

SCHEDULES

SCHEDULE 1

Article 34.

THE GENERAL TEACHING COUNCIL FOR NORTHERN IRELAND

Constitution

- 1.—(1) The Council shall be constituted in accordance with regulations.
- (2) Without prejudice to the generality of sub-paragraph (1), regulations under that sub-paragraph—
- (a) shall provide for the membership of the Council to include persons representative of—
 - (i) teachers;
 - (ii) employing authorities;
 - (iii) transferors and trustees of grant-aided schools;
 - (iv) institutions providing for the initial and further training of teachers;
 - (v) industry and commerce; and
 - (vi) such other interests as in the opinion of the Department will enable the Council to carry out its functions more effectively;
 - (b) shall provide for—
 - (i) the appointment or election and tenure of office of, and the vacation of office by, members of the Council;
 - (ii) the appointment or election of one of the members of the Council to be chairman of the Council and the period for which the chairman is to hold office;
 - (c) may enable or require the Council to establish committees for any purpose specified in the regulations and provide for the constitution of such committees.
- (3) Regulations under sub-paragraph (1) may authorise the Council to make provision with respect to any matter.

Status

2.—(1) The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the Council shall not be regarded as property of, or property held on behalf of, the Crown.

(2) The Council shall be a body corporate to which, subject to the provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

Powers

3.—(1) The Council may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions.

(2) In particular the Council may—

- (a) invest sums not immediately required for the purpose of carrying out its functions;

Status: Point in time view as at 01/04/2015.

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- (b) accept gifts of money, land or other property; and
- (c) charge for services provided by it.

Staff

4. The right of the Council under section 19(1)(a)(vi) of the Interpretation Act (Northern Ireland) 1954 to employ staff shall be exercised subject to paragraph 5 and to any directions given by the Department with respect to the number and terms and conditions of service of persons employed or to be employed by the Council.

The registrar

- 5.—(1) The Council shall have a chief officer (known as “the registrar”) who shall be appointed—
- (a) in the case of the first registrar, by the Department; and
 - (b) in the case of any subsequent registrar, by the Council with the approval of the Department.
- (2) The terms and conditions of service of the registrar shall—
- (a) in the case of the first registrar, be such as the Department may determine; and
 - (b) in the case of any subsequent registrar, be such as the Council may determine with the approval of the Department.
- (3) The registrar shall be entitled to attend and take part in meetings of the Council and its committees but not to vote on any question.

Assessors

- 6.—(1) The Department may appoint two assessors to the Council who shall be entitled to receive notice of, and attend and take part in, meetings of the Council and its committees, but not to vote on any question.
- (2) Section 18(2) of the Interpretation Act (Northern Ireland) 1954 (except so much thereof as relates to remuneration) shall apply to the appointment of assessors under sub-paragraph (1).

Delegation of functions

- 7.—(1) The Council may authorise the chairman, the registrar or any committee of the Council to exercise such of its functions as it may determine.
- (2) Sub-paragraph (1) is without prejudice to any power to authorise an officer of the Council to carry out any of the Council's functions on behalf of the Council.

Allowances to members

8. The Council may pay to any member of the Council or to any member of a committee of the Council (including persons who are not members of the Council) travelling, subsistence and other allowances at such rates as the Department may approve.

Procedure

- 9.—(1) The proceedings of the Council shall not be invalidated by any vacancy in the membership of the Council, or of any committee of the Council, or by any defect in the appointment of any member.
- (2) Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Council shall make standing orders relating to—
- (a) the convening of meetings of the Council and of committees of the Council;
 - (b) the fixing of the quorum for such meetings;

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- (c) the conduct of business at such meetings;
- (d) the keeping of minutes, accounts and other records;
- (e) the signing of cheques;
- (f) the custody of deeds and other documents;
- (g) the duties of officers of the Council; and
- (h) such other matters connected with the conduct of its business as it thinks fit.

(3) In making standing orders under this paragraph the Council shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in the standing orders.

Application of seal and proof of instruments

10.—(1) The application of the seal of the Council shall be authenticated by the signature of—

- (a) the chairman of the Council or some other person authorised either generally or specially by the Council for that purpose; and
- (b) one other member.

