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SCHEDULES

SCHEDULE 3

Section 44.

APPOINTMENT AND DISMISSAL OF SCHOOL STAFF, ETC., DURING FINANCIAL DELEGATION

Appointment of head teacher and deputy head teacher

- 1 (1) This paragraph applies in relation to any appointment to fill a vacancy in the post of head teacher or deputy head teacher of a school to which section 44 of this Act for the time being applies.
- (2) References in this Schedule to a vacancy in any post include a prospective vacancy in the post.
- (3) The governing body shall notify the local education authority of the vacancy in writing before taking any of the steps mentioned below.
- (4) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the following provisions of this paragraph before the date on which it falls vacant—
- (a) the governing body shall recommend a person for appointment as acting head teacher; and
 - (b) the authority shall appoint the person recommended unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (5) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the following provisions of this paragraph before the date on which it falls vacant—
- (a) the governing body may recommend a person for appointment as acting deputy head teacher; and
 - (b) the authority shall appoint the person recommended unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (6) References in this Schedule to staff qualification requirements are references to any requirements with respect to—
- (a) qualifications;
 - (b) health and physical capacity; or
 - (c) fitness on educational grounds or in any other respect;
- of teachers and other persons employed in work which brings them regularly into contact with persons who have not attained the age of nineteen years which for the time being apply under regulations made under section 27 of the 1980 Act (school and further education regulations).

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- (7) Before recommending any person for appointment as head teacher or deputy head teacher, the governing body shall advertise the vacancy in such publications circulating throughout England and Wales as they consider appropriate.
- (8) The governing body shall appoint a selection panel consisting of at least three of their members to perform the functions conferred on the panel under this paragraph.
- (9) The selection panel shall—
 - (a) interview such applicants for the post as they think fit;
 - (b) where they consider that it is appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by them; and
 - (c) if their recommendation is approved by the governing body, recommend the applicant in question to the authority for appointment.
- (10) If the selection panel are unable to agree on a person to recommend to the governing body or the governing body do not approve their recommendation, the governing body—
 - (a) may, if they think fit, re-advertise the vacancy in the manner required by sub-paragraph (7) above; and
 - (b) whether or not they re-advertise the vacancy, may require the panel to repeat the steps mentioned in sub-paragraph (9) above.
- (11) The authority shall appoint the person recommended by the panel for appointment as head teacher or (as the case may be) as deputy head teacher unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (12) Where the authority decline to appoint a person recommended by the governing body for appointment as acting head teacher, the governing body shall recommend another person for appointment.
- (13) Where the authority decline to appoint a person recommended by a selection panel appointed under sub-paragraph (8) above for appointment as head teacher or deputy head teacher, sub-paragraph (10) above shall apply as it applies in the cases there mentioned.

Appointment of other teachers

- 2 (1) Subject to sub-paragraph (2) below, sub-paragraphs (4) to (11) below apply in relation to any appointment to fill a vacancy in any teaching post (whether full-time or part-time) at a school to which section 44 of this Act for the time being applies, other than a post to which paragraph 1 above applies.
- (2) Sub-paragraphs (4) to (11) below do not apply in relation to a temporary appointment to fill such a vacancy for a period not exceeding four months or where it appears to the governing body that the period for which the person appointed will hold the post in question will not exceed four months.
- (3) Where it appears to the governing body in the case of any post that it would be appropriate to make such an appointment as is mentioned in sub-paragraph (2) above—

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- (a) they may recommend a person for appointment to the post on such terms as to the duration of the appointment as they may specify; and
 - (b) the local education authority shall appoint the person recommended on the terms specified unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (4) Before taking any of the steps mentioned below, the governing body shall—
 - (a) determine a specification for the post in consultation with the head teacher; and
 - (b) send a copy of the specification to the authority.
- (5) The authority may nominate for consideration for appointment to the post any person who appears to them to be qualified to fill the post and who either—
 - (a) is at the time of his nomination an employee of theirs or has been appointed to take up employment with them at a future date; or
 - (b) is at the time of his nomination employed by the governing body of an aided school maintained by the authority;subject, in a case within paragraph (b) above, to the consent of the governing body of the school concerned.
- (6) The governing body may advertise the vacancy at any time after they have sent a copy of the specification for the post to the authority in accordance with sub-paragraph (4) above, and shall do so unless either—
 - (a) they accept for appointment to the post a person nominated by the authority under sub-paragraph (5) above; or
 - (b) they decide to recommend to the authority for appointment to the post a person who is already employed to work at the school.
- (7) Where the governing body advertise the vacancy, they shall do so in a manner likely in their opinion to bring it to the notice of persons (including employees of the authority) who are qualified to fill the post.
- (8) Where the governing body advertise the vacancy, they shall—
 - (a) interview such applicants for the post and such of the persons (if any) nominated by the authority under sub-paragraph (5) above as they think fit; and
 - (b) where they consider it is appropriate to do so—
 - (i) recommend to the authority for appointment one of the applicants interviewed by them; or
 - (ii) notify the authority that they accept for appointment any person so nominated;as the case may require.
- (9) If the governing body are unable to agree on a person to recommend or accept for appointment, they may repeat the steps mentioned in paragraphs (a) and (b) of sub-paragraph (8) above, with or without first re-advertising the vacancy in accordance with sub-paragraph (7) above.
- (10) The authority shall appoint the person recommended or accepted for appointment to the post by the governing body unless (in the case of a person other than one nominated by the authority) he does not meet any staff qualification requirements which are applicable in relation to his appointment.

