



Education Reform Act 1988

1988 CHAPTER 40

PART II

HIGHER AND FURTHER EDUCATION

Modifications etc. (not altering text)

- C1** Pt. II (ss. 120-161) modified (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 84(2); S.I. 1992/831, art. 2, [Sch.1](#).

CHAPTER I

LOCAL EDUCATION AUTHORITY FUNCTIONS WITH RESPECT TO HIGHER AND FURTHER EDUCATION

120

- (1) A local education authority shall no longer be under a duty to secure the provision for their area of facilities for higher education, that is to say, education provided by means of a course of any description mentioned in Schedule 6 to this Act.
- (2) The following section shall be substituted for section 41 of the 1944 Act—

“41 Functions of local education authorities with respect to further education.

- (1) It shall be the duty of every local education authority to secure the provision for their area of adequate facilities for further education.
- (2) Subject to the following provisions of this section, in this Act “further education” means—

Status: *Point in time view as at 01/09/1991. This version of this part contains provisions that are not valid for this point in time.*

Changes to legislation: *Education Reform Act 1988, Part II is up to date with all changes known to be in force on or before 05 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)*

- (a) full-time and part-time education for persons over compulsory school age (including vocational, social, physical and recreational training); and
 - (b) organized leisure-time occupation provided in connection with the provision of such education.
- (3) In this Act “further education” does not include higher education.
- (4) Full-time education suitable to the requirements of senior pupils over compulsory school age shall not be regarded for the purposes of this Act as further education if it is or is to be provided by an institution which does not provide part-time senior education or post-school age education to a significant extent.
- (5) In this Act—
- (a) “part-time senior education” means part-time education for senior pupils over compulsory school age; and
 - (b) “post-school age education” means full-time or part-time education for persons of or over nineteen years of age.
- (6) The duty of a local education authority under subsection (1) above extends, in the case of further education of a vocational kind, to the provision of facilities for continuing education for persons already in employment or already engaged in a vocation as well as to the provision of facilities for education with a view to entry into any employment or vocation.
- (7) In subsection (2)(b) above “organized leisure time occupation” means leisure-time occupation, in such organized cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose.
- (8) A local education authority shall have power to secure the provision of further education for persons living outside their area.
- (9) In fulfilling their duty under subsection (1) above a local education authority shall have regard to any educational facilities provided by universities, institutions within the PCFC funding sector and other bodies which are provided for, or available for use by persons living in, their area.
- (10) In fulfilling that duty a local education authority shall also have regard to the requirements of persons over compulsory school age who have learning difficulties.
- (11) Subject to subsection (12) below, for the purposes of subsection (10) above a person has a “learning difficulty” if—
- (a) he has a significantly greater difficulty in learning than the majority of persons of his age; or
 - (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by the local education authority concerned in pursuance of their duty under subsection (1) above for persons of his age.
- (12) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different

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from a language (or form of a language) which has at any time been spoken in his home.

- (13) A local education authority shall have power to do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section.”
- (3) A local education authority shall have power—
- (a) to secure the provision for their area of such facilities for higher education as appear to them to be appropriate for meeting the needs of the population of their area;
 - (b) to secure the provision of higher education for persons living outside their area; and
 - (c) to do anything which appears to them to be necessary or expedient for the purposes of or in connection with such provision.
- (4) In exercising their power under subsection (3)(a) above a local education authority shall have regard to any facilities for higher education provided by universities, institutions within the PCFC funding sector and other bodies which are provided for, or available for use by persons living in, their area.
- (5) In the 1944 Act—
- (a) section 42 (which contains provisions relating to schemes for regulating the provision by local education authorities of further education and is no longer required for the purposes of section 41 of that Act as substituted by this section); and
 - (b) sections 43 to 46 (which relate to county colleges and have never been put into operation);
- shall cease to have effect.
- (6) In section 8 of that Act (duty of local education authority to secure provision of primary and secondary schools)—
- (a) in subsection (1)(b) (which requires a local education authority to secure that sufficient schools for providing secondary education are available for their area), the words “other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education” shall be omitted; and
 - (b) at the end there shall be added the following subsection—
 - “(3) In fulfilling their duty under subsection (1)(b) above a local education authority shall have regard to any facilities for full-time education—
 - (a) provided for senior pupils by any educational institution maintained or assisted by the authority in exercise of their functions under section 41 of this Act; or
 - (b) otherwise secured for such pupils by the authority in exercise of those functions.”
- (7) In section 67 of that Act (determination of disputes and questions), at the end there shall be added the following subsection—
- “(4A) If in the case of any institution a question arises as to whether any current or proposed provision of part-time senior education or post-school age education by that institution amounts or would amount to the provision of such education

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to a significant extent, that question shall be determined by the Secretary of State.”

- (8) References in this Act to an institution within the PCFC funding sector are references to any institution which falls to be treated as within that sector for the purposes of this Act by virtue of section 132 of this Act (which establishes the Polytechnics and Colleges Funding Council).
- (9) In section 114 of the 1944 Act (interpretation)—
- (a) in subsection (1)—
- (i) after the definition of “further education” there shall be inserted the following definition—
- ““Higher education” has the meaning assigned to it by section 120(1) of the Education Reform Act 1988;” and
- (ii) after the definition of “parent” there shall be inserted the following definitions—
- ““Part-time senior education” has the meaning assigned to it by section 41 of this Act;
- “Post-school age education” has the meaning assigned to it by section 41 of this Act;” and
- (b) after that subsection there shall be inserted the following subsections—
- “(1A) References in this Act to an institution within the PCFC funding sector are references to any institution which falls to be treated as within that sector for the purposes of the Education Reform Act 1988 by virtue of section 132 of that Act (which establishes the Polytechnics and Colleges Funding Council).
- (1B) For the purposes of this Act, an institution which provides part-time senior education or post-school age education shall be regarded as providing such education to a significant extent if the provision of such education by the institution is not merely incidental to the provision of education which is not part-time senior education or post-school age education.
- (1C) For the purpose of determining whether an institution is a school as defined by subsection (1) of this section, the provision by the institution of part-time senior education or post-school age education shall be disregarded if the institution does not provide such education to a significant extent.”.
- (10) The Secretary of State may by order amend Schedule 6 to this Act.

