991

The School Teachers’ Pay and Conditions Act 1991 (c. 49) shall cease to have effect.

#### Commencement Information

**I11** [S. 130](#) partly in force; [s. 130](#) not in force at Royal Assent, see [s. 216](#); [s. 130](#) in force for certain purposes at 1.10.2002 by [S.I. 2002/2439](#), [art. 2](#) (with transitional provisions and savings in [Sch.](#)); Act repealed (1.10.2002) by [Education Act 2002 \(c. 32\)](#), [ss. 130, 216\(2\)](#), [Sch. 22 Pt. 1](#); [S.I. 2002/2439](#), [art. 2](#)

**I12** [S. 130](#) in force at 1.8.2003 in so far as not already in force by [S.I. 2003/1667](#), [art. 2](#)

#### *School teachers’ appraisal*

### 131 Appraisal

- (1) Regulations may require the appraisal of the performance of teachers—
  - (a) in a manner specified by the regulations, and
  - (b) at times specified by or determined in accordance with the regulations.



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- (2) The regulations may impose a duty on—
  - (a) a local education authority;
  - (b) the governing body of a school or institution;
  - (c) the head teacher of a school or the principal of an institution.
- (3) The regulations may—
  - (a) require or permit an appraisal to be carried out in a manner which confers a discretion on a person specified by or chosen or determined in accordance with the regulations;
  - (b) permit a person on whom a duty is imposed under subsection (2) to delegate that duty in whole or in part.
- (4) The regulations may require or permit a person listed in subsection (2) to have regard to the results of an appraisal in the performance of a function specified by the regulations.
- (5) The results of an appraisal may be used in determining a teacher’s remuneration.
- (6) Before making regulations under this section the Secretary of State shall consult such of the following as appear to him to be appropriate—
  - (a) associations of local education authorities in England,
  - (b) local education authorities in England,
  - (c) bodies representing the interests of governing bodies in England,
  - (d) bodies representing the interests of teachers in England, and
  - (e) the Learning and Skills Council for England.
- (7) Before making regulations under this section the National Assembly for Wales shall consult such of the following as appear to it to be appropriate—
  - (a) associations of local education authorities in Wales,
  - (b) local education authorities in Wales,
  - (c) bodies representing the interests of governing bodies in Wales,
  - (d) bodies representing the interests of teachers in Wales, and
  - (e) the National Council for Education and Training for Wales.
- (8) Section 49 of the Education (No. 2) Act 1986 (c. 61) (appraisal) shall cease to have effect.

#### **Commencement Information**

**I13** [S. 131](#) wholly in force at 19.12.2002; [s. 131](#) not in force at Royal Assent, see [s. 216](#); [s. 131](#) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)); [s. 131](#) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### *School teachers’ qualifications*

#### **132 Qualified teacher status**

- (1) A reference in the Education Acts to a “qualified teacher” is to a person who satisfies requirements specified in regulations.
- (2) A requirement of regulations under this section may relate to—

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- (a) the possession of a specified qualification or experience of a specified kind;
  - (b) participation in or completion of a specified programme or course of training;
  - (c) compliance with a specified condition;
  - (d) an exercise of discretion by the Secretary of State, the National Assembly for Wales or another specified person.
- (3) The Secretary of State shall consult the General Teaching Council for England before making regulations under this section which make provision by reference to—
- (a) the content of a course or programme, or
  - (b) the standard of education or training provided through a course or programme.
- (4) The National Assembly for Wales shall consult the General Teaching Council for Wales before making regulations under this section which make provision by reference to—
- (a) the content of a course or programme, or
  - (b) the standard of education or training provided through a course or programme.

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

- C2** [S. 132](#) amended (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 6\(1\)](#)

**Commencement Information**

- I14** [S. 132](#) partly in force; [s. 132](#) not in force at Royal Assent, see [s. 216](#); [s. 132](#) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)
- I15** [S. 132](#) in force at 1.8.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 3](#)

**133 Requirement to be qualified**

- (1) Regulations may provide that specified work may not be carried out by a person in a school unless he—
- (a) is a qualified teacher, or
  - (b) satisfies specified requirements.
- (2) Regulations specifying work for the purpose of this section may make provision by reference to—
- (a) one or more specified activities, or
  - (b) the circumstances in which activities are carried out.
- (3) Provision by virtue of subsection (2) may, in particular, be made by reference to an activity specified in a document of the kind mentioned in section 124(3).
- (4) A requirement of regulations under this section may, in particular, relate to—
- (a) the possession of a specified qualification or experience of a specified kind;
  - (b) participation in or completion of a specified programme or course of training;
  - (c) compliance with a specified condition;
  - (d) an exercise of discretion by the Secretary of State, the National Assembly for Wales, another specified person or another person of a specified description.
- (5) Regulations may limit the period of time during which work may be carried out by a person in reliance on subsection (1)(b).