(2) Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

Finance

11. The Department may make grants to the Council of such amounts and subject to such terms and conditions as the Department may determine.

Accounts and audit

12.—(1) The Council shall keep, in such form as the Department may direct, accounts of all moneys received and all moneys paid out by it.

(2) In respect of each financial year—

- (a) the Council shall prepare and submit to the Comptroller and Auditor General and the Department a statement of accounts before such date, in such form and containing such information as the Department, with the approval of the Department of Finance and Personnel, may direct;
- (b) the Comptroller and Auditor General shall examine and certify the statement of accounts submitted to him by the Council; and
- (c) the Department shall lay before the Assembly a copy of the certified statement of accounts of the Council together with a copy of any report thereon of the Comptroller and Auditor General.

Sub-para. (3) rep. by 2003 NI 5

(4) In this paragraph “Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland.

Annual report

13.—(1) The Council shall, within such time after the end of each financial year as the Department may direct, prepare and submit to the Department a report on the exercise by the Council of its functions in that year.

(2) The Department shall—

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- (a) lay before the Assembly copies of every report received under sub-paragraph (1); and
- (b) arrange for every such report to be published in such form as the Department thinks appropriate.

SCHEDULE 2

Article 58.

PROVISIONS RELATING TO THE STAFF OF CONTROLLED AND MAINTAINED SCHOOLS WITH DELEGATED BUDGETS

Application of this Schedule

1.—(1) Subject to sub-paragraph (2), this Schedule applies to a controlled or maintained school at any time when it has a delegated budget.

(2) Paragraphs 3 to 6 do not apply to teaching staff in a maintained school other than a Catholic maintained school.

(3) In the application of paragraph 7 to teaching staff in a maintained school, other than a Catholic maintained school, sub-paragraph (5) shall be omitted.

Determination of staff complement

2. Every school to which this Schedule for the time being applies shall have a complement of teaching and non-teaching posts determined by the Board of Governors of the school.

Discipline

3.—(1) The regulation of conduct and discipline in relation to the staff of any school to which this Schedule for the time being applies, and any procedures for affording to members of the staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the Board of Governors.

(2) The Board of Governors of any such school shall, after consultation with the employing authority, establish—

- (a) disciplinary rules and procedures; and
- (b) procedures such as are mentioned in sub-paragraph (1),

and shall take such steps as appear to it to be appropriate for making them known to the staff at the school.

(3) Where the implementation of any determination made by the Board of Governors in the exercise of its control over the conduct and discipline of the staff of any such school requires any action which—

- (a) is not within the functions exercisable by the Board of Governors by virtue of the Education Orders; and
- (b) is within the power of the employing authority,

it shall be the duty of the employing authority to take that action at the request of the Board of Governors.

Suspension

4.—(1) In the case of any school to which this Schedule for the time being applies, the Board of Governors and the principal shall both have power to suspend any person employed to work at

the school where, in the opinion of the Board of Governors or (as the case may be) of the principal, his exclusion from the school is required.

(2) The Board of Governors or principal, when exercising that power, shall immediately inform the employing authority and the principal or (as the case may be) the Board of Governors.

(3) Any suspension under this paragraph may only be ended by the Board of Governors; and the Board of Governors shall, on ending such a suspension, immediately inform the employing authority and the principal.

(4) In this paragraph “suspend” means suspend without loss of emoluments.

Dismissal, etc.

5.—(1) Where the Board of Governors of any school to which this Schedule for the time being applies determines that any person employed to work at the school under a particular contract of employment should cease to work there under that contract, it shall notify the employing authority in writing of its determination and the reasons for it.

(2) If in a case within sub-paragraph (1)—

- (a) the person concerned is employed under the contract of employment in question to work solely at the school; and
- (b) he does not resign,

the employing authority shall, before the end of the period of one month beginning with the date on which the notification under sub-paragraph (1) is given in relation to him, either give him such notice terminating that contract with the employing authority as is required under that contract or terminate that contract without notice if the circumstances are such that it is entitled to so do by reason of his conduct.

