
STATUTORY INSTRUMENTS

1993 No. 3106 (c. 62)

EDUCATION, ENGLAND AND WALES

Education Act 1993 (Commencement No.
2 and Transitional Provisions) Order 1993

Made - - - - 8th December 1993

In exercise of the powers conferred on the Secretary of State by sections 301(6) and 308(3) of, and paragraph 1(2)(a) and (3)(b) of Schedule 20 to, the Education Act 1993⁽¹⁾ the Secretary of State for Education hereby makes the following Order:

Citation

1. This Order may be cited as the Education Act 1993 (Commencement No.2 and Transitional Provisions) Order 1993.

Interpretation

2. In this Order—

“the Act” means the Education Act 1993; and

“the 1988 Act” means the Education Reform Act 1988⁽²⁾.

Commencement of section 24 of the Act.

3. Section 24 of the Act shall come into force on 9th December 1993.

Commencement and transitional provisions relating to other provisions of the Act.

4. The provisions of the Act specified in the first column of Schedule 1 to this Order (which relate to the matters mentioned in the second column thereof) shall come into force on 1st January 1994; and, save as otherwise provided in the first column of Schedule 1, they shall come into force on that date for all purposes.

5. Schedule 2 to this Order shall have effect for the purpose of making transitional provisions in connection with the provisions brought into force by Article 4 of, and Schedule 1 to, this Order.

(1) 1993 c. 35.
(2) 1988 c. 40.

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SCHEDULE 1

Article 4

PROVISIONS COMING INTO FORCE ON 1ST JANUARY 1994

Provisions of the Act	Subject matter of provisions
Section 22(1), (2)(a) and (b) Meaning of grant-maintained and (3) (save that subsection (2)(b) is only brought into force for the purpose of defining the expression “proposals for the establishment of a new grant-maintained school”).	Meaning of grant-maintained school.
Section 23.	Schools eligible for grant-maintained status.
Section 25.	Initiation of procedure for acquisition of grant-maintained status: by resolution of the governing body.
Section 26.	Initiation of procedure for acquisition of grant-maintained status: by parental request.
Section 27.	Information as to parents of registered pupils.
Section 28.	Ballot of parents.
Section 29.	Persons eligible to vote in ballot.
Section 30.	Second ballot to be held if insufficient votes cast or there is a tie.
Section 31.	Power to declare ballot void for irregularity.
Section 32.	Publication of proposals for acquisition of grant-maintained status.
Section 33.	Withdrawal, approval or rejection of such proposals.
Section 34.	Incorporation of governing body of a grant-maintained school.
Section 35.	Exercise of powers before proposed date of implementation.
Section 36(1) and (2).	Expenses in connection with proposals for acquisition of grant-maintained status.
Section 37.	Interpretation of Chapter II of Part II of the Act.
Section 38.	Transfer of property etc. to the governing body of a grant-maintained school.
Section 39.	Transfer of staff to the governing body of a grant-maintained school.
Section 40.	Meaning of “pending” in relation to the procedure for acquisition of grant-maintained status.
Section 41.	Control of disposals of land.
Section 42.	Wrongful disposals of land.

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Provisions of the Act	Subject matter of provisions
Section 43.	Control of contracts.
Section 44.	Wrongful contracts.
Section 45.	Restrictions on change of purpose for which property may be used or held.
Section 46.	Restrictions on staff changes.
Section 47(5) to (9).	Supplementary provisions about transfers.
Section 55.	Constitution of the governing body of a grant-maintained school and conduct of such a school.
Section 56.	Initial instruments and articles of government.
Section 57.	Subsequent instruments of government.
Section 58.	Subsequent articles of government.
Section 59.	Categories of governors.
Section 60.	Parent governors.
Section 61.	Teacher governors.
Section 62.	Head teacher.
Section 63.	First governors.
Section 64.	Power of Secretary of State to replace first governors.
Section 65.	Foundation governors.
Section 66.	Sponsor governors.
Section 67.	Additional governors.
Section 71.	Determination of initial parent and teacher governors.
Section 72.	Section 71 of the Act: supplementary provisions.
Section 73.	Determination of initial first or foundation governors.
Section 74.	Replacement of proposed initial parent and teacher governors before incorporation.
Section 75.	Replacement of proposed initial first or foundation governors before incorporation.
Section 76.	Elections and appointments required for determining initial governors of an elected category: supplementary provisions.
Section 77.	Initial sponsor governors.
Section 79.	Saving for defects in selection or nomination of governors.