CHAPTER II

REORGANISATION OF PROVISION AND FUNDING OF HIGHER EDUCATION

Modifications etc. (not altering text)

- C2** Pt. II Ch. II (ss. 121-138) modified (temp. until 31. 3. 1993) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 64(1); S.I. 1992/831, art. 2, [Schs.1](#) and 3.

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The higher education corporations

121 Initial incorporation of higher education institutions maintained by local education authorities.

- (1) Before such date as may be appointed for the purposes of this section the Secretary of State shall by order specify each institution maintained by a local education authority which appears to him to fall within subsection (2) below; and on that date a body corporate shall be established for the purpose of conducting each institution so specified as from the transfer date applicable in relation to bodies corporate established under this section.
- (2) An institution falls within this subsection if on 1st November 1985 either—
 - (a) its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55 per cent. of its total full-time equivalent enrolment number; or
 - (b) its full-time equivalent enrolment number for such courses exceeded 2,500.
- (3) Where an institution maintained by a local education authority has been established since that date by a merger of two or more institutions existing on that date, the institution shall be treated as falling within subsection (2) above if it would have done so if the merger had taken place before that date.
- (4) References in this Part of this Act to courses of advanced further education are references to courses designated by Schedule 2 to the ^{M1}Education (Schools and Further Education) Regulations 1981 as courses of advanced further education.

Marginal Citations

M1 [S.I. 1981/1086](#).

122 Orders incorporating higher education institutions maintained by local education authorities.

- (1) Subject to subsection (2) below, if at any time it appears to the Secretary of State, in the case of any institution maintained by a local education authority, that its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number he may make an order under this section with respect to that institution.
- (2) An order may only be made by virtue of subsection (1) above with the consent of the local education authority concerned, unless at the time when the order is made it appears to the Secretary of State that the institution's full-time equivalent enrolment number for courses of higher education exceeds 350.
- (3) Subject to the following provisions of this section, if it appears to the Secretary of State, in the case of any such institution, that its full-time equivalent enrolment number for courses of advanced further education on 1st November 1985—
 - (a) exceeded 55 per cent. of its total full-time equivalent enrolment number on that date; but
 - (b) did not exceed 350;he may make an order under this section with respect to that institution.

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- (4) No order shall be made by virtue of subsection (3) above after the end of the period of twelve months beginning with the date on which this section comes into force.
- (5) An order may only be made by virtue of subsection (3) above with the consent of the local education authority concerned.
- (6) An order under this section with respect to any institution shall make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date applicable in relation to that body corporate.

Modifications etc. (not altering text)

C3 S. 122 applied by S.I. 1991/1391, art.2

VALID FROM 01/04/1993

[^{F1}122A Orders transferring further education corporations to higher education sector.

- (1) The Secretary of State may by order provide for the transfer of a further education corporation to the higher education sector if it appears to him that the full-time equivalent enrolment number of the institution conducted by the corporation for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number.
- (2) Where an order under this section is made in respect of a further education corporation, sections 124A and 125 of this Act shall have effect as if—
 - (a) on the date the order has effect, the corporation were established as a higher education corporation, and
 - (b) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation.
- (3) In determining in pursuance of subsection (2)(b) above the number of members to appoint within each variable category of members, the Secretary of State shall secure that at least half of all the members of the higher education corporation as first constituted are independent members; and in this subsection “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (4) On such date as may be specified in the order the corporation shall cease to be a further education corporation and become a higher education corporation and any member of the further education corporation who is not re-appointed by the Secretary of State in pursuance of subsection (2)(b) above shall cease to hold office on that date.]

Textual Amendments

F1 S. 122A inserted (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 74(1); S.I. 1992/831, art. 2, Sch. 3

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123 Provisions supplementary to sections 121 and 122.

- (1) References in this Act to a higher education corporation are references to a body corporate established under section 121 or 122 of this Act.
- (2) In this Act “transfer date” means, in relation to a higher education corporation, the date appointed under section 126 of this Act in relation to the transfer under that section of property, rights and liabilities to that corporation.
- (3) Schedule 7 to this Act has effect with respect to each higher education corporation.

124 Powers of a higher education corporation.

- (1) A higher education corporation shall have power—
 - (a) to provide higher education;
 - (b) to provide further education; and
 - (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit.
- (2) A higher education corporation shall also have power to do anything which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on the corporation by subsection (1) above, including in particular power—
 - (a) to conduct an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, to assume the conduct as from the transfer date applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities transferred to the corporation under section 126 of this Act;
 - (b) to provide facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of disabled students);
 - (c) to supply goods and services;
 - (d) to acquire and dispose of land and other property;
 - (e) to enter into contracts, including in particular—
 - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any such activities; and
 - (ii) contracts with respect to the carrying on by the corporation of any such activities;
 - (f) to form or take part in forming a body corporate for carrying on any such activities;
 - (g) to borrow such sums as the corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under section 126 of this Act and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the corporation;
 - (h) to invest any sums not immediately required for any of the purposes mentioned in paragraph (g) above;

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- (i) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
 - (j) to do anything incidental to the conduct of an educational institution providing higher or further education.
- (3) The power under subsection (2)(j) above includes in particular power—
- (a) to found scholarships or exhibitions; and
 - (b) to make grants and give prizes.
- (4) In subsection (2)(b) above “disabled student” means a student who is a person to whom section 29 of the ^{M2}National Assistance Act 1948 applies.

Marginal Citations

M2 1948 c. 29.

VALID FROM 06/05/1992

[^{F2}124A Constitution and conduct of corporations.

- (1) For each higher education corporation established on or after the appointed day there shall be an instrument (to be known as the instrument of government) providing for the constitution of the corporation and making such other provision as is required under this section.
- (2) The initial instrument of government of a higher education corporation established on or after that day shall be such as is prescribed by an order of the Privy Council.
- (3) An order of the Privy Council may—
 - (a) make an instrument of government of any higher education corporation with respect to which Schedule 7 to this Act has effect or make a new instrument of government of any higher education corporation in place of the instrument prescribed under subsection (2) above; or
 - (b) modify an instrument made in pursuance of this subsection.
- (4) An instrument of government of a higher education corporation—
 - (a) shall comply with the requirements of Schedule 7A to this Act; and
 - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (5) An order under subsection (2) or (3) above may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates.
- (6) The validity of any proceedings of a higher education corporation for which an instrument of government has effect, or of any committee of such a corporation, shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and to be duly executed under the seal of the corporation, or to be signed or executed

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by a person authorised by the corporation to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

- (8) In relation to a higher education corporation for which an instrument of government has effect the members of the corporation for the time being shall be known as the board of governors of the institution conducted by the corporation.
- (9) The Secretary of State may by order amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A to this Act.
- (10) In this section and section 124C “the appointed day” means the day appointed under section 94 of the Further and Higher Education Act 1992 for the commencement of section 71 of that Act.

