

SCHEDULE 3

Regulation 17(5)

Supplementary Provisions with respect to land transfer

Provision of Information

1. The local education authority, governing body, and trustees 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

2.—(1) Any property, rights and liabilities of the trustees held or used or subsisting partly for the purposes of the school and partly for other purposes is, where the nature of the property, right or liability permits, to be divided or apportioned between the trustees and governing body 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

is to 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 is to be transferred or retained according to—

- (a) in the case of an estate or interest in land, whether on the implementation date the trustees or governing body appear 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 property or any right or liability, which of them appears on the implementation date to be likely to make use of the property or (as the case may be) 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 or persons concerned as may be agreed between the trustees and governing body or determined by the adjudicator under regulation 6.

Identification of property, rights and liabilities

3.—(1) The trustees and governing body must in accordance with regulation 6 agree the form of such written agreements, and other instruments, as are necessary or expedient to identify or define the property, rights and liabilities to be transferred or retained, or for making any such arrangements as are mentioned in paragraph 2(3) above, and as will afford to the trustees and governing body as against one another such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement is to 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,

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(c) for responsibility for registration of any matter in any description of statutory register.

(3) 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.

Right to production of documents of title

4.—(1) Where a transfer to which this Schedule applies relates to registered land, it is the duty of the trustees to execute any such instrument under the Land Registration Acts 1925 to 2002⁽¹⁾, to deliver any such certificate under those Acts and to 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.

(2) Where on any transfer to which this Schedule applies the trustees are entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the governing body, the trustees are to be treated as having given to the governing body an acknowledgment in writing of their right to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925⁽²⁾ 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

5. The adjudicator may issue a certificate stating that any property specified in the certificate, or any such 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 conclusive evidence for all purposes of that fact.

Construction of agreements

6.—(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 trustees were a party immediately before the implementation date, the agreement, unless the context otherwise requires, has effect on and after the implementation date as if—

- (a) the governing body had been a party to the agreement,
- (b) for any reference (whether express or implied and, if express, however worded) to the trustees or foundation there were substituted, as respects anything falling to be done on or after the implementation date, a reference to the governing body,
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the trustees or foundation or a person employed by the trustees or foundation in a specified capacity were, as respects anything falling to be done on or after the implementation date, a reference to such person as the governing body may appoint or, in default of appointment, to a member or employee of the governing body 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 trustees and governing body, the agreement constituted two separate agreements separately enforceable by and against the trustees and governing body as regards the part of the property, rights or liabilities retained by the trustees or (as the case may be) the part vesting in the governing body, and not as regards the other part

(1) 1925 c.21, 1987 c.2, and 2002 c.9.

(2) 1925 c.20.

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

(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 trustees.

7.—(1) Without prejudice to paragraph 6, the governing body under a transfer to which this Schedule applies, and any other person, are, as from the implementation date, to 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 governing body by virtue of these Regulations as they would have had if that right or liability had at all times been a right or liability of the governing body.

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

Third Parties affected by vesting provisions

8.—(1) Without prejudice to the generality of paragraphs 6 and 7, any transaction effected between the trustees and a governing body in pursuance of paragraph 2(1) or of a determination under regulation 6 is to be binding on all other persons, even though it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the trustees and governing body.

(2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the trustees and as to part by or against the governing body, 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 trustees or the governing body which were enforceable against or by the trustees become enforceable as to part against or by the trustees and as to part against or by the governing body, 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 trustees, the governing body 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 by whom or to whom it must be paid, must be referred to and determined by the adjudicator.