



# Education Reform Act 1988

## 1988 CHAPTER 40

### PART I

#### SCHOOLS

#### CHAPTER I

#### THE CURRICULUM

##### *Preliminary*

### **1 Duties with respect to the curriculum.**

- (1) It shall be the duty—
- (a) of the Secretary of State as respects every maintained school;
  - (b) of every local education authority as respects every school maintained by them; and
  - (c) of every governing body or head teacher of a maintained school as respects that school;
- to exercise their functions (including, in particular, the functions conferred on them by this Chapter with respect to religious education, religious worship and the National Curriculum) with a view to securing that the curriculum for the school satisfies the requirements of this section.
- (2) The curriculum for a maintained school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
  - (b) prepares such pupils for the opportunities, responsibilities and experiences of adult life.

*Status: Point in time view as at 30/09/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education Reform Act 1988, Part 1 is up to date with all changes known to be in force on or before 06 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

- C1** S. 1 applied (with modifications) (1.4.1994) by S.I. 1994/653. reg. 42(1), Sch. Pt.I  
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9

### *Principal provisions*

## **2 The National Curriculum.**

- (1) The curriculum for every maintained school shall comprise a basic curriculum which includes—
  - (a) provision for religious education for all registered pupils at the school; and
  - (b) a curriculum for all registered pupils at the school of compulsory school age (to be known as the National Curriculum) which meets the requirements of subsection (2) below.
- (2) The curriculum referred to in subsection (1)(b) above shall comprise the core and other foundation subjects and specify in relation to each of them—
  - (a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (in this Chapter referred to as attainment targets);
  - (b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during each key stage (in this Chapter referred to as programmes of study); and
  - (c) the arrangements for assessing pupils at or near the end of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage (in this Chapter referred to as assessment arrangements).
- (3) Subsection (1)(a) above shall not apply in the case of a maintained special school.

## **3 Foundation subjects and key stages.**

- (1) Subject to subsection (4) below, the core subjects are—
  - (a) mathematics, English and science; and
  - (b) in relation to schools in Wales which are Welsh-speaking schools, Welsh.
- (2) Subject to subsection (4) below, the other foundation subjects are—
  - (a) history, geography, technology, music, art and physical education;
  - (b) in relation to the third and fourth key stages, a modern foreign language specified in an order of the Secretary of State; and
  - (c) in relation to schools in Wales which are not Welsh-speaking schools, Welsh.
- (3) Subject to subsections (4) and (5) below, the key stages in relation to a pupil are as follows—
  - (a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven;

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- (b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of eleven;
  - (c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of twelve and ending at the same time as the school year in which the majority of pupils in his class attain the age of fourteen;
  - (d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of fifteen and ending with the majority of pupils in his class ceasing to be of compulsory school age.
- (4) The Secretary of State may by order—
- (a) amend the foregoing provisions of this section; or
  - (b) provide that, in relation to any subject specified in the order, subsection (3) above shall have effect as if for the ages of seven and eight there mentioned there were substituted such other ages, less than eleven and twelve respectively, as may be so specified.
- (5) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (3) above shall have effect as if any reference to the school year in which the majority of pupils in that pupil’s class attained a particular age were a reference to the school year in which that pupil attained that age.
- (6) In this section—
- “class”, in relation to a particular pupil and a particular subject, means the teaching group in which he is regularly taught that subject or, where there are two or more such groups, such one of them as may be designated by the head teacher of the school;
  - “school”, except in subsection (5) above and the above definition, includes part of a school.
- (7) For the purposes of this section a school in Wales is a Welsh-speaking school if more than one half of the following subjects, namely—
- (a) religious education; and
  - (b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school;
- are taught (wholly or partly) in Welsh.

#### **4 Duty to establish the National Curriculum by order.**

- (1) It shall be the duty of the Secretary of State so to exercise the powers conferred by subsection (2) below as—
- (a) to establish a complete National Curriculum as soon as is reasonably practicable (taking first the core subjects and then the other foundation subjects); and
  - (b) to revise that Curriculum whenever he considers it necessary or expedient to do so.
- (2) The Secretary of State may by order specify in relation to each of the foundation subjects—
- (a) such attainment targets;
  - (b) such programmes of study; and

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- (c) such assessment arrangements;  
as he considers appropriate for that subject.
- (3) An order made under subsection (2) above may not require—
  - (a) that any particular period or periods of time should be allocated during any key stage to the teaching of any programme of study or any matter, skill or process forming part of it; or
  - (b) that provision of any particular kind should be made in school timetables for the periods to be allocated to such teaching during any such stage.
- (4) An order under subsection (2) above may, instead of containing the provisions to be made, refer to provisions in a document published by Her Majesty’s Stationery Office and direct that those provisions shall have effect or, as the case may be, have effect as amended by the order.
- (5) An order under subsection (2)(c) above may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order as appear to the Secretary of State to be expedient; and any provisions made under such an order shall, on being published by Her Majesty’s Stationery Office, have effect for the purposes of this Chapter as if made by the order.

## 5 Courses leading to external qualifications.

- (1) No course of study leading to a qualification authenticated by an outside person shall be provided for pupils of compulsory school age by or on behalf of any maintained school unless the qualification is for the time being approved by the Secretary of State or by a designated body and either—
  - (a) a syllabus provided by the outside person for the purposes of the course is for the time being approved by such a body; or
  - (b) criteria so provided for determining a syllabus for those purposes are for the time being so approved.
- (2) An approval under this section may be given either generally or in relation to particular cases.
- (3) In this section—
  - “designated ” means designated by the Secretary of State;
  - “outside person ”, in relation to a school, means a person other than a member of staff of the school.

### Modifications etc. (not altering text)

- C2** S. 5 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.  
Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

## Religious education

## 6 Collective worship.

- (1) Subject to section 9 of this Act, all pupils in attendance at a maintained school shall on each school day take part in an act of collective worship.

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- (2) The arrangements for the collective worship in a school required by this section may, in respect of each school day, provide for a single act of worship for all pupils or for separate acts of worship for pupils in different age groups or in different school groups.
- (3) The arrangements for the collective worship in a county or voluntary school required by this section shall be made—
  - (a) in the case of a county school, by the head teacher after consultation with the governing body; and
  - (b) in the case of a voluntary school, by the governing body after consultation with the head teacher.
- (4) Subject to subsection (5) below, the collective worship in every maintained school required by this section shall take place on the school premises.
- (5) If the governing body of—
  - (a) an aided or special agreement school; or
  - (b) a grant-maintained school;
 are of opinion that it is desirable that any act of collective worship in the school required by this section should, on a special occasion, take place elsewhere than on the school premises, they may make such arrangements for that purpose as they think appropriate.
- (6) The powers of a governing body under subsection (5) above shall not be so exercised as to derogate from the rule that, in every such school as is there mentioned, the collective worship required by this section must normally take place on the school premises.
- (7) For the purposes of this section—
 

“maintained school ” does not include a maintained special school; and

“school group ” means any group in which pupils are taught or take part in other school activities.

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

- C3** S. 6 explained (1.4.1994) by 1993 c. 35, s. 138(2)-(4) (with s. 155(11)); S.I. 1994/507, art.3(1).  
 S. 6 power to modify conferred (1.4.1994) by 1993 c. 35, s. 138(7)(b) (with s. 155(11)); S.I. 1994/507, art.3(1).

## 7 Special provisions as to collective worship in county schools.

- (1) Subject to the following provisions of this section, in the case of a county school the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broad Christian character.
- (2) For the purpose of subsection (1) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (3) Every act of collective worship required by section 6 of this Act in the case of a county school need not comply with subsection(1) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (4) Subject to subsections (1) and (3) above—

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- (a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection(1) above take place in a county school;
- (b) the extent to which any act of collective worship in a county school which complies with subsection (1) above reflects the broad traditions of Christian belief; and
- (c) the ways in which those traditions are reflected in any such act of collective worship;

shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (5) below.

- (5) Those considerations are—
  - (a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropriate in their case; and
  - (b) their ages and aptitudes.
- (6) Where under section 12 of this Act a standing advisory council on religious education determine that it is not appropriate for subsection (1) above to apply in the case of any county school, or in the case of any class or description of pupils at such a school, then, so long as that determination has effect—
  - (a) that subsection shall not apply in relation to that school or(as the case may be) in relation to those pupils; and
  - (b) the collective worship required by section 6 of this Act in the case of that school or those pupils shall not be distinctive of any particular Christian or other religious denomination(but this shall not be taken as preventing that worship from being distinctive of any particular faith).

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

**C4** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by [S.I. 1994/1084, reg.9](#).

**8 Religious education required in the basic curriculum: further provisions.**

- (1) Section 2(1)(a) of this Act is subject to section 9 of this Act.
- (2) The religious education for which provision is required by section 2(1)(a) to be included in the basic curriculum for any particular maintained school shall be religious education of the kind required by such of the provisions of sections 26 to 28 of the 1944 Act or sections 84 to 86 of this Act as apply in the case of that school.
- (3) Any agreed syllabus which after this section comes into force is adopted or deemed to be adopted under Schedule 5 to that Act (which, as amended by this Act, provides for the preparation, adoption and reconsideration of an agreed syllabus of religious education) shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.

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## **9 Exceptions, special arrangements and supplementary and consequential provisions.**

- (1) It shall not be required, as a condition of any pupil attending any maintained school, that he shall attend or abstain from attending any Sunday school or any place of religious worship.
- (2) For the purposes of subsections (3) to (10) below “maintained school ” does not include a maintained special school.
- (3) If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused—
  - (a) from attendance at religious worship in the school;
  - (b) from receiving religious education given in the school in accordance with the school’s basic curriculum; or
  - (c) both from such attendance and from receiving such education;
 the pupil shall be so excused accordingly until the request is withdrawn.
- (4) Where in accordance with subsection (3) above any pupil has been wholly or partly excused from attendance at religious worship or from receiving religious education in any school, and the responsible authority are satisfied—
  - (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused;
  - (b) that the pupil cannot with reasonable convenience be sent to another maintained school where religious education of the kind desired by the parent is provided; and
  - (c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere;
 the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.
- (5) In this section “the responsible authority ” means—
  - (a) in relation to a county or voluntary school, the local education authority; and
  - (b) in relation to a grant-maintained school, the governing body.
- (6) A pupil may not be withdrawn from school under subsection (4) above unless the responsible authority are satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session or, if there is more than one, of any school session on that day.
- (7) Where the parent of any pupil who is a boarder at a maintained school requests that the pupil be permitted—
  - (a) to attend worship in accordance with the tenets of a particular religious denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs; or
  - (b) to receive religious education in accordance with such tenets outside school hours;
 the governing body of the school shall make arrangements for affording to the pupil reasonable opportunities for doing so.

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- (8) Arrangements made under subsection (7) above may provide for affording facilities for such worship or education on the school premises, but the arrangements shall not entail expenditure by the responsible authority.
- (9) In this section—
- (a) references to religious worship in a school include references to religious worship which under section 6 of this Act takes place otherwise than on the school premises; and
  - (b) references to religious education given in a school in accordance with the school's basic curriculum are references to such education given in accordance with the provision included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (10) Schedule 1 to this Act shall have effect for making amendments of the enactments there mentioned consequential on the provisions of this Chapter relating to religious education.

*Duties with respect to certain requirements*

**10 Duties with respect to certain requirements.**

- (1) Subject to section 9 of this Act, in relation to any maintained school (other than a maintained special school) and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—
- (a) that all pupils in attendance at the school take part in the daily collective worship required by section 6 of this Act; and
  - (b) that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (2) In relation to any maintained school and any school year it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing, and the duty of the head teacher to secure—
- (a) that the National Curriculum as subsisting at the beginning of that year is implemented; and
  - (b) that section 5 of this Act is not contravened.
- (3) In relation to any time before the beginning of the school year following the establishment of the National Curriculum so far as relating to a particular subject and a particular key stage, subsection (2)(a) above shall have effect as if that Curriculum required that subject to be taught for a reasonable time during that stage.

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

- C5** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**
- C6** S. 10 except s. 10(1) applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 42(1), Sch. Pt.I.**
- C7** S. 10(3) excluded (*temp.*) (W.) by S.I. 1990/2187, **art. 2**



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### *Standing advisory councils on religious education*

## **11 Standing advisory councils on religious education.**

- (1) It shall be the duty of every local education authority to constitute a standing advisory council on religious education—
- (a) to advise the authority upon such matters connected with religious worship in county schools and the religious education to be given in accordance with an agreed syllabus as the authority may refer to the council or as the council may see fit; and
  - (b) to carry out the functions conferred by section 12 of this Act on councils constituted under this section.

References below in this section and in sections 12 and 13 of this Act to the council are references to any council constituted by a local education authority under this section.

- (2) The matters referred to in subsection (1) above include in particular methods of teaching, the choice of materials and the provision of training for teachers.
- (3) The council shall consist of—
- (a) the representative members required by subsection (4) below; and
  - (b) where any agreed syllabus for the time being adopted by the authority is in use at one or more grant-maintained schools, a person appointed by the governing body or (as the case may be) by the governing bodies of the school or schools concerned;
- and may also include co-opted members.
- (4) Subject to subsection (5) below, the representative members required by this subsection are persons appointed by the authority to represent respectively—
- (a) such Christian and other religious denominations as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
  - (b) except in the case of an area in Wales, the Church of England;
  - (c) such associations representing teachers as, in the opinion of the authority, ought, having regard to the circumstances of the area, to be represented; and
  - (d) the authority;

and references below in this section to representative groups on the council are references to the members appointed by virtue of paragraphs (a), (c) and (d) above respectively and, where members are required to be appointed by virtue of paragraph (b) above, the members so appointed.

- (5) Where members are required to be appointed by virtue of paragraph (b) of subsection (4) above, the representative members required by paragraph (a) of that subsection shall not include persons appointed to represent the Church of England.
- (6) On any question to be decided by the council only the representative groups on the council shall be entitled to vote, and each such group shall have a single vote.
- (7) The representative groups on the council, other than that consisting of persons appointed to represent the authority, may at any time require a review of any agreed syllabus for the time being adopted by the authority.

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Each representative group concerned shall have a single vote on the question of whether to require such a review.

- (8) On receipt by the authority of written notification of any such requirement, it shall be the duty of the authority to cause a conference constituted in accordance with the provisions of Schedule 5 to the 1944 Act to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates.
- (9) The council shall in each year publish a report with respect to the exercise of their functions and any action taken by representative groups on the council under subsection (7) above during the last preceding year.
- (10) The council's report shall in particular—
  - (a) specify any matters in respect of which the council have given advice to the authority;
  - (b) broadly describe the nature of the advice given; and
  - (c) where any such matter was not referred to the council by the authority, give the council's reasons for offering advice on that matter.

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

- C8** S. 11 restricted by S.I. 1989/46, art. 3(3)  
**C9** Ss. 11, 13 modified by S.I. 1989/46, Sch. 1

**12 Determination by advisory councils of the cases in which the requirement for Christian collective worship is not to apply.**

- (1) It shall be the duty of the council, on an application made by the head teacher of any county school after consultation with the governing body, to consider whether it is appropriate for the requirement for Christian collective worship to apply in the case of that school, or in the case of any class or description of pupils at that school.

References in this section to the requirement for Christian collective worship are references to the requirement imposed by section 7(1) of this Act.

- (2) In determining whether it is appropriate for that requirement to apply in the case of any such school or in the case of any class or description of pupils at such a school, the council shall have regard to any circumstances relating to the family backgrounds of the pupils at the school or of the pupils of the particular class or description in question which are relevant for determining the character of the collective worship appropriate in their case.
- (3) The council shall give any head teacher who has made an application to them under this section written notification of their decision on the application.
- (4) Where the council determine on any application under this section that it is not appropriate for the requirement for Christian collective worship to apply in the case of the school or any class or description of pupils at the school concerned, that determination shall take effect for the purposes of section 7 of this Act on such date as may be specified in the notification of their decision under subsection (3) above.
- (5) Any determination of the council under this section by virtue of which the requirement for Christian collective worship does not for the time being apply in the case of any

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- school or any class or description of pupils at any school shall be reviewed by the council—
- (a) at any time on an application made by the head teacher of the school after consultation with the governing body; and
  - (b) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or (where it has since been reviewed under this subsection) with the effective date of the decision on the last such review.
- (6) On any review under subsection (5)(b) above the council shall afford the head teacher an opportunity of making representations with respect to the determination under review; and the head teacher shall consult the governing body before making any such representations.
  - (7) On any review under subsection (5) above the council may confirm (with or without variation) or revoke the determination under review (without prejudice, in a case where they revoke the determination, to any further determination under this section); and they shall give the head teacher of the school written notification of their decision specifying the effective date of that decision for the purposes of subsection (5)(b) above.
  - (8) Any determination of the council which is required to be reviewed under subsection (5) (b) above shall cease to have effect, if not confirmed on such a review, at the end of the period there mentioned.
  - (9) The governing body of any county school, on being consulted by the head teacher under this section, may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.
  - (10) Any application made to the council under this section shall be made in such manner and form as the council may require.

VALID FROM 01/04/1994

**[<sup>F1</sup>12A Power of Secretary of State to direct advisory council to revoke determination or discharge duty.**

- (1) Where the Secretary of State is satisfied, either on complaint by any person or otherwise, that any standing advisory council on religious education—
  - (a) have acted, or are proposing to act, unreasonably in determining for the purposes of subsection (1) or (5) of section 12 of this Act whether it is appropriate for the requirement for Christian collective worship to apply in the case of any school or any class or description of pupils at a school, or
  - (b) have failed to discharge any duty imposed under that section,
 he may give the council such directions as to the revocation of the determination or the withdrawal of the proposed determination or (as the case may be) the discharge of the duty as appear to him to be expedient; and the council shall comply with the directions.
- (2) Directions under subsection (1) above may provide for the making by the council of a new determination to take effect in place of the determination or proposed determination to be revoked or withdrawn by them.

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- (3) In this section, “requirement for Christian collective worship ” means the requirement imposed by section 7(1) of this Act or, as the case may be, section 138(2) of the Education Act 1993.]

#### Textual Amendments

**F1** S. 12A inserted (1.4.1994) by 1993 c. 35, s.257; S.I. 1994/507, art. 4(1), Sch.2.

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

**C10** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

### 13 Advisory councils: supplementary provisions.

- (1) Before appointing a person to represent any denomination or associations as a member of the council the local education authority concerned shall take all reasonable steps to assure themselves that he is representative of the denomination or associations in question.
- (2) A member of the council appointed by the authority may be removed from membership by the authority if in the opinion of the authority he ceases to be representative of the denomination or associations which he was appointed to represent or (as the case may be) of the authority.
- (3) Any member of the council required by section 11(3)(b) of this Act may at any time be removed from membership by the governing body or (as the case may be) by the governing bodies of the grant-maintained school or schools concerned.
- (4) In subsection (3) of that section “co-opted member ” means a person co-opted as a member of the council by members of the council who have not themselves been so co-opted, and a person so co-opted shall hold office on such terms as may be determined by the members co-opting him.
- (5) Any member of the council may at any time resign his office.
- (6) Subject to subsection (6) of that section, the council and, in relation to any question falling to be decided by members of the council of any particular category, the members of that category may regulate their own proceedings.
- (7) The validity of proceedings of the council or of the members of the council of any particular category shall not be affected—
  - (a) by a vacancy in the office of any member of the council required by subsection (3) of that section; or
  - (b) on the ground that a member of the council appointed to represent any denomination or associations does not at the time of the proceedings represent the denomination or associations in question.

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

**C11** Ss. 11, 13 modified by S.I. 1989/46, Sch. 1

**C12** S. 13(1) saved (1.8.1991) by Diocesan Boards of Education Measure 1991 (No. 2, SIF 41:1), s. 6(1);  
Archbishops' Instrument 1991 No. 1 (made 26.7.1991)

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*Status:* Point in time view as at 30/09/1991. This version of this part contains provisions that are not valid for this point in time.

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## *Curriculum and Assessment Councils*

### **14 Establishment of Councils.**

- (1) There shall be established—
  - (a) a body corporate known as the National Curriculum Council;
  - (b) a body corporate known as the Curriculum Council for Wales; and
  - (c) a body corporate known as the School Examinations and Assessment Council;
 each of which shall perform the functions assigned to it by this Chapter.
- (2) Each Council shall consist of not less than ten or more than fifteen members appointed by the Secretary of State, of whom—
  - (a) one shall be so appointed as chairman; and
  - (b) another may be so appointed as deputy chairman;
 and members so appointed shall include persons having relevant knowledge or experience in education.
- (3) The general functions of the Curriculum Council, that is to say, the National Curriculum Council in relation to England and the Curriculum Council for Wales in relation to Wales, shall be—
  - (a) to keep all aspects of the curriculum for maintained schools under review;
  - (b) to advise the Secretary of State on such matters concerned with the curriculum for maintained schools as he may refer to it or as it may see fit;
  - (c) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with the curriculum for schools;
  - (d) to publish and disseminate, and to assist in the publication and dissemination of, information relating to the curriculum for schools; and
  - (e) to carry out such ancillary activities as the Secretary of State may direct.
- (4) The functions of the School Examinations and Assessment Council shall be—
  - (a) to keep all aspects of examinations and assessment under review;
  - (b) to advise the Secretary of State on such matters concerned with examinations and assessment as he may refer to it or as it may see fit;
  - (c) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with examinations and assessment;
  - (d) to publish and disseminate, and to assist in the publication and dissemination of, information relating to examinations and assessment;
  - (e) to make arrangements with appropriate bodies for the moderation of assessments made in pursuance of assessment arrangements;
  - (f) to advise the Secretary of State on the exercise of his powers under section 5(1) of this Act; and
  - (g) to carry out such ancillary activities as the Secretary of State may direct.
- (5) For the purposes of subsection (3)(e) or (as the case may be) subsection (4)(g) above, activities are ancillary activities in relation to a Council if the Secretary of State considers it is appropriate for the Council to carry out those activities for the purposes of or in connection with the exercise by the Council of any of its other functions under that subsection.

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- (6) It shall be the duty of each Council—
- (a) to furnish the Secretary of State with such reports and other information with respect to the exercise of its functions as he may require; and
  - (b) in exercising its functions—
    - (i) to comply with any directions given, and to act in accordance with any plans approved, by the Secretary of State; and
    - (ii) to have regard to the requirements of section 1 of this Act.
- (7) Schedule 2 to this Act shall have effect with respect to each Council.

## **15 Transfers of property and staff to Councils.**

- (1) References below in this section to the Council are references to each of the following bodies—
- (a) the National Curriculum Council;
  - (b) the Curriculum Council for Wales; and
  - (c) the School Examinations and Assessment Council.
- (2) The Secretary of State may by order provide for the transfer to the Council of—
- (a) such of the property of an existing body; and
  - (b) such of the rights and liabilities of such a body (other than rights and liabilities arising under contracts of employment);
- as, in his opinion, require to be so transferred for the purpose of enabling the Council properly to perform its functions; and an order under this subsection may contain such incidental, consequential and supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (3) Subsection (4) below applies to any person who—
- (a) immediately before the establishment of the Council is employed by an existing body; and
  - (b) is as respects the Council designated by order of the Secretary of State.
- (4) The contract of employment between a person to whom this subsection applies and the existing body shall have effect from the commencement date of the order under subsection (3) above as if originally made between him and the Council.
- (5) Without prejudice to subsection (4) above—
- (a) all the existing body's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of that subsection be transferred to the Council on the commencement date of the order under subsection (3) above; and
  - (b) anything done before that date by or in relation to the existing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the Council.
- (6) Subsections (4) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by subsection (4) above.
- (7) An order under subsection (3) above may designate a person either individually or as a member of a class or description of employees.

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- (8) No order under this section shall be made more than six months after the date on which the Council is established; and any order under this section made before that date shall come into force on that date.
- (9) In this section—
- “commencement date”, in relation to an order under subsection (3) above, means the date on which the order comes into force;
  - “existing body” means the School Curriculum Development Committee or the Secondary Examinations Council.

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

**C13** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

*Special cases*

**16 Development work and experiments.**

- (1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct as respects a particular maintained school that, for such period as may be specified in the direction, the provisions of the National Curriculum—
- (a) shall not apply; or
  - (b) shall apply with such modifications as may be so specified.
- (2) A direction under subsection (1) above may apply either generally or in such cases as may be specified in the direction.
- (3) A direction shall not be given under subsection (1) above except—
- (a) in the case of a county, controlled or maintained special school, on an application—
    - (i) by the governing body with the agreement of the local education authority;
    - (ii) by the local education authority with the agreement of the governing body; or
    - (iii) by the Curriculum Council with the agreement of both the local education authority and the governing body;
  - (b) in the case of a grant-maintained, aided or special agreement school, on an application by the governing body or by the Curriculum Council with the agreement of the governing body.
- (4) The Secretary of State may make it a condition of a direction under subsection (1) above that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.
- (5) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1) above.

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## 17 Exceptions by regulations.

The Secretary of State may by regulations provide that the provisions of the National Curriculum, or such of those provisions as may be specified in the regulations—

- (a) shall not apply; or
  - (b) shall apply with such modifications as may be so specified;
- in such cases or circumstances as may be so specified.

### Modifications etc. (not altering text)

**C14** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

VALID FROM 01/09/1994

### [<sup>F2</sup>17A Exemption from sex education.

If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn.]

### Textual Amendments

**F2** S. 17A inserted (1.9.1994) by 1993 c. 35, s. 241(3); S.I. 1994/2038, art. 3(1), Sch.2.

### Modifications etc. (not altering text)

**C15** S. 17A applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt.I.

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

**C16** S. 17A applied (with modifications) (1.9.1994) by S.I. 1994/2103, reg. 2, Sch. 1 Pt. I para. 3(2).

## 18 Pupils with statements of special educational needs.

The special educational provision for any pupil specified in a statement under section 7 of the 1981 Act of his special educational needs may include provision—

- (a) excluding the application of the provisions of the National Curriculum; or
- (b) applying those provisions with such modifications as may be specified in the statement.

### Modifications etc. (not altering text)

**C17** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

## 19 Temporary exceptions for individual pupils.

- (1) The Secretary of State may make regulations enabling the head teacher of any maintained school, in such cases or circumstances and subject to such conditions as may be prescribed—



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- (a) to direct as respects a registered pupil at the school that, for such period as may be specified in the direction (the “operative period ” of the direction), the provisions of the National Curriculum—
    - (i) shall not apply; or
    - (ii) shall apply with such modifications as may be so specified; and
  - (b) to revoke any direction given by him under the regulations and to vary any such direction except so as to extend its operative period.
- (2) The conditions prescribed by the regulations shall, in particular, limit the period that may be specified in any direction given under the regulations to a maximum period specified in the regulations; and any maximum period specified in the regulations in relation to directions given under the regulations or in relation to directions so given in any circumstances so specified—
- (a) shall be either—
    - (i) a fixed period not exceeding six months; or
    - (ii) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning; and
  - (b) may (without prejudice to section 232(5) of this Act) differ according to whether or not the direction in question is given in respect of a period beginning immediately after the end of the operative period of a previous direction or within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (3) Where a head teacher gives a direction under regulations made under this section in the case of any pupil or varies any direction so given, he shall give the information mentioned in subsection (4) below, in such manner as may be prescribed—
- (a) to the governing body; and
  - (b) where the school is a county, voluntary or maintained special school, to the local education authority;
- and shall take such steps as may be prescribed to give that information also to a parent of the pupil.
- (4) That information is the following—
- (a) the fact that he has taken the action in question, its effect and his reasons for taking it;
  - (b) the provision that is being or is to be made for the pupil’s education during the operative period of the direction; and
  - (c) either—
    - (i) a description of the manner in which he proposes to secure the full implementation in relation to the pupil after the end of that period of the provisions of the National Curriculum; or
    - (ii) an indication of his opinion that the pupil has or probably has special educational needs by virtue of which the local education authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs the authority are for the time being required under section 7 of the 1981 Act to maintain).
- (5) Where the head teacher of a grant-maintained school includes such an indication of opinion as is mentioned in subsection (4)(c)(ii) above in information given to the

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- governing body under subsection (3) above, he shall also give that information, in such manner as may be prescribed, to the local education authority.
- (6) It shall be the duty of a local education authority, on receiving information given to the authority under this section by the head teacher of any maintained school which includes such an indication of opinion with respect to a pupil, to consider whether any action on their part is required in the case of that pupil under section 5 of the 1981 Act (assessment of special educational needs).
- (7) Where the head teacher of a maintained school—
- (a) gives, revokes or varies any direction with respect to a pupil under regulations made under this section;
  - (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed, by the parent of a registered pupil at the school; or
  - (c) fails within such period as may be prescribed following the making of such a request to give, revoke or vary such a direction in accordance with the request;
- the parent of the pupil concerned may appeal to the governing body.
- (8) On any such appeal the governing body may—
- (a) confirm the head teacher’s action; or
  - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances;
- and it shall be the duty of the head teacher to comply with any directions of the governing body under paragraph (b) above.
- (9) The governing body shall notify the appellant and the head teacher in writing of their decision on any such appeal.
- (10) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

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

**C18** S. 19 applied (with modifications) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.

Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, **reg.9**.

