



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### PART II **E+W**

#### NEW FRAMEWORK FOR MAINTAINED SCHOOLS

### CHAPTER VII **E+W**

#### MISCELLANEOUS AND SUPPLEMENTAL

#### *Further provisions relating to new schools*

#### **72 Further provisions relating to new schools. **E+W****

- (1) Regulations may make provision for—
  - (a) the staffing and conduct of a new school in advance of the school opening date;
  - (b) the determination of matters in connection with a new school in advance of that date;
  - (c) the taking of decisions by a temporary governing body, or (where power to do so is delegated to him) by the head teacher, as to expenditure in connection with a new school at a time when it does not have a delegated budget;
  - (d) such other matters relating to new schools as the Secretary of State considers appropriate.
- (2) Regulations under subsection (1) may, in connection with any matters falling within that subsection, apply any provision of the Education Acts with or without modification.
- (3) In this section “new school” means a school or proposed school—

*Status: Point in time view as at 01/09/2003.*

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- (a) for which there is a temporary governing body constituted under [F1section 44][F1section 34 of the Education Act 2002], or
- (b) for which there is no such body but for which such a body—
  - (i) are required to be so constituted by virtue of subsection (1) of that section, or
  - (ii) may be so constituted in accordance with such anticipatory arrangements as are mentioned in subsection (5)(a) of that section.

#### Textual Amendments

- F1** Words in s. 72(3)(a) substituted (1.4.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 106](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/124, art. 4](#); [S.I. 2005/2910, art. 4, Sch.](#)

### *Transfers of staff and land*

#### **73 Transfer of staff on appointed day. E+W**

- (1) Subsections (5) to (7) below (“the staff transfer provisions”) apply where on the appointed day—
  - (a) a special agreement school becomes a voluntary aided school, or
  - (b) a grant-maintained school becomes a community or voluntary controlled school, or
  - (c) a grant-maintained special school becomes a community special school, in accordance with Schedule 2.
- (2) Subject to subsection (3), the staff transfer provisions apply in the circumstances mentioned in subsection (1) to any person who immediately before the appointed day—
  - (a) is employed by the local education authority to work solely at an existing school within subsection (1)(a), or
  - (b) is employed by the local education authority to work at such an existing school and is designated for the purposes of this subsection by an order made by the Secretary of State, or
  - (c) is employed by the governing body of an existing school within subsection (1)(b) or (c).
- (3) The staff transfer provisions do not apply—
  - (a) to any person employed as mentioned in subsection (2) whose contract of employment terminates on the day immediately preceding the appointed day; or
  - (b) to any person employed as mentioned in subsection (2)(a) or (b) who before that day—
    - (i) has been appointed or assigned by the local education authority to work solely at another school as from that day, or
    - (ii) has been withdrawn from work at the school with effect from that day.
- (4) A person who before the appointed day has been appointed or assigned by—
  - (a) the local education authority, or
  - (b) the governing body of an existing school within subsection (1)(b) or (c),

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to work at a school, or (as the case may be) at the existing school, as from that day shall be treated for the purposes of this section as if he had been employed by the authority or governing body immediately before that day to do such work at the school as he would have been required to do on or after that day under his contract of employment with the authority or that body.

(5) The contract of employment between a person to whom the staff transfer provisions apply and his former employer shall have effect from the appointed day as if originally made between him and his new employer.

(6) Without prejudice to subsection (5)—

(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 new employer on the appointed day, 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 day to have been done by or in relation to the new employer.

(7) Subsections (5) and (6) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

(8) In this section—

“existing school” means a school which becomes a school of a different category on the appointed day as mentioned in subsection (1), and “new school” means the school of a different category which an existing school then becomes;

“the former employer” and “the new employer”—

(a) where the staff transfer provisions apply by virtue of subsection (2)(a) or (b), means the local education authority and the governing body of the new school respectively, and

(b) where the staff transfer provisions apply by virtue of subsection (2)(c), means the governing body of the existing school and the local education authority respectively;

and references to a special agreement, grant-maintained or grant-maintained special school are references to such a school within the meaning of the<sup>M1</sup> Education Act 1996.

(9) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (2)(a) as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.

(10) An order under this section may designate a person either individually or as a member of a class or description of employees.

**Modifications etc. (not altering text)**

C1 S. 73 excluded (10.3.1999) by S.I. 1999/362, reg.56.

**Marginal Citations**

M1 1996 c. 56.

