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SCHEDULES

SCHEDULE 10

Sections 198 and 228.

SUPPLEMENTARY PROVISIONS WITH RESPECT TO TRANSFERS

Modifications etc. (not altering text)

- C1** Sch. 10: functions conferred by [The Education \(Inner London Education Authority\) \(Transfer of Functions\) Order 1991 \(S.I.1991/1457\)](#), [arts. 2\(b\)](#), 3
- Sch. 10 applied (with modifications) (1.4.1999 in relation to [s. 74](#) of the amending Act and 1.9.1999 in relation to [Sch. 21](#) of the amending Act) by [School Standards and Framework Act 1998 \(c. 31\)](#), [s. 74](#), [Sch. 21 Pt. I para. 2\(3\)](#) (with [ss. 138\(9\)](#), [144\(6\)](#)); S.I. 1999/1016, [art. 2\(1\)](#), [Sch. 1](#), [s. 74](#); S.I. 1999/2323, [art. 2\(1\)](#), [Sch.](#)
- Power to amend conferred (1.2.1999) by [School Standards and Framework Act 1998 \(c. 31\)](#), [s. 137\(4\)\(a\)](#) (with [ss. 138\(9\)](#), [144\(6\)](#)); S.I. 1999/120, [art. 2\(1\)](#), [Sch. 1](#) (with [art. 4](#)).
- Sch. 10 applied (with modifications) (1.1.2001) by [The Education \(New Procedures for Property Transfers\) Regulations 2000 \(S.I. 2000/3209\)](#), [regs. 5](#), [6](#), [7](#), [Sch. 1](#)
- Sch. 10 modified (E.) (1.1.2001) by [The Education \(New Procedures for Property Transfers\) Regulations 2000 \(S.I. 2000/3209\)](#), [regs. 15](#), [17](#), (with [regs. 18](#), [19](#))
- Sch. 10 modified (W.) (1.9.2001) by [The Change of Category of Maintained Schools \(Wales\) Regulations 2001 \(S.I. 2001/2678\)](#), [reg. 16](#), [Sch. 4 para. 2](#)

[^{F1} Division and apportionment of property etc.]

Textual Amendments

- F1** Crossheading and Sch. 10 para. 1 substituted (1.2.1999) by [1998 c. 31, s. 137 Sch. 29 para.3](#) (with [ss. 138\(9\)](#), [144\(6\)](#)); S.I. 1999/120, [art. 2\(1\)](#), [Sch. 1](#) (with [art. 4](#))

- ^{F21} (1) Any property, rights and liabilities of a transferor authority held or used or subsisting—
- (a) for the purposes of more than one relevant institution; or
 - (b) partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority;
- shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor authority and the transferee or transferees, in such proportions as may be appropriate.
- (2) Any property, rights or liabilities of a transferor body shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor body and the transferee or transferees, in such proportions as may be appropriate.
- (3) Where any estate or interest in land falls to be divided in accordance with either sub-paragraph (1) or sub-paragraph (2) above—

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

shall 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.

- (4) Any such property, right or liability as is mentioned in sub-paragraph (1) or (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority or body according to—

- (a) in the case of an estate or interest in land, whether on the transfer date the transferor authority or body or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none 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 transfer 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 transferor authority or body and the relevant person or determined by the Secretary of State under paragraph 3 below.

- (5) In this paragraph—

- (a) “relevant institution” means—
 - (i) any institution which a body corporate is established under this Act to conduct;
 - (ii) any institution to which section 130 of this Act applies; and
 - (iii) any maintained school;
- (b) “the relevant person” means—
 - (i) in a case where the transferor is a transferor authority, the Education Transfer Council;
 - (ii) in a case where the transferor is a transferor body, the transferee;
- (c) references to a transferor authority are references to a local authority who are the transferor for the purposes of any transfer to which this Schedule applies;
- (d) references to a transferor body are references to any foundation body who are the transferor for the purposes of any transfer to which this Schedule applies;

and for the purposes of this sub-paragraph references to a maintained school or a foundation body have the same meaning as in the School Standards and Framework Act 1998.]

Textual Amendments

- F2** Sch. 10 para. 1 substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.3**; S.I. 1999/120, art. 2(1), **Sch. 1**.