*Supplementary*

**20 Procedure for making certain orders: England.**

- (1) This section applies where the Secretary of State proposes to make—
- (a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in England; or
  - (b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.
- (2) The Secretary of State shall refer the proposal to the National Curriculum Council (in this section referred to as “the Council”) and give to it directions as to the time within which it is to report to him.
- (3) The Council shall give notice of the proposal—

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- (a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to it to be concerned; and
  - (b) to any other persons with whom consultation appears to it to be desirable; and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (4) The report of the Council to the Secretary of State shall contain—
- (a) a summary of the views expressed during the consultations;
  - (b) its recommendations as to the proposal; and
  - (c) such other advice relating to the proposal as it thinks fit;
- and the Council shall, after submitting its report to the Secretary of State, arrange for the report to be published.
- (5) Where the Council has reported to the Secretary of State, he shall—
- (a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
    - (i) a draft of the proposed order or regulations and any associated document; and
    - (ii) a statement explaining his reasons for any failure to give effect to the recommendations of the Council;
  - (b) send copies of the documents mentioned in paragraph (a) above to the Council and to each of the persons consulted by the Council; and
  - (c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.
- (6) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

## **21 Procedure for making certain orders: Wales.**

- (1) This section applies where the Secretary of State proposes to make—
- (a) an order under section 3(4) or 4(2)(a) or (b) of this Act which relates to maintained schools in Wales; or
  - (b) regulations under section 17 of this Act which relate to such schools or to pupils at such schools.
- (2) The Secretary of State shall give notice of the proposal—
- (a) to the Curriculum Council for Wales; and
  - (b) to any other persons with whom consultation appears to him to be desirable, and afford them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (3) After considering any representations submitted to him under subsection (2) above, the Secretary of State shall—
- (a) publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
    - (i) a draft of the proposed order or regulations and any associated document;
    - (ii) a statement giving such explanation of the provisions of the order or regulations as he thinks fit; and

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- (iii) a statement containing a list of the persons consulted by him and a summary of the views expressed;
  - (b) send copies of the documents mentioned in paragraph (a) above to each of the persons consulted by him; and
  - (c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.
- (4) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

## **22 Provision of information.**

- (1) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—
- (a) such information relevant for the purposes of this Chapter (including information as to the matters mentioned in subsection (2) below); and
  - (b) such copies of the documents mentioned in subsection (3) below;
- as may be prescribed.
- (2) The matters referred to in subsection (1) above are as follows—
- (a) the curriculum for maintained schools;
  - (b) the educational provision made by the school for pupils at the school and any syllabuses to be followed by those pupils; and
  - (c) the educational achievements of pupils at the school (including the results of any assessments of those pupils, whether under this Chapter or otherwise, for the purpose of ascertaining those achievements).
- (3) The documents referred to in subsection (1) above are as follows—
- (a) any written statement made by the local education authority under section 17 of the 1986 Act (statement of policy in relation to school curriculum);
  - (b) any written statement made by the governing body in pursuance of provision made under section 18 of that Act (statement of conclusions as to how (if at all) the local education authority's policy should be modified);
  - (c) any written statement made by the governing body of their policy as to the curriculum for the school; and
  - (d) any report prepared by the governing body under section 30 of that Act (annual reports) or section 58(5)(j) of this Act.
- (4) Before making regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.
- (5) Regulations under this section shall not require information as to the results of an individual pupil's assessment (whether under this Chapter or otherwise) to be made available to any persons other than—
- (a) the parents of the pupil concerned;
  - (b) the governing body of the school; or
  - (c) the local education authority;

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and shall not require such information to be made available to the governing body or the local education authority except where relevant for the purposes of the performance by that body or authority of any of their functions.

- (6) Regulations under this section may authorise local education authorities, governing bodies and head teachers to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.
- (7) In relation to any maintained school, it shall be the duty of the local education authority and the governing body to exercise their functions with a view to securing that the head teacher complies with any regulations made under this section.

## 23 Complaints and enforcement.

- (1) Every local education authority shall, with the approval of the Secretary of State and after consultation with governing bodies of aided schools and of special agreement schools, make arrangements for the consideration and disposal of any complaint made on or after 1st September 1989 which is to the effect that the authority, or the governing body of any county or voluntary school maintained by the authority or of any special school so maintained which is not established in a hospital—
- (a) have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed on them by or under—
- (i) any provision of this Chapter; or
- (ii) any other enactment relating to the curriculum for, or religious worship in, maintained schools other than grant-maintained schools; or
- (b) have failed to discharge any such duty.
- (2) The Secretary of State shall not entertain under section 68 or 99 of the 1944 Act any complaint falling within subsection (1) above, unless a complaint concerning the same matter has been made and disposed of in accordance with arrangements made under that subsection.

### Modifications etc. (not altering text)

**C19** Ss. 1-25 (Pt. I) except ss. 2(1)(a), 6, 9(3)-(10), 10(1) applied (9.5.1994) by S.I. 1994/1084, reg.9.

**C20** S. 23(1) modified by S.I. 1989/46, art. 3(2)

**C21** S. 23(1) restricted by S.I. 1989/46, art. 3(4)

## 24 Extension of certain provisions.

- (1) The Secretary of State may by order direct that the provisions of sections 5 and 10(2) (b) of this Act shall have effect as if—
- (a) any reference to pupils of compulsory school age included a reference to—
- (i) senior pupils who are of or over that age; and
- (ii) persons in full-time further education who are of or over that age but have not attained the age of nineteen (referred to below in this section as “FE students”);

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- (b) any reference to a maintained school included a reference to an institution required to be covered by a scheme made under section 139 of this Act and, except in relation to a local education authority—
    - (i) any institution within the PCFC funding sector; and
    - (ii) any institution (other than a university) which provides further education and is a grant-aided institution;
  - (c) any reference to the head teacher of such a school included a reference to the principal or other head of such an institution; and
  - (d) any reference to a school year included a reference to an academic year.
- (2) An order under this section may make such consequential modifications of section 14(4) of this Act as appear to the Secretary of State to be necessary or expedient.
- (3) In relation to FE students in relation to whom sections 5 and 10(2)(b) of this Act have effect by virtue of an order under this section, section 22 of this Act shall have effect—
- (a) with the modifications mentioned in subsection (1)(b) and (c) above;
  - (b) as if the information referred to in paragraph (a) of subsection (1) were information with respect to the following matters—
    - (i) the qualifications authenticated by outside persons (within the meaning of section 5 of this Act) for which courses of study are to be provided by or on behalf of the institution concerned for such students;
    - (ii) the courses of study leading to such qualifications which are to be so provided;
    - (iii) the syllabuses which have been provided or determined for the purposes of those courses; and
    - (iv) the results of the assessments of such students for the purposes of those qualifications;
  - (c) as if in subsection (5)—
    - (i) the reference to the results of an individual pupil’s assessment (whether under this Chapter or otherwise) included a reference to the results of an individual student’s assessment for the purposes of any such qualification; and
    - (ii) the reference to the pupil concerned included a reference to the student concerned; and
  - (d) with the omission of subsections (1)(b), (2) and (3).
- (4) Before making an order under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

## 25 Interpretation of Chapter I.

- (1) In this Chapter, except in so far as the context otherwise requires—
- “assess ” includes examine and test, and cognate expressions shall be construed accordingly;
  - “assessment arrangements ”, “attainment targets ” and “programmes of study ” have the meanings given by section 2 of this Act;
  - “core subjects ”, “foundation subjects ” and “key stages ” have the meanings given by section 3 of this Act and “foundation subjects ” includes “core subjects ”;

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“the Curriculum Council ” means the National Curriculum Council in relation to England and the Curriculum Council for Wales in relation to Wales;

“maintained school ” means—

- (a) any county or voluntary school;
  - (b) any maintained special school which is not established in a hospital; and
  - (c) except in relation to a local education authority, any grant-maintained school.
- (2) Nothing in this Chapter shall apply in relation to a nursery school or a nursery class in a primary school.

## CHAPTER II

### ADMISSION OF PUPILS TO COUNTY AND VOLUNTARY SCHOOLS

#### 26 Admissions to county and voluntary schools.

- (1) The authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the relevant standard number.
- (2) Where any number fixed for the purposes of any such arrangements subsisting when subsection (1) above comes into force as the number of pupils in any such age group it is intended to admit to the school concerned in any school year is less than the relevant standard number, the arrangements shall have effect (subject to the following provisions of this section) as if the number so fixed were a number equal to the relevant standard number.
- (3) Notwithstanding any provision of the articles of government of the school, but subject to section 33 of the 1986 Act (consultations about admissions between authorities concerned), the authority responsible for determining the arrangements for the admission of pupils to any such school may fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which exceeds the relevant standard number.
- (4) A proposal may be made in accordance with the following provisions of this section for fixing as the number of pupils in any such age group it is intended to admit to any such school in any school year a number which exceeds both—
  - (a) the relevant standard number; and
  - (b) any number fixed or proposed to be fixed for that purpose by the authority responsible for determining the arrangements for admission of pupils to the school.
- (5) The proposal may be made—
  - (a) where the authority responsible for determining those arrangements is the local education authority, by the governing body of the school; and
  - (b) where that authority is the governing body of the school, by the local education authority.
- (6) Any such proposal—
  - (a) shall be made in writing;

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- (b) may relate to one or more relevant age groups; and
  - (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (7) If the authority to whom such a proposal is made do not give the proposing authority notice in writing rejecting the proposal before the end of the period of two months beginning with the day next following that on which the proposal was received it shall be the duty of the former authority to give effect to the proposal in the admission arrangements.
- (8) Where the authority to whom such a proposal is made give such notice before the end of that period, the proposing authority may within twenty-eight days of receiving that notice make an application to the Secretary of State for an order under section 27(5) of this Act increasing the relevant standard number.
- (9) For the purposes of section 6(3)(a) of the 1980 Act (which excludes the duty to comply with a parent's preference as to the school at which education is to be provided for his child if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources), no such prejudice shall be taken to arise from the admission to a school in any school year of a number of pupils in any relevant age group which does not exceed—
- (a) the relevant standard number; or
  - (b) the number fixed in accordance with this section as the number of pupils in that age group it is intended to admit to the school in that school year;
- whichever is the greater.
- (10) Any reference in this section to the relevant standard number is a reference, in relation to any school and in relation to any relevant age group and school year, to the standard number applying under section 27 of this Act to the school in relation to that year and age group.

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

**C22** Ss. 26–32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

**C23** S. 26(4)-(10) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.

#### **Commencement Information**

**I1** S. 26 wholly in force; in force for certain purposes at 1.9.1991 and wholly in force for remaining purposes at 1.8.1992 see s. 236 and S.I. 1991/409, **art. 2**.

## **27 Standard numbers for admissions.**

- (1) Subject to subsections (3), (4) and (5) below, if pupils in any age group were admitted to any county or voluntary school in the school year immediately preceding the commencement year, the standard number applying to the school for that age group in the commencement year and any subsequent school year shall be—
- (a) the appropriate pre-commencement number; or
  - (b) the number of pupils in that age group admitted in the school year immediately preceding the commencement year;
- whichever is the greater.



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- (2) In this Chapter “the commencement year” means the school year beginning next after section 26(1) of this Act comes into force; and the reference in subsection (1)(a) above to the appropriate pre-commencement number is a reference—
- (a) in the case of a secondary school, to the standard number applying to the school under section 15 of the 1980 Act in relation to the age group in question in the school year immediately preceding the commencement year; and
  - (b) in the case of a primary school, to the number applicable in relation to the school and in relation to the age group in question in accordance with section 29 of this Act.
- (3) Subject to subsections (4) and (5) below, if proposals under section 12 or 13 of the 1980 Act (which impose certain requirements in relation to the establishment and alteration of schools) have fallen to be implemented in relation to any county or voluntary school, the number stated in the proposals in accordance with subsection (2) of section 12 (or that subsection as applied by section 13) for any school year and age group shall be the standard number applying to the school for that age group—
- (a) in any school year to which this subsection applies in relation to which the proposals have been wholly implemented; and
  - (b) subject to any variation made by the Secretary of State, in any such school year in relation to which they have been partly implemented.
- This subsection applies to the commencement year and any subsequent school year.
- (4) The Secretary of State may by order applying to county or voluntary schools of any class or description vary any standard number that would otherwise apply by virtue of the preceding provisions of this section.
- (5) Subject to subsections (6) and (7) below, the Secretary of State may by order vary any standard number that would otherwise apply to an individual school by virtue of the preceding provisions of this section or any order made under subsection (4) above.
- (6) An order under subsection (5) above reducing a standard number may only be made on the application of the authority responsible for determining the arrangements for the admission of pupils to the school, and is subject to the procedure under section 28 of this Act.
- (7) An order under subsection (5) above increasing a standard number may be made on the application of that authority or on an application made by any other authority in accordance with section 26(8) of this Act; and on any such application the Secretary of State may—
- (a) refuse to make such an order;
  - (b) make an order increasing the standard number to the number proposed; or
  - (c) after consultation with both the local education authority and the governing body of the school, make an order increasing the standard number to such number (less than the number proposed) as he thinks desirable.
- (8) The authority responsible for determining the arrangements for the admission of pupils to any such school shall keep under review any standard numbers applying under this section to the school, having regard to any change in the school’s capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which those standard numbers first applied (whether in accordance with this section or section 15 of the 1980 Act).

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- (9) References in subsection (3) above to proposals under section 12 or 13 of the 1980 Act are references to the proposals with any modifications made by the Secretary of State under either of those sections; and any standard number applying under that subsection is without prejudice to the application under that subsection of a new standard number if further proposals fall to be implemented under those sections.

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

- C24** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**  
**C25** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C26** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C27** S. 27(1)(2)(3) modified by S.I. 1991/410, **art.3**  
**C28** S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.  
**C29** S. 27(6) modified by S.I. 1988/1459, **art. 8**  
**C30** S. 27(6) excluded (2.10.1995) by S.I. 1995/2368, **reg. 4(2)**.  
**C31** S. 27(5)(7) applied (2.10.1995) by S.I. 1995/2368, **reg. 5(2)**.  
**C32** S. 27(7) modified (2.10.1995) by S.I. 1995/2368, **reg. 5(3)**.

#### Commencement Information

- I2** S. 27 partly in force; s. 27 in force for certain purposes at 12.3.1991, 1.5.1991 and 1.9.1991 see s. 236 and S.I. 1991/409, **arts. 3, 4**

## 28 Procedure for reduction of standard number.

- (1) Where the authority responsible for determining the arrangements for the admission of pupils to any county or voluntary school intend to apply to the Secretary of State for an order under subsection (5) of section 27 of this Act reducing any standard number applying to the school under that section, they shall publish their proposals with respect to the reduction in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals together with their application.
- (2) The published proposals shall be accompanied by a statement which explains the effect of—
- subsections (3) and (4) below, where the proposals are published by a local education authority; or
  - subsection (5) below, where the proposals are published by the governing body of the school.
- (3) In the case of proposals published by a local education authority, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to that authority—
- any ten or more local government electors for the area of that authority;
  - the governing body of any school affected by the proposals; and
  - any other local education authority concerned.
- (4) A local education authority by whom any such proposals are published shall within one month after the end of the period allowed for objections under subsection (3) above transmit to the Secretary of State copies of all objections made (and not withdrawn in writing) in that period, together with their observations on the objections.

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- (5) In the case of proposals made by the governing body of a school, any of the following may, before the end of the period of two months beginning with the date of publication of the proposals, submit objections to the proposals to the Secretary of State—
- (a) any ten or more local government electors for the area of the local education authority by whom the school is maintained;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (6) Subject to subsection (7) below, where an application is made to the Secretary of State under this section for an order reducing any standard number applying to a school for any age group in any year, the Secretary of State may—
- (a) refuse to make such an order;
  - (b) make an order reducing the standard number to the number proposed; or
  - (c) after consultation with both the local education authority and the governing body of the school, make an order reducing the standard number to such number (greater than the number proposed) as he thinks desirable.
- (7) The Secretary of State shall not make an order reducing any standard number applying to a school for any age group in any year unless he is satisfied that the reduction is necessary, having regard to any reduction in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year to which the current standard number first applied in relation to that age group (whether in accordance with section 27 of this Act or section 15 of the 1980 Act).
- (8) A local education authority shall not make an application under this section for an order reducing any standard number applying to a school without first consulting the governing body of the school; and the governing body of a school shall not make such an application without first consulting the local education authority.

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

**C33** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), [Sch. 3](#)

**C34** S. 28(6) modified (2.10.1995) by S.I. 1995/2368, [reg. 4\(4\)](#).

#### Commencement Information

**I3** [S. 28](#) partly in force: s. 28 in force for certain purposes at 12.3.1991, see [s. 236](#) and S.I. 1991/409, [art. 3](#)

## 29 Special provisions in relation to admissions to primary schools.

- (1) In the case of a primary school to which section 27(1) of this Act applies, the number applicable in relation to the school and in relation to any age group there mentioned is—
- (a) if the 1980 standard number for that age group is a number determined under subsection (5) of section 15 of the 1980 Act by reference to the number of pupils in that age group admitted to the school in the school year beginning in 1979, the recalculated 1979 admission number;
  - (b) if the 1980 standard number for that age group is a number determined under subsection (6) of section 15 by reference to the number of pupils in that age group admitted to the school in any school year beginning after 1979 (and

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- not varied by the Secretary of State under that subsection), the recalculated post-1979 admission number; and
- (c) if the 1980 standard number for that age group is a number applicable by virtue of subsection (7) of section 15 (number stated in proposals under section 12 of that Act as proposed admission number) which has not been varied by the Secretary of State, the aggregate of the number so applicable and the additional admission number.
- (2) In subsection (1)(a) above, “the recalculated 1979 admission number” means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year beginning in 1979, determined in accordance with subsection (5) below.
- (3) In subsection (1)(b) above, “the recalculated post-1979 admission number” means, in relation to any school and age group, the number of pupils admitted to the school in that age group in the school year by reference to which the 1980 standard number for that school and age group was determined, determined in accordance with subsection (5) below.
- (4) In subsection (1)(c) above, “the additional admission number” means, in relation to any school and age group, the aggregate of—
- (a) the number of pupils admitted to the school in that age group in the first school year in relation to which the proposals in question had been wholly implemented who—
- (i) were admitted otherwise than for nursery education; and
- (ii) had not attained the age of four years and six months on the date of their admission; and
- (b) the number of pupils already admitted to the school for nursery education transferred in that year to a reception class at the school.
- (5) For the purposes of—
- (a) the application in relation to any school of subsection (2) or (3) above; and
- (b) the application in relation to a primary school of any other provision of this Chapter (other than subsection (1) or (4) above) referring to the number of pupils admitted or intended to be admitted to a school in any school year;
- children admitted to the school for nursery education shall be disregarded and children so admitted who are subsequently transferred to a reception class at the school shall be treated as admitted to the school on their transfer.
- (6) Subsection (5) above applies also for the purpose of determining for the purposes of any provision of this Chapter what is a relevant age group in relation to a primary school.
- (7) For the purposes of this section “the 1980 standard number” means, in relation to any school and age group, the standard number applying to the school under section 15 of the 1980 Act in relation to that age group in the school year immediately preceding the commencement year.

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

C35 Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), Sch. 3

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### Commencement Information

**I4** S. 29 wholly in force at 1.5.1991 see s. 236 and S.I. 1991/409, art. 5

## 30 Special arrangements in respect of admissions to aided or special agreement schools.

- (1) Section 6 of the 1980 Act shall be amended as follows.
- (2) In subsection (3)(b) (which excludes the duty to comply with a parent's preference for an aided or special agreement school if compliance with the preference would be incompatible with arrangements between the governors and the local education authority), for the words "in respect of the admission of pupils to the school" there shall be substituted the words "made under subsection (6) below".
- (3) After subsection (5) there shall be inserted the following subsection—
  - “(6) A local education authority shall, if so requested by the governors of an aided or special agreement school maintained by the authority, make arrangements with the governors in respect of the admission of pupils to the school for preserving the character of the school; and the terms of any such arrangements shall, in default of agreement between the authority and the governors, be determined by the Secretary of State.”

### Modifications etc. (not altering text)

**C36** Ss. 26?32 modified by S.I. 1989/1135, art. 3(1), Sch. 3

## 31 Consequential provisions.

- (1) Section 15 of the 1980 Act (which is superseded by the preceding provisions of this Chapter) shall cease to have effect, and in section 16 of that Act—
  - (a) in subsection (1), for "15" there shall be substituted "14";
  - (b) in subsection (3), for "sections 12 and 15" there shall be substituted "section 12"; and
  - (c) in subsection (3A) (inserted in that section by paragraph 81 of Schedule 12 to this Act), for "13 or 15" there shall be substituted "or 13".
- (2) In section 8(3) of that Act (particulars of admission arrangements required to be published under that section)—
  - (a) for paragraph (a) there shall be substituted the following paragraph—
    - “(a) in the case of each school to which the arrangements relate, the admission number applicable in each school year in relation to the age group in which pupils are normally admitted or, if there is more than one such group, the admission number so applicable in relation to each such group;” and
  - (b) at the end there shall be added the following—
 

“In paragraph (a) above, “admission number” means, in relation to any school year and age group, the standard number applying under section 27 of the Education Reform Act 1988 to the school in

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question in relation to that year and age group or the number fixed in accordance with section 26 of that Act as the number of pupils in that age group it is intended to admit to the school in that school year, whichever is the greater.”

(3) In section 9 of that Act (provisions of sections 6, 7 and 8 of that Act, which relate to parental preferences and admission arrangements, excluded from applying in relation to nursery or special schools, etc.)—

- (a) in subsection (1), at the beginning there shall be inserted the words “Subject to subsection (1A) below”, and the words from “except” to the end shall be omitted; and
- (b) after that subsection there shall be inserted the following subsection—

“(1A) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for the admission to the school of children who will not have attained the age of five years at the time of their proposed admission—

- (a) those sections shall have effect in relation to the admission of such pupils to the school otherwise than for nursery education; and
- (b) the transfer to a reception class at the school of children previously admitted to the school for nursery education shall be treated for the purposes of those sections as the admission of pupils to the school.”

(4) In section 12 of that Act (establishment, discontinuance and alteration of schools by local education authorities)—

- (a) in subsection (2) the words from “excluding” to the end shall be omitted; and
- (b) after that subsection there shall be inserted the following subsection—

“(2A) For the purposes of subsection (2) above—

- (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
- (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.”

(5) In section 13 of that Act (establishment and alteration of voluntary schools)—

- (a) for the words “Subsection (2)” there shall be substituted the words “Subsections (2) and (2A)”; and
- (b) for the words “it applies” there shall be substituted the words “they apply”; and
- (c) after the word “reference” there shall be inserted the words “in subsection (2)”.

(6) In section 38 of that Act, after subsection (5) there shall be inserted the following subsection—

“(5A) For the purposes of this Act—

- (a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and
- (b) “reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under

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or over that age whom it is expedient to educate together with pupils of that age.”

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

**C37** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

#### Commencement Information

**I5** S. 31 partly in force; s. 31(1) in force for certain purposes at 1.8.1992, s. 31(2) in force for certain purposes at 1.9.1991, s. 31(3) wholly in force at 1.8.1991, s. 31(4)-(6) wholly in force at 1.5.1991, see s. 236 and S.I. 1991/409, **art. 6**

## 32 Interpretation of Chapter II.

(1) For the purposes of this Chapter, a school’s capacity to accommodate pupils is changed if—

- (a) as a result of changes in the availability or use of accommodation at the school, there is any change in the amount of accommodation available for use by pupils at the school; or
- (b) as a result of changes in the requirements applicable to the school under regulations made under section 10 of the 1944 Act (requirements as to school premises), there is any change in the number of pupils for whom accommodation may lawfully be provided at the school;

and a school’s capacity to accommodate pupils is reduced if the result of the changes is, in a case within paragraph (a) above, less accommodation or, in a case within paragraph (b) above, a reduction in the number there mentioned.

(2) Any reference in this Chapter to a relevant age group, in relation to a school, is a reference to an age group in which pupils are normally admitted to the school.

(3) In this Chapter “the commencement year” has the meaning given by section 27(2).

(4) If by virtue of any orders made under section 236 of this Act subsection (1) of section 26 of this Act comes into force on different dates in relation to schools of different categories, the reference to the coming into force of that subsection—

- (a) in subsection (2) of that section; and
- (b) in subsection (2) of section 27 of this Act;

shall be read, for the purposes of the application of those sections in relation to schools of any category, as a reference to its coming into force in relation to schools of that category.

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

**C38** Ss. 26-32 modified by S.I. 1989/1135, art. 3(1), **Sch. 3**

#### Commencement Information

**I6** S. 32 partly in force; s. 32 in force for certain purposes at 12.3.1991 see s. 236 and S.I. 1991/409, **art. 3**

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## CHAPTER III

### FINANCE AND STAFF

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

- C39** Provisions of Pt. I Ch. III (other than ss. 33, 49 and Sch. 4) modified (25. 2. 1992) by [S.I. 1992/164](#), [reg. 2\(3\)](#).  
 Pt. I Ch. III applied (with modifications) (1.1.1994) by [S.I. 1993/3104](#), [reg.2\(2\)](#)  
 Pt. I Ch. III extended (1.1.1994) by [1993 c. 35](#), [s. 215\(4\)](#); [S.I. 1993/3106](#), [art. 4](#), [Sch. 1](#) (as amended by [S.I. 1994/436](#), [art.2](#)).  
 Pt. I Ch. III applied (1.1.1994) by [1993 c. 35](#), [s. 215\(5\)](#); [S.I. 1993/3106](#), [art. 4](#), [Sch. 1](#) (as amended by [S.I. 1994/436](#), [art.2](#)).  
 Pt. I Ch. III modified (*temp.*) (31.12.1995) by [S.I. 1995/3114](#), [regs.2, 3, 5, 6, 7, 8](#).  
 Pt. I Ch. III modified (31.12.1995) by [S.I. 1995/3114](#), [regs.4, 7](#).

