



# Education Act 1993

## 1993 CHAPTER 35

An Act to amend the law about education.

[27th July 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### RESPONSIBILITY FOR EDUCATION

#### CHAPTER I

#### ADMINISTRATION

*Secretary of State*

#### **1 General duty of Secretary of State**

The Secretary of State shall promote the education of the people of England and Wales.

#### **2 Duty in the case of primary, secondary and further education**

(1) The Secretary of State shall exercise his powers in respect of those bodies in receipt of public funds which—

- (a) carry responsibility for securing that the required provision for primary, secondary or further education is made in schools, or institutions within the further education sector, in or in any area of England or Wales, or
- (b) conduct schools or institutions within the further education sector in England and Wales,

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for the purpose of promoting primary, secondary and further education in England and Wales.

- (2) He shall, in the case of his powers to regulate the provision made in schools and institutions within the further education sector in England and Wales, exercise his powers with a view, among other things, to improving standards, encouraging diversity and increasing opportunities for choice.

### *Funding authorities for England and Wales*

## **3 Funding Agency for Schools**

- (1) There shall be established a body corporate to be known as the Funding Agency for Schools to exercise in relation to England the functions conferred on them.
- (2) The agency shall consist of not less than ten nor more than fifteen members appointed by the Secretary of State, one of whom shall be so appointed as chairman.
- (3) In appointing the members of the agency the Secretary of State shall have regard to the desirability of including—
  - (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of primary or secondary education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of such education,
  - (b) persons who appear to him to have experience of, and to have shown capacity in, the provision of education in voluntary schools, or in grant-maintained schools having foundation governors,
  - (c) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession, and
  - (d) persons who appear to him to have experience of, and to have shown capacity in, providing for children with special educational needs.
- (4) Before appointing any member of the agency the Secretary of State shall consult—
  - (a) a body appearing to him to be representative of the Church of England, and
  - (b) a body appearing to him to be representative of the Roman Catholic Church, in matters relating to the provision of education in voluntary schools, or in grant-maintained schools having foundation governors.
- (5) Schedule 1 to this Act has effect in respect of the agency.

## **4 Schools Funding Council for Wales**

- (1) The Secretary of State may by order make provision for the establishment of a body corporate to be known as the Schools Funding Council for Wales to exercise in relation to Wales, as from such date as may be specified in the order, the functions conferred on them.
- (2) The council shall consist of not less than eight nor more than twelve members appointed by the Secretary of State, one of whom shall be so appointed as chairman.
- (3) In appointing the members of the council the Secretary of State shall have regard to the desirability of including—

- (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of primary or secondary education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of such education,
  - (b) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession, and
  - (c) persons who appear to him to have experience of, and to have shown capacity in, providing for children with special educational needs.
- (4) Schedule 1 to this Act has effect in respect of the council.

## **5 Meaning of “funding authority” in the Education Acts**

- (1) Any reference in the Education Acts to a funding authority—
- (a) in relation to schools, or local education authority areas, in England is to the Funding Agency for Schools, and
  - (b) in relation to schools, or local education authority areas, in Wales is, subject to subsection (2) below, to the Schools Funding Council for Wales,
- and in any other context is to the agency or the council.
- (2) Before the Schools Funding Council for Wales begin to exercise their functions, any reference in the Education Acts (other than this Part of this Act) to a funding authority in relation to schools, or local education authority areas, in Wales is to be read as a reference to the Secretary of State.

## **6 Grants to funding authorities**

The Secretary of State may make grants to any funding authority of such amounts and subject to such terms and conditions as he may determine.

*Funding authorities: Supplementary*

## **7 Provision of information**

- (1) Each funding authority—
- (a) shall provide the Secretary of State with such information or advice in connection with any function of his relating to the provision of education as he may from time to time require, and
  - (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit.
- (2) The information and advice provided under subsection (1) above shall be provided in such manner as the Secretary of State may from time to time determine.
- (3) A local education authority shall make such reports and returns, and give such information, to the funding authority as the funding authority may require for the purpose of the exercise of their functions.
- (4) A funding authority shall make such reports and returns, and give such information, to any local education authority as the authority may require for the purpose of the exercise of their functions.

## **8 Value-for-money studies of grant-maintained schools**

- (1) Each funding authority shall make arrangements for carrying out such value-for-money studies of grant-maintained schools in England or, as the case may be, Wales as in their opinion are required or as the Secretary of State may direct.
- (2) The authority shall, in particular—
  - (a) in forming an opinion as to whether any value-for-money study is required to be carried out in pursuance of this section, have regard to the desirability of value-for-money studies being carried out at regular intervals, and
  - (b) in determining the scope of any value-for-money study to be carried out in pursuance of this section otherwise than on the direction of the Secretary of State, have regard to the scope of any value-for-money study which is being or has recently been carried out.
- (3) In this section “value-for-money study”, in relation to any grant-maintained school, means—
  - (a) any examination into the economy, efficiency and effectiveness with which the governing body of the school have, in discharging their functions, used grant made by the authority, and
  - (b) any study designed to improve economy, efficiency and effectiveness in the management or operations of the school.

## **9 Supervision of funding authorities by the Secretary of State**

- (1) In exercising their functions each funding authority shall comply with any directions contained in an order made by the Secretary of State.
- (2) In respect of the exercise by the funding authority of functions in respect of any grant-maintained school, such directions may relate to grant-maintained schools generally or to any class or description of such schools.
- (3) Before making an order under this section, the Secretary of State shall consult the funding authority unless, for reasons of urgency, it is not in his opinion reasonably practicable for him to do so.
- (4) Sections 68 and 99(1) of the Education Act 1944 (powers of Secretary of State where local education authority are acting unreasonably or are in default) shall apply in relation to a funding authority and the functions conferred on them by or under the Education Acts as they apply in relation to local education authorities and the functions conferred on them by or under that Act.
- (5) Subsection (4) above does not prejudice the generality of subsection (1) above.

## **10 Extension of functions of Audit Commission**

- (1) Section 220 of the Education Reform Act 1988 (extension of functions of Audit Commission) is amended as follows.
- (2) At the beginning of subsection (1)(c) there is inserted “the Funding Agency for Schools, the Schools Funding Council for Wales or”.
- (3) After subsection (2)(bb) there is inserted—
  - “(bc) with respect to studies relating to the Funding Agency for Schools, the agency;

(bd) with respect to studies relating to the Schools Funding Council for Wales, the council”.

(4) In subsection (2)(c) after “school,” there is inserted “the funding authority or”.

## **11 Compulsory purchase of land**

In section 17(4) of the Acquisition of Land Act 1981 (statutory undertakers) after paragraph (a) of the definition of “statutory undertakers” there is inserted—

- “(aa) the Funding Agency for Schools,
- (ab) the Schools Funding Council for Wales”.

## **CHAPTER II**

### **RESPONSIBILITY FOR EDUCATION AT SCHOOL**

#### *School places*

## **12 Responsibility for providing sufficient school places**

- (1) In respect of the area of any local education authority, the Secretary of State may—
- (a) where he wishes responsibility for providing sufficient school places to be held by the funding authority as well as the local education authority, make an order under this paragraph, and
  - (b) where he wishes that responsibility to be held by the funding authority alone, make an order under this paragraph,
- and such an order may relate to primary education, to secondary education or to both.
- (2) An order under subsection (1) above shall state—
- (a) the local education authority area to which the order applies,
  - (b) whether the order is made under paragraph (a) or (b) of that subsection,
  - (c) the kind (that is primary or secondary) or kinds of education to which the order relates, and
  - (d) the date as from which the order is to have effect.
- (3) No order may be made in respect of any area under subsection (1) above unless—
- (a) in the case of an order under subsection (1)(a) or (b) above, it appears to the Secretary of State that subsection (4) below is, or has at any time been, satisfied, or
  - (b) in the case of an order under subsection (1)(b) above, the local education authority have at any time requested the Secretary of State to make the order and subsection (4)(a) below is, or has at any time been, satisfied,
- in relation to the kind of education to which the order relates or, as the case may be, each of the kinds of education to which the order relates.
- (4) This subsection is satisfied if—
- (a) in the case of an order under subsection (1)(a) above, not less than 10 per cent. of the pupils for whom education is provided in county, voluntary and grant-maintained schools in the area are registered pupils at grant-maintained schools, and

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- (b) in the case of an order under subsection (1)(b) above, not less than 75 per cent. of the pupils for whom education is provided in county, voluntary and grant-maintained schools in the area are registered pupils at grant-maintained schools.
- (5) For the purposes of subsection (3) above, the kind of education to which an order relates—
  - (a) where an order is expressed to relate only to primary education, includes any secondary education provided in a primary school and excludes any primary education provided in a secondary school, and
  - (b) where an order is expressed to relate only to secondary education, includes any primary education provided in a secondary school and excludes any secondary education provided in a primary school.
- (6) Schedule 2 to this Act (which shows the effect of an order under this section) shall have effect.
- (7) The kind or kinds of education to which an order under subsection (1)(a) or (b) above relates are referred to in the Education Acts, in relation to such an order, as “relevant education”.

*Power to direct admission of child to school*

**13 Direction to admit child to specified school**

- (1) The appropriate authority may give a direction under this section if, in the case of any child in the area of a local education authority, one or both of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—
  - (a) he has been refused admission to the school, or
  - (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
  - (a) which is a reasonable distance from the child’s home, and
  - (b) from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of the Secretary of State under section 14(4) of this Act or by the funding authority, specify a school in the area referred to in subsection (1) above.
- (4) Where a school is specified in a direction under this section, the governing body (and, if the school is a maintained school and the local education authority are not the appropriate authority, the local education authority) shall admit the child to the school.
- (5) Subsection (4) above does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (6) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.
- (7) In this section and section 14 of this Act references to the appropriate authority, subject to subsection (8) below, are to the local education authority and references to

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schools are to maintained schools (other than maintained special schools) and grant-maintained schools.

- (8) Where the education which is suitable education for the child is also education of a kind to which an order under section 12(1)(b) of this Act applies made in respect of the area referred to in subsection (1) above, references in this section and section 14 of this Act to the appropriate authority are to be read in relation to—

- (a) that child, and
- (b) any maintained school (other than a maintained special school) or grant-maintained school in that area, and any such school in any other area to which an order under section 12(1)(b) of this Act applies which provides education which is relevant education in relation to that order,

as references to the funding authority.

#### **14 Procedure for giving direction**

- (1) Before deciding to give a direction under section 13 of this Act, the appropriate authority shall consult—

- (a) the parent of the child,
- (b) the governing body of the school they propose to specify in the direction, and
- (c) the authority (if different) which have a duty to maintain the school or to pay maintenance grant to the governing body (referred to in this section as the “maintaining authority”).

- (2) Where the appropriate authority decide to give such a direction specifying any school they shall, before doing so, serve a notice in writing of their decision on—

- (a) the governing body and head teacher of the school, and
- (b) the maintaining authority, if different,

and shall not give the direction until the period for referring the matter to the Secretary of State has expired and, if it is so referred, the Secretary of State has made his determination.

- (3) Any body or authority on which a notice is served under subsection (2) above may, within the period of fifteen days beginning with the day on which the notice was served, refer the matter to the Secretary of State and, if they do so, shall inform the appropriate authority.

- (4) On a reference under subsection (3) above the Secretary of State may determine which school is to be required to admit the child and, if he does so, that school shall be specified in the direction.

- (5) Where the appropriate authority give such a direction specifying a school, they shall give notice in writing of that fact to—

- (a) the governing body and head teacher of the school, and
- (b) the maintaining authority, if different.

#### *Religious education*

#### **15 Procedure for preparing agreed syllabus of religious education**

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1)(b) of this Act applies to the area.

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- (2) Within six months of the date of the first such order the local education authority shall reconvene any conference—
- (a) which they have convened for the purpose set out in paragraph 1 or 12 of the Fifth Schedule to the Education Act 1944 (procedure for preparing and bringing into operation an agreed syllabus of religious education) or section 11(8) of the Education Reform Act 1988 (standing advisory councils on religious education), and
  - (b) to which subsection (3) below applies.
- (3) This subsection applies to any conference—
- (a) which has not made a recommendation under paragraph 9 or 13(2) of that Schedule, and
  - (b) in respect of which the authority have not made a report under paragraph 10 or 13(4) of that Schedule.
- (4) Where a conference is convened (or reconvened) after the date of the order—
- (a) paragraph 2 of that Schedule shall have effect as if it required the appointment of a committee, in addition to those listed in sub-paragraphs (a) to (d) of that paragraph, consisting of persons representing relevant grant-maintained schools, and
  - (b) section 146 of this Act shall have effect only in relation to grant-maintained schools, or pupils at such schools, at which the syllabus is in use in accordance with section 140(3) of this Act.
- (5) Before appointing a person to represent relevant grant-maintained schools in accordance with subsection (4)(a) above, the local education authority shall take all reasonable steps to assure themselves that he is acceptable as such to the governing bodies of the majority of such schools; but no proceedings under that Schedule shall be invalidated on the ground that the person was not so acceptable unless it is shown that the local education authority failed to take such steps.
- (6) A person so appointed may resign his membership of the committee or may, if in the opinion of the local education authority he ceases to be acceptable as a representative of relevant grant-maintained schools to the governing bodies of the majority of such schools, be withdrawn from the committee by the authority; and where a person resigns or is withdrawn from the committee the authority shall appoint someone in his place in the same manner as that in which they made the original appointment.
- (7) For the purposes of this section, “relevant grant-maintained schools” means those grant-maintained schools within the area of the local education authority to which section 138 or 139 of this Act applies.

## **16 Standing advisory councils on religious education**

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1)(b) of this Act applies to the area.
- (2) Within six months of the date of the first such order the local education authority shall constitute a new council under section 11 of the Education Reform Act 1988 (standing advisory councils on religious education).
- (3) For the purposes of the constitution required by subsection (2) above (and of any subsequent constitution) that section shall have effect as if—



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- (a) subsection (3)(b) were omitted,
  - (b) subsection (4) required the appointment of a representative group, in addition to those listed in paragraphs (a) to (d) of that subsection, comprising persons representing relevant grant-maintained schools, and
  - (c) in subsection (7)—
    - (i) for “that” there were substituted “those”, and
    - (ii) after “to represent the authority” there were inserted “or relevant grant-maintained schools”.
- (4) For the purposes of subsection (3) above, “relevant grant-maintained schools” means those grant-maintained schools within the area of the local education authority to which section 138 or 139 of this Act applies.
- (5) Before appointing a person to represent relevant grant-maintained schools in accordance with subsection (3) above the local education authority shall take all reasonable steps to assure themselves that he is acceptable as such to the governing bodies of the majority of such schools; but the validity of proceedings shall not be affected because the person was not so acceptable unless it is shown that the local education authority failed to take such steps.
- (6) A person appointed to represent relevant grant-maintained schools in accordance with subsection (3) above may be removed from membership of the council if in the opinion of the local education authority he ceases to be acceptable as such to the governing bodies of the majority of such schools.

#### *Other functions*

### **17 Miscellaneous functions relating to grant-maintained schools**

- (1) The Secretary of State may by order provide for any of his functions under the provisions of this Act mentioned in subsection (2) below to be exercisable instead, either generally or in such circumstances as may be specified in the order, by a funding authority.
- (2) Those provisions are—
- (a) sections 57 and 58 (alterations to instruments and articles of government),
  - (b) section 70 (making and varying joint schemes),
  - (c) section 136 (variation of trust deeds),
  - (d) paragraph 5 of Schedule 4 (transitional powers of governing bodies), and
  - (e) paragraph 14 of Schedule 5 (approval of schemes for payment of allowances to governors).
- (3) An order under this section may—
- (a) confer or impose such related functions on the funding authority, and
  - (b) provide for Part II of this Act to have effect with such modifications,
- as the Secretary of State considers necessary or desirable in connection with any transfer of any functions under the provisions of this Act mentioned in subsection (2) above.

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## **18 Functions under agreements relating to CTCs and CCTAs**

- (1) The Secretary of State may by order provide—
  - (a) for the funding authority to exercise the function of making and receiving payments under all or any of the agreements which he has entered into or may enter into under section 105 of the Education Reform Act 1988 (city technology colleges and city colleges for the technology of the arts), and
  - (b) for any such agreement to have effect accordingly.
- (2) Any sums received by a funding authority in the exercise of those functions shall be paid to the Secretary of State.

## **19 Functions in respect of grants for certain expenditure due to immigrant population**

- (1) The Secretary of State may by order impose on a funding authority the function of paying on his behalf grant under section 11 of the Local Government Act 1966 (grants in respect of special provision for immigrants) payable by him by virtue of section 211(1)(a) or (b) of the Education Reform Act 1988 (grant-maintained schools, CTCs and CCTAs).
- (2) The payments shall be of such amounts and be paid to such persons as the Secretary of State may, in accordance with section 11 of the Local Government Act 1966, determine.

### *Supplementary*

## **20 Resolution of disputes**

Any dispute as to whether any functions are exercisable by a funding authority or a local education authority shall be determined by the Secretary of State.

## **21 Duty to compile information and conduct research about provision of education**

- (1) Each funding authority shall—
  - (a) compile such information, and
  - (b) make such provision for conducting, or assisting the conduct of, research, as may be required for the purpose of providing the Secretary of State and local education authorities, in such form and at such times as may be prescribed, with such information relating to the provision of education in any area to which an order under section 12 of this Act applies as may be prescribed.
- (2) Each local education authority shall—
  - (a) compile such information, and
  - (b) make such provision for conducting, or assisting the conduct of, research, as may be required for the purpose of providing the Secretary of State and the funding authority, in such form and at such times as may be prescribed, with such information relating to the provision of primary or secondary education in the area of the local education authority as may be prescribed.

- (3) The Secretary of State shall exercise his powers under this section so as to secure, in particular, the provision of information relating to the provision of education for children with special educational needs.

## PART II

### GRANT-MAINTAINED SCHOOLS

#### CHAPTER I

##### INTRODUCTORY

#### **22 “Grant-maintained schools”**

- (1) A school conducted by a governing body incorporated under this Part of this Act, or Chapter IV of Part I of the Education Reform Act 1988, for the purpose of conducting the school shall be known as a grant-maintained school.
- (2) A governing body may be incorporated under this Part of this Act—
- (a) in pursuance of proposals for the purpose published under section 32 of this Act in relation to an existing school (referred to in this Part of this Act as “proposals for acquisition of grant-maintained status”),
  - (b) in pursuance of proposals for the purpose published under section 48 or 49 of this Act in connection with the establishment of a school (referred to in this Part of this Act as “proposals for the establishment of a new grant-maintained school”), or
  - (c) in pursuance of proposals for the purpose published under Chapter IX for two or more existing schools to be conducted as a group by a single governing body.
- (3) A grant-maintained school must be either a secondary school or a primary school.
- (4) Subject to the provisions of this Part of this Act, the funding authority shall pay to the governing body of each grant-maintained school such annual grants as may be required to be paid under Chapter VI.

