

**2000 No. 3209**

**EDUCATION, ENGLAND AND WALES**

**The Education (New Procedures for Property Transfers)  
Regulations 2000**

*Made* - - - - - *4th December 2000*

*Laid before Parliament* *7th December 2000*

*Coming into force* - - *1st January 2001*

In exercise of the powers conferred on the Secretary of State by sections 137, 138(7) and (8) and 144 of the School Standards and Framework Act 1998(a) the Secretary of State for Education and Employment hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (New Procedures for Property Transfers) Regulations 2000 and shall come into force on 1st January 2001.

(2) Subject to paragraph (3) below, these Regulations apply in relation to England and Wales.

(3) Regulations 15 to 19 apply only in relation to England.

**Interpretation**

2. In these Regulations:

“the 1988 Act” means the Education Reform Act 1988(b);

“the 1992 Act” means the Further and Higher Education Act 1992(c);

“the 1998 Act” means the School Standards and Framework Act 1998; and

“the National Assembly” means the National Assembly for Wales.

**Provision of information**

3. Any local education authority, governing body of a maintained school and institution within the further education sector (within the meaning of section 91 of the 1992 Act) shall give the Secretary of State or, as the case may be, the National Assembly such information as he or it may require for the purposes of the exercise of his or its functions in relation to property transfers under the Education Acts as modified by these Regulations.

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(a) 1998 c. 31; by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by the National Assembly for Wales (Transfer of Functions) (Variation) Order 2000 (S.I. 2000/1829) the powers conferred by section 144 are exercisable by the Secretary of State only in relation to England. Section 137 has been amended by paragraph 87 of Schedule 9 to the Learning and Skills Act 2000 (c. 21). For the meaning of “regulations” see section 142(1) of the 1998 Act.

(b) 1988 c. 40.

(c) 1992 c. 13.

## **Determinations of the Education Transfer Council**

4. Any reference in a determination of the Education Transfer Council to a matter being referred to the Council for determination in the event of the parties failing to reach agreement shall be read as requiring the matter to be referred to the Secretary of State or the National Assembly (as the case may be) in such event.

## **Land transfers in relation to schools changing category or joining or leaving foundation bodies**

5.—(1) Section 198 of and Schedule 10 to the 1988 Act<sup>(a)</sup> (supplementary provisions with respect to transfers) shall apply to transfers of land under any regulations made or to be made under section 21(5) of or under paragraph 5 of Schedule 8 to the 1998 Act<sup>(b)</sup> with the modifications set out below.

(2) Section 198(3) of and paragraphs 1 to 3 of Schedule 10 to the 1998 Act are set out as so modified in Schedule 1.

6. Section 198 shall have effect as if—

(a) in section 198(3)(a)—

(i) for “Education Transfer Council” there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”,

(ii) in (i) “, subject to subsection (4) below,” were omitted, and

(iii) in (ii) “and” were omitted; and

(b) section 198 (3)(b) and subsections (4) to (6) were omitted.

7. Schedule 10 shall have effect as if—

(a) in paragraph 1(4) for “relevant person” there were substituted “transferee” and after “Secretary of State” there were inserted “in relation to England or the National Assembly in relation to Wales”;

(b) paragraph 1(5)(b) were omitted;

(c) in paragraph 2(1) for “relevant person” there were substituted “transferee”;

(d) in paragraph 2(3)—

(i) for “Except in a case where the transferor is a local authority, the Education Transfer Council” there were substituted “If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State in relation to England or the National Assembly in relation to Wales”, and

(ii) paragraph 2(3)(c) were omitted;

(e) there were inserted after paragraph (3) the following paragraph—

“(3A) Within 6 months after the transfer date the transferor shall send the Secretary of State in relation to England or the National Assembly in relation to Wales a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it.

(f) in paragraph 2(4) for “Education Transfer Council” there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”;

(g) in paragraph 2(6) the words “from” and “the relevant person” to the end of the subparagraph were omitted;

(h) paragraph 3(1) were omitted;

(i) for paragraph 3(2) there were substituted—

“(2) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the transfer date, the Secretary of State in relation to England or the

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<sup>(a)</sup> Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the 1998 Act.

<sup>(b)</sup> The Education (Change of Category of Maintained Schools) (England) Regulations 2000 (S.I. 2000/2195) were made under section 21(5) to the 1998 Act and the Education (Foundation Body) (England) Regulations 2000 (S.I. 2000/2872) were made under paragraph 5 of Schedule 8 to the 1998 Act. Both these Regulations extend only to England.