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- (6) In this section “school” means—
- (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

#### Commencement Information

- I16** S. 133 partly in force; s. 133 not in force at Royal Assent, see s. 216; s. 133 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I
- I17** S. 133 in force at 1.8.2003 except in relation to W. by S.I. 2003/1667, art. 3

### 134 Requirement to be registered

- (1) Regulations may provide that specified work may be carried out in a school by a qualified teacher only if he is registered with full registration under section 3 of the Teaching and Higher Education Act 1998 (c. 30) (register maintained by General Teaching Council).
- (2) Regulations may provide that work may be carried out by a person in reliance on section 133(1)(b) only if he is registered with provisional registration under section 3 of the Teaching and Higher Education Act 1998.
- (3) Regulations may provide that a person may undertake a specified course of training with a view to becoming a qualified teacher only if he is registered with provisional registration under that section.
- (4) Regulations specifying work for the purpose of subsection (1) or (2) may make provision by reference to—
  - (a) one or more specified activities, or
  - (b) the circumstances in which activities are carried out.
- (5) In this section “school” means—
  - (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

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

- C3** S. 134(1) amended (W.) (temp. from 19.12.2002) by The Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002 (S.I. 2002/3184), reg. 7

#### Commencement Information

- I18** S. 134 partly in force; s. 134 not in force at Royal Assent, see s. 216; s. 134(1)(4)(5) in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I
- I19** S. 134(1)(4)(5) in force at 1.8.2003 except in relation to W. by S.I. 2003/1667, art. 3

### 135 Head teachers

- (1) Regulations may provide that a person may serve as the head teacher of a school only if he is a qualified teacher.

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- (2) Regulations may provide that a person may serve as the head teacher of a school only if he has a specified qualification (in addition to any qualification required by virtue of subsection (1)).
- (3) A provision of regulations under subsection (2) shall not apply to a person who has been appointed as the head teacher of a school before the commencement of the provision.
- (4) Regulations under subsection (2) shall not prevent a person from carrying out the functions of the head teacher of a school—
  - (a) pending the appointment of a head teacher, or
  - (b) in the absence of the head teacher.
- (5) In this section “school” means—
  - (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

#### Commencement Information

- I20** S. 135 partly in force; s. 135 not in force at Royal Assent, see s. 216; s. 135 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I
- I21** S. 135 in force at 1.10.2003 except in relation to W. by S.I. 2003/1667, art. 5

### Further education

#### 136 Provision of education

Regulations may—

- (a) prohibit the provision of education at a further education institution by a person who does not have a specified qualification;
- (b) prohibit the provision of education at a further education institution by a person unless he is serving or has served a probationary period;
- (c) specify conditions to be complied with by or in respect of persons providing education at a further education institution.

#### Commencement Information

- I22** S. 136 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

#### 137 Principals of further education institutions

- (1) Regulations may provide that a person may serve as the principal of a further education institution only if he has a specified qualification.
- (2) Regulations under subsection (1) shall not prevent a person from serving as the principal of an institution while he is following a course or programme which—
  - (a) is of a kind specified in the regulations, and
  - (b) is designed to lead to the award of a qualification specified under subsection (1).

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- (3) A provision of regulations under subsection (1) shall not apply to a person who has been appointed as the principal of an institution before the commencement of the provision.
- (4) Regulations under subsection (1) shall not prevent a person from carrying out the functions of the principal of an institution—
  - (a) pending the appointment of a principal, or
  - (b) in the absence of the principal.

**Commencement Information**

**I23** S. 137 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

**138 Training in provision of further education**

- (1) This section applies to a course which is designed to lead to the award of a qualification specified under section 136 or 137(1).
- (2) The Secretary of State may by regulations—
  - (a) prohibit the provision by a further or higher education institution in England of a course to which this section applies without the approval of the Secretary of State;
  - (b) enable the Secretary of State to determine the number of persons who may undertake a specified course to which this section applies at a further or higher education institution in England;
  - (c) enable the Secretary of State to determine the number of persons in different categories who may undertake a specified course to which this section applies at a further or higher education institution in England.
- (3) The National Assembly for Wales may by regulations—
  - (a) prohibit the provision by a further or higher education institution in Wales of a course to which this section applies without the approval of the National Assembly;
  - (b) enable the National Assembly to determine the number of persons who may undertake a specified course to which this section applies at a further or higher education institution in Wales;
  - (c) enable the National Assembly to determine the number of persons in different categories who may undertake a specified course to which this section applies at a further or higher education institution in Wales.