Provisions of the Act	Subject matter of provisions
Section 80.	Interpretation of Chapter V of Part II of the Act.
Section 92.	Loans to governing bodies of grant-maintained schools.
Section 136(1) and (3).	Variation of trust deeds etc. by order of the Secretary of State.
Section 137.	Modification of instruments relating to land held for the purposes of voluntary schools.
Section 152.	Manner of giving notification to governing body.
Section 153(1), (2) and (4).	Provision of information by the governing body of a grant-maintained school.
Section 155.	Interpretation of Part II of the Act.
Section 156.	Definition of special educational needs and special educational provision.
Section 157.	Code of practice relating to functions under Part III of the Act.
Section 158.	Procedure for making and approval of the code of practice.
Section 161(5).	Inclusion in annual report of prescribed information about the governing body's policy for pupils with special educational needs.
Section 177(2) to (6).	Appointment of persons to serve on the Special Educational Needs Tribunal ("the Tribunal").
Section 178.	The President of the Tribunal and the members of the panels.
Section 179.	Remuneration and expenses for members of the Tribunal.
Section 180(1) and (2).	Tribunal procedure.
Section 181.	Supervision of and appeals from the Tribunal.
Section 213.	Schools to which sections 214 to 217 of the Act apply.
Section 214.	Appointment of additional governors.
Section 215.	Suspension of right to delegated budget.
Section 216.	Grouping and de-grouping of schools.
Section 217(1).	Prohibition on ballot under Part II of the Act.
Section 218.	Power to establish education associations.
Section 219.	Supervision of education associations by the Secretary of State.

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Provisions of the Act	Subject matter of provisions
Section 220.	Transfer by order of responsibility for conducting a school to an education association.
Section 221.	Effect of an order under section 220 of the Act.
Section 222.	Functions of education associations.
Section 223.	Conduct of schools conducted by an education association.
Section 227.	Report showing school no longer requires special measures.
Section 228(1) to (3).	Regulations for the purposes of Chapter II of Part V of the Act.
Section 238.	Incorporation of governing bodies of county, voluntary and maintained special schools.
Section 239.	Powers of incorporated governing bodies.
Section 246.	Dissolution of the National Curriculum Council and the School Examinations and Assessment Council.
Section 266.	Lay members for admission appeal committees.
Section 267.	Duty to advertise for lay members for appeal committees.
Section 268.	Indemnity costs and expenses of members of appeal committees.
Section 271.	Sponsor governors for voluntary aided secondary schools.
Section 274.	Revision of schemes for financing schools maintained by local education authorities.
Section 275.	Publication and auditing of financial statements.
Section 276.	Application of schemes to special schools.
Section 281.	Grants by Secretary of State in respect of voluntary aided and special agreement schools.
Section 287.	Religious educational trusts: adoption of statutory trusts.
Section 288.	Religious educational trusts: supplementary provisions.
Section 290.	Independent schools: employment of teachers etc.
Section 291.	Training for unqualified teachers in city technology colleges and city colleges for the technology of the arts.
Section 292.	Independent schools that are children's homes.

Provisions of the Act	Subject matter of provisions
Section 299.	Stamp duty.
Section 300.	Publication of guidance.
Part I of Schedule 3.	Proposals for acquisition of grant-maintained status.
Schedule 4.	Acquisition of grant-maintained status: exercise of powers before incorporation.
Schedule 5.	Governing bodies of grant-maintained schools.
Schedule 6.	Content of articles of government for grant-maintained schools.
Schedule 7.	Categories of governors.
Paragraph 14 of Schedule 11, and section 182(4) so far as it relates thereto.	Government and conduct of grant-maintained special schools: general application of enactments.
Schedule 12.	Education associations.
Schedule 13.	Incorporated governing bodies for county voluntary and maintained special schools.
Schedule 16.	School admission appeals.
Schedule 17.	Uniform statutory trusts for educational endowments.
Paragraphs 7, 22, 23(a) (for all remaining purposes), 24(a)(iv) and (b), 29, 39, 55(b), 82 (for the purpose of repealing section 1 of the Education Act 1981 ⁽³⁾), 83, 90 (to the extent that it provides for section 9(5) of the Education (No.2) Act 1986 ⁽⁴⁾ to have effect as if the transfer of a school to a new site in pursuance of section 16(1A)(c) of the Education Act 1980 ⁽⁵⁾ were an alteration of the kind mentioned in subsection (5) of that section), 109(a), (b)(i) and (e), 118(a) and (e), 123, 126 (for the purpose of omitting sections 52(3) to (9), 53 to 56, 58 to 72, 74 to 78, 104(1) (a), (b) and (f) to (h), 104(2), and the definition of “incorporation date” in section 104(3), of the 1988 Act), 130 (for the purpose of omitting “52(4)” from section 119(2) of the 1988 Act), 133, 134, 135, 137 (for the purpose of omitting “section 74 (taken with Schedule 10)” from section 230(1) of the 1988 Act), 138(a) and (b)(ii), 138(b)(i) (for the purpose of omitting “58(2), 59(1)” and “102” from section 232(2) of the 1988 Act), 139(a)(ii), (b) and (c), 143,	Minor and consequential amendments.