- National Assembly in relation to Wales may 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”;
- (j) in paragraph 3(4) after “The Secretary of State” there were inserted “in relation to England or the National Assembly in relation to Wales”;
  - (k) paragraph 3(5) were omitted;
  - (l) in paragraph 5 for “Education Transfer Council” there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”;
  - (m) in paragraph 9(2) for “Education Transfer Council” there were substituted “transferee”;
  - (n) in paragraphs 9(6) and 9(9) the words “Education Transfer Council or (as the case may be) the” were omitted; and
  - (o) paragraph 10 were omitted.

### **Property transfers under the 1992 Act**

**8.**—(1) Sections 34 (making additional property available for use) and 36 (general provisions about transfers under Chapter II) of and Schedules 5 and 7 (Transfers: supplementary provisions) to the 1992 Act shall have effect with the modifications set out below.

(2) Section 36(6) of and paragraphs 1 to 3 of Schedule 5 to the 1992 Act are set out as so modified in Schedule 2.

**9.** Section 34 shall have effect as if for section 34(3)(b) there were substituted “he has consulted the appropriate council and the local authority.”.

**10.** Section 36 shall have effect as if—

- (a) section 36(5) were omitted;
- (b) for section 36(6) there were substituted—

“(6) In carrying out the functions conferred or imposed on them by that Schedule the Secretary of State in relation to England or the National Assembly in relation to Wales—

- (i) shall 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
- (c) in sections 36(7) and (8) for “Council”, wherever occurring, there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”.

**11.** Schedule 5 shall have effect as if—

- (a) in paragraph 1(3) for “Education Transfer Council” there were substituted “transferee” and for “Council” there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”;
- (b) in paragraph 2(1) for “Education Transfer Council” there were substituted “transferee”;
- (c) after paragraph 2(2) there were inserted—

“(3) If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State in relation to England or the National Assembly in relation to Wales 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;
- (c) prepare drafts of any such agreement or instrument; and
- (d) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Within 6 months after the operative date the transferor shall send the Secretary of State in relation to England or the National Assembly in relation to Wales a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it.”;

(d) subject to regulation 14 below, for paragraph 3(1) there were substituted—

“(1) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the operative date, the Secretary of State in relation to England or the National Assembly in relation to Wales may 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.”;

(e) subject to regulation 14 below, paragraph 3(2) were omitted;

(f) subject to regulation 14 below, for paragraph 3(4) there were substituted—

“(4) The Secretary of State in relation to England or the National Assembly in relation to Wales shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.”;

(g) subject to regulation 14 below, paragraphs 4 and 5 were omitted;

(h) in paragraph 7(2) for “Education Transfer Council” there were substituted “transferee”;

(i) in paragraphs 7(6) and (9) for “Education Transfer Council” there were substituted “transferee”; and

(j) paragraph 8 were omitted.

**12.** Schedule 7 shall have effect as if in paragraph 1 for “Education Transfer Council” there were substituted “Secretary of State in relation to England or the National Assembly in relation to Wales”.

#### **Saving provisions relating to appeals pending under the 1992 Act**

**13.** For the purposes of regulation 14 below, an appeal is pending when—

(a) an appeal has been made to the Secretary of State in relation to England or the National Assembly in relation to Wales under paragraph 4 of Schedule 5 to the 1992 Act; and

(b) a final decision has not been made by the Secretary or State or the National Assembly on the appeal.

**14.** Where an appeal is pending—

(a) regulation 11(d), (e), (f) and (g) above shall not apply; and

(b) regulation 4 of the Education Assets Board (Transfers under the Further and Higher Education Act 1992) Regulations 1992(a) shall apply to the appeal with the following modifications—

(i) paragraph (5) shall be omitted, and

(ii) references to “the Council” in paragraphs (6) and (7) shall be omitted.

#### **Property transfers to former grant-maintained schools**

**15.**—(1) Section 198 of and Schedule 10 to the 1988 Act (supplementary provisions about transfers), as they are applied to transfers under section 201 of the 1996 Act by Article 4 of the School Standards and Framework Act 1998 (Commencement No.5 and Saving and Transitional Provisions) Order 1999(b) and article 8 of the School Standards and Framework Act 1998 (Commencement No. 7 and Saving and Transitional Provisions) Order 1999(c), shall be modified as set out below.

(2) Section 198(4) of and paragraphs 1 to 3 of Schedule 10 to the 1988 Act are set out as so modified in Schedule 3.

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(a) S. I. 1992/2288.

(b) S.I. 1999/120.

(c) S.I. 1999/2323.