#### CHAPTER II

##### PROCEDURE FOR ACQUISITION OF GRANT-MAINTAINED STATUS

##### *Eligibility*

#### **23 Schools eligible for grant-maintained status**

- (1) Subject to subsections (2) and (3) below, any county or voluntary school is for the purposes of this Part of this Act eligible for grant-maintained status.

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- (2) A county or voluntary school is not eligible for grant-maintained status if proposals by the local education authority to cease to maintain the school have been published under section 12(1)(c) of the Education Act 1980 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 the proposals and notified the Secretary of State of their determination in accordance with subsection (8) of that section.
- (3) A voluntary school is not eligible for grant-maintained status if—
  - (a) notice of the governing body’s intention to discontinue the school has been served under section 14 of the Education Act 1944 and has not been withdrawn, or
  - (b) proposals by the governing body to discontinue the school have been published, and approved by the Secretary of State, under section 13 of the Education Act 1980 (as applied by section 59(2)(b) of the Further and Higher Education Act 1992).

#### **24 Duty of governing body to consider ballot on grant-maintained status**

- (1) The Secretary of State may by order provide for this section to apply to the governing bodies of all schools, or all schools in England or Wales, which are eligible for grant-maintained status.
- (2) Where this section applies to a governing body of a school, they shall, at least once in every school year, consider whether to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (3) Subsection (2) above does not apply in respect of any school year if a ballot has been held in accordance with section 28 of this Act in the school year which precedes it.
- (4) The annual report of any governing body to which this section applies shall include—
  - (a) a statement indicating that in the period since their last report the governing body have considered whether to hold a ballot of parents in pursuance of subsection (2) above and giving—
    - (i) particulars of any decisions made by the governing body following such consideration and the date or dates on which they were made, and
    - (ii) if the governing body decided not to hold a ballot, an explanation of the reasons for that decision, or
  - (b) a statement indicating that in that period the governing body have not, for the reasons given in the statement, considered whether to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (5) In this section, “annual report” means the report prepared under the articles of government for the school in accordance with section 30 of the Education (No.2) Act 1986.

### *Initiation of procedure*

#### **25 Initiation of procedure by governing body**

- (1) Where the governing body of a school which is eligible for grant-maintained status decide by a resolution passed at a meeting of that body to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school, they shall—
  - (a) secure that the ballot is held in accordance with section 28 of this Act within the period of ten weeks beginning with the date of the resolution, and
  - (b) give notice in writing that the ballot is to be held to the local education authority and, if the school is a voluntary school, to any person holding property on trust for the purposes of the school.
- (2) Notice under subsection (1)(b) above must be given within the period of five days beginning with the date of the resolution; but in determining that period no account shall be taken of—
  - (a) Saturday, Sunday, Good Friday and Christmas Day, or
  - (b) any day which is a bank holiday in England and Wales.
- (3) This section does not apply if in the case of the school in question a ballot has been held in accordance with section 28 of this Act within the period of twelve months ending with the date immediately preceding the date of the resolution, unless the Secretary of State gives consent in writing for a new ballot to be held.

#### **26 Initiation of procedure by parents**

- (1) This section applies where the governing body of a school which is eligible for grant-maintained status receive a written request to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (2) A request under subsection (1) above must be signed (or otherwise endorsed in such manner as the governing body may require) by a number of registered parents of registered pupils at the school equal to at least twenty per cent. of the number of registered pupils at the school; and in this subsection “registered” means shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date on which the request is received.
- (3) The governing body shall—
  - (a) secure that the ballot is held in accordance with section 28 of this Act within the period of ten weeks beginning with the date on which the request was received, and
  - (b) give notice in writing that the ballot is to be held to the local education authority and, if the school is a voluntary school, to any person holding property on trust for the purposes of the school.
- (4) Notice under subsection (3)(b) above must be given within the period of five days beginning with the date on which the request was received; but in determining that period no account shall be taken of—
  - (a) Saturday, Sunday, Good Friday and Christmas Day, or
  - (b) any day which is a bank holiday in England and Wales.

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- (5) Subsection (3) above does not apply if in the case of the school in question a ballot has been held in accordance with section 28 of this Act within the period of twelve months ending with the date immediately preceding 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 under subsection (1) above shall be taken to have 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.

### *Information*

#### **27 Information as to parents of registered pupils**

- (1) Where any registered parent of a registered pupil at a school which is eligible for grant-maintained status so requests and subsection (2) below applies, the governing body shall—
  - (a) make available to the parent for inspection (at all reasonable times and free of charge) at the school a list containing the name and address of every registered parent of a registered pupil at the school, and
  - (b) supply the parent with a copy of the list.
- (2) This subsection applies if the request is made—
  - (a) in connection with any proposal that a ballot should be held in accordance with section 28 of this Act, or
  - (b) where the governing body are under a duty by virtue of section 25, 26 or 30 of this Act to secure that a ballot is held, in connection with the holding of the ballot.
- (3) A governing body shall not disclose to a parent under subsection (1) 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.
- (4) A governing body who in pursuance of subsection (1) 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.

### *Ballot of parents*

#### **28 Ballot of parents**

- (1) Where the governing body of a school are under a duty by virtue of section 25 or 26 of this Act to secure that a ballot is held, they shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed.
- (2) The arrangements shall provide for a secret postal ballot.
- (3) The governing body shall 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 the prescribed information,
  - (b) informed that he is entitled to vote in the ballot, and

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- (c) given an opportunity to do so.
- (4) The governing body 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 subsection (3)(a) above to be given to persons eligible to vote in the ballot.
- (5) In determining the arrangements they require to be made by the prescribed body, the governing body shall take into account any guidance given by the Secretary of State from time to time as to the arrangements he considers appropriate for ballots held in accordance with this section.
- (6) The governing body may promote (otherwise than as part of the arrangements made for the ballot) the case for seeking grant-maintained status for the school and, in doing so, they shall take into account any guidance given by the Secretary of State as to the action he considers appropriate for the purpose.

## **29 Persons eligible to vote in ballot**

- (1) For the purposes of this Chapter, a person is eligible to vote in a ballot held in respect of a school in accordance with section 28 of this Act if he is a registered parent of a registered pupil at the school.
- (2) In subsection (1) above, “registered” means shown in the register kept under section 80 of the Education Act 1944 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.
- (3) In subsection (2) above, “the relevant resolution or request” means the resolution under section 25, or request under section 26, of this Act by reference to which the ballot is required to be held (or, where the ballot is a second ballot held by virtue of section 30 of this Act, by reference to which the first ballot was required to be held).

## **30 Second ballot to be held if insufficient votes cast**

- (1) Where in any ballot held in accordance with section 28 of this Act (other than one held by virtue of this section)—
  - (a) the total number of votes cast by persons eligible to vote is less than fifty per cent. of the number of persons eligible to vote, or
  - (b) the number of votes cast in favour is the same as the number of votes cast against,the governing body shall secure that a second ballot is held within the period of fourteen days beginning with the date immediately after that on which the result of the first ballot is determined.
- (2) In such a case—
  - (a) the result of the first ballot shall be disregarded for the purposes of section 32(1) of this Act, and
  - (b) subject to the modifications mentioned in subsection (3) below, section 28 of this Act shall apply as it applies in a case where the governing body of a school are under a duty by virtue of section 25 or 26 of this Act to secure that a ballot is held.
- (3) The modifications are—

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- (a) that section 28(3)(a) shall be omitted, and
- (b) that section 28(4) shall be read as if the information there referred to were the information given for the purposes of the first ballot.

### **31 Power to declare ballot void for irregularity**

- (1) Subsection (2) below applies where it appears to the Secretary of State—
- (a) that any requirements of section 28 or 30 of this Act have been contravened in the case of a ballot held in purported compliance with section 28 of this Act,
  - (b) that the arrangements for a ballot so held did not accord with any guidance given by him for the purposes of section 28 of this Act,
  - (c) that a governing body have acted unreasonably in the discharge of their duties under section 28 or 30 of this Act,
  - (d) that persons other than those eligible to do so have purported to vote in a ballot so held,
  - (e) that ballot papers returned for the purposes of a ballot so held have been marked by persons other than those to whom they were issued or those duly authorised to act on their behalf,
  - (f) that persons who were eligible to vote in a ballot so held have been prevented or hindered from doing so, or from doing so freely in accordance with their own opinions, by any other person, or
  - (g) that voting in a ballot so held is likely to have been influenced to a significant extent by the dissemination of information appearing to the Secretary of State to be to a material extent false or misleading.
- (2) The Secretary of State may by notice in writing given to the governing body—
- (a) declare the ballot void, and
  - (b) require that a fresh ballot be held in accordance with section 28 of this Act before such date as he may specify in the notice.
- (3) Where—
- (a) by a notice under subsection (2) above the Secretary of State requires the fresh ballot to be held in the school year following that in which fell the date which was the effective date for the register used for the ballot he declares void, and
  - (b) the notice specifies a date for the purposes of this subsection,
- section 29(1) of this Act shall have effect in relation to the fresh ballot as if “registered” meant shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date specified for the purposes of this subsection.

### **32 Publication of proposals**

- (1) Subsection (2) below applies where the result of a ballot held in accordance with section 28 of this Act shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of seeking grant-maintained status for the school.
- (2) Before the end of the period of four months beginning with the date on which the result of the ballot is determined, the governing body shall—
- (a) publish proposals for acquisition of grant-maintained status for the school in accordance with any provisions imposed by or under paragraph 1 of Schedule 3 to this Act,



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- (b) publish any notice in respect of the proposals for the time being required by any such provisions, and
  - (c) submit to the Secretary of State a copy of the published proposals.
- (3) References in this Part of this Act to proposals published under this section, in any case where the Secretary of State has modified such proposals in pursuance of this Part of this Act, are to the proposals as so modified.
- (4) For the purposes of this Part of this Act, proposals published under this section shall be regarded as pending in respect of a school until either the proposals are withdrawn or the Secretary of State makes his determination in respect of them.
- (5) Part I of Schedule 3 to this Act (which makes provision supplementing this section) shall have effect.

#### *Approval and implementation of proposals*

### **33 Withdrawal, approval or rejection of proposals**

- (1) Proposals published under section 32 of this Act 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 that section within such period as the Secretary of State may specify).
- (2) The Secretary of State—
- (a) may reject any proposals published under section 32 of this Act, 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.
- (3) Where the Secretary of State rejects any proposals published under section 32 of this Act in respect of a school which is eligible for grant-maintained status on the date of his determination, he may require the governing body to publish further proposals under section 32 of this Act within such period as he may specify.
- (4) Where the Secretary of State imposes a requirement under subsection (1) or (3) above for the publication of further proposals, section 32(2) of this Act and Schedule 3 to this Act shall apply as they apply in the case mentioned in section 32(1), but with the following modifications—
- (a) the reference in section 32(2) to the period of four 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 paragraph 2(1)(a) of Schedule 3 to the ballot shall be read as referring to the last ballot held in accordance with section 28 of this Act in relation to the school before the requirement in question was imposed.

### **34 Incorporation of governing body**

- (1) Where any proposals are approved under section 33 of this Act, then—
- (a) the persons who, immediately before the proposals are approved, are named in them as initial governors, and

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- (b) the existing head teacher (as a governor ex officio), shall on that date be incorporated as the governing body of the school under the name given in pursuance of paragraph 4(1)(g) of Schedule 3 to this Act.
- (2) Where any proposals are approved under section 33 of this Act, then, in relation to the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—
  - (a) the governing body incorporated under this section are referred to in this Part of this Act as the “new governing body”, and
  - (b) any reference in any enactment or instrument or document to the governing body of the school, other than an express reference to the new governing body or the governing body incorporated under this section or a reference in Chapter V, shall be read as a reference to the existing governing body, not the new governing body.
- (3) On the date of implementation of the proposals—
  - (a) the local education authority whose duty it was immediately before that date to maintain the school as a county or voluntary school shall cease to have that duty, and
  - (b) any special agreement relating to the school shall cease to have effect.

### **35 Exercise of powers before proposed date of implementation**

Schedule 4 to this Act (which makes provision in relation to the period after approval and before the date of implementation) shall have effect in relation to any school where proposals are approved under section 33 of this Act.

#### *Supplementary*

### **36 Expenses in connection with proposals for acquisition of grant-maintained status**

- (1) The Secretary of State may make payments in respect of any expenses incurred by the governing body of a school in exercising, or in connection with the exercise of, their functions under this Chapter.
- (2) Payments under subsection (1) above may be made on such terms as the Secretary of State may determine.
- (3) A local education authority shall not incur any expenditure attributable to any period for the purpose of influencing the outcome of ballots held under section 28 of this Act if the aggregate of the amounts of expenditure for that purpose attributable to the period exceeds or, if that expenditure were incurred, would exceed the limit for that period.
- (4) Regulations may make provision for determining for the purposes of this section—
  - (a) whether expenditure is incurred for the purpose referred to in subsection (3) above,
  - (b) the amount of any expenditure,
  - (c) the period to which expenditure is to be attributed, and
  - (d) the limit for any period.
- (5) Regulations may require each local education authority—

- (a) to keep in accordance with regulations, and any directions contained in an order made by the Secretary of State, a separate account of the expenditure incurred for the purpose referred to in subsection (3) above, and
- (b) to prepare in respect of such periods as may be prescribed a statement of account and, if the Secretary of State so requests, send each statement to him before the end of such period as may be prescribed.

### **37 Chapter II: interpretation, etc**

- (1) This section applies in relation to proposals for acquisition of grant-maintained status and to the school to which they relate.
- (2) References to the date of implementation of the proposals—
  - (a) in relation to a school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 32 of this Act, are to the date specified in accordance with regulations under section 28(3)(a) of this Act as the proposed date of implementation in the information given to persons eligible to vote in the originating ballot, and
  - (b) in any other case, are to the date specified in the proposals as the proposed date of implementation.
- (3) In subsection (2)(a) above, “the originating ballot”—
  - (a) where section 32(1) of this Act applies, means 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 section 33(1) or (3) of this Act, means the last ballot held in accordance with section 28 of this Act in relation to the school before that requirement was imposed.
- (4) “The relevant particulars”, in relation to a proposed initial governor, means—
  - (a) his name and address,
  - (b) whether he is to be a parent, teacher, first, foundation or sponsor governor,
  - (c) if he is to be a parent or teacher governor, the term of office that applies in his case under paragraph 10 of Schedule 5 to this Act, and
  - (d) if he is to be a first, foundation or sponsor governor, the term of office proposed for him in accordance with that paragraph or, in the case of a foundation governor who is to hold office *ex officio*, the fact that he is to do so.
- (5) “The incorporation date” means the date on which the governing body are incorporated.

## **CHAPTER III**

### **PROPERTY, STAFF AND CONTRACTS**

#### *Transfer of property and staff, etc.*

### **38 Transfer of property etc**

- (1) Subject to subsection (3) below, where in relation to any school proposals for acquisition of grant-maintained status are approved—

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- (a) the property, rights and liabilities mentioned in subsection (2) below of any local authority, and
  - (b) any property, rights and liabilities of the existing governing body,
- shall on the date of implementation of the proposals be transferred to, and by virtue of this Act vest in, the governing body incorporated under Chapter II.
- (2) The property, rights and liabilities referred to in subsection (1)(a) above are—
- (a) all land or other property which, immediately before the date of implementation of the proposals, was property used or held by the authority for the purposes of the school, and
  - (b) all rights and liabilities subsisting immediately before the date of implementation of the proposals which were acquired or incurred by the authority for those purposes.
- (3) Subsection (1) above shall not apply to rights and liabilities under any contract of employment; and subsection (1)(a) above shall not apply to—
- (a) any land or other property vested in a local authority as trustees,
  - (b) any property, rights or liabilities excluded under subsection (5) or (6) below,
  - (c) any liability of a local authority in respect of the principal of, or any interest on, any loan, or
  - (d) any liability of a local authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.
- (4) Any land or other property of a local authority excluded by virtue of subsection (3) (a) above from transfer to the governing body shall, on the date of implementation of the proposals, 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) If before the date of implementation of the proposals—
- (a) the new governing body and the local authority have agreed in writing to exclude any property, and
  - (b) the Secretary of State has given his written approval of the agreement,
- the property, and any rights or liabilities relating to it, shall be excluded.
- (6) If in default of agreement under subsection (5) above—
- (a) the new governing body or the local authority have applied to the Secretary of State to exclude any property, and
  - (b) the Secretary of State has by order directed its exclusion,
- the property, and any rights or liabilities relating to it, shall be excluded.
- (7) An agreement under subsection (5) above may provide for the property to be used for the purposes of the school acquiring grant-maintained status on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (6) above—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
  - (b) shall have effect as if contained in such an agreement.
- (8) For the purposes of this section, any interest in a dwelling-house which, immediately before the date of implementation of the proposals, is used or held by a local 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.

- (9) This section is subject to section 198 of the Education Reform Act 1988 (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this subsection to the transfer date are to the date of implementation of the proposals.

### **39 Transfer of staff**

- (1) This section applies to any school where proposals for acquisition of grant-maintained status have been approved in relation to the school; and, subject to subsection (3) below, applies to any person who—
- (a) if the school is an aided school, is immediately before the date of implementation of the proposals employed by the governing body, or
  - (b) immediately before the date of implementation of the proposals—
    - (i) is employed by the local education authority to work solely at the school, or
    - (ii) is employed by the local education 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) above whose contract of employment terminates on the day immediately preceding the date of implementation of the proposals, or
  - (b) any person employed as mentioned in subsection (1)(b) above who before that date—
    - (i) has been appointed or assigned by the local education authority to work solely at another school as from that date, or
    - (ii) has been withdrawn from work at the school with effect as from that date.
- (4) A person who before the date of implementation of the proposals has been appointed or assigned by the local education authority 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 the authority immediately before that date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the authority.
- (5) In subsections (6) and (7) below, “former employer”—
- (a) in relation to a person to whom this section applies by virtue of subsection (1) (a) above, means the governing body of the school immediately before the date of implementation of the proposals, and
  - (b) in relation to a person to whom this section applies by virtue of subsection (1) (b) above, means the local education authority.

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- (6) The contract of employment between a person to whom this section applies and his former employer shall have effect from the date of implementation of the proposals 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 the contract of employment shall by virtue of this section be transferred to the governing body of the grant-maintained school on the date of implementation of the proposals, 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.

