

EXPLANATORY MEMORANDUM TO THE

EDUCATION (LONDON RESIDUARY BODY)(PROPERTY TRANSFER)(AMENDMENT) ORDER 2005

2005 No. 1542

- 1.** This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and for the House of Lords Merits Committee.

- 2. Description**

2.1 This Order amends a condition set out in The Education (London Residuary Body)(Property Transfer)(No. 4) Order 1991 (SI 1991/2778) (“the 1991 Order”).

2.2 A condition of the 1991 Order meant that the London Borough of Hackney (“LBH”) should have brought the land at the former New River School site into use wholly or mainly for the purposes of its functions as the local education authority for the area before 1st January 1995; otherwise they should sell the land and divide the proceeds between the authorities that formed the Inner London Education Authority (“ILEA”).

2.3 The effect of the Order is to extend the date by which LBH should fulfil the condition to 1st April 2007.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments.**

None

- 4. Legislative Background**

4.1 A number of property transfer orders were made to bring about the transfer of ownership of the property formerly owned by ILEA to the London borough councils.

4.2 The Education (London Residuary Body) (Property Transfer) Order 1990, (SI 1990/124) (“the 1990 Order”) transferred certain property to LBH but expressly excluded the former New River School and rear of 21 to 41 Carysfort Road N16.

4.3 The 1991 Order determined that a number of properties which were excluded from previous orders should now transfer to various London

boroughs. Now included in this Order was the property described simply as "the former New River School, Clissold Road, N16." Although the Order did not expressly include reference to the description of the land to the rear of 17-41 Carysfort Road/1-23 Clissold Road, it referred to an accompanying plan, the title of which includes the Carysfort Road and Clissold Road addresses excluded in the 1990 Order. Furthermore, the 1991 Order set a condition on the transfer of "the former New River School, Clissold Road, N16" that it "should transfer to the London Borough of Hackney on the condition that it was brought into use wholly or mainly for the purposes of Hackney's functions as the local education authority for their area by 1st January 1995." If the land were not so brought into use it should be disposed of and the proceeds of sale (after deductions) divided between the Councils of the inner London boroughs and the Common Council of the City of London.

4.4 The Education (London Residuary Body) (Transfer of Functions and Property) (No. 2) Order 1992, (SI 1992/2257) ("the 1992 Order"), makes provision for the winding up of the London Residual Body and for the disposal of its remaining functions, property, rights and liabilities under the Education Reform Act 1988. It gave the Royal Borough of Kensington and Chelsea the power to investigate and enforce (subject to any directions given by the Secretary of State) compliance with the conditions imposed by the 1991 Order.

4.5 Article 2(1)(e) of SI 1992 No. 2257, states that all interests of the London Residual Body in all other land shall vest in the London Borough Council in whose area the land is situated, or if the land is situated in their area, the Common Council. This is unless:

- the land is situated in an area of the Common Council, or
- the land had been held for charitable purposes, in which case the land may belong to either Bromley or the Royal Borough of Kensington and Chelsea in accordance with regulation 4(1) and (2) of this Property Transfer Order.

4.6 Furthermore, an order was made in 1998, (albeit in respect of a different tract of land) which also purported to amend the 1991 Order. This order made provision in respect of the condition imposed by article 4 (4) of the 1991 Order after the date (stated as 1995) for the fulfilment of that condition had passed.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The Betty Layward School was opened on the New River School site on 1st September 1999. Some local residents from Carysfort Road and Clissold Road have objected to proposals by the School to build a playground on a wooded part of the site that adjoins their properties. As part of their campaign, these local residents have challenged LBH's right to occupy the wooded area claiming that the authority had not brought the whole site into educational use by the due date.

7.2 The issue of whether or not LBH had complied with the terms of the 1991 Order has been investigated by the Royal Borough of Kensington and Chelsea but the investigation could not confirm whether LB Hackney had met or had failed to meet the terms of the 1991 Order.

7.3 It is the Royal Borough of Kensington and Chelsea's view that in order to remove any doubts as to whether the conditions of transfer had been met, the Secretary of State for Education and Skills should consider amending the terms of the 1991 Order. The Secretary of State takes the same view because the alternative would be to close the existing school, sell the land and to divide the proceeds between the inner London authorities.

7.4 As the terms of the 1991 Order mean that the other London authorities would benefit if the site were to be sold, the Department needed to obtain their agreement that the terms of the Order should be amended. In February 2004 the Department began a consultation with those other inner London authorities about amending the date by which LB Hackney must bring the transferred land wholly into use for education purposes.

7.5 The result of the consultation with all inner London Boroughs showed that no authority objected to the proposal to amend the 1991 Order which would safeguard the future of the Betty Layward School. The authorities recognised that forcing compliance might well result in the closure of the school.

7.6 Following consultation with the London authorities, the Department also consulted all parties with an interest in the various parts of the former New River School site about the proposed amendment to the 1991 Order. Those consulted comprised the school, parents of pupils at the school, and local residents via a residents' action group which objects to proposals to extend the school's playground facilities into an area of woodland that borders their properties. The action group contends that this area of woodland is not part of the school site and did not transfer to LBH. The consultation, therefore, also set out the legislative provisions concerning the status of the disputed land.

7.7 There is overwhelming support from the school and parents of pupils at the school to amend the 1991 Order. Some of the residents of Carysfort Road whose property borders the disputed wooded area, and the spokesperson representing other residents of Carysfort Road and Clissold Road, together with a private housing association on Clissold Road which owns properties that overlook the school site, are basically content for an amendment to the 1991 Order which will allow the school to continue on the present site but

object if such amendment would result in the School or LBH having title to, or building a playground on, the disputed woodland land and being able to deny them access.

7.8 The plans that accompanied the 1991 Order clearly detailed that the disputed land to the rear of 17-41 Carysfort Road and to the rear of 1-23 Clissold Road were included in the site to transfer to the London Borough of Hackney. Furthermore, even if the land did not transfer under the 1991 Order, it would have transferred in any event under the provisions of the 1992 Order (see paragraph 4.5 above).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 If the 1991 Order is enforced, the Betty Layward School would be forced to close in order for the land to be sold. This is not in the best interests of the education of children in the local area; therefore, the solution appears to be to amend the 1991 Order to allow the Betty Layward School to continue to use the former New River School site.

9. Contact

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