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- (11) Where the authority decline to appoint a person recommended by the governing body for appointment the governing body shall repeat such of the steps mentioned in paragraphs (a) and (b) of sub-paragraph (8) above as they think fit, with or without first re-advertising the vacancy in accordance with sub-paragraph (7) above.
- (12) The governing body may delegate any of their functions under this paragraph, in relation to the filling of a particular vacancy or a vacancy of a kind specified by them, to—
- (a) one or more governors;
 - (b) the head teacher; or
 - (c) one or more governors and the head teacher acting together.

Appointments: advice of chief education officer and head teacher

- 3 (1) The chief education officer of the local education authority concerned shall be entitled to attend, for the purpose of giving advice, all proceedings—
- (a) of the governing body;
 - (b) of any selection panel appointed under paragraph 1 above; or
 - (c) of any persons to whom any functions of the governing body under paragraph 2 above are delegated;
- relating to appointments to which paragraph 1 or (as the case may be) paragraph 2 above applies (including in each case any interviews).
- (2) The chief education officer shall also be under a duty—
- (a) to offer such advice as he considers appropriate with respect to the appointment of a head teacher, a deputy head teacher, an acting head teacher or an acting deputy head teacher or any matter arising in connection with any such appointment; and
 - (b) to give such advice as he considers appropriate with respect to any appointment to which paragraph 2 above applies if requested to do so by the governing body.
- (3) Each of the following, that is to say—
- (a) the governing body;
 - (b) any selection panel appointed under paragraph 1 above; and
 - (c) any persons to whom any functions of the governing body under paragraph 2 above are delegated;
- shall consider any advice given by the chief education officer with respect to any matter it falls to them to determine relating to any appointment before determining that matter, whether or not the advice was given at their request.
- (4) Except in relation to the appointment of a head teacher—
- (a) sub-paragraph (1) above shall apply in relation to the head teacher (if not otherwise entitled to be present at the proceedings there mentioned) as it applies in relation to the chief education officer; and
 - (b) sub-paragraph (3) above shall apply in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer.

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Appointment of non-teaching staff

- 4 (1) Where the governing body of any school to which section 44 of this Act for the time being applies wish to appoint a person to work in a non-teaching post at the school, they may recommend a person to the local education authority concerned for appointment to the post.
- (2) Such a recommendation shall be in writing and shall specify—
- (a) the duties to be performed by the person appointed (including, where the post is part-time, his hours of work);
 - (b) the grade (on the scale of grades currently applicable in relation to employment with the authority) which the governing body consider appropriate for the post; and
 - (c) where the authority have any discretion with respect to the remuneration to be paid to a person appointed to the post, the determination of any matter to which that discretion applies which the governing body consider appropriate in the case of the person recommended for appointment.
- (3) Before selecting a person to recommend for appointment to such a post and determining in relation to any such recommendation any matters mentioned in sub-paragraph (2) above, the governing body shall consult—
- (a) the head teacher (where he would not otherwise be involved in the decision); and
 - (b) in any case where the post involves or, in the case of a new post, it is proposed that it should involve, work at the school for sixteen hours a week or more, the chief education officer of the authority.
- (4) The authority shall appoint a person recommended for appointment to a non-teaching post at such a school by the governing body on such terms as to give effect, so far as relates to any matter mentioned in sub-paragraph (2) above, to the governing body's recommendation with respect to that matter unless he does not meet any staff qualification requirements which are applicable in relation to his appointment.
- (5) For the purposes of sub-paragraph (2)(c) above, the authority are to be regarded as having a discretion with respect to the remuneration to be paid to a person appointed to any such post 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.

