

SCHEDULES

SCHEDULE 8

Section 36(8).

TRANSFER AND APPORTIONMENT OF ASSETS

Identification of land, moveable property, liabilities and obligations

- 1 (1) The education authority and the commissioner for school assets appointed in respect of a school shall, whether before or after the incorporation date, so far as practicable arrive at such written agreements, and execute such other instruments, as are necessary or expedient—
- (a) to identify or define the land, moveable property, liabilities and obligations transferred to and vested in the board of management under section 36 of this Act; or
 - (b) for making any arrangements such as are mentioned in paragraph 2(2) below as will afford to the authority and the board as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.
- (2) Any such agreement shall provide so far as is expedient—
- (a) for the creation of interests in land or land obligations, whether involving the surrender of any existing interest or obligation or the creation of a new interest or obligation, and whether in favour of or incumbent on the education authority or the board of management; and
 - (b) for the granting of indemnities.
- (3) An education authority shall supply a commissioner for school assets with such information, including all deeds relating to interests in land and land obligations, as he may require in the exercise of his functions.
- 2 (1) The land, moveable property, liabilities and obligations mentioned in section 36(2) or (3) of this Act shall, where their nature permits, be divided or apportioned between the education authority and the board of management in such proportions as may be appropriate.
- (2) Any land, moveable property, liability or obligation the nature of which does not permit its division or apportionment shall be transferred to the board of management or retained by the education authority according to—
- (a) in the case of land, which of the education authority or the board of management appear, as at the incorporation date, to be likely to experience the greater practical difficulty through not having possession of that land or, where neither of them appear likely to experience such difficulty to a greater extent than the other, which of them appear on that date to be likely to make use of the land to the greater extent; or
 - (b) in the case of any moveable property or of any liability or obligation, which of them appear on the incorporation date to be likely to make use of the

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property or, as the case may be, to be affected by the liability or obligation to the greater extent,

subject (in either case) to such arrangements for the protection of the other party as may be agreed between the education authority and the commissioner for school assets or determined by the Secretary of State under paragraph 5 below.

- (3) Where any land falls to be divided under sub-paragraph (1) above—
- (a) any rent payable under a lease in respect of that land, and
 - (b) any rent charged on that land;

shall be correspondingly divided or apportioned so that one part of any such rent is payable in respect of, or charged on, only one part of the land and the other part is payable in respect of, or charged on, only the other part of the land.

Transfer certificates

- 3 A certificate issued under section 39(1) of this Act in relation to land shall—
- (a) specify all interests in land and land obligations which are transferred; and
 - (b) state from whom and to whom the interests in land and land obligations are transferred;
- and shall where necessary be accompanied by a map or plan identifying the land which is being transferred.
- 4 No stamp duty shall be chargeable in respect of any transfer made under section 36, 51 or 53(2) of this Act or in accordance with this Schedule.

Reference of disputes to Secretary of State

- 5 (1) Where it appears to a commissioner for school assets unlikely that agreement will be reached in respect of any matter on which agreement is required to be reached under paragraph 1 above, he shall refer the matter to the Secretary of State.
- (2) Where a reference has been made under sub-paragraph (1) above, the Secretary of State may, whether before or after the incorporation date, determine that matter, and may include in the determination any provision which might have been included in an agreement under the said paragraph 1.
- (3) The Secretary of State shall seek such assistance and advice as he may require from the commissioner for school assets, and shall consult the education authority, before making a determination under this paragraph.
- (4) Where the Secretary of State has made a determination under sub-paragraph (2) above that any land, moveable property, liability or obligation is to be transferred from the education authority to the board of management the commissioner for school assets shall conform with that determination in issuing a certificate under section 39(1) of this Act.

Right to production of documents of title

- 6 Without prejudice to paragraph 1(3) above, where on any transfer of land or moveable property to a board of management under section 36 of this Act the education authority is entitled to retain possession of a document relating in part to the title to any such land or moveable property, the authority shall be treated as

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having given to the board an acknowledgment in writing of the right of the board to production of that document and to delivery of copies of it.

