



# 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.

*Effect of pending procedure for acquisition of grant-maintained status on property disposals, etc.*

#### **40 “Pending” procedure for acquisition of grant-maintained status**

- (1) For the purposes of this Chapter the procedure for acquisition of grant-maintained status 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).
- (2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion—
- (a) on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school is to be considered (not being a case falling within section 25(3) of this Act), or
  - (b) where the governing body have received a request under section 26(1) of this Act, on receipt by the local education authority of notice under subsection (3) (b) of that section.
- (3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—
- (a) when initiated as mentioned in subsection (2)(a) above, if—
    - (i) the meeting is not held,
    - (ii) the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed, or
    - (iii) the resolution is passed but the result of the ballot to which the notice under section 25(1)(b) of this Act relates does not show a majority in favour of seeking grant-maintained status for the school,
  - (b) when initiated as mentioned in subsection (2)(b) above, if the result of the ballot to which the notice under section 26(3)(b) of this Act relates does not show a majority in favour of seeking grant-maintained status for the school,
  - (c) if proposals which by reference to the result of a ballot to which a notice under section 25(1)(b) or 26(3)(b) of this Act relates are required to be published under section 32 of this Act, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn, or
  - (d) on the date of implementation of such proposals.
- (4) Where section 30 of this Act applies in the case of such a ballot, the references in subsection (3) above to the result of that ballot shall be read as references to the result of the second ballot required by that section.
- (5) The reference in subsection (3) above to proposals required in substitution for any proposals (“the original proposals”) required to be published by reference to the result of a ballot is to any proposals required to be published by virtue of section 33(1) or (3) of this Act on withdrawal or (as the case may be) rejection of—

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- (a) the original proposals, or
  - (b) any further proposals required to be published by virtue of section 33(1) or (3) of this Act in respect of the school without a further ballot.
- (6) Proposals published under section 32 of this Act shall not be treated for the purposes of subsection (3)(c) above as rejected in any case where the Secretary of State imposes a requirement under section 33(3) of this Act or as withdrawn in any case where he imposes a requirement under section 33(1) of this Act for the publication of further proposals.

#### **41 Control of disposals of land**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not—
- (a) dispose of any land used wholly or partly for the purposes of the school, or
  - (b) enter into a contract to dispose of any such land,
- except with the required consent.
- (2) Subsection (1) 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 for acquisition of grant-maintained status was initiated in relation to the school.
- (3) Where proposals for acquisition of grant-maintained status are approved, the procedure for acquisition of grant-maintained status is not to be treated as terminated for the purposes of this section and section 42 of this Act in relation to any land where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land until the date on which that matter is finally determined.
- (4) In the case of a disposal made or contract entered into after proposals for acquisition of grant-maintained status have been approved, the required consent—
- (a) if it is agreed between the local authority and the new governing body that the value of the land in question does not exceed £6,000, is the consent of the new governing body, and
  - (b) if paragraph (a) above does not apply, is the consent of both the new governing body and the Secretary of State.
- (5) In any other case the required consent for any proposed disposal (and for any contract to make it) is the consent of both the existing governing body and the Secretary of State.
- (6) 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 42 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given.
- (7) 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.
- (8) In this section—

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- (a) references to disposing of land include granting or disposing of any interest in land, and
  - (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.
- (9) 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.
- (10) The Secretary of State may by order substitute for the sum specified in subsection (4) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

#### **42 Wrongful disposals of land**

- (1) This section applies where—
- (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have made a disposal, or have entered into a contract, in contravention of section 41(1) of this Act.
- (2) In the case of a contract which consists of granting an option to acquire any land or interest in land, the Education Assets Board may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (3) In the case of a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by notice in writing served on the other party to the contract, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed, repudiate the contract.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if—
- (a) where it is made after the date of implementation of the proposals, the local authority (and not the governing body) were party to the contract, and
  - (b) the repudiation were made by the local authority.
- (5) In the case of a disposal which consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier contract falling within subsection (2) or (3) above) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the governing body incorporated under Chapter II.
- (8) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that

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compensation in accordance with section 11 of the Compulsory Purchase Act 1965 or section 52A of the Land Compensation Act 1973, and

- (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.
- (9) Section 41(8) of this Act applies for the purposes of this section as it applies for the purposes of that.

#### **43 Control of contracts**

- (1) Where the procedure for acquisition of grant-maintained status is pending in relation to any school, this section applies to any contract which, if the proposals for acquisition of grant-maintained status were implemented, would or might bind the governing body incorporated under Chapter II.
- (2) Except with the appropriate consent, a local authority shall not enter into a contract to which this section applies.
- (3) In the case of a contract entered into after the proposals have been approved by the Secretary of State, the appropriate consent is that of the new governing body.
- (4) In relation to any other contract, the appropriate consent is—
  - (a) the consent of the existing governing body, and
  - (b) if (on the assumption in subsection (1) above) the contract will require the governing body incorporated under Chapter II to make payments amounting in aggregate to £15,000 or more, the consent of the Secretary of State.
- (5) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (6) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 44 of this Act) a person entering into a contract with a local authority or governing body shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.
- (7) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) above shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (8) This section does not apply to—
  - (a) a works contract (within the meaning of Part III of the Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act,
  - (b) a works contract (within the meaning of Part I of the Local Government Act 1988) which is entered into in accordance with section 4 of that Act,
  - (c) a contract to dispose of land (within the meaning of section 41 of this Act) or to grant an option to acquire land or an interest in land, or
  - (d) a contract of employment.
- (9) The Secretary of State may by order substitute for the sum specified in subsection (4) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