Modifications etc. (not altering text)

- C2** Sch. 10 paras. 1-3 applied (with modifications) (1.1.2001) by S.I. 2000/3209, reg. 5(2), **Sch. 1**

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[^{F3}Identification of property, rights and liabilities]

Textual Amendments

F3 Crossheading and Sch. 10 para. 2 substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.4** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

- ^{F42} (1) It shall be the duty of the transferor and the relevant person, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to 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 1(4) above and as will—
- (a) 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; and
 - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of this Act or of the 1998 Act (or any regulations made under it) under which the transfer is required on the property, rights and liabilities of the transferor as will best serve the proper discharge of the respective functions of the transferor and the transferee.
- (2) Any such agreement shall 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) Except in a case where the transferor is a local authority, the Education Transfer Council shall—
- (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) If and to the extent that they are requested to do so by any person falling to make a transfer agreement under paragraph 4 or 7 of Schedule 21 to the 1998 Act or any corresponding provision of regulations under that Act, the Education Transfer Council shall exercise any one or more functions falling within sub-paragraph (3) above in relation to such an agreement, or an instrument made pursuant to such an

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agreement, as if it were an agreement or instrument falling to be made under subparagraph (1) above.

(5) Any transfer of any estate or interest in land under this paragraph or under paragraph 1 above (whether by virtue of an agreement or instrument entered into before or after the transfer date) shall be regarded as having taken place on the transfer date.

(6) In this paragraph—

“the 1998 Act” means the School Standards and Framework Act 1998;
and

“the relevant person” means—

(a) in a case where the transferor is a local authority, the Education Transfer Council;

(b) in a case where the transferor is not a local authority, the transferee.]

Textual Amendments

F4 Sch. 10 para. 2 substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.4**; S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Modifications etc. (not altering text)

C3 Sch. 10 para. 2 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
 Sch. 10 para. 2 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1), 54C(1)**, (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by S.I. 2000/1867, **reg. 2, Sch.**)
 Sch. 10 paras. 1-3 applied (with modifications) (1.1.2001) by S.I. 2000/3209, **reg. 5(2), Sch. 1**

[^{F5} Resolution of disputes]

Textual Amendments

F5 Crossheading and Sch. 10 para. 3 substituted for Sch. 10 para. 3 (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.5** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

[^{F63} (1) The Education Transfer Council shall notify the Secretary of State if it appears to them that it is unlikely in the case of any matter on which agreement is required to be reached under paragraph 2(1) above that such an agreement will be reached.

(2) Where the Secretary of State has received a notification from the Council under subparagraph (1) above, he may, whether before or after the transfer date, give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under paragraph 2(1) above.

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

(4) The Secretary of State shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

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- (5) The Education Transfer Council shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this paragraph.]

Textual Amendments

- F6** Sch. 10 para. 3 and crossheading substituted for Sch. 10 para. 3 (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.5**; S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Modifications etc. (not altering text)

- C4** Sch. 10 para. 3 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
Sch. 10 para. 3 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **reg. 54A(1)**, 54C(1) (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)
Sch. 10 paras. 1-3 applied (with modifications) (1.1.2001) by S.I. 2000/3209, **reg. 5(2)**, **Sch. 1**

Right to production of documents of title

- 4 [F7(1) Where a transfer [F8to which this Schedule applies] relates to registered land, it shall be the duty of the transferor to execute any such instrument under the Land Registration Acts 1925 to 1986, 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 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 shall 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 M1Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

Textual Amendments

- F7** Sch. 10 para. 4(1) and word inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 65**; S.I. 1992/831, art. 2, **Sch. 1** (with art. 4).
- F8** Words in Sch. 10 para. 4(1) substituted (1.1.1994) by 1993 c. 35, s. 47(8) (with s. 155(11)); S.I. 1993/3106, art. 4, **Sch.1** (with art. 5, Sch. 2) (amended by S.I. 1994/436, **art.2**) (and continued (1.11.1996) by 1996 c. 56, ss. 582(1), 583, Sch. 37 Pt. I para. 82(2)(b) (with ss. 1(4), 561, 562, **Sch. 39**).

Modifications etc. (not altering text)

- C5** Sch. 10 para. 4 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
Sch. 10 para. 4 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1)**, 54C(1), (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (31.7.2000) by 2000/1867, reg. 2, Sch. 2)

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Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by [S.I. 1999/362](#), [reg. 54A\(1\)](#) (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

Marginal Citations

M1 [1925 c. 20](#).

Proof of title by certificate

- 5 [^{F9}The Education Transfer Council] 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 this Act [^{F10}or of the School Standards and Framework Act 1998] to any body corporate or persons so specified; and any such certificate shall be conclusive evidence for all purposes of that fact.