(3) 1981 c. 60.

(4) 1986 c. 61.

(5) 1980 c. 20; subsection (1A) of section 16 was revised by paragraph 78 of Schedule 19 to the Act.

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Provisions of the Act	Subject matter of provisions
144, 150, 153, 162, 163(a) and (c), 164, 165, 166, 167(b) and 174 of Schedule 19, and section 307(1) so far as it relates thereto.	
Paragraphs 1, 3, 5, 6 and 7 of Schedule 20, and section 307(2) so far as it relates thereto.	Transitional provisions and savings.
Schedule 21, in so far as it relates to the repeals set out in the Appendix to this Schedule, and section 307(3) so far as it relates thereto.	Repeals.

Appendix to Schedule 1

REPEALS TAKING EFFECT FROM 1ST JANUARY 1994

Chapter	Short title	Extent of repeal
1944 c. 31.	The Education Act 1944.	Sections 102 and 103. In section 105(2), paragraph (d) and, in the words following that paragraph, “maintenance contribution”.
1967 c. 3.	The Education Act 1967.	Section 1.
1972 c. 11.	The Superannuation Act 1972.	In Schedule 1, in the list of Other Bodies, the entries relating to the National Curriculum Council and the School Examinations and Assessment Council.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, the entry relating to membership of the School Examinations and Assessment Council.
1981 c. 60.	The Education Act 1981.	Section 1.
1988 c. 40.	The Education Reform Act 1988.	In section 14(1), paragraph (a), the word “and” immediately following paragraph (b), paragraph (c) and the words “each of”. Section 42(f) to (i) and (5)(b). Sections 52(3) to (9), 53 to 56, 58 to 72, 74 to 78, 102 and 103. In section 104, subsections (1) (a) and (b) and (f) to (h) and (2), and in subsection (3) the definition of “incorporation date”. In section 119(2), “52(4)”. In section 198(1), “74”. Section 200. In section 230, in subsection (1) the words “section 74 (taken with Schedule 10)”. In section 232, in subsection (2) “58(2),

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Chapter	Short title	Extent of repeal
		59(1)” and “102” and in subsection (4)(b) “52(7)”.
		In section 235, in subsection (1), in the definition of “transfer date”, “74(9)”, in subsection (3)(b) “subject to section 75(2) of this Act”, and in subsection (5) “74”.
		In Schedule 2, paragraph 1, in paragraph 9 the entries relating to membership of the National Curriculum Council and the School Examinations and Assessment Council, and in paragraph 10(5) the entries relating to the National Curriculum Council and the School Examinations and Assessment Council.
		In paragraph 2 of Schedule 4, sub-paragraphs (3)(b) and (c) and (4)(b) and (c).
		Schedule 5.
1989 c. 41.	The Children Act 1989.	In Schedule 12, paragraph 4.
1991 No.2.	The Diocesan Boards of Education Measure 1991.	In section 3(6), “or (4)”.

SCHEDULE 2

Article 5

TRANSITIONAL PROVISIONS

PART I

TRANSITIONAL PROVISIONS CONSEQUENTIAL ON THE COMMENCEMENT OF PROVISIONS OF CHAPTERS I, II AND III OF PART II

1. Until the repeal of section 52(1) and (2) of the 1988 Act and the commencement of section 22(4) of the Act, the reference in section 52(1) of the 1988 Act to a governing body incorporated under Chapter IV of that Act shall have effect as if it included a reference to a governing body incorporated in pursuance of proposals published under section 32 of the Act.

