

SCHEDULE 4

Regulations 40 and 46

LAND TRANSFERS WHEN A SCHOOL CHANGES CATEGORY

1. Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land; and
- (b) subsisting immediately before the implementation date,

also transfer to, and by virtue of these Regulations, vest in, that body.

Rules relating to transfer

2.—(1) This paragraph applies where any proposals that a community school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in —

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.

3.—(1) This paragraph applies where any proposals that a community school should become a voluntary aided school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

4.—(1) This paragraph applies where any proposals that a community school should become a voluntary controlled school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

5.—(1) This paragraph applies where any proposals that a voluntary aided school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary aided school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

6.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary controlled school must on that date transfer to, and by virtue of this paragraph vest in—

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- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

7.—(1) This paragraph applies where any proposals that a community special school should become a foundation special school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

Outstanding transfers

8. Where immediately before the implementation date in relation to any change of category—

- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
- (b) the land has not yet been so transferred,

paragraphs 2 to 7 are to apply to the school as if it had been so transferred by that time.

Transfers of right to use land

9. Where paragraph 2, 3, 4 or 7 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

on that date transfers to, and by virtue of these Regulations vests in, the trustees of the school or, if there are no trustees, the governing body.

Land excluded from transfers

10.—(1) Nothing in paragraphs 2 to 8 of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3);
- (b) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan; or
- (c) any liability in tort.

(2) If after the proposal has been approved, but before the implementation date in relation to any change of category, the prospective transferee and transferor have agreed in writing that any land should be excluded, that land (and any rights or liabilities relating to it) is excluded.

(3) Where the prospective transferee and transferor cannot agree what land should be excluded they must refer the matter to the adjudicator.

(4) If in default of agreement under sub-paragraph (2)—

- (a) the prospective transferee or transferor have applied to the adjudicator to exclude any land from the operation of paragraphs 2 to 8 of this Schedule; and

(b) the adjudicator has by order directed its exclusion;
the land (and any rights or liabilities relating to it) is excluded.

(5) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school on such terms as may be specified in or determined in accordance with the agreement; and directions under sub-paragraph (4)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) must have effect as if contained in such an agreement.

Restrictions on disposal of land when proposals are pending

11.—(1) For the purposes of paragraphs 11 to 13 of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on the date written notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered, is given.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with section 28 (5) of SSFA 1998 as modified by the Change of Category Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the proposals are rejected by the governing body, the authority or the adjudicator or withdrawn on or before the date of implementation of such proposals;
- (f) if the governing body decide not to implement the proposals; or
- (g) if revocation proposals are approved.

12.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the adjudicator.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category have been approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 16 of this Schedule on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract is not to be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract

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to acquire land, from a local authority need not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972⁽¹⁾ (general power to dispose of land) and the consent required by this paragraph is in addition to any consent required by subsection (2) of that section.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and,
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

13.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the adjudicator any action (including appropriation of the land for any purpose) by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category have been approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of sub-paragraph (1),

the provisions relating to the transfer of property in this Schedule have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

Provision of information

14. Any local authority and governing body of a maintained school must give the adjudicator such information as he may require for the purposes of the exercise of his functions under these Regulations.

Division and apportionment of property

15.—(1) Any property, rights and liabilities of a transferor held or used or subsisting—

- (a) for purposes wider than that of the school; or
- (b) partly for the purposes of the school and partly for other purposes

where the nature of the property, right or liability permits, is to be divided or apportioned between the transferor and the transferee, in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be divided in accordance with sub-paragraph (1)—

- (a) any rent payable under a lease in respect of that estate or interest, and
- (b) any rent charged on that estate or interest,

must be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any such property, right or liability as is mentioned in sub-paragraph (1) the nature of which does not permit its division or apportionment as so mentioned must be transferred to the transferee or retained by the transferor according to—

(1) 1972 c.70.

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- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent, or
- (b) in the case of any other right or liability, which of them appears on the transfer date to be likely to be affected by the right or liability to the greater extent

subject (in either case) to such arrangements for the protection of the other person concerned as may be agreed between the transferor and the transferee or determined by the adjudicator under paragraph 17.

Identification of property, rights and liabilities

16.—(1) The transferor and the transferee must arrive at such written agreements, and execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor, or for making any such arrangements as are mentioned in paragraph 15 as will afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement may provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
- (b) for the granting of indemnities in connection with the severance of leases and other matters;
- (c) for responsibility for registration of any matter in any description of statutory register.

(3) If and to the extent that he is requested to do so by the transferor or the transferee, the adjudicator may—

- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities transferred to the transferee or retained by the transferor;
- (b) advise such persons as to the terms of any agreement or instrument falling to be made under sub-paragraph (1) above;
- (c) assist such persons to negotiate any such agreement or instrument and mediate in any such negotiations;
- (d) prepare drafts of any such agreement or instrument; and
- (e) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Any transfer of any estate or interest in land under these Regulations (whether by virtue of an agreement or instrument entered into before or after the implementation date) is to be regarded as having taken place on the implementation date.

Resolution of disputes

17.—(1) In the case of any matter on which agreement is required to be reached under paragraph 15 or 16, if such an agreement has not been reached within a period of six months from the implementation date, the adjudicator may give a direction determining that matter, and may include in the direction any provision which may have been included in an agreement under paragraph 15 or 16.

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(2) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee must be regarded as having been transferred to, and by virtue of this Schedule vested in, the transferee on the implementation date.

(3) The adjudicator must consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

Right to production of documents of title

18.—(1) Where a transfer to which this Schedule applies relates to registered land, the transferor must execute any instrument under the Land Registration Acts 1925 to 2002⁽²⁾, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor must be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925⁽³⁾ has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

Proof of title by certificate

19. The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact.

Construction of agreements

20.—(1) Where in the case of any transfer to which this Schedule applies any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement, unless the context otherwise requires, has effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement;
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement;
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part;

(2) 1925 c.21, 1987 c.2, and 2002 c.9.

(3) 1925 c.21.

and paragraph (d) applies in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

21.—(1) Without prejudice to the generality of paragraph 20, the transferee under a transfer to which this Schedule applies and any other person must, as from the implementation date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of these regulations as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of these regulations, or to any agreement relating to any such property, right or liability, must be continued by or against the transferee to the exclusion of the transferor.

Third parties affected by vesting provisions

22.—(1) Without prejudice to the generality of paragraphs 20 to 21, any transaction effected between a transferor and a transferee in pursuance of paragraph 15 or of a direction under paragraph 17 is binding on all other persons, even if it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the transferor and the transferee.

(2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the transferor and as to part by or against the transferee, the adjudicator must give that person written notification of that fact.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—

- (a) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee; and
- (b) the value of any property or interest of that person is thereby diminished;

such compensation as may be just must be paid to that person by the transferor, the transferee or both.

(4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3), or as to the person to whom it must be paid, must be referred to and determined by the adjudicator.

23. In this Schedule—

“relevant purposes” means—

- (a) in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which the body acts; or
- (b) in relation to a transfer to a school's governing body, the purposes of the school;

“transferor” and “transferee” mean the transferor and transferee under any transfer to which this Schedule applies;

“trustees of the school” means any person (other than the governing body) holding property on trust for the purposes of the school.