

1989 No. 901

EDUCATION, ENGLAND AND WALES

**The Education (Modification of Enactments Relating to
Employment) Order 1989**

Made - - - - - 24th May 1989

Laid before Parliament 30th May 1989

Coming into force 1st September 1989

The Secretary of State for Education and Science, in exercise of the powers conferred on him by sections 222 and 232(5) of the Education Reform Act 1988^(a) and after consulting—

- (a) such associations of local authorities;
- (b) such bodies representing the interests of governors of voluntary schools; and
- (c) such organisations representing staff in schools required to be covered by schemes under section 33 of that Act or institutions required to be covered by schemes under section 139 of that Act

as appeared to him to be concerned, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Education (Modification of Enactments Relating to Employment) Order 1989 and shall come into force on 1st September 1989.

Interpretation

2. In this Order, unless the context otherwise requires—

(1) “the Act” means the Education Reform Act 1988;

“governing body” means the governing body for the time being of an institution which provides higher education or further education (or both) and which is maintained by a local education authority or of a school which is so maintained, and references in relation to governing bodies to the local education authority are references to the local education authority by which the institution or school is maintained; and

“school” has the meaning assigned to it by section 114 of the Education Act 1944^(b);

(2) references to employment powers are references to the powers as to appointment, suspension, discipline and dismissal of staff conferred by or under sections 44, 45, 46, 148 and 149 of, and Schedule 3 and paragraph 4 of Schedule 4 to, the Act; and

(3) references to governing bodies with delegated budgets are references to governing bodies to whom powers as to the expenditure of the budget share of the school or institution for which they are responsible are for the time being delegated by virtue of sections 36 or 142 of the Act, or to whom powers in relation to the budget shares of new schools are for the time being delegated by section 48 thereof and Schedule 4 thereto, as the case may be.

(a) 1988 c.40.

(b) 1944 c.31, amended by section 34(1) of the Education Act 1980 (c.20) and by paragraph 7 of Schedule 12 to the Education Reform Act 1988.

General modifications of employment enactments

3.—(1) In their application to governing bodies with delegated budgets, the enactments set out in the Schedule hereto shall have effect as if—

- (a) any reference (however expressed) to an employer, a person by whom employment is offered, or a principal included a reference to the governing body acting in the exercise of their employment powers and as if that governing body had at all material times been such an employer, person or principal;
- (b) in relation to the exercise of the governing body's employment powers, employment by the local education authority at a school or institution were employment by the governing body of that school or institution;
- (c) references to employees were references to employees at the school or institution in question;
- (d) references to dismissal by an employer included references to dismissal by the local education authority following notification of a determination by a governing body under paragraph 8(1) of Schedule 3 to, or section 148(6) of, the Act; and
- (e) references to trade unions recognised by an employer were references to trade unions recognised by the local education authority or the governing body.

(2) Nothing in paragraph (1) shall be taken as causing the governing body to meet the conditions stated in—

- (a) section 56A(1)(a) of the Employment Protection (Consolidation) Act 1978(a) ;
or
- (b) section 2(3)(b) of the Employment Act 1980(b) ;

if it would not have done so but for the operation of that paragraph.

Dismissals

4. Without prejudice to the generality of article 3, where an employee employed at a school or institution with a governing body with a delegated budget is dismissed by the local education authority following notification of such a determination as if mentioned in article 3(1)(d) above—

- (a) section 53 of the Employment Protection (Consolidation) Act 1978(c) shall have effect as if the governing body had dismissed him and as if references to the employer's reasons for dismissing the employee were references to the reasons for which the governing body made their determination; and
- (b) Part V of the Employment Protection (Consolidation) Act 1978(d) shall have effect in relation to the dismissal as if the governing body had dismissed him, and the reason or principal reason for which the governing body did so had been the reason or principal reason for which they made their determination.

(a) 1978 c.44. Section 56A was inserted by section 12 of the Employment Act 1980 (c.42).