**Commencement Information**

**I24** S. 138 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

**139 Wales: provision of higher education**

- (1) The National Assembly for Wales may by regulations—
  - (a) prohibit the provision by an institution to which this section applies of a course of higher education without the approval of the National Assembly;

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- (b) enable the National Assembly to determine the number of persons who may undertake a course of higher education at an institution to which this section applies;
  - (c) enable the National Assembly to determine the number of persons in different categories who may undertake a course of higher education at an institution to which this section applies.
- (2) This section applies to an institution in Wales which provides further or higher education and is within the further education sector.

#### Commencement Information

**I25** S. 139 in force at 1.9.2003 by S.I. 2003/1718, art. 5, Sch. Pt. II

### 140 Further education: general

- (1) Regulations under any of sections 136 to 139 may provide that a specified provision of the regulations shall not apply where a specified condition (which may refer to the opinion of a specified person) is satisfied.
- (2) Regulations under any of sections 136 to 139 may impose a function on—
- (a) a local education authority, or
  - (b) the governing body of a further or higher education institution.
- (3) In sections 136 to 139—
- “education” includes vocational, social, physical and recreational training,
  - “further education institution” means an institution which—
    - (a) provides further education and is maintained by a local education authority, or
    - (b) is within the further education sector, and
  - “higher education institution” means an institution which—
    - (a) is within the higher education sector, and
    - (b) receives financial support under section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils).

#### Commencement Information

**I26** S. 140 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

### *Health and fitness*

### 141 Health and fitness

- (1) Regulations may provide that an activity to which this section applies may be carried out only by a person who satisfies specified conditions as to health or physical capacity.
- (2) This section applies to an activity of a prescribed kind performed in the course of the provision of education at—
- (a) a school, or

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- (b) a further education institution.
- (3) This section also applies to an activity of a prescribed kind performed in the course of the provision of education by a person—
  - (a) otherwise than in a school or a further education institution, and
  - (b) under a contract of employment or for services where the other party is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority.
- (4) This section also applies to an activity of a prescribed kind (other than the provision of education) where—
  - (a) the activity is carried out by a person under a contract of employment or for services,
  - (b) the other party to the contract is a local education authority or the governing body of a school or a further education institution, and
  - (c) the activity regularly brings the person into contact with children.
- (5) In this section—
  - “child” means a person who has not attained the age of 18 years,
  - “education” includes vocational, social, physical and recreational training,
  - “further education institution” has the meaning given by section 140, and
  - “school” means—
    - (a) a school maintained by a local education authority, or
    - (b) a special school not so maintained.

#### Commencement Information

**I27** S. 141 partly in force; s. 141 not in force at Royal Assent, see s. 216; s. 141 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

**I28** S. 141 in force at 1.8.2003 except in relation to W. by S.I. 2003/1667, art. 3

*Misconduct etc.*

#### 142 Prohibition from teaching, etc.

- (1) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may direct that a person—
  - (a) may not carry out work to which this section applies;
  - (b) may carry out work to which this section applies only in circumstances specified in the direction;
  - (c) may carry out work to which this section applies only if conditions specified in the direction are satisfied.
- (2) This section applies to—
  - (a) providing education at a school,
  - (b) providing education at a further education institution,
  - (c) providing education under a contract of employment or for services where the other party to the contract is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority, and

