
EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies various statutory provisions relating to employment to take account of the requirement contained in the School Standards and Framework Act 1998 for local education authorities to delegate financial management of schools to their governing bodies. While a school has a delegated budget, the governing body have powers as to the appointment, suspension, discipline and dismissal of staff at the school, although the local education authority remains the employer of staff at community, voluntary controlled and community special schools. The local education authority may also be the employer of certain non-teaching staff at foundation, voluntary aided and foundation special schools.

Article 3 makes general modifications to the statutory provisions set out in the Schedule to the Order by providing that—

- (a) references to an employer or someone acting as such are treated as including references to the governing body exercising their employment powers;
- (b) employment by the local education authority at the relevant school is treated as employment by the governing body;
- (c) references to employees are treated as referring to employees at the relevant school;
- (d) references to dismissal by an employer are treated as including references to dismissal by the local education authority on the direction of the governing body; and
- (e) references to trade unions recognised by an employer are, as far as the governing body are concerned, treated as references to trade unions recognised either by the local education authority or the governing body.

Some provisions of employment law are excluded if an employer employs less than a certain number of staff. Article 3 further provides that the modifications which it makes shall not cause the governing body to be such a “small employer” if they would not have been so without the modifications.

Article 4 provides that where the governing body of a school require the local education authority to dismiss a member of staff, provisions relating to dismissal in the Employment Rights Act 1996 shall have effect as if the governing body were the employer, and the governing body’s reason for requiring the employee’s dismissal were the employer’s reason for dismissing the employee.

Article 5 provides that a dispute between staff employed to work at a school with a delegated budget and the governing body is capable of being a trade dispute within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. A dispute which is a trade dispute only by virtue of article 5 is not a trade dispute so far as staff employed to work at other schools are concerned.

Article 6 provides that the governing body are to be the respondent to any application to an employment tribunal arising out of any of their actions taken in the exercise of their employment powers, or any action taken by the local education authority at their direction, but provides that any award of compensation or costs or other order (other than an order for reinstatement or re-engagement) is to be made against the local education authority. It further provides that the local education authority are to be notified by the governing body when an application is made and are to have the right to apply to be made an additional party and to appear at the hearing of any such application.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The Education (Modification of Enactments Relating to Employment) Order 1998, which is revoked, made provision in similar terms in relation to the application of employment law consequent upon the staffing provisions (now repealed) of the Education Act 1996.