(3) If in a case within sub-paragraph (1) the person concerned is not employed under the contract of employment in question to work solely at the school the employing authority shall require him to cease to work at the school.

(4) In any case within sub-paragraph (3) no part of the costs incurred by [F1the Authority] in respect of the emoluments of the person concerned under the contract of employment in question, so far as relates to any period falling after the expiration of his contractual notice period, shall be met from the school's budget share.

(5) In relation to any such person, the reference in sub-paragraph (4) to his contractual notice period is a reference to the period of notice that would have been given under the contract of employment in question for termination of that contract if such notice had been given on the date on which the notification under sub-paragraph (1) was given in relation to him.

(6) The Board of Governors of such a school shall make arrangements for affording to any person in respect of whom it proposes to make any determination under sub-paragraph (1) an opportunity of making representations with respect to the action it proposes to take, including (if he so wishes) oral representations to such person or persons as the Board of Governors may appoint for the purpose, and shall have regard to any representation made by him.

(7) The Board of Governors of such a school shall also make arrangements for affording to any person in respect of whom it has made such a determination an opportunity of appealing against it before it notifies the employing authority of the determination.

(8) The relevant officer of the employing authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination under sub-paragraph (1) and the Board of Governors shall consider any advice given by a person entitled to attend such proceedings under this sub-paragraph before making any such determination.

Status: Point in time view as at 01/04/2015.

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F1 Words in **Order** substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), **Sch. 3 para. 1(1)(a)** (with Sch. 2 para. 4(3), Sch. 3 para. 1(2)); S.R. 2015/35, art. 2(b)

6.—(1) Subject to sub-paragraph (2), the employing authority shall not dismiss a person employed by it to work solely at a school to which this Schedule for the time being applies except as provided by paragraph 5.

(2) Sub-paragraph (1) shall not apply in any case where the dismissal of the person in question is required to comply with—

- (a) Article 35(3); or
- (b) any regulations made under Article 88A of the 1986 Order.

Payments in respect of dismissals, resignations, etc.

7.—(1) Subject to sub-paragraph (2), it shall be for the Board of Governors of any school to which this Schedule for the time being applies to determine—

- (a) whether any payment should be made by the ^[F2]Authority 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.

(2) Sub-paragraph (1) does not apply in relation to any payment which is required or authorised to be made—

- (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.

(3) The ^[F2]Authority—

- (a) shall take such steps as may be required for giving effect to any determination of the Board of Governors of any such school under sub-paragraph (1); and
- (b) shall not make, or agree to make, any payment to which that sub-paragraph 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.

(4) Costs incurred by the ^[F2]Authority in giving effect to any determination under sub-paragraph (1) in respect 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 ^[F1]the Authority has good reason for deducting those costs, or any part of those costs, from that share.

(5) The fact that the employing authority has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of sub-paragraph (4).

^{F3}(6)

F1 Words in **Order** substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), **Sch. 3 para. 1(1)(a)** (with Sch. 2 para. 4(3), Sch. 3 para. 1(2)); S.R. 2015/35, art. 2(b)

F2 Word in Sch. 2 para. 7 substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), **Sch. 3 para. 20(7)** (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

F3 Sch. 2 para. 7(6) repealed (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), **Sch. 4** (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

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School meals staff

8. Nothing in paragraphs 2 to 7 shall apply in relation to a person employed to work at a school to which this Schedule for the time being applies, where—

- (a) the person concerned is to be, or is, employed to work solely in connection with the provision of a schools meals service; and
- (b) no allowance is made for expenditure on or in connection with the provision of such a service in determining the school's budget share.

Application of employment law

9.—(1) The Department may by order make such modifications in any statutory provision relating to employment and, in particular, in any statutory provision—

- (a) conferring powers or imposing duties on employers;
- (b) conferring rights on employees; or
- (c) otherwise regulating the relations between employers and employees;

as it considers necessary or expedient in consequence of the operation of any of the provisions of this Schedule.

(2) Before making any order under this paragraph, the Department shall consult—

- (a) [F1the Authority];
- (b) the Council for Catholic Maintained Schools;
- (c) the Boards of Governors of maintained schools (other than Catholic maintained schools) or any body representing their interests;
- (d) such organisations representing staff in controlled and maintained schools as appear to the Department to be concerned; and
- (e) such other persons as the Department thinks fit.