#### *Financing of schools maintained by local education authorities*

### 33 Schemes for financing county and voluntary schools.

- (1) It shall be the duty of every local education authority to prepare a scheme in accordance with this Chapter and submit it for the approval of the Secretary of State in accordance with section 34 of this Act.
- (2) The scheme shall provide for—
  - (a) the determination in respect of each financial year of the authority, for each school required to be covered by the scheme in that year, of the share to be appropriated for that school in that year of the part of the general schools budget of the authority for that year which is available for allocation to individual schools under the scheme (referred to below in this Chapter, in relation to such a school, as the school's budget share); and
  - (b) the delegation by the authority of the management of a school's budget share for any year to the governing body of the school where such delegation is required or permitted by or under the scheme.
- (3) For the purposes of this Chapter, a school is required to be covered in any financial year by a scheme made under this section by a local education authority if either—
  - (a) immediately before the beginning of that year it is a county or voluntary school maintained by that authority; or
  - (b) at any time during that year it becomes a county or voluntary school so maintained (whether by virtue of being established as a new school of that description or by virtue of becoming a county or voluntary school where it was not, immediately before it became so, a school of either description).
- (4) For the purposes of this Chapter—
  - (a) references, in relation to any local education authority, to the general schools budget of the authority for any financial year, are references to the amount appropriated by the authority for meeting expenditure in that year in respect of all schools required to be covered in that year by any scheme made under this section by that authority; and



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- (b) the part of the general schools budget of any such authority for any financial year which is available for allocation to individual schools under a scheme under this section (referred to below in this Chapter, in relation to any such authority, as the authority's aggregated budget for the year) is the amount remaining after deducting from the amount of the general schools budget of the authority for that year—
  - (i) the amount of any expenditure of the authority in that year on heads or items of expenditure which fall in accordance with section 38 of this Act to be left out of account in determining the authority's aggregated budget for the year (referred to below in this Chapter as excepted heads or items of expenditure); and
  - (ii) any other amounts which fall in accordance with the scheme to be deducted in determining the authority's aggregated budget for the year.
- (5) In relation to any scheme under this section, any reference in subsection (4) above to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme; and a scheme under this section must provide for all amounts relevant to the determination of a school's budget share under the scheme for any financial year to be determined initially before the beginning of that year.
- (6) In this Chapter—
  - (a) references to a school in respect of which financial delegation is required for any financial year under a scheme under this section are references to a school conducted by a governing body to whom the local education authority concerned are for the time being required by or under the scheme to delegate the management of the school's budget share for that year (and the governing body of such a school are said to have a right to a delegated budget for the year);
  - (b) references to a school which has a delegated budget are references to a school conducted by a governing body to whom a local education authority have for the time being delegated the management of the school's budget share for any financial year in pursuance of such a scheme (whether that delegation is required by the scheme or not); and
  - (c) references, in relation to any scheme under this section, to excluded expenditure under the scheme are references to the aggregate of any amounts which fall in the case of that scheme to be deducted by virtue of subsection (4) (b)(ii) above in determining the aggregated budget of the authority concerned for any financial year.

### **34 Preparation and imposition of schemes.**

- (1) A scheme prepared by a local education authority under section 33 of this Act shall be submitted to the Secretary of State on or before such date as the Secretary of State may by order direct, either generally or in relation to any local education authority, or any class or description of such authorities, specified in the order.
- (2) In preparing a scheme under that section a local education authority shall take into account any guidance given by the Secretary of State (whether generally or in relation to that authority or to any class or description of local education authorities to which that authority belongs) as to the provisions he regards as appropriate for inclusion in the scheme.

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- (3) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.
- (4) Before preparing such a scheme a local education authority shall consult the governing body and the head teacher of every county or voluntary school maintained by the authority.
- (5) Such a scheme shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve such a scheme—
  - (a) either without modifications or with such modifications as he thinks fit after consulting the authority concerned; and
  - (b) subject to such conditions as he may specify in giving his approval.
- (6) If in the case of any local education authority either—
  - (a) the authority fail to submit a scheme as required by subsection (1) above; or
  - (b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection does not accord with any guidance given by him for the purposes of this section and cannot be made to do so merely by modifying it;
 he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 33 of this Act in relation to the financing by the authority of county and voluntary schools as he considers appropriate.
- (7) A scheme imposed by the Secretary of State by virtue of subsection (6) above—
  - (a) shall be treated as if made under section 33 by the local education authority concerned; and
  - (b) shall come into force on such date as may be specified in the scheme.

### **35 Replacement and variation of schemes.**

- (1) Subject to the following provisions of this section, a scheme may be replaced or varied by a subsequent scheme made under section 33 of this Act by the local education authority concerned.
- (2) Section 33 shall apply for the purposes of a scheme replacing or varying a previous scheme with the omission of subsection (1); and subsection (1) of section 34 of this Act shall not apply in relation to such a scheme.
- (3) A scheme prepared by a local education authority under section 33 which—
  - (a) replaces a previous scheme; or
  - (b) makes any significant variation of a previous scheme;
 shall be submitted to the Secretary of State for his approval.
- (4) A scheme under section 33 varying a previous scheme which is not required by subsection (3)(b) above to be submitted to the Secretary of State for his approval is referred to below in this section as a “minor variation scheme”.
- (5) Subsections (4) and (5) of section 34 shall not apply in relation to a minor variation scheme.

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- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of subsection (3)(b) above.
- (7) Where a local education authority propose to make a scheme under section 33 which in their opinion is a minor variation scheme, the authority shall notify the Secretary of State in writing of their proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.
- (8) In any such case the authority shall, if so required by the Secretary of State before the end of the period of two months beginning with the date on which he receives notification under subsection (7) above of the authority's proposal, send to him a copy of their proposed scheme; and it shall be for the Secretary of State to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in an order under subsection (6) above.
- (9) A scheme made under section 33 may also be varied by a direction given by the Secretary of State, as from such date as may be specified in the direction.
- (10) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.

### **36 Delegation to governing body of management of school's budget share.**

- (1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Subject to section 37(4) of this Act, in the case of any county or voluntary school maintained by the authority in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority to put at the disposal of the governing body of the school in respect of that year a sum equal to the school's budget share for that year to be spent for the purposes of the school.
- (3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body shall be such as may be provided by or under the scheme.
- (4) Subject to section 49(1) of this Act, the authority may not delegate to the governing body of any school required to be covered by the scheme in any financial year the power to spend any sum appropriated by the authority for the purposes of the school in that year otherwise than as required or permitted under the scheme.
- (5) The governing body of any school which has a delegated budget—
  - (a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to them in respect of the school's budget share for any financial year as they think fit for the purposes of the school; and
  - (b) may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their power under paragraph (a) above in relation to any part of that sum.
- (6) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their power under subsection (5) above.

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### **F<sup>3</sup>37 Withdrawal of delegation.**

- (1) Where it appears to a local education authority, in the case of any school in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the school—
  - (a) have been guilty of a substantial or persistent failure to comply with any requirements applicable under the scheme; or
  - (b) are not managing the appropriation or expenditure of the sum put at their disposal for the purposes of the school in a satisfactory manner;
 the authority may suspend the governing body’s right to a delegated budget by giving the governing body (subject to subsection (3) below) not less than one month’s notice of suspension.
- (2) Any such notice shall specify the grounds for the proposed suspension, giving particulars of any failure alleged on the part of the governing body to comply with any requirements applicable under the scheme and of any alleged mismanagement on their part; and a copy of the notice shall be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (3) A local education authority may suspend the right to a delegated budget of any governing body to whom they have given notice under subsection (1) above before the expiry of the period of notice if it appears to them to be necessary to do so by reason of gross incompetence or mismanagement on the part of that governing body or other emergency; but in such a case the authority shall immediately give to the Secretary of State written notification of their action and the reasons for it.
- (4) During any period when a governing body’s right to a delegated budget is suspended under this section the duty of the local education authority concerned under section 36(2) of this Act shall not apply in relation to that governing body.
- (5) It shall be the duty of the authority concerned—
  - (a) to review before the beginning of every financial year any suspension under this section which is for the time being in force;
  - (b) for the purposes of that review, to afford the governing body concerned and the head teacher of the school an opportunity of making representations with respect to the suspension and to have regard to any representations made by that body or the head teacher; and
  - (c) to revoke any such suspension where they consider it appropriate to do so.
- (6) The authority shall give the governing body concerned and the head teacher written notification of their decision on any such review.
- (7) The revocation of any such suspension shall take effect as from the beginning of the next following financial year.
- (8) A governing body shall be entitled to appeal to the Secretary of State against—
  - (a) the imposition of any suspension under this section; and
  - (b) any refusal of a local education authority to revoke any such suspension on any review required under this section.
- (9) On any such appeal the Secretary of State—
  - (a) may allow or reject the appeal; and

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- (b) shall have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuance or recurrence.

**Textual Amendments**

**F3** S. 37(8)(a) excluded (1.1.1994) by 1993 c. 35, s. 215(4); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C40** S. 37 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**38 Schemes: determination of budget shares.**

- (1) The provision to be included in a scheme for determining the budget share for any financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of a formula laid down by the scheme for the purpose of dividing among all such schools the aggregated budget for that year of the local education authority concerned.
- (2) In this section “formula” includes methods, principles and rules of any description, however expressed; and references in this Chapter, in relation to a scheme, to the allocation formula under the scheme, are references to the formula laid down by the scheme in accordance with subsection (1) above.
- (3) The allocation formula under a scheme—
- (a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of registered pupils at that school on such date or dates as may be determined by or under the scheme in relation to that year; and
  - (b) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).
- (4) In the case of any scheme, the following heads or items of expenditure, so far as taken into account in determining the general schools budget of the local education authority concerned for any financial year, shall be left out of account in determining the authority’s aggregated budget for that year—
- (a) all expenditure of a capital nature;
  - (b) all expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature;
  - (c) expenditure falling to be taken into account in determining central government grants of any prescribed description; and
  - (d) such other items of expenditure as may be prescribed.

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### 39 Schemes: provision for financial delegation.

- (1) A scheme shall include provision for requiring, in the case of each [<sup>F4</sup>secondary] school required to be covered by the scheme in any financial year, the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.
- [<sup>F5</sup>(2) A scheme shall include provision for requiring, in the case of each primary school required to be covered by the scheme in any financial year which—
- (a) satisfies the qualifying condition on a qualifying date in relation to that year which falls before the beginning of that year; or
  - (b) falls in accordance with the scheme to be regarded as qualifying for delegation in respect of that year on the assumption that, if a forecast made in accordance with the scheme of the number of registered pupils it will have on a qualifying date in relation to that year which falls within that year proves to be correct, it will satisfy the qualifying condition on that date;
- the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.]
- [<sup>F5</sup>(3) For the purposes of this section—
- (a) a primary school is to be treated as satisfying the qualifying condition at any time when it has two hundred or more registered pupils; and
  - (b) “qualifying date” means, in relation to any financial year, any date which is a qualifying date in accordance with any provision made by or under the scheme in question.]
- (4) References in this Chapter to the delegation requirement under any scheme are references—
- (a) [<sup>F6</sup>in relation to a secondary school required to be covered by the scheme in any financial year], to any provision included in the scheme by virtue of subsection (1) above; and
  - [<sup>F5</sup>(b) in relation to a primary school required to be covered by the scheme in any financial year, to any provision included in the scheme by virtue of subsection (2) above.]
- (5) The application of the delegation requirement under a scheme in relation to any school is subject to section 40 of this Act in the case of any school to which that section applies.
- [<sup>F5</sup>(6) Subject to subsections (7) and (8) below, once the delegation requirement under a scheme applies in relation to a primary school in respect of any financial year it shall continue to apply in respect of each succeeding financial year.
- (7) Subject to subsection (8) below, the delegation requirement under a scheme shall cease to apply in relation to a primary school to which that requirement for the time being applies if the number of registered pupils at the school—
- (a) falls below the number for the time being required under subsection (3)(a) above for such a school to be treated as satisfying the qualifying condition or, in the case of a school to which that requirement applies by virtue of any provision made under subsection (2)(b) above, either fails to reach or falls below that number; and
  - (b) remains below that number for such period as may be specified in the scheme.

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- (8) Where subsection (7) above applies in the case of any primary school the delegation requirement under the scheme in question shall cease to apply in relation to the school as from the beginning of the financial year beginning next after the period mentioned in paragraph (b) of that subsection comes to an end in the case of that school.
- (9) The application of subsections (7) and (8) above in relation to any school is without prejudice to the subsequent application of the delegation requirement under the scheme in question in relation to that school in respect of any financial year subsequent to that mentioned in subsection (8).]
- (10) A scheme may provide for the delegation by the local education authority concerned to the governing body of any school to which the delegation requirement under the scheme does not apply in any financial year of the management of the school's budget share for that year.
- (11) Any delegation by a local education authority under a scheme to the governing body of any school of the management of the school's budget share shall be subject to such conditions as may be imposed by or under the scheme.
- (12) Conditions so imposed may in particular relate to—
  - (a) the arrangements to be made for management of the expenditure of any sum made available to the governing body of any school in accordance with the scheme (and in particular for authorising expenditure, or transactions involving commitments to expenditure, to be met from any such sum);
  - (b) the keeping and audit of accounts and records with respect to such expenditure, and the keeping of records with respect to such transactions; and
  - (c) the provision to the local education authority concerned by the governing body of—
    - (i) copies of accounts and records required to be kept by virtue of any condition imposed under paragraph (b) above; and
    - (ii) such other documents and information relating to the application of any such sum as the authority may from time to time require.

#### Textual Amendments

- F4** Word in s. 39(1) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(1)  
**F5** S. 39(2)(3)(4)(b)(6)-(9) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(a)  
**F6** Words in s. 39(4)(a) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(b)

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

- C41** S. 39 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

## 40 Initial implementation of delegation requirements under schemes.

- (1) The delegation requirement under a scheme shall not apply in relation to any school which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.
- (2) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (4) below) is the period of three years beginning with the date on which the scheme comes into force.

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- (3) Different dates may be specified under subsection (1) above in relation to different schools or categories of school and in relation to schools coming within the scheme in different financial years or at different times within the same financial year; but—
- (a) each date so specified must coincide with the beginning of a financial year; and
  - (b) no date may be so specified which falls after the beginning of the financial year next following the end of the scheme's initial period.
- (4) The Secretary of State may by order—
- (a) substitute a date specified in the order for any date specified in a scheme under subsection (1) above (including one so specified by virtue of a previous order under this subsection); and
  - (b) extend any scheme's initial period until such date as may be specified in the order.
- (5) For the purposes of this section, a school—
- (a) comes within a scheme in any financial year if that financial year is the first financial year in which the school is required to be covered by the scheme; and
  - (b) comes within the scheme at the beginning of that year if it is then a school required to be so covered and otherwise at the time within that year when it first becomes such a school.

#### **41 Extension of delegation requirement under schemes in the case of primary schools.**

- (1) The Secretary of State may by regulations—
- (a) amend paragraph (a) of subsection (3) of section 39 of this Act by substituting a lower number for the number of registered pupils for the time being required under that paragraph for a primary school to be treated as satisfying the qualifying condition for the purposes of that section; or
  - (b) amend subsection (1) of that section so as to require a scheme to include such provision as is there mentioned in relation to primary schools as well as secondary schools and make in any other provisions of this Chapter such consequential amendments as appear to him to be required.
- (2) Any such regulations may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision made in those regulations by virtue of subsection (1)(a) or (b) above.

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

C42 S. 41 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

#### **42 Publication of schemes and financial statements, etc.**

- (1) A scheme shall be published in such manner as may be prescribed—
- (a) on its coming into force; and
  - (b) on such subsequent occasions as may be prescribed.



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- (2) The following provisions of this section apply where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (3) Before the beginning of each financial year the authority shall prepare a statement of the financial provision they plan to make in that year for county and voluntary schools maintained by them.
- (4) The statement shall contain the following particulars in relation to the financial year in question—
- (a) the amount of the general schools budget of the authority for that year (as initially determined for the purposes of the scheme);
  - (b) the amount of the authority's aggregated budget for that year (as so determined);
  - (c) such particulars as may be prescribed of amounts deducted in respect of—
    - (i) excepted heads or items of expenditure; or
    - (ii) excluded expenditure under the scheme;
 in arriving at the amount specified in the statement by virtue of paragraph (b) above;
  - (d) such particulars of the allocation formula under the scheme as may be prescribed;
  - (e) in the case of each school required to be covered by the scheme in that year, the planned expenditure per pupil arising from the division of the school's budget share (as so determined) by the initial pupil number;
  - (f) in the case of each such school, the planned expenditure per pupil on excepted services arising from the division of the amount of the expenditure on such services planned by the authority for the purposes of the school by the initial pupil number;
  - (g) in the case of each such school, the planned expenditure per pupil arising from the division by the initial pupil number of so much of the authority's excluded expenditure under the scheme (as so determined) as is appropriated by the authority for meeting expenditure for the purposes of the school;
  - (h) in the case of each such school, the amount of any expenditure of a capital nature planned for the purposes of the school;
  - (i) such particulars as may be prescribed of the basis on which the authority determine in the case of each such school—
    - (i) the amount of expenditure on excepted services by reference to which the information required to be included in the statement under paragraph (f) above is determined; and
    - (ii) the part of the authority's excluded expenditure under the scheme by reference to which the information required to be included in the statement under paragraph (g) above is determined; and
  - (j) such further information with respect to the financial provision the authority plan to make in that year for county and voluntary schools maintained by them as may be prescribed.
- (5) For the purposes of subsection (4) above—
- (a) "the initial pupil number" means, in relation to a financial year, the number of registered pupils at the school in question required under the scheme to be used

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- in applying the allocation formula under the scheme for initial determination of the school's budget share for the year; and
- (b) services are excepted services, in relation to a financial year, if expenditure on those services in that year is an excepted item of expenditure.
- (6) After the end of each financial year the authority shall prepare a statement containing such information with respect to—
- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the scheme; and
- (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) A statement prepared under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (8) The authority shall furnish the governing body of each school required to be covered by the scheme in any financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (9) The governing body of each such school shall secure that a copy of any such statement furnished to them under subsection (8) above is available for inspection (at all reasonable times and free of charge) at the school.

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

C43 S. 42 applied by S.I. 1989/1135, art. 6(2)(a)

VALID FROM 01/01/1994

**[<sup>F7</sup>42A Certification of statements by Audit Commission.**

- (1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Any such local education authority shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 29(1)(d) of the Local Government Finance Act 1982 for certifying such statement or statements prepared by the authority under section 42 of this Act as may be specified in the directions; and any statement under that section shall be treated for the purposes of section 29(1)(d) of that Act as a return by the authority.
- (3) The arrangements made by the Audit Commission in pursuance of subsection (2) above shall include arrangements for sending a copy of any such statement or statements as so certified to the Secretary of State.
- (4) Directions given under subsection (2) above may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.]

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#### Textual Amendments

F7 S. 42A inserted (1.1.1994) by 1993 c. 35, s. 275(2); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

C44 S. 42A modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### 43 Application of schemes to special schools.

- (1) The Secretary of State may by regulations provide for requiring or authorising schemes—
  - (a) to cover special schools maintained by local education authorities; and
  - (b) to include provision, in the case of any such school which by virtue of any regulations made under paragraph (a) above is required or authorised to be covered by a scheme, for the delegation by the authority concerned of the management of the school's budget share for any financial year to the governing body of the school.
- (2) Regulations under this section—
  - (a) may make in any provisions of this Chapter such amendments as appear to the Secretary of State to be required in consequence of any provision made in those regulations by virtue of subsection (1) above; and
  - (b) may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision so made.

*Financial delegation: appointment and dismissal of staff*

### 44 Staff employed by the local education authority.

- (1) This section applies to a county, controlled or special agreement school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) sections 34 and 35 of the 1986 Act (determination of staff complement for schools by local education authority and general provisions about appointment and dismissal of staff);
  - (b) any provision made by the articles of government in accordance with any of sections 36 to 41 of that Act (procedure for appointments, suspensions and dismissals); and
  - (c) any provision of section 40 of that Act (appointment and dismissal of clerk to the governing body) other than subsection (5).
- (3) Subject to the following provisions of this section—
  - (a) the appointment, suspension and dismissal of staff at a school to which this section for the time being applies and the determination of their duties, grading and remuneration; and
  - (b) the application in relation to such staff of—

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- (i) any disciplinary rules and procedures; and
- (ii) any procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;

shall be subject to Schedule 3 to this Act.

- (4) Within the period of five years beginning with the date on which the financial year begins in which any county, controlled or special agreement school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions made by the articles in accordance with any of sections 36 to 41 of the 1986 Act (specifying those provisions) are superseded by this section and Schedule 3 to this Act during any period when the school has a delegated budget.
- (5) This section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).

#### **45 Staff at aided schools.**

- (1) This section applies to an aided school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) section 22(4) of the 1944 Act (power of local education authority to give directions to governors of aided school as to number and conditions of service of school maintenance staff); and
  - (b) any provision of the articles of government conferring any functions on a local education authority with respect to the number of teachers or other staff to be employed at the school or the appointment or dismissal of such teachers or other staff (including any such provision required by section 24(2) of that Act).
- (3) Subject to any provision of the articles of government of any such school other than any provision for the time being excluded by subsection (2) above from applying to the school, the governing body of the school shall have (if they would not otherwise do so apart from any provision of the articles so excluded) power to appoint, suspend and dismiss staff as they think fit.
- (4) Subsection (6) below applies if in the case of any such school—
  - (a) the governing body of the school agree with the local education authority to accord advisory rights to the chief education officer of the authority in relation to the appointment or dismissal of teachers at the school; or
  - (b) in default of such agreement the Secretary of State determines that it would be appropriate in the case of the school that such rights should be accorded to the chief education officer of the authority.
- (5) Advisory rights accorded by an agreement or determination under subsection (4) above in the case of any school may relate to the appointment or dismissal, or both to the appointment and the dismissal, either of head teachers and deputy head teachers alone or of all teachers at the school.
- (6) During any period while an agreement or determination under subsection (4) above is effective in the case of any school, the chief education officer of the authority, or an officer of the authority nominated by him, shall be entitled to attend all proceedings of

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- the governing body relating to any action to which the advisory rights accorded to him extend (including interviews) for the purpose of giving advice to the governing body.
- (7) The agreement of a governing body for the purposes of subsection (4)(a) above shall be given in writing and may only be withdrawn by notice in writing to the local education authority.
  - (8) A determination by the Secretary of State for the purposes of subsection (4)(b) above may be withdrawn at any time (without prejudice to a further determination for those purposes).
  - (9) The governing body of a school to which this section for the time being applies shall, on dismissing any member of the staff of the school employed by them, notify the local education authority in writing of the reasons for the dismissal.
  - (10) Where any member of the staff at any such school is employed by the local education authority, paragraphs 8 to 10 of Schedule 3 to this Act shall have effect in relation to his dismissal or withdrawal from the school as they have effect in relation to the dismissal or withdrawal from a school to which section 44 of this Act applies of a person employed to work at the school.
  - (11) Within the period of five years beginning with the date on which the financial year begins in which any aided school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions of the articles of a kind mentioned in subsection (2)(b) above (specifying those provisions) are superseded by this section during any period when the school has a delegated budget.

#### **46 Staff: further provisions.**

- (1) The Secretary of State may by order amend paragraph (a) of section 3(5) of the <sup>M1</sup>Teachers' Pay and Conditions Act 1987 (order regulating remuneration and conditions of employment of teachers may confer discretion on the local education authority with respect to any matter) so as to provide for any discretion conferred on a local education authority by virtue of that paragraph to be exercisable instead by the governing body of any school to which section 44 or 45 of this Act for the time being applies.
- (2) Subject to subsection (3) below, it shall be for the governing body of any such school to determine—
  - (a) whether any payment should be made by the local education authority concerned in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school; and
  - (b) the amount of any such payment.
- (3) Subsection (2) above does not apply in relation to any payment which the authority are required to make—
  - (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or
  - (b) under any statutory provision.
- (4) The local education authority concerned—

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- (a) shall take such steps as may be required for giving effect to any determination of the governing body of any such school under subsection (2) above; and
  - (b) shall not make, or agree to make, any payment to which that subsection applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.
- (5) Costs incurred by the local education authority concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of any such school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5) above.

#### Marginal Citations

M1 1987 c. 1.

#### 47 Community Schools.

- (1) This section applies to any school to which section 44 or 45 of this Act for the time being applies which is a community school.
- (2) For the purposes of this section, a school is a community school if—
- (a) activities other than school activities (“non-school activities”) are carried on on the school premises; and
  - (b) all non-school activities which are so carried on are carried on under the management or control of the governing body of the school.
- (3) A scheme may provide for applying sections 44(3), 45(10) and 46 of and Schedule 3 to this Act in relation to persons employed to work—
- (a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the premises of a school to which this section applies; or
  - (b) solely for the purposes of non-school activities so carried on; as if all activities so carried on were school activities.

#### *Miscellaneous and supplementary*

#### 48 New schools.

- (1) Schedule 4 to this Act has effect for the purpose of applying the provisions of this Chapter and Schedule 3 to this Act in relation to new schools which have temporary governing bodies.
- (2) In this section and in Schedule 4 to this Act—
- “new school” and “relevant proposal” have the same meanings respectively as in Schedule 2 to the 1986 Act (where “new school” covers both a school

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proposed to be established which will on implementation of the relevant proposal be maintained by a local education authority and a school which will be so maintained on the implementation in relation to an existing school of the relevant proposal); and

“temporary governing body” means a temporary governing body constituted for a new school under an arrangement made under section 12 of that Act (excluding such a governing body who fall by virtue of paragraph 3(5) of that Schedule to be treated as if they were the governing body constituted under the provisions of that Act that apply following the implementation of the relevant proposal).

#### **49 Required financial delegation apart from schemes.**

- (1) In respect of any period during which any county, voluntary or special school maintained by a local education authority does not have a delegated budget it shall be the duty of the authority to make available a sum of money which the governing body of the school are to be entitled to spend at their discretion during that period (but subject to subsection (2) below) on books, equipment, stationery and such other heads of expenditure (if any) as the authority may specify or as may be prescribed.
- (2) A governing body to whom any sum is made available under this section—
  - (a) shall comply in spending that sum with such reasonable conditions as the authority think fit to impose; and
  - (b) may delegate to the head teacher, to such extent as they may specify, their powers in relation to that sum.
- (3) Before making any regulations for the purposes of subsection (1) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned and any local authority with whom consultation appears to him to be desirable.

#### **50 Financial statements in respect of schools not covered by statements under section 42.**

- (1) Every local education authority shall prepare a statement under subsection (5) below in respect of any financial year before the first financial year in respect of which the authority are required to prepare a statement under section 42 of this Act (including the financial year current at the time when this section comes into force).
- (2) Subject to subsection (3) below, every local education authority who maintain one or more special schools during the whole or any part of any financial year after the last financial year to which subsection (1) above applies shall prepare a statement under subsection (5) below in respect of that financial year.
- (3) Subsection (2) above shall not apply in relation to such an authority in respect of any financial year in respect of which the authority are required to prepare a statement under section 42 of this Act which, by virtue of any provision made by regulations under section 43 of this Act, is required to include information with respect to the special school or (as the case may be) with respect to each of the special schools concerned.
- (4) The schools required to be covered by a statement prepared by a local education authority under subsection (5) below in respect of any financial year are—

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- (a) in the case of a statement required by subsection (1) above, any county, voluntary or special school maintained by the authority during the whole or any part of that year; and
  - (b) in the case of a statement required by subsection (2) above, any special school so maintained other than one in respect of which, by virtue of any provision so made, any information is required to be included in a statement prepared by the authority in respect of that year under section 42 of this Act.
- (5) The statement shall give the following particulars with respect to the financial provision initially planned by the authority in respect of the financial year to which the statement relates for the schools required to be covered by the statement—
- (a) the initial amount appropriated for meeting expenditure in that year in respect of all such schools;
  - (b) the amount remaining (referred to below in this section as the general expenditure amount) after deducting from the amount specified in the statement by virtue of paragraph (a) above the aggregate amount of the initial amounts so appropriated in respect of—
    - (i) expenditure of a capital nature;
    - (ii) expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature; and
    - (iii) expenditure of such other descriptions as may be prescribed;
  - (c) such particulars as may be prescribed of amounts so deducted;
  - (d) in the case of each such school, the share of—
    - (i) the general expenditure amount; and
    - (ii) such of the amounts so deducted by virtue of paragraph (b)(iii) above as may be prescribed;
 which is appropriated by the authority for meeting expenditure for the purposes of the school;
  - (e) in the case of each such school, the amount of any expenditure of a capital nature initially planned for the purposes of the school;
  - (f) such particulars of the basis on which the authority determine the share of each such school for the purposes of the information required to be included in the statement under paragraph (d) above as may be prescribed; and
  - (g) such further information with respect to the financial provision initially planned by the authority for the schools required to be covered by the statement as may be prescribed.
- (6) After the end of each financial year in respect of which a local education authority are required to prepare a statement under subsection (5) above the authority shall prepare a statement containing such information with respect to—
- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the statement under subsection (5); and
  - (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) Each statement prepared under this section in respect of any financial year shall be prepared in such form, and published in such manner and at such times, as may be prescribed.



