



# Education Act 1997

## 1997 CHAPTER 44

### PART VIII

#### MISCELLANEOUS AND GENERAL

##### *Exceptional educational provision*

#### **47 Functions of LEAs as regards exceptional educational provision**

- (1) Section 19 of the Education Act 1996 (exceptional provision of education in pupil referral units or elsewhere) shall be amended as follows.
- (2) In subsection (1) (duty of local education authority to make arrangements for provision of suitable full-time or part-time education, at school or otherwise, for excluded children etc.), the words “full-time or part-time” shall be omitted.
- (3) In subsection (4) (power of local education authority to make arrangements for provision of suitable full-time or part-time education, otherwise than at school, for excluded young persons etc.), the words “full-time or part-time” shall be omitted.
- (4) After that subsection there shall be inserted—

“(4A) In determining what arrangements to make under subsection (1) or (4) in the case of any child or young person a local education authority shall have regard to any guidance given from time to time by the Secretary of State.”

##### *Management committees for pupil referral units*

#### **48 Management committees for pupil referral units**

At the end of Schedule 1 to the Education Act 1996 (pupil referral units) there shall be added—

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*Status: This is the original version (as it was originally enacted).*

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*“Management committees*

- 15 (1) Regulations may make provision—
- (a) for requiring any local education authority who maintain a pupil referral unit to establish a committee to act as the management committee for the unit; and
  - (b) for that committee to discharge on behalf of the authority such of their functions in connection with the unit as are delegated by them to the committee in accordance with the regulations.
- (2) Regulations under this paragraph may in particular make provision—
- (a) for enabling a local education authority to establish a joint committee to act as the management committee for two or more pupil referral units maintained by the authority;
  - (b) for requiring the approval of the Secretary of State to be obtained before any such joint committee is established;
  - (c) as to the composition of a management committee established under the regulations and—
    - (i) the appointment and removal of its members, and
    - (ii) their terms of office,
 and in particular for requiring such a committee to include persons representing schools (including grant-maintained schools) situated in the area from which the unit or units in question may be expected to draw pupils;
  - (d) for requiring or (as the case may be) prohibiting the delegation by a local education authority to a management committee of such functions in connection with pupil referral units as are specified in the regulations;
  - (e) for authorising a management committee to establish sub-committees;
  - (f) for enabling (subject to any provisions of the regulations) a local education authority or a management committee to determine to any extent the committee’s procedure and that of any sub-committee;
  - (g) for limiting the personal liability of members of any such committee or sub-committee in respect of their acts or omissions as such members;
  - (h) for applying to any such committee or sub-committee, with or without modification—
    - (i) any provision of the Education Acts, or
    - (ii) any provision made by or under any other enactment and relating to committees or (as the case may be) sub-committees of a local authority.”

*Teachers not under contract of employment and persons having access to those under 19*

**49 Power to make regulations: teachers not under contract of employment and persons having access to those under 19**

(1) Section 218 of the Education Reform Act 1988 (power of Secretary of State to make regulations in respect of schools and further and higher education institutions) shall be amended as follows.

(2) After subsection (6) there shall be inserted—

“(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.”

(3) In subsection (12) (definition of “school”), after “(6)(d)” there shall be inserted “or (6A)”.

(4) After subsection (12) there shall be inserted—

“(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.”

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*Status: This is the original version (as it was originally enacted).*

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*Costs of teachers' premature retirement*

**50 Recoupment by local education authority of costs of teachers' premature retirement**

- (1) Section 139 of the Education Act 1996 (payments in respect of dismissal etc. of teachers at schools with delegated budgets) shall be amended as follows.
- (2) In subsection (5) (local education authority's costs in respect of teacher's dismissal or premature retirement not normally to be met from school's budget share), at the beginning there shall be inserted "Subject to subsection (5A),".
- (3) After that subsection there shall be inserted—
  - "(5A) Subsection (5) does not apply to costs incurred by the local education authority in respect of any premature retirement of a member of the staff of the school occurring on or after the date of the passing of the Education Act 1997; and such costs shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body (whether before or after the retirement occurs) that they shall not be so met.
  - (5B) The agreement of the local education authority for the purposes of subsection (5A) must be given in writing on or after the date of the passing of that Act."
- (4) For the avoidance of doubt, the provisions inserted by this section have effect in relation to a school despite anything in any scheme prepared by the local education authority under section 103 of the Education Act 1996 (schemes providing for financial delegation).

