

SCHEDULES

SCHEDULE 29

Section 137.

AMENDMENTS RELATING TO FUNCTIONS OF EDUCATION TRANSFER COUNCIL

Introductory

1 In this Schedule “the 1988 Act” means the Education Reform Act 1988.

General provisions as to transfers

2 (1) Section 198 of the 1988 Act (transfers under Parts I and II of that Act) shall be amended as follows.

(2) For subsections (1) to (4) substitute—

“(1) This section applies to any transfer under any of the following provisions, namely—

- (a) section 126 or 130 of this Act,
- (b) Schedule 21 to the School Standards and Framework Act 1998 (“the 1998 Act”), or
- (c) any regulations made—
 - (i) under section 21(5) or (9) of that Act, or
 - (ii) under paragraph 10 of Schedule 2 or paragraph 5 of Schedule 8 to that Act;

and those provisions, so far as relating to transfers under them, shall in each case have effect subject to Schedule 10 to this Act.

(1A) However, nothing in—

- (a) the provisions of that Schedule other than paragraph 2(4), or
- (b) subsection (3) below,

applies in relation to any transfer agreement falling to be made under paragraph 4 or 7 of Schedule 21 to the 1998 Act or any corresponding provision of regulations under that Act.

(2) Schedule 10 to this Act has effect for the purpose of—

- (a) dividing and apportioning property, rights and liabilities which fall to be transferred under any transfer to which this section applies by a transferor authority or body where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or other educational institution;
- (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer;

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- (c) providing for identifying and defining the property, rights and liabilities which fall to be transferred under a transfer to which this section applies; and
 - (d) making supplementary and consequential provisions in relation to such transfers.
- (3) In carrying out the functions conferred or imposed on them by that Schedule—
- (a) the Education Transfer Council—
 - (i) shall, subject to subsection (4) below, not act on behalf of the transferor, the transferee or any other interested person, but
 - (ii) shall seek to ensure that all such persons' interests are protected; and
 - (b) it shall be the duty of the Council, so far as it is reasonably practicable for them to do so, to secure that each transfer to which this section applies is, so far as possible, fully effective on the date on which it takes effect under this Act or under or by virtue of the 1998 Act.
- (4) Where the transferor under any such transfer is a local authority and in accordance with that Schedule anything falls to be or may be done by the Council for the purposes of or in connection with that transfer—
- (a) it may not be done by the transferee; and
 - (b) in doing it the Council shall be regarded as acting on behalf and in the name of the transferee;
- and in a case where the transferee is a body corporate established under this Act or the 1998 Act paragraph (b) above applies both in relation to things done before and in relation to things done after that body is established under this Act or the 1998 Act.”
- (3) For “the Board”, wherever occurring in subsections (5) and (6) of section 198, there is substituted (in accordance with section 136(2) of this Act) “the Council”.

Division and apportionment of property etc.

- 3 For paragraph 1 of Schedule 10 to the 1988 Act (supplementary provisions with respect to transfers) substitute—

“Division and apportionment of property etc.

- 1 (1) Any property, rights and liabilities of a transferor authority held or used or subsisting—
- (a) for the purposes of more than one relevant institution; or
 - (b) partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority;
- shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor authority and the transferee or transferees, in such proportions as may be appropriate.

- (2) Any property, rights or liabilities of a transferor body shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor body and the transferee or transferees, in such proportions as may be appropriate.
- (3) Where any estate or interest in land falls to be divided in accordance with either sub-paragraph (1) or sub-paragraph (2) above—
- (a) any rent payable under a lease in respect of that estate or interest; and
 - (b) any rent charged on that estate or interest;
- shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.
- (4) Any such property, right or liability as is mentioned in sub-paragraph (1) or (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority or body according to—
- (a) in the case of an estate or interest in land, whether on the transfer date the transferor authority or body or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
 - (b) in the case of any other property or any right or liability, which of them appears on the transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent;
- subject (in either case) to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority or body and the relevant person or determined by the Secretary of State under paragraph 3 below.
- (5) In this paragraph—
- (a) “relevant institution” means—
 - (i) any institution which a body corporate is established under this Act to conduct;
 - (ii) any institution to which section 130 of this Act applies; and
 - (iii) any maintained school;
 - (b) “the relevant person” means—
 - (i) in a case where the transferor is a transferor authority, the Education Transfer Council;
 - (ii) in a case where the transferor is a transferor body, the transferee;

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- (c) references to a transferor authority are references to a local authority who are the transferor for the purposes of any transfer to which this Schedule applies;
- (d) references to a transferor body are references to any foundation body who are the transferor for the purposes of any transfer to which this Schedule applies;

and for the purposes of this sub-paragraph references to a maintained school or a foundation body have the same meaning as in the School Standards and Framework Act 1998.”