Textual Amendments

- F2** Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(1); S.I. 1992/831, art. 2, [Sch. 1](#)

VALID FROM 06/05/1992

124B Accounts.

- (1) It shall be the duty of each corporation—
 - (a) to keep proper accounts and proper records in relation to the accounts; and
 - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
 - (a) give a true and fair account of the state of the corporation’s affairs at the end of the financial year and of the corporation’s income and expenditure in the financial year; and
 - (b) comply with any directions given by the higher education funding council as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (3) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.
- (4) The accounts (including any statement prepared under this section) shall be audited by persons appointed in respect of each financial year by the corporation.
- (5) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities and the National Health Service in England and Wales before appointing any auditor under subsection (4) above in respect of their first financial year.
- (6) No person shall be qualified to be appointed auditor under that subsection except—

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- (a) an individual, or firm, eligible for appointment as a company auditor under section 25 of the Companies Act 1989;
 - (b) a member of the Chartered Institute of Public Finance and Accountancy; or
 - (c) a firm each of the members of which is a member of that institute.
- (7) In this section, in relation to a corporation—
- “the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and
 - “financial year” means that period and each successive period of twelve months.

Textual Amendments

F2 Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 71(1); S.I. 1992/831, art. 2, [Sch. 1](#)

Modifications etc. (not altering text)

C4 S. 124B(7): power to exclude conferred (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 78(2); S.I. 1992/831, art. 2, [Sch. 1](#)

VALID FROM 06/05/1992

124C Initial and transitional arrangements.

- (1) The Secretary of State shall be the appointing authority in relation to the appointment of the first members of a corporation established on or after the appointed day and, in determining the number of members to appoint within each variable category of members, he shall secure that at least half of all the members of the corporation as first constituted are independent members.
- (2) In subsection (1) above “variable category of members” and “independent members” have the same meaning as in Schedule 7A to this Act.
- (3) The following provisions apply where an instrument of government is made under section 124A of this Act for a higher education corporation with respect to which Schedule 7 to this Act has effect.
- (4) The instrument shall apply, subject to subsection (5) below, as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment.
- (5) Any local authority nominee, teacher nominee, general staff nominee or student nominee (within the meaning, in each case, of Schedule 7 to this Act) shall cease to hold office.

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Textual Amendments

F2 Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

VALID FROM 06/05/1992

124D Exercise of Powers by Privy Council.

- (1) This section applies in relation to the exercise of powers for the purposes of this Part of this Act.
- (2) A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.
- (3) An act of the Privy Council shall be sufficiently signified by an instrument signed by the clerk of the Council.
- (4) An order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council.
- (5) An instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.]

Textual Amendments

F2 Ss. 124A-124D inserted (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 71\(1\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

Modifications etc. (not altering text)

C5 S. 124D extended (6.5.1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 76\(7\)](#); S.I. 1992/831, art. 2, [Sch. 1](#)

125 Articles of government.

- (1) Any institution conducted by a higher education corporation shall be conducted in accordance with articles of government, to be made by the corporation with the approval of the Secretary of State.
- (2) The articles of government—
 - (a) shall determine the functions to be exercised in relation to the institution by the board of governors of the institution, the principal of the institution and the academic board of the institution; and
 - (b) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal.
- (3) The articles of government shall also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of

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the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies), and may make provision with respect to—

- (a) procedures for the appointment, promotion, suspension and dismissal of staff;
 - (b) procedures for the admission, suspension and expulsion of students; and
 - (c) the appointment and functions of a clerk to the board of governors.
- (4) The articles of government may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution, including in particular rules or bye-laws with respect to—
- (a) the conduct of students and staff or either of them; and
 - (b) any such procedures as are mentioned in subsection (3)(a) or (b) above.
- (5) Articles of government made under this section may be varied or revoked by subsequent articles made by the corporation with the approval of the Secretary of State.
- (6) The Secretary of State may by a direction under this section require higher education corporations, any class of such corporations specified in the direction or any particular higher education corporation so specified—
- (a) to amend their articles of government; or
 - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are amended by the board of governors;
- in any manner so specified.
- (7) Before giving a direction under this section, the Secretary of State shall consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies.

VALID FROM 01/10/1998

[^{F3}125A Charitable status of a higher education corporation.

- (1) A higher education corporation shall be a charity which is an exempt charity for the purposes of the ^{M3}Charities Act 1993.
- (2) So far as it is a charity, any institution which—
 - (a) is administered by or on behalf of any higher education corporation, and
 - (b) is established for the general purposes of, or for any special purpose of or in connection with, that corporation,
 shall also be an exempt charity for the purposes of the Charities Act 1993.
- (3) In this section “charity” and “institution” have the same meaning as in the Charities Act 1993.

Textual Amendments

F3 S. 125A inserted (1.10.1998) by 1998 c. 30, s. 41(1); S.I. 1998/2215, art. 2

Marginal Citations

M3 1993 c. 10.

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126 Transfer of property, etc., to higher education corporations.]

- (1) In the case of a higher education corporation established under section 121 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to the corporations so established.
- (2) In the case of a higher education corporation established under section 122 of this Act the transfer under this section shall take effect on such date as the Secretary of State may by order appoint in relation to that corporation.
- (3) Subject to subsection (5) below and section 198 of this Act, on the transfer date applicable in relation to a higher education corporation the property, rights and liabilities mentioned in subsection (4) below shall be transferred to, and by virtue of this Act vest in, that corporation.
- (4) The property, rights and liabilities referred to in subsection (3) above are—
 - (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the transferred institution; and
 - (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (5) Subsection (3) above shall not apply to—
 - (a) rights and liabilities under any contract of employment;
 - (b) any liability of any such authority in respect of the principal of, or any interest on, any loan; or
 - (c) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by them.
- (6) In this section “the transferred institution” means, in relation to any higher education corporation, the institution the corporation is established to conduct.