F1 Words in **Order** substituted (1.4.2015) by **Education Act (Northern Ireland) 2014 (c. 12), Sch. 3 para. 1(1)(a)** (with **Sch. 2 para. 4(3), Sch. 3 para. 1(2)**); S.R. 2015/35, art. 2(b)

Interpretation

10.—(1) In this Schedule “employing authority” means—

- (a) in relation to teachers and other staff in a controlled school, [F1the Authority]^{F4}...;
- (b) in relation to teachers in a Catholic maintained school, the Council for Catholic Maintained Schools;
- (c) in relation to other staff in a Catholic maintained school, [F1the Authority]^{F5}...; and
- (d) in relation to staff other than teachers in a maintained school other than a Catholic maintained school, [F1the Authority]^{F6}....

(2) In paragraph 5(8) “the relevant officer” of the employing authority means—

- (a) where the employing authority is [F1the Authority], the chief education officer of [F1the Authority] or another officer of [F1the Authority] nominated by him;
- (b) where the employing authority is the Council for Catholic Maintained Schools, the chief executive of the Council or another officer of the Council nominated by him.

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| F1 | Words in Order substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), Sch. 3 para. 1(1)(a) (with Sch. 2 para. 4(3), Sch. 3 para. 1(2)); S.R. 2015/35, art. 2(b) |
| F4 | Words in Sch. 2 para. 10(1)(a) repealed (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), Sch. 4 (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b) |
| F5 | Words in Sch. 2 para. 10(1)(c) repealed (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), Sch. 4 (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b) |
| F6 | Words in Sch. 2 para. 10(1)(d) repealed (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), Sch. 4 (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b) |

SCHEDULE 3

Article 73.

THE NORTHERN IRELAND COUNCIL FOR THE CURRICULUM, EXAMINATIONS AND ASSESSMENT

Constitution and status

1.—(1) The Council shall be a body corporate to which, subject to the following provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

(2) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

2.—(1) The Council shall consist of a chairman and not fewer than 9 or more than 17 other members.

(2) The chairman and other members of the Council shall be appointed by the Head of the Department and shall be persons appearing to the Head of the Department to have knowledge or experience relevant to the functions of the Council.

(3) The Council may elect a deputy chairman from among its members.

(4) The Department may appoint two assessors to the Council who shall be entitled to receive notice of, and to attend and speak at, meetings of the Council and of committees and sub-committees thereof, but shall not be entitled to vote.

(5) Section 18(2) of the Interpretation Act (Northern Ireland) 1954 (except so much thereof as relates to remuneration) shall apply to the appointment of assessors under sub-paragraph (4).

Qualifications of members and tenure of office

3.—(1) A person shall hold and vacate office as a member or as chairman of the Council in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

(2) A member shall be deemed to have vacated his office and the Council shall declare his place vacant in the following circumstances—

- (a) where he gives to the Head of the Department a notice in writing of his resignation;
- (b) where he becomes bankrupt or makes a composition or arrangement with his creditors;
- (c) where, in the opinion of the Head of the Department, he becomes unable or unfit to discharge the functions of a member and the Head of the Department so informs the Council in writing;

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- (d) where he is convicted of an indictable offence and is sentenced to a term of imprisonment of not less than 3 months; or
 - (e) where he fails, without leave of the Council, to attend any meetings of the Council or of a committee or sub-committee thereof for a period of 6 consecutive months.
- (3) If the chairman or deputy chairman of the Council ceases to be a member of the Council, he shall also cease to be chairman or deputy chairman.

Committees

- 4.—(1) The Council shall appoint a Finance Committee.
- (2) The Council may appoint such other committees as it thinks fit.
- (3) A committee appointed under sub-paragraph (2) may include persons who are not members of the Council.
- (4) The Council may delegate any of its functions to a committee, but functions which relate to finance may be delegated only to the Finance Committee.
- (5) The Council may authorise a committee to appoint sub-committees for such purposes as the Council may approve and the membership of such sub-committees may include persons who are not members of the Council or of the committee which appointed the sub-committee.
- (6) The powers of any committee or any sub-committee appointed under this paragraph shall be exercised, and the proceedings of the committee or sub-committee shall be regulated, in accordance with, and subject to, any directions given by the Council.