2.—(1) This paragraph applies in relation to any school if immediately before 1st January 1994—

- (a) the governing body of the school are under a duty to publish proposals in accordance with section 62 of the 1988 Act for the acquisition of grant-maintained status for the school;

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- (b) such proposals have been published in relation to the school, but not determined by the Secretary of State in accordance with section 62(11) of that Act; or
 - (c) such proposals have been approved, but the governing body constituted in accordance with the proposals have not been incorporated in accordance with section 62(14) of that Act.
- (2) In relation to any such school for the period specified in sub-paragraph (3) below—
- (a) sections 23, 25 to 37, 59 to 67 and 71 to 77 of, and Part I of Schedule 3 and Schedules 4 and 7 to, the Act shall not apply;
 - (b) the repeal of sections 52(4) to (9), 53(8) (as it relates to the definition of “foundation governor”), 53(9), 60(7) to (9) and 61 to 71 of the 1988 Act, subsections (1)(a) and (b), (f) to (h) and (2) and (3) (as it relates to the definition of “incorporation date”) of section 104 of that Act, and paragraphs 1 to 4 and 6 of Schedule 5 to that Act shall not have effect; and
 - (c) the amendments made by—
 - (i) section 47(5) of the Act to section 197(7) of the 1988 Act;
 - (ii) section 47(6) of the Act to paragraph 61 of Schedule 8 to the Further and Higher Education Act 1992⁽⁶⁾;
 - (iii) section 47(7) and (8) of the Act to paragraphs 1(1) and 4(1) of Schedule 10 to the 1988 Act;
 - (iv) paragraph 24(b) of Schedule 19 to the Act to section 114 (1E) of the Education Act 1944⁽⁷⁾;
 - (v) paragraph 130 of Schedule 19 to the Act to section 119(2) of the 1988 Act (in so far as it has effect for the purpose of omitting “52(4)”); and
 - (vi) paragraph 164 of that Schedule to section 5 of the Diocesan Boards of Education Measure 1991⁽⁸⁾,shall not have effect.
- (3) Sub-paragraph (2) above shall have effect in relation to such a school for the period beginning on 1st January 1994 and ending on—
- (a) where—
 - (i) the ballot by reference to the result of which the governing body are under a duty to publish proposals is declared void in accordance with section 61(11) of the 1988 Act, and
 - (ii) the fresh ballot held in accordance with that section does not show a majority in favour of seeking grant-maintained status for the school,the date on which the result of that fresh ballot is determined;
 - (b) where the proposals for acquisition of grant-maintained status referred to in (as the case may be) sub-paragraph (1)(a) or (b) above, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn, the date on which the proposals are so rejected or withdrawn; or
 - (c) in any other case, the incorporation date in relation to the school (within the meaning of section 104(3) of the 1988 Act).
- (4) Where in any case to which sub-paragraph (3)(a) above applies a second ballot is required to be held because the total number of votes cast in the fresh ballot is less than fifty per cent of the number of persons eligible to vote in that ballot, the reference in that sub-paragraph to the fresh ballot shall have effect as if it were a reference to the second ballot so held.

⁽⁶⁾ 1992 c. 13.

⁽⁷⁾ 1944 c. 31; subsection (1E) of section 114 was revised by paragraph 10 of Schedule 13 to The Children Act 1989 (c. 41).

⁽⁸⁾ 1991 No. 2.

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(5) The reference in sub-paragraph (3)(b) above to proposals required in substitution for any proposals for the acquisition of grant-maintained status (“the original proposals”) is to any proposals required to be published under section 62(4) or (12) of the 1988 Act on withdrawal or (as the case may be) rejection of—

- (a) the original proposals; or
- (b) any further proposals required to be published by virtue of section 62(4) or (12) in respect of the school without a further ballot.

(6) Proposals published under section 62 of the 1988 Act with respect to a school shall not be treated for the purposes of sub-paragraph (3)(b) above as rejected in any case where the Secretary of State imposes a requirement under section 62(12) of that Act or as withdrawn in any case where he imposes a requirement under section 62(4) of that Act.

(7) Where in the case of any school to which this paragraph applies the proposals for acquisition of grant-maintained status referred to in sub-paragraph (1) above are approved, section 56 of the Act shall have effect as if it required the initial instrument and articles of government to have effect from the incorporation date in relation to the school (within the meaning of section 104(3) of the 1988 Act).

3.—(1) This paragraph applies in relation to any school the governing body of which have before 1st January 1994 passed a resolution in accordance with section 60(1)(a) of the 1988 Act to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school, but have not by that date confirmed their decision by passing a second resolution in accordance with that section.

(2) In relation to any such school for the period specified in sub-paragraph (3) below—

- (a) section 25 of the Act shall not apply;
- (b) section 27 of the Act shall have effect with the reference to section 25 of the Act being construed as a reference to section 60 of the 1988 Act;
- (c) the repeal of section 60(1)(a), (3), (4) and (5) of the 1988 Act shall not have effect;
- (d) any references to section 61 of the 1988 Act in section 60(1)(a) and (4) of that Act shall have effect as if they were references to section 28 of the Act; and
- (e) the amendments made by paragraphs 163(a) and (c) and 164(b) of Schedule 19 to the Act to sections 3 and 5 of the Diocesan Boards of Education Measure 1991 shall not have effect.