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- (8) The authority shall furnish the governing body of any school required to be covered by a statement prepared under subsection (5) above in respect of any financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (9) A governing body to whom a copy of any such statement is furnished under subsection (8) above shall secure that a copy of the statement is available for inspection (at all reasonable times and free of charge) at the school.
- (10) Where only one school is required to be covered by a statement prepared under subsection (5) above—
  - (a) references in this section to all schools required to be so covered shall be read as references to the school in question;
  - (b) that subsection shall apply with the omission of paragraphs (d) to (f); and
  - (c) subsection (6) above shall apply with the omission of paragraph (b).

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

C45 S. 50(1) modified by S.I. 1989/1135, art. 6(2)(b)

## 51 Interpretation of Chapter III and supplementary and consequential provisions.

- (1) In this Chapter—
  - “expenditure of a capital nature” means, in relation to a local education authority, expenditure treated by that authority as expenditure of a capital nature; and
  - “governors’ report” means, in relation to the governing body of any school to which section 30 of the 1986 Act applies, the report they are required to prepare by virtue of that section.
- (2) In this Chapter—
  - (a) references to a scheme are references—
    - (i) to a scheme made by a local education authority under section 33 of this Act; and
    - (ii) in a context referring to a particular local education authority, to a scheme so made by that authority;
  - (b) references to a school’s budget share for any financial year—
    - (i) shall be read in accordance with subsection (2)(a) of that section; and
    - (ii) include references to that share as from time to time revised in accordance with the scheme under which it is determined;
  - (c) references to the general schools budget of a local education authority shall be read in accordance with subsection (4)(a) of that section;
  - (d) references to the aggregated budget of a local education authority shall be read in accordance with subsection (4)(b) of that section;
  - (e) references to excepted heads or items of expenditure shall be read in accordance with subsection (4)(b)(i) of that section;
  - (f) references to a school in respect of which financial delegation is required for any financial year shall be read in accordance with subsection (6)(a) of that section;

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- (g) references to a school which has a delegated budget shall be read in accordance with subsection (6)(b) of that section;
  - (h) references, in relation to a scheme, to excluded expenditure under the scheme shall be read in accordance with subsection (6)(c) of that section; and
  - (i) references to the delegation requirement under a scheme shall be read in accordance with section 39(4).
- (3) During any period when a school has a delegated budget under any scheme any provisions of the articles of government of the school which are inconsistent with the operation during that period of any provisions of this Chapter or of the scheme shall be of no effect to the extent of that inconsistency.

This subsection does not apply to any provision of the articles of government such as is referred to in section 44(2)(b) or 45(2)(b) of this Act (in relation to which provision corresponding to that made by subsections (4) and (5) below is made by sections 44(4) and 45(11) respectively).

- (4) Within the period of five years beginning with the date on which the financial year begins in which any school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned, if the articles of government of the school contain any provision to which subsection (3) above applies, to amend the articles so as to include in relation to that provision or (as the case may be) in relation to each such provision contained in the articles the statement required by subsection (5) below.
- (5) The statement shall specify—
- (a) the provision or provisions of the articles in question;
  - (b) the provision of this Chapter or of the scheme (the “overriding provision”) with the operation of which any provision of the articles specified under paragraph (a) above is inconsistent; and
  - (c) the extent of the inconsistency;

and shall indicate that, during any period when the school has a delegated budget, any provision of the articles so specified is superseded by the overriding provision to the extent that it is inconsistent with it.

- (6) Any amendment of the articles of government of a school required by section 44(4) or 45(11) of this Act or by subsection (4) above shall be made by order under section 1 of the 1986 Act; but section 2 of that Act shall not apply in relation to any order made under section 1 by virtue of this subsection.
- [<sup>F8</sup>(7) It shall be for the Secretary of State to determine any question arising under a scheme as to whether a primary school required to be covered by the scheme is within the delegation requirement under the scheme.]
- (8) Section 29 of the 1986 Act (which requires provisions to be contained in articles of government of schools with respect to financial statements and financial delegation and is superseded by the provisions of this Chapter), and any provision included in the articles of government of any school by virtue of that section, shall cease to have effect.
- (9) In section 30(2)(h) of that Act (financial statement to be included in governors’ annual report to parents), for sub-paragraphs (i) and (ii) there shall be substituted the following sub-paragraphs—
- “(i) reproducing or summarising any financial statement of which a copy has been furnished to the governing body by the

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- authority under section 42 or 50 of the Education Reform Act 1988 since the last governors' report was prepared;
- (ii) indicating, in general terms, how any sum made available to the governing body by the authority in respect of the school's budget share within the meaning of Chapter III of Part I of that Act or under section 49 of that Act in the period covered by the report was used;".

**Textual Amendments**

**F8** S. 51(7) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(c)

**CHAPTER IV**

**GRANT-MAINTAINED SCHOOLS**

*Duty of Secretary of State to maintain certain schools*

**52 Duty of Secretary of State to maintain certain schools.**

- (1) Subject to the provisions of this Chapter, and the granting of approval to proposals submitted under section 62(2) below in accordance with the provisions of that section, it shall be the duty of the Secretary of State to maintain any school conducted by a governing body incorporated under this Chapter for the purpose of conducting the school.
- (2) For the purposes of this Chapter, the duty of the Secretary of State to maintain a school is a duty to make such payments in respect of the expenses of maintaining the school as are required by the following provisions of this Chapter.
- (3) A school to which the Secretary of State's duty under this section for the time being applies shall be known as a grant-maintained school.
- (4) This Chapter provides for the incorporation of a governing body constituted in accordance with this Chapter for the purpose of conducting any school if—
  - (a) proposals for that purpose (referred to below in this Chapter, in relation to a school, as proposals for acquisition of grant-maintained status) are published as required under this Chapter;
  - (b) the school is eligible for grant-maintained status on the date of publication of the proposals; and
  - (c) the proposals are approved by the Secretary of State.
- (5) Subject to the following provisions of this section, any county or voluntary school is for the purposes of this Chapter eligible for grant-maintained status.
- (6) . . . . . <sup>F9</sup>
- (8) A county or voluntary school is not eligible for grant-maintained status for the purposes of this Chapter if proposals by the local education authority to cease to maintain the school have been published under section 12(1)(c) of the 1980 Act and either—

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- (a) the proposals have been approved by the Secretary of State under that section; or
  - (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section.
- (9) A voluntary school is not eligible for grant-maintained status for the purposes of this Chapter if notice of the governors' intention to discontinue the school has been served under section 14 of the 1944 Act and has not been withdrawn.

#### Textual Amendments

**F9** S. 52(6)(7) repealed by S.I. 1990/2031, art. 3

### *Government, powers and conduct*

#### **53 Constitution of the governing body of a grant-maintained school.**

- (1) For every grant-maintained school there shall be an instrument providing for the constitution of the governing body incorporated under this Chapter for the purpose of conducting the school (to be known as the instrument of government).
- (2) The instrument of government shall be made by order of the Secretary of State.
- (3) The instrument of government shall comply with any trust deed relating to the school.
- (4) The instrument of government for a grant-maintained school shall provide for the governing body to include—
  - (a) five parent governors;
  - (b) at least one but not more than two teacher governors;
  - (c) the person who is for the time being the head teacher (as a governor ex officio); and
  - (d) either—
    - (i) in the case of a school which was a county school immediately before it became a grant-maintained school, first governors; or
    - (ii) in the case of a school which was a voluntary school immediately before it became a grant-maintained school, foundation governors.
- (5) The instrument of government for a grant-maintained school shall provide—
  - (a) for a number of first or (as the case may require) foundation governors which will secure that they outnumber the other governors; and
  - (b) for at least two of those governors to be (on the date or dates on which they respectively take office) parents of a registered pupil at the school.
- (6) The instrument of government for such a school shall provide—
  - (a) for the Secretary of State to have power to appoint not more than two additional governors if it appears to him that the governing body of the school are not adequately carrying out their responsibilities with respect to the conduct or management of the school; and

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- (b) for the appropriate appointing authority to have power, during any period when any additional governors appointed by the Secretary of State by virtue of paragraph (a) above are in office, to appoint a number of additional first or foundation governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.

In paragraph (b) above “the appropriate appointing authority” means, in relation to first governors, the governing body and, in relation to foundation governors, the person entitled to appoint the foundation governors on the governing body or, if more than one person is so entitled, the persons so entitled acting jointly.

- (7) The instrument of government for such a school which is required to have first governors shall provide for the Secretary of State to have power to make such provision as he thinks fit for filling vacancies for such governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (8) Subject to section 64 of this Act (which provides for the constitution of the governing body of such a school on initial incorporation of that body under this Chapter), in this Chapter—

“first governor”, in relation to any such school, means a person of the kind mentioned in subsection (9) below who is appointed to be a member of the governing body of the school by the governing body;

“foundation governor”, in relation to any such school, means a person appointed otherwise than by a local education authority for the purpose of securing, so far as practicable, that the established character of the school at the time when it becomes a grant-maintained school is preserved and developed and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it;

“parent governor”, in relation to any such school, means (subject to section 54 of this Act) a person who is elected as a member of the governing body of the school by parents of registered pupils at the school and who is himself such a parent at the time when he is elected; and

“teacher governor”, in relation to any such school, means a person who is elected as a member of the governing body of the school by teachers at the school and who is himself such a teacher at the time when he is elected.

- (9) The kind of person who may be appointed as a first governor of a grant-maintained school is a person appearing to the persons appointing him to be a member of the local community who is committed to the good government and continuing viability of the school.
- (10) In the case of a school which is required to have first governors, the instrument of government shall provide for it to be the duty of the governing body, in appointing such governors, to secure that those governors include persons appearing to them to be members of the local business community.
- (11) The governing body of a grant-maintained school as first constituted in accordance with section 64 of this Act is referred to below in this Chapter, in relation to the school, as the initial governing body in any case where different provision is made in relation to the governing body as first so constituted from the provision made in relation to the governing body as constituted in accordance with this section.
- (12) Accordingly, except where reference is specifically made to the initial governing body or to the governing body as constituted in accordance with this section, references in

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this Chapter to the governing body of such a school are references to the governing body whether constituted in accordance with that section or this section.

#### **54 Appointment of parent governors by the governing body.**

- (1) The instrument of government for every grant-maintained school shall provide for the required number of parent governors to be made up by parent governors appointed by the other members of the governing body if—
  - (a) one or more vacancies for parent governors are required to be filled by election; and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies.
- (2) The instrument of government for every such school shall provide for it to be the duty of governors, in appointing any parent governor under any provision made by virtue of this section—
  - (a) to appoint a person who is the parent of a registered pupil at the school, where it is reasonably practicable to do so; and
  - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.

#### **55 Proceedings of the governing body and allowances to members.**

- (1) The proceedings of the governing body of a grant-maintained school shall not be invalidated by—
  - (a) any vacancy among their number; or
  - (b) any defect in the election or appointment of any governor.
- (2) Subject to the provisions of this Chapter and any instrument made under this Chapter, the governing body of a grant-maintained school may regulate their own procedure.
- (3) The instrument of government for any grant-maintained school may make provision as to the meetings and proceedings of the governing body.
- (4) The provision that may be made by virtue of subsection (3) above includes in particular provision—
  - (a) as to the election of a chairman and vice-chairman;
  - (b) as to the establishment, constitution, meetings and proceedings of committees;
  - (c) for the delegation of functions of the governing body in such circumstances as may be specified in the instrument of government to committees established by that body or to any member of that body;
  - (d) as to the procedure (including any quorum) when business is transacted by governors of a particular category; and
  - (e) as to the procedure for the election of members of the governing body and for the determination of any questions arising in connection with, or matters relating to, any such elections;

and the provision mentioned in paragraph (b) above may provide for a committee to include persons who are not members of the governing body.

- (5) The governing body of a grant-maintained school shall have power to pay to their members such travelling, subsistence or other allowances as may be determined in

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accordance with a scheme made by the governing body and approved by the Secretary of State.

- (6) Any scheme made under subsection (5) above may be varied or revoked by a subsequent scheme so made.
- (7) The application of the seal of the governing body of a grant-maintained school shall be authenticated by the signature of the chairman of the governing body or of some other member authorised either generally or specially by the governing body to act for that purpose together with that of any other member.
- (8) Every document purporting to be an instrument made or issued by or on behalf of the governing body of any such school and to be duly executed under the seal of the governing body, or to be signed or executed by a person authorised by the governing body to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

## **56      Governors' tenure of office.**

- (1) The instrument of government for every grant-maintained school shall provide for each governor of an elected category to hold office for a term of four years.
- (2) Subject to subsection (3) below, the instrument of government for every such school which is required to have foundation governors—
  - (a) may provide for any foundation governorship to be held ex officio by the holder of an office named in the instrument; and
  - (b) shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (3) An additional foundation governor appointed by virtue of provision made in the instrument of government in accordance with section 53(6)(b) of this Act may not be appointed to hold office ex officio.
- (4) Subject to subsection (5) below, the instrument of government for every grant-maintained school shall provide for each first governor or (as the case may be) for each foundation governor other than one who is a governor ex officio to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument of government.
- (5) The term of office of any additional first or foundation governor appointed by virtue of provision made in the instrument of government in accordance with section 53(6)(b) of this Act shall be such term (not being more than five years) as may be specified in the terms of that governor's appointment.
- (6) The preceding provisions of this section shall not be taken to prevent a governor from being elected or appointed for a further term, or from being disqualified, by virtue of subsection (8) below or any provision made by virtue of subsection (9) below, for continuing to hold office.
- (7) Any governor of a grant-maintained school may at any time resign his office.
- (8) A person who is a member of the teaching or other staff at a grant-maintained school which is required to have first governors shall be disqualified for holding office as such a governor on the governing body of that school.

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- (9) The instrument of government for a grant-maintained school may make provision as to the circumstances in which persons are to be disqualified for holding office as governors of the school.
- (10) Any foundation governor of a grant-maintained school may be removed from office by the person or persons who appointed him.

## **57 Powers of the governing body.**

- (1) The governing body of a grant-maintained school shall have power to conduct a school of the same description, subject to any changes authorised under section 89 or 91 of this Act, as the school immediately before it became a grant-maintained school.
- (2) The school conducted by the governing body of a grant-maintained school shall be regarded for the purposes of subsection (1) above as remaining of the same description as the school immediately before it became a grant-maintained school if no changes are made in the character or premises of the school which require to be authorised under either of those sections.
- (3) Subject to subsection (4) below and to any provision made by the instrument or articles of government of the school, the governing body of such a school shall have power to do anything which appears to them to be necessary or expedient for the purpose of or in connection with the conduct of the school as for the time being constituted, including in particular power—
  - (a) to assume the conduct as from the incorporation date in relation to the school of the school as constituted immediately before that date, and for that purpose to receive any property, rights and liabilities transferred to the governing body under section 74 of this Act;
  - (b) to acquire and dispose of land and other property;
  - (c) to enter into contracts, including in particular contracts for the employment of teachers and other staff;
  - (d) to invest any sums not immediately required for the purposes of meeting the expenses of conducting the school or any liability transferred to the governing body under section 74 of this Act; and
  - (e) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for any such purposes.
- (4) Subsection (3) above does not confer power to borrow money; and the power under paragraph (b) of that subsection to dispose of land—
  - (a) does not include power to grant any mortgage, charge or other security in respect of any land; and
  - (b) may only be exercised with the written consent of the Secretary of State.
- (5) Without prejudice to subsection (3) above, but subject to any provision made by the instrument or articles of government of the school, the governing body of a grant-maintained school shall also have power to provide education at the school which is neither primary nor secondary education, provided that they do so as agents for a local education authority under arrangements made with the authority for the purpose.



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## 58 Articles of government.

- (1) For every grant-maintained school there shall be an instrument in accordance with which the school is to be conducted (to be known as the articles of government).
- (2) The articles of government shall be made by order of the Secretary of State.
- (3) The articles of government shall comply with any trust deed relating to the school.
- (4) The articles of government for a grant-maintained school may include provision as to the establishment by the governing body of committees or other bodies of persons for the purpose of or in connection with the performance in relation to the school of such functions as may be determined by or under the articles.
- (5) The articles of government for a grant-maintained school shall include in particular provision—
  - (a) with respect to the functions to be exercised in relation to the school by—
    - (i) the Secretary of State;
    - (ii) the governing body;
    - (iii) any committee or other body established in accordance with any provision made by virtue of subsection (4) above; and
    - (iv) any other persons specified in or determined under the articles;and the delegation of such functions by those on whom by or under the articles they are imposed or conferred;
  - (b) with respect to arrangements for the admission of pupils to the school and the policy to be followed in deciding admissions;
  - (c) for securing the discharge by the governing body and the head teacher of duties imposed on them under Chapter I of this Part;
  - (d) with respect to arrangements for appeals, in such circumstances as may be provided by the articles, to an appeal committee constituted in accordance with the instrument of government against any decision or action taken by the governing body, or by any persons authorised under the articles to take any decision or action of the kind in question, in relation to—
    - (i) admissions of pupils to the school; or
    - (ii) the permanent exclusion of any pupil from the school;and for enabling the governing body to make joint arrangements for that purpose with the governing body of one or more other grant-maintained schools;
  - (e) with respect to arrangements for the consideration and disposal of complaints relating to any matter concerning the curriculum followed within the school including, in particular, the discharge by the governing body of duties imposed on them under Chapter I of this Part;
  - (f) requiring the governing body to publish, for each school year, particulars of—
    - (i) the arrangements for the admission of pupils to the school; and
    - (ii) the procedures applicable under the articles and any further arrangements made by them in respect of appeals by parents against any such decision or action as is mentioned in paragraph (d) above in relation to the admission of pupils to the school;
  - (g) with respect to disciplinary rules and procedures applicable to members of the staff of the school and procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;

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- (h) with respect to arrangements—
  - (i) for affording to any member of the staff an opportunity of making representations with respect to any proposal to dismiss him by the governing body or any persons authorised under the articles to dismiss him, including (if he so wishes) oral representations to such person or persons as may be appointed for the purpose;
  - (ii) for requiring the governing body or any such persons to have regard to any representations made by him before taking any decision to dismiss him; and
  - (iii) for affording to any member of staff whom it has been decided to dismiss an opportunity of appealing against that decision before any action is taken to implement it;
- (i) requiring the governing body, when considering the content of the secular curriculum for the school, to have regard to any representations with regard to that curriculum—
  - (i) which are made to them by any persons connected with the community served by the school; or
  - (ii) which are made to them by the chief officer of police and are connected with his responsibilities;
- (j) requiring the governing body—
  - (i) to prepare, once in every school year, a report in such form, and containing such information, as may be required by the articles; and
  - (ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school and all persons employed at the school are given (free of charge) a copy of the report and that copies of the report are available for inspection (at all reasonable times and free of charge) at the school;
- (k) requiring the governing body, subject to any exceptions provided for in the articles, to hold a meeting once in every school year which is open to—
  - (i) all parents of registered pupils at the school; and
  - (ii) such other persons as the governing body may invite; and
- (l) with respect to—
  - (i) the procedure to be followed and the matters to be considered at any such meeting and the determination of any questions arising in connection with any such meeting; and
  - (ii) the taking by the governing body or any other persons of such action as may be required by the articles for the purposes of or in connection with the meeting or any resolutions passed at the meeting.

## **59 Instrument and articles of government: procedure.**

- (1) The instrument and articles of government for a grant-maintained school may be varied or revoked by order of the Secretary of State.
- (2) Before making, varying or revoking any instrument or articles of government for such a school, the Secretary of State shall consult the governing body of the school.

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### *Procedure for acquisition of grant-maintained status*

#### **60 Initiation of procedure for acquisition of grant-maintained status.**

- (1) Subject to subsection (5) below, in the case of any school which is eligible for grant-maintained status, a ballot of parents on the question of whether grant-maintained status should be sought for the school shall be held in accordance with section 61 of this Act if either—
  - (a) the governing body decide by a resolution passed at a meeting of that body (“the first resolution”) to hold such a ballot and confirm that decision, after the consultations required by subsection (3) below, by a resolution (“the second resolution”) passed at a subsequent meeting of the governing body held not less than twenty-eight days, nor more than forty-two days, after that at which the first resolution was passed; or
  - (b) they receive a written request to hold such a ballot which meets the requirements of subsection (2) below.
- (2) Those requirements are that the request must be signed (or otherwise endorsed in such manner as the governing body may require) by a number of parents of registered pupils at the school equal to at least twenty per cent. of the number of registered pupils at the school on the date on which the request is received.
- (3) Immediately following the passing of the first resolution the governing body shall consult—
  - (a) the local education authority by whom the school is maintained; and
  - (b) if the school is a voluntary school, the trustees of the school;with respect to their decision to hold a ballot.
- (4) Subject to subsection (5) below, on the passing of the second resolution required for the purposes of subsection (1)(a) above or (as the case may be) on receipt of any such request as is mentioned in subsection (1)(b) above, it shall be the duty of the governing body—
  - (a) to secure that a ballot is held in accordance with section 61 of this Act—
    - (i) within the period of three months beginning with the date of the second resolution; or
    - (ii) within 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; and
  - (b) to give notice in writing that such a ballot is to be held to the local education authority by whom the school is maintained and also, if the school is a voluntary school, to the trustees of the school.
- (5) Subsections (1) and (4) above shall not apply if in the case of the school in question a ballot has been held in accordance with section 61 of this Act within the period of twelve months ending with the date immediately preceding the date of the second resolution or (as the case may be) the date on which the request is received, unless the Secretary of State gives consent in writing for a new ballot to be held.
- (6) A request such as is mentioned in subsection (1)(b) above shall be taken as having been received by a governing body if given or sent to the chairman of the governing body or to the clerk to the governing body.

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- (7) Subject to subsection (8) below, it shall be the duty of the governing body of any school which is eligible for grant-maintained status, at the request of any parent of a registered pupil at the school, to make available to the parent for inspection (at all reasonable times and free of charge) at the school, and to supply the parent with a copy of, a list containing the name and address of every person who is known to the governing body to be such a parent if the request is made—
- (a) in connection with any proposal that a ballot should be held in accordance with section 61 of this Act; or
  - (b) where the governing body are under a duty by virtue of this section or section 61(8) of this Act to secure that such a ballot is held, in connection with the holding of the ballot.
- (8) A governing body shall not disclose to a parent under subsection (7) above the name and address of any person who has requested the governing body in writing not to disclose that information under that subsection; and accordingly the name and address of that person shall be excluded from the list there mentioned.
- (9) A governing body who in pursuance of subsection (7) above supply copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.
- (10) For the purposes of this section, it shall be for the governing body to determine any question whether a person is a parent of a registered pupil at the school.

## **61 Ballot of parents.**

- (1) Where the governing body of any school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section, they shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed ("the prescribed body").
- (2) The arrangements shall provide for a secret postal ballot.
- (3) It shall be the duty of the governing body to secure that the prescribed body take such steps as are reasonably practicable to secure that every person who is eligible to vote in the ballot is—
  - (a) given such information about the procedure for and consequences of acquisition of grant-maintained status for a school as may reasonably be expected to enable him to form a proper judgment as to whether or not such status should be sought for the school, including, in particular, the information required by subsection (4) below;
  - (b) informed that he is entitled to vote in the ballot; and
  - (c) given an opportunity to do so.
- (4) The information referred to in subsection (3)(a) above is—
  - (a) a general explanation of the provisions of this Chapter relating to—
    - (i) the procedure for acquisition of grant-maintained status for a school;
    - (ii) the constitution and powers of the governing body of such a school; and
    - (iii) the conduct and funding of such a school;
  - (b) the number of teacher and first or (as the case may be) foundation governors that will be specified in any proposals for acquisition of grant-maintained

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- status for the school if the result of the ballot is in favour of seeking such status;
- (c) the names and addresses of the persons, so far as ascertained, who would be required by section 66 of this Act to be named in any such proposals required to be published under section 62 of this Act in respect of the school as at a specified date by reference to which the information required for the purposes of this paragraph was compiled for the purposes of the ballot;
  - (d) an explanation of the requirements applicable under this Chapter in any case where the determination of an initial governor of any elected category is pending (within the meaning of section 62) on the date of publication of any such proposals;
  - (e) an explanation of—
    - (i) the circumstances in which a person named in any such proposals as a proposed initial governor may be replaced under section 68 of this Act; and
    - (ii) the procedure applicable under this Chapter in each case in which such a replacement is required; and
  - (f) the date that will be included in any such proposals made in respect of the school if the result of the ballot is in favour of seeking grant-maintained status as the proposed date of implementation of the proposals.
- (5) Where the governing body of any school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section they shall make available to every person employed to work at the school for inspection (at all reasonable times and free of charge) at the school a document containing the information required by subsections (3)(a) and (4) above to be given to persons eligible to vote in the ballot.
- (6) In determining the arrangements they require to be made by the prescribed body for the purposes of the ballot the governing body shall take into account any guidance given by the Secretary of State as to the arrangements he considers appropriate for ballots held in accordance with this section.
- (7) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.
- (8) Where in the case of any ballot held in respect of a school in accordance with this section other than one held by virtue of this subsection (“the first ballot”) the total number of votes cast in the ballot by persons eligible to vote in the ballot is less than fifty per cent. of the number of persons so eligible, it shall be the duty of the governing body to secure that another ballot (“the second ballot”) is held before the end of the period of fourteen days beginning with the date immediately following that on which the result of the first ballot is determined.
- (9) In any case to which subsection (8) above applies—
  - (a) the result of the first ballot shall be disregarded for the purposes of section 62(1) of this Act; and
  - (b) subject to subsection (10) below, the provisions of this section shall apply as they apply in a case where the governing body of a school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section.
- (10) In any such case—

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- (a) those provisions shall apply with the omission of subsections (3)(a) and (4); and
  - (b) subsection (5) above shall be read as if the information there referred to were the information given for the purposes of the first ballot.
- (11) If it appears to the Secretary of State—
- (a) that any requirements of this section have been contravened in the case of any ballot held in purported compliance with this section;
  - (b) that the arrangements for any ballot so held did not accord with any guidance given by him for the purposes of this section; or
  - (c) that the governing body of any school have acted unreasonably in the discharge of their duties under this section;
- he may by notice in writing given to the governing body declare the ballot void and require that a fresh ballot be held in accordance with this section before such date as he may specify in the notice.
- (12) Where a ballot is held in respect of a school in accordance with this section, the Secretary of State may pay, or reimburse the governing body of the school in respect of, the whole or any part of the expenses incurred by the governing body in respect of the ballot.
- (13) The making of any payments under subsection (12) above shall be subject to such conditions as the Secretary of State thinks fit.
- (14) For the purposes of this section, a person is eligible to vote in any ballot held in respect of a school in accordance with this section if he is—
- (a) known to the governing body to be a parent of a registered pupil at the school; and
  - (b) named as a parent of such a pupil in the register kept in accordance with the requirements of the 1944 Act in the case of the school, as that register has effect on the date immediately following the end of the period of fourteen days beginning with the date on which the relevant resolution or request was passed or received by the governing body.
- (15) For the purposes of paragraph (a) of subsection (14) above, it shall be for the governing body to determine any question whether a person is a parent of a registered pupil at the school; and in paragraph (b) of that subsection the reference to the relevant resolution or request is a reference to the resolution or request (mentioned in section 60(4) of this Act) by reference to which the ballot is required to be held or, where the ballot is a second ballot under subsection (8) above, by reference to which the first ballot was required to be held.