The clerk to the governing body

- 5 (1) In the case of any vacancy in the office of clerk to the governing body of a school to which section 44 of this Act for the time being applies, the local education authority concerned shall appoint a person selected by the governing body.
- (2) Before selecting a person to recommend for such appointment, the governing body shall consult the chief education officer of the authority.

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Discipline

- 6 (1) The regulation of conduct and discipline in relation to the staff of any school to which section 44 of this Act 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.
- (2) The governing body of any such school shall establish—
- (a) disciplinary rules and procedures; and
 - (b) procedures such as are mentioned in sub-paragraph (1) above;
- and shall take such steps as appear to them to be appropriate for making them known to the staff at the school.
- (3) Where the implementation of any determination made by the governing body in the exercise of their 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 governing body by virtue of this Act; but
 - (b) is within the power 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.

Suspension

- 7 (1) In the case of any school to which section 44 of this Act for the time being applies, the governing body and the head teacher shall both have power to suspend any person employed to work at the school where, in the opinion of the governing body or (as the case may be) of the head teacher, his exclusion from the school is required.
- (2) The governing body or head teacher, when exercising that power, shall immediately inform the local education authority concerned and the head teacher or (as the case may be) the governing body.
- (3) Any suspension under this paragraph may only be ended by the governing body; and the governing body shall, on ending such a suspension, immediately inform the local education authority concerned and the head teacher.
- (4) In this paragraph “suspend” means suspend without loss of emoluments.

Dismissal, etc.

- 8 (1) Where the governing body of any school to which section 44 of this Act for the time being applies determine—
- (a) that any person employed to work at the school should cease to work there; or
 - (b) that the clerk to the governing body should be dismissed;
- they shall notify the local education authority concerned in writing of their determination and the reasons for it.
- (2) If in a case within sub-paragraph (1)(a) above—

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- (a) the person concerned is employed to work solely at the school; and
- (b) he does not resign;

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

- (3) If in a case within sub-paragraph (1)(a) above the person concerned is not employed to work solely at the school the authority shall require him to cease to work at the school.
- (4) In any case within sub-paragraph (3) above no part of the costs incurred by the authority in respect of the emoluments of the person concerned, 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) above to his contractual notice period is a reference to the period of notice that would have been required under his contract of employment with the authority for termination of that contract if such notice had been given on the date on which the notification under sub-paragraph (1) above was given in relation to him.
- (6) In a case within sub-paragraph (1)(b) above the authority shall dismiss the clerk to the governing body on receipt of the notification from the governing body.
- (7) The governing body of such a school shall make arrangements for affording to any person in respect of whom they propose to make any determination under sub-paragraph (1) above an opportunity of making representations with respect to the action they propose to take, including (if he so wishes) oral representations to such person or persons as the governing body may appoint for the purpose, and shall have regard to any representations made by him.
- (8) The governing body of such a school shall also make arrangements for affording to any person in respect of whom they have made such a determination an opportunity of appealing against it before they notify the authority of the determination.
- (9) The head teacher (except where he is the person concerned) and the chief education officer of the authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the governing body relating to any determination under sub-paragraph (1) above; and the governing body shall consider any advice given by a person entitled to attend such proceedings under this sub-paragraph before making any such determination.

Modifications etc. (not altering text)

C1 Sch. 3 para. 8 amended by S.I. 1989/1503, art. 25(3)

- 9 (1) Subject to sub-paragraph (2) below, a local education authority shall not dismiss a person employed by the authority to work solely at a school to which section 44 of this Act for the time being applies except as provided by paragraph 8 above.

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- (2) Sub-paragraph (1) above shall not apply in any case where the dismissal of the person in question is required under any regulations made under section 27 of the 1980 Act.

School meal staff

- 10 Nothing in paragraphs 4 and 6 to 9 above shall apply in relation to the appointment of a person to work at a school to which section 44 of this Act for the time being applies, or in relation to a person so employed, where—
- (a) the person concerned is to be, or is, employed to work solely in connection with the provision of meals; and
 - (b) no allowance is made for expenditure on or in connection with the provision of meals in determining the school's budget share.

Interpretation

- 11 (1) References in this Schedule to a vacancy in any post shall be read in accordance with paragraph 1(2) above.
- (2) References in this Schedule to staff qualification requirements shall be read in accordance with paragraph 1(6) above.
- (3) References in this Schedule to the chief education officer of a local education authority include references to any officer of the authority nominated by the chief education officer.

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