
STATUTORY INSTRUMENTS

2003 No. 1964

**The Education (Modification of Enactments
Relating to Employment) (England) Order 2003**

Citation, commencement, application and revocation

1.—(1) This Order may be cited as the Education (Modification of Enactments Relating to Employment) (England) Order 2003 and shall come into force on 1st September 2003.

(2) These Regulations apply only in relation to England.

(3) The Education (Modification of Enactments Relating to Employment) Order 1999(1) is revoked, in relation to England.

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;

“the 2003 Regulations” mean the School Staffing (England) Regulations 2003(3);

“authority” means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

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

“governing body having a right to a delegated budget” and “school having a delegated budget” have the same meaning as in Part 2 of the 1998 Act.

(2) In this Order references to employment powers are references to the powers of appointment, suspension, conduct and discipline, capability and dismissal of staff conferred by the 2003 Regulations.

General modifications of employment enactments

3.—(1) In their application to a governing body having a right to a delegated budget, the enactments set out in the Schedule have effect as if—

(a) any reference to an employer (however expressed) included a reference to the governing body acting in the exercise of its employment powers and as if that governing body had at all material times been such an employer;

(b) in relation to the exercise of the governing body’s employment powers, employment by the authority at a school were employment by the governing body of the school;

(c) references to employees were references to employees at the school in question;

(1) S.I.1999/2256.

(2) 1996 c. 18.

(3) S.I. 2003/1963.

- (d) references to dismissal by an employer included references to dismissal by the authority following notification of a determination by a governing body under regulation 18(1) of the 2003 Regulations; and
- (e) references to trade unions recognised by an employer were references to trade unions recognised by the authority or the governing body.

(2) Paragraph (1) does not cause the exemption in respect of an employer with fewer employees than is specified in section 7(1) of the Disability Discrimination Act 1995(4) to apply (without prejudice to whether it applies irrespective of that paragraph).

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

- (a) section 92 of the 1996 Act(5) has 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 its determination; and
- (b) Part X of the 1996 Act(6) has 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 it made its 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 of the matters set out in section 244(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(7) is a trade dispute within the meaning of that Act.

(2) In any case where there is a trade dispute only by virtue of this article, nothing in section 219 of that Act(8) prevents 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 exercises its functions.

Applications to Employment Tribunals

6.—(1) Without prejudice to articles 3 and 4, and notwithstanding any provision in the Employment Tribunals Act 1996(9) 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 is to be treated as if it were an employer (however expressed).

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

(4) 1995 c. 50. Section 7(1) is amended by S.I. 1998/2618.

(5) Section 92(1) is amended by S.I. 2002/2034, section 92(2) is amended by the Employment Act 2002, section 92(3) is amended by the Employment Act 2002 and by S.I. 1999/1436, section 92(4) is amended by the Employment Relations Act 1999, section 92(4A) is inserted by the Employment Act 2002 and section 92(6) is amended by S.I. 2002/2034.

(6) Part X of the 1996 Act is amended by the Police (Health and Safety) Act 1997, the Employment Rights (Dispute Resolution) Act 1998, the National Minimum Wage Act 1998, the Public Interest Disclosure Act 1998, the Teacher and Higher Education Act 1998, the Employment Relations Act 1999, the Tax Credits Act 1999, the Welfare Reform and Pensions Act 1999, the Employment Act 2002, the Police Reform Act 2002, the Tax Credits Act 2002, S.I. 1996/1513, S.I. 1998/1833, S.I. 1999/1436, S.I. 1999/1925, S.I. 1999/3323, S.I. 2000/1551, S.I. 2002/2034 and S.I. 2002/2927.

(7) 1992 c. 52.

(8) Section 219 is amended by the Trade Union Reform and Employment Rights Act 1993.

(9) 1996 c. 17 is amended by the Arbitration Act 1996, the Employment Rights (Dispute Resolution) Act 1998, the National Minimum Wage Act 1998, the Social Services Act 1998, the Employment Relations Act 1999, the Tax Credits Act 1999, the Employment Act 2002, the Tax Credits Act 2002, S.I. 1998/1658, S.I. 1998/1833, S.I. 1999/678, S.I. 1999/3323, S.I. 2000/1299, S.I. 2000/1551, S.I. 2001/237, S.I. 2001/1107 and S.I. 2002/2034.

(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 has effect as if made against the authority.

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

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

5th August 2003

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Department for Education and Skills