(3) Sub-paragraph (2) above shall have effect for the period beginning on 1st January 1994 and ending on—

- (a) where the period of forty two days, after that on which the first resolution was passed, has expired and the decision to hold a ballot has not been confirmed by a second resolution passed in accordance with section 60(1)(a) of the 1988 Act, the date of the expiry of that period; or
- (b) in any other case, the date on which a ballot is held in pursuance of the duty imposed on the governing body of the school by section 60(1)(a) and (4) of the 1988 Act (as it has effect by virtue of sub-paragraph (2)(c) above).

4.—(1) This paragraph applies in relation to any school where immediately before 1st January 1994 the governing body are under a duty by virtue of section 60(4) of the 1988 Act to hold a ballot in accordance with section 61 of that Act, but they have not held the ballot before that date.

(2) For the purposes of sub-paragraph (1) above, the governing body are to be treated as having held a ballot in pursuance of their duty under section 60(4) of the 1988 Act notwithstanding that, by virtue of section 61(9) of that Act, the result of the ballot is to be disregarded.

(3) In relation to the holding of the ballot referred to in sub-paragraph (1) above—

- (a) where the governing body have decided to hold the ballot by passing two resolutions in accordance with section 60(1)(a) of the 1988 Act, section 25(1)(a) of the Act shall have effect as if for “the period of ten weeks beginning with the date of the resolution” there were substituted “the period of three months beginning with the date of the second resolution”; and
 - (b) where the governing body are required to hold a ballot having received such a request as is mentioned in section 60(1)(b) of the 1988 Act, section 26(3)(a) of the Act shall have effect as if for “the period of ten weeks beginning with the date on which the request was received” there were substituted “the period of two months beginning with the date immediately following the period of twenty eight days beginning with the date on which the request was received”.
5. Sections 30(1)(b) and 31(1)(d) to (g) of the Act shall not apply (where otherwise they would do so) to—
- (a) any ballot held before 1st January 1994; or
 - (b) any ballot held after that date where the procedure for acquisition of grant-maintained status to which the ballot relates was initiated before that date in accordance with section 60(1)(a) or (b) of the 1988 Act.
- 6.—(1) The governing body of a primary school which is under a duty to publish proposals under section 32(1) of the Act shall be required to name in those proposals five parent governors where the circumstances mentioned in sub-paragraph (2) below apply.
- (2) Those circumstances are that the information given to voters in connection with the holding of the relevant ballot was so given before 1st January 1994 in accordance with section 61(3)(a) of the 1988 Act.
- (3) In sub-paragraph (2) above “the relevant ballot” means—
- (a) the ballot by reference to the result of which the governing body are under a duty to publish proposals in accordance with section 32(1) of the Act; or
 - (b) where that ballot was a second ballot held in pursuance of section 30(1)(a) of the Act, the ballot the result of which led to the second ballot being held.
- 7.—(1) Subject to sub-paragraph (2) below, this paragraph applies to any school in respect of which the procedure under Chapter IV of Part I of the 1988 Act for the acquisition of grant-maintained status is pending (within the meaning of section 76 of that Act) immediately before 1st January 1994.
- (2) Where in the case of any such school, the procedure for acquisition of grant-maintained status, which is pending as mentioned in sub-paragraph (1) above, is terminated in accordance with section 76(4) of the 1988 Act (as it has effect by virtue of sub-paragraph (3) below), this paragraph shall cease to apply to that school from that date.
- (3) In relation to any school to which this paragraph applies—
- (a) sections 38 and 40 to 46 of the Act shall not apply;
 - (b) the repeal of sections 74 and 76 to 78 of the 1988 Act shall not have effect;
 - (c) paragraph 6(1)(c) or (as the case may be) paragraph 7(1)(c) of Schedule 13 to the Act shall have effect as if the reference to section 40 of the Act were a reference to section 76 of the 1988 Act; and
 - (d) the amendments made by—
 - (i) section 47(9) of the Act to Schedule 10 to the 1988 Act;
 - (ii) paragraph 134(a) of Schedule 19 to the Act to section 198(1) of the 1988 Act;

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- (iii) paragraph 137 of that Schedule to section 230(1) of the 1988 Act (in so far as it has effect for the purpose of omitting the words “section 74 (taken with Schedule 10)”; and
- (iv) paragraph 139(a)(ii) and (c) of that Schedule to section 235 of the 1988 Act, shall not have effect.

