



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART I

#### SCHOOLS

#### CHAPTER IV

##### GRANT-MAINTAINED SCHOOLS

##### *Winding up and disposal of property*

#### 94 Winding up

- (1) Where in the case of any grant-maintained school—
- (a) proposals for discontinuance of the school have been approved under section 92 of this Act; or
  - (b) the Secretary of State has given notice to the governing body of the school under section 93 of this Act specifying a date on which he intends to cease to maintain the school;

the Secretary of State may by order make provision for the winding up of the governing body of the school and the disposal of the school property.

- (2) An order made under this section may—
- (a) set out a proposed timetable for the winding up and, in particular, for—
    - (i) securing that all property belonging to the governing body or held by any trustees on trust for the purposes of the school is brought into the custody or control of that body or those trustees (as the case may require);
    - (ii) discharging any liabilities of the governing body;
    - (iii) making any provision mentioned in paragraphs (d) to (f) below; and
    - (iv) the preparation and audit of the governing body's final accounts;

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- (b) make provision with respect to the exercise of the functions of the governing body in relation to the school, including in particular—
    - (i) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State;
    - (ii) provision authorising any of those functions to be exercised by any member of the governing body specified in the order; and
    - (iii) provision for the application of the seal of the governing body to be authenticated by the signature of any person so specified;
  - (c) make provision for conferring or imposing functions on the governing body in relation to the winding up and the management and disposal of the school property;
  - (d) make any provision authorised by section 95 of this Act for or in connection with the transfer of the school property;
  - (e) make any provision authorised by section 97 of this Act with respect to the discharge of the liabilities of the governing body and the payment of the costs of the winding up;
  - (f) make any provision authorised by section 98 or 99 of this Act in relation to capital expenditure in respect of the school premises;
  - (g) require the governing body to give to persons employed by them notice terminating their contracts of employment as from a date specified in the order; and
  - (h) appoint a date on which the governing body is to be dissolved.
- (3) Below in this Chapter—
- (a) references to a governing body in liquidation are references to a governing body in respect of whom any order has been made under this section; and
  - (b) references, in relation to any such governing body or the grant-maintained school conducted, or formerly conducted, by any such body, to the dissolution date are references to the date appointed in relation to that governing body by virtue of subsection (2)(h) above.
- (4) The Secretary of State may make grants to a governing body in liquidation for the purpose of—
- (a) discharging any liabilities of that governing body (other than section 105 loan liabilities); and
  - (b) meeting any costs incurred by that governing body for the purposes of the winding up under this section.
- (5) The Secretary of State may impose on a governing body to whom any such payment is made such requirements as he may from time to time determine (whether before, at or after the time when the payment in question is made).
- (6) The Secretary of State shall not by an order under this section appoint a date on which a governing body in liquidation is to be dissolved unless he is satisfied that—
- (a) all liabilities of the governing body (other than any section 105 loan liabilities which fall to be transferred or terminated under section 97 of this Act) have been discharged;
  - (b) all costs of the winding up have been met; and
  - (c) any provision authorised by any of sections 95 to 99 of this Act which is possible and expedient in the circumstances of the case has been made and

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anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.

(7) In this Chapter—

- (a) references, in relation to a governing body in liquidation, to section 105 loan liabilities are references to any liabilities in respect of any loans made under section 105 of the 1944 Act (loans by Secretary of State towards initial capital expenditure) which were transferred to the governing body under section 74 of this Act;
- (b) references, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, to the school property are references to—
  - (i) the premises used or formerly used for the purposes of the school;
  - (ii) any interest belonging to the governing body or held by any trustees on trust for the purposes of the school in any dwelling-house used or held or formerly used or held for occupation by a person employed to work at the school; and
  - (iii) all other equipment and property used or held or formerly used or held for the purposes of the school, with the exception of money and any investments to which section 96 of this Act applies; and
- (c) references to a grant-maintained school formerly conducted by a governing body in liquidation apply in circumstances where the school has been discontinued before the dissolution date and refer to the school as conducted immediately before discontinuance (and “formerly” in sub-paragraphs (i) to (iii) of paragraph (b) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).

