



# Education Act 2002

## 2002 CHAPTER 32

### PART 3

#### MAINTAINED SCHOOLS

#### CHAPTER 1

##### GOVERNMENT OF MAINTAINED SCHOOLS

### **37**      **Payments in respect of dismissal, etc.**

- (1) It shall be for the governing body of a maintained school to determine—
  - (a) whether any payment should be made by the [<sup>F1</sup>local authority] in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and
  - (b) the amount of any such payment.
- (2) Subsection (1) does not, however, apply in relation to a payment which the [<sup>F1</sup>local authority] are required to make—
  - (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or
  - (b) under any statutory provision.
- (3) The [<sup>F1</sup>local authority] —
  - (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and
  - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (4) Subject to subsection (7), costs incurred by the [<sup>F1</sup>local authority] in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more [<sup>F2</sup>funding periods] except in so far

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as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met.

- (5) Subject to subsection (7), costs incurred by the [<sup>F1</sup>local authority] in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school's budget share for any [<sup>F3</sup>funding period] except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).
- (7) Where a [<sup>F1</sup>local authority] incur costs—
- (a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or
  - (b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes,
- they shall recover those costs from the governing body except in so far as the authority agree with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.
- [<sup>F4</sup>(7A) Any amount payable by virtue of subsection (7) by the governing body of a maintained school in England to the local authority may be met by the governing body out of the school's budget share for any funding period if and to the extent that the condition in subsection (7B) is met.
- (7B) The condition is that the governing body are satisfied that meeting the amount out of the school's budget share will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.]
- (8) Any amount payable by virtue of subsection (7) by the governing body of a maintained school [<sup>F5</sup> in Wales] to the [<sup>F1</sup>local authority] shall not be met by the governing body out of the school's budget share for any [<sup>F6</sup>funding period].
- (9) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.
- (10) Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of subsection (7).
- (11) Subsections (1) to (6) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under <sup>F7</sup>... Schedule 15 to, the School Standards and Framework Act 1998 (c. 31) [<sup>F8</sup>or section 8 of the School Standards and Organisation (Wales) Act 2013].
- [<sup>F9</sup>(12) In this section—
- “community purposes” means the purposes of the provision of facilities or services under section 27;

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“funding period” has the meaning given by section 45(1B) of the School Standards and Framework Act 1998.]

#### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**
- F2** Words in s. 37(4) substituted (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 14(2)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F3** Words in s. 37(5) substituted (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 14(3)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F4** S. 37(7A)(7B) inserted (15.1.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 47(2)**, 82(2)(c)
- F5** Words in s. 37(8) inserted (15.1.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 47(3)**, 82(2)(c)
- F6** Words in s. 37(8) substituted (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 14(3)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F7** Words in s. 37(11) omitted (20.2.2014) by virtue of [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#), s. 100(4), **Sch. 5 para. 6(5)(a)**; S.I. 2014/178, art. 2(f) (with art. 3)
- F8** Words in s. 37(11) inserted (20.2.2014) by [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#), s. 100(4), **Sch. 5 para. 6(5)(b)**; S.I. 2014/178, art. 2(f) (with art. 3)
- F9** S. 37(12) substituted (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 14(4)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)

#### Modifications etc. (not altering text)

- C1** S. 37 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 3(1)**
- C2** S. 37(1)-(7B) applied (with modifications) by S.I. 2007/2979, Sch. 1 para. 17B (as inserted (1.4.2013) by [The Pupil Referral Units \(Miscellaneous Amendments\) \(No.2\) \(England\) Regulations 2012 \(S.I. 2012/3158\)](#), regs. 1, **3(2)**)
- C3** S. 37(9) applied (with modifications) by S.I. 2007/2979, Sch. 1 para. 17B (as inserted (1.4.2013) by [The Pupil Referral Units \(Miscellaneous Amendments\) \(No.2\) \(England\) Regulations 2012 \(S.I. 2012/3158\)](#), regs. 1, **3(2)**)
- C4** S. 37(11)(12) applied (with modifications) by S.I. 2007/2979, Sch. 1 para. 17B (as inserted (1.4.2013) by [The Pupil Referral Units \(Miscellaneous Amendments\) \(No.2\) \(England\) Regulations 2012 \(S.I. 2012/3158\)](#), regs. 1, **3(2)**)

#### Commencement Information

- I1** S. 37 in force at 1.10.2002 for E. by [S.I. 2002/2439](#), **art. 3** (with transitional provisions and savings in [art. 4, Sch.](#))
- I2** S. 37 in force at 1.4.2006 for W. by [S.I. 2006/879](#), **art. 4, Sch.**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1 by [S.I. 2004/571 Sch.](#)
- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1A and 2 by [S.I. 2005/2570 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 27(1A) inserted by [2010 c. 26 s. 4\(1\)](#)
- s. 29(2A)-(2D) inserted by [2009 c. 22 s. 260\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 250 omitted (1.9.2012) by virtue of 2011 c. 21, s. 29(9)(d); S.I. 2012/1087, art. 3)
- s. 29B inserted by [2008 c. 25 s. 157](#)
- s. 8585A substituted for s. 85 by [2006 c. 40 s. 74\(1\)](#)
- s. 85A amendment to earlier affecting provision 2006 c. 40 s. 74(1) by [2011 c. 21 s. 31\(2\)](#)
- s. 85A(5) words substituted by [2009 c. 22 Sch. 12 para. 34](#)
- s. 86(1) s. 86 renumbered as s. 86(1) by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 86(2) inserted by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 88(2)-(7) inserted by [2006 c. 40 s. 74\(3\)](#)
- s. 88(7) repealed by [S.I. 2010/1080 Sch. 1 para. 45Sch. 2 Pt. 1](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 88(2)-(7) by 2006 c. 40, s 74(3) was repealed without ever being brought into force.)
- s. 142(9)(b) words substituted by [S.I. 2010/1158 Sch. 2 para. 11\(10\)\(b\)](#)
- s. 210A inserted by [2008 c. 25 Sch. 1 para. 79](#)