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#### **44 Wrongful contracts**

- (1) This section applies where—
  - (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have entered into a contract to which section 43 of this Act applies in contravention of that section.
- (2) The Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) above shall have effect as if—
  - (a) where it is made after the date of implementation of the proposals, the local authority (and not the governing body) were party to the contract, and
  - (b) the repudiation were made by the local authority.

#### **45 Restriction on change of purpose for which property used or held**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not, in relation to any land or other property of the authority used or held for the purposes of the school, take without the required consent any action by which the land or other property ceases to any extent to be so used or held.
- (2) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, the required consent is that of the new governing body.
- (3) In any other case the required consent is that of both the existing governing body and the Secretary of State.
- (4) If in the case of any school—
  - (a) proposals for acquisition of grant-maintained status are approved, and
  - (b) a local authority have, in relation to any property, taken any action in contravention of subsection (1) above,the provisions relating to the transfer of property shall have effect as if, immediately before the date of implementation of the proposals in relation to the school, the property were used or held by the authority for the purposes for which it was used or held when the procedure for acquisition of grant-maintained status was initiated.
- (5) In this section—
  - (a) “the provisions relating to the transfer of property” means section 38 of this Act and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
  - (b) the references to taking action include appropriating property for any purpose.

#### **46 Restriction on staff changes**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, the local education authority shall not do any of the things mentioned in subsection (2) below without the required consent.
- (2) Those things are—



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- (a) the appointment of a 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 Education Act 1944 (special provisions as to religious education in voluntary schools)) of a person to whom subsection (3) below applies, and
  - (c) the withdrawal of such a 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 references in this section to the complement of the school are to the complement of teaching and non-teaching posts determined by the local education authority for the school under section 34 of the Education (No. 2) Act 1986 (determination of staff complement for schools).
- (5) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, the required consent is that of the new governing body.
- (6) In any other case the required consent is that of both the existing governing body and the Secretary of State.

### *Supplementary*

#### **47 Supplementary provisions about transfers**

- (1) No duty of a local education authority under paragraph 6 of the First Schedule to the Education Act 1946 (maintenance of voluntary schools) to convey their interest in any site or buildings to the trustees of a school shall be affected by the school subsequently becoming a grant-maintained school.
- (2) Where such a duty is continued by virtue of subsection (1) above, then, in connection with the site in question, paragraphs 6 to 9 of that Schedule shall continue to apply after the school becomes a grant-maintained school as if it were a controlled school or, as the case may be, an aided or special agreement school.
- (3) Where any such duty as is referred to in subsection (1) above, or imposed by section 284(1) of this Act, applies in relation to a school, then—
- (a) if it applies immediately before the date of implementation of proposals for acquisition of grant-maintained status, section 38(1)(a) of this Act shall not apply to, or to any interest in, the site or buildings or, as the case may be, the premises to be conveyed, and
  - (b) if it applies at a time when the procedure for acquisition of grant-maintained status is pending, section 41 of this Act shall not apply to disposing, or entering into a contract to dispose, of the site or buildings or, as the case may be, the premises to be conveyed.
- (4) Where immediately before the date of implementation of proposals for acquisition of grant-maintained status there is an agreement relating to any site or buildings made under paragraph 3 or 4 of that Schedule, section 38(1)(a) of this Act shall not apply to any rights or liabilities of any local authority under the agreement; and any directions given before that date under paragraph 5 of that Schedule, so far as they relate to the

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governing body of the school, shall have effect on or after that date as if they related to the governing body incorporated under section 34 of this Act.

- (5) In section 197(7) of the Education Reform Act 1988 (duty of local education authority to give information to Education Assets Board), after “local education authority” there is inserted “and any governing body of a maintained or grant-maintained school” and for “this Act” there is substituted “the Education Acts 1944 to 1993”.
- (6) In paragraph 61 of Schedule 8 to the Further and Higher Education Act 1992 (new procedure, instead of paragraph 3 of Schedule 10 to the 1988 Act, where no agreement has been reached about transfers of assets under that Schedule and the transfer relates to the higher education sector), for “by virtue of section 126 or 130 and in such a case” there is substituted “and”.
- (7) In paragraph 1(1) of Schedule 10 to the Education Reform Act 1988 (apportionment of property held), after “held” there is inserted “or used”.
- (8) In paragraph 4(1) of that Schedule (registered land) for “by virtue of section 126 or 130” there is substituted “to which this Schedule applies”.
- (9) In that Schedule, for “local education authority” in each place where it appears there is substituted “local authority”.