Textual Amendments

F3 S. 125A inserted (1.10.1998) by 1998 c. 30, s. 41(1); S.I. 1998/2215, art. 2

127 Transfer of staff to higher education corporations.

- (1) This section applies to any person who immediately before the transfer date applicable in relation to a higher education corporation—
 - (a) is employed by the transferor authority to work solely at the institution the corporation is established to conduct; or
 - (b) is employed by that authority to work at that institution and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the corporation.
- (3) Without prejudice to subsection (2) above—
 - (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the corporation on the transfer date; and

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- (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the corporation.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) An order under this section may designate a person either individually or as a member of a class or description of employees.
- (6) References in this section, in relation to a higher education corporation, to the transferor authority, are references to the local education authority by whom the institution that corporation is established to conduct is maintained immediately before the transfer date.

Modifications etc. (not altering text)

- C6** S. 127 applied (with modifications) (1.9.1992) by [S.I. 1992/1849](#), [art.4](#).
- C7** S. 127 applied (with modifications) (1.10.1992) by [S.I. 1992/2151](#), [art.4](#).
- C8** S. 127 applied (with modifications) (1.3.1995) by [S.I. 1995/183](#), [art.4](#).
- C9** S. 127 applied (with modifications) (1.8.1996) by [S.I. 1996/1225](#), [art.4](#).
- S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/1383](#), [art. 3](#)
- S. 127 applied (with modifications) (1.8.2000) by [S.I. 2000/355](#), [art. 3](#)
- S. 127 applied (with modifications) (1.8.2001) by [S.I. 2001/1340](#), [art. 3](#)

128 Dissolution of higher education corporations.

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for—
 - (a) the dissolution of any higher education corporation; and
 - (b) the transfer of property, rights and liabilities of the corporation to—
 - (i) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;
 - (ii) any body corporate established for purposes which include the provision of such facilities or services;
 - (iii) the Universities Funding Council established under section 131 of this Act; or
 - (iv) the Polytechnics and Colleges Funding Council established under section 132 of this Act.
- (2) An order under sub-paragraph (i) or (ii) of subsection (1)(b) above shall not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and where the recipient of a transfer under any order under subsection (1)(b) is not an educational charity any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (3) For the purposes of subsection (2) above, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes.

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- (4) Before making an order under this section in respect of a higher education corporation the Secretary of State shall consult—
 - (a) the corporation; and
 - (b) the Polytechnics and Colleges Funding Council.
- (5) In this section “charity” and “charitable purposes” have the same meanings as in the ^{M4}Charities Act 1960.

Marginal Citations

M4 1960 c. 58.

*Designation of certain institutions for funding by
the Polytechnics and Colleges Funding Council, etc.*

129 Designation of institutions.

- (1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council established under section 132 of this Act—
 - (a) any institution other than a university which appears to him to fall within subsection (2) or (3) below; and
 - (b) any institution which is or is to be conducted by a successor company to a higher education corporation.
- (2) An institution falls within this subsection if—
 - (a) its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number; and
 - (b) it is either—
 - (i) an institution assisted by a local education authority; or
 - (ii) an institution which is grant-aided or eligible to receive aid by way of grant.
- (3) An institution falls within this subsection if—
 - (a) its full-time equivalent enrolment number for courses of advanced further education on 1st November 1985 exceeded 55 per cent. of its total full-time equivalent enrolment number on that date; and
 - (b) it was on that date either—
 - (i) an institution assisted by a local education authority; or
 - (ii) a grant-aided institution.
- (4) An order under this section designating an institution as falling within subsection (3) above may not be made after the end of the period of twelve months beginning with the date on which this section comes into force.
- (5) For the purposes of subsection (1)(b) above, a company is a successor company to a higher education corporation if—
 - (a) it is a company limited by a guarantee formed and registered under the ^{M5}Companies Act 1985;

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- (b) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation;
- (c) its objects—
 - (i) are exclusively charitable according to the law of England and Wales; and
 - (ii) include the conduct of the institution which was at that time conducted by that corporation;
- (d) its memorandum and articles of association have been approved by the Secretary of State; and
- (e) an order has been made under section 128 of this Act dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this section is made).

Modifications etc. (not altering text)

C10 S. 129 extended(*prosp.*) by [Further and Higher Education Act 1992 \(c. 13\)](#), **ss. 74(2)**, 94(3).

Marginal Citations

M5 1985 c. 6.

VALID FROM 06/05/1992

[^{F4}129A Government and conduct of designated institutions.

- (1) This section has effect in relation to any designated institution, other than an institution conducted by a company.
- (2) For each such institution 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),
 each of which meets the requirements of subsection (3) below.
- (3) Those requirements are that the instrument—
 - (a) was in force when the designation took effect; or
 - (b) is made in pursuance of a power under a regulatory instrument, or is made under subsection (5) below,
 and is approved for the purposes of this section by the Privy Council.
- (4) In this section “regulatory instrument”, in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution.
- (5) Where there is no such power as is mentioned in subsection (3)(b) above to make the instrument, it may be made by the body of persons responsible for the management of the institution and an instrument made by them under this subsection may replace wholly or partly any existing regulatory instrument.

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- (6) If an instrument approved by the Privy Council for the purposes of this section—
- (a) falls within subsection (3)(a) above or was made in pursuance of a power under a regulatory instrument and, apart from this section, there is no power to modify it; or
 - (b) was made by the body of persons responsible for the management of the institution,
- the instrument may be modified by those persons.
- (7) Either of the instruments referred to in subsection (2) above may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of this section may be modified by any other person without the Privy Council’s consent.
- (8) Before exercising any power under subsection (7) above in relation to any instrument the Privy Council shall consult—
- (a) the governing body of the institution, and
 - (b) where there is such a power as is mentioned in subsection (3)(b) above to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power,
- so far as it appears to them to be practicable to do so.
- (9) Nothing in this section requires further approval for any instrument approved by the Secretary of State for the purposes of section 156 of this Act, and references in this section to instruments approved by the Privy Council for the purposes of this section include instruments so approved by the Secretary of State.
- (10) In this section and section 129B “designated institution” means an institution in relation to which a designation made, or having effect as if made, under section 129 of this Act has effect but does not include any institution established by Royal Charter.]

