
STATUTORY INSTRUMENTS

1999 No. 2256

**The Education (Modification of Enactments
Relating to Employment) Order 1999**

Citation, commencement and revocation

1.—(1) This Order may be cited as the Education (Modification of Enactments Relating to Employment) Order 1999 and shall come into force on 1st September 1999.

(2) The Education (Modification of Enactments Relating to Employment) Order 1998(1) is hereby revoked.

Interpretation

2.—(1) In this Order—

“the 1996 Act” means the Employment Rights Act 1996(2);

“the 1998 Act” means the School Standards and Framework Act 1998;

“governing body” means the governing body of a school which is maintained by a local education authority;

“governing body having a right to a delegated budget” has the same meaning as in Part II of the 1998 Act;

“local education authority” means the local education authority by which the school is maintained; and

“school having a delegated budget” has the same meaning as in Part II of the 1998 Act.

(2) In this Order references to employment powers are references to the powers of appointment, suspension, discipline and dismissal of staff conferred by or under sections 54 and 57(1) to (3) of, and Schedule 16 and paragraph 27 of Schedule 17 to, the 1998 Act.

(3) In this Order a reference to an article is a reference to an article of this Order, a reference in an article to a paragraph is a reference to a paragraph of that article, and a reference to the Schedule is a reference to the Schedule to this Order.

General modifications of employment enactments

3.—(1) In their application to governing bodies having a right to a delegated budget, the enactments set out in the Schedule 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;

(1) S.I.1998/218, modified by S.I. 1999/711.

(2) 1996 c. 18.

- (b) in relation to the exercise of the governing body's employment powers, employment by the local education authority at a school were employment by the governing body of that school;
 - (c) references to employees were references to employees at the school 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 25(1) of Schedule 16 to the 1998 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—
- (a) the governing body to meet the condition stated in section 96(2)(a) of the 1996 Act; or
 - (b) the exemption in respect of an employer with fewer employees than is specified in section 7(1) of the Disability Discrimination Act 1995(3) to apply,
- if it would not have done so but for the operation of that paragraph.
- (3) The references to the Disability Discrimination Act 1995(4) in paragraph (2)(b) and in the Schedule shall not apply in respect of any act or omission occurring before 2nd March 1998.

Dismissals

4. Without prejudice to the generality of article 3, where an employee employed at a school having a delegated budget is dismissed by the local education authority following notification of such a determination as is mentioned in article 3(1)(d)—
- (a) section 92 of the 1996 Act 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 X of the 1996 Act(5) 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.

Trade disputes

5.—(1) Subject to paragraph (2), a dispute between staff employed to work at a school having a delegated budget and the school's governing body, which relates wholly or mainly to one or more of the matters set out in section 244(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(6) shall be a trade dispute within the meaning of that Act.

(2) In any case where there is a trade dispute only by virtue of the operation of this article, nothing in section 219 of that Act shall prevent an act from being actionable in tort where 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 over which the governing body in question exercise their functions.

(3) Section 7(1) was amended by S.I. 1998/2618.

(4) 1995 c. 50.

(5) 1996 c. 18.

(6) 1992 c. 52.

Applications to Employment Tribunals

6.—(1) Without prejudice to articles 3 and 4, and notwithstanding any provision in the Employment Tribunals Act 1996⁽⁷⁾ and any regulations made under section 1(1) of that Act, this article applies in respect of any application to an employment tribunal, and any proceedings pursuant to such an application, in relation to which by virtue of article 3 or 4 a governing body are to be treated as if they 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 employment tribunal, be entitled to be made an additional party to the proceedings and to take part in the proceedings accordingly.

9th August 1999

Estelle Morris
Minister of State,
Department for Education and Employment

(7) 1996 c. 17; this Act is to be cited as the Employment Tribunals Act 1996 by virtue of section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).