## **62 Proposals for acquisition of grant-maintained status.**

- (1) This section applies where in the case of any school which is eligible for grant-maintained status the result of a ballot held in accordance with section 61 of this Act shows a simple majority of votes cast in the ballot by persons eligible to vote in the ballot (within the meaning of that section) in favour of seeking grant-maintained status for the school.
- (2) It shall be the duty of the governing body of the school, before the end of the period of six months beginning with the date on which the result of the ballot is determined, to—

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- (a) publish proposals for acquisition of grant-maintained status for the school in accordance with section 63 of this Act or regulations made under that section and any notice with respect to the proposals for the time being required by that section or by such regulations; and
  - (b) submit to the Secretary of State a copy of the published proposals.
- (3) Without prejudice to any specific duty imposed on them under any other provision of this Chapter, it shall be the duty of the governing body, within that period, to take such preparatory steps as may be reasonably required with a view to discharging their duty under subsection (2) above.
- (4) Proposals published under this section may not be withdrawn except with the consent of the Secretary of State and subject to such conditions as he may impose (which may, in particular, require further proposals to be published under this section within such period as the Secretary of State may specify).
- (5) There shall be annexed to the proposals a statement which shall—
  - (a) state the result of the ballot, giving the number of votes cast in favour of seeking grant-maintained status for the school and the number of votes cast against;
  - (b) state whether the school is a county, controlled, aided or special agreement school;
  - (c) briefly describe the existing character of the school;
  - (d) state the number of pupils for whom accommodation can be provided at the school; and
  - (e) give such other information as may be prescribed;and the statement so annexed shall be treated for the purposes of subsection (2) above as forming part of the proposals.
- (6) The published proposals shall be accompanied by a statement which shall—
  - (a) describe the requirements of this Chapter with respect to the membership of the governing body of a grant-maintained school;
  - (b) if the determination of an initial governor of any elected category is pending on the date of publication of the proposals, explain the requirements applicable under this Chapter in any such case;
  - (c) state that the head teacher will be a governor of the school ex officio if the school becomes a grant-maintained school;
  - (d) explain—
    - (i) the circumstances in which a person named in the proposals in accordance with section 66 of this Act as a proposed initial governor may be replaced under section 68 of this Act; and
    - (ii) the procedure applicable under this Chapter in each case in which such a replacement is required;
  - (e) explain the effect of subsection (10) below; and
  - (f) give such other information as may be prescribed.
- (7) The proposals shall—
  - (a) specify the number of initial teacher and first or foundation governors proposed for the initial governing body in accordance with section 64 of this Act;

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- (b) give the relevant particulars with respect to the persons required by section 66 of this Act to be named in the proposals as proposed initial governors;
  - (c) if the determination of an initial governor of any elected category is pending on the date of publication of the proposals, state that fact and refer to the explanation given in the statement accompanying the proposals in accordance with subsection (6)(b) above;
  - (d) give the name of the person who is the head teacher of the school on the date of publication of the proposals;
  - (e) give the name under which it is proposed that the initial governing body should be incorporated under this section (referred to below in this section as the proposed corporate name);
  - (f) describe the arrangements it is proposed to adopt, if the school becomes a grant-maintained school, with respect to—
    - (i) the admission of pupils to the school;
    - (ii) the provision to be made at the school for pupils who have special educational needs; and
    - (iii) the induction of newly qualified teachers at the school and the in-service training and professional development of teachers at the school; and
  - (g) specify the proposed date of implementation of the proposals.
- (8) In giving the information required by subsection (7)(f)(i) above with respect to proposed admission arrangements, the proposals shall in particular specify the number of pupils intended to be admitted to the school in each relevant age group in the first school year beginning on or after the proposed date of implementation of the proposals.
- (9) For the purposes of subsection (8) above—
- (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (10) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the proposals to the Secretary of State—
- (a) any ten or more local government electors;
  - (b) the trustees (if any) of the school concerned;
  - (c) the governing body of any school affected by the proposals; and
  - (d) any local education authority concerned.
- (11) The Secretary of State—
- (a) may reject any proposals under this section; or
  - (b) where a school in respect of which such proposals are made is eligible for grant-maintained status on the date of publication of the proposals, may approve them without modification or, after consultation with the existing governing body, approve them with such modifications as he thinks desirable.
- (12) Where the Secretary of State rejects any proposals under this section in the case of a school which is eligible for grant-maintained status on the date of his determination,



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he may require the governing body of the school to publish further proposals under this section within such period as he may specify.

- (13) Where the Secretary of State imposes any requirement under subsection (4) or (12) above the provisions of this section (with the exception of subsection (1)) shall apply as they apply in the case mentioned in subsection (1), but subject to the following modifications, that is to say—
- (a) the reference in subsection (2) above to the period of six months beginning with the date on which the result of the ballot is determined shall be taken as a reference to the period specified by the Secretary of State for submission of the further proposals required; and
  - (b) the reference in subsection (5)(a) above to the ballot shall be read as referring to the last ballot held in accordance with section 61 of this Act in relation to the school before that requirement was imposed.
- (14) If proposals in respect of any school published under this section are approved by the Secretary of State, the initial governing body constituted in accordance with the proposals shall on the proposed date of implementation of the proposals become a body corporate under the proposed corporate name.
- (15) For the purposes of this section, the determination of an initial governor of an elected category is pending on the date of publication of any proposals under this section with respect to a school if—
- (a) an election required under section 66 of this Act for determining a governor of any such category for the initial governing body; or
  - (b) an election or appointment required for filling any outstanding vacancy for a governor of any such category on the existing governing body which falls under that section to be taken into account in determining whether an election such as is mentioned in paragraph (a) above is required;
- has not been held or made by that date.
- (16) In this Chapter, “the relevant particulars” means, in relation to any person named as a proposed initial governor in any proposals under this section—
- (a) his name and address;
  - (b) whether he is to be a parent, teacher, first or foundation governor;
  - (c) if he is to be a parent or teacher governor, the term of office that applies in his case under section 65 of this Act; and
  - (d) if he is to be a first or foundation governor, the term of office proposed for him in accordance with subsection (4) of that section or, in the case of a foundation governor who is to hold office ex officio, the fact that he is to do so.

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

**C46** S. 62(5) amended (1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2, SIF 41:1\)](#), s. 5; [Archbishops' Instrument 1991 No. 1](#) (made 26.7.1991)

### **63 Publication of proposals and notice with respect to proposals.**

- (1) Where section 62 of this Act applies in the case of any school, the proposals for acquisition of grant-maintained status for the school shall for the purposes of subsection (2) of that section be published—

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- (a) by being posted at or near any main entrance to the school;
  - (b) by being posted in at least one conspicuous place within the area served by the school; and
  - (c) by being made available for inspection at all reasonable times at the school or at any other place within that area to which members of the public may conveniently have access.
- (2) There shall be published in at least one newspaper circulating in that area a notice with respect to the proposals containing such summary of the proposals as the governing body may think appropriate including, in particular, the information required by subsection (3) below.
- (3) A notice under subsection (2) above shall—
- (a) state that proposals for acquisition of grant-maintained status have been published and submitted to the Secretary of State for approval;
  - (b) specify the proposed date of implementation of the proposals;
  - (c) state that, if the proposals are so approved, the school will on that date—
    - (i) cease to be maintained by the local education authority; and
    - (ii) be conducted by a newly constituted governing body and maintained by grants paid by the Secretary of State;
  - (d) give the information required to be specified in the proposals by section 62(7)(f)(i) of this Act;
  - (e) state where the proposals may be inspected; and
  - (f) explain the effect of section 62(10) of this Act.
- (4) The Secretary of State may by regulations make such provision (whether by way of modification of, or substitution for, the provisions of subsections (1) to (3) above) as he considers appropriate with respect to—
- (a) the publication of proposals for the acquisition of grant-maintained status; and
  - (b) the publication of such notice (if any) with respect to such proposals as may be prescribed.
- (5) References in this section to proposals for acquisition of grant-maintained status include references to the statement required by section 62(5) of this Act to be annexed to the proposals.

#### **64 Constitution of the initial governing body of a grant-maintained school.**

- (1) The initial governing body of a grant-maintained school shall consist of—
- (a) five parent governors;
  - (b) such number (not being less than one nor more than two) of teacher governors as may be specified in the proposals for acquisition of grant-maintained status for the school;
  - (c) the person who is for the time being the head teacher, as a governor ex officio; and
  - (d) either—
    - (i) in the case of a school which was a county school immediately before it became a grant-maintained school, such number of first governors as may be so specified; or

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- (ii) in the case of a school which was a voluntary school immediately before it became a grant-maintained school, such number of foundation governors as may be so specified.
- (2) The number of first governors or foundation governors specified in the proposals for acquisition of grant-maintained status for a school shall be a number which secures that those governors outnumber the other governors.
- (3) In the case of the initial governing body of a grant-maintained school, the first governors or (as the case may be) the foundation governors shall include at least two persons who on the date of publication of the proposals for acquisition of grant-maintained status are parents of a registered pupil at the school in respect of which the proposals are made.
- (4) Where the initial governing body of such a school is required to include first governors, those governors shall include persons who appear to those selecting them under section 66 of this Act to be members of the local business community.
- (5) In any provision of this Chapter relating to the initial governing body of a grant-maintained school—

“first governor” means a person selected under section 66 or nominated under section 68 of this Act who would qualify in accordance with section 53 of this Act for appointment as a first governor to the governing body as constituted in accordance with that section;

“foundation governor” means a person so selected or nominated for the purpose for which a foundation governor would be required in accordance with that section to be appointed to the governing body as so constituted;

“parent governor” means—

- (a) a person who, immediately before the incorporation date in relation to the grant-maintained school, is a parent governor (within the meaning of the 1986 Act) in relation to the school in respect of which the proposals for acquisition of grant-maintained status are made; or
- (b) a person elected under section 66 or elected or nominated under section 68 of this Act to hold office as a parent governor on the initial governing body; and

“teacher governor” means—

- (a) a person who, immediately before the incorporation date in relation to the grant-maintained school, is a teacher governor (within the meaning of the 1986 Act) in relation to the school in respect of which the proposals for acquisition of grant-maintained status are made; or
- (b) a person elected under section 66 or elected or nominated under section 68 of this Act to hold office as a teacher governor on the initial governing body.

## 65 Terms of office of initial governors.

- (1) A governor of an elected category on the initial governing body of a grant-maintained school who was a governor of that category on the governing body of the school immediately before the incorporation date in relation to the grant-maintained school shall hold office for the remainder of his term of office on the former governing body.

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- (2) A governor of an elected category on the initial governing body of any such school who was elected under section 66 or elected or nominated under section 68 of this Act to hold office as such shall hold office for a term of four years.
- (3) A person may hold office as a foundation governor on the initial governing body of any such school ex officio; but a foundation governor who is a governor ex officio by virtue of this subsection shall cease to be a governor on the coming into force of an instrument of government for the school unless the office by virtue of which he is such a governor is named in the instrument by virtue of section 56(2)(a) of this Act.
- (4) A first governor or foundation governor on the initial governing body of any such school, other than a foundation governor who is a governor ex officio, shall hold office for such term (not being less than five nor more than seven years) as may be specified as his proposed term of office in the proposals for acquisition of grant-maintained status for the school.

## **66 Determination of the initial governors.**

- (1) This section applies to any school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 62 of this Act.
- (2) Where in the case of any such school the number of eligible governors of an elected category is the same as the number of governors of that category proposed for the initial governing body of the school, the eligible governors of that category shall be named in the proposals as the proposed initial governors of that category.
- (3) Where in the case of any such school the number of eligible governors of an elected category is greater than the number of governors of that category so proposed, such of the eligible governors of that category as may before the date of publication of the proposals be determined by agreement between them or, in default of agreement, by drawing lots, shall be named in the proposals as the proposed initial governors of that category.
- (4) It shall be the duty of the existing governing body of any such school to secure that the persons required to be named in the proposals in accordance with subsection (3) above are determined before the date of publication of the proposals.
- (5) Where in the case of any such school the number (if any) of eligible governors of an elected category, together with the number (if any) of outstanding vacancies for governors of that category on the existing governing body, is less than the number of governors of that category proposed for the initial governing body of the school, it shall be the duty of the authority responsible for election arrangements under the 1986 Act in relation to the school to secure that such number of persons are elected to hold office on the initial governing body as governors of the category concerned as is required to make up the number of governors of that category so proposed.
- (6) In any case to which subsection (5) above applies, the persons to be named in the proposals as the proposed initial governors of the category concerned shall be—
  - (a) any eligible governor of that category; and
  - (b) any person elected under this section to hold office as a governor of that category on the initial governing body before the date of publication of the proposals.

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- (7) In the case of any such school which is required to have first governors, the existing governing body shall before the date of publication of the proposals select the persons who are to be the first governors on the initial governing body; and the persons so selected shall be named in the proposals as the proposed initial first governors.
- (8) In the case of any such school which is required to have foundation governors, the persons who are to be the foundation governors on the initial governing body shall be selected before that date by the person or persons named in the instrument of government relating to the existing governing body as being entitled to appoint foundation governors (within the meaning of the 1944 Act) to that governing body; and the persons so selected shall be named in the proposals as the proposed initial foundation governors.
- (9) It shall be the duty of the existing governing body to secure that any selection required by subsection (8) above is carried out in accordance with that subsection.

## **67 Provisions supplementary to section 66.**

- (1) Subject to subsection (2) below, where in the case of any school to which section 66 of this Act applies the members of the existing governing body include any person—
  - (a) who holds office as a governor of an elected category; and
  - (b) whose term of office is due to come to an end before the proposed date of implementation or at any time within the period of six months beginning with that date;the governing body may by notice in writing to that person terminate his term of office on a date specified in the notice.
- (2) The governing body may only terminate a person's term of office under this section if—
  - (a) his term of office is due to come to an end after the proposed date of publication of the proposals; or
  - (b) it would not in their view be reasonably practicable to fill the vacancy arising from the termination of his term of office by the procedure applicable under the 1986 Act in the time available between the date on which it is due to come to an end and the proposed date of publication of the proposals.
- (3) Without prejudice to section 8(2) of the 1986 Act (instrument of government for county, controlled or maintained special school to provide for four year term of office for governors other than ex officio governors), the term of office of a person elected or appointed in accordance with the requirements of the 1986 Act and any requirements of the instrument of government of the school to fill a vacancy arising by virtue of subsection (1) above shall be four years.
- (4) It shall be the duty of the authority responsible for election arrangements under the 1986 Act in relation to any school to which section 66 of this Act applies to secure that—
  - (a) any election or appointment required for filling any vacancy on the existing governing body occurring before the date of publication of the proposals (including any vacancy arising by virtue of subsection (1) above); and
  - (b) any election required by that section;is held or made if possible before that date, and otherwise as soon as possible after that date.

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- (5) Where the selection of any person to be a foundation governor on the initial governing body of any such school falls in accordance with section 66(8) of this Act to be made by two or more persons, it shall be made by those persons acting jointly; and if those persons fail to agree on the selection, it shall be made by the Secretary of State or in accordance with any direction given by him.
- (6) Before selecting, or giving any direction as to the selection of, a person to be a foundation governor on the initial governing body of any such school where religious education in accordance with the tenets of a particular religious denomination is given to any pupils in pursuance of section 27 or 28 of the 1944 Act (religious education at voluntary schools), the Secretary of State shall consult the persons appearing to him to be the appropriate authority of the denomination concerned.

## **68 Modification of proposed membership of initial governing body before incorporation.**

- (1) This section applies where proposals for acquisition of grant-maintained status are pending in respect of any school.
- (2) For the purposes of this Chapter, such proposals shall be regarded as pending in respect of any school at any time on or after the date of publication under section 62 of this Act of proposals for acquisition of grant-maintained status for the school—
  - (a) until either the proposals are withdrawn or the Secretary of State makes his determination with respect to the proposals; and
  - (b) where he approves the proposals, until the proposed date of implementation.
- (3) Where a person named in the proposals as a proposed first or foundation governor—
  - (a) dies;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body, where the former proposed governor was a proposed first governor, and by the foundation governors (within the meaning of the 1944 Act) on the existing governing body, where he was a proposed foundation governor.

- (4) Where a person named in the proposals as a proposed governor of an elected category who was elected under section 66 of this Act or this section—
  - (a) dies;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

it shall be the duty of the authority responsible for election arrangements under the 1986 Act in relation to the school to secure that a person is elected to hold office on the initial governing body in place of the former proposed governor if it is reasonably practicable to do so in the time available before the proposed date of implementation.

- (5) If in any case to which subsection (4) above applies the Secretary of State is satisfied that it would not be reasonably practicable to hold an election in accordance with that

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subsection in the time available, he shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.

- (6) Where at any time a person named in the proposals as a proposed governor of an elected category who was so named by virtue of being an eligible governor of that category in relation to the school—
- (a) ceases to hold office on the existing governing body;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to any person nominated by the existing governing body who is at that time an eligible governor of that category who is neither named in the proposals nor prospectively disqualified as mentioned in paragraph (b) above.

- (7) Where in any case to which subsection (6)(a) above applies—
- (a) there is no such eligible governor at the time in question; and
  - (b) the Secretary of State is satisfied that it would not be reasonably practicable to fill the vacancy on the existing governing body by the procedure applicable under the 1986 Act in the time available before the proposed date of implementation;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.

- (8) Where in any case to which subsection (6)(b) or (c) above applies there is no such eligible governor at the time in question, subsection (4) above shall apply as if the former proposed governor had been elected under section 66 of this Act.
- (9) Where a person named in the proposals as a proposed governor of an elected category who was nominated by the existing governing body under this section—
- (a) dies;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.

## **69 Provisions supplementary to section 68.**

- (1) A nomination required to be made for the purposes of subsection (3) of section 68 of this Act by the foundation governors (within the meaning of the 1944 Act) on the existing governing body may be made by a simple majority of those governors present and voting at a meeting held for the purpose (with the chairman of the meeting having a second or casting vote in the event of an equality of votes).

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- (2) For the purposes of that section, a person named in the proposals as a proposed initial governor of any category shall be treated as becoming prospectively disqualified for holding office as such a governor on the initial governing body by virtue of the occurrence in relation to him of any event by virtue of which he would have become disqualified for holding such office by virtue of—
- (a) section 56(8) of this Act; or
  - (b) any provision made by an instrument of government for the school made before the proposed date of implementation;
- if the event had occurred on or after the proposed date of implementation.
- (3) A person nominated by the existing governing body under subsection (5), (7) or (9) of section 68 of this Act—
- (a) must at the time of his nomination be a parent of a registered pupil at the school, if the former proposed governor was a proposed parent governor; and
  - (b) must at the time of his nomination be a teacher at the school, if the former proposed governor was a proposed teacher governor.
- (4) It shall be the duty of the existing governing body—
- (a) to give the Secretary of State written notification of the occurrence of any event within subsection (3), (4), (6) or (9) of that section;
  - (b) to make any nomination required for the purposes of that section; and
  - (c) to give to the Secretary of State written notification of the relevant particulars with respect to the person nominated.

## **70 Elections required for determining initial governors: supplementary provisions.**

- (1) Where a person is required by section 66 or 68 of this Act to be elected to hold office as a parent governor on the initial governing body of a grant-maintained school, he shall be elected by parents of registered pupils at the school and must himself be such a parent at the time when he is elected.
- (2) Where a person is required by either of those sections to be elected to hold office as a teacher governor on the initial governing body of such a school, he shall be elected by teachers at the school and must himself be such a teacher at the time when he is elected.
- (3) Section 15(2) to (6) of the 1986 Act (qualifications and arrangements for election of parent governors or teacher governors) shall apply in relation to the election of a person under either of those sections to hold office as a parent governor or a teacher governor on the initial governing body of such a school as they apply in relation to the election of a parent governor or teacher governor to the existing governing body.
- (4) Where the authority responsible for election arrangements under the 1986 Act in relation to any school to which section 66 of this Act applies is not the existing governing body, it shall be the duty of the existing governing body to notify that authority in writing of the proposed date of publication of the proposals for acquisition of grant-maintained status for the school.
- (5) Where the authority so responsible in relation to any school to which section 66 or 68 of this Act applies is not the existing governing body, it shall be the duty of the existing governing body to notify that authority in writing of—



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- (a) any election which appears to them to be required under either of those sections in relation to the initial governing body of the proposed grant-maintained school; and
  - (b) any vacancy on the existing governing body for a governor of any category where the number of eligible governors of that category on the existing governing body is for the time being less than the number of governors of that category proposed for the initial governing body.
- (6) Where any election or appointment required for determining a proposed initial governor of any category for a grant-maintained school is held or made at any time when any proposals for acquisition of grant-maintained status are pending in respect of the school, it shall be the duty of the existing governing body to give the Secretary of State written notification of the relevant particulars with respect to the person elected or appointed.
- (7) The Secretary of State shall modify the proposals by including in them any particulars notified to him under this section (in substitution, where appropriate, for any particulars they supersede).
- (8) For the purposes of this section, an election or appointment is required for determining a proposed initial governor of any category for any grant-maintained school if—
- (a) in the case of an election, it is required under section 66 or 68 of this Act in relation to the initial governing body of that school; or
  - (b) in the case of an election or appointment, it is required for filling a vacancy on the existing governing body of that school for a governor of that category and the number of eligible governors of that category on the existing governing body is for the time being less than the number of governors of that category proposed for the initial governing body.

## **71 Eligible governors for the purposes of Chapter IV.**

In relation to any proposals for acquisition of grant-maintained status in respect of any school, a person who is a governor of an elected category in relation to the school is an eligible governor of that category for the purposes of this Chapter if—

- (a) his term of office as such a governor is due to end after the proposed date of implementation of the proposals; and
- (b) he has notified the existing governing body that he is willing to serve on the initial governing body to be constituted in accordance with the proposals and has not withdrawn that notification.

VALID FROM 01/02/1992

## **72 Initial government and conduct: further provisions**

- (1) The first instrument and articles of government for a grant-maintained school required by sections 53 and 58 of this Act shall be made not later than the end of the period of six months beginning with the incorporation date in relation to the school and may be made before the beginning of that period to come into force on that date.
- (2) In relation to any time on or after that date and before the end of that period when no instrument or articles of government are in force in respect of any such school, the Secretary of State may by direction make with respect to the school any provision

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he considers appropriate for dealing with any matters relating to the government or conduct of the school that could be dealt with by an instrument or articles of government made under this Chapter.

- (3) Any direction under subsection (2) above in relation to any school—
  - (a) shall be given in writing; and
  - (b) may be given at any time on or after the date on which the proposals for acquisition of grant-maintained status for the school are approved.
- (4) At any time when any such direction is in force in relation to any school, the school shall be governed and conducted in accordance with the provisions of that direction.
- (5) In this Chapter—
  - (a) the reference in section 57(3) to any provision made by the instrument or articles of government of a grant-maintained school shall include a reference to any provision made by a direction under subsection (2) above in relation to such a school; and
  - (b) the reference in section 69(2)(b) to any provision made by an instrument of government for such a school made before the proposed date of implementation shall include a reference to any provision made by such a direction given before that date.
- (6) Schedule 5 to this Act has effect with respect to the transition to grant-maintained status of a school in respect of which proposals for acquisition of such status have been approved and the initial government and conduct of a grant-maintained school.

*Proposals under section 12 or 13 of the 1980 Act in  
 respect of schools eligible for grant-maintained status*

### **73 Proposals for alteration, etc., of schools eligible for grant-maintained status.**

- (1) Before formulating in respect of any school which is eligible for grant-maintained status any proposals for a purpose mentioned in section 12(1)(c) or (d) of the 1980 Act (proposals to cease to maintain certain schools or to make significant changes in the character, or enlargements of the premises of, a county school), the local education authority shall consult the governing body of the school.
- (2) No proposals shall be published under section 12 or 13 of that Act in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved.
- (3) Subsection (4) below applies in any case where either—
  - (a) after proposals for acquisition of grant-maintained status have been published in respect of any school which is eligible for grant-maintained status but before those proposals are withdrawn or determined proposals under section 12 or 13 of that Act in respect of the school are first published for the purposes of that section; or
  - (b) after proposals under section 12 or 13 of that Act in respect of any such school have first been published for the purposes of that section but before those proposals are withdrawn or determined the governing body of the school publish proposals for acquisition of grant-maintained status for the school.
- (4) In any case to which this subsection applies—

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- (a) the proposals under section 12 or 13 of that Act shall require the approval of the Secretary of State where they would not do so apart from this provision; and
  - (b) the Secretary of State shall consider both sets of proposals together but shall not determine the proposals under section 12 or 13 of that Act until he has made his determination with respect to the proposals for acquisition of grant-maintained status.
- (5) If in any such case the Secretary of State approves the proposals for acquisition of grant-maintained status, he shall reject the proposals under section 12 or 13 of that Act in respect of the school.
- (6) Where proposals under section 12 or 13 of that Act in respect of any school which is eligible for grant-maintained status have first been published for the purposes of that section and have not been withdrawn or determined, the Secretary of State—
  - (a) may determine a period of suspension in relation to the proposals; and
  - (b) may from time to time by a further determination extend any period of suspension previously determined under this subsection.
- (7) A determination under subsection (6) above may be made in relation to all cases to which that subsection applies or in relation to any particular case; and a determination under that subsection which extends the period of suspension previously so determined may be made before or after the expiry of that period.
- (8) Where it is for the local education authority to determine proposals to which a period of suspension determined under subsection (6) above applies, the proposals shall not be determined until the end of that period; and in such a case section 12(7) of the 1980 Act (which requires the authority to make such a determination within four months after the submission of proposals to the Secretary of State) shall have effect as if for the reference to the submission of the proposals to the Secretary of State there were substituted a reference to the end of that period.
- (9) Where proposals to which a period of suspension determined under that subsection applies require the approval of the Secretary of State, he may suspend his consideration of the proposals—
  - (a) where proposals for acquisition of grant-maintained status for the school are published before the end of the period of suspension, until the end of the period of two months beginning with the date of publication of those proposals; or
  - (b) in any other case, until the end of the period of suspension.
- (10) Where the Secretary of State makes a determination under subsection (6) above in relation to proposals under section 12 or 13 of the 1980 Act made in respect of any school, he shall give written notification of the determination—
  - (a) to the governing body of the school; and
  - (b) in the case of proposals under section 12 of that Act, to the local education authority.
- (11) The power of the Secretary of State under subsection (6) above shall not apply in relation to proposals under section 12 or 13 of that Act published on or after such date as may be appointed for the purposes of this section by order made by the Secretary of State.
- (12) Where—

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- (a) proposals under section 12 or 13 of that Act with respect to a change in the character or an enlargement of the premises of any school have been approved; and
- (b) the school becomes a grant-maintained school before those proposals have been implemented;

those proposals shall be treated for the purposes of this Chapter as if they had been published and approved under section 89 of this Act.

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

C47 S. 73(2)(12) modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

*Transfer of property and staff, etc.*

**74 Transfer of property, etc., to governing body of grant-maintained school.**

- (1) Subject to the following provisions of this section and section 198 of this Act, on the incorporation date in relation to a grant-maintained school—
  - (a) the property, rights and liabilities of the former maintaining authority mentioned in subsection (2) below; and
  - (b) any property, rights and liabilities of the former governing body of the school; shall be transferred to, and by virtue of this Act vest in, the governing body of the grant-maintained school.
- (2) The property, rights and liabilities referred to in subsection (1)(a) above are—
  - (a) all land or other property which, immediately before the incorporation date, was property used or held by the former maintaining authority for the purposes of the school; and
  - (b) all rights and liabilities subsisting immediately before the incorporation date which were acquired or incurred by that authority for those purposes.
- (3) Subsection (1) above shall not apply to rights and liabilities under any contract of employment; and paragraph (a) of that subsection shall not apply to—
  - (a) any land or other property vested in the former maintaining authority as trustees;
  - (b) any liability of that authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.
- (4) Subject to section 198 of this Act, any land or other property of the former maintaining authority excluded by virtue of subsection (3)(a) above from transfer to the governing body of a grant-maintained school shall, on the incorporation date in relation to the school, be transferred to, and by virtue of this Act vest in, the first governors of the school on the trusts applicable immediately before that date under any trust deed regulating the use of that land or other property for the purposes of the school.
- (5) On the incorporation date in relation to a grant-maintained school—

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- (a) the duty of the former maintaining authority to maintain the school as a county or voluntary school shall be extinguished; and
  - (b) any special agreement relating to the school shall cease to have effect.
- (6) For the purposes of this section any interest in a dwelling-house which, immediately before the incorporation date in relation to such a school, is used or held by the former maintaining authority for occupation by a person employed to work at the school shall be treated as an interest used or held for the purposes of the school.
- (7) In this section “the former governing body” means, in relation to such a school, the governing body of the school immediately before the incorporation date in relation to the school.
- (8) In this Chapter, “the former maintaining authority” means, in relation to such a school, the local education authority by whom the school was maintained immediately before the incorporation date in relation to the school.
- (9) In this Act, “transfer date” means, in relation to such a school, the incorporation date in relation to the school.