*Effect of pending procedure for acquisition of grant-maintained status on property disposals, etc.*

#### **40 “Pending” procedure for acquisition of grant-maintained status**

- (1) For the purposes of this Chapter the procedure for acquisition of grant-maintained status 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).
- (2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion—
- (a) on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school is to be considered (not being a case falling within section 25(3) of this Act), or
  - (b) where the governing body have received a request under section 26(1) of this Act, on receipt by the local education authority of notice under subsection (3) (b) of that section.
- (3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—
- (a) when initiated as mentioned in subsection (2)(a) above, if—
    - (i) the meeting is not held,
    - (ii) the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed, or
    - (iii) the resolution is passed but the result of the ballot to which the notice under section 25(1)(b) of this Act relates does not show a majority in favour of seeking grant-maintained status for the school,

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- (b) when initiated as mentioned in subsection (2)(b) above, if the result of the ballot to which the notice under section 26(3)(b) of this Act relates does not show a majority in favour of seeking grant-maintained status for the school,
  - (c) if proposals which by reference to the result of a ballot to which a notice under section 25(1)(b) or 26(3)(b) of this Act relates are required to be published under section 32 of this Act, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn, or
  - (d) on the date of implementation of such proposals.
- (4) Where section 30 of this Act applies in the case of such a ballot, the references in subsection (3) above to the result of that ballot shall be read as references to the result of the second ballot required by that section.
- (5) The reference in subsection (3) above to proposals required in substitution for any proposals (“the original proposals”) required to be published by reference to the result of a ballot is to any proposals required to be published by virtue of section 33(1) or (3) 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 by virtue of section 33(1) or (3) of this Act in respect of the school without a further ballot.
- (6) Proposals published under section 32 of this Act shall not be treated for the purposes of subsection (3)(c) above as rejected in any case where the Secretary of State imposes a requirement under section 33(3) of this Act or as withdrawn in any case where he imposes a requirement under section 33(1) of this Act for the publication of further proposals.

#### **41 Control of disposals of land**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not—
- (a) dispose of any land used wholly or partly for the purposes of the school, or
  - (b) enter into a contract to dispose of any such land,
- except with the required consent.
- (2) Subsection (1) 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 for acquisition of grant-maintained status was initiated in relation to the school.
- (3) Where proposals for acquisition of grant-maintained status are approved, the procedure for acquisition of grant-maintained status is not to be treated as terminated for the purposes of this section and section 42 of this Act in relation to any land where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land until the date on which that matter is finally determined.
- (4) In the case of a disposal made or contract entered into after proposals for acquisition of grant-maintained status have been approved, the required consent—
- (a) if it is agreed between the local authority and the new governing body that the value of the land in question does not exceed £6,000, is the consent of the new governing body, and
  - (b) if paragraph (a) above does not apply, is the consent of both the new governing body and the Secretary of State.

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- (5) In any other case the required consent for any proposed disposal (and for any contract to make it) is the consent of both the existing governing body and the Secretary of State.
- (6) 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 42 of this Act) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given.
- (7) This section has effect notwithstanding anything in section 123 of the 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.
- (8) In this section—
  - (a) references to disposing of land include granting or disposing of any interest in land, and
  - (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.
- (9) 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.
- (10) The Secretary of State may by order substitute for the sum specified in subsection (4) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

## **42 Wrongful disposals of land**

- (1) This section applies where—
  - (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have made a disposal, or have entered into a contract, in contravention of section 41(1) of this Act.
- (2) In the case of a contract which consists of granting an option to acquire any land or interest in land, the Education Assets Board may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (3) In the case of a contract to dispose of any land or to grant or dispose of any interest in land, the Education Assets Board may by notice in writing served on the other party to the contract, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed, repudiate the contract.
- (4) A repudiation under subsection (2) or (3) above shall have effect as if—
  - (a) where it is made after the date of implementation of the proposals, the local authority (and not the governing body) were party to the contract, and
  - (b) the repudiation were made by the local authority.
- (5) In the case of a disposal which consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier contract falling within subsection (2) or



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- (3) above) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) above as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the Education Assets Board shall convey that interest to the governing body incorporated under Chapter II.
- (8) Where the Education Assets Board acquire any interest in land by a compulsory purchase under subsection (5) above the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
- (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the Compulsory Purchase Act 1965 or section 52A of the Land Compensation Act 1973, and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.
- (9) Section 41(8) of this Act applies for the purposes of this section as it applies for the purposes of that.

#### **43 Control of contracts**

- (1) Where the procedure for acquisition of grant-maintained status is pending in relation to any school, this section applies to any contract which, if the proposals for acquisition of grant-maintained status were implemented, would or might bind the governing body incorporated under Chapter II.
- (2) Except with the appropriate consent, a local authority shall not enter into a contract to which this section applies.
- (3) In the case of a contract entered into after the proposals have been approved by the Secretary of State, the appropriate consent is that of the new governing body.
- (4) In relation to any other contract, the appropriate consent is—
- (a) the consent of the existing governing body, and
  - (b) if (on the assumption in subsection (1) above) the contract will require the governing body incorporated under Chapter II to make payments amounting in aggregate to £15,000 or more, the consent of the Secretary of State.
- (5) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (6) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 44 of this Act) a person entering into a contract with a local authority or governing body shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.

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- (7) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) above shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (8) This section does not apply to—
- (a) a works contract (within the meaning of Part III of the Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act,
  - (b) a works contract (within the meaning of Part I of the Local Government Act 1988) which is entered into in accordance with section 4 of that Act,
  - (c) a contract to dispose of land (within the meaning of section 41 of this Act) or to grant an option to acquire land or an interest in land, or
  - (d) a contract of employment.
- (9) The Secretary of State may by order substitute for the sum specified in subsection (4) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

#### **44 Wrongful contracts**

- (1) This section applies where—
- (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have entered into a contract to which section 43 of this Act applies in contravention of that section.
- (2) The Education Assets Board may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) above shall have effect as if—
- (a) where it is made after the date of implementation of the proposals, the local authority (and not the governing body) were party to the contract, and
  - (b) the repudiation were made by the local authority.

#### **45 Restriction on change of purpose for which property used or held**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not, in relation to any land or other property of the authority used or held for the purposes of the school, take without the required consent any action by which the land or other property ceases to any extent to be so used or held.
- (2) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, the required consent is that of the new governing body.
- (3) In any other case the required consent is that of both the existing governing body and the Secretary of State.
- (4) If in the case of any school—
- (a) proposals for acquisition of grant-maintained status are approved, and
  - (b) a local authority have, in relation to any property, taken any action in contravention of subsection (1) above,

the provisions relating to the transfer of property shall have effect as if, immediately before the date of implementation of the proposals in relation to the school, the property were used or held by the authority for the purposes for which it was used or held when the procedure for acquisition of grant-maintained status was initiated.

- (5) In this section—
- (a) “the provisions relating to the transfer of property” means section 38 of this Act and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
  - (b) the references to taking action include appropriating property for any purpose.

#### **46 Restriction on staff changes**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, the local education authority shall not do any of the things mentioned in subsection (2) below without the required consent.
- (2) Those things are—
- (a) the appointment of a 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 Education Act 1944 (special provisions as to religious education in voluntary schools)) of a person to whom subsection (3) below applies, and
  - (c) the withdrawal of such a 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 references in this section to the complement of the school are to the complement of teaching and non-teaching posts determined by the local education authority for the school under section 34 of the Education (No. 2) Act 1986 (determination of staff complement for schools).
- (5) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, the required consent is that of the new governing body.
- (6) In any other case the required consent is that of both the existing governing body and the Secretary of State.

#### *Supplementary*

#### **47 Supplementary provisions about transfers**

- (1) No duty of a local education authority under paragraph 6 of the First Schedule to the Education Act 1946 (maintenance of voluntary schools) to convey their interest in any site or buildings to the trustees of a school shall be affected by the school subsequently becoming a grant-maintained school.
- (2) Where such a duty is continued by virtue of subsection (1) above, then, in connection with the site in question, paragraphs 6 to 9 of that Schedule shall continue to apply

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after the school becomes a grant-maintained school as if it were a controlled school or, as the case may be, an aided or special agreement school.

- (3) Where any such duty as is referred to in subsection (1) above, or imposed by section 284(1) of this Act, applies in relation to a school, then—
  - (a) if it applies immediately before the date of implementation of proposals for acquisition of grant-maintained status, section 38(1)(a) of this Act shall not apply to, or to any interest in, the site or buildings or, as the case may be, the premises to be conveyed, and
  - (b) if it applies at a time when the procedure for acquisition of grant-maintained status is pending, section 41 of this Act shall not apply to disposing, or entering into a contract to dispose, of the site or buildings or, as the case may be, the premises to be conveyed.
- (4) Where immediately before the date of implementation of proposals for acquisition of grant-maintained status there is an agreement relating to any site or buildings made under paragraph 3 or 4 of that Schedule, section 38(1)(a) of this Act shall not apply to any rights or liabilities of any local authority under the agreement; and any directions given before that date under paragraph 5 of that Schedule, so far as they relate to the governing body of the school, shall have effect on or after that date as if they related to the governing body incorporated under section 34 of this Act.
- (5) In section 197(7) of the Education Reform Act 1988 (duty of local education authority to give information to Education Assets Board), after “local education authority” there is inserted “and any governing body of a maintained or grant-maintained school” and for “this Act” there is substituted “the Education Acts 1944 to 1993”.
- (6) In paragraph 61 of Schedule 8 to the Further and Higher Education Act 1992 (new procedure, instead of paragraph 3 of Schedule 10 to the 1988 Act, where no agreement has been reached about transfers of assets under that Schedule and the transfer relates to the higher education sector), for “by virtue of section 126 or 130 and in such a case” there is substituted “and”.
- (7) In paragraph 1(1) of Schedule 10 to the Education Reform Act 1988 (apportionment of property held), after “held” there is inserted “or used”.
- (8) In paragraph 4(1) of that Schedule (registered land) for “by virtue of section 126 or 130” there is substituted “to which this Schedule applies”.
- (9) In that Schedule, for “local education authority” in each place where it appears there is substituted “local authority”.

## CHAPTER IV

### ESTABLISHING NEW GRANT-MAINTAINED SCHOOLS

#### *Proposals for establishment of new grant-maintained school*

#### **48 Proposals by funding authority**

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1) of this Act applies to the area.

- (2) The funding authority may establish grant-maintained schools for the purpose of providing relevant education.
- (3) Where the funding authority intend to establish a grant-maintained school, they shall—
  - (a) publish proposals for that purpose in such manner as may be prescribed, and
  - (b) submit a copy of the published proposals to the Secretary of State.
- (4) Before publishing any proposals under this section the funding authority shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.

#### **49 Proposals by promoters**

- (1) Where any persons (referred to in this Part of this Act as “promoters”) propose to establish a grant-maintained school, they shall—
  - (a) publish proposals for that purpose in such manner as may be prescribed, and
  - (b) submit a copy of the published proposals to the Secretary of State.
- (2) Before publishing any proposals under this section the promoters shall consult—
  - (a) the funding authority, and
  - (b) such other persons as appear to them to be appropriate;and in discharging their duty under this subsection, the promoters shall have regard to any guidance given from time to time by the Secretary of State.
- (3) A local education authority may not establish any grant-maintained school.
- (4) In relation to England this section has effect at any time after the funding authority have begun to exercise their functions.

#### **50 Provisions supplementary to sections 48 and 49**

- (1) Part II of Schedule 3 to this Act (which makes provision supplementing sections 48 and 49) shall have effect.
- (2) Subsection (3) below applies where promoters propose to establish a grant-maintained school in place of an existing independent school which it is proposed to discontinue on or before the date of implementation of the proposals.
- (3) Where this subsection applies, the proposals published by the promoters under section 49 of this Act shall, in addition to the matters required to be specified by virtue of paragraph 7 of Schedule 3 to this Act—
  - (a) specify any arrangements proposed to be made by the promoters for land and other property held for the purposes of the existing independent school to be held for the purposes of the grant-maintained school, and
  - (b) state whether there is a trust deed or other instrument relating to the existing independent school.
- (4) References in this Part of this Act to proposals published under section 48 or 49 of this Act, in any case where the Secretary of State has modified such proposals in pursuance of this Part of this Act, are to the proposals as so modified.

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- (5) No proposals may be published under section 48 or 49 of this Act for a school which may provide any education which is neither primary nor secondary education unless it is—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years, or
  - (b) part-time education suitable to the requirements of junior pupils.

### *Approval and implementation of proposals*

## **51 Approval, adoption or rejection of proposals**

- (1) Proposals published under section 48 of this Act require the approval of the Secretary of State if—
  - (a) he gives notice to that effect to the funding authority within two months after the submission to him of the published proposals,
  - (b) objections have been made under paragraph 10 of Schedule 3 to this Act within the period allowed under that paragraph (unless all objections so made have been withdrawn in writing within that period), or
  - (c) the proposals name a sponsor of the school.
- (2) Proposals published under section 49 of this Act require the approval of the Secretary of State.
- (3) Where under subsection (1) or (2) above any proposals require the approval of the Secretary of State, he may reject them, approve them without modification or, after consulting the funding authority and, in the case of proposals under section 49 of this Act, the promoters, approve them with such modifications as he thinks desirable.
- (4) In relation to Wales, subsection (3) above shall have effect before the Schools Funding Council for Wales begin to exercise their functions with the omission of the reference to consulting the funding authority.
- (5) In the case of proposals published under section 48 of this Act, particulars in respect of the proposed premises of the school prepared under paragraph 12 of Schedule 3 to this Act must be adopted by the funding authority.
- (6) In the case of proposals published under section 49 of this Act, particulars in respect of the proposed premises of the school submitted under paragraph 12 of Schedule 3 to this Act require the approval of the funding authority.
- (7) Where proposals published under section 48 of this Act do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (8) The funding authority shall—
  - (a) make any determination under subsection (7) above not later than four months after the publication of the proposals, and
  - (b) give notice in writing to the Secretary of State of their determination.

## **52 Implementation of proposals**

- (1) Where any proposals are approved or adopted under section 51 of this Act, the persons who are appointed in accordance with regulations to be the initial first or (as the case may be) foundation governors shall on the incorporation date be incorporated as the governing body of the school under the name given in pursuance of paragraph 7(1)(f) of Schedule 3 to this Act.
- (2) Where any proposals published under section 48 of this Act are so approved or adopted, the funding authority shall implement the proposals or, if under this subsection the Secretary of State modifies the proposals at their request, the proposals as modified.
- (3) Where any proposals published under section 49 of this Act are so approved, the promoters shall implement the proposals or, if under this subsection the Secretary of State modifies the proposals at their request, the proposals as modified.
- (4) Proposals required to be implemented under this section shall be implemented in accordance with any particulars adopted or approved under section 51(5) or (6) of this Act.

## **53 Exercise of powers before proposed date of implementation, and payment of grant**

- (1) Where proposals have been approved or adopted under section 51 of this Act, the powers conferred on the governing body by or under this Part of this Act shall, until the date of implementation of the proposals, be exercised only for the purpose of or in connection with the conduct of the school on or after that date.
- (2) In the case of proposals under section 49 of this Act, the funding authority may at any time after the incorporation date make grants to the governing body in respect of the provision of premises for the school.
- (3) So far as the amount of any grant under subsection (2) above relates to the provision of a site for the school or of school buildings, it shall not exceed 85 per cent. of the sums expended by the governing body in respect of the provision of the site and buildings in question.
- (4) Where proposals have been approved or adopted under section 51 of this Act, then, in respect of the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—
  - (a) Chapter VI shall not apply, but
  - (b) the funding authority may make grants to the governing body (other than grants in respect of the provision of premises for the school) in respect of expenditure incurred or to be incurred by that body.
- (5) The funding authority may impose on a governing body to whom a grant is made under subsection (2) or (4) above such requirements as they may from time to time determine (whether before, at or after the time when the grant is made).
- (6) Such requirements may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the funding authority of the whole or any part of the following amount.
- (7) That amount is—

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- (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) above may be imposed where any grant is made under subsection (2) above in respect of the provision of premises for the school if any freehold interest in the premises in respect of which the grant is paid is, or is to be, held on trust for the purposes of the school.
- (9) In this section “site” does not include playing fields.

### *Supplementary*

#### **54 Chapter IV: interpretation**

In relation to proposals for the establishment of a new grant-maintained school or to a school established in pursuance of such proposals—

- (a) the date specified in the proposals as the proposed incorporation date is referred to in this Part of this Act as the “incorporation date”, and
- (b) the date specified in the proposals as the proposed date of implementation is referred to in this Part of this Act as the “date of implementation of the proposals”.

## **CHAPTER V**

### GOVERNMENT, CONDUCT ETC. OF GRANT-MAINTAINED SCHOOLS

#### *The governing instruments*

#### **55 Constitution of governing body and conduct of school**

- (1) For every governing body of a grant-maintained school there shall be—
- (a) an instrument (to be known as the instrument of government) providing for the constitution of the governing body, and
  - (b) an instrument (to be known as the articles of government) in accordance with which the school is to be conducted.
- (2) The instrument and articles of government—
- (a) shall comply with any requirements imposed by or under this Chapter, and
  - (b) may make any provision authorised by or under this Chapter to be made and such other provision as may be necessary or desirable.
- (3) Subject to any express provision of the instrument or articles of government, the school shall be conducted in accordance with any trust deed relating to it.
- (4) Schedule 5 to this Act (membership and proceedings etc. of governing bodies) shall have effect.
- (5) Schedule 6 to this Act (content of articles of government) shall have effect.



## **56 Initial instruments and articles of government**

- (1) The initial instrument of government for the governing body of a grant-maintained school, and the initial articles of government for such a school, shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the incorporation date.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals but, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, such of the articles as may be prescribed shall have effect as from the incorporation date.

## **57 Subsequent instruments of government**

- (1) The Secretary of State may—
  - (a) if the governing body of a grant-maintained school submit a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
  - (b) if such a governing body submit draft modifications of an instrument made under paragraph (a) above or, where an instrument of government made under Chapter IV of Part I of the Education Reform Act 1988 has effect by virtue of paragraph 1(2) of Schedule 20 to this Act, of that instrument, by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit, but shall not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the governing body.
- (2) No order may be made under subsection (1) above in respect of a school having foundation governors unless the governing body have consulted—
  - (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).
- (3) The Secretary of State may by order modify the instrument of government for the governing body of any grant-maintained school.
- (4) An order under subsection (3) above—
  - (a) may relate to all grant-maintained schools, to any category of such schools specified in the order or to any such school so specified, but
  - (b) shall not be made unless the Secretary of State has consulted—
    - (i) the governing body of each grant-maintained school to which the order relates,
    - (ii) if the order relates only to a school having foundation governors, the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
    - (iii) if the order relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors, a body appearing to the Secretary of State to be representative of the church in question in

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matters relating to the provision of education in grant-maintained schools having foundation governors.

- (5) Where, by reason of the making of a new instrument, or the modification of an instrument, under this section the number of governors of any category will (unless the required number of governors of that category resign) exceed the number provided for in the instrument, the new instrument or, as the case may be, the instrument as modified shall provide—
- (a) for such number of governors of that category as is required to eliminate the excess to cease to hold office, and
  - (b) for the selection of those who are to cease to hold office.

## **58 Subsequent articles of government**

- (1) The governing body of a grant-maintained school may, with the consent of the Secretary of State—
- (a) make new articles of government in place of the existing articles for the school, or
  - (b) modify any articles made under paragraph (a) above or, where articles made under Chapter IV of Part I of the Education Reform Act 1988 have effect by virtue of paragraph 1(2) of Schedule 20 to this Act, those articles.
- (2) Before exercising that power, the governing body of a school having foundation governors shall consult—
- (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).
- (3) The Secretary of State may by a direction under this section require the governing bodies of grant-maintained schools or any class of such schools specified in the direction or the governing body of any particular grant-maintained school so specified to modify their articles of government in any manner so specified.
- (4) Before giving a direction under this section, the Secretary of State shall consult—
- (a) the governing body or (as the case may be) each governing body to which the direction applies,
  - (b) if the direction relates only to a school having foundation governors, the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
  - (c) if the direction relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors, a body appearing to the Secretary of State to be representative of the church in question in matters relating to the provision of education in grant-maintained schools having foundation governors.