(4) Where paragraph 2 above does not apply in the case of any school in respect of which sub-paragraph (3) above has effect, any reference in sections 74 to 78 of the 1988 Act (as they have effect by virtue of that sub-paragraph) to the transfer date shall have effect in relation to that school as if it were a reference to the date of implementation of the proposals (within the meaning of section 37(2) of the Act).

PART II

TRANSITIONAL PROVISIONS CONSEQUENTIAL ON THE COMMENCEMENT OF CHAPTER V OF PART II

- 8.—(1) This paragraph applies in relation to any grant-maintained school where—
- (a) the governing body of the school were incorporated under Chapter IV of Part I of the 1988 Act;
 - (b) an instrument and articles of government have been made for the school under that Chapter before 1st January 1994; and
 - (c) the school was a county school immediately before it became grant-maintained.

(2) In the case of any school to which this paragraph applies, the instrument of government shall be modified by substituting the following for the definition of “first governor” in paragraph 1 (interpretation)—

““first governor” means—

- (a) in relation to any person appointed to such a governorship before 1st January 1994, a governor of the kind referred to in paragraph 3(1)(d); and
- (b) in relation to any person so appointed on or after that date—
 - (i) a person appointed by the governing body who appears to them to be committed to the good government and continuing viability of the school; or
 - (ii) a person appointed under paragraph 3A of this instrument who appears to the person appointing him to be committed to the good government and continuing viability of the school,

and the following provisions of this instrument shall have effect accordingly;”.

(3) In the case of any school to which this paragraph applies, the instrument of government shall be modified by inserting after paragraph 3(4) (which requires the governing body to secure that at least two of the first governors are parents of registered pupils at the school) the following sub-paragraph—

“(4A) The governing body shall secure that, in appointing any person to be a first governor on or after 1st January 1994, at least two of the first governors are (on the date or dates on which they respectively take office) members of the local community.”.

(4) In the case of any school to which this paragraph applies, the instrument of government shall be modified by inserting after paragraph 3 (composition of the governing body) the following paragraph—

“Power of Secretary of State to replace first governors

3A.—(1) The Secretary of State shall have power, where any of sub-paragraphs (2), (3) and (5) below apply, to replace all or any of the first governors.

(2) This sub-paragraph applies where the governing body have been guilty of substantial or persistent failure to comply, or secure compliance, with any requirement imposed by or under any enactment.

(3) This sub-paragraph applies where—

- (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school;
- (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion;
- (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of the Education Act 1993, he did not express the opinion in the report that special measures were not required to be taken in relation to the school; and
- (d) the Secretary of State has received a statement prepared under section 210 of the Education Act 1993 (statement of special measures to be taken by the governing body), or the period allowed under subsection (2) of that section for the preparation of such a statement has expired.

(4) Any expression used in sub-paragraph (3) above which is also used in Part V of the Education Act 1993 shall have the same meaning as in that Part.

(5) This sub-paragraph applies where in the opinion of the Secretary of State any action taken or proposed by the governing body, or any failure of the governing body to act, is prejudicial to the provision of education by the school.”.

9.—(1) This paragraph applies in relation to any grant-maintained school where—

- (a) the governing body of the school were incorporated under Chapter IV of Part I of the 1988 Act; and
- (b) an instrument and articles or government have been made for the school under that Chapter before 1st January 1994.

(2) In the case of any school to which this paragraph applies, the instrument of government shall be modified by substituting for paragraphs 2 to 4 of Appendix 3 (Appeal committees on admissions and permanent exclusions) the following paragraphs—

“2. An appeal committee shall consist of—

- (a) where all the members of the appeal committee were nominated before 1st January 1994, three, five or seven persons appointed by the governing body under paragraph 4C(1) below; or
- (b) in any other case—
 - (i) one person nominated by the governing body from among the persons who are eligible to be lay members, and
 - (ii) two, four or six other members nominated by the governing body from among persons appointed by them under paragraph 4C(1) below.

3. The governing body shall not nominate under paragraph 2(b)(i) above a person who falls within paragraph 4C(1) below.

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4.—(1) In the case of an appeal committee to which paragraph 2(a) above applies, the members of the committee who are members of the governing body may not outnumber the other members by more than one.

(2) In the case of an appeal committee to which paragraph 2(b) above applies—

- (a)** three members shall be nominated from among those appointed under paragraph 4C(1)(b) below, in the case of a committee consisting of seven members;
- (b)** two members shall be so nominated, in the case of a committee consisting of five members; and
- (c)** one member shall be so nominated, in the case of a committee consisting of three members.

4A. Sufficient persons may be appointed by the governing body to enable two or more committees to sit at the same time.