Textual Amendments

F4 Ss. 129A, 129B inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 73\(1\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

VALID FROM 06/05/1992

129B ^{F5}**Designated institutions conducted by companies.**

- (1) This section has effect in relation to any designated institution conducted by a company.
- (2) The articles of association of the company shall incorporate—
 - (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and
 - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).

Status: Point in time view as at 01/09/1991. This version of this part contains provisions that are not valid for this point in time.

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- (3) The Privy Council may give to the persons who appear to them to have effective control over the company such directions as they think fit for securing that—
 - (a) the memorandum or articles of association of the company; or
 - (b) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company,
 are amended in such manner as they may specify in the direction.
- (4) No amendment of the memorandum or articles of association of the company (other than one required under subsection (3)(a) above) shall take effect until it has been submitted to the Privy Council for their approval and they have notified their approval to the company.
- (5) Before giving any directions under subsection (3) above the Privy Council shall consult the persons who appear to them to have effective control over the company.

Textual Amendments

- F5** Ss. 129A, 129B inserted (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 73\(1\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

130 Transfer of property, etc., to certain designated institutions.

- (1) This section applies to an institution designated under section 129 of this Act in any case where—
 - (a) the order designating the institution under that section so provides; and
 - (b) immediately before the date on which the designation takes effect (referred to below in this section, in relation to such an institution, as the designation date) the institution is an institution assisted by a local education authority (referred to below in this section as the former assisting authority).
- (2) Subject to subsection (4) below and section 198 of this Act, on the designation date in relation to any institution to which this section applies the property, rights and liabilities mentioned in subsection (3) below shall be transferred to, and by virtue of this Act vest in, the appropriate transferee.
- (3) The property, rights and liabilities referred to in subsection (2) above are—
 - (a) all land or other property which, immediately before that date, was property of the former assisting authority used or held for the purposes of that institution; and
 - (b) all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes.
- (4) Subsection (2) above shall not apply to—
 - (a) any liability of the former assisting authority in respect of the principal of, or any interest on, any loan; or
 - (b) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them.
- (5) In subsection (2) above, “the appropriate transferee” means—
 - (a) in relation to an institution conducted by a body corporate, that body; and

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- (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution.
- (6) Subject to subsection (7) below, where any persons so specified are the appropriate transferee for the purposes of subsection (2) above—
- (a) any land or other property or rights transferred to them under this section shall be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution; and
 - (b) they shall incur no personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability.
- (7) Subsection (6)(a) above shall not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution.
- (8) In this Act, “transfer date” means, in relation to an institution to which this section applies, the designation date in relation to that institution.

New arrangements for funding higher education

131 Universities Funding Council.

- (1) There shall be established a body corporate to be known as the Universities Funding Council.
- (2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—
 - (a) to have experience of, and to have shown capacity in, the provision of higher education; and
 - (b) to be currently engaged in the provision of higher education;and in appointing the remaining members the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purpose of providing financial support for activities eligible for funding under this section.
- (5) Those activities are—
 - (a) the provision of education and the undertaking of research by universities; and
 - (b) the provision of any facilities and the carrying on of any other activities by universities which their governing bodies consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research.

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- (6) The Council shall have power to make grants, subject to such terms and conditions as they think fit, to the governing body of any university in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section.
- (7) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any university in respect of which grants are made under subsection (6) above from maintaining or developing its funding from other sources.
- (8) The Council shall also have power—
 - (a) to keep under review activities eligible for funding under this section;
 - (b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit;
 - (c) to provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the Department's functions relating to universities in Northern Ireland; and
 - (d) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.
- (9) The governing body of any university shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.
- (10) In this section “governing body” means, in relation to a university, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs.

132 Polytechnics and Colleges Funding Council.

- (1) There shall be established a body corporate to be known as the Polytechnics and Colleges Funding Council.
- (2) The Council shall consist of fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) Not less than six and not more than nine of the members shall be persons appearing to the Secretary of State—
 - (a) to have experience of, and to have shown capacity in, the provision of higher education; and
 - (b) to be currently engaged in the provision of higher education;
 and in appointing the remaining members the Secretary of State shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (4) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State for the purposes of—

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- (a) providing financial support for activities eligible for funding under this section; and
 - (b) making payments in accordance with section 133 of this Act.
- (5) The activities eligible for funding under this section are—
- (a) the provision of education and the undertaking of research by institutions within the PCFC funding sector;
 - (b) the provision of any facilities and the carrying on of any other activities by such institutions which the governing bodies of those institutions consider it necessary or expedient to provide or carry on for the purpose of or in connection with education and research; and
 - (c) the provision by institutions maintained or assisted by local education authorities, other than universities, of prescribed courses of higher education.
- (6) The following are to be treated for the purposes of this Act as institutions within the PCFC funding sector—
- (a) any institution conducted by a higher education corporation; and
 - (b) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Council.
- (7) The Council shall have power—
- (a) to make grants to the governing body of any institution within the PCFC funding sector in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (5)(a) or (b) above; and
 - (b) to make grants to any local education authority or other persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in subsection (5)(c) above of prescribed courses of higher education;
- subject in each case to such terms and conditions as the Council think fit.
- (8) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard to the desirability of not discouraging any institution within the PCFC funding sector in respect of which grants are made under subsection (7) above from maintaining or developing its funding from other sources.
- (9) In exercising their functions in relation to the provision of financial support for activities eligible for funding under this section the Council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to them to be for the time being an appropriate balance in their support of such activities as between institutions concerned in those activities which are of a denominational character and other institutions so concerned.
- (10) The Council shall also have power—
- (a) to keep under review activities eligible for funding under this section;
 - (b) to provide the Secretary of State, in such manner as he may from time to time determine, with such information and advice relating to activities eligible for funding under this section as they think fit; and
 - (c) to undertake such other activities as the Council consider it necessary or expedient to undertake for the purposes of or in connection with the exercise of any of their functions under the preceding provisions of this section.

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- (11) Each of the following, that is to say—
- (a) a local education authority;
 - (b) the governing body of any institution within the PCFC funding sector; and
 - (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided;
- shall give the Council such information as the Council may require for the purposes of the exercise of any of their functions under this section.
- (12) For the purposes of subsection (9) above an institution is an institution of a denominational character if it appears to the Council that either—
- (a) a majority of the members of the governing body of the institution are persons appointed to represent the interests of a particular religious denomination; or
 - (b) all or most of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a particular religious denomination.

