

## SCHEDULES

### SCHEDULE 21

Section 74.

#### TRANSFERS OF LAND ON APPOINTED DAY

##### PART I

##### GENERAL PROVISIONS

###### *Introductory*

- 1 In this Schedule any reference to a grant-maintained or grant-maintained special school is a reference to such a school within the meaning of the Education Act 1996.

###### *Effect of transfers under this Schedule*

- 2 (1) Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—  
(a) enjoyed or incurred by the transferor in connection with the land, and  
(b) subsisting immediately before the appointed day,  
shall also be transferred to, and by virtue of this Act vest in, that body.
- (2) Any reference in this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.
- (3) This Schedule is subject to section 198 of the Education Reform Act 1988 (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this sub-paragraph to the transfer date are to the appointed day.

##### PART II

##### RULES RELATING TO TRANSFERS

###### *Application of Part II*

- 3 (1) This Part of this Schedule applies to schools which, in accordance with Schedule 2, become community, foundation, voluntary or community special schools on the appointed day.
- (2) This Part has effect subject to Part III of this Schedule.

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*Transfers for purposes of community schools*

- 4 (1) This paragraph applies where a grant-maintained school (an “existing school”) becomes a community school.
- (2) In such a case—
- (a) any publicly funded land shall on the appointed day be transferred to, and by virtue of this Act vest in, the local education authority;
  - (b) any other land which, immediately before that day, is held by the governing body for the purposes of the existing school shall be transferred to, and vest in, the authority in accordance with a transfer agreement; and
  - (c) any land which, immediately before that day, is held by any trustees for the purposes of the existing school shall be transferred to, and vest in, the authority in accordance with a transfer agreement.
- (3) In this paragraph “publicly funded land” means land which—
- (a) immediately before the appointed day is held by the governing body for the purposes of the existing school, and
  - (b) was acquired from a local authority under a transfer under section 201(1)(a) of the Education Act 1996 or from the Funding Agency for Schools or was acquired wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of that Act).
- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2) between the local education authority and the governing body or (as the case may be) trustees mentioned in that sub-paragraph, and
  - (b) providing for the land in question to be transferred to, and vest in, the authority on the appointed day, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

*Transfers for purposes of foundation schools*

- 5 (1) This paragraph applies where—
- (a) a grant-maintained school (an “existing school”) becomes a foundation school; and
  - (b) as from the appointed day the school (as a foundation school) is a member of the group for which a foundation body acts.
- (2) In such a case, any land which, immediately before the appointed day, was held by the governing body for the purposes of the existing school shall on that day be transferred to, and by virtue of this Act vest in, the foundation body.

*Transfers for purposes of voluntary schools*

- 6 (1) This paragraph applies where—
- (a) a grant-maintained school (an “existing school”) becomes a voluntary school; and
  - (b) as from the appointed day the school (as a voluntary school) is a member of the group for which a foundation body acts.

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- (2) In such a case, any land which, immediately before the appointed day, was held by the governing body for the purposes of the existing school shall on that day be transferred to, and by virtue of this Act vest in, the foundation body.

*Transfers for purposes of community special schools*

- 7 (1) This paragraph applies where a grant-maintained special school (an “existing school”) becomes a community special school.
- (2) In such a case—
- (a) any publicly funded land shall on the appointed day be transferred to, and by virtue of this Act vest in, the local education authority;
  - (b) any other land which, immediately before that day, is held by the governing body for the purposes of the existing school shall be transferred to, and vest in, the authority in accordance with a transfer agreement; and
  - (c) any land which, immediately before that day, is held by any trustees for the purposes of the existing school shall be transferred to, and vest in, the authority in accordance with a transfer agreement.
- (3) In this paragraph “publicly funded land” means land which—
- (a) immediately before the appointed day is held by the governing body for the purposes of the existing school, and
  - (b) was acquired from a local authority under a transfer under section 201(1)(a) of the Education Act 1996 or from the Funding Agency for Schools or was acquired wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of that Act).
- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2) between the local education authority and the governing body or (as the case may be) the trustees mentioned in that sub-paragraph, and
  - (b) providing for the land in question to be transferred to, and vest in, the authority on the appointed day, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

*Outstanding transfers to existing school*

- 8 Where immediately before the appointed day—
- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of an existing school within the meaning of any of paragraphs 4 to 7, but
  - (b) the land has not yet been so transferred,
- that paragraph shall apply to the school as if it had been so transferred by that time.

*Transfer of rights to use land*

- 9 (1) Where paragraph 4, 5, 6 or 7 applies to an existing school and any land held by a person or body other than the governing body of the school was, immediately before the appointed day, used for the purposes of the school, any rights or liabilities—

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- (a) enjoyed or incurred by the governing body in connection with the use of the land, and
  - (b) subsisting immediately before the appointed day,
- shall on that day be transferred to, and by virtue of this Act vest in, the local education authority (in a case to which paragraph 4 or 7 applies) or the foundation body (in a case to which paragraph 5 or 6 applies).
- (2) Where paragraph 4 or 7 applies to an existing school and any land held by a person or body other than any trustees who hold any land for the purposes of the school was, immediately before the appointed day, used for the purposes of the school, any rights or liabilities—
- (a) enjoyed or incurred by any such trustees in connection with the use of the land, and
  - (b) subsisting immediately before the appointed day,
- shall on that day be transferred to, and vest in, the local education authority in accordance with a transfer agreement.
- (3) Nothing in this paragraph applies in relation to land to which paragraph 4, 5, 6 or 7 applies.
- (4) In this paragraph—
- “existing school” has the meaning given by paragraph 4, 5, 6 or 7, as the case may be;
  - “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2) between the local education authority and the trustees mentioned in that sub-paragraph, and
  - (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the appointed day, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

### PART III

#### PROPERTY EXCLUDED FROM TRANSFERS

- 10 (1) Nothing in Part II of this Schedule has the effect of transferring to, or vesting in, any body—
- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3),
  - (b) any rights or liabilities under a contract of employment,
  - (c) any liability of a governing body in respect of the principal of, or any interest on, any loan,
  - (d) any liability in tort, or
  - (e) any rights or liabilities which are determined in accordance with regulations to be rights or liabilities falling within this paragraph.
- (2) If before the appointed day—
- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of Part II of this Schedule, and
  - (b) the Secretary of State has given his written approval of the agreement,
- the land (and any rights or liabilities relating to it) shall be so excluded.

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- (3) If in default of agreement under sub-paragraph (2)—
- (a) the prospective transferee or transferor have applied to the Secretary of State to exclude any land from the operation of Part II of this Schedule, and
  - (b) the Secretary of State has by order directed its exclusion,
- the land (and any rights or liabilities relating to it) shall be so excluded.
- (4) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school (as a school of a new category) on such terms as may be specified in or determined in accordance with the agreement; and directions under sub-paragraph (3)—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
  - (b) shall have effect as if contained in such an agreement.
- (5) In this paragraph—
- “new category” means one of the categories set out in section 20(1);
  - “the prospective transferee”, in relation to any land, means the body to whom, apart from sub-paragraph (2) or (3), the land would fall to be transferred under Part II of this Schedule; and
  - “the prospective transferor” shall be construed accordingly.