## **75 Transfer of staff to grant-maintained school.**

- (1) Subject to subsection (3) below, this section applies to any person who—
- (a) immediately before the transfer date in relation to a grant-maintained school which is then an aided school is employed by the governing body of the school; or
  - (b) immediately before the transfer date in relation to a grant-maintained school—
    - (i) is employed by the local education authority by whom the school is maintained to work solely at the school; or
    - (ii) is employed by that authority to work at the school and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (1)(b) above as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.
- (3) This section does not apply to—
- (a) any person employed as mentioned in subsection (1)(a) or (b) above whose contract of employment terminates on the day immediately preceding the transfer date;
  - (b) any person employed as mentioned in subsection (1)(b) above who before that date has been—
    - (i) appointed or assigned by the local education authority concerned to work solely at another school as from that date; or
    - (ii) withdrawn from work at the school with effect as from that date.
- (4) A person who before the transfer date has been appointed or assigned by the local education authority by whom the school is maintained to work at the school as from that date shall be treated for the purposes of this section as if he had been employed by that authority immediately before that date to do such work at the school as he would

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have been required to do on or after that date under his contract of employment with that authority.

- (5) References below in this section to the former employer are references—
  - (a) in relation to a person to whom this section applies by virtue of subsection (1) (a) above, to the governing body of the school immediately before the transfer date; and
  - (b) in relation to a person to whom this section applies by virtue of subsection (1) (b) above, to the local education authority by whom the school is maintained immediately before that date.
- (6) The contract of employment between a person to whom this section applies and the former employer shall have effect from the transfer date as if originally made between him and the governing body of the grant-maintained school.
- (7) Without prejudice to subsection (6) above—
  - (a) all the former employer's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the governing body of the grant-maintained school on the transfer date; and
  - (b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to that governing body.
- (8) Subsections (6) and (7) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (9) An order under this section may designate a person either individually or as a member of a class or description of employees.

## **76 Effect of pending procedure for acquisition of grant-maintained status on property disposals.**

- (1) This section applies to a school during any period when the procedure under this Chapter for acquisition of grant-maintained status is pending in relation to the school.
- (2) For the purposes of this section that procedure is pending in relation to a school when it has been initiated in relation to the school on any occasion and not terminated (as initiated on that occasion).
- (3) For those purposes that procedure is to be regarded as initiated in relation to any school on any occasion—
  - (a) where the governing body of the school have decided to hold a ballot in accordance with section 61 of this Act by a first resolution passed as mentioned in subsection (1)(a) of section 60 of this Act, when the local education authority by whom the school is maintained are first consulted under subsection (3) of that section; or
  - (b) where such a request as is mentioned in subsection (1)(b) of that section has been received by the governing body, on receipt by that authority of notice under subsection (4)(b) of that section that such a ballot is to be held.

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- (4) For those purposes that procedure, as initiated on any occasion, is to be regarded as terminated—
- (a) in the case of procedure initiated as mentioned in subsection (3)(a) above, if 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 this Act; or
  - (b) in the case of procedure initiated as mentioned in subsection (3)(a) or (b) above, if either—
    - (i) the result of the ballot to which that consultation or notice relates does not show a majority in favour of seeking grant-maintained status for the school; or
    - (ii) proposals for acquisition of such status for the school which are required to be published by reference to the result of that ballot, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn.

Where section 61(8) of this Act applies in the case of any such ballot, the references in sub-paragraphs (i) and (ii) of paragraph (b) above to the result of that ballot shall be read as references to the result of the second ballot required by that subsection.

- (5) The reference in subsection (4) above to proposals required in substitution for any proposals for acquisition of grant-maintained status for any school which are required to be published by reference to the result of a ballot held in accordance with section 61 of this Act (“the original proposals”) is a reference to any proposals required to be published under subsection (4) or (12) of section 62 of this Act on withdrawal or (as the case may be) rejection of—
- (a) the original proposals; or
  - (b) any further proposals required to be published under either of those subsections with respect to the school without a further ballot;
- and proposals under that section with respect to a school shall not be treated for the purposes of subsection (4) above as rejected in any case where the Secretary of State imposes a requirement under subsection (12) of that section or as withdrawn in any case where he imposes a requirement under subsection (4) of that section.
- (6) Except with the required consent, a local education authority shall not—
- (a) dispose of any property used wholly or partly for the purposes of a school to which this section for the time being applies; or
  - (b) enter into a contract to dispose of any such property.
- (7) Subsection (6) above does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure mentioned in subsection (1) above was initiated in relation to the school.
- (8) Where in relation to any proposed disposal it is agreed between the local education authority concerned and the governing body of the school that the value of the property in question does not exceed £6,000 the required consent for that disposal (and for any contract to make it) is the consent of the governing body of the school.
- (9) In any case other than one within subsection (8) above, the required consent for any proposed disposal (and for any contract to make it) is the consent of both the governing body of the school and the Secretary of State.

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- (10) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this section and (subject to section 77 of this Act) a person acquiring property, or entering into a contract to acquire property, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given.
- (11) This section has effect notwithstanding anything in section 123 of the <sup>M2</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (12) In this section and in section 77 of this Act—
- (a) references to disposing of property include, in the case of land, references to granting or disposing of any interest in land; and
  - (b) references to entering into a contract to dispose of property include, in the case of land, references to granting an option to acquire land or any such interest.
- (13) Where a proposed disposal forms part of a proposed series of transactions, all disposals forming part of that series shall be treated as one disposal for the purposes of this section.
- (14) The Secretary of State may by order substitute for the sum specified in subsection (8) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

**Marginal Citations**

M2 1972 c. 70.

**77 Wrongful disposals and contracts.**

- (1) This section applies where in the case of a school to which section 76 of this Act applies—
- (a) proposals for acquisition of grant-maintained status are approved by the Secretary of State; and
  - (b) the local education authority have made any disposal, or have entered into any contract, in contravention of subsection (6) of that section (referred to below in this section as a wrongful disposal or, as the case may be, a wrongful contract).
- (2) In the case of any wrongful disposal, the governing body of the school shall be entitled to recover from the local education authority concerned the value of the property disposed of.
- (3) In the case of a wrongful contract which consists in granting an option to acquire any land or interest in land, the governing body of the school may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (4) In the case of any other wrongful contract, the governing body of the school may by notice in writing served on the other party to the contract repudiate the contract—
- (a) in the case of a contract to dispose of any land or to grant or dispose of any interest in land, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed;



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- (b) in any other case, at any time before the contract is performed.
- (5) A repudiation under subsection (3) or (4) above shall have effect as if made by the local education authority concerned.
- (6) Without prejudice to any provision made under paragraph 2(d) of Schedule 5 to this Act, the powers conferred by this section may only be exercised on or after the incorporation date in relation to the school.

## **78 Effect of pending procedure for acquisition of grant-maintained status on appointment, etc., of staff.**

- (1) During any period when section 76 of this Act applies to a school, the local education authority shall not take any action to which this section applies without the consent of the governing body of the school.
- (2) This section applies to the following actions—
  - (a) the appointment of any person to fill a vacancy in a post which is part of the complement of the school or to work solely at the school in any other post;
  - (b) the dismissal (otherwise than under section 27(5) or 28(4) of the 1944 Act, which allow foundation governors, within the meaning of that Act, to dismiss a reserved teacher) of any person to whom subsection (3) below applies; and
  - (c) the withdrawal of any such person from work at the school (otherwise than by dismissing him).
- (3) This subsection applies to any person who is employed—
  - (a) in a post which is part of the complement of the school; or
  - (b) to work solely at the school in any other post.
- (4) The reference in subsection (2)(a) above to the complement of the school is a reference to the complement of teaching and non-teaching posts determined by the local education authority for the school under section 34 of the 1986 Act.

### *Finance*

## **79 Maintenance grants, special purpose grants and capital grants.**

- (1) The payments the Secretary of State is required to make in pursuance of his duty to maintain a grant-maintained school are annual grants to the governing body of the school in respect of expenditure for the purposes of the school incurred or to be incurred by the governing body in the financial year to which any such grant relates (to be known as maintenance grants).
- (2) The amount of the maintenance grant payable in respect of such a school for any financial year shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this Chapter as grant regulations).
- (3) Grant regulations may also provide for the payment to the governing bodies of such schools—
  - (a) of grants (to be known as special purpose grants) in respect of expenditure incurred or to be incurred by them of any class or description specified in the regulations—

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- (i) for or in connection with educational purposes of any class or description so specified;
    - (ii) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the Secretary of State to be required for meeting any special needs of the population of the area served by the school; or
    - (iii) in respect of expenses of any class or description so specified, being expenses which it appears to the Secretary of State the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant; and
  - (b) of grants (to be known as capital grants) in respect of expenditure of a capital nature incurred or to be incurred by them of any class or description so specified.
- (4) Grant regulations may provide for special purpose grants to be payable on a regular basis in respect of expenditure of a recurrent kind or by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.
- (5) The amount of any capital grant shall be equal to 100 per cent. of the expenditure in respect of which it is made.
- (6) The descriptions of expenditure which are to be regarded for the purposes of subsection (3)(b) above as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (7) A governing body to whom any payments in respect of maintenance grant or special purpose grants are made shall comply with such requirements as the Secretary of State may from time to time impose, being requirements—
- (a) specified in grant regulations as requirements which may be imposed by the Secretary of State on governing bodies to whom such payments are made; or
  - (b) determined in accordance with such regulations by the Secretary of State.
- (8) A governing body to whom any payments in respect of capital grant are made shall comply with such requirements determined by the Secretary of State as he may from time to time impose.
- (9) Requirements imposed under subsection (7) or (8) above—
- (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed; and
  - (b) may at any time be waived or removed or, subject to subsection (10) below, varied by the Secretary of State.
- (10) The power of the Secretary of State to vary such a requirement—
- (a) does not apply to a requirement imposed under subsection (7)(a) above; and
  - (b) is subject, in the case of a requirement imposed under subsection (7)(b) above, to the provisions of the regulations with respect to the determination of the requirements that may be so imposed in the case of payments in respect of the grants in question.
- (11) The requirements—
- (a) which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grants; or

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(b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grants are made;

include in particular requirements with respect to the repayment, in whole or in part, of payments made in respect of those grants if any other requirement imposed under subsection (7) or (8) above by reference to payments of such grants (whether imposed before, at or after the time when the payments subject to the repayment requirement are made) is not complied with.

(12) Subject to—

- (a) any requirements imposed by the Secretary of State under subsection (7) above; and
- (b) any requirements with respect to the application of maintenance grant contained in the articles of government of the school;

it shall be the duty of the governing body of a grant-maintained school to apply any payments made to them in respect of maintenance grant solely for the purposes of the school.

## **80 Grants: further provisions.**

(1) The times at which, and the manner in which, payments are made in respect of—

- (a) maintenance grant for any grant-maintained school in respect of any financial year;
- (b) special purpose grants; and
- (c) capital grants;

shall be such as may be determined from time to time by the Secretary of State.

(2) Payments in respect of maintenance grant for any such school in respect of any financial year may be made, before any amount has been determined in accordance with grant regulations as the amount of such grant payable for that year in respect of that school, by reference to an estimate of the amount which will be so payable made by the Secretary of State.

(3) Where in respect of any financial year any over-payment of maintenance grant is made to the governing body of such a school a sum equal to the amount of that over-payment shall be recoverable from the governing body by the Secretary of State.

(4) Where any sum is payable by the governing body of such a school to the Secretary of State—

- (a) in respect of any over-payment of maintenance grant in respect of any financial year; or
- (b) by way of repayment of special purpose grant or capital grant (whether by virtue of any such requirement as is mentioned in section 79(11) of this Act or otherwise);

the Secretary of State may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by him to the governing body.

(5) References in this section, in relation to any such school, to an overpayment of maintenance grant in respect of any financial year are references to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in respect of that year exceeds the amount finally

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determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

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

**C48** Power to transfer functions conferred on s. 80 (*prosp.*) by 1993 c. 35, ss. 307(2), 308(3), **Sch. 20 para.2**  
 Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3, **Sch.2**

**81 Recovery from local funds of sums in respect of maintenance grant.**

- (1) The Secretary of State may in respect of any financial year recover from the former maintaining authority sums in respect of the maintenance grant payable for that year to the governing body of a grant-maintained school.
- (2) Subject to subsection (5) below, sums recoverable by virtue of subsection (1) above in respect of any school for any financial year—
  - (a) shall be of such amounts; and
  - (b) shall fall due on such date or dates;
 as may be determined by the Secretary of State.
- (3) The total amount so recoverable shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this section as recoupment regulations).
- (4) Subject to any provision made by such regulations by virtue of subsection (6) below, recoupment regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the maintenance grant payable in respect of the school and the financial year in question (as from time to time revised).
- (5) The amount of any sum so recoverable shall be determined—
  - (a) where before the determination of the amount of that sum any amount has been determined under recoupment regulations as the total amount recoverable by virtue of subsection (1) above in respect of the school and financial year in question, by reference to any amount so determined as the total amount so recoverable; and
  - (b) in any other case, by reference to any amount estimated by the Secretary of State as the amount which will initially be so determined as the total amount so recoverable;
 which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) Recoupment regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from any authority by virtue of subsection (1) above in respect of any school for any financial year by reference to any excess amounts recovered under this section in respect of any previous financial year.
- (7) For the purposes of subsection (6) above an excess amount is recovered under this section in respect of any financial year if the aggregate amount of the sums recovered under this section for that year from the former maintaining authority for any grant-maintained school—

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- (a) in respect of any school in respect of which sums are recoverable from the authority under this section; or
  - (b) where there is more than one such school, in respect of both or all of those schools;
- exceeds the total amount recoverable under this section in accordance with recoupment regulations in respect of that school or (as the case may be) in respect of both or all of those schools for that year.
- (8) The Secretary of State may recover sums due to him under this section from such an authority in either or both of the following ways—
- (a) by requiring the authority to pay the whole or any part of any such sum at such time or times as he thinks fit; and
  - (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whether passed before or after this Act).
- [<sup>F10</sup>(8A) Where the authority mentioned in subsection (8) above is an English authority, that subsection shall have effect as if the reference in paragraph (b) to grant did not include a reference to revenue support grant or additional grant (as to deductions from which provision is made by sections 141 to 141B of the Local Government Finance Act 1988).]
- (9) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

#### Textual Amendments

- F10** S. 81(8A) inserted (*prosp.*) by Local Government and Housing Act 1989 (c. 42, SIF 81:1), ss. 194(1), 195(2), **Sch. 11 para. 98** and repealed (*prosp.*) by 1993 c. 35, ss. 307(1)(3), 308(3), **Sch. 19 para. 158, Sch. 21 Pt. 1**

## 82 Provisions consequential on section 81.

- (1) For the purposes of determining the grant related expenditure of a local authority in accordance with Part VI of the <sup>M3</sup>Local Government, Planning and Land Act 1980—
- (a) the provision of education for registered pupils at any grant-maintained school in respect of which sums are recoverable from the authority under section 81 of this Act shall be regarded as a function of the authority; but
  - (b) no account shall be taken of the authority's actual expenditure in any year under that section in determining so much of the authority's notional total expenditure for that year as is referable to the notional exercise of that function.
- (2) Subsection (1)(b) above applies notwithstanding that the whole or any part of the actual expenditure there mentioned falls in accordance with section 3 of the <sup>M4</sup>Local Government Finance Act 1987 to be taken into account in determining the authority's total expenditure in relation to the year in question for the purposes of Part VI.
- (3) In subsections (1) and (2) above—
- “local authority” means a body which is a local authority for the purposes of Part VI; and
  - “year” has the same meaning as in that Part;

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and the reference in subsection (1)(a) above to the provision of education includes a reference to the provision of any benefits or services for which provision is made by or under the enactments relating to education.

- (4) For the purposes of sections 51 and 52 of the 1986 Act (recoupment for provision for education of pupils belonging to, or having connection with, area of another authority) the provision for education made in any financial year in respect of a registered pupil at a grant-maintained school shall be taken to have been made by the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school and that year.
- (5) The reference in subsection (4) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (6) The governing body of a grant-maintained school shall provide the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school with such information relating to the registered pupils at the school as the authority may require for the purposes of claiming any amount in respect of any such pupil from another authority under section 51 of the 1986 Act or by virtue of regulations under section 52 of that Act.

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

**C49** *Ss. 79-91* modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**Marginal Citations**

**M3** 1980 c. 65.

**M4** 1987 c. 6.

*Admissions*

**83 Admissions.**

- (1) The governing body of a grant-maintained school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the approved admission number for that age group.
- (2) Subject to subsection (3) below, for the purposes of subsection (1) above, as it applies in relation to any such school—
  - (a) the approved admission number in relation to any relevant age group is the number specified in the proposals for acquisition of grant-maintained status for the school in accordance with section 62(8) of this Act;
  - (b) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (c) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (3) The approved admission number in relation to any relevant age group may be varied in the case of any such school with the approval of the Secretary of State.

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

**C50** Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

*Religious education*

**84 Religious education in former county schools.**

- (1) This section applies to a grant-maintained school which was a county school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) Subject to the following provisions of this section, in the case of a school to which this section applies the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broadly Christian character.
- (3) For the purposes of subsection (2) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (4) Every act of collective worship required by section 6 of this Act in the case of a school to which this section applies need not comply with subsection (2) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (5) Subject to subsections (2) and (4) above—
  - (a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection (2) above take place in such a school;
  - (b) the extent to which any act of collective worship in such a school which complies with subsection (2) above reflects the broad traditions of Christian belief; and
  - (c) the ways in which those traditions are reflected in any such act of collective worship;shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (6) below.
- (6) Those considerations are—
  - (a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropriate in their case; and
  - (b) their ages and aptitudes.
- (7) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education in accordance with the appropriate agreed syllabus.
- (8) That syllabus shall not provide for religious education to be given to pupils at such a school by means of any catechism or formulary which is distinctive of any particular

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religious denomination; but this provision is not to be taken as prohibiting provision in that syllabus for the study of such catechisms or formularies.

- (9) Subject to section 88(3) of this Act, for the purposes of subsection (7) above “the appropriate agreed syllabus” is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.
- (10) The arrangements for the collective worship in a school to which this section applies required by section 6 of this Act shall be made by the head teacher after consultation with the governing body.
- (11) Subsection (12) below applies where a secondary school to which this section applies is so situated that arrangements cannot conveniently be made for the withdrawal of pupils from the school in accordance with section 9 of this Act to receive religious education elsewhere.
- (12) If in any such case the governing body are satisfied—
- (a) that the parents of pupils in attendance at the school desire them to receive religious education in the school in accordance with the tenets of a particular religious denomination; and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school and for securing that the cost of providing such education to those pupils in the school will not fall upon the governing body;
- the governing body shall, unless they are satisfied that owing to any special circumstances it would be unreasonable to do so, provide facilities for the carrying out of those arrangements.
- (13) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in, or from being otherwise employed for the purposes of, a school to which this section applies.
- (14) No teacher in a school to which this section applies shall be required to give religious education or receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious education or by reason of his religious opinions or of his attending or omitting to attend religious worship.
- (15) References in this section to acts of collective worship in a school to which this section applies include references to any such act which under section 6 of this Act takes place otherwise than on the school premises.

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

**C51** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

## **85 Religious education in former controlled schools.**

- (1) This section applies to a grant-maintained school which was a controlled school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.



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- (2) Where the parents of any pupils in attendance at a school to which this section applies have requested (whether before or after the school became a grant-maintained school) that they may receive religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school; or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a controlled school;the foundation governors shall, unless they are satisfied that owing to special circumstances it would be unreasonable so to do, make arrangements for securing that such religious education is given to those pupils at the school during not more than two periods in each week.
- (3) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
  - (a) in accordance with any arrangements made under subsection (2) above; or
  - (b) subject to any such arrangements, in accordance with the appropriate agreed syllabus.
- (4) Subject to section 88(3) of this Act, for the purposes of subsection (3) above "the appropriate agreed syllabus" is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.
- (5) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.
- (6) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

**C52** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**86 Religious education in former aided or special agreement schools.**

- (1) This section applies to a grant-maintained school which was an aided or special agreement school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school; or
  - (b) in accordance with any arrangements made under this section.

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- (3) Where the parents of pupils in attendance at such a school—
- (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority for the area in which the school is situated for use in schools maintained by the authority; and
  - (b) cannot with reasonable convenience cause those pupils to attend any school at which that syllabus is in use;
- then, unless the governing body are satisfied that owing to any special circumstances it would be unreasonable to do so, they shall make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (4) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.
- (5) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

**C53** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**87 Changes in religious education.**

- (1) Where, in the case of a grant-maintained school to which section 84(2) to (8) or 85(3) of this Act for the time being applies, proposals that the required provision for religious education should be provision for religious education in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—
- (a) the required provision for religious education shall (subject to subsection (2) below) be provision for religious education either in accordance with the tenets of that religious denomination or in accordance with any arrangements made under section 86(3) of this Act (as applied by paragraph (b) below);
  - (b) section 86(3) to (5) of this Act shall apply in relation to the school; and
  - (c) subject to section 88(5) of this Act, any provisions of section 84 or 85 of this Act which apply in relation to the school shall cease to apply in relation to it.
- (2) Where, in the case of any grant-maintained school, proposals that the required provision for religious education should be provision for religious education otherwise than in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—
- (a) section 84(2) to (8) and (10) to (15) of this Act shall apply in relation to the school; and
  - (b) any provisions of section 85 or 86 of this Act which apply in relation to the school shall cease to apply in relation to it.

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- (3) Subject to section 88(3) of this Act, for the purposes of section 84(7) of this Act in its application to a school by virtue of subsection (2) above “the appropriate agreed syllabus” in relation to a school or to any pupils at the school is—
- (a) the agreed syllabus adopted, or deemed to be adopted, under Schedule 5 to the 1944 Act by the local education authority for the area in which the school is situated for use in the schools maintained by the authority at the time at which the proposals referred to in that subsection fall to be implemented; or
  - (b) where at that time that authority have adopted, or are deemed to have adopted, under that Schedule for use in those schools more than one agreed syllabus, whichever of them the governing body shall determine.
- (4) In this section “the required provision for religious education”, in relation to a school, means the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school’s basic curriculum.

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

**C54** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**88 Religious education: supplementary.**

- (1) Subsections (2) and (3) below shall have effect where any agreed syllabus for the time being adopted by a local education authority which is in use at a grant-maintained school (or for any pupils at the school) falls to be reconsidered under Schedule 5 to the 1944 Act.
- (2) The conference convened under that Schedule to reconsider the syllabus shall consult the governing body of the grant-maintained school before making any recommendation.
- (3) Where any new syllabus is adopted, or deemed to be adopted, by the authority under that Schedule in substitution for the existing syllabus, then, for the purposes of section 84(7) of this Act (including that subsection in its application to a school by virtue of section 87(2) of this Act) or 85(3) of this Act “the appropriate agreed syllabus” in relation to the grant-maintained school (or to the pupils in question) shall be—
- (a) the new syllabus so adopted, or deemed to be adopted; or
  - (b) if more than one new syllabus is so adopted, or deemed to be adopted, whichever of them the governing body shall determine.
- (4) Where, in accordance with section 84, 85 or 86 of this Act or any proposals approved under section 89 of this Act, religious education is given to pupils at a grant-maintained school otherwise than in accordance with an agreed syllabus, such religious education shall not be subject to inspection under section 77 of the 1944 Act.
- (5) Without prejudice to sections 85(5) and (6) and 86(4) and (5) of this Act, where—
- (a) immediately before a school to which section 85 or 86 of this Act applies became a grant-maintained school any of the provisions of section 30 of the 1944 Act applied with respect to a teacher in the school; or
  - (b) the provisions of section 84(13) and (14) of this Act apply with respect to a teacher employed in a grant-maintained school falling within subsection (1)

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of section 87 of this Act immediately before any proposals such as are referred to in that subsection fall to be implemented;  
those provisions shall continue to apply to him until he ceases to be employed as a teacher in the school.

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

C55 [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

*Control over alteration and change of site*

**89 Change of character or enlargement of grant-maintained school.**

- (1) Subject to subsection (2) below, where the governing body of a grant-maintained school intend to make a significant change in the character, or significant enlargement of the premises, of the school they shall publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals.
- (2) No proposals shall be published under this section for the purpose of making a significant change in the religious character of such a school unless the trustees of the school (if any) have given their consent in writing to the change in question.
- (3) Proposals published under this section shall include particulars—
  - (a) of the time or times at which it is intended to implement the proposals; and
  - (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented.
- (4) For the purposes of subsection (3)(b) above—
  - (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (5) Proposals published under this section shall be accompanied by a statement—
  - (a) describing any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs; and
  - (b) explaining the effect of subsection (6) below.
- (6) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the proposals to the Secretary of State—
  - (a) any ten or more local government electors;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (7) The proposals shall require the approval of the Secretary of State; and he may reject them, approve them without modification or, after consultation with the governing body by whom they were made, approve them with such modifications as he thinks desirable.

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- (8) It shall be the duty of the governing body of a grant-maintained school to implement any proposals with respect to the school which have been approved by the Secretary of State under this section; but the Secretary of State may, at the request of the governing body, modify any proposals which they are required to implement by virtue of this subsection.
- (9) Neither the governing body of a grant-maintained school nor any other person shall do or undertake anything for which proposals are required to be published and submitted in accordance with this section until such proposals have been so published and submitted and approved by the Secretary of State.
- (10) The Secretary of State may in any case allow such steps to be taken by the governing body of a grant-maintained school pending compliance with the requirements of this section and the giving by him of his approval of any such proposals as he considers reasonable in the circumstances of the case.
- (11) No decision taken at a meeting of the governing body of a grant-maintained school that would result in the submission of proposals under this section shall have effect unless it is confirmed at a second meeting of the governing body held not less than twenty-eight days after the first.

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

**C56** S. 89(2) saved (1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2, SIF 41:1\)](#), s. 3(5);  
Archbishops' Instrument 1991 No. 1 (made 26.7.1991)

## **90 Approval of school premises on change of character or enlargement.**

- (1) Where the governing body of a grant-maintained school submit proposals under section 89 of this Act, they shall, at such time and in such form and manner as the Secretary of State may direct, submit to him for his approval—
  - (a) particulars of the access provision made or to be made with respect to the premises or proposed premises of the school indicating the extent to which the provision conforms with the minimum requirements of the Design Note so far as they are relevant to school premises; and
  - (b) such other particulars with respect to the premises or proposed premises of the school as he may require.
- (2) In subsection (1)(a) above—

“access provision”, in relation to school premises, means provision as to the means of access both to and within the premises; and

“the Design Note” means Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or any document replacing that Note prescribed by regulations under [<sup>F11</sup>the Town and Country Planning Act 1990].
- (3) Where the proposals are approved, the governing body shall implement the proposals in accordance with the particulars submitted under this section as approved by the Secretary of State.

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- (4) In section 63(2) of the 1944 Act (exemption from building regulations, etc.) references to plans approved by the Secretary of State shall include references to any particulars submitted to and approved by him under this section.