Procedure

5. The proceedings of the Council or of any committee or sub-committee shall not be invalidated by any vacancy in the membership of the Council, or of any committee or sub-committee, or by any defect in the appointment of a member.
6. Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Council shall make standing orders relating to the convening of meetings of the Council and of committees and sub-committees, the fixing of the quorum, the conduct of business at meetings, the keeping of minutes, accounts and other records, the signing of cheques, the custody of deeds and other documents, the duties of officers and such other matters connected with the conduct of its business as it thinks fit.
7. The application of the seal of the Council shall be authenticated by the signatures of any two members of the Council authorised by the Council to act for that purpose.
8. The power of the Council under section 19(1)(a)(iv) of the Interpretation Act (Northern Ireland) 1954 to acquire, hold, dispose of or charge real property shall not be exercised without the approval of the Department.

Staff

- 9.—(1) The right of the Council under section 19(1)(a)(vi) of the Interpretation Act (Northern Ireland) 1954 to employ staff shall be exercised subject to the following provisions of this paragraph and any directions which may be given by the Department with respect to the number and terms and conditions of service of persons employed or to be employed by the Council.
- (2) The officers of the Council (other than the chief executive) shall be appointed at such rates of remuneration as the Council may, with the consent of the Department, determine.
- (3) The Council shall have a chief executive who shall be appointed—
- (a) in the case of a person who is also chairman of the Council, by the Head of the Department;

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(b) in any other case, by the Council with the approval of the Department.

(4) The appointment of the chief executive shall be on such terms and conditions as the Department (in the case of an appointment under sub-paragraph (3)(a)) or the Council after consultation with the Department (in the case of an appointment under sub-paragraph (3)(b)) may determine.

(5) No member of the Council other than the chairman shall be appointed as chief executive.

(6) A person who is an officer of the Council (other than the chief executive) shall not be qualified to be a member of the Council.

(7) The Council may, in accordance with arrangements determined by the Department, make provision for the payment on death or retirement of pensions, gratuities or other like benefits to or in respect of the service of officers of the Council.

Allowances

10. The Council may pay to any member of the Council or to any member of a committee or sub-committee thereof (including persons who are not members of the Council) travelling, subsistence and other allowances at such rates as the Department may approve.

Power to form bodies corporate

11. The Council may, in the exercise of any of its functions, form bodies corporate, but shall only do so with the approval of the Department and subject to such conditions as the Department may specify in granting any such approval.

Finance

12.—(1) The Department may pay to the Council grants equal to—

- (a) approved expenditure incurred by the Council for the provision or alteration of premises for the use of the Council;
- (b) approved expenditure incurred by the Council for the provision of equipment;
- (c) other approved expenditure incurred by the Council in carrying out a work programme approved under Article 80.

(2) Grants under this paragraph shall be made on such conditions (including conditions as to repayment) and at such times as the Department may determine.

Accounts and audit

13.—(1) The Council shall keep, in such form as the Department may direct, accounts of all moneys received and all moneys paid out by it.

(2) In respect of each financial year—

- (a) the Council shall prepare and submit to the Comptroller and Auditor General and the Department a statement of accounts before such date, in such form and containing such information as the Department, with the approval of the Department of Finance and Personnel, may direct;
- (b) the Comptroller and Auditor General shall examine and certify the statement of accounts submitted to him by the Council; and
- (c) the Department shall lay before the Assembly a copy of the certified statement of accounts of the Council together with a copy of any report thereon of the Comptroller and Auditor General.

Sub-para. (3) rep. by 2003 NI 5

(4) In this paragraph “Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland.

SCHEDULE 4

Article 88(3).

CERTIFIED CONTRACTS OF [F¹THE AUTHORITY]

Certified contracts assumed to be *intra vires*

1.—(1) Where [F¹the Authority] has entered into a contract, the contract shall, if it is a certified contract, have effect (and be deemed always to have had effect) as if [F¹the Authority] had had power to enter into it (and had exercised that power properly in entering into it).