(b) 1980 c.42.

(c) 1978 c.44. Section 53(2) was amended by paragraph 4 of Schedule 2 to the Employment Act 1982 (c.46).

(d) Subsections (5) to (7) of section 55 were substituted by paragraph 1 of Schedule 3 to the Employment Act 1982. Section 56 was amended by paragraph 11 of Schedule 1 to the Employment Act 1980 (c.42), section 56A was inserted by section 12 of that Act, and section 57(3) was amended by section 6 of that Act. Section 58 was substituted by section 3 of the Employment Act 1982, and was amended by Schedules 3 and 4 to the Employment Act 1988 (c.19). Section 59 was amended by paragraph 17 of Schedule 3 to the Employment Act 1982, and section 62 by section 9 of and Schedule 4 to that Act. Section 64 was amended by the Unfair Dismissal (Variation of Qualifying Period) Order 1985 (S.I. 1985/782), by paragraph 5 of Schedule 2 and paragraph 19 of Schedule 3 to the Employment Act 1982, and by section 3(1) of the Sex Discrimination Act 1986 (c.59). Section 64A was inserted by section 8(1) of the Employment Act 1980 and amended by paragraph 20 of Schedule 3 to the Employment Act 1988. Section 66(1) was repealed and section 66(2) was amended by paragraph 13 of Schedule 1 to the Employment Act 1980. Section 67(3) was substituted by section 9(5) of the Employment Act 1982. Section 68(2) was amended by paragraph 21 of Schedule 3 to the Employment Act 1982, and subsections (2), (3) and (5) of section 71 were amended by section 5(1) of, and paragraph 22 of Schedule 3 and Schedule 4 to, that Act. Section 72 was substituted by section 5(2) of the Employment Act 1982, and section 72A inserted by section 6 of that Act. Section 73 was amended by section 9 of, and Schedule 2 to, the Employment Act 1980, by section 4 of, and paragraph 5 of Schedule 2 and Schedule 4 to, the Employment Act 1982, and by the Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order 1988 (S.I. 1988/277). Section 74(3) was amended by paragraph 23 of Schedule 3 to the Employment Act 1982. Section 75(1) was amended by the Unfair Dismissal (Increase of Compensation Limit) Order 1986 (S.I. 1986/2284). Section 75A was inserted by section 5(3) of the Employment Act 1982, and subsections (1) and (2) were amended by the Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order 1988 (S.I. 1988/277). Section 76A was inserted by section 7 of the Employment Act 1982. Section 77 was amended by section 8 of, and paragraph 24 of Schedule 3 and Schedule 4 to, the Employment Act 1982. Section 80(1) was amended by paragraph 30 of Schedule 1 to the Education Act 1980 (c.20).

Trade disputes

5. A dispute between staff employed to work at a school or institution which has a governing body with a delegated budget and that governing body which relates wholly or mainly to one or more of the matters set out in section 29(1) of the Trade Union and Labour Relations Act 1974(a) shall be a trade dispute within the meaning of that Act but, in any case where there is a trade dispute only by virtue of the operation of this article, nothing in section 13 of that Act(b) shall prevent an act from being actionable in tort where, as the case may be, the inducement, interference or threat mentioned in that section relates to a contract the performance of which does not affect directly or indirectly the school or institution over which the governing body in question exercises its functions.

Applications to Industrial Tribunals

6.—(1) Without prejudice to anything in articles 3 and 4 and notwithstanding any provision in the Employment Protection (Consolidation) Act 1978 or in any regulations made under section 128 of that Act, this article applies in respect of any application to an industrial tribunal, and any proceedings pursuant to such an application, in relation to which by virtue of article 3 or 4 the governing body is to be treated as if it were an employer, person by whom employment is offered, or a principal.

(2) The application shall be made, and the proceedings shall be carried on, against that governing body.

(3) Notwithstanding paragraph (2), any decision, declaration, order, recommendation or award made in the course of such proceedings except in so far as it requires reinstatement or re-engagement shall have effect as if made against the local education authority.