### *Governors*

## **59 Categories of governors**

Schedule 7 to this Act (expressions used in connection with categories of governors) shall have effect.

## 60 Parent governors

- (1) Subject to subsection (6) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include parent governors.
- (2) Subject to subsection (7) below, the instrument shall provide for the number of parent governors to be—
  - (a) in the case of a primary school, not less than three nor more than five, and
  - (b) in the case of a secondary school, five.
- (3) The instrument shall provide that 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,the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (4) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (3) above—
  - (a) to appoint a person who is the registered 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.
- (5) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a parent governor to the new governing body—
  - (a) section 15(2) to (6) of the Education (No. 2) Act 1986 (qualifications and arrangements for election of parent or teacher governors) shall apply as it applies in relation to the election of a parent governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a parent governor, and the instrument shall have effect accordingly.
- (6) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as parent governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (7) In the case of a primary school, the initial instrument shall provide for the number of parent governors to be such number (being not less than three nor more than five) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) Subsection (3) above does not apply, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, to vacancies arising before the date of implementation of the proposals.

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## **61 Teacher governors**

- (1) Subject to subsection (4) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include teacher governors.
- (2) Subject to subsection (5) below, the instrument shall provide for the number of teacher governors to be either one or two.
- (3) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a teacher governor to the new governing body—
  - (a) section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply as it applies in relation to the election of a teacher governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a teacher governor, and the instrument shall have effect accordingly.
- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as teacher governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (5) The initial instrument shall provide for the number of teacher governors to be such number (being either one or two) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.

## **62 Head teacher**

- (1) Subject to subsection (3) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include (as a governor ex officio) the person who is for the time being the head teacher.
- (2) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, the reference in subsection (1) above to the head teacher, in relation to any time before the date of implementation of the proposals, is to the existing head teacher.
- (3) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the initial instrument of government for the school shall provide, in relation to any time before the date of implementation of the proposals when a person has been appointed to be the head teacher, for the governing body to include (as a governor ex officio) that person.

## **63 First governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or

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- (b) is established in pursuance of proposals published under section 48 of this Act, shall provide for the governing body to include first governors.
- (2) The instrument shall provide for such number of first governors as will secure that they outnumber the other governors.
- (3) Subject to subsections (5) and (6) below, the instrument—
- (a) shall require—
- (i) at least two of the first governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school, and
- (ii) at least two of the first governors to be (on the date or dates on which they respectively take office) members of the local community,
- but one person may satisfy both requirements, and
- (b) shall require the governing body, in appointing first governors, to secure that those governors include persons appearing to them to be members of the local business community (and such persons may also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (4) The initial instrument shall provide for the number of first governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (5) In the case of a grant-maintained school which is a county school immediately before it becomes grant-maintained, the instrument, notwithstanding subsection (3) above, shall have effect in relation to the determination of initial first governors—
- (a) as if—
- (i) it required the first governors to include at least two persons who on the date of their selection or nomination are parents of registered pupils at the school, and
- (ii) it required the first governors to include at least two persons who appear to those selecting or nominating them to be members of the local community,
- but one person might satisfy both requirements, and
- (b) as if it required the first governors to include persons who appear to those selecting or nominating them to be members of the local business community (and such persons might also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (6) In the case of a grant-maintained school established in pursuance of proposals published under section 48 of this Act—
- (a) any provision of the instrument made by virtue of subsection (3)(a)(i) above shall not apply in relation to the appointment before the date of implementation of the proposals of any first governor, and
- (b) any provision of the instrument made by virtue of subsection (3)(b) above shall apply as if references to the governing body were references to the funding authority.
- (7) References in this section to governors other than first governors do not include sponsor governors.

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#### **64 Power of the Secretary of State to replace first governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 48 of this Act,shall provide for the Secretary of State to have power, where any of subsections (2) to (4) below apply, to replace all or any of the first governors.
- (2) This subsection applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This subsection applies where—
  - (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of this Act, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
  - (d) the Secretary of State has received a statement prepared under section 210 of this Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;and expressions used in this subsection and in that Part have the same meaning as in that Part.
- (4) This subsection applies where in the opinion of the Secretary of State any action taken or proposed by the governing body of the school, or any failure of the governing body to act, is prejudicial to the provision of education by the school.
- (5) The instrument of government for a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 48 of this Act,shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of section 63(3) of this Act shall not apply for the purposes of the appointment by virtue of this section of any first governor.

#### **65 Foundation governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a voluntary school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 49 of this Act,shall provide for the governing body to include foundation governors.

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- (2) The instrument shall provide for such number of foundation governors as will secure that they outnumber the other governors.
- (3) Subject to subsection (5) below, the instrument may provide for any foundation governorship to be held ex officio.
- (4) Subject to subsection (7) below, the instrument—
  - (a) where it provides for a foundation governorship to be held ex officio, shall specify the office the holder of which is to be a foundation governor, and
  - (b) shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (5) An additional foundation governor appointed by virtue of provision made in the instrument of government in pursuance of section 67(2) of this Act may not be appointed to hold office ex officio.
- (6) Subject to subsections (8) and (9) below, the instrument shall provide for at least two of the foundation governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school.
- (7) The initial instrument shall—
  - (a) provide for the number of foundation governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified,
  - (b) in the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, provide for the person or persons who, immediately before the incorporation date, were named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) to the existing governing body to be entitled to appoint the foundation governors for the governing body of the grant-maintained school,
  - (c) in the case of a grant-maintained school established in pursuance of proposals under section 49 of this Act, provide for the promoters to be entitled to appoint the foundation governors,
  - (d) where it provides for a foundation governorship to be held ex officio, provide for it to be held by the holder of a specified office,and in this subsection "specified" means specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) In the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, the instrument shall have effect, notwithstanding anything in subsection (6) above, in relation to the determination of initial foundation governors as if it provided for the foundation governors to include at least two persons who on the date of their selection or appointment are parents of registered pupils at the school.
- (9) In the case of a grant-maintained school established in pursuance of proposals published under section 49 of this Act, subsection (6) above shall not apply in relation to the appointment of any foundation governor before the date of implementation of the proposals.

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*Status: This is the original version (as it was originally enacted).*

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## **66 Sponsor governors**

- (1) The instrument of government for the governing body of a grant-maintained secondary school may—
  - (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the instrument.
- (2) Where a governing body of a school are to be incorporated in pursuance of proposals for acquisition of grant-maintained status, or proposals for the establishment of a new grant-maintained school, which name a person as a sponsor of the school, and the school is to be a secondary school, the initial instrument of government shall provide—
  - (a) for the person so named to be a sponsor of the school, and
  - (b) for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the proposals.
- (3) Where the instrument of government provides for two or more persons named as sponsors of the school in such proposals or, as the case may be, in the instrument to appoint governors—
  - (a) it shall provide for each sponsor to appoint such number of governors as is specified in relation to him in the proposals or, as the case may be, instrument, and
  - (b) it may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school which name a person as a sponsor of the school, the instrument of government shall have effect as if it required the first appointments of sponsor governors to be made before the date of implementation of the proposals.

## **67 Additional governors**

- (1) The instrument of government for the governing body of a grant-maintained school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the appointing authority, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) above are in office, to appoint a number of additional first or, as the case may be, foundation governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) In subsection (2) above, “the appointing authority” means the person entitled to appoint the first or, as the case may be, foundation governors on the governing body or, if more than one person is so entitled, the persons so entitled acting jointly.



## *Powers*

### **68 Powers of governing body**

- (1) The governing body of a grant-maintained school incorporated in pursuance of proposals for acquisition of grant-maintained status may conduct a school of the same description as the school immediately before the date of implementation of the proposals.
- (2) The governing body of a grant-maintained school incorporated in pursuance of proposals for the establishment of a new grant-maintained school may conduct a school of the description in the proposals.
- (3) The school conducted by the governing body of a grant-maintained school shall not be regarded as of a different description, where changes have been made in the character or premises of the school since the date of implementation of the proposals, to that immediately before that date or, as the case may be, to that in the proposals if the changes—
  - (a) did not require authorisation under Chapter VII, or
  - (b) were authorised under that Chapter.
- (4) Subject to subsections (6) and (7) below and to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may 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.
- (5) The power conferred by subsection (4) above includes in particular power—
  - (a) in the case of a grant-maintained school established in pursuance of proposals for acquisition of grant-maintained status, to assume the conduct, as from the date of implementation of the proposals, of the school as constituted immediately before that date,
  - (b) in the case of a grant-maintained school established in pursuance of proposals for the establishment of a new grant-maintained school, to conduct, as from the date of implementation of the proposals, a school of the description in the proposals,
  - (c) to acquire and dispose of land and other property,
  - (d) to enter into contracts, including, in particular, contracts for the employment of teachers and other staff,
  - (e) 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 38 of this Act, and
  - (f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for such purposes.
- (6) Subsection (4) above does not confer power to borrow money, except money lent under section 92 of this Act.
- (7) The power to dispose of land mentioned in subsection (5)(c) above—
  - (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.

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- (8) Without prejudice to subsection (4) above, but subject to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may provide education at the school which is neither primary nor secondary education if—
- (a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years,
  - (b) it is part-time education suitable to the requirements of junior pupils who have not attained the age of five years and the school provides full-time education for junior pupils of the same age, or
  - (c) they do so as agents for a local education authority under arrangements made with the authority for the purpose.

## **69 Joint schemes**

- (1) Two or more grant-maintained schools may enter into a scheme under this section (referred to in this section and section 70 of this Act as a “joint scheme”).
- (2) A joint scheme may—
- (a) authorise or require the governing bodies of the schools to which the scheme applies to establish joint committees constituted in accordance with the scheme,
  - (b) provide for the meetings and proceedings of any joint committee so constituted, and
  - (c) authorise or require the governing bodies of the schools to which the scheme applies to delegate, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined to any joint committee so constituted.
- (3) A scheme providing for any joint committee must provide for the committee—
- (a) to consist only of persons who are governors of the schools to which the scheme applies, and
  - (b) to include a head teacher of one of those schools, a parent governor of one of those schools and a first or foundation governor of one of those schools.
- (4) A joint scheme may authorise or require the governing bodies of the schools to which the scheme applies to exercise jointly, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined; but such a scheme may not provide for the joint exercise of any function relating to the employment of teachers unless it also provides for the establishment of a joint committee to exercise that function.
- (5) In relation to any teacher employed in pursuance of a joint scheme, the School Teachers' Pay and Conditions Act 1991 shall have effect as if he were employed by the joint committee required by subsection (4) above to be established and that joint committee were the governing body of a grant-maintained school.
- (6) A joint scheme shall provide for any expenses of exercising any functions in pursuance of the scheme.
- (7) A joint scheme shall have effect notwithstanding anything contained (whether in pursuance of a requirement under this Act or otherwise) in the instrument or articles of government for any of the schools to which the scheme applies.

- (8) A joint scheme shall not have effect in relation to any matter dealt with in any co-ordinated arrangements for admissions (within the meaning of section 260 of this Act) contained in an agreement approved by the Secretary of State under that section or made in pursuance of a scheme under that section.

## **70 Making and varying joint schemes**

- (1) A joint scheme shall not come into force until it has been approved by the Secretary of State.
- (2) A joint scheme shall provide for the scheme to cease to have effect where the governing bodies of all the schools to which the scheme applies agree.
- (3) A joint scheme—
- (a) may be varied by the governing bodies of all the schools to which the scheme applies if the variations are minor variations or the Secretary of State has approved the variations,
  - (b) if the Secretary of State so directs, shall be varied by the governing bodies in accordance with the direction, and
  - (c) if the Secretary of State so directs, shall cease to have effect.
- (4) The Secretary of State may—
- (a) approve a scheme, or variations, with such modifications as he thinks fit, or
  - (b) give a direction under subsection (3)(b) or (c) above,
- only after proper consultations.
- (5) In subsection (4) above, “proper consultations” means consultations with the governing bodies of every school—
- (a) in the case of a proposed scheme, to which the scheme will apply,
  - (b) in the case of a variation, to which the scheme applies, or will apply after the variation, and
  - (c) in the case of a direction for a scheme to cease to have effect, to which the scheme applies.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as minor for the purposes of this section.

*Schools acquiring grant-maintained status: determination etc. of initial governors*

## **71 Determination of initial parent and teacher governors**

- (1) Where proposals are required to be published under section 32 of this Act in respect of a school, this section applies for the purpose of determining the persons who are to be named in the proposals as proposed initial governors of any elected category.
- (2) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall 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 section 72(1) of this Act), and
  - (b) any election or appointment required by subsection (7) below,

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is held or made if possible before that date, and otherwise as soon as possible afterwards.

- (3) Subject to subsection (4) below, any person who on the date of publication of the proposals is an eligible governor of an elected category on the existing governing body shall be named in the proposals as published as a proposed initial governor of that category.
- (4) If the number of governors of any elected category to be specified in the proposals is less than the number which, on the date of publication of the proposals, will be the number of eligible governors of that category on the existing governing body, such of the eligible governors of that category as may before the date of publication of the proposals be determined—
  - (a) by agreement between them, or
  - (b) in default of agreement, by drawing lots,
 shall be named in the proposals as published as the proposed initial governors of that category.
- (5) The existing governing body shall secure that any persons required to be named in the proposals in accordance with subsection (4) above are determined before the date of publication of the proposals.
- (6) Subsection (7) below applies if the number which is, or is to be, specified in the proposals of governors of any elected category is greater than the complement of eligible governors of that category on the existing governing body on the date of publication of the proposals; and for those purposes that complement is—
  - (a) the number (if any) of eligible governors of that category on the existing governing body, plus
  - (b) the number (if any) of outstanding vacancies for governors of that category on the existing governing body.
- (7) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall secure that such number of persons are elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body as governors of that category as is required to make up the difference between the number specified or to be specified in the proposals and the complement of eligible governors of that category on the existing governing body.
- (8) In a case to which subsection (7) above applies, the persons to be named in the proposals as published as the proposed initial governors of the category concerned shall be—
  - (a) any eligible governor of that category, and
  - (b) any person elected or appointed under subsection (7) above as an initial governor of that category before the date of publication of the proposals.

## 72 Section 71: supplementary provisions

- (1) Subject to subsection (2) below, where the members of the existing governing body of a school to which section 71 of this Act applies include a 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 date of implementation of the proposals 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 subsection (1) above 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, in the time available between the date on which his term of office is due to come to an end and the proposed date of publication of the proposals, to fill the vacancy by the procedure applicable under the Education (No. 2) Act 1986.
- (3) Without prejudice to section 8(2) of that 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 that 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) Where any such election or appointment as is referred to in section 71(2) of this Act is held or made on or after the date of publication of the proposals, the existing governing body shall publish at such time and in such manner as may be prescribed notice of the election or appointment.

### **73 Determination of initial first or foundation governors**

- (1) Where proposals are required to be published under section 32 of this Act in respect of a county school, the existing governing body shall select the persons who are to be the initial first governors.
- (2) Where proposals are required to be published under section 32 of this Act in respect of a voluntary school, the person or persons named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) to the existing governing body shall select the persons who are to be the initial foundation governors.
- (3) The duties under subsections (1) and (2) above are to be complied with, if possible, before the date of publication of the proposals and otherwise as soon as possible after that date.
- (4) Any person selected under subsection (1) or (2) above shall, if possible, be named in the proposals as published as a proposed initial first or, as the case may be, foundation governor.
- (5) In the case of any person so selected who is not named in the proposals as published, the existing governing body shall—
  - (a) give the Secretary of State notice in writing of the relevant particulars in respect of the person selected before such date as may be specified in directions given by the Secretary of State, and
  - (b) publish at such time and in such manner as may be prescribed notice of his selection.
- (6) Where the Secretary of State is notified of any particulars under subsection (5) above, he shall modify the proposals by including in them the particulars notified to him.

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- (7) The existing governing body shall secure that any selection required by subsection (2) above is carried out in accordance with that subsection.
- (8) Where any selection falls in accordance with subsection (2) above to be made by two or more persons, it shall be made by those persons acting jointly; and if they fail to agree on the selection, it shall be made by the Secretary of State or in accordance with directions given by him.
- (9) Before selecting, or giving any direction as to the selection of, an initial foundation governor in a case where religious education in accordance with the tenets of a particular religion or religious denomination is given to pupils at the school in pursuance of section 27 or 28 of the Education Act 1944 (religious education at voluntary schools), the Secretary of State shall consult the persons appearing to him to be the appropriate authority of the religion or denomination concerned.

#### **74 Replacement of proposed initial parent and teacher governors before incorporation**

- (1) This section applies where proposals published under section 32 of this Act are pending in respect of a school.
- (2) If a person named in the proposals as a proposed governor of an elected category who was elected under section 71 of this Act or this section—
  - (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,

then, subject to subsection (3), below the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to the school shall secure that a person is elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body in his place.

- (3) Where in a case to which subsection (2) above applies the Secretary of State is satisfied that it would not be reasonably practicable to hold an election or make an appointment in accordance with that subsection in the time available, he shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (4) If 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—
  - (a) ceases to hold office on the existing governing body,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,

the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a 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.

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- (5) Where in a case to which subsection (4)(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 in the time available before he determines the proposals to fill the vacancy on the existing governing body by the procedure applicable under the Education (No. 2) Act 1986,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (6) Where in a case to which subsection (4)(b) or (c) above applies there is no such eligible governor at the time in question, subsection (2) above shall apply as if the former proposed governor had been elected under section 71 of this Act.
- (7) If 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 proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (8) References in this section to a person named in the proposals include any person required to be so named.
- (9) The existing governing body shall—
- (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (2), (4) or (7) above,
  - (b) make any nomination required for the purposes of this section, and
  - (c) give the Secretary of State notice in writing of the relevant particulars in respect of any person nominated by them under this section.

## **75 Replacement of proposed initial first or foundation governors before incorporation**

- (1) Where proposals published under section 32 of this Act are pending in respect of a county school and a person selected under section 73(1) of this Act to be a first governor—
- (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.

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- (2) Where proposals published under section 32 of this Act are pending in respect of a voluntary school and a person selected under section 73(2) of this Act to be a foundation governor—
- (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,

the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the person or persons named in the school's instrument of government as being entitled to appoint the foundation governors (within the meaning of the Education Act 1944) to the existing governing body.

- (3) Subsections (8) and (9) of section 73 of this Act apply for the purposes of subsection (2) above as they apply for the purposes of that section, but as if references to selection were to nomination.
- (4) The existing governing body shall—
- (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (1) or (2) above,
  - (b) make or secure the making of any nomination required for the purposes of this section, and
  - (c) give the Secretary of State written notification of the relevant particulars in respect of any person nominated under this section.