**Textual Amendments**

**F11** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 78](#)

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

**C57** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**91 Change of site.**

The Secretary of State may by order authorise the transfer of a grant-maintained school to a new site; and no such school shall be transferred to a new site without the authority of an order under this section.

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

**C58** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

*Discontinuance of grant-maintained schools*

**92 Discontinuance by governing body.**

- (1) The governing body of a grant-maintained school shall not discontinue the school except in pursuance of proposals published and approved under this section.
- (2) Where the governing body of such a school—
- (a) decide by a resolution passed at a meeting of that body (“the first resolution”) to publish proposals under this section for the discontinuance of the school and confirm that decision by a resolution (“the second resolution”) passed at a subsequent meeting of that body held not less than twenty-eight days after that at which the first resolution was passed; and
  - (b) give notice in writing of the second resolution to the local education authority for the area in which the school is situated;
- they may within the period of six months beginning with the date of the second resolution publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and shall submit to him a copy of the published proposals.
- (3) The notice required by subsection (2)(b) above shall be given as soon as practicable after the passing of the resolution to which it refers.
- (4) The published proposals—
- (a) shall specify the proposed date of discontinuance of the school; and
  - (b) shall be accompanied by a statement—

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- (i) indicating whether or not any proposals with respect to the establishment of a new school on the premises of the school have been published under section 12 or 13 of the 1980 Act (which relate respectively to county schools and voluntary schools); and
  - (ii) explaining the effect of subsection (5) below.
- (5) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the Secretary of State—
  - (a) any ten or more local government electors;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (6) The Secretary of State may reject any proposals under this section, approve them without modification or, after consultation with the governing body, approve them with the substitution of a different date for the date of discontinuance proposed.
- (7) If the Secretary of State approves proposals under this section with respect to a grant-maintained school—
  - (a) the governing body of the school shall cease to conduct the school; and
  - (b) the Secretary of State’s duty to maintain the school shall cease;on the date of discontinuance specified in the proposals as approved or on any other date subsequently specified by the Secretary of State at the request of the governing body (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously specified under this subsection).

### **93 Withdrawal of grant by Secretary of State.**

- (1) The Secretary of State may cease to maintain a grant-maintained school by giving notice of his intention to do so to the governing body of the school under this section; and on the date specified in any such notice as the date on which the Secretary of State intends to cease to maintain the school the Secretary of State’s duty to maintain the school shall cease.
- (2) Subject to the following provisions of this section—
  - (a) a notice under this section may not specify as the date on which the Secretary of State intends to cease to maintain such a school a date falling less than seven years after the date of the notice; and
  - (b) before giving such a notice the Secretary of State shall consult—
    - (i) the governing body of the school;
    - (ii) the local education authority for the area in which the school is situated;
    - (iii) the statutory diocesan body responsible for schools in the diocese in which the school is situated; and
    - (iv) the former maintaining authority, if that authority is not the local education authority for the area in which the school is situated.
- (3) Subsection (2) above shall not apply where the Secretary of State is satisfied, in the case of any grant-maintained school, that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school on all or any of the following grounds—
  - (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost;

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- (b) that the governing body have failed for a significant period of time to carry out their duties under Chapter I of this Part;
  - (c) that the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under this Act or any other enactment.
- (4) In any case within subsection (3) above, the Secretary of State may give to the governing body of the school a notice stating the grounds on which he considers that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school together with full particulars of the matters relevant to each such ground.
- (5) Where any of the matters of which particulars are given in a notice under subsection (4) above are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall also state that the Secretary of State intends to cease to maintain the school on a date specified in the notice.
- (6) Where subsection (5) above does not apply in the case of any notice under subsection (4) above, the notice shall—
- (a) state that the Secretary of State intends to cease to maintain the school unless the matters of which particulars are given in the notice are remedied;
  - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters; and
  - (c) specify the time, not being less than six months after the date of the notice, within which the governing body are required to take those measures.
- (7) Where the governing body of a grant-maintained school fail to take the measures required by a notice under subsection (4) above within the time specified in the notice or allowed by any previous notice under this subsection, the Secretary of State shall within the period of two months beginning with the date next following the end of that time either—
- (a) give notice to the governing body extending the time within which those measures are required to be taken; or
  - (b) after consulting the local education authority for the area in which the school is situated, give notice that he intends to cease to maintain the school on a date specified in the notice.
- (8) The Secretary of State may by notice given to the governing body—
- (a) withdraw any notice under subsection (1), (4) or (7)(b) above; or
  - (b) vary—
    - (i) any notice under subsection (1) or (7)(b) above; or
    - (ii) any notice under subsection (4) above to which subsection (5) above applies;
 

by substituting a later date for the date for the time being specified in the notice as the date on which he intends to cease to maintain the school; or
  - (c) vary any notice under subsection (4) above to which subsection (6) above applies, so far as relates to the measures required by the notice to remedy the matters of which particulars are given in the notice.
- (9) If by virtue of subsection (8)(c) above the Secretary of State varies any notice under subsection (4) above so as to require different measures to be taken he shall also substitute for the time specified in the notice as the time within which the governing body are required to take the measures specified in the notice as varied a time ending—



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- (a) not less than six months after the date of the notice of variation; and
  - (b) where the time so specified has been extended under subsection (7) above, not earlier than that time as so extended.
- (10) Any variation under subsection (9) above of the time specified in a notice under subsection (4) above is without prejudice to any further extension of that time under subsection (7) above.
- (11) Any notice under this section shall be in writing; and references in this section to the date of any such notice given to a governing body under this section are references to the date on which it is given to the governing body.

#### *Winding up and disposal of property*

### **94 Winding up.**

- (1) Where in the case of any grant-maintained school—
- (a) proposals for discontinuance of the school have been approved under section 92 of this Act; or
  - (b) the Secretary of State has given notice to the governing body of the school under section 93 of this Act specifying a date on which he intends to cease to maintain the school;
- the Secretary of State may by order make provision for the winding up of the governing body of the school and the disposal of the school property.
- (2) An order made under this section may—
- (a) set out a proposed timetable for the winding up and, in particular, for—
    - (i) securing that all property belonging to the governing body or held by any trustees on trust for the purposes of the school is brought into the custody or control of that body or those trustees (as the case may require);
    - (ii) discharging any liabilities of the governing body;
    - (iii) making any provision mentioned in paragraphs (d) to (f) below; and
    - (iv) the preparation and audit of the governing body's final accounts;
  - (b) make provision with respect to the exercise of the functions of the governing body in relation to the school, including in particular—
    - (i) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State;
    - (ii) provision authorising any of those functions to be exercised by any member of the governing body specified in the order; and
    - (iii) provision for the application of the seal of the governing body to be authenticated by the signature of any person so specified;
  - (c) make provision for conferring or imposing functions on the governing body in relation to the winding up and the management and disposal of the school property;
  - (d) make any provision authorised by section 95 of this Act for or in connection with the transfer of the school property;

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- (e) make any provision authorised by section 97 of this Act with respect to the discharge of the liabilities of the governing body and the payment of the costs of the winding up;
  - (f) make any provision authorised by section 98 or 99 of this Act in relation to capital expenditure in respect of the school premises;
  - (g) require the governing body to give to persons employed by them notice terminating their contracts of employment as from a date specified in the order; and
  - (h) appoint a date on which the governing body is to be dissolved.
- (3) Below in this Chapter—
- (a) references to a governing body in liquidation are references to a governing body in respect of whom any order has been made under this section; and
  - (b) references, in relation to any such governing body or the grant-maintained school conducted, or formerly conducted, by any such body, to the dissolution date are references to the date appointed in relation to that governing body by virtue of subsection (2)(h) above.
- (4) The Secretary of State may make grants to a governing body in liquidation for the purpose of—
- (a) discharging any liabilities of that governing body (other than section 105 loan liabilities); and
  - (b) meeting any costs incurred by that governing body for the purposes of the winding up under this section.
- (5) The Secretary of State may impose on a governing body to whom any such payment is made such requirements as he may from time to time determine (whether before, at or after the time when the payment in question is made).
- (6) The Secretary of State shall not by an order under this section appoint a date on which a governing body in liquidation is to be dissolved unless he is satisfied that—
- (a) all liabilities of the governing body (other than any section 105 loan liabilities which fall to be transferred or terminated under section 97 of this Act) have been discharged;
  - (b) all costs of the winding up have been met; and
  - (c) any provision authorised by any of sections 95 to 99 of this Act which is possible and expedient in the circumstances of the case has been made and anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.
- (7) In this Chapter—
- (a) references, in relation to a governing body in liquidation, to section 105 loan liabilities are references to any liabilities in respect of any loans made under section 105 of the 1944 Act (loans by Secretary of State towards initial capital expenditure) which were transferred to the governing body under section 74 of this Act;
  - (b) references, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, to the school property are references to—
    - (i) the premises used or formerly used for the purposes of the school;
    - (ii) any interest belonging to the governing body or held by any trustees on trust for the purposes of the school in any dwelling-house used or

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- held or formerly used or held for occupation by a person employed to work at the school; and
- (iii) all other equipment and property used or held or formerly used or held for the purposes of the school, with the exception of money and any investments to which section 96 of this Act applies; and
- (c) references to a grant-maintained school formerly conducted by a governing body in liquidation apply in circumstances where the school has been discontinued before the dissolution date and refer to the school as conducted immediately before discontinuance (and “formerly” in sub-paragraphs (i) to (iii) of paragraph (b) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).

## 95 Disposal of school property.

(1) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) proposals under section 13 of the 1980 Act that any school proposed to be established on the premises of the grant-maintained school should be maintained by a local education authority as a voluntary school have been approved;

an order under section 94 of this Act may vest the school property or any part of it in persons specified in the order to be held on trust for the purposes of the proposed school, subject to the payment by those persons of the appropriate consideration.

(2) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) any persons propose to establish on the premises of the school a new independent school;

an order under section 94 of this Act may vest the school property or any part of it in the persons proposing to establish the new school, subject to the payment by those persons of the appropriate consideration.

(3) In any case within subsection (1) or (2) above, the appropriate consideration is payable to the former maintaining authority, subject to any provision made by virtue of section 97 or 99 of this Act.

(4) Where in the case of a grant-maintained school conducted or formerly conducted by a governing body in liquidation which was a voluntary school immediately before it became a grant-maintained school proposals by a local education authority for the establishment of a new county school on the premises of the school have been published under section 12 of the 1980 Act and either—

- (a) the proposals have been approved by the Secretary of State under that section; or
- (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section;

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an order under section 94 of this Act may vest any part of the school property which is held by persons on trust for the purposes of the school or, where all the school property is so held, the whole of the school property in the local education authority concerned beneficially, subject to the payment by that authority of the appropriate consideration.

- (5) In any case within subsection (4) above the appropriate consideration is payable to the persons from whom the property is transferred, subject to any provision made by virtue of section 97 or 98 of this Act.
- (6) Subject to subsections (7) and (10) below, any school property held by a governing body in liquidation immediately before the dissolution date shall vest on that date in the former maintaining authority.
- (7) Subsections (1), (2) and (6) above shall not apply to any school property which is held by persons on trust for the purposes of the grant-maintained school concerned; but an order under section 94 of this Act may vest the whole or any part of any property excluded from the application of subsection (1), (2) or (6) above by virtue of this subsection in such local education authority or other person as may be specified in the order.
- (8) Where it appears to the Secretary of State that any school property to be vested in a local education authority by an order made by virtue of subsection (7) above—
  - (a) was wholly or mainly provided at the expense of a local education authority or a former authority; or
  - (b) will be held by the authority for the purposes of a county or voluntary school proposed to be established on the premises of the grant-maintained school concerned;
 the order may vest the property in the authority beneficially.
- (9) Subject to subsection (8) above, an order made by virtue of subsection (7) above shall vest the school property in the local education authority or other person concerned on trust for such purposes as may be specified in the order.
- (10) Subsection (6) above shall not apply to any items of property excluded from transfer by the Secretary of State; and the Secretary of State may exclude any item, or any class or description of items, of property from transfer if he is satisfied that that item, or items of that class or description, were procured otherwise than at the expense of the authority concerned and that it is appropriate on that account to exclude them from transfer to that authority.
- (11) An order under section 94 of this Act may vest any property excluded from a transfer under subsection (6) above by virtue of subsection (10) above in such persons as may be specified in the order on such terms as may be so specified.
- (12) Any property vested in any person by an order made by virtue of this section shall so vest on such date as may be specified in the order as the transfer date.
- (13) In this section “the appropriate consideration” means, in relation to any school property—
  - (a) so far as it consists of premises (including any interest in a dwelling-house such as is mentioned in section 94(7)(b)(ii) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at the transfer date or as at a date no earlier than six months before that date; and
  - (b) so far as it consists of other property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.

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- (14) Nothing in any provision included in an order under section 94 of this Act by virtue of this section shall affect any interest or right of any person in, to or over any school property which is held by that person otherwise than for the purposes of the school.

## 96 Surplus money and investments.

- (1) Subject to subsection (2) below—
- (a) any money held by a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the <sup>M5</sup>Banking Act 1979); and
  - (b) any investments to which this section applies held by such a governing body;
- after discharge of all their liabilities (other than any not required to be discharged before the dissolution date is appointed) and all costs of the winding up shall be paid or (as the case may be) transferred to the Secretary of State.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
- (a) that the money or that part of it was derived or (as the case may be) those investments were acquired otherwise than from grants paid by him under this Chapter; and
  - (b) that it ought to be paid, or the investments ought to be transferred, to a local education authority or to some other person;
- he may require the governing body to pay that money, or an amount equal to the part in question, or to transfer those investments, to such local education authority or other person as he may specify, either beneficially or to be held on trust for such purposes as he may specify.
- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the <sup>M6</sup>Financial Services Act 1986 which falls within—
- (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.
- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of that Act which amends those paragraphs for the purposes of all the provisions of that Act.

### Marginal Citations

- M5 1979 c. 37.  
M6 1986 c. 60.

## 97 Discharge, transfer and termination of liabilities, etc.

- (1) Subsection (2) below applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation an order is made

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by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises (“the new owners”).

- (2) Where this subsection applies, an order under section 94 of this Act may do either or both of the following things, that is to say—
  - (a) require the new owners to discharge any liabilities of the governing body in respect of redundancy payments; and
  - (b) require an amount equal to the whole or any part of the amount required for—
    - (i) discharging any liabilities of the governing body other than liabilities required by virtue of paragraph (a) above to be discharged by the new owners; and
    - (ii) meeting the costs of the winding up under section 94 of this Act; to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the new owners to the Secretary of State.
- (3) This subsection applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation proposals under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school have been approved.
- (4) Where in any case to which subsection (3) above applies the school was an aided or special agreement school immediately before it became a grant-maintained school—
  - (a) if the Secretary of State has directed that the proposed school shall be an aided school, any section 105 loan liabilities of the governing body shall on the dissolution date be transferred to and become liabilities of the temporary governing body of the new school (subject to any variation of the terms applicable in relation to the loans in question immediately before that date that may be agreed between the Secretary of State and that governing body); and
  - (b) in any other case, any such liabilities shall be terminated on the dissolution date.
- (5) Where—
  - (a) a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of a discontinued grant-maintained school; and
  - (b) any liabilities of the governing body of that grant-maintained school have been terminated under subsection (4)(b) above;

the amount of those liabilities shall be treated for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.
- (6) Where in any case to which subsection (3) above applies the school premises are vested in any persons by an order made by virtue of section 95(1) of this Act, an order under section 94 of this Act may require an amount equal to the whole or any part of the amount required for discharging any liabilities of the governing body and meeting the costs of the winding up to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the persons in whom the premises are so vested to the Secretary of State.
- (7) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation the premises of the school are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes

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of a new county school, an order under section 94 of this Act may require an amount equal to the amount of any section 105 loan liabilities of the governing body to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the authority to the Secretary of State.

- (8) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation—
- (a) the premises of the school—
    - (i) are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school;
    - (ii) are vested beneficially in such an authority by an order made by virtue of section 95(7) and (8) of this Act; or
    - (iii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
  - (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);

the Secretary of State may require the authority to pay to him the whole or any part of the compensation or purchase money paid in respect of the acquisition in or towards repayment of any expenditure incurred by him in making grants for the purpose of discharging any liabilities of the governing body and meeting the costs of the winding up.

## **98 Capital expenditure: former voluntary schools.**

- (1) This section applies where a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a voluntary school immediately before it became a grant-maintained school.
- (2) Subsection (3) below applies where in any such case—
- (a) an order is made by virtue of section 95(4) of this Act vesting the premises of the school in a local education authority for the purposes of a new county school; or
  - (b) no such order has been made and no proposals have been approved under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school;

provided that, where paragraph (b) above applies, the Secretary of State is satisfied that no proposals for the establishment on those premises of a new county school are likely to be published, and no such proposals under section 13 are likely to be published or approved, before the date he proposes to appoint as the dissolution date.

- (3) Where this subsection applies, an order under section 94 of this Act shall determine—
- (a) the amount of any expenditure incurred by the Secretary of State in paying capital grant to the governing body of the school (“the capital grant amount”);
  - (b) the amount of any expenditure incurred by him, otherwise than in connection with repairs, in respect of any premises used for the purposes of the school before it became a grant-maintained school (“the prior expenditure amount”); and
  - (c) an amount representing the appropriate share in the value of the school premises of the former maintaining authority (“the locally funded amount”).

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For the purposes of paragraph (c) above the appropriate share of a local education authority in the value of any school premises is such part of the value of those premises as the Secretary of State determines to be appropriate having regard to the extent to which those premises were provided at the expense of the local education authority concerned or a former authority.

(4) Subject to subsection (7) below, in a case within subsection (2)(a) above, an order under section 94 of this Act may—

(a) require an amount equal to the whole or any part of—

- (i) the capital grant amount; and
- (ii) the prior expenditure amount;

to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the local education authority concerned to the Secretary of State; and

(b) either—

- (i) where the local education authority concerned are the former maintaining authority, provide for the consideration otherwise so payable to be reduced by an amount equal to the locally funded amount; or
- (ii) in any other case, require an amount equal to the locally funded amount to be deducted from that consideration and paid by the local education authority concerned to the former maintaining authority.

(5) Subject to subsection (7) below, in a case within subsection (2)(b) above, an order under section 94 of this Act may require any persons in whom the school premises are vested—

(a) to pay to the Secretary of State an amount equal to the whole or any part of—

- (i) the capital grant amount; and
- (ii) the prior expenditure amount; and

(b) to pay to the former maintaining authority an amount equal to the locally funded amount.

(6) Subject to subsection (7) below, where in a case within subsection (2)(b) above—

- (a) no requirement has been imposed by virtue of subsection (5) above; and
- (b) any person acquires the school premises or any part of them (whether compulsorily or otherwise) from the persons in whom they were vested immediately before an order was made under section 94 of this Act (or, where more than one such order has been made, before the first of them) or their successors;

the Secretary of State may impose on the persons from whom the school premises were acquired any requirement that could have been imposed by virtue of subsection (5) above.

(7) No provision may be made in an order under section 94 of this Act by virtue of subsection (4) or (5) above, and no requirement may be imposed by virtue of subsection (6) above, in any case where—

- (a) that section applies in relation to the school in question by virtue of the fact that the Secretary of State has given notice to the governing body of the school specifying a date on which he intends to cease to maintain the school; and
- (b) the notice was given in accordance with section 93(2) of this Act.



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- (8) Where in any case to which this section applies a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of the grant-maintained school, any capital expenditure incurred by the Secretary of State in relation to the grant-maintained school shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure so incurred (otherwise than in connection with repairs) in respect of the premises of the new school.
- (9) In subsection (8) above “capital expenditure” means any such expenditure as is mentioned in subsection (3)(a) or (b) above.

## **99 Capital expenditure: former county schools.**

- (1) This section applies where—
- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) the Secretary of State has incurred any expenditure in paying capital grant to the governing body of the school (“the capital grant expenditure”).
- (2) Where in any case to which this section applies—
- (a) an order is made by virtue of section 95(1) of this Act vesting the school premises in any persons to be held on trust for the purposes of a proposed voluntary school; and
  - (b) the Secretary of State has directed that the proposed school shall be an aided school;
- an order under section 94 of this Act may provide for the consideration otherwise payable by virtue of section 95 to the local education authority concerned to be reduced by an amount equal to the whole or any part of the capital grant expenditure.
- (3) Any reduction by virtue of subsection (2) above shall be disregarded in determining the amount of any sums expended by the persons in whom the school premises are vested by the order on the provision of a site for the new school or of the school buildings; but an amount equal to the amount of that reduction shall be treated as having been paid by the Secretary of State to the governing body of the new school—
- (a) as to so much of it as does not exceed 85 per cent. of the amount of the sums so expended, by way of a grant under section 1(2)(a) of the <sup>M7</sup>Education Act 1967; and
  - (b) as to the balance (if any), by way of a loan made under section 105 of the 1944 Act on such terms as the Secretary of State may specify.
- (4) Where in any case to which this section applies—
- (a) an order is made as mentioned in subsection (2)(a) above; but
  - (b) no direction that the proposed school shall be an aided school has been given before the dissolution date;
- subsection (5) below shall apply in relation to the capital grant expenditure.
- (5) Where this subsection applies the capital grant expenditure shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.

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- (6) Where in any case to which this section applies an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises, an order under section 94 of this Act may require an amount equal to the whole or any part of the capital grant expenditure to be deducted from the consideration otherwise payable by virtue of section 95 to the local education authority concerned and paid by the persons in whom the property is so vested to the Secretary of State.
- (7) Where in any case to which this section applies—
- (a) the school premises—
    - (i) are vested beneficially in a local education authority by an order made by virtue of section 95(7) and (8) of this Act; or
    - (ii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
  - (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);
- the Secretary of State may require the authority to pay to him the whole or any part of the consideration or purchase money paid in respect of the acquisition in or towards repayment of the capital grant expenditure.

#### **Marginal Citations**

**M7** 1967 c. 3.

### *Miscellaneous and supplementary*

#### **100 Provision of benefits and services for pupils by local education authorities.**

- (1) Where—
- (a) a local education authority are under a duty, or have power (whether by virtue of this section or otherwise), to provide any benefits or services for pupils; and
  - (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools maintained by a local education authority and in relation to pupils at grant-maintained schools;
- the authority shall in performing the duty, or exercising the power, treat pupils at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at schools maintained by a local education authority.
- (2) In section 50(1) of the 1944 Act (power of local education authority to provide board and lodging for pupils) after the words “voluntary school” there shall be inserted the words “grant-maintained school”.
- (3) In section 55 of the 1944 Act (provision of transport and other facilities), after subsection (3) there shall be inserted the following subsection—
- “(4) Arrangements made by a local education authority under subsection (1) above shall make provision for pupils at grant-maintained schools which is no less favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority.”

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This subsection is without prejudice to the generality of subsection (1) above.

- (4) In section 5 of the <sup>M8</sup>Education (Miscellaneous Provisions) Act 1948 (power of local education authority to provide clothing for pupils)—
- (a) in subsection (1), the words “or at a grant-maintained school” shall be inserted at the end of paragraphs (a) and (c); and
  - (b) the words “or a grant-maintained school” shall be inserted at the end of subsection (2)(a), after the words “maintained by them” in subsection (3)(a) and after the words “special school” in subsection (4).

**Marginal Citations**

**M8** 1948 c. 40.

**101 Application of proceeds of disposal of premises.**

- (1) Where—
- (a) the Secretary of State pays capital grant in respect of any transfer of a grant-maintained school to a new site authorised under section 91 of this Act; and
  - (b) the governing body or any trustees of the school possess, or are or may become entitled to, any sum representing the proceeds of disposal of other premises which have been used for the purposes of the school;
- the governing body or (as the case may be) the trustees or their successors shall pay to the Secretary of State the whole of that sum, if it is equal to or less than the amount of the capital grant, and otherwise so much of it as is required to repay that amount.
- Any sum so paid shall, in a case where any interest in the new site has vested in any trustees of the school, be treated for the purposes of section 14 of the <sup>M9</sup>Schools Sites Act 1841 (sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.
- (2) Subject to subsection (4) below, where the governing body of any grant-maintained school apply to the Secretary of State for his consent to the disposal of—
- (a) any premises transferred to the governing body under section 74 of this Act from the former maintaining authority; or
  - (b) any premises acquired wholly or partly from the proceeds of the disposal of any premises so transferred or of any premises so acquired;
- he may require the premises or any part of the premises to be transferred to that authority, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.
- (3) Subject to subsection (4) below, where the governing body dispose of any premises within subsection (2)(a) or (b) above the Secretary of State may require the governing body to pay to the former maintaining authority the whole or any part of the proceeds of disposal in any case where he does not impose any requirement under subsection (2) above.
- (4) Subsection (2) above shall not apply where the occasion of any disposal of premises by the governing body is a transfer of the school to a new site in respect of which the Secretary of State has paid capital grant; and in relation to any disposal occasioned by such a transfer the reference in subsection (3) above to the proceeds of disposal

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shall be read as a reference to such part (if any) of those proceeds as remains after repayment of the amount of that capital grant in accordance with subsection (1) above.

- (5) For the purposes of this section the Secretary of State is to be regarded as paying capital grant in respect of the transfer of a grant-maintained school to a new site if he pays such grant in respect of the acquisition of the new site or the provision on that site of the school buildings or of any other buildings forming part of the new school premises.
- (6) For the purposes of this section—
- (a) the governing body or trustees of a grant-maintained school are to be regarded as disposing of any premises if those premises are acquired from them, whether compulsorily or otherwise; and
  - (b) references to the proceeds of disposal are references, in relation to any disposal of premises by any such governing body or trustees, to the compensation or purchase money paid in respect of the acquisition from them of those premises.
- (7) In subsection (6) above—
- (a) references to the acquisition of premises from the governing body or the trustees of a grant-maintained school include, in the case of any premises held under a tenancy to which Part II of the <sup>M10</sup>Landlord and Tenant Act 1954 applies, the termination of that tenancy under that Part of that Act; and
  - (b) the reference to the purchase money paid in respect of such an acquisition includes a reference to any compensation paid by the landlord on the quitting of any such premises by the governing body or the trustees of the school (whether or not the compensation is required to be paid by section 37 of that Act).

In this subsection expressions to which a meaning is given for the purposes of that Act have the same meaning as in that Act.

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

**C59** Ss. 100-101 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**Marginal Citations**

**M9** 1841 c. 38.

**M10** 1954 c. 56.

**102 Variation of trust deeds relating to grant-maintained schools, etc.**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to any school as, after consultation with the governing body of the school and the trustees (if any), appear to him to be requisite—
- (a) in consequence of the approval of proposals for acquisition of grant-maintained status for the school;
  - (b) for removing any inconsistency between the provisions of that trust deed or other instrument and any provisions included or proposed to be included in any instrument or articles of government made for the school under this Chapter which it appears to him to be expedient to remove in the interests of the school; or

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- (c) in consequence of any proposals with respect to a change in the character or an enlargement of the premises of the school which fall to be implemented under section 89 of this Act.
- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.
- (3) Any provision of any instrument relating to any land held for the purposes of any voluntary school which—
- (a) confers on any person an option to acquire an interest in that land; or
  - (b) provides (in whatever terms) for the determination or forfeiture of any such interest;
- in the event of the school's ceasing to be a voluntary school or (as the case may be) ceasing to be maintained by a specified local education authority shall, if the school becomes a grant-maintained school, have effect as if the event referred to were the school's ceasing to be a school which is either a grant-maintained school or a voluntary school.

### **103 Publication of information and reports and returns by governing bodies of grant-maintained schools.**

- (1) The governing body of every grant-maintained school shall publish, at such times and in such manner as may be required by regulations made by the Secretary of State, such information with respect to the school as may be so required.
- (2) The governing body of every such school shall make such reports and returns, and give such information, to the Secretary of State as he may require.
- (3) The governing body of every such school shall make such reports and returns, and give such information, to any local education authority by whom any functions are exercisable—
- (a) in relation to the school; or
  - (b) in relation to registered pupils at the school;
- as the authority may require for the purpose of the exercise of those functions.