Construction of agreements

- 7 (1) Where any rights, liabilities or obligations transferred under section 36 of this Act are rights, liabilities or obligations under an agreement to which the education authority were a party immediately before the incorporation date, the agreement shall, unless the context otherwise requires, have effect on and after the incorporation date as if—
- (a) the board of management had been a party to the agreement;
 - (b) for any reference (whether express or implied and, if express, however worded) to the education authority there were substituted, as respects anything falling to be done on or after the incorporation date, a reference to the board of management;
 - (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the education authority or a person employed by the authority in a specified capacity were, as respects anything falling to be done on or after the incorporation date, a reference to such person as the board of management may appoint or, in default of appointment, to an officer or employee of the board of management who corresponds as closely as possible to the person referred to in the agreement; and
 - (d) where the agreement refers to land, moveable property, liabilities or obligations which fall to be apportioned or divided between the education authority and the board of management, the agreement constituted two separate agreements separately enforceable by and against the authority and the board as regards the part of the land, moveable property, liabilities or obligations retained by the authority or, as the case may be, the part thereof vesting in the board and not as regards the other part.
- (2) Head (d) of sub-paragraph (1) above shall apply in particular to the stipulations and conditions of any lease by or to the education authority.
- (3) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the education authority.
- 8 Save as otherwise provided by any provision of this Act (whether expressly or by necessary implication) paragraph 7 above, except head (a) of sub-paragraph (1), shall apply in relation to any statutory provision, any provision of any agreement to which the education authority was not a party, and any provision of any document other than an agreement, if and in so far as the provision in question relates to any of the transferred rights and liabilities, as it applies in relation to an agreement to which the authority was a party; and, in relation to any such statutory or other provision as aforesaid, references in heads (b) and (c) of that sub-paragraph to the authority and to any officers or servants of the authority include references made by means of a general reference to a class of persons of which the authority is one, without the authority themselves being specifically referred to.
- 9 (1) Without prejudice to the generality of paragraphs 7 and 8 above, any person shall, as from the incorporation date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested

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in the board of management under section 36 of this Act as he would have had if that right or liability had at all times been a right or liability of the board.

- (2) Without prejudice to section 36(5)(d) of this Act, any legal proceedings commenced before the incorporation date by or against the education authority, in so far as they relate to any land, moveable property, liability or obligation transferred to the board of management under this Act, or to any agreement relating to any such land, moveable property, liability or obligation, shall be continued by or against the board of management to the exclusion of the education authority.
- 10 The provisions of paragraphs 7 to 9 above shall have effect for the interpretation of agreements, statutory provisions and other documents subject to the context, and shall not apply where the context otherwise requires.

Third parties affected by vesting provisions

- 11 (1) Without prejudice to the generality of paragraphs 7 to 10 above—
- (a) any transfer of land or moveable property from an education authority to a board of management under section 36 of this Act; and
 - (b) any subsequent transfer of that land or moveable property from a board of management,
- shall be binding on all other persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of, or the waiver of any right by, any person other than the authority and the board.
- (2) If as a result of any such transfer any person's rights or liabilities—
- (a) cease to be enforceable by or against the education authority and instead become enforceable by or against the board of management; or
 - (b) become enforceable as to part by or against the education authority and as to part by or against the board of management,
- the commissioner for school assets shall give that person written notification of that fact.
- (3) If in consequence of a certificate issued under section 39(1) of this Act or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the education authority or the board of management which were enforceable against or by the authority become enforceable—
 - (i) against or by the board of management; or
 - (ii) as to part against or by the authority and as to part against or by the board; and
 - (b) the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the authority, the board or both.
- (4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.

Delivery of documents to board of management

- 12 The commissioner for school assets shall, as soon as is practicable after the incorporation date, deliver to the board of management—

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- (a) any agreements or instruments made or, as the case may be, executed by him and the education authority under paragraph 1 above;
- (b) copies of any determinations made by the Secretary of State under paragraph 5 above; and
- (c) any certificates issued by him under section 39(1) of this Act.