



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous provisions*

#### **218 School and further and higher education regulations.**

- (1) The Secretary of State may by regulations make provision—
- (a) for requiring persons employed as teachers at schools, subject to such exceptions as may be provided for by or under the regulations, to be qualified teachers;
  - (b) for requiring persons employed as teachers at institutions falling within subsection (10) below to possess such qualifications as may be determined by or under the regulations;
  - (c) for requiring persons employed as teachers at <sup>F1</sup> . . . such institutions to serve probationary periods;
  - (d) with respect to the teaching staff to be provided in schools and such institutions;
  - (e) for requiring the approval of the Secretary of State to be obtained for the use in <sup>F2</sup> . . . such institutions of such materials or apparatus as may be specified in the regulations, being materials or apparatus which could or might involve a serious risk to health;
  - (f) with respect to the keeping, disclosure and transfer of educational records about [<sup>F3</sup>persons receiving education] at <sup>F2</sup> . . . such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations;
  - <sup>F4</sup>(g) .....
- (2) In subsection (1) above “qualified teacher” means a person who—
- (a) is a qualified teacher in accordance with any provision made by or under the regulations; or

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- (b) is determined to be a qualified teacher by the Secretary of State in accordance with any provision so made;

and the regulations may provide for any determination by the Secretary of State under the regulations with respect to a person's status as a qualified teacher to be made so as to have effect, in such cases or circumstances as may be specified in the regulations, from a date earlier than the determination.

[<sup>F5</sup>(2A) Regulations under subsection (2)(a) above may make provision—

- (a) by reference to the successful completion of a course of initial training for teachers in schools at an accredited institution; and  
(b) conferring on the Teacher Training Agency or the Higher Education Funding Council for Wales such functions in relation to accreditation or otherwise as may be prescribed.]

[<sup>F6</sup>(2B) Regulations under subsection (2) above may impose requirements on persons carrying on city technology colleges or city colleges for the technology of the arts as to the training and teaching experience of persons employed as teachers at such colleges who seek to become (in relation to schools) qualified teachers.]

- (3) The provision authorised by paragraph (a) of subsection (1) above with respect to exceptions from any requirement imposed by virtue of that paragraph includes in particular provision permitting the employment as there mentioned, in such cases or circumstances and subject to such conditions as may be specified in or determined under the regulations, of [<sup>F7</sup>persons licensed or otherwise authorised to teach by the Secretary of State or the Teacher Training Agency] in accordance with any provision made by or under the regulations.

- (4) Regulations made by virtue of subsection (1)(f) above may authorise persons who in pursuance of the regulations supply copies of any such records as are there mentioned to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

- (5) The Secretary of State may by regulations make provision for imposing requirements as to the health and physical capacity of—

- (a) teachers at schools and institutions falling within subsection (10) or (11) below;  
(b) teachers employed by local education authorities otherwise than at schools or such institutions; and  
(c) persons employed—  
(i) by local education authorities; or  
(ii) by the governing bodies of schools or such institutions;

in work otherwise than as teachers which brings them regularly into contact with persons who have not attained the age of nineteen years.

- (6) The Secretary of State may by regulations make provision for prohibiting or restricting the employment or further employment of persons—

- (a) as teachers at schools and institutions falling within subsection (10) or (11) below;  
(b) by local education authorities as teachers otherwise than at schools or such institutions; <sup>F8</sup> . . .  
(c) by local education authorities or by the governing bodies of schools or such institutions in such work as is mentioned in subsection (5)(c) above; [<sup>F9</sup>or]

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[<sup>F10</sup>(d) by the proprietors of independent schools or at such schools as teachers or in any such work]

on medical grounds, in cases of misconduct and, as respects employment or further employment as a teacher, on educational grounds.

[<sup>F11</sup>(6A) The Secretary of State may by regulations impose requirements on—

- (a) local education authorities,
- (b) the governing bodies of schools or institutions falling within subsection (10) below, or
- (c) the proprietors of independent schools,

for the purpose of prohibiting or restricting, on medical grounds or in cases of misconduct, access to persons who have not attained the age of nineteen years by persons (not falling within subsection (6) above) who provide services falling within subsection (6B).

(6B) Those services are services provided in relation to the school or institution or persons attending it which—

- (a) are provided by whatever means and whether under contract or otherwise, and
- (b) bring the persons providing them regularly into contact with persons who have not attained the age of nineteen years.]

