



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART I

#### SCHOOLS

#### CHAPTER IV

##### GRANT-MAINTAINED SCHOOLS

*Transfer of property and staff, etc.*

#### **74 Transfer of property, etc., to governing body of grant-maintained school**

- (1) Subject to the following provisions of this section and section 198 of this Act, on the incorporation date in relation to a grant-maintained school—
  - (a) the property, rights and liabilities of the former maintaining authority mentioned in subsection (2) below; and
  - (b) any property, rights and liabilities of the former governing body of the school; shall be transferred to, and by virtue of this Act vest in, the governing body of the grant-maintained school.
- (2) The property, rights and liabilities referred to in subsection (1)(a) above are—
  - (a) all land or other property which, immediately before the incorporation date, was property used or held by the former maintaining authority for the purposes of the school; and
  - (b) all rights and liabilities subsisting immediately before the incorporation date which were acquired or incurred by that authority for those purposes.
- (3) Subsection (1) above shall not apply to rights and liabilities under any contract of employment; and paragraph (a) of that subsection shall not apply to—
  - (a) any land or other property vested in the former maintaining authority as trustees;

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- (b) any liability of that authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.
- (4) Subject to section 198 of this Act, any land or other property of the former maintaining authority excluded by virtue of subsection (3)(a) above from transfer to the governing body of a grant-maintained school shall, on the incorporation date in relation to the school, be transferred to, and by virtue of this Act vest in, the first governors of the school on the trusts applicable immediately before that date under any trust deed regulating the use of that land or other property for the purposes of the school.
- (5) On the incorporation date in relation to a grant-maintained school—
- (a) the duty of the former maintaining authority to maintain the school as a county or voluntary school shall be extinguished; and
  - (b) any special agreement relating to the school shall cease to have effect.
- (6) For the purposes of this section any interest in a dwelling-house which, immediately before the incorporation date in relation to such a school, is used or held by the former maintaining authority for occupation by a person employed to work at the school shall be treated as an interest used or held for the purposes of the school.
- (7) In this section “the former governing body” means, in relation to such a school, the governing body of the school immediately before the incorporation date in relation to the school.
- (8) In this Chapter, “the former maintaining authority” means, in relation to such a school, the local education authority by whom the school was maintained immediately before the incorporation date in relation to the school.
- (9) In this Act, “transfer date” means, in relation to such a school, the incorporation date in relation to the school.

## **75 Transfer of staff to grant-maintained school**

- (1) Subject to subsection (3) below, this section applies to any person who—
- (a) immediately before the transfer date in relation to a grant-maintained school which is then an aided school is employed by the governing body of the school; or
  - (b) immediately before the transfer date in relation to a grant-maintained school—
    - (i) is employed by the local education authority by whom the school is maintained to work solely at the school; or
    - (ii) is employed by that authority to work at the school and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (1)(b) above as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.
- (3) This section does not apply to—

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- (a) any person employed as mentioned in subsection (1)(a) or (b) above whose contract of employment terminates on the day immediately preceding the transfer date;
  - (b) any person employed as mentioned in subsection (1)(b) above who before that date has been—
    - (i) appointed or assigned by the local education authority concerned to work solely at another school as from that date; or
    - (ii) withdrawn from work at the school with effect as from that date.
- (4) A person who before the transfer date has been appointed or assigned by the local education authority by whom the school is maintained to work at the school as from that date shall be treated for the purposes of this section as if he had been employed by that authority immediately before that date to do such work at the school as he would have been required to do on or after that date under his contract of employment with that authority.
- (5) References below in this section to the former employer are references—
- (a) in relation to a person to whom this section applies by virtue of subsection (1) (a) above, to the governing body of the school immediately before the transfer date; and
  - (b) in relation to a person to whom this section applies by virtue of subsection (1) (b) above, to the local education authority by whom the school is maintained immediately before that date.
- (6) The contract of employment between a person to whom this section applies and the former employer shall have effect from the transfer date as if originally made between him and the governing body of the grant-maintained school.
- (7) Without prejudice to subsection (6) above—
- (a) all the former employer's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the governing body of the grant-maintained school on the transfer date; and
  - (b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to that governing body.
- (8) Subsections (6) and (7) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (9) An order under this section may designate a person either individually or as a member of a class or description of employees.

## **76 Effect of pending procedure for acquisition of grant-maintained status on property disposals**

- (1) This section applies to a school during any period when the procedure under this Chapter for acquisition of grant-maintained status is pending in relation to the school.
- (2) For the purposes of this section that procedure is pending in relation to a school when it has been initiated in relation to the school on any occasion and not terminated (as initiated on that occasion).