*Definition of "school"*

**51 Definition of "school"**

In section 4 of the Education Act 1996 (definition of "school"), for subsection (1) there shall be substituted—

- "(1) In this Act "school" means an educational institution which is outside the further education sector and the higher education sector and is an institution for providing—
- (a) primary education,
  - (b) secondary education, or
  - (c) both primary and secondary education,
- whether or not the institution also provides part-time education suitable to the requirements of junior pupils or further education."

*Compulsory school age*

**52 Commencement of compulsory school age**

- (1) Section 8 of the Education Act 1996 (compulsory school age) shall be amended in accordance with subsections (2) and (3).

(2) For subsection (2) there shall be substituted—

“(2) A person begins to be of compulsory school age—

- (a) when he attains the age of five, if he attains that age on a prescribed day, and
- (b) otherwise at the beginning of the prescribed day next following his attaining that age.”

(3) For subsection (4) there shall be substituted—

“(4) The Secretary of State may by order—

- (a) provide that such days in the year as are specified in the order shall be, for each calendar year, prescribed days for the purposes of subsection (2);
- (b) determine the day in any calendar year which is to be the school leaving date for that year.”

(4) The Secretary of State may also make an order providing that such days in the year as are specified in the order shall be, for each calendar year during the whole or part of which section 8 of the Education Act 1996 is not wholly in force, prescribed days for the purposes of paragraph 1(2) of Schedule 40 to that Act (transitory provisions pending coming into force of section 8 of that Act) as it has effect in accordance with subsection (5) below.

(5) Where a person does not attain the age of five on any of those prescribed days, he shall be regarded for the purposes of paragraph 1(2) of that Schedule—

- (a) as not attaining that age, and
- (b) accordingly as not being of compulsory school age,

until the beginning of the prescribed day next following his fifth birthday.

#### *General provisions*

### **53 Stamp duty**

(1) Subject to subsection (2), stamp duty shall not be chargeable in respect of any transfer effected by virtue of section 30 or 34.

(2) No instrument (other than a statutory instrument) made or executed in pursuance of either of the provisions mentioned in subsection (1) shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

### **54 Orders and regulations**

(1) Any power of the Secretary of State to make orders or regulations under this Act, except an order under section 25 or 31, shall be exercised by statutory instrument.

(2) A statutory instrument containing any order or regulations under this Act, except an order under section 58, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.
- (4) Without prejudice to the generality of subsection (3), any order or regulations under this Act may make in relation to Wales provision different from that made in relation to England.

## **55 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) any sums required for the payment by the Secretary of State of grants under this Act;
- (b) any administrative expenses incurred by the Secretary of State in consequence of this Act; and
- (c) any increase attributable to this Act in the sums so payable under any other Act.

## **56 Construction**

- (1) In this Act—
  - “prescribed” means prescribed by regulations; and
  - “regulations” means regulations made by the Secretary of State under this Act.
- (2) This Act shall be construed as one with the Education Act 1996.
- (3) Where, however, an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of that Act, the meaning given for the purposes of that provision shall apply instead of the one given for the purposes of that Act.

## **57 Minor and consequential amendments, repeals etc**

- (1) The minor and consequential amendments set out in Schedule 7 shall have effect.
- (2) Any reference in any enactment to Part I of Schedule 33 to the Education Act 1996 (appeal committees for hearing admission appeals), or to any provision of that Part of that Schedule, shall (so far as the context permits) be read as including a reference to that Part of that Schedule, or (as the case may be) to that provision of that Part, as applied by paragraph 4 of Schedule 16 or paragraph 3 of Schedule 33A to that Act.
- (3) For the avoidance of doubt, the provisions inserted in the Education Act 1996 by Parts II and III of this Act have effect despite anything in the articles (or, as the case may be, in the instrument or articles) of government of a school to, or in relation to, which those inserted provisions apply or are applied.
- (4) The enactments specified in Schedule 8 are repealed to the extent specified.

## **58 Short title, commencement and extent etc**

- (1) This Act may be cited as the Education Act 1997.

- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996.
- (3) Subject to subsection (4), this Act shall come into force on such day as the Secretary of State may by order appoint, and different days may be appointed for different provisions and for different purposes.
- (4) The following provisions come into force on the day on which this Act is passed—
  - section 50,
  - section 54,
  - paragraph 48(2) of Schedule 7 and section 57(1) so far as relating thereto, and this section.
- (5) Subject to subsections (6) and (7), this Act extends to England and Wales only.
- (6) The following provisions extend to Northern Ireland—
  - sections 21 and 22,
  - section 24(4),
  - section 26,
  - sections 34 to 36,
  - section 53,
  - section 54,
  - this section, and
  - Schedule 4.
- (7) The amendment or repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.