16. Section 198 shall have effect as if—
- (a) section 198(3) were omitted; and
  - (b) for section 198(4) there were substituted—
    - “(4) In carrying out the functions conferred or imposed on them by that Schedule the Secretary of State—
      - (i) shall 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.”.
17. Schedule 10 shall have effect as if—
- (a) in paragraph 1(3) for “Education Transfer Council” there were substituted “transferee”;
  - (b) in paragraph 2(1) for “Education Assets Board” there were substituted “transferee”;
  - (c) after paragraph 2(2) there were inserted—
    - “(3) If and to the extent that he is requested to do so by the transferor or transferee the Secretary of State 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;
      - (c) prepare drafts of any such agreement or instrument; and
      - (d) assist the parties in executing and giving effect to any such agreement or instrument.
    - (4) Within 6 months after the transfer date the transferor shall send the Secretary of State a copy of an executed transfer agreement or, if no agreement has been executed, so notify him”;
  - (d) subject to regulation 19 below, for paragraph 3 there were substituted—
    - “3.—(1) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the transfer date, the Secretary of State may 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.
    - (2) 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 accordingly.
    - (3) The Secretary of State shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.”;
  - (e) in paragraph 5 for “Education Transfer Council” there were substituted “Secretary of State”;
  - (f) in paragraph 9(2) for “Education Transfer Council” there were substituted “transferee”;
  - (g) in paragraph 9(6) and (9) for “Education Transfer Council” there were substituted “transferee” and
  - (h) paragraph 10 were omitted.

**Saving provisions relating to appeals pending in relation to grant-maintained schools**

18. For the purposes of regulation 19 below, an appeal is pending when—
- (a) an appeal has been made to the Secretary of State under paragraph 63 of Schedule 8 to the 1992 Act; and
  - (b) a final decision has not been made by the Secretary of State on the appeal.

**19.** When an appeal is pending—

- (a) regulation 17 (d) above shall not apply; and
- (b) regulation 4 of the Education Assets Board (Transfers under the Education Reform Act 1988) Regulations 1992(a) shall apply to the appeal with the following modifications—
  - (i) paragraph (5) shall be omitted, and
  - (ii) references to the Council in paragraphs (6) and (8) shall be omitted.

4th December 2000

*Estelle Morris*  
Minister of State,  
Department for Education and Employment

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(a) S.I. 1992/1348, amended by S.I. 1993/3114.

**Provisions of section 198 of and Schedule 10 to the 1988 Act as modified by regulations 5 to 7 of these Regulations (applying to land transfers in relation to schools changing category or joining or leaving foundation bodies)**

**Section 198**

- (3) In carrying out the functions conferred or imposed on them by that Schedule—
- (a) the Secretary of State in relation to England or the National Assembly in relation to Wales—
    - (i) shall 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;

**SCHEDULE 10**

**Supplementary provisions with respect to transfers**

*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, rights 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 transferee or determined by the Secretary of State in relation to England or the National Assembly in relation to Wales 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;
  - (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*

2.—(1) It shall be the duty of the transferor and the transferee, 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 provisions 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) If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State in relation to England or the National Assembly in relation to Wales 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;

....

- (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.

(3A) Within 6 months after the transfer date the transferor shall send the Secretary of State in relation to England or the National Assembly in relation to Wales a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it.

(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, 7 or 9(2) of Schedule 21 to the 1998 Act or any corresponding provision of regulations under that Act, the Secretary of State in relation to England or the National Assembly in relation to Wales 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;

3.—...

(2) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the transfer date, the Secretary of State in relation to England or the National Assembly in relation to Wales may 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 in relation to England or the National Assembly in relation to Wales shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

## SCHEDULE 2

regulation 8(2)

**Provisions of section 36 of and Schedule 5 to the 1992 Act as modified by regulations 8, 10 and 11 of these Regulations (applying to property transfers under the 1992 Act)**

### Section 36

(6) In carrying out the functions conferred or imposed on them by that Schedule the Secretary or State in relation to England or the National Assembly in relation to Wales—

- (i) shall 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.

## SCHEDULE 5

### Identification and apportionment, etc, of property

#### *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) Where any estate or interest in land falls to be so divided—

- (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.

(3) Any property, right or liability held or used, or subsisting, as mentioned in subparagraph (1) 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 according to—

- (a) in the case of an estate or interest in land, whether on the operative date the transferor authority 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 operative 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 and the transferee or determined by the Secretary of State in relation to England or the National Assembly in relation to Wales under paragraph 3 below.

(4) In this paragraph—

- (a) references to a relevant institution are references to—
  - (i) any institution a body corporate is established under this Act to conduct; and
  - (ii) any institution in relation to which section 32 of this Act has effect, and
- (b) 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;

### **Identification of property, rights and liabilities**

2.—(1) It shall be the duty of the transferor and the transferee, whether before or after the operative 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(3) 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 operative date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of this Act 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 or instrument 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) If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State in relation to England or the National Assembly in relation to Wales shall—

- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities and 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;
- (c) prepare drafts of any such agreement or instrument; and
- (d) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Within 6 months after the operative date the transferor shall send the Secretary of State in relation to England or the National Assembly in relation to Wales a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it.

