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# Education Act 1973

## CHAPTER 16

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## ELIZABETH II



## Education Act 1973

## 1973 CHAPTER 16

An Act to make provision for terminating and in part replacing the powers possessed by the Secretary of State for Education and Science and the Secretary of State for Wales under the Charities Act 1960 concurrently with the Charity Commissioners or under the Endowed Schools Acts 1869 to 1948, and enlarging certain other powers of modifying educational trusts, and for supplementing awards under section 1 and restricting awards under section 2 of the Education Act 1962, and for purposes connected therewith. [18th April 1973]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Educational trusts*

1.—(1) There shall cease to have effect—

- (a) section 2 of the Charities Act 1960 (by which, as originally enacted, the powers of the Charity Commissioners were made exercisable concurrently by the Minister of Education); and
- (b) the Endowed Schools Acts 1869 to 1948 (which made provision for the modernisation of educational trusts by schemes settled and approved in accordance with those Acts).

General provisions as to educational trusts.

1960 c. 58.

(2) The Secretary of State may by order—

- (a) make such modifications of any trust deed or other instrument relating to a school as, after consultation with the managers, governors or other proprietor of the school, appear to him to be requisite in consequence of any proposals approved or order made by him under section 13 or 16 of the Education Act 1944 (which relate to the establishment of and changes affecting schools); and
- (b) make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governors or other proprietor of the school, appear to him to be requisite to enable the governors or proprietor to meet any requirement imposed by regulations under section 33 of the Education Act 1944 (which relates in particular to the approval of schools as special schools); and
- (c) make such modifications of any trust deed or other instrument relating to or regulating any institution that provides or is concerned in the provision of educational services, or is concerned in educational research, as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations under section 100 of the Education Act 1944 (which authorises the making of grants in aid of educational services or research);

and any modification made by an order under this subsection may be made to have permanent effect or to have effect for such period as may be specified in the order.

This subsection shall be construed, and the Education Acts 1944 to 1971 shall have effect, as if this subsection were contained in the Education Act 1944.

(3) In connection with the operation of this section there shall have effect the transitional and other consequential or supplementary provisions contained in Schedule 1 to this Act.

(4) The enactments mentioned in Schedule 2 to this Act (which includes in Part I certain enactments already spent or otherwise no longer required apart from the foregoing provisions of this section) are hereby repealed to the extent specified in column 3 of the Schedule.

(5) Subsection (1)(a) above and Part III of Schedule 2 to this Act shall not come into force until such date as may be appointed by order made by statutory instrument by the Secretary of State.

2.—(1) Where the premises of a voluntary school have ceased (before or after the coming into force of this section) to be used for a voluntary school, or in the opinion of the Secretary of State it is likely they will cease to be so used, then subject to subsections (2) to (4) below he may by order made by statutory instrument make new provision as to the use of any endowment shown to his satisfaction to be or have been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religious denomination; and for purposes of this section “endowment” includes property not subject to any restriction on the expenditure of capital.

Special powers as to certain trusts for religious education.

(2) No order shall be made under subsection (1) above except on the application of the persons appearing to the Secretary of State to be the appropriate authority of the denomination concerned; and the Secretary of State shall, not less than one month before making an order under that subsection, give notice of the proposed order and of the right of persons interested to make representations on it, and shall take into account any representations that may be made to him by any person interested therein before the order is made; and the notice shall be given—

- (a) by giving to any persons appearing to the Secretary of State to be trustees of an endowment affected by the proposed order a notice of the proposal to make it, together with a draft or summary of the provisions proposed to be included; and
- (b) by publishing in such manner as the Secretary of State thinks sufficient for informing any other persons interested a notice of the proposal to make the order and of the place where any person interested may (during a period of not less than a month) inspect such a draft or summary, and by keeping a draft or summary available for inspection in accordance with the notice.

(3) An order under subsection (1) above may require or authorise the disposal by sale or otherwise of any land or other property forming part of an endowment affected by the order, including the premises of the school and any teacher's dwelling-house; and in the case of land liable to revert under the third proviso to section 2 of the School Sites Act 1841 the Secretary of State may by order exclude the operation of that proviso, if he is satisfied either—

- (a) that the person to whom the land would revert in accordance with the proviso cannot after due enquiry be found; or
- (b) that, if that person can be found, he has consented to relinquish his rights in relation to the land under the

1841 c. 38.

proviso and that, if he has consented so to do in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum out of the proceeds of disposal of the land.