Textual Amendments

- F9** Words in Sch. 10 para. 5 substituted (1.2.1999) by [1998 c. 31, s. 137](#), [Sch. 29 para.10](#); [S.I. 1999/120, art. 2\(1\)](#), [Sch. 1](#) (with [art. 4](#)).
- F10** Words in Sch. 10 para. 5 substituted (1.2.1999) by virtue of [1998 c. 31, s. 137](#), [Sch. 29 para.6](#); [S.I. 1999/120, art. 2\(1\)](#), [Sch. 1](#) (with [art. 4](#)).

Modifications etc. (not altering text)

- C6** Sch. 10 para. 5 applied (with modifications) (10.3.1999) by [S.I. 1999/362, reg. 54\(6\)\(a\)](#).
 Sch. 10 para. 5 applied (with modifications) (E.) (31.12.1999) by [S.I. 1999/362, regs. 54A\(1\), 54C\(1\)](#), (as substituted (E.) (31.12.1999) by [S.I. 1999/3297, reg. 2](#))
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by [S.I. 1999/362, reg. 54A\(1\)](#) (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

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 transferor was a party immediately before the transfer date, the agreement shall, unless the context otherwise requires, have 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

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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; and paragraph (d) above shall apply 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.

Modifications etc. (not altering text)

- C7** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para. 15; S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art. 2**).
Sch. 10 paras. 6-8 applied (1.11.1996) by 1996 c. 56, ss. 88(1), 583, **Sch. 7 para. 12** (with ss. 1(4), 561, 562, **Sch. 39**).
Sch. 10 paras. 6-8 applied (1.9.1999) by 1998 c. 31, s. 76, **Sch. 22 Pt. III para. 9(2)** (with s. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
Sch. 10 paras. 6-8 extended (1.9.1999) by S.I. 1999/2243, **reg. 44(2)**.
Sch. 10 paras. 6-8 applied (1.9.1999) by S.I. 1999/2262, **reg. 44(2)**.
- C8** Sch. 10 paras. 6-8 extended (10.3.1999) by S.I. 1999/362, **reg. 25(2)**.
- C9** Sch. 10 para. 6 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
Sch. 10 para. 6 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1)**, 54C(1), (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

- 7 (1) Without prejudice to the generality of paragraph 6 above, the transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer 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 this Act [^{F11}or of the School Standards and Framework Act 1998] 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 this Act [^{F11}or of the School Standards and Framework Act 1998], or to any agreement relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

Textual Amendments

- F11** Words in Sch. 10 para. 7 inserted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 144(d); S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art. 2**) and words substituted for those words (1.2.1999) by virtue of 1998 c. 31, s. 137, **Sch. 29 para. 7** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Modifications etc. (not altering text)

- C10** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para. 15; S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art. 2**).

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- Sch. 10 paras. 6-8 applied (1.11.1996) by 1996 c. 56, ss. 88(1), 583, **Sch. 7 para. 12** (with ss. 1(4), 561, 562, **Sch. 39**).
- Sch. 10 paras. 6-8 extended (1.9.1999) by S.I. 1999/2243, **reg. 44(2)**.
- Sch. 10 paras. 6-8 applied (1.9.1999) by S.I. 1999/2262, **reg. 44(2)**.
- Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)
- C11** Sch. 10 paras. 6-8 applied (1.9.1999) by 1998 c. 31, s. 76, **Sch. 22 Pt. III para. 9(2)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- C12** Sch. 10 para. 7 extended (10.3.1999) by S.I. 1999/362, **reg. 25**.
- C13** Sch. 10 para. 7 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**
 Sch. 10 para. 7 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1), 54C(1)**, (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)

- 8 The provisions of paragraphs 6 and 7 above shall have effect for the interpretation of agreements subject to the context, and shall not apply where the context otherwise requires.