Modifications etc. (not altering text)

C11 S. 132(6) applied (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 90\(4\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

133 Payments by Polytechnics and Colleges Funding Council in respect of persons employed in the provision of higher or further education.

- (1) The Polytechnics and Colleges Funding Council shall have power to make payments, subject to such terms and conditions as the Council think fit, to—
- (a) any local education authority; and
 - (b) the governing body of any institution designated under section 129 of this Act;
- in respect of relevant expenditure incurred or to be incurred by that authority or body of any class or description prescribed for the purposes of this section.
- (2) In subsection (1) above “relevant expenditure” means—
- (a) in relation to a local education authority, expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both); and
 - (b) in relation to the governing body of any institution so designated, expenditure in making payments to or in respect of persons employed or formerly employed at the institution.
- (3) The reference in subsection (2)(a) above to higher education or further education (or both) shall be read, in the case of an institution which ceased to exist before the date on which section 120 of this Act comes into force, as a reference to further education within the meaning of section 41 of the 1944 Act as that section had effect immediately before that date.
- (4) Each of the following, that is to say—
- (a) a local education authority; and

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(b) the governing body of any institution so designated;
shall give the Council such information as the Council may require for the purposes of the exercise of their power under subsection (1) above.

Modifications etc. (not altering text)

C12 S. 133 amended(*retrospectively*) (6. 5. 1992) by [Further and Higher Education Act 1992 \(c. 13\), s. 67\(5\)](#); S.I. 1992/831, art. 2, [Sch.1](#).

134 The Funding Councils: supplementary provisions.

- (1) The Secretary of State may by order confer or impose on either of the Funding Councils such supplementary functions as he thinks fit; and any such functions shall be treated—
- (a) in the case of functions conferred or imposed on the Universities Funding Council, as functions under section 131 of this Act; and
 - (b) in the case of functions conferred or imposed on the Polytechnics and Colleges Funding Council, as functions under section 132 of this Act.
- (2) For the purposes of subsection (1) above a function is a supplementary function, in relation to either of the Funding Councils, if it is exercisable for the purposes of—
- (a) the exercise by the Secretary of State of functions of his under any enactment; or
 - (b) the doing by the Secretary of State of anything he has power to do apart from any enactment;
- and it relates to, or to the activities of, institutions eligible for funding by that Council.
- (3) The terms and conditions on which either of the Funding Councils make any grants or other payments may include in particular conditions—
- (a) enabling the Council to require the repayment, in whole or in part, of sums paid by the Council if any other condition subject to which the sums were paid is not complied with; and
 - (b) requiring the payment of interest in respect of any period during which a sum due to the Council in accordance with any other condition remains unpaid;
- but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council.
- (4) Before exercising their discretion under section 131(6) or (as the case may be) section 132(7)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants each of the Funding Councils shall consult such of the following bodies as it appears to the Council to be appropriate to consult in the circumstances, that is to say—
- (a) such bodies representing the interests of relevant institutions as appear to the Council to be concerned; and
 - (b) the governing body of any particular relevant institution which appears to the Council to be concerned.
- (5) References in subsection (4) above to relevant institutions are references—
- (a) in relation to consultations required to be carried out by the Universities Funding Council, to universities; and

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- (b) in relation to consultations required to be carried out by the Polytechnics and Colleges Funding Council, to institutions within the PCFC funding sector.
- (6) Subject to subsection (7) below, the Secretary of State may make grants to each of the Funding Councils of such amounts and subject to such conditions as he may determine.
- (7) The conditions subject to which grants are made by the Secretary of State to either of the Funding Councils shall not relate to the making of grants or other payments by the Council to any specified institution.
- (8) In exercising their functions under this Part of this Act each of the Funding Councils shall comply with any directions given to them by the Secretary of State.
- (9) Directions given for the purposes of subsection (8) above shall be given by order made by the Secretary of State.
- (10) Neither of the Funding Councils shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of either Council shall not be regarded as property of, or property held on behalf of, the Crown.
- (11) An order under subsection (1) above may exclude the application of subsection (10) above to any extent specified in the order in relation to the exercise of any functions conferred or imposed by the order on either of the Funding Councils.
- (12) Schedule 8 to this Act has effect with respect to each of the Funding Councils.
- (13) In this section “the Funding Councils” means the Universities Funding Council and the Polytechnics and Colleges Funding Council; and the reference in subsection (2) above to institutions eligible for funding by either of those Councils is a reference—
- (a) in relation to the Universities Funding Council, to universities; and
 - (b) in relation to the Polytechnics and Colleges Funding Council, to—
 - (i) institutions within the PCFC funding sector; and
 - (ii) institutions maintained or assisted by local education authorities, other than universities, at which prescribed courses of higher education are currently provided.

Modifications etc. (not altering text)

C13 S. 134(10) excluded (23. 3. 1992) by S.I. 1992/427, art.6.

C14 S. 134(10) excluded (23. 3. 1992) by S.I. 1992/428, art.6.

Supplementary

135 Inspection of accounts.

- (1) The accounts of—
- (a) any university;
 - (b) any higher education corporation; or
 - (c) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council;

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shall be open to the inspection of the Comptroller and Auditor General.

(2) In the case of any higher education corporation or of any such institution as is mentioned in subsection (1)(a) or (c) above—

- (a) the power conferred by subsection (1) above; and
- (b) the powers under sections 6 and 8 of the ^{M6}National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act;

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which grants are made to them under section 131 or 132 of this Act.

Marginal Citations

M6 1983 c. 44.

136 Transfer to Polytechnics and Colleges Funding Council of property and staff of NAB.

- (1) In this section “NAB” means the company limited by guarantee registered under the Companies Acts 1948 to 1983 under the name of the National Advisory Body for Public Sector Higher Education.
- (2) Notwithstanding anything in the memorandum of association of NAB, if upon the winding up or dissolution of NAB any property remains after the satisfaction of all its debts and liabilities the property shall be transferred to, and by virtue of this Act vest in, the Polytechnics and Colleges Funding Council.
- (3) The Secretary of State may by order designate persons employed by NAB for transfer under this section to the employment of the Polytechnics and Colleges Funding Council on such date as may be specified in the order.
- (4) The contract of employment between NAB and any person so designated who, immediately before the date so specified, is employed by NAB shall have effect from that date as if originally made between the Polytechnics and Colleges Funding Council and that person.
- (5) Without prejudice to subsection (4) above—
 - (a) all NAB’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to that Council on the date so specified; and
 - (b) anything done before that date by or in relation to NAB in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to that Council.
- (6) Subsections (4) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

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- (7) An order under this section may designate a person either individually or as a member of a class or description of employees.