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**74 Transfer of land on appointed day. E+W**

Schedule 21 (which makes provision for transfers of land and certain rights and liabilities on the appointed day in respect of schools which become community, foundation, voluntary or community special schools on that day) shall have effect.

**75 Transfer of land by governing body to trustees. E+W**

- (1) Where a building is to be provided for a foundation or voluntary school and the building—
- (a) is to form part of the school premises, and
  - (b) is to be constructed partly on land held by the governing body and partly on land held on trust for the purposes of the school by persons other than the governing body,
- the governing body shall transfer to those persons the land held by the governing body on which the building is to be constructed.
- (2) Paragraph 1 of Schedule 22 does not apply to any transfer required by subsection (1).

*Disposals of land and on discontinuance*

**76 Disposals of land in case of certain schools and disposals on discontinuance. E+W**

Schedule 22 (which makes provision as to the disposal of land held for the purposes of foundation, voluntary or foundation special schools and as to the property of maintained schools on their discontinuance) shall have effect.

**77 Control of disposals or changes in use of school playing fields. E+W**

- (1) Except with the consent of the Secretary of State, a body to whom this subsection applies shall not dispose of any playing fields—
- (a) which are, immediately before the date of the disposal, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date.
- (2) Subsection (1) applies—
- (a) to a local authority; and
  - (b) in any case where the consent of the Secretary of State is not required to any such disposal by virtue of either of paragraphs 1 and 2 of Schedule 22—
    - (i) to the governing body of a maintained school, and
    - (ii) to a foundation body.
- (3) Except with the consent of the Secretary of State, a local authority shall not take any action (other than the making of a disposal falling within subsection (1)) which is intended or likely to result in a change of use of any playing fields—
- (a) which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date,

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whereby the playing fields will be used for purposes which do not consist of or include their use as playing fields by such a school for the purposes of the school.

- (4) Subsection (3) does not, however, apply where the land in question will, on a change of use falling within that subsection, become used in connection with the provision by a local authority of educational facilities for a maintained school or any recreational facilities.
- (5) For the purposes of this section the Secretary of State's consent may be given in relation to a particular disposal or change of use or generally in relation to disposals or changes of use of a particular description, and in either case may be given subject to conditions.
- (6) This section has effect despite anything in section 123 or 127 of the <sup>M2</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and any consent which a local authority are required to obtain by virtue of this section shall be in addition to any consent required by virtue of either of those sections.
- (7) In this section—
  - “local authority” includes a parish council;
  - “playing fields” means land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land.
- (8) For the purposes of this section any reference to a maintained school includes, in relation to any time falling before the appointed day, a reference to the school as—
  - (a) a county, voluntary or maintained special school, or
  - (b) a grant-maintained or grant-maintained special school,within the meaning of the <sup>M3</sup>Education Act 1996.
- (9) Nothing in this section applies in relation to Wales.

#### **Modifications etc. (not altering text)**

- C2** S. 77(1) restricted (28.7.2000) by 2000 c. 21, s. 131, **Sch. 8 para. 9(3)** (with s. 150)
- C3** S. 77(1) excluded (26.7.2002) by [Education Act 1996 \(c. 56\)](#), [Sch. 35A para. 10\(4\)](#) (as inserted by [Education Act 2002 \(c. 32\)](#), ss. 65, 216, **Sch. 7 Pt. 1 para. 1** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**)
- C4** S. 77 modified (*temp.*) (1.2.1999) by S.I. 1999/1, **reg.2**

#### **Commencement Information**

- I1** S. 77 wholly in force; s. 77 not in force at Royal Assent see s. 145(3); s. 77 except subsection (2)(b) in force at 1.10.1998 by S.I. 1998/2212, **art. 2**, **Sch. 1 Pt. I**; s. 77(2)(b) in force at 1.2.1999 by S.I. 1998/3198, **art. 2(2)**, **Sch.**

#### **Marginal Citations**

- M2** 1972 c. 70.
- M3** 1996 c. 56.

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### *Rating*

#### 78 **Rating of maintained schools.** **E+W**

For the purposes of Part III of the <sup>M4</sup>Local Government Finance Act 1988 (non-domestic rating) the occupier of any hereditament so far as consisting of the premises of a maintained school shall be taken to be—

- (a) the local education authority, where it is a community, voluntary controlled or community special school; or
- (b) the governing body, where it is a foundation, voluntary aided or foundation special school.