Modifications etc. (not altering text)

- C14** Sch. 10 paras. 6-8 applied (1.1.1994) by 1993 c. 35, ss. 238, 239, **Sch. 13**, para. 15; S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art. 2**).
- Sch. 10 paras. 6-8 applied (1.11.1996) by 1996 c. 56, ss. 88(1), 583, **Sch. 7 para. 12** (with ss. 1(4), 561, 562, **Sch. 39**).
- Sch. 10 paras. 6-8 applied (1.9.1999) by 1998 c. 31, s. 76, **Sch. 22 Pt. III para. 9(2)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- Sch. 10 paras. 6-8 extended (1.9.1999) by S.I. 1999/2243, **reg. 44(2)**.
- Sch. 10 paras. 6-8 applied (1.9.1999) by S.I. 1999/2262, **reg. 44(2)**.
- C15** Sch. 10 para. 8 extended (10.3.1999) by S.I. 1999/362, **reg. 25**.
- C16** Sch. 10 para. 8 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**
 Sch. 10 para. 8 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1), 54C(1)** (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (31.7.2000) by 2000/1867, reg. 2, Sch. 2)
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

Third parties affected by vesting provisions

- 9 (1) Without prejudice to the generality of paragraphs 6 to 8 above, any transaction effected between a transferor and a transferee in pursuance of paragraph 2(1) or of a direction under paragraph 3 above shall be binding on all other persons, and notwithstanding that 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 ^{F12}[the Education Transfer Council] shall 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—

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- (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 shall 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) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.
- (5) Where the transferor or the transferee under a transfer to which this Schedule applies purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or other property which before the transfer date belonged to the transferor, or which is an interest in property which before that date belonged to the transferor, the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interest in the property conveyed or transferred.
- (6) A court shall have the power set out in sub-paragraph (7) below if at any stage in proceedings before it to which the transferor or transferee under a transfer to which this Schedule applies and a person other than the transferor or the transferee are parties it appears to it that the issues in the proceedings—
 - (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and [^{F12}the Education Transfer Council][^{F13}or (as the case may be) the transferee] have not yet effected; or
 - (b) raise a question of construction on the relevant provisions of this Act [^{F14}or of the School Standards and Framework Act 1998] which would not arise if the transferor and the transferee constituted a single person.
- (7) In any such case the court may, if it thinks fit on the application of a party to the proceedings other than the transferor or the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person.
- (8) Any judgment or order given by a court in proceedings determined on that footing shall bind both the transferor and the transferee accordingly.
- (9) It shall be the duty of the transferor and of [^{F12}the Education Transfer Council][^{F15}or (as the case may be) the transferee] to keep one another informed of any case where the transferor or the transferee under a transfer to which this Schedule applies may be prejudiced by sub-paragraph (5) above or any judgment or order given by virtue of sub-paragraph (8) above.
- (10) If either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.

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Textual Amendments

- F12** Words in Sch. 10 para. 9(2)(6)(a)(9) substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.10** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F13** Words in Sch. 10 para. 9(6)(a) inserted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para. 8(a)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F14** Words in Sch. 10 para. 9(6)(b) inserted (1.1.1994) by 1993 c. 35, s. 307(1), **Sch. 19**, para. 144(d); S.I. 1993/3106, art. 4, **Sch. 1** (with art. 5, **Sch. 2**) (amended by S.I. 1994/436, **art. 2**) and words substituted for those words (1.2.1999) by virtue of 1998 c. 31, s. 137, **Sch. 29 para. 8(b)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F15** Words in Sch. 10 para. 9(9) inserted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para. 8(c)** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Modifications etc. (not altering text)

- C17** Sch. 10 para. 9 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**
 Sch. 10 para. 9 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1)**, 54C(1),
 (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as
 substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

Delivery of documents to transferee

- 10 When it appears to [^{F16}the Education Transfer Council], in the case of any transfer [^{F17}under which the transferor is a local authority], that any agreements and instruments required to be made or executed in pursuance of paragraph 2(1) above or in pursuance of a direction under paragraph 3 above have been made or executed, [^{F18}the Council] shall deliver those agreements and instruments (if any) to the transferee.

Textual Amendments

- F16** Words in Sch. 10 para. 10 substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.10** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F17** Words in Sch. 10 para. 10 inserted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.10** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).
- F18** Words in Sch. 10 para. 10 substituted (1.2.1999) by 1998 c. 31, s. 137, **Sch. 29 para.10** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1** (with art. 4).

Modifications etc. (not altering text)

- C18** Sch. 10 para. 10 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 54(6)(a)**.
 Sch. 10 para. 10 applied (with modifications) (E.) (31.12.1999) by S.I. 1999/362, **regs. 54A(1)**, 54C(1),
 (as substituted (E.) (31.12.1999) by S.I. 1999/3297, **reg. 2**)
 Sch. 10 paras. 2-10 applied (with modifications) (W.) (31.7.2000) by S.I. 1999/362, **reg. 54A(1)** (as
 substituted (W.) (31.7.2000) by 2000/1867, reg. 2, Sch.)

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