## **76 Elections and appointments required for determining initial governors of an elected category: supplementary provisions**

- (1) Section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply in relation to the election of a person under section 71 or 74 of this Act to hold office as an initial parent governor or an initial teacher governor as it applies in relation to the election of a parent governor or teacher governor to the existing governing body.
- (2) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 of this Act applies is the local education authority, the existing governing body shall give notice in writing to the authority of the proposed date of publication of the proposals for acquisition of grant-maintained status for the school.
- (3) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 or 74 of this Act applies is the local education authority, the existing governing body shall notify the authority in writing—
- (a) of any election or appointment which appears to them to be required under section 71 or 74 of this Act in relation to the proposed governing body, and
  - (b) if the number of eligible governors of any category on the existing governing body is for the time being less than the proposed number of initial governors of that category, of any vacancy on the existing governing body for a governor of that category.
- (4) Where an election or appointment required for determining a proposed initial governor of any category is held or made at a time when proposals published under section 32



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of this Act are pending in respect of the school, the existing governing body shall give the Secretary of State notice in writing of the relevant particulars in respect of the person elected or appointed.

- (5) Where the Secretary of State is notified of any particulars under subsection (4) above, he shall modify the proposals by including in them the particulars notified to him (in substitution, where appropriate, for any particulars they supersede).
- (6) For the purposes of subsection (4) above, an election or appointment is required for determining a proposed initial governor of any category if—
  - (a) it is required under section 71 or 74 of this Act, or
  - (b) it is required for filling a vacancy on the existing governing body 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 proposed number of initial governors of that category.

## **77 Initial sponsor governors**

- (1) In relation to any governing body to be incorporated under Chapter II in pursuance of proposals for acquisition of grant-maintained status which give the name of a sponsor of the school, regulations shall make provision—
  - (a) for the determination of the persons who are to be the initial sponsor governors, and
  - (b) for the persons so determined to be named in the proposals, whether as published or as modified in pursuance of the regulations.
- (2) The regulations may in particular make provision corresponding to any of the provisions of sections 71 to 76 of this Act.

*New grant-maintained schools: determination etc. of initial governors*

## **78 Initial governors for new grant-maintained schools**

- (1) This section applies in relation to any governing body to be incorporated under Chapter IV.
- (2) Regulations shall make provision for the appointment of the persons who are to be the initial governors and, in particular, shall require each appointing authority—
  - (a) to obtain the Secretary of State’s consent before making any appointment, and
  - (b) to notify the Secretary of State before the incorporation date of the appointments to all the initial governorships for which the authority is the appointing authority.
- (3) In subsection (2) above, the “appointing authority” in relation to any appointment, means the person entitled to make the appointment.

*General and supplementary*

**79 Saving for defects in selection or nomination**

- (1) The proceedings of the governing body of a grant-maintained school shall not be invalidated by any defect in any procedure required under this Chapter in relation to the determination of any person to hold office as an initial governor.
- (2) This section does not prejudice the generality of paragraph 11 of Schedule 5 to this Act.

**80 Chapter V: interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) References to the authority responsible for election arrangements under the Education (No. 2) Act 1986 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).
- (3) 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 32 of this Act and in sections 71(7) and 74(2) of this Act, to the procedure applicable under the Education (No. 2) Act 1986 are references—
  - (a) 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
  - (b) where any such provision applies, to the making of an appointment in accordance with that provision.
- (4) A person named in proposals for acquisition of grant-maintained status in respect of a school as a proposed initial governor of any category shall be treated as becoming prospectively disqualified for holding office as such a governor on the proposed governing body if an event occurs in relation to him which, if—
  - (a) it had occurred on or after the incorporation date, and
  - (b) the instrument prescribed under section 56 of this Act for the governing bodies of schools of the kind in question had then been in force,would have caused him to become disqualified for holding such office.

## CHAPTER VI

### FUNDING OF GRANT-MAINTAINED SCHOOLS

#### *Grants: general*

#### **81 Maintenance grants**

- (1) Subject to the provisions of this Part of this Act, the funding authority shall make annual grants (to be known as maintenance grants) to the governing body of each grant-maintained school, each such grant being made 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 the grant relates.
- (2) The amount of the maintenance grant payable in respect of a school for a financial year shall be such as may be determined (and from time to time revised) in accordance with regulations (referred to in this Chapter as “grant regulations”); and grant regulations may provide for determinations (and revisions) to be made by reference to amounts determined or redetermined for the purposes of this section by the Secretary of State.
- (3) Subject to—
  - (a) any provision made by virtue of section 69(6) of this Act,
  - (b) any requirements imposed by the funding authority under section 84(1) of this Act, and
  - (c) any requirements as to the application of maintenance grant contained in the articles of government of the school,the governing body of a grant-maintained school shall apply any payments made to them in respect of maintenance grant solely for the purposes of the school.
- (4) In this Chapter “the purposes of the school” do not include purposes wholly referable to the provision of—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
  - (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years.

#### **82 Special purpose grants**

- (1) Grant regulations may provide for the payment by the funding authority to the governing bodies of grant-maintained schools of grants (to be known as special purpose grants) in respect of expenditure, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies—
  - (a) for or in connection with educational purposes of any class or description so specified,
  - (b) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the funding authority to be required for meeting any special needs of the population of the area served by the schools in question, or
  - (c) in respect of expenses of any class or description so specified, being expenses which it appears to the funding authority the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant.

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- (2) Grant regulations may provide for special purpose grants to be payable—
  - (a) on a regular basis in respect of expenditure of a recurrent kind, or
  - (b) by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.

### **83 Capital grants**

- (1) Grant regulations may provide for the payment by the funding authority to the governing bodies of grant-maintained schools of grants (to be known as capital grants) in respect of expenditure of a capital nature, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies.
- (2) The descriptions of expenditure which are to be regarded for the purposes of capital grant as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (3) Where the governing body of a grant-maintained school include sponsor governors, the funding authority shall, if directed to do so by the Secretary of State, pay capital grant of such amount as may be specified in the directions in respect of such expenditure falling within subsection (1) above as is incurred, or to be incurred, by the governing body for such purposes as may be specified in the directions.
- (4) Before giving a direction under subsection (3) above, the Secretary of State shall consult the funding authority.
- (5) A direction under subsection (3) above may not be given after the end of the period of twelve months beginning—
  - (a) in the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status which include sponsor governors on the incorporation date, with that date,
  - (b) in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school which include sponsor governors on the date of implementation of the proposals, with that date, and
  - (c) in any other case, with the date when the instrument of government naming a person as the sponsor of the school came into effect.

### **84 Imposition of requirements on governing body in receipt of grant**

- (1) A governing body to whom any payments in respect of maintenance grant, capital grant or special purpose grant are made shall comply with such requirements of a kind mentioned in subsection (2) below as the funding authority may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) above are—
  - (a) requirements specified in grant regulations as requirements which may be imposed by the funding authority on governing bodies to whom such payments are made, and
  - (b) requirements determined in accordance with grant regulations by the funding authority.
- (3) Requirements imposed under subsection (1) above—

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- (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed, and
  - (b) subject to subsection (4) below, may at any time be varied by the funding authority.
- (4) The power of the funding authority to vary such a requirement—
  - (a) does not apply to a requirement of the kind mentioned in subsection (2)(a) above, or a requirement required to be imposed by the regulations (by virtue of subsection (9) below) or by directions under section 9 of this Act, unless the Secretary of State has consented to the variation, and
  - (b) is subject, in the case of a requirement of the kind mentioned in subsection (2)(b) above, to the provisions of the regulations relating to the determination of the requirements that may be imposed in the case of payments in respect of the grant in question.
- (5) Requirements imposed under subsection (1) above may at any time be waived or removed by the funding authority with the consent of the Secretary of State.
- (6) 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 grant, or
  - (b) which may be imposed by the funding authority on a governing body to whom payments in respect of capital grant are made,may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the funding authority of the whole or any part of the following amount.
- (7) That amount is—
  - (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) above may be imposed where any payment is made in respect of capital grant if—
  - (a) the grant is made in respect of the provision, alteration or repair of premises for a school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.
- (9) Grant regulations may require the funding authority to impose any such requirements as may be imposed under the preceding provisions of this section.

## **85 Grants: further provisions**

- (1) The times at which, and the manner in which, payments are made in respect of—
  - (a) maintenance grant for a grant-maintained school in respect of any financial year,
  - (b) special purpose grant, and
  - (c) capital grant,shall be such as may be determined from time to time by the funding authority.

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- (2) Payments in respect of maintenance grant for a 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 the school, by reference to an estimate of the amount which will be so payable made by the funding authority.
- (3) Where in respect of any financial year an over-payment of maintenance grant is made to the governing body of a school, a sum equal to the amount of that over-payment shall be recoverable from the governing body by the funding authority.
- (4) Where a sum is payable by the governing body of a school to the funding authority—
- (a) in respect of an over-payment of maintenance grant in respect of a financial year, or
  - (b) by way of repayment of special purpose grant or capital grant (whether by virtue of a requirement such as is mentioned in section 84(6) of this Act or otherwise),
- the funding authority 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 them to the governing body.
- (5) In this section, references to an over-payment of maintenance grant in respect of a financial year are 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 question in respect of the year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.
- (6) The funding authority shall exercise any power conferred on them by sections 53 and 81 to 84 of this Act, paragraph 6 of Schedule 4 to this Act or this section in such manner (if any) as may be specified in or determined in accordance with grant regulations.

*Grants: Wales (until establishment of the SFCW)*

## **86 Application of sections 87 to 91**

Before the Schools Funding Council for Wales begin to exercise their functions, sections 87 to 91 of this Act shall have effect in relation to grant-maintained schools in Wales in place of sections 81(1) and (3), 82(1), 83(1), 84 and 85 of this Act.

## **87 Maintenance grants**

- (1) Subject to the provisions of this Part of this Act, the Secretary of State shall make annual grants (to be known as maintenance grants) to the governing body of each grant-maintained school, each such grant being made 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 the grant relates.
- (2) Subject to—
- (a) any provision made by virtue of section 69(6) of this Act,
  - (b) any requirements imposed by the Secretary of State under section 90(1) or (3) of this Act, and

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(c) any requirements as to the application of maintenance grant contained in the articles of government of the school,  
the governing body of a grant-maintained school shall apply any payments made to them in respect of maintenance grant solely for the purposes of the school.

## **88 Special purpose grants**

Grant regulations may provide for the payment by the Secretary of State to the governing bodies of grant-maintained schools 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—

- (a) for or in connection with educational purposes of any class or description so specified,
- (b) 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
- (c) 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.

## **89 Capital grants**

Grant regulations may provide for the payment by the Secretary of State to the governing bodies of grant-maintained schools of grants (to be known as capital grants) in respect of expenditure of a capital nature, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies.

## **90 Imposition of requirements on governing body in receipt of grant**

- (1) A governing body to whom any payments in respect of maintenance grant or special purpose grants are made shall comply with such requirements of a kind mentioned in subsection (2) below as the Secretary of State may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) above are—
  - (a) requirements specified in grant regulations as requirements which may be imposed by the Secretary of State on governing bodies to whom such payments are made, and
  - (b) requirements determined in accordance with grant regulations by the Secretary of State.
- (3) 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.
- (4) Requirements imposed under subsection (1) or (3) 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 (5) below, varied by the Secretary of State.
- (5) The power of the Secretary of State to vary such a requirement—

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- (a) does not apply to a requirement of the kind mentioned in subsection (2)(a) above, and
  - (b) is subject, in the case of a requirement of the kind mentioned in subsection (2)(b) above, to the provisions of the regulations relating to the determination of the requirements that may be imposed in the case of payments in respect of the grants in question.
- (6) 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 grant, or
  - (b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grant are made,
- may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the Secretary of State of the whole or any part of the following amount.
- (7) That amount is—
- (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) above may be imposed where any payment is made in respect of capital grant if—
- (a) the grant is made in respect of the provision, alteration or repair of premises for a school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.

## **91 Grants: further provisions**

- (1) The times at which, and the manner in which, payments are made in respect of—
- (a) maintenance grant for a 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 a 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 the 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 an over-payment of maintenance grant is made to the governing body of 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 a sum is payable by the governing body of a school to the Secretary of State—
- (a) in respect of an over-payment of maintenance grant in respect of a financial year, or



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- (b) by way of repayment of special purpose grant or capital grant (whether by virtue of a requirement such as is mentioned in section 90(6) 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) In this section, references to an over-payment of maintenance grant in respect of a financial year are 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 question in respect of the year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

### *Loans*

## **92 Loans to governing bodies**

- (1) The appropriate authority may make loans to the governing bodies of grant-maintained schools in respect of expenditure of any class or description specified in regulations (referred to in this section as “loan regulations”) incurred or to be incurred by the governing bodies for or in connection with such purposes as may be so specified.
- (2) Any loan under this section shall be made on such terms as loan regulations may require, being terms specified in or determined in accordance with the regulations.
- (3) Where any sum is payable by the governing body of a grant-maintained school to the appropriate authority in respect of the principal of, or interest on, any loan under this section, the appropriate authority 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 them to the governing body.
- (4) In this section, the “appropriate authority”—
- (a) in relation to England before the Funding Agency for Schools begin to exercise their functions, and
  - (b) in relation to Wales before the Schools Funding Council for Wales begin to exercise their functions,
- means the Secretary of State and, in any other case, means the funding authority.
- (5) The funding authority shall exercise any power conferred on them by this section in such manner (if any) as may be specified in or determined in accordance with loan regulations.

### *Recovery from local funds*

## **93 Recovery from local funds of sums in respect of maintenance grant**

- (1) Where the Secretary of State so determines, this section applies to a local education authority in respect of any financial year for which the determination is made; and the determination may apply this section in respect of all grant-maintained schools in the area of the authority or in respect of such grant-maintained schools in that area as may be ascertained by or in accordance with the determination.

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- (2) The Secretary of State shall in respect of each financial year for which he makes a determination under subsection (1) above in respect of a local education authority, give notice in writing to the authority of the terms of the determination.
- (3) The Secretary of State may recover from a local education authority to which this section applies in respect of any financial year sums in respect of the maintenance grant payable for that year to the governing bodies of any grant-maintained schools in respect of which the determination applies.
- (4) Subject to subsection (5) below, sums recoverable by virtue of this section in respect of a 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.
- (5) The amount of any sum so recoverable shall be determined by reference to any amount—
  - (a) which has previously been determined under section 94 of this Act as the total amount recoverable in respect of the school and financial year in question, or
  - (b) (where no amount has previously been determined as mentioned in paragraph (a) above) which is estimated by the Secretary of State as the amount which will initially be determined under section 94 of this Act as the total amount recoverable in respect of the school and financial year in question,
 and 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) The Secretary of State may recover sums due to him under this section in either or both of the following ways—
  - (a) by requiring the local education 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 (whenever passed) or from any amount payable by him to the authority under Part III of Schedule 8 to the Local Government Finance Act 1988 (redistributed non-domestic rates).
- (7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

#### **94 Determination of total amount recoverable under section 93**

- (1) The total amount recoverable by virtue of section 93 of this Act in respect of 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 (referred to in this section as “recoupment regulations”).
- (2) Subject to any provision made by such regulations by virtue of subsection (3) 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).

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- (3) 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 local education authority by virtue of section 93 of this Act for a financial year by reference to any excess amounts recovered under that section in respect of any previous financial year.
- (4) For the purposes of subsection (3) above, an excess amount is recovered under section 93 of this Act in respect of a financial year if the aggregate amount of the sums recovered under that section for that year from the local education authority—
  - (a) in respect of any school in respect of which sums are recoverable from the authority under that 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 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.

## **95 Provisions consequential on section 93**

- (1) For the purposes of sections 51 and 52 of the Education (No. 2) Act 1986 (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 which is not made by the local education authority shall, if sums are recoverable under section 93 of this Act in respect of the school and that year from the authority, be taken to have been made by them.
- (2) The reference in subsection (1) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education.
- (3) The governing body of a grant-maintained school shall, if sums are recoverable under section 93 of this Act in respect of the school from a local education authority, provide the authority with such information relating to the registered pupils at the school as the authority may require for the purpose of claiming any amount in respect of such a pupil from another authority by virtue of regulations under section 51 or 52 of the Education (No. 2) Act 1986.

## **CHAPTER VII**

### **ALTERATION ETC. OF GRANT-MAINTAINED SCHOOLS**

## **96 Proposals for change of character etc. by governing body**

- (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 or to transfer the school to a new site they shall—
  - (a) publish proposals for that purpose in such manner as may be prescribed, and
  - (b) submit to the Secretary of State 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 a school unless the trustees under any

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trust deed relating to the school have given their consent in writing to the change in question.

- (3) Before publishing any proposals under this section, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the governing body shall have regard to any guidance given to them from time to time by the Secretary of State.
- (4) Proposals published under this section shall include particulars—
  - (a) of the proposed time or times of implementation of the proposals, and
  - (b) of the number of pupils proposed 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,
 and, if pupils are proposed to be admitted for nursery education, shall give the prescribed information.
- (5) Proposals published under this section shall be accompanied by a statement which—
  - (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
  - (b) explains the effect of subsection (6) below.
- (6) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be made by any of the following—
  - (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors for the area,
  - (c) the governing body of any school affected by the proposals, and
  - (d) any local education authority concerned,
 and objections under this subsection shall be submitted to the Secretary of State.
- (7) Where the proposals are to transfer a school to a site in a different area, objections under subsection (6) above to the proposals may also be made by any ten or more local government electors for that area.
- (8) No decision taken at a meeting of the governing body of a grant-maintained school that would result in the publication 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.

## **97 Proposals for change of character etc. by funding authority**

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1) of this Act applies to the area.
- (2) Where the funding authority are of the opinion that—
  - (a) a significant change should be made in the character of a grant-maintained school,
  - (b) a significant enlargement of the premises of such a school should be made, or
  - (c) such a school should be transferred to a new site in the area or in another area to which an order under that section applies,

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they may publish proposals for that purpose in such manner as may be prescribed and submit a copy of the published proposals to the Secretary of State.

(3) No proposals shall be published under this section for the purpose of making a significant change in the religious character of a school.

(4) Before publishing any proposals under this section the funding authority shall consult—

- (a) such persons as appear to them to be appropriate, and
- (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school having any foundation governor who is appointed by the appropriate diocesan authority, that authority;

and in discharging their duty under paragraph (a) above, the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.

(5) Proposals published under this section shall include particulars—

- (a) of the proposed time or times of implementation of the proposals, and
- (b) of the number of pupils proposed 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,

and, if pupils are proposed to be admitted for nursery education, shall give the prescribed information.

(6) Proposals published under this section shall be accompanied by a statement which—

- (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
- (b) explains the effect of subsection (7) below.

(7) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the funding authority by any of the following—

- (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
- (b) any ten or more local government electors for the area,
- (c) the governing body of the school to which the proposals relate,
- (d) the governing body of any other school affected by the proposals, and
- (e) any local education authority concerned.

(8) Where the proposals are to transfer a school to a site in a different area, objections under subsection (7) above to the proposals may also be made by any ten or more local government electors for that area.

(9) Not later than one month after the end of that period, the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them.

## **98 Approval, adoption or rejection of proposals**

(1) Proposals published under section 96 of this Act require the approval of the Secretary of State.