## **95 Disposal of school property**

(1) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) proposals under section 13 of the 1980 Act that any school proposed to be established on the premises of the grant-maintained school should be maintained by a local education authority as a voluntary school have been approved;

an order under section 94 of this Act may vest the school property or any part of it in persons specified in the order to be held on trust for the purposes of the proposed school, subject to the payment by those persons of the appropriate consideration.

(2) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) any persons propose to establish on the premises of the school a new independent school;

an order under section 94 of this Act may vest the school property or any part of it in the persons proposing to establish the new school, subject to the payment by those persons of the appropriate consideration.

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- (3) In any case within subsection (1) or (2) above, the appropriate consideration is payable to the former maintaining authority, subject to any provision made by virtue of section 97 or 99 of this Act.
- (4) Where in the case of a grant-maintained school conducted or formerly conducted by a governing body in liquidation which was a voluntary school immediately before it became a grant-maintained school proposals by a local education authority for the establishment of a new county school on the premises of the school have been published under section 12 of the 1980 Act and either—
- (a) the proposals have been approved by the Secretary of State under that section; or
  - (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section;
- an order under section 94 of this Act may vest any part of the school property which is held by persons on trust for the purposes of the school or, where all the school property is so held, the whole of the school property in the local education authority concerned beneficially, subject to the payment by that authority of the appropriate consideration.
- (5) In any case within subsection (4) above the appropriate consideration is payable to the persons from whom the property is transferred, subject to any provision made by virtue of section 97 or 98 of this Act.
- (6) Subject to subsections (7) and (10) below, any school property held by a governing body in liquidation immediately before the dissolution date shall vest on that date in the former maintaining authority.
- (7) Subsections (1), (2) and (6) above shall not apply to any school property which is held by persons on trust for the purposes of the grant-maintained school concerned; but an order under section 94 of this Act may vest the whole or any part of any property excluded from the application of subsection (1), (2) or (6) above by virtue of this subsection in such local education authority or other person as may be specified in the order.
- (8) Where it appears to the Secretary of State that any school property to be vested in a local education authority by an order made by virtue of subsection (7) above—
- (a) was wholly or mainly provided at the expense of a local education authority or a former authority; or
  - (b) will be held by the authority for the purposes of a county or voluntary school proposed to be established on the premises of the grant-maintained school concerned;
- the order may vest the property in the authority beneficially.
- (9) Subject to subsection (8) above, an order made by virtue of subsection (7) above shall vest the school property in the local education authority or other person concerned on trust for such purposes as may be specified in the order.
- (10) Subsection (6) above shall not apply to any items of property excluded from transfer by the Secretary of State; and the Secretary of State may exclude any item, or any class or description of items, of property from transfer if he is satisfied that that item, or items of that class or description, were procured otherwise than at the expense of

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the authority concerned and that it is appropriate on that account to exclude them from transfer to that authority.

- (11) An order under section 94 of this Act may vest any property excluded from a transfer under subsection (6) above by virtue of subsection (10) above in such persons as may be specified in the order on such terms as may be so specified.
- (12) Any property vested in any person by an order made by virtue of this section shall so vest on such date as may be specified in the order as the transfer date.
- (13) In this section “the appropriate consideration” means, in relation to any school property—
  - (a) so far as it consists of premises (including any interest in a dwelling-house such as is mentioned in section 94(7)(b)(ii) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at the transfer date or as at a date no earlier than six months before that date; and
  - (b) so far as it consists of other property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.
- (14) Nothing in any provision included in an order under section 94 of this Act by virtue of this section shall affect any interest or right of any person in, to or over any school property which is held by that person otherwise than for the purposes of the school.

## **96 Surplus money and investments**

- (1) Subject to subsection (2) below—
  - (a) any money held by a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the Banking Act 1979); and
  - (b) any investments to which this section applies held by such a governing body; after discharge of all their liabilities (other than any not required to be discharged before the dissolution date is appointed) and all costs of the winding up shall be paid or (as the case may be) transferred to the Secretary of State.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
  - (a) that the money or that part of it was derived or (as the case may be) those investments were acquired otherwise than from grants paid by him under this Chapter; and
  - (b) that it ought to be paid, or the investments ought to be transferred, to a local education authority or to some other person;he may require the governing body to pay that money, or an amount equal to the part in question, or to transfer those investments, to such local education authority or other person as he may specify, either beneficially or to be held on trust for such purposes as he may specify.
- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the Financial Services Act 1986 which falls within—

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- (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.
- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of that Act which amends those paragraphs for the purposes of all the provisions of that Act.

