



Education Act 1993

1993 CHAPTER 35

PART II

GRANT-MAINTAINED SCHOOLS

CHAPTER III

PROPERTY, STAFF AND CONTRACTS

Transfer of property and staff, etc.

38 Transfer of property etc

- (1) Subject to subsection (3) below, where in relation to any school proposals for acquisition of grant-maintained status are approved—
 - (a) the property, rights and liabilities mentioned in subsection (2) below of any local authority, and
 - (b) any property, rights and liabilities of the existing governing body,shall on the date of implementation of the proposals be transferred to, and by virtue of this Act vest in, the governing body incorporated under Chapter II.
- (2) The property, rights and liabilities referred to in subsection (1)(a) above are—
 - (a) all land or other property which, immediately before the date of implementation of the proposals, was property used or held by the authority for the purposes of the school, and
 - (b) all rights and liabilities subsisting immediately before the date of implementation of the proposals which were acquired or incurred by the authority for those purposes.
- (3) Subsection (1) above shall not apply to rights and liabilities under any contract of employment; and subsection (1)(a) above shall not apply to—
 - (a) any land or other property vested in a local authority as trustees,

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- (b) any property, rights or liabilities excluded under subsection (5) or (6) below,
 - (c) any liability of a local authority in respect of the principal of, or any interest on, any loan, or
 - (d) any liability of a local authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.
- (4) Any land or other property of a local authority excluded by virtue of subsection (3) (a) above from transfer to the governing body shall, on the date of implementation of the proposals, 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) If before the date of implementation of the proposals—
- (a) the new governing body and the local authority have agreed in writing to exclude any property, and
 - (b) the Secretary of State has given his written approval of the agreement,
- the property, and any rights or liabilities relating to it, shall be excluded.
- (6) If in default of agreement under subsection (5) above—
- (a) the new governing body or the local authority have applied to the Secretary of State to exclude any property, and
 - (b) the Secretary of State has by order directed its exclusion,
- the property, and any rights or liabilities relating to it, shall be excluded.
- (7) An agreement under subsection (5) above may provide for the property to be used for the purposes of the school acquiring grant-maintained status on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (6) above—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
 - (b) shall have effect as if contained in such an agreement.
- (8) For the purposes of this section, any interest in a dwelling-house which, immediately before the date of implementation of the proposals, is used or held by a local 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.
- (9) This section is subject to section 198 of the Education Reform Act 1988 (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this subsection to the transfer date are to the date of implementation of the proposals.

39 Transfer of staff

- (1) This section applies to any school where proposals for acquisition of grant-maintained status have been approved in relation to the school; and, subject to subsection (3) below, applies to any person who—
- (a) if the school is an aided school, is immediately before the date of implementation of the proposals employed by the governing body, or
 - (b) immediately before the date of implementation of the proposals—

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- (i) is employed by the local education authority to work solely at the school, or
 - (ii) is employed by the local education 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—
 - (a) any person employed as mentioned in subsection (1) above whose contract of employment terminates on the day immediately preceding the date of implementation of the proposals, or
 - (b) any person employed as mentioned in subsection (1)(b) above who before that date—
 - (i) has been appointed or assigned by the local education authority to work solely at another school as from that date, or
 - (ii) has been withdrawn from work at the school with effect as from that date.
- (4) A person who before the date of implementation of the proposals has been appointed or assigned by the local education authority 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 the 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 the authority.
- (5) In subsections (6) and (7) below, “former employer”—
 - (a) in relation to a person to whom this section applies by virtue of subsection (1) (a) above, means the governing body of the school immediately before the date of implementation of the proposals, and
 - (b) in relation to a person to whom this section applies by virtue of subsection (1) (b) above, means the local education authority.
- (6) The contract of employment between a person to whom this section applies and his former employer shall have effect from the date of implementation of the proposals 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 the contract of employment shall by virtue of this section be transferred to the governing body of the grant-maintained school on the date of implementation of the proposals, 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

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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.