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- (2) Proposals published under section 97 of this Act require the approval of the Secretary of State if—
- (a) he gives notice to that effect to the funding authority within two months after the submission to him of the published proposals, or
  - (b) objections have been made under subsection (7) of that section within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (3) Where under subsection (1) or (2) above any proposals require the approval of the Secretary of State, he may reject them, approve them without modification or, after consulting the governing body and, in the case of proposals published under section 97 of this Act, the funding authority, approve them with such modifications as he thinks desirable.
- (4) Where proposals published under section 97 of this Act do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (5) The funding authority shall—
- (a) make any determination under subsection (4) above not later than four months after the publication of the proposals, and
  - (b) give notice in writing to the Secretary of State and the governing body of their determination.

## **99 Approval of school premises**

- (1) Where the governing body of a grant-maintained school publish proposals under section 96 of this Act, they shall if the funding authority so direct submit to the authority, at such time and in such form and manner as the authority may direct, the particulars mentioned in subsection (3) below; and particulars so submitted require the approval of the funding authority under this section.
- (2) Where the funding authority publish proposals under section 97 of this Act, they shall if in their opinion the circumstances so require prepare the particulars mentioned in subsection (3) below; and particulars so prepared require adoption by the funding authority under this section.
- (3) The particulars are—
- (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
  - (b) such other particulars in respect of the premises or proposed premises of the school as the funding authority may require or, in the case of proposals published under section 97 of this Act, as may be required.
- (4) The particulars prepared or submitted under subsection (3)(a) above shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
- (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990, that document.

## **100 Implementation of proposals, etc**

- (1) Where any proposals are approved or adopted under section 98 of this Act, it shall be the duty of the governing body of the school to which the proposals relate to implement them.
- (2) Proposals required to be implemented under this section shall be implemented in accordance with any particulars approved or adopted under section 99 of this Act.
- (3) The Secretary of State may, at the request of a governing body, modify any proposals published under section 96 of this Act which the governing body are required to implement under this section.
- (4) The Secretary of State may—
  - (a) at the request of a governing body, or
  - (b) at the request of the funding authority and after consulting the governing body, modify any proposals published under section 97 of this Act which the governing body are required to implement under this section.
- (5) Neither the governing body of a grant-maintained school nor any other person shall make any significant change in the character, or significant enlargement of the premises, of the school or transfer the school to a new site, or undertake to do any of those things, unless proposals have been published under section 96 or 97 of this Act and any requirements of section 98 have been complied with.
- (6) Subsection (5) above does not—
  - (a) prevent the Secretary of State allowing such steps to be taken by the governing body of a grant-maintained school, pending compliance with those requirements and the giving or making of the approval or adoption, as the Secretary of State considers reasonable in the circumstances, or
  - (b) apply to the transfer of a school to a new site if at the time of transfer the school is intended to return to the existing site within three years.

## **101 Power to transfer functions under preceding provisions etc**

- (1) The Secretary of State may by order provide for this Part of this Act to have effect with the modifications in subsections (2) to (7) below in relation to any proposals published by the governing body of a grant-maintained school under section 96 of this Act after the coming into force of the order.
- (2) The governing body shall submit a copy of the proposals to the funding authority as well as to the Secretary of State.
- (3) Any objections under subsection (6) of that section to the proposals shall be submitted to the funding authority instead of to the Secretary of State.
- (4) If any objection is made under subsection (6) of that section within the period allowed under that subsection and not withdrawn in writing within that period, then, not later than one month after the end of that period—
  - (a) the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them, and
  - (b) may themselves submit to the Secretary of State an objection to the proposals.
- (5) Sections 98(1) and 100(3) of this Act shall not apply to the proposals unless—

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- (a) the Secretary of State gives notice to the funding authority within two months after the submission to him of the published proposals that the proposals require his approval, or
  - (b) objections have been made under subsection (6) of section 96 of this Act within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (6) Where sections 98(1) and 100(3) of this Act do not apply to the proposals—
- (a) the proposals shall require the approval of the funding authority,
  - (b) the funding authority may reject them, approve them without modification or, after consulting the governing body, approve them with such modifications as they think desirable, and
  - (c) where the governing body are required to implement the proposals under section 100 of this Act, the funding authority may at their request modify the proposals.
- (7) Paragraph 20 of Schedule 2 to this Act shall not apply in relation to the proposals.
- (8) In this Part of this Act—
- (a) references to approval under, or the requirements of, section 98 of this Act include approval under, or the requirements of, this section, and
  - (b) references to the modification of proposals under section 100(3) of this Act include the modification of proposals under subsection (6)(c) above.
- (9) This section does not apply to proposals published under section 272 of this Act (to which this Chapter is applied by subsection (3)); and section 100(3) is not disapplied by this section in the case of proposals treated (by virtue of section 273(6) of this Act) for the purposes of this Part of this Act as if they had been approved under section 98 of this Act.

## **102 Proposals for change of character approved before school becomes grant-maintained**

- (1) This section applies where—
- (a) proposals for a change in the character or an enlargement of the premises of a county or voluntary school, or for the transfer of a county or voluntary school to a new site, have been approved under section 12 or 13 of the Education Act 1980, and
  - (b) the school becomes a grant-maintained school before the proposals are implemented.
- (2) The proposals—
- (a) shall be treated for the purposes of this Part of this Act as if they had been published under section 97 and approved under section 98 of this Act, and
  - (b) shall be implemented in accordance with any particulars approved under section 14 of that Act.
- (3) Subsection (2) above is subject to section 47(1) to (4) of this Act.

## **103 Chapter VII: interpretation**

- (1) References in this Part of this Act to a change in the character of a school include, in particular, changes in character resulting from—



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- (a) 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
  - (b) the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude,
- but do not include such a change as is mentioned in subsection (2) below.
- (2) The change excluded by subsection (1) above is a change resulting only from persons beginning or ceasing to be provided with—
    - (a) part-time education suitable to the requirements of persons of any age over compulsory school age,
    - (b) part-time education suitable to the requirements of junior pupils who have not attained the age of five years where the school provides full-time education for junior pupils of the same age, or
    - (c) full-time education suitable to the requirements of persons who have attained the age of nineteen years.
  - (3) References in this Chapter, where proposals for a significant change in the character, or significant enlargement of the premises, of a school or for the transfer of a school to a new site have been approved or adopted under section 98 of this Act, to the proposals are references to the proposals as approved or adopted, subject to any modifications of the proposals under section 100(3) or (4) of this Act.

## CHAPTER VIII

### DISCONTINUANCE OF GRANT-MAINTAINED SCHOOLS

#### *Proposals for discontinuance*

#### **104 Proposals by governing body for discontinuance**

- (1) The governing body of a grant-maintained school may publish proposals under this section for the discontinuance of the school if they—
  - (a) decide by a resolution passed at a meeting of that body to publish such proposals, and
  - (b) confirm that decision by a resolution passed at a subsequent meeting of the governing body held not less than twenty-eight days after that at which the first resolution was passed.
- (2) Before passing such a resolution as is mentioned in subsection (1)(a) above, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the governing body shall have regard to any guidance given to them from time to time by the Secretary of State.
- (3) The governing body shall, as soon as practicable after the passing of the second resolution, give notice in writing of the second resolution to the local education authority.
- (4) The governing body may, within the period of six months beginning with the date of the second resolution, publish proposals for the discontinuance of the school in such manner as may be prescribed and, where they do so, shall submit to the Secretary of State a copy of the published proposals.

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- (5) The published proposals shall specify the proposed date of discontinuance of the school.
- (6) The published proposals shall be accompanied by a statement—
  - (a) indicating whether or not there are any proposals for the premises of the school to be used by any new or existing school, and
  - (b) explaining the effect of subsection (7) below.
- (7) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the Secretary of State by any of the following—
  - (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors,
  - (c) the governing body of any school affected by the proposals, and
  - (d) any local education authority concerned.

#### **105 Proposals by funding authority for discontinuance**

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1) of this Act applies to the area.
- (2) The funding authority may publish, in such manner as may be prescribed, proposals for the discontinuance of any grant-maintained school and, where they do so, shall submit to the Secretary of State a copy of the published proposals.
- (3) The published proposals shall specify the proposed date of discontinuance of the school.
- (4) Before publishing any proposals under this section the funding authority shall consult—
  - (a) such persons as appear to them to be appropriate, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school having any foundation governor who is appointed by the appropriate diocesan authority, that authority;
 and in discharging their duty under paragraph (a) above, the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.
- (5) The published proposals shall be accompanied by a statement—
  - (a) indicating whether or not there are any proposals for the premises of the school to be used by any new or existing school, and
  - (b) explaining the effect of subsection (6) below.
- (6) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the funding authority by any of the following—
  - (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors,
  - (c) the governing body of the school to which the proposals relate,

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- (d) the governing body of any school affected by the proposals, and
  - (e) any local education authority concerned.
- (7) Not later than one month after the end of that period, the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them.

## **106 Approval, adoption or rejection of proposals**

- (1) Proposals published under section 104 of this Act require the approval of the Secretary of State.
- (2) Proposals published under section 105 of this Act require the approval of the Secretary of State if—
  - (a) he gives notice to that effect to the funding authority within two months after the submission to him of the published proposals, or
  - (b) objections have been made under subsection (6) of that section within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (3) Where under subsection (1) or (2) above any proposals require the approval of the Secretary of State, he may reject them, approve them without modification or, after consulting the governing body and, in the case of proposals published under section 105 of this Act, the funding authority, approve them with the substitution of a different date for the date of discontinuance proposed.
- (4) Where the Secretary of State approves any such proposals he shall give notice in writing of that fact and of the discontinuance date to the governing body and (except where the school is in Wales and the Schools Funding Council for Wales have not begun to exercise their functions) the funding authority.
- (5) Where proposals published under section 105 of this Act do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (6) The funding authority shall—
  - (a) make any determination under subsection (5) above not later than four months after the publication of the proposals, and
  - (b) give notice in writing to the Secretary of State and the governing body of their determination and, if they adopt the proposals, of the discontinuance date.

## **107 Implementation of proposals**

- (1) Where any proposals are approved under section 106 of this Act, the governing body shall cease to conduct the school on the discontinuance date.
- (2) In this section, “the discontinuance date” means—
  - (a) the date of discontinuance specified in the proposals as approved, or
  - (b) if—
    - (i) at the request of the governing body, or
    - (ii) in the case of proposals published under section 105 of this Act, at the request of the funding authority and after consulting the governing body,

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the Secretary of State subsequently fixes another date (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously fixed under this subsection), that date.

- (3) The governing body of a grant-maintained school shall not discontinue the school except in pursuance of proposals published under section 104 or 105 of this Act and approved or adopted under section 106 of this Act.

## **108 Power to transfer functions under preceding provisions**

- (1) The Secretary of State may by order provide for this Part of this Act to have effect with the modifications in subsections (2) to (7) below in relation to any proposals published by the governing body of a grant-maintained school under section 104 of this Act after the coming into force of the order.
- (2) The governing body shall submit a copy of the proposals to the funding authority as well as to the Secretary of State.
- (3) Any objections under subsection (7) of that section to the proposals shall be submitted to the funding authority instead of to the Secretary of State.
- (4) If any objection is made under subsection (7) of that section within the period allowed under that subsection and not withdrawn in writing within that period, then, not later than one month after the end of that period—
- (a) the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them, and
  - (b) may themselves submit to the Secretary of State an objection to the proposals.
- (5) Section 106(1) of this Act shall not apply to the proposals unless—
- (a) the Secretary of State gives notice to the funding authority within two months after the submission to him of the published proposals that the proposals require his approval, or
  - (b) objections have been made under subsection (7) of section 104 of this Act within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (6) Where section 106(1) of this Act does not apply to the proposals—
- (a) the proposals shall require the approval of the funding authority,
  - (b) the funding authority may reject them, approve them without modification or, after consulting the governing body, approve them with the substitution of a different date for the date of discontinuance proposed,
  - (c) where the funding authority approve them, they shall give notice in writing of that fact and of the discontinuance date to the governing body, and
  - (d) the reference in section 107(2)(b) of this Act to the Secretary of State shall be read as a reference to the funding authority.
- (7) Paragraph 21(b) of Schedule 2 to this Act shall not apply in relation to the proposals.
- (8) References in this Part of this Act to approval under section 106 of this Act include approval under this section.

### *Withdrawal of grant*

#### **109 Withdrawal of grant where school is unsuitable to continue as grant-maintained school**

- (1) This section applies where the Secretary of State is satisfied that a grant-maintained school as currently constituted or conducted is unsuitable to continue as a grant-maintained school on either or both 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, and
  - (b) 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.
- (2) The Secretary of State may give to the governing body a notice in writing 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.
- (3) Where any of those matters are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall also state that the funding authority's duty to maintain the school will cease on a date specified in the notice.
- (4) Where subsection (3) above does not apply, the notice shall—
  - (a) state that the funding authority's duty to maintain the school will cease 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 on which the notice is given to the governing body, within which the governing body are required to take those measures.
- (5) Where the governing body fail to take the measures required under subsection (4)(b) above by the notice 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 in writing to the governing body extending the time within which those measures are required to be taken, or
  - (b) after consulting the local education authority and, if the school provides education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council, give notice in writing to the governing body that the funding authority's duty to maintain the school will cease on a specified date.
- (6) Where the Secretary of State gives a notice under subsection (2) or (5) above which states that the funding authority's duty to maintain the school will cease on a specified date—
  - (a) he shall give a copy of the notice to the funding authority, and
  - (b) the funding authority shall cease to be under a duty to make maintenance grants to the governing body of the school in respect of any period beginning on or after that date and shall cease on that date to have the power to pay capital or special purpose grant to the governing body.

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- (7) In relation to a school in Wales before the Schools Funding Council for Wales have begun to exercise their functions, this section and section 110 of this Act shall have effect as if subsection (6)(a) above and section 110(4) and (5) were omitted.

## **110 Withdrawal or variation of notice under section 109**

- (1) The Secretary of State may by giving notice in writing to the governing body—
- (a) withdraw a notice under section 109(2) or (5)(b) of this Act,
  - (b) vary a notice under section 109(2) of this Act in relation to which section 109(3) of this Act applies or a notice under section 109(5)(b) of this Act by substituting another date for the date for the time being specified in the notice as the date on which the funding authority’s duty to maintain the school will cease, or
  - (c) vary a notice under section 109(2) of this Act, so far as relates to any measures specified in it by virtue of section 109(4)(b) of this Act.
- (2) If by virtue of subsection (1)(c) above the Secretary of State varies a notice so as to require different measures to be taken, he shall also substitute for the time specified in the notice by virtue of section 109(4)(c) of this Act a time which is not earlier than that time or, where the time so specified has been extended under section 109(5)(a) of this Act, than that time as so extended.
- (3) Any variation under subsection (2) above of the time specified in a notice is without prejudice to any further extension of that time under section 109(5)(a) of this Act.
- (4) Where the Secretary of State withdraws a notice by virtue of subsection (1)(a) above, he shall give notice in writing of that fact to the funding authority.
- (5) Where the Secretary of State varies a notice by virtue of subsection (1)(b) above, he shall give a copy of the notice as varied to the funding authority.

### *Winding up and disposal of property*

## **111 Power to provide by order for winding-up and disposal of property**

- (1) Where—
- (a) proposals for the discontinuance of a grant-maintained school have been approved or adopted under section 106 of this Act, or
  - (b) the Secretary of State has given notice to the governing body of a grant-maintained school under section 109 of this Act specifying a date on which the funding authority’s duty to maintain the school will cease,
- the Secretary of State may by order make provision for the winding up of the governing body and the disposal of the school property.
- (2) Subsections (3) to (7) below apply for the purposes of this section and sections 112 to 116 of this Act.
- (3) “Governing body in liquidation” means a governing body in respect of which any order has been made under this section.
- (4) “School property”, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, means—

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- (a) the premises used or formerly used for the purposes of the school,
  - (b) any interest belonging to the governing body, or held by any trustees on trust for the purposes of the school, in a dwelling house used or held or formerly used or held for occupation by a person employed to work at the school, and
  - (c) all other equipment and property used or held or formerly used or held for the purposes of the school (including any right to such property), except money and any investments to which section 116 of this Act applies.
- (5) 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 subsection (4)(a) to (c) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).
- (6) “Dissolution date”, in relation to a governing body in liquidation or the grant-maintained school conducted or formerly conducted by such a body, means the date appointed in relation to that body by virtue of section 112(5) of this Act.
- (7) “Section 105 loan liabilities”, in relation to a governing body in liquidation, means any liabilities in respect of any loans made under section 105 of the Education Act 1944 (loans by Secretary of State towards initial capital expenditure of aided and special agreement schools) which were transferred to the governing body under section 38 of this Act.

## **112 Winding up**

- (1) An order under section 111 of this Act may set out a proposed timetable for the winding up of the governing body and, in particular, for—
- (a) 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),
  - (b) discharging any liabilities of the governing body,
  - (c) making any provision mentioned in subsection (2) below, and
  - (d) the preparation and audit of the governing body’s final accounts.
- (2) The provision referred to in subsection (1)(c) above is provision authorised to be made—
- (a) by section 114 of this Act (for or in connection with the transfer of the school property), or
  - (b) by section 115 of this Act (in respect of the discharge of the liabilities of the governing body).
- (3) An order under section 111 of this Act may make provision as to the exercise of the governing body’s functions in relation to the school including, in particular—
- (a) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State,
  - (b) provision authorising any of those functions to be exercised by a member of the governing body specified in the order, and
  - (c) provision for the application of the seal of the governing body to be authenticated by the signature of a person specified in the order.
- (4) An order under section 111 of this Act—

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- (a) may 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, and
  - (b) may 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.
- (5) Subject to subsection (6) below, an order under section 111 of this Act may appoint a date on which the governing body are to be dissolved.
- (6) The Secretary of State shall not appoint a dissolution date 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 115 of this Act) have been discharged,
  - (b) all costs of the winding up have been met,
  - (c) any provision authorised by any of sections 114 to 116 of this Act which is possible and expedient in the circumstances of the case has been made, and
  - (d) anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.

### **113 Grants to governing body in liquidation**

- (1) The funding authority 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 in pursuance of an order under section 111 of this Act.
- (2) The funding authority may impose on a governing body to whom such a payment is made such requirements as they may from time to time determine (whether before, at or after the time when the payment in question is made).

### **114 Disposal of school property**

- (1) Subject to the provisions of any order under section 111 of this Act, any school property held by the governing body in liquidation immediately before the dissolution date, other than property held by them on trust for the purposes of the school, shall—
- (a) in the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, vest on that date in the local education authority, and
  - (b) in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, vest on that date in the funding authority.
- (2) Such an order may on such date as may be specified in the order as the transfer date vest the school property or any part of it in any person specified in the order and, where the order does so, it may provide for any property so vested to be held beneficially or on such trusts as may be specified in the order.
- (3) Where any school property is vested in any person other than the funding authority under subsection (1) above or is vested in pursuance of an order under section 111 of this Act, such an order may require the person in whom any property is so vested to pay



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in respect of the property to the Secretary of State or to such other person as may be so specified such consideration (not exceeding the maximum) as may be so specified.

