

SCHEDULES

SCHEDULE 13

Sections 238 and 239.

INCORPORATED GOVERNING BODIES FOR COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

Property, rights and liabilities

1 On the incorporation under section 238(1) of this Act of a governing body (“the new governing body”) constituted under an instrument of government for two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986—

(a) all land and other property which, immediately before the date of incorporation, was property of the governing body of any of those schools used or held for the purposes of the school in question, and

(b) all rights and liabilities of the governing body of any of those schools subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body.

2 On the incorporation under section 238(1) of this Act of a governing body (“the new governing body”) for a school which, immediately before the incorporation date, was conducted by a temporary governing body constituted under arrangements made under section 12 of that Act—

(a) all land and other property which, immediately before the date of incorporation, was property of the temporary governing body used or held for the purposes of the school, and

(b) all rights and liabilities of the temporary governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body.

Contracts of employment

3 Without prejudice to the generality of the provisions of section 238 of this Act and paragraphs 1 and 2 above, where those provisions effect a transfer of rights and liabilities under a contract of employment—

(a) the contract shall have effect from the date of incorporation as if originally made between the employee and the incorporated governing body, and

(b) without prejudice to paragraph (a) above, 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 the incorporated governing body,

but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by those provisions.

School premises

- 4 (1) Section 22 of the Education Act 1944 (powers of local education authority as to use and care of premises of voluntary schools) is amended as follows.
- (2) At the end of subsection (3) (premises to be under the control of the governing body, subject to any directions of the local education authority etc.) there is added “except to the extent provided by any transfer of control agreement into which they may enter under subsection (3A) of this section.”
- (3) After that subsection there is inserted—
- “(3A) Subject to subsection (3B) below the governing body of any voluntary school shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises; and—
- (a) they may do so notwithstanding that the trust deed for the school would, apart from this subsection, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
- (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would obtain if control were being exercised by the governing body.
- (3B) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the local education authority’s consent to the agreement in so far as it makes such provision.
- (3C) A transfer of control agreement shall be taken to include the following terms, namely—
- (a) that the governing body shall notify the controlling body of—
- (i) any directions given to the governing body by virtue of subsection (1) or (2) of this section; and
- (ii) any determination made by the foundation governors under subsection (1) of this section;
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
- (i) shall do so in accordance with any directions or determinations from time to time notified to that body in pursuance of paragraph (a) of this subsection; and
- (ii) shall have regard to the desirability of the premises being made available for community use; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
- (i) the use of the specified premises at those times shall be under the control of the governing body; and

(ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

notwithstanding that their use at those times would, apart from this paragraph, be under the control of the controlling body.

(3D) Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, paragraph (c) of subsection (3C) above shall not have effect in relation to that agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.

(3E) Where the governing body enter into a transfer of control agreement, they shall so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of subsection (3C)(a) of this section.”

(4) For subsection (5) (which provides that, where the trust deed provides for any person other than the governing body being entitled to control the occupation and use of the school premises, the section shall have effect with the substitution for references to the governors of references to that person) there is substituted—

“(5) Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that, disregarding any transfer of control agreement, the use of those premises is or would be under the control of such a person, this section shall have effect in relation to the school with the substitution for references to the governing body of references to that person.”

(5) After that subsection there is inserted—

“(6) In this section—

“community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;

“the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;

“school hours” means any time during a school session or during a break between sessions on the same day;

“school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with section 21 of the Education (No. 2) Act 1986; and

“transfer of control agreement” means an agreement which, subject to subsection (3C) of this section, provides for the use of so much of the school premises as may be specified in the agreement

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to be under the control, at such times as may be so specified, of such body or person as may be so specified.”

(6) In subsections (1) to (3) and (4), for “the governors” in each place there is substituted “the governing body”.

5 For section 42 of the Education (No. 2) Act 1986 (which requires the articles of government of every county or maintained special school to provide for the use of the school premises outside school hours to be under the control of the governing body, subject to directions given by the local education authority) there is substituted—

“42 Control of use of premises outside school hours.

(1) The articles of government for every county and maintained special school shall provide—

- (a) for the use of the school premises outside school hours to be under the control of the governing body except to the extent provided by any transfer of control agreement into which they may enter by virtue of paragraph (c) below;
- (b) for the governing body in exercising control of the use of the school premises outside school hours—
 - (i) to comply with any directions given to them by the local education authority by virtue of this sub-paragraph; and
 - (ii) to have regard to the desirability of the premises being made available for community use;
- (c) for the governing body to have power to enter into a transfer of control agreement if their purpose, or one of their purposes, in doing so is to promote community use of the school premises outside school hours; and
- (d) for the governing body so far as reasonably practicable to secure, where they enter into a transfer of control agreement, that the controlling body exercises control in accordance with any directions given to the governing body by virtue of paragraph (b)(i) above.