(4) Subject to subsection (3) above and to any provision affecting the endowments of any public general Act of Parliament, an order under subsection (1) above shall establish and give effect, with a view to enabling the denomination concerned to participate more effectively in the administration of the statutory system of public education, to a scheme or schemes for the endowments dealt with by the order to be used for appropriate educational purposes, either in connection with voluntary schools or partly in connection with voluntary schools and partly in other ways related to the locality served or formerly served by the voluntary school at the premises that have gone or are to go out of use for such a school; and for this purpose "use for appropriate educational purposes" means use for educational purposes in connection with the provision of religious education in accordance with the tenets of the denomination concerned.

(5) A scheme given effect under this section may provide for the retention of the capital of any endowment and application of the accruing income or may authorise the application or expenditure of capital to such extent and subject to such conditions as may be determined by or in accordance with the scheme; and any such scheme may provide for the endowments thereby dealt with or any part of them to be added to any existing endowment applicable for any such purpose as is authorised for the scheme by subsection (4) above.

(6) An order under subsection (1) above may include any such incidental or supplementary provisions as appear to the Secretary of State to be necessary or expedient either for the bringing into force or for the operation of any scheme thereby established, including in particular provisions for the appointment and powers of trustees of the property comprised in the scheme or, if the property is not all applicable for the same purposes, of any part of that property, and for the property or any part of it to vest by virtue of the scheme in the first trustees under the scheme or trustees of any endowment to which it is to be added or, if not so vested, to be transferred to them.

(7) Any order under this section shall have effect notwithstanding any Act of Parliament (not being a public general Act), letters patent or other instrument relating to, or trust affecting, the endowments dealt with by the order; but section 15(3) of the Charities Act 1960 (by virtue of which the court and the Charity Commissioners may exercise their jurisdiction in relation to charities mentioned in Schedule 4 to the Act notwithstanding that the charities are governed by the Acts or

statutory schemes there mentioned) shall have effect as if at the end of paragraph 1 (b) of Schedule 4 to the Act there were added the words "or by schemes given effect under section 2 of the Education Act 1973."

(8) This section shall apply where the premises of a non-provided public elementary school ceased before 1st April 1945 to be used for such a school as it applies where the premises of a voluntary school have ceased to be used for a voluntary school.

(9) This section shall be construed, and the Education Acts 1944 to 1971 shall have effect, as if this section were contained in the Education Act 1944. 1944 c. 31.

### *Awards*

3.—(1) The Secretary of State may by regulations make provision for the payment by him, to persons on whom awards have been bestowed by a local education authority under section 1 of the Education Act 1962 (awards for first degree university courses and comparable courses in the United Kingdom), of an allowance in respect of a wife, husband or child for the purpose of enabling those persons to take advantage without hardship of their awards in cases where, in accordance with the regulations having effect under that section, account may not be taken of the wife, husband or child in determining the payments to be made by the authority in pursuance of the award. Supplementa-  
tion by  
Secretary of  
State, in  
special cases,  
of certain  
awards by  
local education  
authority.  
1962 c. 12.

(2) The amount of an allowance payable by virtue of this section to the holder of an award in respect of a wife, husband or child shall not exceed the amount by which the payments to be made by the local education authority in pursuance of the award would have been increased if the case had fallen within the provision made with respect to a wife, husband or child by the regulations having effect under section 1 of the Education Act 1962.

(3) Regulations under this section may make different provision for different cases; and the power of the Secretary of State to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any expenses incurred by the Secretary of State in the payment of allowances under this section shall be defrayed out of moneys provided by Parliament.

(5) In this section references to a person's child include that person's stepchild or illegitimate child and a child adopted by that person (alone or jointly with another) in pursuance of an order made by any court in the United Kingdom, the Isle of Man or the Channel Islands or by an adoption specified as an overseas adoption by order of the Secretary of State under section 4 of the Adoption Act 1968. 1968 c. 53.

Exclusion of postgraduate courses from grants under section 2(1) of Education Act 1962.  
1962 c. 12.

**4.—(1)** Section 2(1) of the Education Act 1962 (powers of local education authorities to bestow awards on persons over compulsory school age attending certain courses in Great Britain or elsewhere) shall not apply to such courses at universities, colleges or other institutions as may for the time being be designated by or under regulations made by the Secretary of State for the purposes of this section as being postgraduate courses or comparable to postgraduate courses.

