
STATUTORY INSTRUMENTS

1998 No. 218

EDUCATION, ENGLAND AND WALES

**The Education (Modification of Enactments
Relating to Employment) Order 1998**

<i>Made</i>	- - - -	<i>6th February 1998</i>
<i>Laid before Parliament</i>		<i>9th February 1998</i>
<i>Coming into force</i>	- -	<i>2nd March 1998</i>

The Secretary of State for Education and Employment, in exercise of the power conferred by section 178 of the Education Act 1996⁽¹⁾ and after consulting—

- (a) such associations of local authorities,
- (b) such bodies representing the interests of governors of voluntary schools, and
- (c) such organisations representing staff in schools required to be covered by schemes under section 103 of that Act

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

Citation, commencement, transition and revocation

1.—(1) This Order may be cited as the Education (Modification of Enactments Relating to Employment) Order 1998 and shall come into force on 2nd March 1998.

(2) The references to the Disability Discrimination Act 1995⁽²⁾ in Article 3(2)(b) and in the Schedule hereto shall not apply in respect of any act or omission occurring before the coming into force of this Order.

(3) The Education (Modification of Enactments Relating to Employment) Order 1989⁽³⁾ is hereby revoked.

Interpretation

2. In this Order—

“the Act” means the Education Act 1996;

(1) 1996 c. 56.
(2) 1995 c. 50.
(3) S.I.1989/901.

“governing body” means the governing body for the time being of a school which is maintained by a local education authority and references to the local education authority are references to the local education authority by which the school is maintained; and

“school” has the meaning assigned to it by section 4 of the Act;

(2) references to employment powers are references to the powers as to appointment, suspension, discipline and dismissal of staff conferred by or under sections 136, 137(6) and 139 of, and Schedule 14 and paragraph 19 of Schedule 19 to, the Act; and

(3) references to governing bodies with delegated budgets are references to governing bodies to whom powers as to the expenditure of the budget share of the school for which they are responsible are for the time being delegated by virtue of section 116 of the Act, or to whom powers in relation to the budget shares of new schools are for the time being delegated by section 126 thereof and Schedule 12 thereto, as the case may be.

General modifications of employment enactments

3.—(1) In their application to governing bodies with delegated budgets, the enactments set out in the Schedule hereto 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 23(1) of Schedule 14 to the 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 Employment Rights Act 1996(4); 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 to apply,

if it would not have done so but for the operation of that paragraph.

Dismissals

4. Without prejudice to the generality of article 3, where an employee employed at a school with a governing body with a delegated budget is dismissed by the local education authority following notification of such a determination as is mentioned in article 3(1)(d) above:

- (a) section 92 of the Employment Rights Act 1996 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

(4) 1996 c. 18.

- (b) Part X of the Employment Rights Act 1996 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. A dispute between staff employed to work at a school which has a governing body with a delegated budget and that 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⁽⁵⁾ shall be a trade dispute within the meaning of that Act but, 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 exercises its functions.

Applications to Industrial Tribunals

6.—(1) Without prejudice to anything in articles 3 and 4 and notwithstanding any provision in the Industrial Tribunals Act 1996⁽⁶⁾ or in any regulations made under section 1(1) of that Act, this article applies in respect of any application to an industrial tribunal, and any proceedings pursuant to such an application, in relation to which by virtue of article 3 or 4 the governing body is to be treated as if it 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 industrial tribunal, be entitled to be made an additional party to the proceedings and to take part in the proceedings accordingly.

(5) 1992 c. 52.

(6) 1996 c. 17.

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(7) sections 6, 7, 9, 41 and 82(1A)

Race Relations Act 1976(8) sections 4, 5, 7 and 32

Trade Union and Labour Relations (Consolidation) Act 1992(9) sections 146–147, 152–154, 181–185

Disability Discrimination Act 1995(10) sections 4–6, 11–12, 16, 55, 57 and 58

Employment Rights Act 1996(11) sections 66–68, 70–71, 92–93 and Part X

Stephen Byers
Minister of State,

6th February 1998

Department for Education and Employment

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 Education Act 1996 for local education authorities to delegate financial management of schools to their governing bodies.

While such governing bodies have the responsibility for financial management of their school, they also have powers as to the appointment, suspension, discipline and dismissal of staff at the school, although the local education authority remains the employer of those staff.

Article 1 provides for citation, commencement and the revocation of an earlier instrument. The principal differences between the provisions of this Order and the previous Order are:

- to apply the modification required by the Order to some sections of the Disability Discrimination Act 1995; and
- to cite current legislation in all those cases where a consolidating statute has been passed since the previous Order was made.

Where provisions of the Disability Discrimination Act 1995 are required to have effect as modified by the Order, Article 1 also provides that the modifications do not apply in respect of acts and omissions occurring prior to the Order coming into force.

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 its employment powers;

(7) 1975 c. 65. Section 6 was amended by sections 1(1) and 2(1) of the Sex Discrimination Act 1986 (c. 59), and subsection 82(1A) was inserted by section 2(3) of that Act.

(8) 1976 c. 74.

(9) 1992 c. 52.

(10) 1995 c. 50.

(11) 1996 c. 18.

- (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 is concerned, treated as references to trade unions recognised either by the local education authority or the governing body.

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 it 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 subject to delegated financial management and their governing body is capable of being a trade dispute within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992, but that a dispute which is a trade dispute only by virtue of the article is not a trade dispute so far as staff employed to work at other schools are concerned.

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