(2) For the purposes of this Schedule a contract entered into by [F¹the Authority] is a certified contract if (and, subject to sub-paragraphs (3) and (4), only if) the certification requirements have been satisfied by [F¹the Authority] with respect to the contract and they were so satisfied before the end of the certification period.

(3) A contract entered into by [F¹the Authority] shall be treated as a certified contract during the certification period if the contract provides that the certification requirements are intended to be satisfied by [F¹the Authority] with respect to the contract before the end of that period.

(4) Where [F¹the Authority] has entered into a contract which is a certified contract (“the existing contract”) and the existing contract is replaced by a contract entered into by it with a person or persons not identical with the person or persons with whom it entered into the existing contract, the replacement contract is also a certified contract if—

- (a) the period for which it operates or is intended to operate ends at the same time as the period for which the existing contract was to operate; and
- (b) apart from that, its provisions are the same as those of the existing contract.

(5) Subject to sub-paragraph (6), in this Schedule “the certification period”, in relation to a contract entered into by [F¹the Authority], means the period of 6 weeks beginning with the day on which [F¹the Authority] entered into the contract.

(6) In relation to a contract entered into before the day on which this paragraph comes into operation, “the certification period” means the period of 6 weeks beginning with that day.

(7) Sub-paragraph (1) is subject to paragraph 3 (special provisions about judicial reviews).

(8) The application of sub-paragraph (1) in relation to a contract entered into by [F¹the Authority] does not affect any claim for damages made by a person who is not (and has never been) a party to the contract in respect of a breach by [F¹the Authority] of any duty to do, or not to do, something before entering into the contract (including, in particular, any such duty imposed by a statutory provision for giving effect to any Community obligation relating to public procurement. ^{F7}...

F7 Words in Sch. 4 para. 1(8) repealed (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 4](#) (with [Sch. 2 para. 4\(3\)](#)); [S.R. 2015/35](#), art. 2(b)

The certification requirements

2.—(1) In this Schedule “the certification requirements”, in relation to a contract entered into by [F¹the Authority], means the requirements specified in sub-paragraphs (2) to (4).

Status: Point in time view as at 01/04/2015.

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(2) The requirement specified in this sub-paragraph is that [F1the Authority] must have issued a certificate (whether before or after the contract is entered into)—

- (a) including details of the period for which the contract operates or is to operate;
- (b) describing the purpose of the contract;
- (c) containing a statement that the contract is or is to be a contract falling within sub-paragraph (5) or (6);
- (d) stating that [F1the Authority] had or has power to enter into the contract and specifying the statutory provision, or each of the statutory provisions, conferring the power;
- (e) stating that a copy of the certificate has been or is to be given to each person to whom a copy is required to be given by regulations;
- (f) dealing in a manner prescribed by regulations with any matters required by regulations to be dealt with in certificates under this paragraph; and
- (g) confirming that [F1the Authority] has complied with or is to comply with any requirement imposed by regulations with respect to the issue of certificates under this paragraph.

(3) The requirement specified in this sub-paragraph is that [F1the Authority] must have secured that the certificate is signed by any person who is required by regulations to sign it.

(4) The requirement specified in this sub-paragraph is that [F1the Authority] must have obtained consent to the issue of a certificate under this paragraph from each of the persons with whom [F1the Authority] has entered, or is to enter, into the contract.

(5) A contract entered into by [F1the Authority] falls within this sub-paragraph if—

- (a) it is entered into with another person for the provision or making available of services (whether or not together with assets) for the purposes of, or in connection with, the discharge by [F1the Authority] of any of its functions; and
- (b) it operates, or is intended to operate, for a period of at least 5 years.

(6) A contract entered into by [F1the Authority] falls within this sub-paragraph if it is entered into, in connection with a contract falling within sub-paragraph (5), with—

- (a) a person who, in connection with that contract, makes a loan to, or provides any other form of finance for, a party to that contract other than [F1the Authority]; or
- (b) any insurer of or trustee for such a person.