(2) A transfer of control agreement shall be taken to include the following terms, namely—

- (a) that the governing body shall notify the controlling body of any directions given to the governing body by virtue of subsection (1) (b)(i) above;
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
 - (i) shall do so in accordance with any directions from time to time notified to that body in pursuance of paragraph (a) above; and
 - (ii) shall have regard to the desirability of the premises being made available for community use outside school hours; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required

for use by or in connection with the school at such times as may be so specified, then—

- (i) the use of the specified premises at those times shall be under the control of the governing body, and
- (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

notwithstanding that their use at those times would, apart from this paragraph, be under the control of the controlling body.

- (3) Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, paragraph (c) of subsection (2) above shall not have effect in relation to that agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.

- (4) In this section—

“community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;

“the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;

“school hours” means any time during a school session or during a break between sessions on the same day, and “outside school hours” shall be construed accordingly;

“school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with section 21 of this Act; and

“transfer of control agreement” means an agreement which, subject to subsection (2) above, provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times outside school hours as may be so specified, of such body or person as may be so specified.”

School premises: pre-commencement agreements

- 6 (1) This paragraph applies in any case where—
- (a) at any time before the appointed day, the governing body of a voluntary school entered, or purported to enter, into a transfer of control agreement (the “relevant agreement”),
 - (b) the school is a voluntary school on that day, and
 - (c) on that day the procedure for acquisition of grant-maintained status is not for the time being pending (as defined in section 40 of this Act) or, if it is, proposals for acquisition of grant-maintained status (within the meaning of Part II of this Act) are not approved.

Status: This is the original version (as it was originally enacted).

- (2) Any question arising as to the validity of the relevant agreement at any time on or after the appointed day shall be determined as if, at the time when the governing body entered, or purported to enter, into the agreement (and at all times thereafter), section 22 of the Education Act 1944 had had effect with the amendments made by paragraph 4 above.
- (3) As from the appointed day, section 22 of that Act shall have effect in relation to the relevant agreement with the amendments made by paragraph 4 above, except that subsection (3D) shall so have effect with the substitution for the words “if, at the time of entering into it, the governors were of the opinion that” of the words “if and to the extent that”.
- (4) In their application with respect to any time before the coming into force of paragraph 6 of Schedule 1 to the Education Act 1980 (which removed certain references to the managers or foundation managers) the provisions of this paragraph (other than this sub-paragraph) and the amendments made by paragraph 4 above shall have effect—
- (a) as if any reference to the governing body of a school included a reference to the managers of the school, and
 - (b) as if any reference to the foundation governors of the school included a reference to the foundation managers of the school.
- (5) In its application with respect to any time before the coming into force of section 21 of the Education (No. 2) Act 1986, as originally enacted, the subsection (6) inserted into section 22 of the Education Act 1944 by paragraph 4 above shall have effect with the omission of the definition of “school session”, which expression shall accordingly be given the meaning that it would have had at that time.
- (6) Nothing in this Schedule shall be taken to imply that the relevant agreement would not have been valid at any time apart from this paragraph.
- (7) Expressions used in this paragraph and in section 22 of the Education Act 1944, as amended by paragraph 4 above, have the same meaning in this paragraph as they have in that section as so amended.
- 7 (1) This paragraph applies in any case where—
- (a) at any time before the appointed day, the governing body of a county or maintained special school entered, or purported to enter, into a transfer of control agreement (the “relevant agreement”),
 - (b) the school is a county school or, as the case may be, a maintained special school on the appointed day, and
 - (c) on that day the procedure for acquisition of grant-maintained status is not for the time being pending (as defined in section 40 of this Act) or, if it is, proposals for acquisition of grant-maintained status (within the meaning of Part II of this Act) are not approved.
- (2) Any question arising as to the validity of the relevant agreement at any time on or after the appointed day shall be determined as if, at the time when the governing body entered, or purported to enter, into the agreement (and at all times thereafter)—
- (a) the Education (No. 2) Act 1986 had had effect with the substitution, for section 42, of the section 42 set out in paragraph 5 above, and
 - (b) the articles of government for the school had included the provision required by the section 42 so substituted.