(4) Where any application is made against a governing body pursuant to paragraph (2)—

- (a) the governing body shall notify the local education authority within 14 days of receiving notification thereof; and
- (b) the local education authority shall, on written application to the industrial tribunal, be entitled to be made an additional party to the proceedings and to take part in the proceedings accordingly.

(a) 1974 c.52. Section 29(1) was amended by section 18 of the Employment Act 1982 (c.46).

(b) Section 13(1) was substituted by section 3(2) of the Trade Union and Labour Relations (Amendment) Act 1976 (c.7), section 13(2) was repealed by section 19(1) of, and Schedule 4 to, the Employment Act 1982 and section 13(3) by section 17(8) of, and Schedule 4 to, the Employment Act 1980 (c.42).

SCHEDULE

Article 3

Sex Discrimination Act 1975(a)
sections 6, 7, 9, 41 and 82(1A)

Employment Protection Act 1975(b)
sections 17–21, 99–103, 105 and 106

Race Relations Act 1976(c)
sections 4, 5, 7 and 32

Employment Protection (Consolidation) Act 1978(d)
sections 23–24
section 33
sections 45–48
section 53
Part V

Employment Act 1980(e)
section 2

24th May 1989

Kenneth Baker
Secretary of State for Education and Science

(a) 1975 c.65. Section 6 was amended by sections 1(1) and 2(1) of the Sex Discrimination Act 1986 (c.59), and subsection 82(1A) was inserted by section 2(3) of that Act.

(b) 1975 c.71. Sections 17 and 21 were amended by Schedule 2 to the Employment Act 1980 (c.42). Sections 99–101 were amended by the Employment Protection (Handling of Redundancies) Variation Order 1979 (S.I. 1979/958). Section 102 was amended by paragraph 23 of Schedule 16 to the Employment Protection (Consolidation) Act 1978 (c.44).

(c) 1976 c.74.

(d) Section 23 was amended by section 15 of the Employment Act 1980; section 10 of the Employment Act 1982 (c.46); and section 11(a) of, and Schedules 3 and 4 to, the Employment Act 1988 (c.19). Section 33 was amended by section 11(1) and (2) of, and Schedule 2 to, the Employment Act 1980; by paragraph 31 of Schedule 7 to the Nurses, Midwives and Health Visitors Act 1979 (c.36); and by paragraph 75 of Schedule 10 and Schedule 11 to the Social Security Act 1986 (c.50).

(e) 1980 c.42. Section 2 was amended by section 20(5) of the Trade Union Act 1984 (c.49) and by paragraph 3 of Schedule 3 to the Employment Act 1988 (c.19).

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 Education Reform Act 1988 for local education authorities to delegate financial management of schools and institutions of higher or further education to their respective governing bodies. While such governing bodies have the responsibility for financial management of their school or institution, they also have powers as to the appointment, suspension, discipline and dismissal of staff at the school or institution, although the local education authority remains the employer of those staff.

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 its employment powers;
- (b) employment by the local education authority at the relevant school or institution is treated as employment by the governing body;
- (c) references to employees are treated as referring to employees at the relevant school or institution;
- (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 is 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 it would not have been so without the modifications.

Article 4 provides that where the governing body of a school or institution require the local education authority to dismiss a member of staff, provisions relating to dismissal in the Employment Protection (Consolidation) Act 1978 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 or institution subject to delegated financial management and their governing body is capable of being a trade dispute within the meaning of the Trade Union and Labour Relations Act 1974, but that a dispute which is a trade dispute only by virtue of the article is not a trade dispute so far as staff employed to work at other schools or institutions are concerned.

Article 6 provides that the governing body is to be the respondent to any application to an industrial tribunal arising out of any of its actions taken in the exercise of its employment powers, or any action taken by the local education authority at its 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 is to be notified by the governing body when an application is made and is to have the right to apply to be made an additional party and to appear at the hearing of any such application.