(7) The Department may by regulations subject to affirmative resolution amend sub-paragraph (5) or (6).

(8) Where the certification requirements have been satisfied in relation to a contract by [F1the Authority], the certificate which has been issued shall have effect (and be deemed always to have had effect) as if [F1the Authority] had had power to issue it (and had exercised that power properly in issuing it); and a certificate which has been so issued is not invalidated by reason that anything in the certificate is inaccurate or untrue.

(9) Where the certification requirements have been satisfied in relation to a contract by [F1the Authority], [F1the Authority] shall secure that throughout the period for which the contract operates—

- (a) a copy of the certificate which has been issued is open to inspection by members of the public at all reasonable times without payment; and
- (b) members of the public are afforded facilities for obtaining copies of that certificate on payment of a reasonable fee.

Special provision for judicial review

3.—(1) Paragraph 1(1) does not apply for the purposes of determining any question arising on an application for judicial review as to whether [F1the Authority] had power to enter into a contract (or exercised any power properly in entering into a contract).

(2) Paragraph 1(1) has effect subject to any determination or order made in relation to a certified contract on an application for judicial review.

(3) Where, on an application for judicial review relating to a certified contract entered into by [F1the Authority], a court—

- (a) is of the opinion that [F1the Authority] did not have power to enter into the contract (or exercised any power improperly in entering into it); but
- (b) (having regard in particular to the likely consequences for the financial position of [F1the Authority], and for the provision of services to the public, of a decision that the contract should not have effect) considers that the contract should have effect,

the court may determine that the contract has (and always has had) effect as if [F1the Authority] had had power to enter into it (and had exercised that power properly in entering into it).

(4) In this paragraph and paragraphs 4 and 5 references to an application for judicial review include any appeal (or further appeal) against a determination or order made on such an application.

Relevant discharge terms

4.—(1) No determination or order made in relation to a certified contract on an application for judicial review shall affect the enforceability of any relevant discharge terms relating to the contract.

(2) In this paragraph and paragraph 5 “relevant discharge terms”, in relation to a contract entered into by [F1the Authority], means terms—

- (a) which have been agreed by [F1the Authority] and any person with whom [F1the Authority] entered into the contract;
- (b) which either form part of the contract or constitute or form part of another agreement entered into by them not later than the day on which the contract was entered into; and
- (c) which provide for a consequence mentioned in sub-paragraph (3) to ensue in the event of the making of a determination or order in relation to the contract on an application for judicial review.

(3) Those consequences are—

- (a) the payment of compensatory damages (measured by reference to loss incurred or loss of profits or to any other circumstances) by one of the parties to the other;
- (b) the adjustment between the parties of rights and liabilities relating to any assets provided or made available under the contract; or
- (c) both of those things.

(4) Where [F1the Authority] has agreed relevant discharge terms with any person with whom it has entered into a contract and the contract is a certified contract, the relevant discharge terms shall have effect (and be deemed always to have had effect) as if [F1the Authority] had had power to agree them (and had exercised that power properly in agreeing them).

Absence of relevant discharge terms

5.—(1) Sub-paragraph (2) applies where—

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- (a) the result of a determination or order made by a court on an application for judicial review is that a certified contract does not have effect; and
 - (b) there are no relevant discharge terms having effect between [^{F1}the Authority] and a person who is a party to the contract.
- (2) That person shall be entitled to be paid by [^{F1}the Authority] such sums (if any) as he would have been entitled to be paid by [^{F1}the Authority] if the contract—
- (a) had had effect until the time when the determination or order was made; but
 - (b) had been terminated at that time by acceptance by him of a repudiatory breach by [^{F1}the Authority].
- (3) For the purposes of this paragraph the circumstances in which there are no relevant discharge terms having effect between [^{F1}the Authority] and a person who is a party to the contract include (as well as circumstances in which no such terms have been agreed) circumstances in which the result of a determination or order of a court, made (despite paragraph 4(4)) on an application for judicial review, is that such terms do not have effect.

Schedule 5—Amendments

Schedule 6—Repeals

Status:

Point in time view as at 01/04/2015.

Changes to legislation:

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