



Education Reform Act 1988

1988 CHAPTER 40

PART I

SCHOOLS

CHAPTER III

FINANCE AND STAFF

Financial delegation: appointment and dismissal of staff

44 Staff employed by the local education authority

- (1) This section applies to a county, controlled or special agreement school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
 - (a) sections 34 and 35 of the 1986 Act (determination of staff complement for schools by local education authority and general provisions about appointment and dismissal of staff);
 - (b) any provision made by the articles of government in accordance with any of sections 36 to 41 of that Act (procedure for appointments, suspensions and dismissals); and
 - (c) any provision of section 40 of that Act (appointment and dismissal of clerk to the governing body) other than subsection (5).
- (3) Subject to the following provisions of this section—
 - (a) the appointment, suspension and dismissal of staff at a school to which this section for the time being applies and the determination of their duties, grading and remuneration; and
 - (b) the application in relation to such staff of—

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- (i) any disciplinary rules and procedures; and
- (ii) any procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;

shall be subject to Schedule 3 to this Act.

- (4) Within the period of five years beginning with the date on which the financial year begins in which any county, controlled or special agreement school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions made by the articles in accordance with any of sections 36 to 41 of the 1986 Act (specifying those provisions) are superseded by this section and Schedule 3 to this Act during any period when the school has a delegated budget.
- (5) This section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).

45 Staff at aided schools

- (1) This section applies to an aided school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
 - (a) section 22(4) of the 1944 Act (power of local education authority to give directions to governors of aided school as to number and conditions of service of school maintenance staff); and
 - (b) any provision of the articles of government conferring any functions on a local education authority with respect to the number of teachers or other staff to be employed at the school or the appointment or dismissal of such teachers or other staff (including any such provision required by section 24(2) of that Act).
- (3) Subject to any provision of the articles of government of any such school other than any provision for the time being excluded by subsection (2) above from applying to the school, the governing body of the school shall have (if they would not otherwise do so apart from any provision of the articles so excluded) power to appoint, suspend and dismiss staff as they think fit.
- (4) Subsection (6) below applies if in the case of any such school—
 - (a) the governing body of the school agree with the local education authority to accord advisory rights to the chief education officer of the authority in relation to the appointment or dismissal of teachers at the school; or
 - (b) in default of such agreement the Secretary of State determines that it would be appropriate in the case of the school that such rights should be accorded to the chief education officer of the authority.
- (5) Advisory rights accorded by an agreement or determination under subsection (4) above in the case of any school may relate to the appointment or dismissal, or both to the appointment and the dismissal, either of head teachers and deputy head teachers alone or of all teachers at the school.
- (6) During any period while an agreement or determination under subsection (4) above is effective in the case of any school, the chief education officer of the authority, or an officer of the authority nominated by him, shall be entitled to attend all proceedings of

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- the governing body relating to any action to which the advisory rights accorded to him extend (including interviews) for the purpose of giving advice to the governing body.
- (7) The agreement of a governing body for the purposes of subsection (4)(a) above shall be given in writing and may only be withdrawn by notice in writing to the local education authority.
 - (8) A determination by the Secretary of State for the purposes of subsection (4)(b) above may be withdrawn at any time (without prejudice to a further determination for those purposes).
 - (9) The governing body of a school to which this section for the time being applies shall, on dismissing any member of the staff of the school employed by them, notify the local education authority in writing of the reasons for the dismissal.
 - (10) Where any member of the staff at any such school is employed by the local education authority, paragraphs 8 to 10 of Schedule 3 to this Act shall have effect in relation to his dismissal or withdrawal from the school as they have effect in relation to the dismissal or withdrawal from a school to which section 44 of this Act applies of a person employed to work at the school.
 - (11) Within the period of five years beginning with the date on which the financial year begins in which any aided school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions of the articles of a kind mentioned in subsection (2)(b) above (specifying those provisions) are superseded by this section during any period when the school has a delegated budget.

46 Staff: further provisions

- (1) The Secretary of State may by order amend paragraph (a) of section 3(5) of the Teachers' Pay and Conditions Act 1987 (order regulating remuneration and conditions of employment of teachers may confer discretion on the local education authority with respect to any matter) so as to provide for any discretion conferred on a local education authority by virtue of that paragraph to be exercisable instead by the governing body of any school to which section 44 or 45 of this Act for the time being applies.
- (2) Subject to subsection (3) below, it shall be for the governing body of any such school 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 school; and
 - (b) the amount of any such payment.
- (3) Subsection (2) 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.
- (4) 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 school under subsection (2) above; and

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- (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 school otherwise than in accordance with any such determination.
- (5) 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 school shall not be met from the school'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.
- (6) 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 (5) above.

47 Community Schools

- (1) This section applies to any school to which section 44 or 45 of this Act for the time being applies which is a community school.
- (2) For the purposes of this section, a school is a community school if—
 - (a) activities other than school activities (“W”) are carried on on the school premises; and
 - (b) all non-school activities which are so carried on are carried on under the management or control of the governing body of the school.
- (3) A scheme may provide for applying sections 44(3), 45(10) and 46 of and Schedule 3 to this Act in relation to persons employed to work—
 - (a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the premises of a school to which this section applies; or
 - (b) solely for the purposes of non-school activities so carried on; as if all activities so carried on were school activities.