(7) The Secretary of State may by regulations make provision requiring his approval <sup>F12</sup> . . . to be obtained for the provision of new premises for, or the alteration of the premises of—

- (a) any <sup>F13</sup> . . . institution falling within subsection (10) below; or
- (b) any boarding hostel provided by a local education authority for [<sup>F14</sup>persons receiving education at]. . .any such institution;

and for the inspection of any such hostel.

<sup>F15</sup>(8) . . . . .

(9) The Secretary of State may by regulations make provision—

- (a) with respect to the fees to be charged for courses of further education at institutions falling within subsection (10) or (11) below;
- (b) for requiring his approval to be obtained for the provision at such institutions of courses designated by or under the regulations as courses of initial teacher training;
- (c) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions; and
- (d) with respect to institutions in Wales falling within subsection (10) below—
  - (i) for requiring his approval to be obtained for the provision at such institutions of courses of higher education; and
  - (ii) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions.

(10) An institution falls within this subsection if it provides higher education or further education (or both) and either—

- (a) it is maintained by a local education authority; or [<sup>F16</sup>(aa) it is within the further education sector]

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<sup>F17</sup>(b) .....

(11) An institution falls within this subsection if it is an institution within [<sup>F18</sup>the higher education sector in receipt of financial support under section 65 of the Further and Higher Education Act 1992].

[<sup>F19</sup>(12) In this section (except in subsection (6)(d) or (6A) above) “school” means any school maintained by a local education authority or any special school not so maintained.]

[<sup>F20</sup>(13) For the purposes of this section—

- (a) any reference to persons employed as teachers includes a reference to persons engaged to provide their services as teachers otherwise than under contracts of employment; and
- (b) any reference to teachers or other persons employed by local education authorities or by any description of governing bodies or proprietors includes a reference to teachers or other persons engaged to provide their services for such authorities, governing bodies or proprietors (as the case may be) otherwise than under contracts of employment;

and any reference to employment (or further employment) shall be construed accordingly.]

#### Textual Amendments

- F1** Words in s. 218(1)(c) repealed (1.10.1998) by 1998 c. 30, s. 44(2), **Sch. 4** (with s. 42(8)); S.I. 1998/2215, **art. 2**.
- F2** Words in s. 218(1)(e)(f) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, Sch. 37 Pt. I para. 76(2)(a), **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).
- F3** Words in s. 218(1)(f) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(a)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F4** S. 218(1)(g) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, Sch. 37 Pt. I para. 76(2)(b), **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).
- F5** S. 218(2A) inserted (21.9.1994) by 1994 c. 30, s. 14(1); S.I. 1994/2204, **art. 2(1)**.
- F6** S. 218(2B) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para. 76(3)** (with ss. 1(4), 561, 562, Sch. 39).
- F7** Words in s. 218(3) substituted (21.9.1994) by 1994 c. 30, s. 14(3); S.I. 1994/2204, **art. 2(1)**.
- F8** Word in s. 218(6)(b) omitted by virtue of s. 290(3)(a); S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**).
- F9** Word in s. 218(6)(c) inserted (1.1.1994) by 1993 c. 35, s. 290(3)(b); S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**) (which insertion is continued after the repeal of 1993 c. 35 (1.11.1996) by 1996 c. 56, ss. 582(2), 583, Sch. 38 Pt. I (with ss. 1(4), 561, 562, **Sch. 39**)).
- F10** S. 218(6)(d) inserted (1.1.1994) by 1993 c. 35, s. 290(3)(b); S.I. 1993/3106, art. 9, **Sch. 1** (amended by S.I. 1994/436, **art. 2**); (which insertion is continued after the repeal of 1993 c. 35 (1.11.1996) by 1996 c. 56, ss. 582(2), 583, Sch. 38 Pt. I (with ss. 1(4), 561, 562, **Sch. 39**)).
- F11** S. 218(6A)(6B) inserted (1.10.1997) by 1997 c. 44, s. 49(2); S.I. 1997/1468, art. 2(3), **Sch. Pt. III**.
- F12** Words in s. 218(7) repealed (1.11.1996) by virtue of 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).
- F13** Words in s. 218(7) repealed (1.11.1996) by 1996 c. 56, ss. 582(1)(2), 583, Sch. 37 Pt. I para. 76(4), **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).
- F14** Words in s. 218(7)(b) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(b)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F15** S. 218(8) repealed (1.11.1996) by 1996 c. 56, ss. 582(1)(2), 583, Sch. 37 Pt. I para. 76(5), **Sch. 38 Pt. I** (with ss. 1(4), 561, 562, Sch. 39).