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- (3) As from the appointed day, section 42 of that Act, as substituted by paragraph 5 above, shall have effect in relation to the relevant agreement, except that subsection (3) shall so have effect with the substitution for the words “if, at the time of entering into it, the governing body were of the opinion that” of the words “if and to the extent that”.
- (4) Nothing in this Schedule shall be taken to imply that the relevant agreement would not have been valid at any time apart from this paragraph.
- (5) Expressions used in this paragraph and in section 42 of that Act, as substituted by paragraph 5 above, have the same meaning in this paragraph as they have in that section as so substituted.

Dissolution and discontinuance

- 8 (1) A governing body incorporated under section 238 of this Act are dissolved by virtue of this paragraph—
 - (a) if the school they conduct is discontinued,
 - (b) where the school becomes a grant-maintained school or grant-maintained special school, when the local education authority cease to maintain the school, or
 - (c) if a new governing body of the school are constituted under the Education (No. 2) Act 1986.
- (2) Where such a governing body conduct two or more schools, sub-paragraph (1) above applies when, in relation to each of the schools, paragraph (a), (b) or (c) is satisfied.
- 9 (1) Where such a governing body are to be dissolved by reason of—
 - (a) the discontinuance of the county, voluntary or maintained special school which they conduct, or
 - (b) in the case of a governing body conducting two or more such schools, the discontinuance of each such school conducted by them,they shall have power to transfer any land or other property of theirs which is used or held for the purposes of the school to any person who provides education.
- (2) Where such a governing body are so dissolved—
 - (a) any such land or property for which no provision has been made under sub-paragraph (1) above for transfer, and
 - (b) all rights and liabilities of the governing body subsisting immediately before the date of dissolution which were acquired or incurred for the purposes of the school in question,shall be transferred to and, by virtue of this Act, vest in the local education authority.
- (3) Sub-paragraphs (1) and (2) above do not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.
- 10 (1) This paragraph applies where such a governing body dissolved by virtue of paragraph 8 above are the governing body of two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986.

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- (2) Where none of the schools in the group are discontinued, then in the case of each school formerly a member of the group—
- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
 - (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.
- (3) An order made by virtue of sub-paragraph (2) above may provide that—
- (a) the whole or any part of any such land and other property which was property of the governing body used or held for the purposes of the schools in the group, and
 - (b) any such rights and liabilities of the governing body which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body of the school.
- (4) Where not all of the schools in the group are discontinued, then in the case of each school formerly a member of the group which is not discontinued—
- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
 - (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.
- (5) An order made by virtue of sub-paragraph (4) above may provide that—
- (a) the whole or any part of any such land and other property which was property of the governing body used or held for the purposes of any school which is to be discontinued or the schools in the group, and
 - (b) any such rights and liabilities of the governing body which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body of the school.
- (6) Sub-paragraph (5) above does not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.
- 11 (1) This paragraph applies in relation to the governing body of two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986.
- (2) Where one or more schools conducted by the governing body are discontinued but the governing body are not dissolved by reason of the discontinuance, then in the case of each school formerly a member of the group which is discontinued—

- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
- (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be held by the governing body for the purposes of the schools in the group.
- (3) Sub-paragraph (2) above does not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.
- (4) Where, in the case of one or more schools conducted by the governing body, new governing bodies are constituted under the Education (No. 2) Act 1986 to conduct those schools but the governing body are not dissolved by reason of the constitution of such bodies, then in the case of each school formerly a member of the group—
- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
- (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.
- 12 For the purposes of this Schedule, references to the discontinuance of a school are—
- (a) to its discontinuance under section 14 of the Education Act 1944 (discontinuance by governors of voluntary schools), or
- (b) to the local education authority ceasing to maintain it in accordance with proposals under section 12 of the Education Act 1980 (discontinuance of county or voluntary schools) or section 183 of this Act.

General

- 13 (1) Where personal data are transferred under section 238(3) of this Act to a governing body incorporated by virtue of that section—
- (a) any entry made in respect of the governing body constituted immediately before the appointed day as a data user in the register maintained under section 4 of the Data Protection Act 1984, or
- (b) any application for registration as a data user made by that body under section 6 of that Act,
- shall have effect as if it were made in respect of or, as the case may be, by the governing body so incorporated.
- (2) Expressions used in sub-paragraph (1) above and in that Act shall have the same meaning in that sub-paragraph as in that Act.
- 14 Where a transfer under section 238 of this Act or this Schedule 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.

Status: This is the original version (as it was originally enacted).

- 15 Paragraphs 6 to 8 of Schedule 10 to the Education Reform Act 1988 (construction of agreements) shall apply in relation to transfers effected by section 238 of this Act or this Schedule as they apply to transfers to which that Schedule applies.