(2) The power of the Secretary of State to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Supplementary*

Citation and extent.

**5.—(1)** This Act may be cited as the Education Act 1973, and the Education Acts 1944 to 1971 and this Act may be cited together as the Education Acts 1944 to 1973.

(2) Nothing in this Act extends to Scotland or to Northern Ireland.

## SCHEDULES

## SCHEDULE 1

## TRANSITIONAL AND SUPPLEMENTARY PROVISIONS AS TO CHARITIES ETC.

1.—(1) In section 43 of the Charities Act 1960, in its application <sup>1960 c. 58.</sup> to regulations made on or after the appointed day, there shall be substituted for subsection (1)—

“(1) Save as otherwise provided by this Act, any power to make regulations which is conferred by this Act shall be exercisable by the Secretary of State”;

and in subsection (3) for the words (as originally enacted) “the Secretary of State or the Minister of Education” there shall be substituted the words “or the Secretary of State”.

(2) Section 206(3) of the Local Government Act 1972 (which <sup>1972 c. 70.</sup> makes special provision for certain charitable property to vest in local education authorities, if it is held for purposes of a charity registered in a part of the charities register maintained by the Secretary of State by virtue of section 2 of the Charities Act 1960) shall have effect, unless the appointed day is later than the end of March 1974, as if the reference to a charity registered in a part of the register which is maintained by the Secretary of State were a reference to a charity so registered immediately before the appointed day.

(3) Any register, books and documents which on the appointed day are in the possession or custody of the Secretary of State for Education and Science, or of the Secretary of State for Wales, and which in his opinion he requires no longer by reason of the repeal of section 2(1) of the Charities Act 1960, shall be transferred to the Charity Commissioners.

(4) The repeal by this Act of section 2(1) of the Charities Act 1960 shall not affect the operation of section 2(1)—

(a) in conferring on the Charity Commissioners functions belonging at the passing of that Act to the Minister of Education ; or

(b) in extending to the Charity Commissioners references to the Secretary of State for Education and Science or the Secretary of State for Wales (or references having effect as if either of them were mentioned) so as to enable the Commissioners to discharge any such functions as aforesaid or to act under or for the purposes of the trusts of a charity ;

but on the appointed day any functions so conferred and any reference so extended shall, subject to sub-paragraph (5) below, cease to be functions of or to extend to either Secretary of State.

(5) Where it appears to the Secretary of State for Education and Science or the Secretary of State for Wales that any reference which, in accordance with sub-paragraph (4) above would on the appointed day cease to extend to him, is not related (or not wholly



1960 c. 58. related) to the functions ceasing to belong to him by the repeal of section 2(1) of the Charities Act 1960, he may by order made at any time, whether before the appointed day or not, exclude the operation of that sub-paragraph in relation to the reference and make such modifications of the relevant instrument as appear to him appropriate in the circumstances.

(6) The repeal of section 2(1) of the Charities Act 1960 shall not affect the validity of anything done (or having effect as if done) before the appointed day by or in relation to the Secretary of State for Education and Science or the Secretary of State for Wales, and anything so done (or having effect as if so done) in so far as it could by virtue of section 2(1) have been done by or in relation to the Charity Commissioners shall thereafter have effect as if done by or in relation to them.

(7) In this paragraph "appointed day" means the day appointed under section 1(5) of this Act.

1873 c. 86. 2.—(1) Where before the passing of this Act a scheme under the Endowed Schools Acts 1869 to 1948 has been published as required by section 13 of the Endowed Schools Act 1873, the scheme may be proceeded with as if section 1 of this Act had not been passed.

1869 c. 56. (2) Where before the passing of this Act a draft scheme under the Endowed Schools Acts 1869 to 1948 has been prepared in a case in which effect might be given to the scheme by order under section 2 of this Act, and the draft scheme has been published as required by section 33 of the Endowed Schools Act 1869, the scheme may be proceeded with in pursuance of section 2 of this Act as if section 2(2)(a) and (b) had been complied with on the date this Act is passed.

1944 c. 31. 3. The repeals made by this Act in sections 17 and 100 of the Education Act 1944 shall not affect any order made by virtue of the provisions repealed, or the operation in relation to any such order of section 111 of that Act (which relates to the revocation and variation of orders).

