
STATUTORY INSTRUMENTS

1999 No. 2256

EDUCATION, ENGLAND AND WALES

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

<i>Made</i>	- - - -	<i>9th August 1999</i>
<i>Laid before Parliament</i>		<i>11th August 1999</i>
<i>Coming into force</i>	- -	<i>1st September 1999</i>

The Secretary of State for Education and Employment, in exercise of the power conferred by sections 81 and 138(7) of the School Standards and Framework Act 1998⁽¹⁾ and after consulting—

- (a) such associations of local authorities,
- (b) such bodies representing the interests of governors of grant-maintained or voluntary schools (within the meaning of the Education Act 1996⁽²⁾), and
- (c) such organisations representing staff in county, voluntary, maintained special, grant-maintained or grant-maintained special schools (within the meaning of the Education Act 1996),

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

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⁽³⁾ is hereby revoked.

Interpretation

2.—(1) In this Order—

“the 1996 Act” means the Employment Rights Act 1996⁽⁴⁾;

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

(1) 1998 c. 31, modified by S.I.1999/638.
(2) 1996 c. 56.
(3) S.I. 1998/218, modified by S.I. 1999/711.
(4) 1996 c. 18.

“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;
- (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(5) 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(6) 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)—

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

(6) 1995 c. 50.

- (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(7) 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(8) 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.

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 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. 18.

(8) 1992 c. 52.

(9) 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).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Article 3

- Sex Discrimination Act 1975**(10)**
 sections 6, 7, 9, 41 and 82(1A)
- Race Relations Act 1976**(11)**
 sections 4, 5, 7 and 32
- Trade Union and Labour Relations (Consolidation) Act 1992**(12)**
 sections 146, 147, 152–154, 181–185
- Disability Discrimination Act 1995**(13)**
 sections 4–6, 11, 12, 16, 55, 57 and 58
- 1996 Act**(14)**
 sections 66–68, 70, 71, 92, 93 and Part X

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 School Standards and Framework Act 1998 for local education authorities to delegate financial management of schools to their governing bodies. While a school has a delegated budget, the governing body have powers as to the appointment, suspension, discipline and dismissal of staff at the school, although the local education authority remains the employer of staff at community, voluntary controlled and community special schools. The local education authority may also be the employer of certain non-teaching staff at foundation, voluntary aided and foundation special schools.

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 their employment powers;
- (b) employment by the local education authority at the relevant school is treated as employment by the governing body;
- (c) references to employees are treated as referring to employees at the relevant school;
- (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 are concerned, treated as references to trade unions recognised either by the local education authority or the governing body.

(10) 1975 c. 65.

(11) 1976 c. 74.

(12) 1992 c. 52.

(13) 1995 c. 50.

(14) 1996 c. 18.

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 they would not have been so without the modifications.

Article 4 provides that where the governing body of a school require the local education authority to dismiss a member of staff, provisions relating to dismissal in the Employment Rights Act 1996 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 with a delegated budget and the governing body is capable of being a trade dispute within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. A dispute which is a trade dispute only by virtue of article 5 is not a trade dispute so far as staff employed to work at other schools are concerned.

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

The Education (Modification of Enactments Relating to Employment) Order 1998, which is revoked, made provision in similar terms in relation to the application of employment law consequent upon the staffing provisions (now repealed) of the Education Act 1996.