#### **Marginal Citations**

**M4** 1988 c. 41.

### *Stamp duty*

#### 79 **Stamp duty.** **E+W**

- (1) Subject to subsection (2), stamp duty shall not be chargeable in respect of any transfer to a local authority under any of the following provisions, namely—
  - (a) paragraph 4 or 7 of Schedule 21 or any corresponding provision of regulations under paragraph 10 of Schedule 2,
  - (b) paragraph 4(2), 5(4), 6(2)(b), 7(2) or 8(2)(b) of Schedule 22, or
  - (c) any regulations under paragraph 5 of Schedule 8.
- (2) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsection (1) shall be treated as duly stamped unless—
  - (a) it is stamped with the duty to which it would be liable but for that subsection, or
  - (b) it has, in accordance with section 12 of the <sup>M5</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.
- (3) In subsection (1) any reference to a transfer under any provision or regulations mentioned in that subsection shall be read as a reference to a transfer under that provision or those regulations taken with section 198 of, and Schedule 10 to, the <sup>M6</sup>Education Reform Act 1988 if those provisions of that Act apply to the transfer by virtue of any provision of this Act or that Act.

#### **Marginal Citations**

**M5** 1891 c. 39.

**M6** 1988 c. 40.

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### *Further education*

#### **80 Provision of further education. E+W**

- (1) The governing body of any maintained school shall be responsible for determining whether or not to provide—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19;but the governing body of a community or foundation special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.
- (2) It shall be the duty of the governing body of any such school which provides such education to secure that, except in such circumstances as may be prescribed, such education is not provided at any time in a room where pupils are at that time being taught.
- (3) This section shall not apply to part-time education provided under a partnership arrangement to which section 60A of the <sup>M7</sup>Further and Higher Education Act 1992 (as inserted by section 125(4) of this Act) applies.

#### **Marginal Citations**

M7 1992 c. 13.

### *Modification of employment law*

#### **81 Application of employment law during financial delegation. E+W**

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment, and in particular in any enactment—
  - (a) conferring powers or imposing duties on employers,
  - (b) conferring rights on employees, or
  - (c) otherwise regulating the relations between employers and employees,as he considers necessary or expedient in consequence of the operation of [F2sections 54 and 57(1) to (3), Schedule 16 and paragraph 27 of Schedule 17][F2sections 35 to 37 of the Education Act 2002 or of regulations under those sections].
- (2) Before making any order under this section the Secretary of State shall consult—
  - (a) such associations of local authorities,
  - (b) such bodies representing the interests of governors of foundation or voluntary schools, and
  - (c) such organisations representing staff in maintained schools,as appear to him to be concerned.

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#### Textual Amendments

**F2** Words in s. 81(1) substituted (1.8.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 107](#) (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2003/1667](#), [art. 3](#)

#### Modifications etc. (not altering text)

**C5** S. 81(2) modified (*temp.*) (1.4.1999) by [S.I. 1999/638](#), [reg. 9](#).

### *Supplementary provisions*

## 82 **Modification of trust deeds.** E+W

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to—
  - (a) a school which is or is to become a foundation, voluntary or foundation special school, or
  - (b) property held on trust for the purposes of such a school,
 as appear to him to be necessary or expedient in connection with the operation of any provision of this Act [<sup>F3</sup>, the Learning and Skills Act 2000 or the Education Act 2002] or anything done under or for the purposes of any such provision.
- (2) Before making an order under this section the Secretary of State shall consult—
  - (a) the governing body of the school in question;
  - (b) any trustees holding property on trust for the purposes of the school;
  - (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
  - (d) such other persons as he considers appropriate.
- (3) Any modification made by an order under this section may be made so as to have permanent effect or to have effect for such period as is specified in the order.

#### Textual Amendments

**F3** Words in. 82(1) inserted (1.10.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 215\(1\)](#), [216](#), [Sch. 21 para. 108](#) (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), [art. 3](#) (with [Sch.](#)); [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. 1](#)

## 83 **Modification of provisions making governors of foundation or voluntary school ex officio trustees.** E+W

- (1) Where any provision of a trust deed or other instrument made before 1st July 1981 would, apart from this subsection, have the effect that the persons who are for the time being governors of a foundation or voluntary school were by virtue of their office trustees of any property held for the purposes of, or in connection with, the school, that provision shall instead have effect as if the only governors of the school were—
  - (a) the foundation governors,
  - (b) those appointed by the local education authority, and
  - (c) any co-opted governor nominated by a minor authority.



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- (2) Subsection (1) is without prejudice to any power to amend any such provision as is mentioned in that subsection.

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