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- F16** S. 218(10)(aa) inserted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 49(c)(i)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F17** S. 218(10)(b) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 49(c)(ii), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F18** Words in s. 218(11) substituted (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, **Sch. 8 Pt. I para. 49(d)**; S.I. 1992/831, art. 2, **Sch. 3**.
- F19** S. 218(12) substituted (1.9.1999) by 1998 c. 31, s. 140, **Sch. 30 para. 17** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F20** S. 218(13) inserted (1.3.1998) by 1997 c. 44, s. **49(4)**; S.I. 1998/386, art. 2(1), **Sch. 1 Pt. I**.

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

- C1** S. 218(2)(3) modified (*prosp.*) by 1998 c. 30, ss. 10(1), 42(8) (with s. 42(8))
- C2** S. 218(2B) modified (1.11.1996) by 1996 c. 56, **ss. 482(5), 583** (with ss. 1(4), 561, 562, Sch. 39).
- C3** S. 218(6) extended (*prosp.*) by 1999 c. 14, **ss. 6, 14(2)**
- C4** S. 218(13) applied (*prosp.*) by 1997 c. 50, s. **113(3A)** (as inserted (*prosp.*) by 1999 c. 14, **ss. 8(1), 14(2)**)

VALID FROM 11/01/2001

**[<sup>F21</sup>218A Regulations under section 218(6): further provision.**

- (1) The power to make regulations under subsection (6) of section 218 above includes power to provide that a person may appeal to the Tribunal against—
- a decision to prohibit or restrict the person's employment or further employment on the grounds mentioned in subsection (6ZA)(a) to (d) of that section; or
  - a decision not to revoke or vary such a decision as is mentioned in paragraph (a) above.
- (2) The regulations may—
- make provision as to the circumstances in which the Tribunal shall allow an appeal under the regulations and as to the powers available to it on allowing such an appeal;
  - provide that, where a person has been convicted of an offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under the regulations.
- (3) The power to make regulations under subsection (6) of that section also includes power to make provision for a person who has been subject, for a prescribed period, to a prohibition or restriction imposed by virtue of that subsection on relevant grounds to apply, with the leave of the Tribunal, for a review of the prohibition or restriction.
- (4) The regulations may make provision as to—
- the circumstances in which an application for leave, or a review, under the regulations shall be determined in the person's favour;
  - the powers available to the Tribunal on determining a review in the person's favour.
- (5) In this section—
- “relevant grounds” means the grounds mentioned in section 218(6ZA)(c) above;

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(b) “the Tribunal” means the Tribunal established under section 1 of the <sup>M1</sup>Protection of Children Act 1999.]

**Textual Amendments**

**F21** S. 218A inserted (11.1.2001) by 2000 c. 43, ss. 74, **Sch. 7 Pt. II para. 83**; S.I. 2000/3302, **art. 2(b)**

**Marginal Citations**

**M1** 1999 c. 14.

**[<sup>F22</sup>219 Powers of the Secretary of State in relation to certain educational institutions.**

- (1) This section applies to any institution which is maintained by a local education authority and provides higher education or further education (or both).
- (2) Section 495(1) of the Education Act 1996 (determination of disputes by the Secretary of State) shall apply in relation to the governing body of an institution to which this section applies as it applies in relation to the governing body of a school.
- (3) Each of sections 496 and 497 of that Act (power of Secretary of State to prevent unreasonable exercise of functions and Secretary of State’s general default powers) shall have effect as if any reference to a body to which that section applies included a reference to the governing body of an institution to which this section applies.
- (4) Section 498 of that Act (powers of Secretary of State where there is no properly constituted governing body) shall have effect as if any reference to a school to which that section applies included a reference to an institution to which this section applies.]

**Textual Amendments**

**F22** S. 219 substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583, **Sch. 37 Pt. I para.77** (with ss. 1(4), 561, 562, **Sch. 39**).