- (4) Subsection (3) above does not apply to property held on trust for the purposes of the school otherwise than by the governing body; but where an order under section 111 of this Act vests property so held otherwise than by the governing body in any person the order shall require that person to pay to the trustees the maximum consideration in respect of the property.
- (5) The maximum consideration that may be specified in such an order in respect of any school property is—
- (a) so far as the property consists of premises (including any interest in a dwelling-house such as is mentioned in section 111(4)(b) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at, or as at a date no earlier than six months before, the dissolution date or, as the case may be, the transfer 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.
- (6) Where such an order requires any person in whom any premises are vested to pay any consideration in respect of the premises, the order shall specify the amount determined by the Secretary of State under subsection (5)(a) above; and any dispute as to that amount may be referred to the Lands Tribunal by—
- (a) the person in whom the premises are vested,
  - (b) the person from whom they are transferred, or
  - (c) the person to whom the consideration is to be paid,
- and shall then be determined by the Tribunal.
- (7) Where—
- (a) by virtue of subsection (3) or (4) above such an order requires any person in whom any premises are vested to pay any consideration in respect of the premises, and
  - (b) on a reference under subsection (6) above the Lands Tribunal determine a different amount from that determined by the Secretary of State,
- he shall consider whether the amount of the consideration specified in the order requires alteration in the light of the determination of the Tribunal and, if it does, he shall vary the order accordingly.
- (8) Where—
- (a) any school property has been vested in the funding authority, or a local education authority, under subsection (1) above and, in the case of property vested in the local education authority, no order under section 111 of this Act required them to pay any consideration in respect of the property, and
  - (b) the funding authority or local education authority subsequently dispose of the property so vested, or any part of it,
- the Secretary of State may require the authority concerned to pay to him or to such person as he may specify the whole or any part of the proceeds of the disposal.
- (9) Nothing in subsection (1) above or in any provision included in an order under section 111 of this Act by virtue of this section shall affect any interest or right of a person in, to or over any school property, being an interest or right which is held by that person otherwise than for the purposes of the school.

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## **115 Disposal of school property: supplementary**

(1) Where by virtue of an order under section 111 of this Act the premises used or formerly used for the purposes of the school, or any part of those premises, are vested in persons proposing to establish a new independent school on the premises—

- (a) such an order may require those persons to discharge any liabilities of the governing body in liquidation in respect of redundancy payments, and
- (b) where the order does so, those liabilities shall be taken into account in determining the amount of consideration (if any) which those persons are required to pay by virtue of section 114(3) of this Act.

(2) Subsection (1) above does not apply to any property held on trust for the purposes of the school otherwise than by the governing body.

(3) Where the premises used or formerly used for the purposes of the school, or any part of those premises, are to be used for the purposes of a new or existing grant-maintained school, an order under section 111 of this Act may provide for the transfer to the governing body of the new or existing school of such rights or liabilities of the governing body in liquidation as were acquired or incurred in connection with the premises which are to be so used.

(4) If—

- (a) the school was an aided or special agreement school immediately before it became grant-maintained,
- (b) proposals have been approved under section 13 of the Education Act 1980 (establishment and alteration of voluntary schools) for the maintenance as a voluntary school of a school which is proposed to be established on the school premises, and
- (c) the Secretary of State has directed that the proposed school shall be an aided school,

any section 105 loan liabilities of the governing body in liquidation 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).

(5) If—

- (a) subsection (4)(a) and (b) above apply, but
- (b) no direction that the proposed school shall be an aided school has been given before the dissolution date,

any section 105 loan liabilities of the governing body shall be terminated on that date.

(6) If—

- (a) any liabilities of the governing body have been terminated by virtue of subsection (5) above, and
- (b) a new voluntary school is established in pursuance of any proposals approved under section 13 of the Education Act 1980 on the school premises,

the amount of those liabilities shall be treated for the purposes of section 14 of the Education Act 1944 (restrictions on discontinuance of voluntary schools by governors) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.

## **116 Surplus money and investments**

- (1) Subject to the following provisions of this section—
  - (a) any money held by or for a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution), and
  - (b) any investments to which this section applies held by or for such a governing body,shall, after discharge of the liabilities and costs mentioned in subsection (2) below, be paid or (as the case may be) transferred by the governing body to the Secretary of State.
- (2) The liabilities and costs referred to in subsection (1) above are—
  - (a) all the liabilities of the governing body in liquidation (other than any not required to be discharged before the dissolution date is appointed), and
  - (b) all costs of the winding up.
- (3) 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 or the funding authority under this Part of this Act, 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 the money or (as the case may be) 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.
- (4) Where the premises of the school are to be used for the purposes of a new or existing grant-maintained school, the Secretary of State may require the governing body in liquidation, after discharge of the liabilities mentioned in subsection (2) above—
  - (a) to pay any money held by or for them, and
  - (b) to transfer any investments to which this section applies held by or for them, to the governing body of the new or existing grant-maintained school, either beneficially or to be held on trust for such purposes as he may specify.
- (5) Without prejudice to the powers of the Secretary of State under subsections (3) and (4) 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.
- (6) This section applies to any investment within the meaning of the Financial Services Act 1986 which falls within—
  - (a) any of paragraphs 1 to 6 of Schedule 1 to that Act (investments and investment business), or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any of paragraphs 1 to 6.
- (7) References in subsection (6) above to any paragraphs of Schedule 1 to the Financial Services Act 1986 include references to those paragraphs as amended by any order under section 2 of that Act (power to extend or restrict scope of Act) which amends those paragraphs for the purposes of all the provisions of that Act.

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## CHAPTER IX

### GROUPS OF GRANT-MAINTAINED SCHOOLS

#### **117 Nature of group**

- (1) Subject to the provisions of this Chapter, two or more grant-maintained schools may be conducted as a group by a single governing body.
- (2) In the case of such a group—
  - (a) there shall be an instrument (to be known as the instrument of government) providing for the constitution of the governing body, and
  - (b) for each school in the group there shall be an instrument (to be known as the articles of government) in accordance with which the school is to be conducted.
- (3) The instrument and articles of government—
  - (a) shall comply with any requirements imposed by or under this Chapter, and
  - (b) may make any provision authorised by or under this Chapter to be made and such other provision as may be necessary or desirable.
- (4) Subject to any express provision of the instrument or articles of government, each school in such a group shall be conducted in accordance with any trust deed relating to it.
- (5) Schedules 5 and 6 to this Act shall have effect in relation to groups of grant-maintained schools with such modifications as may be prescribed.
- (6) Subject to any provision made by or under this Chapter, where there is a group of grant-maintained schools any provision of an enactment which applies to such schools shall apply separately in relation to each of the schools.
- (7) References in this Chapter to a group are to a group of grant-maintained schools conducted, or to be conducted, by a single governing body.

#### **118 Instruments and articles of government for group**

- (1) The initial instrument of government for the governing body of a group and the initial articles of government for each school in the group shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the date on which the governing body are incorporated.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals in pursuance of which the school became a member of the group.
- (4) Section 57 of this Act shall apply in relation to the governing body of a group as it applies in relation to the governing body of a grant-maintained school.
- (5) Section 58 of this Act shall apply in relation to a school in a group as it applies in relation to other grant-maintained schools.

## **119 Parent governors**

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include parent governors.
- (2) The number of parent governors shall not be—
  - (a) less than three, or
  - (b) subject to paragraph (a) above, more than the number of schools in the group.
- (3) Subject to subsection (6) below, the parent governors shall be elected by persons who are registered parents of registered pupils at schools in the group, but, if any of the schools in the group is established in a hospital, the instrument may provide for any of the parent governors to be appointed by the other members of the governing body.
- (4) To qualify for such election a person must himself when he is elected be a registered parent of a registered pupil at one of the schools in the group and, to qualify for such appointment, a person must when he is appointed be such a parent or, if that is not reasonably practicable, a parent of one or more children of compulsory school age.
- (5) The instrument shall provide for each parent governor to hold office for a term of four years.
- (6) The instrument shall provide that 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,the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (7) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (6) above—
  - (a) to appoint a person who is the registered parent of a registered pupil at one of the schools in the group, 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.

## **120 Teacher governors**

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include either one or two teacher governors.
- (2) Each teacher governor shall be elected by persons who are teachers at schools in the group.
- (3) To qualify for such election, a person must himself when he is elected be a teacher at one of the schools in the group.
- (4) The instrument shall provide for each teacher governor to hold office for a term of four years.

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## **121 Head teacher governors**

The instrument of government for the governing body of a group shall provide for the head teacher of each school in the group to be an ex officio governor, unless he chooses not to be.

## **122 Core governors**

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include core governors.
- (2) Schedule 8 to this Act (which makes provision in relation to core governors for groups) shall have effect.
- (3) The instrument shall provide for core governors to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument.

## **123 Power of the Secretary of State to replace core governors**

- (1) The instrument of government for the governing body of a group shall provide for the Secretary of State to have power, where any of subsections (2) to (4) below apply, to replace all or any of the core governors, other than any externally appointed core governor appointed in respect of a particular school.
- (2) This subsection applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This subsection applies where—
  - (a) there is a report of an inspection of any of the schools in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of this Act, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
  - (d) the Secretary of State has received a statement prepared under section 210 of this Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;and expressions used in this subsection and in that Part have the same meaning as in that Part.
- (4) This subsection applies where in the opinion of the Secretary of State any action taken or proposed by the governing body or any failure of the governing body to act is prejudicial to the provision of education by any of the schools.
- (5) The instrument of government shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for core governors other than externally appointed governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.

- (6) Any provision made by the instrument of government in pursuance of Schedule 8 to this Act shall not apply for the purposes of the appointment by virtue of this section of any core governor.

#### **124 Additional governors**

- (1) The instrument of government for the governing body of a group shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of any of the schools in the group.
- (2) The instrument shall enable the governing body, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) above are in office, to appoint a number of additional core governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) Section 122(3) of this Act and Schedule 8 to this Act do not apply to additional core governors.

#### **125 Powers**

In the case of a group of grant-maintained schools conducted by a single governing body, that body shall have in relation to each of the schools the powers conferred by section 68 of this Act on the governing body of a grant-maintained school.

#### **126 Application of maintenance grants in the case of groups**

- (1) For each financial year the governing body of a group shall apply for the purposes of each school in the group the share of maintenance grant which is attributable to that school.
- (2) For the purposes of subsection (1) above, in each financial year the share of maintenance grant which is attributable to each school in a group is the amount which in the case of that school is the prescribed percentage of the maintenance grant payable in respect of the school.
- (3) The governing body of a group shall not apply otherwise than for the purposes of schools in the group any payments made to them in respect of maintenance grant.
- (4) This section is subject to—
- (a) any requirements imposed under section 84(1) or, as the case may be, 90(1) of this Act, and
  - (b) any requirements as to the application of maintenance grant contained in the articles of government for any of the schools.
- (5) In relation to groups of grant-maintained schools, this section has effect in place of section 81(3) or, as the case may be, 87(2) of this Act.

#### **127 School acquiring grant-maintained status as a member of a group, etc**

- (1) Regulations may make provision—

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- (a) for two or more schools, each of which is eligible for grant-maintained status and satisfies the prescribed requirements, to become grant-maintained schools conducted by a single governing body,
  - (b) for two or more grant-maintained schools, each of which is not a member of a group and satisfies the prescribed requirements, to become a new group conducted by a single governing body,
  - (c) for a school which is eligible for grant-maintained status, or is a grant-maintained school, and satisfies the prescribed requirements to become a member of an existing group,
  - (d) for the schools in two or more existing groups, where each of the schools satisfies the prescribed requirements, to become one group, and
  - (e) for a school in a group, where the school satisfies the prescribed requirements, to leave the group but continue to be a grant-maintained school (whether as a member of a group or not).
- (2) Regulations shall require in the case of each school which is not a grant-maintained school but is to acquire grant-maintained status as a member of a group—
- (a) a resolution of the existing governing body to hold a ballot of parents on the question of whether grant-maintained status as a member of a group should be sought for the school,
  - (b) a ballot of parents at the school,
  - (c) the publication by the existing governing body (together with the existing governing bodies of any other schools which are to acquire grant-maintained status as members of the same group) of proposals for the schools to acquire grant-maintained status and be conducted by a single governing body, and
  - (d) the approval of such proposals, as originally published or as modified by the Secretary of State (whether before or after they are approved).
- (3) Regulations shall require in the case of each grant-maintained school which is not a member of a group but is to become a member of a new group—
- (a) a resolution for the purpose of the existing governing body,
  - (b) the publication by the existing governing body (together with the governing bodies of any other schools which are to become members of the group) of proposals for the schools to become a new group conducted by a single governing body, and
  - (c) the approval of such proposals, as originally published or as modified by the Secretary of State (whether before or after they are approved).
- (4) Regulations made by virtue of subsection (2) or (3) above shall not enable the Secretary of State to modify any proposals after approving them so as to exclude any school to which they relate; and where under such regulations the Secretary of State modifies any proposals so as to exclude any school to which they relate—
- (a) he may not approve them without the consent of the existing governing bodies of the schools to which the proposals as modified relate, and
  - (b) if he approves them, the regulations shall have effect as if the proposals as published had related only to those schools.
- (5) Where proposals for the purposes of subsection (1)(a) or (b) above are approved, regulations shall provide—
- (a) for the determination of the persons who are to be the initial members of the governing body,



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- (b) for their incorporation, and
  - (c) for sections 119 to 123 of this Act, Schedule 8 to this Act and the instrument of government to have effect in relation to any person who becomes a member of the governing body—
    - (i) before the date of implementation of the proposals, or
    - (ii) before the date on which the first instrument under section 57(1) of this Act for the governing body comes into effect,with such modifications as may be prescribed.
- (6) Where proposals for the purposes of subsection (1)(a) above in relation to any schools, or proposals for the purposes of subsection (1)(c) above in relation to a school which is eligible for grant-maintained status, are approved, regulations shall provide in relation to each of the schools—
- (a) for the local education authority to cease to be under a duty to maintain the school,
  - (b) for any special agreement relating to the school to cease to have effect, and
  - (c) for the functions, during the period beginning with the approval of the proposals and ending with their implementation, of the governing body incorporated under the regulations.
- (7) Where proposals for the purposes of subsection (1)(b) above are approved, regulations shall provide for the functions, during the period beginning with the approval of the proposals and ending with their implementation, of the governing body incorporated under the regulations.
- (8) In relation to—
- (a) any schools seeking to acquire grant-maintained status as a group or grant-maintained schools seeking to become a new group,
  - (b) any school seeking to become a member of an existing group, and
  - (c) schools in a group,
- regulations may provide for any provision of this Part of this Act, other than this Chapter, to apply with such modifications as may be prescribed.
- (9) Regulations may make provision for the governing body of a group to be reconstituted where any change occurs in the membership of the group.
- (10) The Secretary of State may instead of, or in addition to, prescribing requirements for the purposes of subsection (1) above issue guidance as to the requirements he would expect to be satisfied for any application—
- (a) for any maintained schools, or grant-maintained schools, to become a new group,
  - (b) to join or leave a group, or
  - (c) for the merger of groups,
- to be approved.
- (11) This section does not apply to nursery schools.

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## CHAPTER X

### GENERAL AND MISCELLANEOUS

#### *Further education*

#### **128 Provision of further education in grant-maintained schools**

It shall be the duty of the governing body of any grant-maintained school which provides—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years,

to secure that it is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed.

*Provision of benefits and services by local education authority*

#### **129 Provision of benefits and services for pupils by local education authority**

(1) Where—

- (a) a local education authority are under a duty, or have power, 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) Where—

- (a) a local education authority are under a duty, or have power, to provide any benefits or services for persons, other than pupils, receiving education at a school, and
- (b) the duty is to be performed, or the power may be exercised, both in relation to such persons at schools maintained by a local education authority and in relation to such persons at grant-maintained schools,

the authority shall in performing the duty, or in exercising the power, treat such persons 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 such persons at schools maintained by a local education authority.

### *Transfer and disposal of premises*

#### **130 Transfer of premises to trustees**

- (1) Where grant under section 53(2) of this Act or capital grant is paid to the governing body of a grant-maintained school established in pursuance of proposals published under section 49 of this Act in respect of the provision of a site for the school or of school buildings, a requirement shall be imposed under section 53 or, as the case may be, Chapter VI for the purpose of securing that the site or buildings in question are held on trust by trustees of the school.
- (2) Where buildings are to be provided for any grant-maintained school which are to—
  - (a) form part of the school premises, and
  - (b) be constructed partly on land held by the governing body and partly on land held on trust for the purposes of the school by persons other than the governing body,the governing body shall transfer to those persons the land held by the governing body on which the buildings are to be constructed; and section 68(7)(b) of this Act does not apply to a transfer required by this subsection.
- (3) In this section “site” does not include playing fields.

#### **131 Disposal of premises on transfer of school to new site**

- (1) Where—
  - (a) the funding authority pay capital grant in respect of a transfer of a grant-maintained school to a new site authorised under Chapter VII, and
  - (b) the governing body or any trustees of the school possess, or are or may become entitled to, a 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.
- (2) Any sum paid under subsection (1) above 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 Schools Sites Act 1841 (which relates to the 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.
- (3) Where trustees of a grant-maintained school are required to pay any sum to the Secretary of State under subsection (1) above in a case where any interest in the new site is or is to be held by the governing body, then—
  - (a) if the interest or, as the case may be, all the interests held by any persons for the purposes of the school in the previous site were freehold interests held by the trustees, the governing body shall transfer their interest in the new site to the trustees, and
  - (b) if in any other case the trustees held any interest in the previous site, the governing body shall if directed to do so by the Secretary of State transfer to the trustees their interest in the whole of the new site or such part of it as may be specified in the direction.
- (4) Where trustees of a grant-maintained school are required to pay any sum to the Secretary of State under subsection (1) above in a case in which they may also be

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required to pay any sum to a local education authority under paragraph 8 of the First Schedule to the Education Act 1946 in respect of the disposal of the same premises, that paragraph shall have effect as if—

- (a) in relation to that disposal, the reference to the purchase money paid in respect of the acquisition of the premises were a reference to so much of the amount of that purchase money as remains after deducting the amount of the payment under subsection (1) above, and
  - (b) any premises transferred to the trustees in pursuance of subsection (3) above were premises conveyed by the authority as mentioned in that paragraph.
- (5) In subsection (3)(a) above “site” does not include playing fields.

### **132 Disposal of premises transferred under section 38**

- (1) This section applies where the governing body of a 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 38(1)(a) of this Act, or
  - (b) any premises acquired wholly or partly with the proceeds of the disposal of any premises so transferred or of any premises so acquired.
- (2) Subject to subsection (3) below, the Secretary of State may—
- (a) require the premises or any part of the premises to be transferred to such local authority as the Secretary of State may specify, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate, or
  - (b) where he does not impose a requirement under paragraph (a) above, require the governing body when the premises are disposed of to pay to such local authority as the Secretary of State may specify the whole or any part of the proceeds of disposal.
- (3) Where the occasion of the disposal is a transfer of the school to a new site in respect of which the funding authority have paid capital grant—
- (a) no requirement shall be imposed under subsection (2)(a) above, and
  - (b) the reference in subsection (2)(b) above to the proceeds of disposal 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 section 131 of this Act.