### **104 Interpretation of Chapter IV.**

- (1) In this Chapter—
- (a) references to the proposed date of implementation are references—
    - (i) in relation to any school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 62 of this Act, to the date specified in accordance with section 61(4)(f) of this Act in the information given for the purposes of the originating ballot to persons eligible to vote in that ballot (within the meaning of section 61); and
    - (ii) in relation to any school in respect of which such proposals are pending, to the date specified in the proposals as the proposed date of implementation;
  - (b) references, in relation to any school in respect of which such proposals have been approved, to the proposals are references to the proposals as approved, subject to any modifications of those proposals under section 68 of this Act;

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- (c) references to the character of a school are references to the kind of school it is determined by reference to any matter relating to—
    - (i) the provision of education at the school; or
    - (ii) the arrangements for admission of pupils to the school;
 the alteration of which would amount to a change in the character of the school;
  - (d) references to a change in the character of a school include, in particular, changes in character resulting from education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls or for girls as well as boys, or from the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude;
  - (e) references to a relevant age group are references to an age group in which pupils are or will normally be admitted to the school in question;
  - (f) references to a governor of an elected category are references to a person who is a parent or teacher governor within the meaning of the 1986 Act or this Chapter (as the context may require);
  - (g) references, in relation to a vacancy for a governor of an elected category on the existing governing body of a school in respect of which proposals are required to be or have been published under section 62 of this Act, to the procedure applicable under the 1986 Act in relation to filling the vacancy are references—
    - (i) except where any provision made by virtue of section 5 of that Act (appointment of parent governors by governing body) applies, to the holding of an election under that Act; and
    - (ii) where any such provision applies, to the making of an appointment in accordance with that provision;
  - (h) references to the authority responsible for election arrangements under the 1986 Act in relation to a school are references to the authority or body by whom all necessary arrangements for any election of parent governors or teacher governors to the governing body of the school fall to be made under section 15(2) of that Act (which imposes responsibility for those arrangements on the local education authority in relation to county, controlled and maintained special schools and on the governing body of the school concerned in relation to aided and special agreement schools);
  - (i) references, in relation to a grant-maintained school, to the former maintaining authority shall be read, in any case where—
    - (i) the school was maintained by ILEA immediately before it became a grant-maintained school; and
    - (ii) the functions formerly exercisable by ILEA in relation to, or in relation to registered pupils at, the school are by virtue of section 166(7) of this Act exercisable by an inner London council or any other local education authority;
 as references to that council or authority; and
  - (j) references, in relation to such a school, to school property include, in the case of such property as is mentioned in section 94(7)(b)(iii) of this Act, references to any right to such property.
- (2) In relation to any proposals for acquisition of grant-maintained status required to be published under section 62 of this Act in respect of any school, the reference in subsection (1)(a) above to the originating ballot is a reference—

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- (a) where subsection (1) of that section applies, to the ballot by reference to which it applies; and
  - (b) where the proposals are required to be published by virtue of a requirement imposed by the Secretary of State under subsection (4) or (12) of that section, to the last ballot held in accordance with section 61 of this Act in relation to the school before that requirement was imposed.
- (3) In this Chapter—
- “incorporation date” means, in relation to a grant-maintained school, the date on which the initial governing body of the school is incorporated under this Chapter; and
  - “premises” includes any interest in or easement, right or charge in, to or over premises.
- (4) The following table shows provisions defining or otherwise explaining expressions used in this Chapter (other than provisions defining or explaining an expression used only in the same section)—

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dissolution date	section 94(3)(b)
eligible governor of an elected category	section 71
first governor	section 53(8) or 64(5) (as the context may require)
former maintaining authority	section 74(8) and subsection (1)(i) above.
foundation governor	section 53(8) or 64(5) (as the context may require)
governing body and initial governing body of a grant-maintained school	section 53(11) and (12)
governing body in liquidation	section 94(3)(a)
grant-maintained school formerly conducted by a governing body in liquidation	section 94(7)(c)
grant regulations	section 79(2)
parent governor	section 53(8) or 64(5) (as the context may require)
proposals for acquisition of grant-maintained status	section 52(4)(a)
pending proposals for acquisition of grant-maintained status	section 68(2)
the relevant particulars	section 62(16)
section 105 loan liabilities	section 94(7)(a)
school property	section 94(7)(b) and subsection (1)(j) above
a school which is eligible for grant-maintained status	section 52(5) to (9)

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teacher governor

section 53(8) or 64(5) (as the context may require)

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- (5) Any notification to the governing body of a school for the purposes of any provision of this Chapter may be given, and withdrawn, in such manner as the governing body may require.
- (6) In subsection (1)(i) above, “ILEA” and “inner London council” have the same meanings as in Part III of this Act.

## CHAPTER V

### MISCELLANEOUS

#### *City colleges*

#### **105 Agreements for establishment, etc., of city technology colleges and city colleges for the technology of the arts.**

- (1) The Secretary of State may enter into an agreement with any person under which—
- (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of either—
    - (i) an independent school to be known as a city technology college; or
    - (ii) an independent school to be known as a city college for the technology of the arts;
 and having (in each case) such characteristics as are specified in the agreement and in subsection (2) below; and
  - (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.
- (2) The characteristics mentioned above are that the school—
- (a) is situated in an urban area;
  - (b) provides education for pupils of different abilities who have attained the age of eleven years but not the age of nineteen years and who are wholly or mainly drawn from the area in which the school is situated; and
  - (c) has a broad curriculum with an emphasis—
    - (i) in the case of a school to be known as a city technology college, on science and technology; or
    - (ii) in the case of a school to be known as a city college for the technology of the arts, on technology in its application to the performing and creative arts.
- (3) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—
- (a) conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school; and
  - (b) such other conditions and requirements with respect to the school as are specified in the agreement.



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- (4) Payments under an agreement under this section may be in respect of capital or current expenditure and, in so far as they relate to the latter, the agreement shall provide for their continuance (subject to the fulfilment of the conditions and requirements mentioned in subsection (3) above) for a period of not less than seven years or for an indefinite period terminable by the Secretary of State by not less than seven years written notice.
- (5) Where such payments relate to capital expenditure, the agreement shall provide for the repayment to the Secretary of State, in the event at any time of the school discontinuing or ceasing to have the characteristics specified in the agreement and in subsection (2) above, of sums determined by reference to—
  - (a) the value at that time of the school premises and other assets held for the purposes of the school; and
  - (b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement.
- (6) Without prejudice to subsection (4) above an agreement under this section may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure—
  - (a) incurred by that person in carrying out the undertakings mentioned in subsection (1) above; or
  - (b) incurred by that person (otherwise than by virtue of subsection (5) above) in consequence of the termination of the agreement.

#### *Charges in maintained schools*

### **106 Prohibition of charges, etc., in maintained schools.**

- (1) No charge shall be made in respect of admission to any maintained school.
- (2) Subject to subsection (3) below and section 107 of this Act, no charge shall be made in respect of the education provided for registered pupils at any such school during school hours.
- (3) Subsection (2) above shall not apply in relation to—
  - (a) individual tuition in playing any musical instrument; or
  - (b) any education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.
- (4) No charge shall be made in respect of education provided for a registered pupil at any maintained school where the education is education to which subsection (2) above does not apply if it is—
  - (a) required as part of any syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school; or
  - (b) provided in pursuance of any of the duties imposed by section 10(1)(b) or (2) (a) of this Act;

but this subsection shall not apply in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.
- (5) No charge shall be made in respect of the entry of a registered pupil at any maintained school for any prescribed public examination in any syllabus for that examination for which the pupil has been prepared at the school.

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- (6) Neither the parent of any such pupil nor the pupil himself shall be required to pay for or supply any materials, books, instruments or other equipment for use for the purposes of or in connection with—
- (a) education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or
  - (b) any syllabus for a prescribed public examination which is a syllabus for which the pupil has been prepared at the school.
- (7) No charge shall be made in respect of transport provided for a registered pupil at any such school where the transport is either—
- (a) incidental to education provided for the pupil at the school in respect of which by virtue of this section no charge may be made; or
  - (b) provided for the purpose of enabling him to meet any examination requirement for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school.
- (8) For the purposes of subsection (7)(a) above, transport is incidental to education provided for registered pupils at any such school if it is provided for the purpose of carrying such pupils—
- (a) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises; or
  - (b) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place.
- (9) Nothing in this section shall be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at any such school on a residential trip.
- (10) In this Chapter “residential trip ” means any trip—
- (a) which is arranged for registered pupils at any maintained school by or on behalf of the governing body or the local education authority; and
  - (b) which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation.
- (11) For the purposes of this section, a pupil shall be regarded as having been prepared at a school for a syllabus for any prescribed public examination if any part of the education provided with a view to preparing him for that examination in that syllabus has been provided for him at that school.

## **107 Provision for cases where education is provided partly during and partly outside school hours.**

- (1) Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours—
- (a) if fifty per cent. or more of the time occupied by that period together with any connected school travelling time falls during school hours, so much of the education provided during that period as is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and

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- (b) in any other case, so much of the education provided during that period as is provided during school hours shall be treated for those purposes as provided outside school hours.
- (2) In this section “school travelling time ” means time spent on travel during school hours; and for the purposes of subsection (1)(a) above, such time is connected school travelling time in relation to any educational activity if it is spent by the pupils taking part in the activity in getting to or from the place where the activity takes place.
- (3) Where any education provided at a maintained school is provided on a residential trip—
- (a) if the number of school sessions taken up by the trip is equal to or greater than fifty per cent. of the number of half days spent on the trip, any education provided on the trip which is provided outside school hours shall be treated for the purposes of section 106(2) of this Act as provided during school hours; and
- (b) in any other case, any education provided on the trip which is provided during school hours shall be treated for those purposes as provided outside school hours.
- (4) In this section a “half day ” means any period of twelve hours ending with noon or midnight on any day.
- (5) Where fifty per cent. or more of a half day is spent on a residential trip, the whole of that half day shall be treated for the purposes of subsection (3) above as spent on the trip.
- (6) For the purposes of that subsection, a school session on any day on which such a session takes place at the school concerned shall be treated as taken up by a residential trip on which education is provided for registered pupils at the school if the time spent on the trip occupies fifty per cent. or more of the time allowed for that session at the school.

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

**C60** Ss. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.

**C61** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.  
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

### 108 Recovery of wasted examination fees.

- (1) Notwithstanding section 106(5) of this Act, where—
- (a) the governing body of any maintained school or the local education authority have paid or are liable to pay any fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination; and
- (b) the pupil fails without good reason to meet any examination requirement for that syllabus;
- that body or authority may recover the amount of the fee from the pupil’s parent.
- (2) It shall be for the body or authority who have paid or are liable to pay the fee in question to determine for the purposes of this section any question whether a pupil who has failed to meet any such examination requirement had good reason for the failure.

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

- C62** S. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.
- C63** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.  
Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

### **109 Permitted charges.**

- (1) Subject to subsection (2) below, a charge may be made in respect of—
- (a) education or transport provided for a registered pupil at any maintained school other than education or transport in respect of which by virtue of section 106 of this Act or section 55(1) of the 1944 Act no charge may be made;
  - (b) the entry of any such pupil for a public examination in any syllabus for that examination otherwise than in circumstances in which by virtue of section 106(5) of this Act no charge may be made; and
  - (c) board and lodging provided for any such pupil on a residential trip.
- (2) A charge may not be made—
- (a) by virtue of subsection (1)(a) above in respect of the provision for a pupil of education or transport; or
  - (b) by virtue of subsection (1)(b) above in respect of the entry of a pupil for an examination in any syllabus for that examination;
- unless the education or transport is provided or the pupil is entered for the examination in that syllabus by agreement with his parent; and any education, transport or examination entry in respect of which a charge may be made by virtue of either of those provisions is referred to below in this section as an “optional extra”.
- (3) The following provisions of this section apply in relation to any charge permitted under this section, other than a charge in respect of education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act; and any charge to which those provisions apply is referred to in those provisions as a regulated charge.
- (4) The amount of any regulated charge shall be payable by the parent of the pupil concerned.
- (5) A regulated charge shall not exceed the cost of the provision of the optional extra or the board and lodging in question.
- (6) Without prejudice to the generality of subsection (5) above, the cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs—
- (a) incurred in respect of the provision of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra;
  - (b) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra; or
  - (c) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it.

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- (7) Subject to subsection (8) below, the cost of the provision of an optional extra shall not be taken as including any costs attributable to the provision of teaching staff other than staff engaged as mentioned in subsection (6)(c) above.
- (8) Where the optional extra in question consists of tuition in playing any musical instrument the cost of its provision shall include costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition.
- (9) Where charging is permitted under this section and the charge would be a regulated charge, the question of whether any charge in respect of the optional extra or the board and lodging should be made, and the amount of any charge to be made, shall be determined—
  - (a) in a case where the cost of the provision of the optional extra or board and lodging is met by, or from funds at the disposal of, the governing body, by the governing body; and
  - (b) in any other case, by the local education authority.
- (10) The whole or any part of the amount of any charge the local education authority determine under subsection (9)(b) above to make—
  - (a) shall, if the governing body so determine, be met by, or from funds at the disposal of, the governing body; and
  - (b) shall not, to the extent that it is so met, be payable by the parent of the pupil concerned.

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

- C64** Ss. 106-111 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2**.
- C65** Ss. 106-111 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I**.
- C66** Ss. 106-111 applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

## **110 Charges and remissions policies.**

- (1) Every governing body of a maintained school and every local education authority shall determine and keep under review a policy with respect to the provision of, and the classes or descriptions of case in which they propose to make charges for, any optional extra or board and lodging in respect of which charges are permitted by section 109 of this Act, other than education provided at a grant-maintained school in pursuance of arrangements made under section 57(5) of this Act.
- (2) No such body or authority shall make such a charge unless they have both—
  - (a) determined a policy under subsection (1) above with respect to the making of such charges (their “charging policy”); and
  - (b) determined a policy (their “remissions policy”)—
    - (i) setting out any circumstances in which they propose to remit (in whole or in part) any charge which would otherwise be payable to them in accordance with their charging policy; and
    - (ii) in the case of such a policy determined by the governing body of any school other than a grant-maintained school, setting out also any circumstances in which the governing body propose to meet (in whole

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or in part) any charge payable to the local education authority in accordance with the authority's charging policy for any optional extra or board and lodging provided for a registered pupil at the school.

- (3) Any remissions policy determined by the governing body of a maintained school or by a local education authority shall provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip if—
- (a) the education provided on the trip is education in respect of which by virtue of section 106 no charge may be made; and
  - (b) his parents are in receipt of income support or family credit in respect of any period wholly or partly comprised in the time spent on the trip.
- (4) Any such body or authority shall keep under review any remissions policy determined by them under this section.
- (5) In this section “optional extra ” has the same meaning as in section 109 of this Act.

## **111 Charges for board and lodging at boarding schools.**

- (1) Subject to the following provisions of this section, where any registered pupil at any maintained school is provided at the school with board and lodging at the expense of a local education authority or the governing body of the school, charges shall be payable in respect of the board and lodging by the parent of the pupil concerned to that authority or body.
- (2) Where the board and lodging are provided for the pupil—
- (a) at a school maintained by a local education authority; and
  - (b) under arrangements made by the authority on the ground mentioned in subsection (4) below;
- the authority shall remit the whole of the charges payable under this section.
- (3) Where the board and lodging are provided for the pupil—
- (a) at a grant-maintained school; and
  - (b) under arrangements made by a local education authority on the ground mentioned in subsection (4) below;
- the whole of the charges payable under this section shall be payable by the authority instead of by the pupil's parent.
- (4) The ground referred to in subsections (2)(b) and (3)(b) above is that, in the opinion of the authority concerned, education suitable to the pupil's age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided by the authority for him.
- (5) Where a local education authority are satisfied that payment of the full charges payable under this section would involve financial hardship to the parent of the pupil concerned, the authority—
- (a) in the case of charges payable to the authority, shall remit so much of those charges as falls in accordance with subsection (6) below to be so remitted; and
  - (b) in the case of charges payable to the governing body of a grant-maintained school in respect of board and lodging provided under arrangements made by the authority, shall pay so much of those charges as falls in accordance with that subsection to be so paid.

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- (6) In the case of any such charges, the amount that falls to be remitted or paid by a local education authority by virtue of subsection (5) (a) or (b) above is—
- (a) such part of those charges as the authority consider ought not to be paid by the pupil's parent in order to avoid such hardship as is mentioned in that subsection; or
  - (b) if in their opinion such hardship cannot otherwise be avoided, the whole of those charges.

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

- C67** S. 111 modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), **Sch. 18**, para.9(1)  
S. 111 excluded (*prosp.*) by 1993 c. 35, ss. 12, 308(3), Sch. 2 Pt. III paras. 4, 13(1)(c) (with **Sch. 18**, para. 12).
- C68** S. 111(2)-(6) excluded (*prosp.*) by 1993 c. 35, ss. 12, 308(3), Sch. 2 Pt. I para. 1(2) (with **Sch. 18**, para. 12).
- C69** S. 111(2)(b) modified (*prosp.*) by 1993 c. 35, ss. 298, 308(3), **Sch. 18** para.9(2)

*Miscellaneous*

**112 Extension of powers as to trusts for religious education.**

- (1) Section 2 of the<sup>M11</sup> Education Act 1973 (special powers as to certain trusts for religious education) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsections—
- “(1) Where the premises of a voluntary school or a grant-maintained school have ceased (whether before or after the passing of the Education Reform Act 1988) to be used for a voluntary school or, as the case may be, a grant-maintained school, or in the opinion of the Secretary of State it is likely they will cease to be so used, then subject to subsections (2) to (4) below, he may by order made by statutory instrument make new provision as to the use of any endowment if it is shown either—
- (a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religious denomination; or
  - (b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that (subject to subsection (1C) below) the requirements of subsection (1A) below are fulfilled.
- (1A) The requirements of this subsection are—
- (a) that the school was or has been maintained as a voluntary school since 1st April 1945 (the coming into force of Part II of the Education Act 1944) or, in the case of a grant-maintained school, was so maintained from that date until immediately before it became a grant-maintained school; and
  - (b) that religious education in accordance with the tenets of the denomination concerned—
    - (i) is, and from that date has been, provided at the school; or

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(ii) where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used;

in pursuance of section 27 or 28 of that Act (religious education in voluntary schools) or section 85 or 86 of the Education Reform Act 1988 (religious education in grant-maintained schools which were formerly voluntary schools).

(1B) For the purposes of this section—

“endowment ” includes property not subject to any restriction on the expenditure of capital; and

“shown ” means shown to the satisfaction of the Secretary of State.

(1C) For the purposes of this section—

(a) where in the case of any school falling within subsection (1A)(a) above it is shown—

(i) that religious education in accordance with the tenets of a particular denomination is provided at the school; or

(ii) where the premises have ceased to be used for the purposes of the school, such religious education was so provided immediately before the premises ceased to be so used;

such religious education shall be taken to have been provided at the school from 1st April 1945; and

(b) where religious education in accordance with such tenets is shown to have been given to any pupils at a controlled school or a grant-maintained school which was a controlled school immediately before it became a grant-maintained school, the religious education shall be taken to have been given to them at the request of their parents;

unless the contrary is shown.”

(3) In subsection (4) for the words from “in connection with voluntary schools or ” to “such a school ” there shall be substituted the following paragraphs—

“(a) in connection with schools which are voluntary schools or grant-maintained schools; or

(b) partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the voluntary school or grant-maintained school at the premises that have gone or are to go out of use for such a school;”.

#### Marginal Citations

M11 1973 c. 16.

### 113 Schemes under the Endowed Schools Acts.

(1) Where under any provision (however expressed) of a scheme made under the Endowed Schools Acts 1869 to 1948 the power of the trustees under the scheme to apply any property to which the scheme relates for purposes authorised by the scheme is subject to the approval or order of any other person—

(a) the scheme shall have effect as if no such approval or order was required; and



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- (b) no liability shall be deemed to have been incurred in respect of any failure before the passing of this Act to obtain any such approval or order.
- (2) The Secretary of State may, on the application of any person whose approval or order would but for this section be required under such a scheme, direct that that requirement shall continue to have effect notwithstanding subsection (1)(a) above; but no liability shall be deemed to have been incurred in respect of any failure before the making of such a direction to obtain any such approval or order.

#### 114 Extension of power to require local education authority to defray expenses of establishing controlled school.

In section 2 of the <sup>M12</sup>Education (Miscellaneous Provisions) Act 1953 (power to require local education authority to defray expenses of establishing controlled school), in paragraph (b) (which limits the power conferred by that section to cases where the new school is required for pupils for whom accommodation in some other voluntary or grant-maintained school has ceased to be available) after the words “for whom ” there shall be inserted the words “or for a substantial proportion of whom ”.

#### Marginal Citations

M12 1953 c. 33.

#### 115 Power to determine times of school sessions, etc.

The following section shall be substituted for section 21 of the 1986 Act—

##### “21 Terms, holidays and sessions.

- (1) The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the local education authority to determine the dates at which the school terms and holidays are to begin and end.
- (2) The articles of government for every such school shall provide for it to be the duty of the governing body to determine the times at which the school session or, if there is more than one, each school session is to begin and end on any day and, where the governing body propose to make any change in those times, for it to be their duty—
- (a) to consult the local education authority and the head teacher before taking any of the actions mentioned in paragraphs (b) to (g) below;
  - (b) to include a statement in the report they are required to prepare by virtue of section 30 of this Act—
    - (i) indicating that they propose to make a change in those times;
    - (ii) specifying the proposed change and when they propose that it should take effect; and
    - (iii) drawing attention to any comment on the proposal included as an annex to the report by virtue of paragraph (c) below and including such response to the comment as they may consider appropriate;

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- (c) if so required by the local education authority, to include as an annex to that report such written comment on the proposal as the authority may provide for that purpose;
  - (d) to provide an opportunity for discussion of the proposal at a parents' meeting held by virtue of section 31 of this Act;
  - (e) to consider any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification;
  - (f) not to effect any change in those times except at the beginning of a school year; and
  - (g) not less than three months before any change in those times is to take effect—
    - (i) to inform the local education authority; and
    - (ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are informed; of the change and of when it is to take effect.
- (3) For the purposes of any provision included in the articles of government for any such school by virtue of subsection (2) above, the times determined by the local education authority immediately before the coming into force of section 115 of the Education Reform Act 1988 as the times at which the school session or, if there is more than one, each school session is to begin and end on any day shall be taken to have been determined by the governing body.
- (4) The articles of government for every aided and special agreement school shall provide for it to be the duty of the governing body to determine—
- (a) the dates and times at which the school terms and holidays are to begin and end; and
  - (b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day.
- (5) The articles of government for every county, voluntary and maintained special school shall provide for the governing body to have power to require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.”

## **116 Provision for delegation of functions by governing bodies of county, voluntary and maintained special schools.**

In section 8 of the 1986 Act (proceedings and tenure of office of governors of county, voluntary or maintained special school), in subsection (7) (provision that may be included in regulations made by the Secretary of State as to meetings and proceedings of governing bodies, etc.) the following paragraphs shall be inserted after paragraph (a)

- “(aa) for the establishment of committees by the governing bodies of such schools (whether or not including persons who are not members of the governing body concerned) and for the constitution, meetings and proceedings of such committees;

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- (ab) for the delegation of functions of the governing body of any such school in prescribed circumstances to committees established by that body, to any member of that body or to the head teacher;”.

*Chapter V: general and supplementary provisions*

**117 Obligation to enter pupils for prescribed public examinations.**

- (1) Subject to the following provisions of this section, the governing body of every maintained school shall secure that each registered pupil at the school is entered, at such time as they consider appropriate, for each prescribed public examination for which he is being prepared at the school at the time in question in each syllabus for that examination for which he is being so prepared.
- (2) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination, or for any examination in any syllabus for that examination, if either—
- (a) the governing body consider that there are educational reasons in the case of that particular pupil for not entering him for that examination or (as the case may be) for not entering him for that examination in that syllabus; or
- (b) the parent of the pupil requests in writing that the pupil should not be entered for that examination or (as the case may be) for that examination in that syllabus.
- (3) Subsection (1) above shall not require a governing body to secure that a pupil is entered for any examination in any syllabus for that examination if the governing body have secured that pupil’s entry for another prescribed public examination in a corresponding syllabus.
- (4) For the purposes of subsection (3) above, a syllabus for any such examination shall be regarded as corresponding to a syllabus for another such examination if the same course of study is provided at the school concerned in preparation for both syllabuses.
- (5) As soon as practicable after determining whether or not to secure the entry of any pupil for a prescribed public examination in any syllabus for which he is being prepared at the school the governing body of a maintained school shall notify the parent of the pupil in writing of their determination in relation to each such syllabus.

**118 General and supplementary provisions relating to charges.**

- (1) Nothing in the provisions of this Chapter relating to charges shall be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of any maintained school or any local education authority for voluntary contributions for the benefit of the school or any school activities.
- (2) Any request or invitation made by or on behalf of any such body or authority for contributions for the benefit of any school or school activities shall not be regarded for the purposes of subsection (1) above as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made—
- (a) that there is no obligation to make any contribution; and
- (b) that registered pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.

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- (3) Nothing in section 106(6) of this Act shall prevent the parent of a registered pupil at a maintained school from being required to pay for or supply any materials for use for the purposes of the production in the course of the provision of education for the pupil at the school of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil.
- (4) Nothing in this Chapter relating to charges with respect to a registered pupil at a maintained school shall be read as relating to—
  - (a) charges made by persons other than the governing body or the local education authority; or
  - (b) charges to be paid by persons other than the parent of the pupil or the pupil himself.
- (5) The Secretary of State may make regulations requiring, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—
  - (a) such information relevant for the purposes of this Chapter as to the school hours at the school; and
  - (b) such information as to the policies determined under section 110 which apply in relation to the school;as may be prescribed.
- (6) Any sum payable under section 108, 109 or 111 of this Act by the parent of any registered pupil at a maintained school shall be recoverable summarily as a civil debt.
- (7) In this Chapter—
  - (a) “equipment ” does not include clothing;
  - (b) “the local education authority ” means, in relation to a maintained school which is a school maintained by a local education authority, the authority by whom the school is maintained;
  - (c) “maintained school ” means—
    - (i) any school maintained by a local education authority; and
    - (ii) any grant-maintained school;
  - (d) references to a public examination (including a prescribed public examination) are references to such an examination as it applies in relation to persons entered for any syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment for the purposes of determining the achievements of persons entered for that examination takes place;
  - (e) references to an examination requirement for a syllabus for any such examination are references to any requirement a pupil must meet in order to qualify for assessment for the purposes of determining his achievements in that examination in that syllabus; and
  - (f) “residential trip ” has the meaning given by section 106(10) of this Act.
- (8) For the purposes of subsection (7) above an assessment for the purposes of determining the achievements of persons entered for any examination is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for

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any syllabus in that examination who has met the examination requirements for that syllabus whether that person has passed or failed and, if grades are assigned for the purposes of the examination, the grade to be assigned in his case.

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

**C70** S. 118 modified (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.9(1)**; S.I. 1994/2038, art. 3(1), **Sch.2.**

**C71** S. 118 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt.I.**

S. 118 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

### *Interpretation of Part I*

#### **119 Interpretation of Part I.**

- (1) For the purposes of this Part of this Act—
  - (a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class; and
  - (b) “reception class ” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate together with pupils of that age.
- (2) References in this Part, in relation to proposals under section 28, 52(4), 89 or 92 of this Act, to the date of publication of the proposals are references—
  - (a) to the date on which the requirements of this Act, or of regulations under this Act, with respect to the publication of the proposals (or of any notice relating to the proposals) are satisfied; or
  - (b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different dates, to the last of those dates;

and references to the time at which such proposals are published shall be construed accordingly.
- (3) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (2) above be taken to be satisfied on the first date in respect of which it is satisfied.

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