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- (3) For those purposes that procedure is to be regarded as initiated in relation to any school on any occasion—
- (a) where the governing body of the school have decided to hold a ballot in accordance with section 61 of this Act by a first resolution passed as mentioned in subsection (1)(a) of section 60 of this Act, when the local education authority by whom the school is maintained are first consulted under subsection (3) of that section; or
  - (b) where such a request as is mentioned in subsection (1)(b) of that section has been received by the governing body, on receipt by that authority of notice under subsection (4)(b) of that section that such a ballot is to be held.
- (4) For those purposes that procedure, as initiated on any occasion, is to be regarded as terminated—
- (a) in the case of procedure initiated as mentioned in subsection (3)(a) above, if the period of forty-two days after that on which the first resolution was passed has expired and the decision to hold a ballot has not been confirmed by a second resolution passed in accordance with section 60(1)(a) of this Act; or
  - (b) in the case of procedure initiated as mentioned in subsection (3)(a) or (b) above, if either—
    - (i) the result of the ballot to which that consultation or notice relates does not show a majority in favour of seeking grant-maintained status for the school; or
    - (ii) proposals for acquisition of such status for the school which are required to be published by reference to the result of that ballot, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn.

Where section 61(8) of this Act applies in the case of any such ballot, the references in sub-paragraphs (i) and (ii) of paragraph (b) above to the result of that ballot shall be read as references to the result of the second ballot required by that subsection.
- (5) The reference in subsection (4) above to proposals required in substitution for any proposals for acquisition of grant-maintained status for any school which are required to be published by reference to the result of a ballot held in accordance with section 61 of this Act (“W”) is a reference to any proposals required to be published under subsection (4) or (12) of section 62 of this Act on withdrawal or (as the case may be) rejection of—
- (a) the original proposals; or
  - (b) any further proposals required to be published under either of those subsections with respect to the school without a further ballot;
- and proposals under that section with respect to a school shall not be treated for the purposes of subsection (4) above as rejected in any case where the Secretary of State imposes a requirement under subsection (12) of that section or as withdrawn in any case where he imposes a requirement under subsection (4) of that section.
- (6) Except with the required consent, a local education authority shall not—
- (a) dispose of any property used wholly or partly for the purposes of a school to which this section for the time being applies; or
  - (b) enter into a contract to dispose of any such property.

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- (7) Subsection (6) above 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 mentioned in subsection (1) above was initiated in relation to the school.
- (8) Where in relation to any proposed disposal it is agreed between the local education authority concerned and the governing body of the school that the value of the property in question does not exceed £6,000 the required consent for that disposal (and for any contract to make it) is the consent of the governing body of the school.
- (9) In any case other than one within subsection (8) above, the required consent for any proposed disposal (and for any contract to make it) is the consent of both the governing body of the school and the Secretary of State.
- (10) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this section and (subject to section 77 of this Act) a person acquiring property, or entering into a contract to acquire property, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given.
- (11) This section has effect notwithstanding anything in section 123 of the Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (12) In this section and in section 77 of this Act—
  - (a) references to disposing of property include, in the case of land, references to granting or disposing of any interest in land; and
  - (b) references to entering into a contract to dispose of property include, in the case of land, references to granting an option to acquire land or any such interest.
- (13) Where a proposed disposal forms part of a proposed series of transactions, all disposals forming part of that series shall be treated as one disposal for the purposes of this section.
- (14) The Secretary of State may by order substitute for the sum specified in subsection (8) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

## **77 Wrongful disposals and contracts**

- (1) This section applies where in the case of a school to which section 76 of this Act applies—
  - (a) proposals for acquisition of grant-maintained status are approved by the Secretary of State; and
  - (b) the local education authority have made any disposal, or have entered into any contract, in contravention of subsection (6) of that section (referred to below in this section as a wrongful disposal or, as the case may be, a wrongful contract).
- (2) In the case of any wrongful disposal, the governing body of the school shall be entitled to recover from the local education authority concerned the value of the property disposed of.

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- (3) In the case of a wrongful contract which consists in granting an option to acquire any land or interest in land, the governing body of the school may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) In the case of any other wrongful contract, the governing body of the school may by notice in writing served on the other party to the contract repudiate the contract—
  - (a) in the case of a contract to dispose of any land or to grant or dispose of any interest in land, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed;
  - (b) in any other case, at any time before the contract is performed.
- (5) A repudiation under subsection (3) or (4) above shall have effect as if made by the local education authority concerned.
- (6) Without prejudice to any provision made under paragraph 2(d) of Schedule 5 to this Act, the powers conferred by this section may only be exercised on or after the incorporation date in relation to the school.

**78 Effect of pending procedure for acquisition of grant-maintained status on appointment, etc., of staff**

- (1) During any period when section 76 of this Act applies to a school, the local education authority shall not take any action to which this section applies without the consent of the governing body of the school.
- (2) This section applies to the following actions—
  - (a) the appointment of any person to fill a vacancy in a post which is part of the complement of the school or to work solely at the school in any other post;
  - (b) the dismissal (otherwise than under section 27(5) or 28(4) of the 1944 Act, which allow foundation governors, within the meaning of that Act, to dismiss a reserved teacher) of any person to whom subsection (3) below applies; and
  - (c) the withdrawal of any such person from work at the school (otherwise than by dismissing him).
- (3) This subsection applies to any person who is employed—
  - (a) in a post which is part of the complement of the school; or
  - (b) to work solely at the school in any other post.
- (4) The reference in subsection (2)(a) above to the complement of the school is a reference to the complement of teaching and non-teaching posts determined by the local education authority for the school under section 34 of the 1986 Act.