



Education Reform Act 1988

1988 CHAPTER 40

PART II

HIGHER AND FURTHER EDUCATION

CHAPTER III

FINANCE AND GOVERNMENT OF LOCALLY FUNDED FURTHER AND HIGHER EDUCATION

Appointment and dismissal of staff during financial delegation

148 Delegation of powers as to appointment and dismissal of staff

- (1) This section applies to an institution maintained by a local education authority at any time when either—
 - (a) financial delegation is required in respect of the institution for the current financial year under any scheme; or
 - (b) it has a delegated budget under any scheme though that delegation is not required under the scheme;

subject, in a case within paragraph (a) above, to any suspension, limitation or restriction under section 150 of this Act of the powers conferred on the governing body under or by virtue of this section or section 149 of this Act.

- (2) A scheme may include provision with respect to the appointment and dismissal of staff at any institution to which this section for the time being applies and (without prejudice to the inclusion of other provisions as to staff and other costs to be met from the budget share of any such institution) with respect to costs incurred by the local education authority in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff.
- (3) Subject to any provision of the relevant scheme or the articles of government of the institution and the following provisions of this section, in the case of any institution to which this section for the time being applies—

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- (a) it shall be for the governing body of the institution—
 - (i) to determine what staff (both full-time and part-time) are for the time being required for the purposes of the institution, and to select all such staff for appointment by the local education authority;
 - (ii) to determine the duties to be performed by members of the staff (including, in the case of part-time staff, their hours of work) and the grading (according to the scale of grades currently applicable in relation to employment with the authority) of both full-time and part-time posts at the institution; and
 - (iii) to exercise any discretion of the authority with respect to the remuneration to be paid to any person appointed by the authority in accordance with paragraph (b) below; and
 - (b) it shall be the duty of the authority to appoint staff selected by the governing body on such terms, in the case of each appointment, as to give effect, so far as relates to any matter which by virtue of paragraph (a)(ii) or (iii) above falls to be decided by the governing body, to any decisions of the governing body in relation to any such matter which are applicable in relation to that appointment.
- (4) For the purposes of subsection (3)(a)(iii) above, the authority are to be regarded as having a discretion with respect to the remuneration to be paid to a person appointed to a post at any such institution if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either—
- (a) do not apply in relation to that appointment; or
 - (b) leave to the authority any degree of discretion with respect to rate of remuneration or allowances in the case of that appointment.
- (5) The authority shall not be required by virtue of subsection (3)(b) above to appoint any person if he does not meet any requirements of any regulations made under section 27 of the 1980 Act (school and further education regulations) which are applicable in relation to his appointment.
- (6) Subject to any provision of the relevant scheme or the articles of government of the institution, where the governing body of an institution to which this section for the time being applies notify the local education authority concerned in writing that they have determined that any person employed to work at the institution should cease to work there—
- (a) if the person concerned is employed to work solely at the institution, the authority shall, before the end of the period of fourteen days beginning with the date on which the notification is given in relation to him, either—
 - (i) give him such notice terminating his contract of employment with the authority as is required under that contract; or
 - (ii) terminate that contract without notice if the circumstances are such that they are entitled to do so by reason of his conduct; and
 - (b) in any other case, the authority shall require the person concerned to cease to work at the institution.
- (7) The articles of government of an institution to which this section for the time being applies shall provide for it to be the duty of the governing body to consult the chief education officer of the local education authority concerned before making any decisions about the selection of senior staff or any determination which would have the effect of removing such staff from work at the institution.

In this subsection “senior staff” means staff who fall in accordance with the articles to be treated as senior staff for the purposes of any such provision.

- (8) It shall be the duty of the chief education officer to offer advice when consulted in accordance with any such provision, and the duty of the governing body to consider any advice so offered.
- (9) Subject to any provision of the articles of government of the institution—
 - (a) the regulation of conduct and discipline in relation to the staff of an institution to which this section 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 governing body; and
 - (b) where the implementation of any determination made by the governing body in the exercise of that control requires any action which—
 - (i) is not within the functions exercisable by the governing body by virtue of this Chapter; but
 - (ii) is within the powers of the local education authority concerned;it shall be the duty of the authority to take that action at the request of the governing body.
- (10) References in this section to the chief education officer of a local education authority include references to any officer of the authority nominated by the chief education officer.

149 Costs of dismissal, premature retirement or voluntary severance

- (1) Subject to any provision of the relevant scheme or the articles of government of the institution and subsection (2) below, it shall be for the governing body of any institution to which section 148 of this Act for the time being applies to determine—
 - (a) whether any payment should be made by the local education authority concerned in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the institution; and
 - (b) the amount of any such payment.
- (2) Subsection (1) above does not apply in relation to any payment which the authority are required to make—
 - (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 local education authority concerned—
 - (a) shall take such steps as may be required for giving effect to any determination of the governing body of any such institution under subsection (1) above; and
 - (b) shall not make, or agree to make, any payment to which that subsection applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such institution otherwise than in accordance with any such determination.
- (4) Subject to any provision of the relevant scheme or the articles of government of the institution, costs incurred by the local education authority concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of

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any member of the staff of any such institution shall not be met from the institution's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.

- (5) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (4) above.