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- (d) taking part in the management of an independent school.
- (3) This section also applies to work of a kind which—
- (a) brings a person regularly into contact with children, and
  - (b) is carried out at the request of or with the consent of a relevant employer (whether or not under a contract).
- (4) A direction under this section may be given in respect of a person only—
- (a) on the grounds that the person is included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999 (c. 14) (list of individuals considered unsuitable to work with children),
  - (b) on the grounds that the person is unsuitable to work with children,
  - (c) on grounds relating to the person’s misconduct,
  - (d) on grounds relating to the person’s health, or
  - (e) in the case of a direction given by virtue of subsection (2)(d), on grounds relating to the person’s professional incompetence (or on a ground mentioned in any of paragraphs (a) to (d)).
- (5) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).
- (6) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may vary or revoke a direction under this section except in a case where—
- (a) the direction was given on the grounds that a person is unsuitable to work with children, and
  - (b) the person claims that he is no longer unsuitable to work with children.
- (7) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (6).
- (8) Where a person is subject to a direction under this section, a relevant employer shall not use the person to carry out work in contravention of the direction.
- (9) In this section—
- “child” means a person who has not attained the age of 18 years,
  - “education” includes vocational, social, physical and recreational training,
  - “further education institution” has the meaning given by section 140,
  - “relevant employer” means—
- (a) local education authority,
  - (b) a person exercising a function relating to the provision of education on behalf of a local education authority,
  - (c) the proprietor of a school, or
  - (d) the governing body of a further education institution, and
- “school” includes an independent school.



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

- C4** S. 142 modified (31.3.2003 for W. and otherwise prosp.) by [Teaching and Higher Education Act 1998 \(c. 30\), s. 15\(4\)](#) (as substituted by [Education Act 2002 \(c. 32\), ss. 215\(1\), 216, Sch. 21](#) {para. 83} (with ss. 210(8), 214(4)); [S.I. 2002/3185, art. 5, Sch. Pt. II](#) }
- C5** S. 142 modified by 1998 c. 30, s. 15 (as inserted (31.3.2003 for W., 1.6.2003 for E.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 83](#) (with ss. 210(8), 214(4)); [S.I. 2002/3185, art. 5, Sch. Pt. II](#); [S.I. 2003/1115, art. 3](#))

#### Commencement Information

- I29** S. 142 partly in force; s. 142 not in force at Royal Assent, see s. 216; s. 142 in force for W. at 31.3.2003 by [S.I. 2002/3185, art. 5, Sch. Pt. II](#)
- I30** S. 142 in force at 31.3.2003 for W. by [S.I. 2002/3185, art. 5, Sch. Pt. II](#)
- I31** S. 142 in force at 1.6.2003 except in relation to W. by [S.I. 2003/1115, art. 3](#)

### 143 Directions under section 142: contractor, agency, etc.

- (1) A person shall not arrange for an individual who is subject to a direction under section 142 to carry out work in contravention of the direction.
- (2) If the Secretary of State thinks that a person is likely to fail to comply with the duty under this section in relation to work in England, the Secretary of State may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty.
- (3) If the National Assembly for Wales thinks that a person is likely to fail to comply with the duty under this section in relation to work in Wales, the National Assembly may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty.
- (4) A direction under subsection (2) shall be enforceable, on the application of the Secretary of State, by a mandatory order.
- (5) A direction under subsection (3) shall be enforceable, on the application of the National Assembly, by a mandatory order.

#### Commencement Information

- I32** S. 143 partly in force; s. 143 not in force at Royal Assent, see s. 216; s. 143 in force for W. at 31.3.2003 by [S.I. 2002/3185, art. 5, Sch. Pt. II](#)
- I33** S. 143 in force at 31.3.2003 for W. by [S.I. 2002/3185, art. 5, Sch. Pt. II](#)
- I34** S. 143 in force at 1.6.2003 except in relation to W. by [S.I. 2003/1115, art. 3](#)

### 144 Directions under section 142: appeal

- (1) A person in respect of whom a direction has been given under section 142 may appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14)—
  - (a) against the decision to give the direction;
  - (b) against a decision not to vary or revoke the direction.

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- (2) In a case to which subsection (3) applies, the Tribunal may, on an application for a review of a direction under section 142, revoke the direction.
- (3) This subsection applies to a case where—
- (a) the direction was given on the grounds that the applicant is unsuitable to work with children,
  - (b) the applicant has obtained the leave of the Tribunal to apply for a review of the direction, and
  - (c) the Tribunal is satisfied that the applicant is no longer unsuitable to work with children.
- (4) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations—
- (a) provide that the Tribunal may not entertain an appeal under this section in so far as the appellant's case is inconsistent with his having been convicted of an offence;
  - (b) prescribe circumstances in which the Tribunal shall allow an appeal under this section;
  - (c) prescribe the powers available to the Tribunal on allowing an appeal under this section;
  - (d) prescribe circumstances in which the Tribunal shall grant an application for leave under this section;
  - (e) prescribe circumstances in which the Tribunal shall grant an application for a review under this section;
  - (f) prescribe the powers available to the Tribunal on revoking a direction.