137 Control of disposals of land.

- (1) Subject to subsection (9) below, this section applies to any disposal after 22nd July 1987—
- (a) of land which, immediately before that date, was used or held for the purposes of any relevant institution; or
 - (b) of land which was obtained before that date for the purpose of being so used or held and had not before that date been appropriated to any other use.
- (2) For the purposes of subsection (1) above, an institution is a relevant institution if it falls within section 121(2) or 129(3) of this Act.
- (3) Except with the consent of the Secretary of State, no local education authority shall after the passing of this Act make a disposal to which this section applies; and if at any time after 22nd July 1987 and before the passing of this Act such an authority have made a disposal which would have been in contravention of the preceding provisions of this subsection if they had then been in force the same consequences shall follow as if those provisions had been contravened by that authority.
- (4) Any consent for the purposes of subsection (3) above may be given either in respect of a particular disposal or in respect of disposals of any class or description and either unconditionally or subject to conditions.
- (5) Any signification of consent, or of consent subject to specified conditions, given by the Secretary of State before the passing of this Act in respect of any disposal to which this section applies, shall be treated for the purposes of subsection (3) above as a consent, or a consent subject to those conditions, given under this section.
- (6) This section has effect notwithstanding anything in section 123 of the ^{M7}Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (7) A disposal shall not be invalid or, in the case of a disposal which consists of a contract, void by reason only that it has been made or entered into in contravention of this section; and (subject to the provisions of section 201 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given or complied with.
- (8) In this section references to disposing of land include references to—
- (a) granting or disposing of any interest in land;
 - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
 - (c) granting an option to acquire any land or any such interest.
- (9) This section does not apply to a disposal falling within subsection (8)(a) above if it is made in pursuance of a contract entered into, or an option granted, on or before 22nd July 1987.

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Marginal Citations

M7 1972 c. 70.

138 Construction of references to land held for the purposes of an institution.

- (1) This section applies for the purpose of the construction of the following provisions of this Act—
 - (a) section 126(4)(a);
 - (b) section 130(3)(a); and
 - (c) section 137(1)(a).
- (2) Where at any time any land is used for the purposes of an institution to which any of those provisions applies, any interest of a local education authority in that land subsisting at that time shall be taken for the purposes of that provision to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used).

^{F6}CHAPTER III

Textual Amendments

F6 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.
- (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—

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- (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.

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—

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- (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);
 - (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

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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
 - (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”.

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- (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.
- (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.

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- (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)

C15 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.
- (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)

C16 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, art. 3(1)(a)

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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 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.

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- (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—
 - (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—

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- (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
 - (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—

Status: Point in time view as at 01/09/1991. This version of this part contains provisions that are not valid for this point in time.

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- (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 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

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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—
- (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—

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- (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)

C17 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.
- (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.

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Modifications etc. (not altering text)

C18 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.
- (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.

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- (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)

C19 Ss. 142, 143, 148–150 modified by S.I. 1989/1470, **art. 3(1)(a)**

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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)

C20 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.

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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)

C21 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.

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CHAPTER IV

MISCELLANEOUS AND SUPPLEMENTARY

[156 Government and conduct of certain further and higher education institutions.

- (1) This section applies to any institution which is—
 - (a) a designated assisted institution providing full-time education; or
 - (b) an institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council.
- (2) Where any institution to which this section applies is conducted by a company, the articles of association of the company shall incorporate—
 - (a) provision with respect to the constitution of a governing body of the institution (to be known as the instrument of government of the institution); and
 - (b) provision with respect to the conduct of the institution (to be known as the articles of government of the institution).
- (3) Where any such institution is so conducted—
 - (a) the Secretary of State may give to the persons who appear to him to have effective control over the company such directions as he thinks fit for securing that—
 - (i) the memorandum or articles of association of the company; or
 - (ii) any rules or bye-laws made in pursuance of any power conferred by the articles of association of the company;are amended in such manner as he may specify in the direction; and
 - (b) no amendment of the memorandum or articles of association of any such company (other than one required under paragraph (a)(i) above) shall take effect until it has been submitted to the Secretary of State for his approval and he has notified his approval to the company.
- (4) Before giving any directions under subsection (3)(a) above the Secretary of State shall consult the persons who appear to him to have effective control over the company concerned.
- (5) Where it is proposed to form a company to conduct any institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions, the proposed memorandum and articles of association of the company shall be submitted to the Secretary of State for his approval before the company is formed and amended in any manner he may require.
- (6) For every institution to which this section applies which is not conducted by a company, 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).
- (7) The instrument and articles of government of any institution within subsection (6) above shall be made by the responsible authority with the approval of the Secretary of State.

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- (8) The instrument of government of any institution within subsection (6) above, and the instrument containing the articles of government of any such institution, may each include provision for its amendment or replacement subject to the approval of the Secretary of State.
- (9) In this section, “the responsible authority” means, in relation to the instrument or articles of government of any institution within subsection (6) above—
- (a) where any existing instrument or articles of government of the institution, or any other instrument relating to or regulating the institution, confers power on any persons to amend or replace that instrument or those articles, the persons on whom that power is so conferred; and
 - (b) in any other case, the persons responsible for the management of the institution.
- (10) The Secretary of State may by order amend the instrument and articles of government of any institution within subsection (6) above in such manner as he thinks fit.
- (11) Before making any amendments of the instrument or articles of government of any institution under subsection (10) above the Secretary of State shall consult—
- (a) the responsible authority; and
 - (b) the persons responsible for the management of the institution, in any case where those persons are not the responsible authority;
- in so far as it appears to him to be practicable to do so.]

Modifications etc. (not altering text)

- C22** S. 156: by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 73(2); S.I. 1992/831, art. 2, [Sch.1](#), it is provided (6. 5. 1992) that s. 156 shall cease to have effect in relation to designated institutions (the expression 'designated institution' being defined in s. 72(3) of that 1992 Act).
- C23** S. 156: by [Further and Higher Education Act 1992 \(c. 13\)](#), [ss. 85\(1\)](#), 94(3), it is provided(*prosp.*) that s. 156 shall cease to have effect in relation to designated assisted institutions.