## SCHEDULE 2

## REPEALS

## PART I

## REPEALS OF SPENT ETC. ENACTMENTS

Chapter	Short Title	Extent of Repeal
8 & 9 Geo. 5. c. 39.	The Education Act 1918.	Section 14. In section 47, the words from "except" to "direct" and the words from "and the Board" onwards. Section 52(1) from the first "and" onwards.
7 & 8 Geo. 6. c. 31.	The Education Act 1944.	Section 119. Section 121, except proviso (a). Schedule 9.
1 & 2 Eliz. 2. c. 33.	The Education (Miscellaneous Provisions) Act 1953.	Section 14. Section 17(2). Schedule 2.
2 & 3 Eliz. 2. c. 70.	The Mines and Quarries Act 1954.	In section 166 the words "section 14 of the Education Act 1918", and the words "the said section 14". In Schedule 4 the entry relating to the Education Act 1918.
8 & 9 Eliz. 2. c. 58.	The Charities Act 1960.	Section 4(10). Section 38(1) and (2). Section 39(1). Section 44(3). Section 48(2). Section 49(3). In Schedule 1, paragraph 1(6) and paragraph 2(3). Schedule 5. In Schedule 6 the entry for the Reorganisation Areas Measure 1944. Schedule 7.
9 & 10 Eliz. 2. c. 34. 1963 c. 33.	The Factories Act 1961. The London Government Act 1963.	In section 167 the words "section 14 of the Education Act 1918". In section 81, subsections (1) to (8) (but not so as to alter the charity trustees of any charity) and subsection (10).

## PART II

## GENERAL

Chapter	Short Title	Extent of repeal
32 & 33 Vict. c. 56.	The Endowed Schools Act 1869.	The whole Act.
36 & 37 Vict. c. 86.	The Endowed Schools Act 1873.	The whole Act.
12 & 13 Geo. 5. c. 50.	The Expiring Laws Continuance Act 1922.	In Schedule 1, the entry for the Endowed Schools Act 1869.
7 & 8 Geo. 6. c. 31.	The Education Act 1944.	In section 17(6) (as added by the Education Act 1968) the words from "or such modifications" to "trust deed". Section 86. Section 100(4). Section 2.
11 & 12 Geo. 6. c. 40.	The Education (Miscellaneous Provisions) Act 1948.	In section 11(1) the words from the first "and" to the following "Schedule". In section 14, in subsection (2) the words from "(except" to the following "1908)" and the words from "and the said" onwards, and in subsection (3) the words from "(other" to the following "provisions)" and the words from "and the said" onwards.
8 & 9 Eliz. 2. c. 58.	The Charities Act 1960.	In Schedule 1, Part II. Section 2(4).
1968 c. 17	The Education Act 1968.	In Schedule 1, in paragraph 2, the words from "or such modifications" to "trust deed".
<i>Church Assembly Measure</i>		
1967 No. 2.	The Extra-Parochial Ministry Measure 1967.	In section 2(5), the words "and section 53 of the Endowed Schools Act 1869" and the words "and endowed".

## PART III

## REPEALS RELATING TO CHARITIES

Chapter	Short Title	Extent of Repeal
10 & 11 Geo. 6. c. 44.	The Crown Proceedings Act 1947.	Section 23(3)(e).
8 & 9 Eliz. 2. c. 58.	The Charities Act 1960.	Section 2(1), (2), (3) and (5). Section 3(8). In section 4(8) the words " or of the Minister of Education ". In section 10(6) the words " and to the Minister of Education ". Section 18(13). Section 19(9). Section 20(11). Section 22(12). In section 44, in subsection (1)(b) the words " the Minister of Education " and in subsection (2) the words " by the Minister of Education or ". In Schedule 6, in the entry relating to section 31 of the New Parishes Measure 1943 the words " or Minister of Education ".
1969 c. 22.	The Redundant Churches and other Religious Buildings Act 1969.	In section 4, in subsection (3) the words " and the Secretary of State for Education and Science " and in subsection (4) the words " and (13) ".
<i>Church Assembly Measures</i>		
6 & 7 Geo. 6. No. 1.	The New Parishes Measure 1943.	In section 31 the words " or of the Board of Education " and the words " or Minister of Education " inserted by the Charities Act 1960.
1968 No. 1.	The Pastoral Measure 1968.	Section 90(3).

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