**97 Discharge, transfer and termination of liabilities, etc**

- (1) Subsection (2) below applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises (“W”).
- (2) Where this subsection applies, an order under section 94 of this Act may do either or both of the following things, that is to say—
- (a) require the new owners to discharge any liabilities of the governing body in respect of redundancy payments; and
  - (b) require an amount equal to the whole or any part of the amount required for—
    - (i) discharging any liabilities of the governing body other than liabilities required by virtue of paragraph (a) above to be discharged by the new owners; and
    - (ii) meeting the costs of the winding up under section 94 of this Act; to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the new owners to the Secretary of State.
- (3) This subsection applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation proposals under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school have been approved.
- (4) Where in any case to which subsection (3) above applies the school was an aided or special agreement school immediately before it became a grant-maintained school—
- (a) if the Secretary of State has directed that the proposed school shall be an aided school, any section 105 loan liabilities of the governing body shall on the dissolution date be transferred to and become liabilities of the temporary governing body of the new school (subject to any variation of the terms applicable in relation to the loans in question immediately before that date that may be agreed between the Secretary of State and that governing body); and
  - (b) in any other case, any such liabilities shall be terminated on the dissolution date.
- (5) Where—
- (a) a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of a discontinued grant-maintained school; and
  - (b) any liabilities of the governing body of that grant-maintained school have been terminated under subsection (4)(b) above;

the amount of those liabilities shall be treated for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) as expenditure incurred

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by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.

- (6) Where in any case to which subsection (3) above applies the school premises are vested in any persons by an order made by virtue of section 95(1) of this Act, an order under section 94 of this Act may require an amount equal to the whole or any part of the amount required for discharging any liabilities of the governing body and meeting the costs of the winding up to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the persons in whom the premises are so vested to the Secretary of State.
- (7) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation the premises of the school are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school, an order under section 94 of this Act may require an amount equal to the amount of any section 105 loan liabilities of the governing body to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the authority to the Secretary of State.
- (8) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation—
  - (a) the premises of the school—
    - (i) are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school;
    - (ii) are vested beneficially in such an authority by an order made by virtue of section 95(7) and (8) of this Act; or
    - (iii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
  - (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);

the Secretary of State may require the authority to pay to him the whole or any part of the compensation or purchase money paid in respect of the acquisition in or towards repayment of any expenditure incurred by him in making grants for the purpose of discharging any liabilities of the governing body and meeting the costs of the winding up.

## **98 Capital expenditure: former voluntary schools**

- (1) This section applies where a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a voluntary school immediately before it became a grant-maintained school.
- (2) Subsection (3) below applies where in any such case—
  - (a) an order is made by virtue of section 95(4) of this Act vesting the premises of the school in a local education authority for the purposes of a new county school; or
  - (b) no such order has been made and no proposals have been approved under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school;

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provided that, where paragraph (b) above applies, the Secretary of State is satisfied that no proposals for the establishment on those premises of a new county school are likely to be published, and no such proposals under section 13 are likely to be published or approved, before the date he proposes to appoint as the dissolution date.

- (3) Where this subsection applies, an order under section 94 of this Act shall determine—
- (a) the amount of any expenditure incurred by the Secretary of State in paying capital grant to the governing body of the school (“W”);
  - (b) the amount of any expenditure incurred by him, otherwise than in connection with repairs, in respect of any premises used for the purposes of the school before it became a grant-maintained school (“W”); and
  - (c) an amount representing the appropriate share in the value of the school premises of the former maintaining authority (“W”).

For the purposes of paragraph (c) above the appropriate share of a local education authority in the value of any school premises is such part of the value of those premises as the Secretary of State determines to be appropriate having regard to the extent to which those premises were provided at the expense of the local education authority concerned or a former authority.