4B. A person is eligible to be a lay member for the purposes of paragraph 2(b)(i) above if—

- (a)** he is a person without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity), and
- (b)** he does not have, or has not at any time had, any connection with—
 - (i)** the school, or
 - (ii)** any person who is a member of, or employed by, the governing body, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the school.

4C.—(1) Subject to sub-paragraphs (2) and (3) below, the persons appointed—

- (a)** may include one or more members of the governing body, and
- (b)** shall include persons who have experience in education, who are acquainted with the educational conditions in the area, or who are parents of registered pupils at a school.

(2) A person shall not be appointed in pursuance of sub-paragraph (1) above, if he is employed as a teacher or otherwise at the school.

(3) A person shall not be appointed in pursuance of sub-paragraph (1)(b) above, if he—

- (a)** has ever been a member of the Governing Body, or
- (b)** is a parent of a registered pupil at the School.”.

10.—(1) This paragraph applies to any grant-maintained school where—

- (a)** the governing body of the school are incorporated under Chapter IV of Part I of the 1988 Act; and
- (b)** the instrument and articles of government prescribed by virtue of section 56 of the Act have effect in relation to that school.

(2) In relation to any school to which this paragraph applies, Part III of Schedule 7 to the Act shall have effect with the following modifications:—

- (a)** in paragraph 10(1) there shall be inserted after paragraph (d)—

“or

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- (e) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who—
 - (i) immediately before that date, was a parent governor (within the meaning of the Education (No.2) Act 1986) in relation to the school, or
 - (ii) was elected under section 66, or elected or nominated under section 68, of the 1988 Act to hold office as a parent governor on the governing body.”;
- (b) in paragraph 11(1) there shall be inserted after paragraph (c)—

“or

- (d) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who—
 - (i) immediately before that date, was a teacher governor (within the meaning of the Education (No.2) Act 1986) in relation to the school, or
 - (ii) was elected under section 66, or elected or nominated under section 68, of the 1988 Act to hold office as a teacher governor on the governing body.”;
- and
- (c) in paragraph 12, there shall be inserted after paragraph (c)—

“or

- (d) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who was selected under section 66 or nominated under section 68 of that Act as being a person who appeared to those selecting or nominating him to be a member of the local community committed to the good government and continuing viability of the School.”.

11.—(1) This paragraph applies in relation to any grant-maintained school where—

- (a) the governing body of the school are incorporated under Chapter IV of Part I of the 1988 Act; and
- (b) the school was a voluntary school immediately before it became grant-maintained.

(2) In relation to any school to which this paragraph applies, paragraph 13 of Schedule 7 to the Act shall have effect as if it provided for “foundation governor” to mean—

- (a) a person appointed otherwise than by a local education authority for the purpose of securing, so far as is practicable, that the established character of the school at the time when it became grant-maintained is preserved and developed and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it; or
- (b) a person selected under section 66 or nominated under section 68 of the 1988 Act for the purpose referred to in paragraph (a) above.

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PART III

OTHER TRANSITIONAL PROVISIONS.

12. Until the commencement of section 3 of the Act, the duty imposed on the Secretary of State by section 220(3) of the Act to give notice in writing of an order made under that section to the funding authority shall not apply where the school concerned is in England.

13. Until the commencement of Chapter VII of Part II of the Act, section 222(3)(a) of the Act shall have effect as if for “Chapter VII of Part II” there were substituted “section 89 or 91 of the Education Reform Act 1988”.

14. Section 268(2) of the Act shall not have effect to require a local education authority or governing body to indemnify the members of any appeal committee to which that section applies against any legal costs or expenses which are incurred by those members in connection with any decision or action taken by them before 1st January 1994.

15.—(1) Sub-paragraph (2) below applies where—

- (a) a local education authority have before 1st January 1994 submitted a scheme (within the meaning of section 33 of the 1988 Act) to the Secretary of State for his approval in accordance with section 35(3) of that Act (as it had effect before that date); but
- (b) the decision whether or not to approve the scheme has not been made before that date.

(2) Where this sub-paragraph applies the scheme shall be treated after 1st January 1994 as if it were proposals submitted in accordance with section 35(3) of the 1988 Act (as substituted by section 274(2) of the Act).

(3) Where on 1st January 1994 the period of two months has not elapsed since a notice was given in accordance with section 35(7) of the 1988 Act (as it had effect before that date), that notice shall have effect for the purposes of section 35(6) of the 1988 Act (as substituted by section 274 of the Act) as if it were given under subsection (5) of that section (as so substituted).