#### Commencement Information

- I35** S. 144 partly in force; s. 144 not in force at Royal Assent, see s. 216; s. 144 in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II
- I36** S. 144 in force at 31.3.2003 for W. by S.I. 2002/3185, art. 5, Sch. Pt. II
- I37** S. 144 in force at 1.6.2003 except in relation to W. by S.I. 2003/1115, art. 3

#### Sections 132 to 140: general

### 145 Specification of qualification or course

- (1) A power under sections 132 to 140 to make provision by reference to a specified qualification, a specified course of education or training or a specified programme includes power to make provision—
- (a) by reference to a class or description of qualification, course or programme;
  - (b) by reference to the institution, or class or description of institution, which awards the qualification or provides the course or programme;
  - (c) which confers discretion on the Secretary of State, the [F1Training and Development Agency for Schools] , the General Teaching Council for England, the National Assembly for Wales, the Higher Education Funding Council for Wales, the General Teaching Council for Wales or another specified person.

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- (2) A discretion under subsection (1)(c) may, in particular, refer to approval or accreditation of a qualification, course, programme or institution.
- (3) Regulations made by virtue of subsection (1) may impose a duty on the [F2Training and Development Agency for Schools] or the Higher Education Funding Council for Wales.

#### Textual Amendments

- F1** Words in s. 145(1)(c) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 24](#)
- F2** Words in s. 145(3) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 24](#)

#### Commencement Information

- I38** S. 145 partly in force; s. 145 not in force at Royal Assent, see s. 216; s. 145 in force for W. at 19.12.2002 by [S.I. 2002/3185](#), art. 4, [Sch. Pt. I](#)
- I39** S. 145 in force at 1.8.2003 except in relation to W. by [S.I. 2003/1667](#), art. 3

### 146 Repeal of sections 218 and 218A of Education Reform Act 1988

Sections 218 and 218A of the Education Reform Act 1988 (c. 40) (school and further and higher education regulations) shall cease to have effect.

#### Commencement Information

- I40** S. 146 partly in force; s. 146 not in force at Royal Assent, see s. 216; s. 146 in force for certain purposes for W. at 31.3.2003 by [S.I. 2002/3185](#), art. 5, [Sch. Pt. II](#)
- I41** S. 146 in force at 31.3.2003 for specified purposes for W. by [S.I. 2002/3185](#), art. 5, [Sch. Pt. II](#)
- I42** S. 146 in force at 1.6.2003 for specified purposes except in relation to W. by [S.I. 2003/1115](#), art. 3
- I43** S. 146 in force at 1.8.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), art. 3 (with [Sch. paras. 2, 3](#))
- I44** [S. 146](#) in force at 1.9.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), art. 4
- I45** [S. 146](#) in force at 1.10.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), art. 5

### 1999 Pay Document

### 147 Application of pay-scale

- (1) This section—
  - (a) applies to the construction of paragraph 18 of the document referred to in article 3 of the Education (School Teachers' Pay and Conditions) (No. 2) Order 1999 (S.I. 1999/2160) (classroom teachers: criteria for position on pay spine) as it had effect from 1st September 1999 to 31st March 2000, and
  - (b) shall be treated as having come into force on 1st September 1999 (for all purposes including the calculation of pensions).
- (2) Where a person is awarded one or more points, he shall be paid the salary shown for the spine point which equates to the number of points awarded.

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- (3) Where a person is not awarded a point, he shall be paid the salary shown for the lowest spine point.
- (4) In paragraph 18.1.1 (good honours degree)—
- (a) paragraph (a) shall be ignored,
  - (b) paragraph (b) shall be treated as applying irrespective of the date of a person’s appointment to his first post following qualification as a teacher, and
  - (c) in paragraph (c) the words “before 1st September has been employed as a qualified teacher and who” shall be ignored.

*General Teaching Councils for England and Wales*

**148 The General Teaching Councils for England and Wales**

Schedule 12 (which contains amendments relating to the General Teaching Council for England and the General Teaching Council for Wales) shall have effect.

**Commencement Information**

- I46** S. 148 partly in force; s. 148 not in force at Royal Assent, see s. 216; s. 148 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 148 in force for certain purposes for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I and for certain further purposes for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II
- I47** S. 148 in force at 31.3.2003 for specified purposes for W. by S.I. 2002/3185, art. 5, Sch. Pt. II
- I48** S. 148 in force at 1.8.2003 for specified purposes except in relation to W. by S.I. 2003/1667, art. 3

**Status:**

Point in time view as at 01/11/2005.

**Changes to legislation:**

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