- (4) Subject to subsection (7) below, in a case within subsection (2)(a) above, an order under section 94 of this Act may—
- (a) require an amount equal to the whole or any part of—
    - (i) the capital grant amount; and
    - (ii) the prior expenditure amount;
 to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the local education authority concerned to the Secretary of State; and
  - (b) either—
    - (i) where the local education authority concerned are the former maintaining authority, provide for the consideration otherwise so payable to be reduced by an amount equal to the locally funded amount; or
    - (ii) in any other case, require an amount equal to the locally funded amount to be deducted from that consideration and paid by the local education authority concerned to the former maintaining authority.
- (5) Subject to subsection (7) below, in a case within subsection (2)(b) above, an order under section 94 of this Act may require any persons in whom the school premises are vested—
- (a) to pay to the Secretary of State an amount equal to the whole or any part of—
    - (i) the capital grant amount; and
    - (ii) the prior expenditure amount; and
  - (b) to pay to the former maintaining authority an amount equal to the locally funded amount.
- (6) Subject to subsection (7) below, where in a case within subsection (2)(b) above—
- (a) no requirement has been imposed by virtue of subsection (5) above; and
  - (b) any person acquires the school premises or any part of them (whether compulsorily or otherwise) from the persons in whom they were vested



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immediately before an order was made under section 94 of this Act (or, where more than one such order has been made, before the first of them) or their successors;

the Secretary of State may impose on the persons from whom the school premises were acquired any requirement that could have been imposed by virtue of subsection (5) above.

- (7) No provision may be made in an order under section 94 of this Act by virtue of subsection (4) or (5) above, and no requirement may be imposed by virtue of subsection (6) above, in any case where—
- (a) that section applies in relation to the school in question by virtue of the fact that the Secretary of State has given notice to the governing body of the school specifying a date on which he intends to cease to maintain the school; and
  - (b) the notice was given in accordance with section 93(2) of this Act.
- (8) Where in any case to which this section applies a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of the grant-maintained school, any capital expenditure incurred by the Secretary of State in relation to the grant-maintained school shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure so incurred (otherwise than in connection with repairs) in respect of the premises of the new school.
- (9) In subsection (8) above “capital expenditure” means any such expenditure as is mentioned in subsection (3)(a) or (b) above.

## **99 Capital expenditure: former county schools**

- (1) This section applies where—
- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) the Secretary of State has incurred any expenditure in paying capital grant to the governing body of the school (“W”).
- (2) Where in any case to which this section applies—
- (a) an order is made by virtue of section 95(1) of this Act vesting the school premises in any persons to be held on trust for the purposes of a proposed voluntary school; and
  - (b) the Secretary of State has directed that the proposed school shall be an aided school;
- an order under section 94 of this Act may provide for the consideration otherwise payable by virtue of section 95 to the local education authority concerned to be reduced by an amount equal to the whole or any part of the capital grant expenditure.
- (3) Any reduction by virtue of subsection (2) above shall be disregarded in determining the amount of any sums expended by the persons in whom the school premises are vested by the order on the provision of a site for the new school or of the school buildings; but an amount equal to the amount of that reduction shall be treated as having been paid by the Secretary of State to the governing body of the new school—
- (a) as to so much of it as does not exceed 85 per cent. of the amount of the sums so expended, by way of a grant under section 1(2)(a) of the Education Act 1967; and

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- (b) as to the balance (if any), by way of a loan made under section 105 of the 1944 Act on such terms as the Secretary of State may specify.
- (4) Where in any case to which this section applies—
- (a) an order is made as mentioned in subsection (2)(a) above; but
  - (b) no direction that the proposed school shall be an aided school has been given before the dissolution date;
- subsection (5) below shall apply in relation to the capital grant expenditure.
- (5) Where this subsection applies the capital grant expenditure shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.
- (6) Where in any case to which this section applies an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises, an order under section 94 of this Act may require an amount equal to the whole or any part of the capital grant expenditure to be deducted from the consideration otherwise payable by virtue of section 95 to the local education authority concerned and paid by the persons in whom the property is so vested to the Secretary of State.
- (7) Where in any case to which this section applies—
- (a) the school premises—
    - (i) are vested beneficially in a local education authority by an order made by virtue of section 95(7) and (8) of this Act; or
    - (ii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
  - (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);
- the Secretary of State may require the authority to pay to him the whole or any part of the consideration or purchase money paid in respect of the acquisition in or towards repayment of the capital grant expenditure.