3.—(1) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the operative date, the Secretary of State in relation to England or the National Assembly in relation to Wales may 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 accordingly.

(4) The Secretary of State in relation to England or the National Assembly in relation to Wales shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

### SCHEDULE 3

regulation 15(2)

#### **Provisions of section 198 of and Schedule 10 to the 1988 Act as modified by regulations 15 to 17 of these Regulations (applying to property transfers to former grant-maintained schools)**

#### **Section 198**

(4) In carrying out the functions conferred or imposed on them by that Schedule the Secretary of State—

- (i) shall 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.

### SCHEDULE 10

#### **Supplementary provisions with respect to transfers**

##### *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) Where any estate or interest in land falls to be so divided—

- (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.

(3) Any property, right or liability held or subsisting as mentioned in sub-paragraph (1) 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 according to—

- (a) in the case of an estate or interest in land, whether on the transfer date the transferor authority 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 and the transferee or determined by the Secretary of State under paragraph 3 below.

(4) In this paragraph—

(a) references to a relevant institution are references to—

(i) any school or other institution a body corporate is established under this Act or under the Education Act 1996 to conduct; and

(ii) any institution to which section 130 of this Act applies; and

(b) 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.

### **Identification of property, rights and liabilities**

2.—(1) It shall be the duty of the transferor and the transferee, 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(3) above and as will (in a case where the transferor is a local authority)—

(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 Education Act 1996 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) If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State 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;

(c) prepare drafts of any such agreement or instrument; and

(d) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Within 6 months after the transfer date the transferor shall send the Secretary of State a copy of an executed transfer agreement, or if no agreement has been executed, so notify him.

3.—(1) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the transfer date, the Secretary of State may 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.

(2) 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 accordingly.

(3) The Secretary of State shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for dealing with transfers of property, rights and liabilities under various provisions in the Education Reform Act 1988, the Further and Higher Education Act 1992 and the School Standards and Framework Act 1998 when the Education Transfer Council has been dissolved. The Council will be dissolved on 31st December 2000, by order of the Secretary of State.

Regulation 3 relates to the provision of information to the Secretary of State by specified bodies.

Regulation 4 provides that any reference in a determination of the Education Transfer Council to a matter being referred to the Council in the event of the parties failing to reach agreement shall be read as requiring the matter to be referred to the Secretary of State in such event.

Regulation 5 to 7 deal with transfers in relation to schools changing category or joining or leaving a group for which a foundation body acts. They apply transfer provisions in section 198 of and Schedule 10 to the Education Reform Act 1988 to such transfers with modifications. The effect of these modifications is that most of the functions of the Council set out in those provisions are performed by the Secretary of State for Education and Employment, in relation to England, or the National Assembly, in relation to Wales.

Regulations 8 to 14 deal with transfers to further education corporations under the Further and Higher Education Act 1992. They apply provisions of section 36 of and Schedules 5 and 7 to the 1992 Act to such transfers with modifications. The effect of these modifications is as set out above in relation to regulations 5 to 7, Section 34 is also modified by the omission of the reference to the Education Transfer Council. Regulations 13 and 14 contain saving provisions in relation to pending appeals.

Regulations 15 to 19 deal with outstanding transfers to former grant-maintained schools. Section 198 of and Schedule 10 to the Education Reform Act 1988 continue to apply to such transfers by virtue of saving provisions in article 4 of the School Standards and Framework Act 1998 (Commencement No.5 and Saving and Transitional Provisions) Order 1999 (S.I. 1999/120) and article 8 of the School Standards and Framework Act 1998 (Commencement Order No.7 and Saving and Transitional Provisions) Order 1999 (S.I.1999/2323). Regulations 15 to 19 of these Regulations apply provisions of section 198 of and Schedule 10 to the Education Reform Act 1988 to such transfers with modifications. The effect of these modifications is that most of the functions of the Council set out in these provisions are performed by the Secretary of State for Education and Employment. Regulations 18 and 19 contain saving provisions in relation to pending appeals.

Schedule 1 sets out provisions of section 198 of and Schedule 10 to the Education Reform Act 1988, modified in accordance with regulations 5 to 7, as they apply to land transfers in relation to schools changing category or joining or leaving foundation bodies.

Schedule 2 sets out provisions of section 36 of and Schedule 5 to the Further and Higher Education Act 1992, modified in accordance with regulations 8, 10, and 11, as they apply to property transfers under that Act.

Schedule 3 sets out provisions of section 198 of and Schedule 10 to the Education Reform Act 1988, modified in accordance with regulations 15 to 17, as they apply to property transfers to former grant-maintained schools.



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