8th December 1993

John Patten
Secretary of State for Education

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 9th December 1993 section 24 of the Education Act 1993 (which relates to the duty of the governing bodies of schools which are eligible for grant-maintained status to consider once in each school year a ballot on grant-maintained status).

The Order brings into force on 1st January 1994 the provisions of the 1993 Act specified in Schedule 1. These include provisions of Chapter II of Part II, Part I of Schedule 3 and Schedule 4 (which relate to the procedure for the acquisition of grant-maintained status); provisions of Chapter III of Part II (which relate to the property, staff and contracts of schools which are subject to the procedure for acquisition of grant-maintained status); and provisions of Chapter V of Part II and Schedules 5 to 7 (which relate to the government and conduct of grant-maintained schools).

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The provisions brought into force by the Order on 1st January 1994 also include sections 157 and 158 (which relate to the code of practice concerning the exercise of functions under Part III); sections 177(2) to (6) and 178 to 180(1) and (2) (which relate to the appointment of persons to serve on the Special Educational Needs Tribunal and the making of regulations with respect to the proceedings of that Tribunal); sections 238 and 239 and Schedule 13 (which relate to the incorporation of governing bodies of county, voluntary and maintained special schools); sections 266 to 268 and Schedule 16 (which relate to appeal committees and the appointment of lay members to sit on such committees); sections 287 and 288 (which relate to religious educational trusts); and sections 290 to 292 (which relate to independent schools).

Also brought into force on 1st January 1994 are provisions of Part II of Chapter V and Schedule 12 (which are concerned with new powers in relation to schools requiring special measures).

The Order also contains transitional provisions. Part I of Schedule 2 contains transitional provisions consequential on the commencement of Chapters I, II and III of Part II. Part II of Schedule 2 contains transitional provisions consequential on the commencement of Chapter V of Part II. Part III contains transitional provisions relating to other provisions brought into force by this Order on 1st January 1994.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The Education Act 1993 (Commencement No.1 and Transitional Provisions) Order 1993 (S.I.1993/1975) brought into force the provisions of the Education Act 1993 specified in the first column of the following table on the dates specified in the second column thereof:—

<i>Provision</i>	<i>Date of Commencement</i>
Paragraph 173(2), (3), (5), (6), (8)(a) and (9)(a) of Schedule 19 (partially); and section 307(1) (so far as it relates thereto).	1st August 1993.
Section 5.	1st September 1993.
Paragraph 173(1)(c) and (2) to (7) of Schedule 19 (for all remaining purposes); and section 307(1) (so far as it relates thereto).	1st September 1993.
Sections 1, 2, 192 (partially) 193 to 195, 197(1) to (4) and (6), 198 to 203, 229(1) (partially), 230(1) and (3) to (5) (subsection (1) partially), 242 to 251, 259, 260, 263 to 265, 269, 270, 280, 282 to 286, 293 and 294 and Schedule 14.	1st October 1993.
Paragraphs 1, 3 to 5, 8, 11, 14, 15, 20(a), 23(a) (i) (partially), 24(a)(ii) to (iii), 25, 28, 30, 32, 34 (partially), 35, 40 to 43, 56, 64, 68, 69, 72, 75, 77(a), 78, 80, 84, 112, 118(b) to (d), 119, 122, 124, 131, 132, 141, 149, 152, 154 (partially), 155, 170 and 175 of Schedule 19; and section 307(1) so far as it relates thereto.	1st October 1993.
Schedule 21 so far as it relates to the repeal of section 10 of the Children and Young Persons Act 1933; sections 1(1), 6(1) and (2) (subsection (1) partially), 16(1) (partially),	1st October 1993.

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<i>Provision</i>	<i>Date of Commencement</i>
37, 39 and 40 of, and the Eighth Schedule (partially) to, the Education Act 1944; section 9 of the Education (Miscellaneous Provisions) Act 1948; section 10 of the Education (Miscellaneous Provisions) Act 1953; Schedule 3 to the Criminal Justice Act 1967 (partially); section 3(4) of, and paragraph 1 of Schedule 1 to, the Education Act 1968; paragraphs 2 and 13 of Schedule 5 to the Children and Young Persons Act 1969; Schedule 6 to the Criminal Law Act 1977 (partially); sections 10 and 11 of, and paragraph 10 of Schedule 1 to, the Education Act 1980; sections 14(4) and (5) (the latter subsection partially) and 25(1) (partially) of, and paragraph 18 (partially) of Schedule 2 to, the Education Reform Act 1988; and section 36(8) (partially) of, and paragraphs 4 and 8 of Schedule 13 to, the Children Act 1989; and section 307(3) so far as it relates thereto.	