Identification of property, rights and liabilities

4 For paragraph 2 of Schedule 10 to the 1988 Act substitute—

“Identification of property, rights and liabilities

- 2 (1) It shall be the duty of the transferor and the relevant person, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor or for making any such arrangements as are mentioned in paragraph 1(4) above and as will—
- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
 - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of this Act or of the 1998 Act (or any regulations made under it) under which the transfer is required on the property, rights and liabilities of the transferor as will best serve the proper discharge of the respective functions of the transferor and the transferee.
- (2) Any such agreement shall provide so far as it is expedient—
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
 - (b) for the granting of indemnities in connection with the severance of leases and other matters;
 - (c) for responsibility for registration of any matter in any description of statutory register.
- (3) Except in a case where the transferor is a local authority, the Education Transfer Council shall—
- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities transferred to the transferee or retained by the transferor;
 - (b) advise such persons as to the terms of any agreement or instrument falling to be made under sub-paragraph (1) above;

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- (c) assist such persons to negotiate any such agreement or instrument and mediate in any such negotiations;
 - (d) prepare drafts of any such agreement or instrument; and
 - (e) assist the parties in executing and giving effect to any such agreement or instrument.
- (4) If and to the extent that they are requested to do so by any person falling to make a transfer agreement under paragraph 4 or 7 of Schedule 21 to the 1998 Act or any corresponding provision of regulations under that Act, the Education Transfer Council shall exercise any one or more functions falling within sub-paragraph (3) above in relation to such an agreement, or an instrument made pursuant to such an agreement, as if it were an agreement or instrument falling to be made under sub-paragraph (1) above.
- (5) Any transfer of any estate or interest in land under this paragraph or under paragraph 1 above (whether by virtue of an agreement or instrument entered into before or after the transfer date) shall be regarded as having taken place on the transfer date.
- (6) In this paragraph—
- “the 1998 Act” means the School Standards and Framework Act 1998; and
 - “the relevant person” means—
 - (a) in a case where the transferor is a local authority, the Education Transfer Council;
 - (b) in a case where the transferor is not a local authority, the transferee.”

Resolution of disputes

5 For paragraph 3 of Schedule 10 to the 1988 Act substitute—

“Resolution of disputes

- 3
- (1) The Education Transfer Council shall notify the Secretary of State if it appears to them that it is unlikely in the case of any matter on which agreement is required to be reached under paragraph 2(1) above that such an agreement will be reached.
 - (2) Where the Secretary of State has received a notification from the Council under sub-paragraph (1) above, he may, whether before or after the transfer date, give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under paragraph 2(1) above.
 - (3) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee shall be regarded as having been transferred to, and by virtue of this Act vested in, the transferee on the transfer date.
 - (4) The Secretary of State shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

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- (5) The Education Transfer Council shall give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under this paragraph.”

Proof of title by certificate

- 6 In paragraph 5 of Schedule 10 to the 1988 Act, for “or of the Education Act 1996” substitute “or of the School Standards and Framework Act 1998”.

Construction of agreements etc.

- 7 In paragraph 7 of Schedule 10 to the 1988 Act, for “or of the Education Act 1996”, in both places, substitute “or of the School Standards and Framework Act 1998”.

Third parties affected by vesting provisions

- 8 In paragraph 9 of Schedule 10 to the 1988 Act—
- (a) in sub-paragraph (6)(a), after “Board” insert “or (as the case may be) the transferee”;
 - (b) in sub-paragraph (6)(b), for “or of the Education Act 1996” substitute “or of the School Standards and Framework Act 1998 (or any regulations made under it)”; and
 - (c) in sub-paragraph (9), after “Board” insert “or (as the case may be) the transferee”.

Delivery of documents to transferee

- 9 In paragraph 10 of Schedule 10 to the 1988 Act, after “transfer” insert “under which the transferor is a local authority”.

Amendment of references to Education Assets Board

- 10 For “the Education Assets Board” or “the Board”, wherever occurring in Schedule 10 to the 1988 Act, there is substituted (in accordance with section 136(2) of this Act) “the Education Transfer Council” or “the Council” respectively.