**<sup>F23</sup>220 Extension of functions of Audit Commission.**

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**Textual Amendments**

**F23** S. 220 repealed (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch.5**.

**221 Avoidance of certain contractual terms.**

- (1) This section applies to any contract made after 20th November 1987 between—
  - (a) a local education authority in their capacity as such an authority;
  - (b) the governing body of [<sup>F24</sup>a foundation, voluntary aided or foundation special school;]; or
  - <sup>F25</sup>(c) .....

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and any person employed by them, not being a contract made in contemplation of the employee's pending dismissal by reason of redundancy.

- (2) In so far as a contract to which this section applies provides that the employee—
- (a) shall not be dismissed by reason of redundancy; or
  - (b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay him under [<sup>F26</sup>section 135 of the Employment Rights Act 1996],

the contract shall be void and of no effect.

- (3) In this section—
- “governing body”, in relation to an institution, includes a body corporate established for the purpose of conducting that institution;
- <sup>F27</sup>  
...
- (a) provides higher education or further education (or both); and
  - (b) is either a designated assisted institution or an institution which is grant-aided or eligible to receive aid by way of grant.

**Textual Amendments**

- F24** Words in s. 221(1)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.18** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F25** S. 221(1)(c) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.
- F26** Words in s. 221(2)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 37(4)** (with ss. 191-195, 202).
- F27** Definition in s. 221(3) repealed (1. 4. 1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 52, **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

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

- C5** S. 221 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.
- C6** S. 221 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. Pt. I**.

<sup>F28</sup>**222** .....

**Textual Amendments**

- F28** S. 222 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39).

<sup>F29</sup>**223** .....

**Textual Amendments**

- F29** S. 223 repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch.16**; S.I. 2000/183, art. 2(1)

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**224 Superannuation for staff of Further Education Unit.**

- (1) The persons to whom section 1 of the <sup>M2</sup>Superannuation Act 1972 applies (persons to or in respect of whom benefits may be provided by schemes under that section) shall include—
  - (a) persons who at any time after the passing of this Act are serving in employment with the company formed and registered under the <sup>M3</sup>Companies Act 1948 and known at the passing of this Act as the Further Education Unit; and
  - (b) persons who at any time before the passing of this Act have ceased to serve in employment with that company;
 and accordingly a reference to that company shall be inserted at the appropriate point in the alphabetical list of “Other Bodies” in Schedule 1 to that Act.
- (2) That company shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to this section in the sums payable out of money provided by Parliament under that Act.

**Marginal Citations**

**M2** 1972 c. 11.  
**M3** 1948 c. 38.

<sup>F30</sup>**225** .....

**Textual Amendments**

**F30** S. 225 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583, **Sch. 38 Pt.I** (with ss. 1(4), 561, 562, Sch. 39).

**226 Services for schools in other member States providing education for British children.**

- (1) This section applies to any school which—
  - (a) is situated in a member State other than the United Kingdom;
  - (b) provides education for pupils who are British citizens, have attained the age of five years but not the age of nineteen years and are residing in that member State;
  - (c) has a curriculum which, in the case of any pupil at the school, is broadly similar to the curriculum which he would follow if he were a pupil at a maintained school in England and Wales; and
  - (d) has such other characteristics as may be prescribed.
- (2) In the case of a school to which this section applies the Secretary of State shall—
  - (a) on a regular basis provide the persons responsible for the management of the school with such information relating to educational developments in England and Wales as he thinks appropriate; and



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- (b) if those persons so request, make arrangements for inspections to be made of the school [<sup>F31</sup>by, or under the direction of, one or more of Her Majesty's Inspectors of Schools for England].
- (3) The Secretary of State shall charge the persons at whose request any inspection of a school is made under this section such fees as will cover the full cost of the inspection.
- (4) In this section “maintained school” means [<sup>F32</sup>any community, foundation or voluntary school.].

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#### Textual Amendments

- F31** Words in s. 226(2)(b) substituted (31. 8. 1992) by [Education \(Schools\) Act 1992 \(c. 38\), s. 21\(7\), Sch. 4 para. 7](#); S.I. 1992/1157, [art. 2, Sch.](#) (which amendment was continued first by [School Inspections Act 1996 \(c. 57\), ss. 47\(1\), 48\(2\), Sch. 6 para. 4](#) and subsequently by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 5\(1\), \(2\)](#)).
- F32** Words in s. 226(4) substituted (1.9.1999) by [1998 c. 31, s. 140\(1\), Sch. 30 para.19](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, [art. 2\(1\), Sch. 1](#).

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