157 Variation of trust deeds, etc.

- (1) The Secretary of State may by order make such modifications as he thinks fit in any trust deed or other instrument—
- (a) relating to or regulating any such institution as is mentioned in subsection (2) below; or
 - (b) relating to any land or other property held by any person for the purposes of any such institution.
- (2) The institutions referred to in subsection (1) above are—
- (a) any institution conducted by a higher education corporation;
 - (b) any designated assisted institution providing full-time education; and
 - (c) any institution designated under section 129 of this Act as an institution eligible to receive support from funds administered by the Polytechnics and Colleges Funding Council.
- (3) Before making any modifications under subsection (1) above of any trust deed or other instrument the Secretary of State shall consult—

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- (a) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any persons to amend or replace that deed or instrument—
 - (i) the persons on whom that power is so conferred; and
 - (ii) if different, the persons responsible for the management of the institution; and
 - (b) in any other case, the persons so responsible;
in so far as it appears to him to be practicable to do so.
- (4) Any provision of any instrument relating to any land or other property held for the purposes of any institution maintained or assisted by a local education authority to which this subsection applies which—
- (a) confers on any person an option to acquire an interest in that land or other property; or
 - (b) provides (in whatever terms) for the determination or forfeiture of any such interest;
- in the event of the institution’s ceasing to be maintained or assisted by a local education authority or (as the case may be) by the authority in question shall, if the institution becomes an institution within the PCFC funding sector or a grant-aided institution, have effect as if the event referred to were the institution’s ceasing to be a publicly funded institution.
- (5) Subsection (4) above applies—
- (a) to an institution maintained by a local education authority if it is an institution providing full-time education which is maintained by the authority in exercise of their further or higher education functions; and
 - (b) to an institution assisted by a local education authority if it is a designated assisted institution providing full-time education.
- (6) In that subsection “publicly funded institution” means an institution which is an institution of any one or more of the following descriptions, that is to say—
- (a) an institution maintained or assisted by a local education authority;
 - (b) an institution within the PCFC funding sector; and
 - (c) a grant-aided institution.

158 Reports and returns to Secretary of State.

- (1) The persons mentioned in subsection (2) below shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purposes of the exercise of any of his functions in relation to education.
- (2) Those persons are—
 - (a) the governing body of—
 - (i) any institution within the PCFC funding sector;
 - (ii) any institution providing full-time education which is maintained by a local education authority in exercise of their further or higher education functions; or
 - (iii) any designated assisted institution providing full-time education; and
 - (b) the persons appearing to the Secretary of State to have effective control over a company conducting any institution to which section 156 of this Act applies.

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159 Information with respect to educational provision in institutions providing further or higher education.

- (1) The Secretary of State may make regulations requiring every local education authority to publish, in relation to each relevant institution maintained or assisted by the authority, such information with respect to the matters mentioned in subsection (3) below as may be prescribed.
- (2) For the purposes of this section, an institution is a relevant institution in relation to a local education authority if it is either—
 - (a) an institution providing full-time education which is maintained by that authority in exercise of their further or higher education functions; or
 - (b) a designated assisted institution providing full-time education which is dependent on assistance from that authority.
- (3) The matters referred to in subsection (1) above are—
 - (a) the educational provision made by the institution for students at the institution; and
 - (b) the educational achievements of students at the institution (including the results of examinations, tests and other assessments of those students).
- (4) The information shall be published in such form and manner and at such times as may be prescribed; and the regulations may provide for a local education authority to make arrangements with the governing body of any relevant institution for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution.

160 Adjustments of block grant in respect of expenditure on advanced further education.

- (1) The block grant payable to a local authority in England for any year beginning on or after the date appointed for the purposes of section 126(1) of this Act shall not be subject to adjustment in accordance with paragraph 6 of Schedule 10 to the ^{M8}Local Government, Planning and Land Act 1980 (which relates to adjustments of block grant in respect of expenditure on advanced further education as between local authorities).
- (2) In relation to any expenditure incurred by such an authority on or after that date in the exercise of the authority's functions as a local education authority, sub-paragraphs (3) (a) and (5)(b) of paragraph 5 of that Schedule (which define certain expenditure for the purposes of that paragraph) shall each have effect as if the words "other than that to which paragraph 6 below applies" were omitted.
- (3) On that date Part I of that Schedule (which relates to adjustments of block grant in respect of expenditure on advanced further education as between England and Wales) shall cease to have effect.
- (4) Anything done by the Secretary of State before the passing of this Act for the purpose of making in the block grant payable to a local authority in England adjustments under paragraph 5 or 6 of that Schedule in respect of expenditure incurred in the years beginning in 1985, 1986 and 1987 by local authorities in England in connection with further education of an advanced character (including the training of teachers) shall be deemed to have been done in accordance with that paragraph.
- (5) In this section—

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“local authority” means a body which is a local authority for the purposes of Part VI of that Act; and

“year” has the same meaning as in that Part.

Marginal Citations

M8 1980 c. 65.

161 Interpretation of Part II.

- (1) In this Part of this Act, except where the context otherwise requires—
- (a) references to courses of advanced further education shall be read in accordance with section 121(4);
 - (b) references to the further or higher education functions of a local education authority are references to the functions of the authority under either or both of the following—
 - (i) section 41 of the 1944 Act (provision of facilities for further education); and
 - (ii) section 120(3) and (4) of this Act (provision of facilities for higher education);
 - (c) references to a designated assisted institution dependent on assistance from a local education authority shall be read in accordance with section 139(7); and
 - (d) “governing body” includes, in relation to any institution, a board of governors of the institution or any persons responsible for the management of the institution (but not formally constituted as such a body or board).
- (2) References in this Part of this Act to the total full-time equivalent enrolment number of any institution at any time are references to the aggregate of its full-time equivalent enrolment numbers at that time for courses of all descriptions then offered by that institution.
- (3) For the purposes of this Part of this Act the full-time equivalent enrolment number at any time of any institution for courses of any description shall be determined in accordance with Schedule 9 to this Act.

Status:

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Changes to legislation:

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