### **133 Disposal of premises held by trustees**

- (1) This section applies where any premises—
- (a) transferred to the governing body of a grant-maintained school under section 38(1)(a) of this Act, or
  - (b) acquired by such a governing body wholly or partly with the proceeds of the disposal of any premises so transferred or of any premises so acquired,
- have been transferred by them to be held on trust by the trustees of the school.
- (2) If at any time the trustees dispose of the premises the Secretary of State may require them to pay to such local authority as he may specify the whole or any part of the proceeds of the disposal.

### **134 Disposal of premises provided, etc. by the funding authority**

- (1) Where the governing body of a grant-maintained school apply to the Secretary of State for his consent to the disposal of—
- (a) any premises provided by the funding authority, or
  - (b) any premises acquired wholly or partly with the proceeds of the disposal of any premises so provided or of any premises so acquired,
- the Secretary of State may require the governing body when the premises are disposed of to pay to him or to the funding authority the whole or any part of the proceeds of disposal.
- (2) Where—
- (a) any premises falling within subsection (1)(a) or (b) above are transferred by the governing body to be held on trust by the trustees of the school, or
  - (b) any premises in respect of which capital grant was paid are transferred by the governing body (otherwise than in pursuance of a requirement imposed in accordance with section 130 of this Act or in pursuance of section 131(3) of this Act) to be held on trust by the trustees of the school,
- then, if at any time the trustees dispose of the premises, the Secretary of State may require them to pay to him or to the funding authority the whole or any part of the proceeds of the disposal.

### **135 Interpretation of sections 130 to 134**

- (1) For the purposes of sections 131 and 132 of this Act, the funding authority are to be regarded as paying capital grant in respect of the transfer of a school to a new site if they pay capital 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.
- (2) In sections 130 to 134 of this Act “trustees of the school” means any person (other than the governing body) holding property on trust for the purposes of the school.
- (3) For the purposes of sections 131 to 134 of this Act—
- (a) a governing body or trustees are to be regarded as disposing of any premises if those premises are acquired from them, whether compulsorily or otherwise, and
  - (b) “proceeds of disposal”, in relation to a disposal of premises by a governing body or trustees, means the compensation or purchase money paid in respect of the acquisition from them of those premises.
- (4) In subsection (3) above—
- (a) references to the acquisition of premises from a governing body or trustees include, in the case of any premises held under a tenancy to which Part II of the Landlord and Tenant Act 1954 (“the 1954 Act”) 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 any compensation paid by the landlord on the quitting of any such premises by the governing body or trustees (whether or not the compensation is required to be paid by section 37 of that Act (compensation where order for new tenancy precluded on certain grounds)).

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- (5) In subsection (4) above, expressions to which a meaning is given for the purposes of the 1954 Act have the same meaning as in that Act.

*Modification of instruments*

**136 Variation of trust deeds etc. by order**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a 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 Chapter V, or any scheme under section 69 of this Act, which it appears to him to be expedient to remove in the interests of the school, or
  - (c) in consequence of any proposals as to a change in the character or an enlargement of the premises of the school or a transfer of the school to a new site which fall to be implemented under section 100 of this Act.
- (2) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to an independent school where proposals have been approved for the establishment of a grant-maintained school in its place as, after consultation with the promoters and the trustees (if any), appear to him to be requisite—
- (a) in consequence of the approval of the proposals, or
  - (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 grant-maintained school under Chapter V which it appears to him to be expedient to remove in the interests of the school.
- (3) 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.

**137 Modification of instruments relating to land held for purposes of voluntary schools**

Any provision of an instrument relating to any land held for the purposes of a 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.

*Religious education, worship etc.: classes of grant-maintained school*

**138 Former county schools and certain schools established as grant-maintained schools**

- (1) Subject to section 141 of this Act, this section applies in relation to a grant-maintained school if—
  - (a) it was a county school immediately before it became grant-maintained,
  - (b) it was established in pursuance of proposals published under section 48 of this Act, or
  - (c) it was established in pursuance of proposals published under section 49 of this Act and neither any trust deed relating to the school nor the statement required by paragraph 8 of Schedule 3 to this Act makes provision as to the religious education for pupils at the school.
- (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 the Education Reform Act 1988 (collective worship) 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 that 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 that 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) Where under section 12 of the Education Reform Act 1988 (determination by standing advisory councils of the cases in which the requirement for Christian worship is not to apply) a standing advisory council on religious education determine that it is not appropriate for subsection (2) above to apply in the case of a school to which this section applies, or in the case of any class or description of pupils at such a school (or

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where they had so determined in the case of a school or pupils at a school before it became grant-maintained) 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 that Act (collective worship) 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).
- (8) The arrangements for collective worship in a school to which this section applies required by section 6 of that Act shall be made by the head teacher after consultation with the governing body.
- (9) The provision for religious education for pupils at the school which is required by section 2(1)(a) of that Act (basic curriculum for schools) shall be provision for religious education in accordance with the appropriate agreed syllabus.
- (10) That syllabus shall not provide for religious education to be given to pupils at the school by means of any catechism or formulary which is distinctive of a particular religious denomination (but this is not to be taken as prohibiting provision in the syllabus for the study of such catechisms or formularies).
- (11) If, in the case of a secondary school so situated that arrangements cannot conveniently be made for the withdrawal of pupils from it in accordance with section 9 of that Act (religious education - exceptions etc.) to receive religious education elsewhere, the governing body are satisfied—
- (a) that the parents of any pupils at the school desire them to receive religious education in the school in accordance with the tenets of a particular religion or 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 because of any special circumstances it would be unreasonable to do so) provide facilities for the carrying out of those arrangements.
- (12) 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 that Act takes place otherwise than on the school premises.

### **139 Former controlled schools**

- (1) Subject to section 141 of this Act, this section applies in relation to a grant-maintained school which was a controlled school immediately before it became grant-maintained.
- (2) The provision for religious education for pupils at the school which is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school's basic curriculum shall be provision for religious education—
  - (a) in accordance with any arrangements made under subsection (3) below, or
  - (b) subject to any such arrangements, in accordance with the appropriate agreed syllabus.



- (3) Where the parents of any pupils at the school have requested (whether before or after the school became grant-maintained) that the pupils 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 grant-maintained school,

the foundation governors shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for securing that such religious education is given to those pupils in the school during not more than two periods in each week.

#### **140 Former aided or special agreement schools and certain schools established as grant-maintained schools**

- (1) Subject to section 141 of this Act, this section applies in relation to a grant-maintained school if—
- (a) it was an aided or special agreement school immediately before it became grant-maintained, or
  - (b) it was established in pursuance of proposals published under section 49 of this Act and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 3 to this Act makes provision as to the religious education for pupils at the school.

- (2) The provision for religious education for pupils at the school which is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school's basic curriculum shall be provision for religious education—

- (a) in accordance with any provisions of any trust deed relating to the school or, where provision for that purpose is not made by such a deed—
  - (i) in the case of a former aided or special agreement school, in accordance with the practice observed in the school before it became a grant-maintained school, or
  - (ii) in the case of a school established in pursuance of proposals published under section 49 of this Act, in accordance with the statement required by paragraph 8 of Schedule 3 to this Act, or
- (b) in accordance with any arrangements made under subsection (3) below.

- (3) Where the parents of any pupils at the 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 a school at which that syllabus is in use,

the governing body shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school.

- (4) Religious education under any such arrangements shall be given 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 the Education Reform Act 1988.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The head teacher of a school to which this section applies shall give notice in writing to the council constituted under section 11 of that Act (standing advisory councils on religious education) by the local education authority in whose area the school is of any agreed syllabus which is in use at the school in accordance with subsection (3) above.

#### **141 Changes in religious education and worship**

- (1) Subsection (2) below applies where, in the case of a school in relation to which section 138 or 139 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 religion or religious denomination are approved under section 98 of this Act.
- (2) From the time at which the proposals fall to be implemented—
- (a) the required provision for religious education shall (subject to subsection (3) below) be provision for religious education either in accordance with the tenets of that religion or religious denomination or in accordance with any arrangements made under section 140(3) of this Act (as applied by paragraph (b) below),
  - (b) section 140(3) to (5) of this Act shall apply in relation to the school, and
  - (c) any provisions of section 138 or 139 of this Act which apply in relation to the school shall cease to apply in relation to it.
- (3) 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 religion or religious denomination are approved under section 98 of this Act—
- (a) section 138 of this Act shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) any provisions of section 139 or 140 of this Act which apply in relation to the school shall cease to apply in relation to it from that time.
- (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 the Education Reform Act 1988 to be included in the school’s basic curriculum.

#### **142 Meaning of “the appropriate agreed syllabus” in sections 138 and 139**

- (1) For the purposes of sections 138(9) and 139(2) of this Act, “the appropriate agreed syllabus”, in relation to a grant-maintained school or to any pupils at it, is—
- (a) the agreed syllabus adopted or deemed to be adopted for the time being by the local education authority for the area in which the school is situated for use in the schools maintained by the authority,
  - (b) if there is more than one such syllabus, whichever of them the governing body shall determine, or
  - (c) if the governing body select for the school or those pupils an agreed syllabus which was adopted or deemed to be adopted by a local education authority, other than the authority in whose area the school is, on or after 29th September 1988 and which has not been replaced by a new agreed syllabus, that syllabus.

- (2) In relation to a school in Wales, in subsection (1)(c) above “local education authority” means a local education authority in Wales.

*Religious education, worship etc.: religious opinions etc. of staff*

**143 Former county schools and certain schools established as grant-maintained schools**

- (1) Subject to section 145 of this Act, subsections (2) to (4) below apply in relation to a grant-maintained school if—
- (a) it was a county school immediately before it became grant-maintained,
  - (b) it was established in pursuance of proposals published under section 48 of this Act, or
  - (c) it was established in pursuance of proposals published under section 49 of this Act and neither any trust deed relating to the school nor the statement required by paragraph 8 of Schedule 3 to this Act makes provision as to the religious education for pupils at the school.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—
- (a) for being a teacher at the school, or
  - (b) for being employed (otherwise than as a teacher) for the purposes of the school.
- (3) No teacher at the school shall be required to give religious education.
- (4) No teacher at the school shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
- (a) by reason of the fact that he does or does not give religious education, or
  - (b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

**144 Former voluntary schools and certain schools established as grant-maintained schools**

- (1) Subject to section 145 of this Act, subsections (2) and (3) below apply in relation to a grant-maintained school if—
- (a) it was a voluntary school immediately before it became grant-maintained, or
  - (b) it was established in pursuance of proposals published under section 49 of this Act and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 3 to this Act makes provision as to the religious education for pupils at the school.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, for being employed (otherwise than as a teacher) for the purposes of the school.
- (3) No teacher at the school shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
- (a) by reason of the fact that he gives religious education, or
  - (b) by reason of his religious opinions or of his attending religious worship.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Without prejudice to subsections (2) and (3) above, in the case of a school which was a voluntary school immediately before it became grant-maintained, any of the provisions of section 30 of the Education Act 1944 (saving as to position of teachers) which, immediately before the school became grant-maintained, applied in relation to a teacher in the school shall continue to apply in relation to him until he ceases to be employed as a teacher in the school.

#### **145 Changes in religious character of schools**

- (1) Where, in the case of a school in relation to which section 143(2) to (4) 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 religion or religious denomination are approved under section 98 of this Act—
- (a) section 144(2) and (3) of this Act shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) subject to subsection (2) below, section 143(2) to (4) of this Act shall cease to apply in relation to the school from that time.
- (2) Without prejudice to section 144(2) and (3) of this Act, section 143(2) to (4) of this Act shall continue to apply in relation to any teacher who was employed at the school immediately before the proposals referred to in subsection (1) above fell to be implemented until he ceases to be employed as a teacher at the school.
- (3) 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 religion or religious denomination are approved under section 98 of this Act—
- (a) section 143(2) to (4) of this Act shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) section 144(2) and (3) of this Act shall cease to apply in relation to the school from that time.
- (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 the Education Reform Act 1988 to be included in the school’s basic curriculum.

*Religious education, worship etc.: general*

#### **146 Reconsideration of agreed syllabus: consultation with grant-maintained schools**

Where any agreed syllabus for the time being adopted by a local education authority which is in use at a grant-maintained school within the area of the authority (or for any pupils at such a school) falls to be reconsidered under the Fifth Schedule to the Education Act 1944 (procedure for preparing and bringing into operation agreed syllabus for religious instruction), the conference convened under that Schedule to reconsider the syllabus shall consult the governing body of the grant-maintained school before making any recommendation.

#### **147 Standing advisory councils on religious education**

(1) For section 11(3)(b) of the Education Reform Act 1988 (standing advisory councils on religious education) there is substituted—

“(b) a person appointed by the governing bodies of the grant-maintained schools within the area of the authority to which section 138 or 139 of the Education Act 1993 applies.”

(2) At the end of section 11 of the Education Reform Act 1988 there is added—

“(11) The council shall send to the head teacher of any grant-maintained school to which section 138 of the Education Act 1993 applies and which is in the area of the authority a copy of advice which they give to the authority upon matters connected with religious worship.

(12) The council shall send a copy of advice which they give to the authority on the religious education to be given in accordance with an agreed syllabus to the head teacher of any grant-maintained school which is in the area of the authority and which—

- (a) is required, by virtue of section 138 or 140 of the Education Act 1993 (religious education in certain grant-maintained schools), to provide religious education in accordance with an agreed syllabus, or
- (b) was a controlled school immediately before it became grant-maintained.”

#### **148 Cases where no requirement for Christian collective worship**

In section 12 of the Education Reform Act 1988 (determination by advisory councils of the cases in which the requirement for Christian collective worship is not to apply)

—  
(a) in subsection (1)—

(i) for “the head teacher of any county school” there is substituted—

- “(a) the head teacher of any county school; or
- (b) the head teacher of any grant-maintained school to which section 138 of the Education Act 1993 applies and which is in the area of the local education authority which constituted the council”, and

(ii) after “this Act” there is inserted “or, as the case may be, section 138(2) of the Education Act 1993”,

(b) in subsection (4) after “section 7” there is inserted “of this Act or, as the case may be, section 138 of the Education Act 1993”,

(c) in subsection (9) after “county school” there is inserted “or of any grant-maintained school to which subsection (1) above applies”, and

(d) after subsection (10) there is inserted—

“(11) Where an application is made under subsection (1)(a) above in respect of a school which becomes a grant-maintained school before the application is determined, it shall, unless withdrawn by the head teacher, continue to be considered as if made under subsection (1)(b) above.”

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*Approved admission number*

**149 Minimum number for admission**

- (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 subsections (3) and (4) below and sections 150 and 151 of this Act, the approved admission number for any relevant age group is the number specified in the proposals published under section 32, 48 or 49 of this Act (as the case may be) as the number of pupils intended to be admitted to the school in that age group in the first school year beginning on or after the date of implementation of the proposals.
- (3) Where proposals for a significant change in the character, or significant enlargement of the premises, of a grant-maintained school or for the transfer of such a school to a new site have been approved or adopted under section 98 of this Act, the approved admission number for any relevant age group for any school year for which the proposals have been wholly or partly implemented is—
  - (a) the number specified in the proposals as the number of pupils proposed to be admitted to the school in that age group in the first school year in relation to which the proposals have been fully implemented, or
  - (b) if for any school year for which the proposals have been partly implemented the Secretary of State directs the substitution of a different number, that number.
- (4) 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.
- (5) For the purposes of this section and sections 150 and 151 of this Act admission to any school for nursery education shall be disregarded.

**150 Alteration of minimum number by Secretary of State**

- (1) This section applies in relation to any grant-maintained school unless the funding authority have the function under section 151 of this Act in relation to that school.
- (2) The Secretary of State may by order increase the approved admission number for any relevant age group to such number as may be specified in the order for any school year specified in the order beginning after the date of the order.
- (3) No direction may be given under subsection (2) above which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would—
  - (a) constitute a significant change in the character of the school, or
  - (b) involve any alteration of the premises of the school.

**151 Alteration of minimum number by funding authority**

- (1) If an order under section 12(1) of this Act applies to the area of a local education authority, the funding authority may give a direction under subsection (2) below to the governing body of a grant-maintained school in the area.
- (2) A direction under this subsection—

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- (a) may increase the approved admission number for any relevant age group to such number as may be specified in the direction for any school year specified in the direction beginning after the date of the direction, and
  - (b) if any alteration would be required to the premises of the school in consequence of any increase in any approved admission number made by the direction, shall give particulars of the alteration.
- (3) No direction may be given under subsection (2) above which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would constitute a significant change in the character of the school or involve a significant enlargement of the premises of the school.
- (4) Before deciding to give a direction under subsection (2) above the funding authority shall consult the governing body about the proposed content of the direction.
- (5) Before giving a direction under subsection (2) above the funding authority shall serve a draft of the proposed direction on the governing body.
- (6) A governing body on which a draft is served under subsection (5) above may, within the period of fifteen days beginning with the day on which it was served, refer the matter to the Secretary of State and, if they do so, shall inform the funding authority.
- (7) On a reference under subsection (6) above the Secretary of State may—
- (a) require the funding authority not to give any direction in terms of the draft, or
  - (b) authorise the funding authority to give a direction in such terms, or those terms as required to be modified by the Secretary of State,
- and any direction given by the funding authority shall be in the terms authorised under paragraph (b) above.
- (8) Where the funding authority give a direction under this section—
- (a) if any particulars are specified in pursuance of subsection (2)(b) above, the governing body shall secure the alteration of the school premises in accordance with the particulars, and
  - (b) the funding authority shall make a grant to them of an amount equal to the reasonable expenses incurred or to be incurred in doing so.

### *Supplementary*

#### **152 Manner of giving notification to governing body**

Any notification to the governing body of a school for the purposes of any provision of this Part of this Act may be given, and withdrawn, in such manner as the governing body may require.

#### **153 Provision of information by governing body**

- (1) The governing body of a 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 in respect of the school as may be so required.
- (2) The governing body shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purpose of his functions in relation to education.

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- (3) The governing body shall make such reports and returns, and give such information, to the funding authority as they may require for the purpose of the exercise of their functions.
- (4) The governing body 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.
- (5) The governing body shall make such reports and returns, and give such information, in relation to registered pupils at the school aged five or under as any local education authority may require for the purpose of exercising their functions under section 19(1) (a) of the Children Act 1989 (review of provision for day care).

#### **154 Inspection of accounts and reports to Parliament**

- (1) The accounts of the governing body of any grant-maintained school shall be open to the inspection of the Comptroller and Auditor General.
- (2) The Comptroller and Auditor General shall, in each session of Parliament, report to the House of Commons—
  - (a) whether he has carried out under section 6 of the National Audit Act 1983 any examinations in respect of grant-maintained schools, and if he has,
  - (b) the results of such examinations.
- (3) The first report under subsection (2) above shall cover a period beginning with the commencement of this section and each subsequent report shall cover a period beginning at the end of the period covered by the preceding report.
- (4) In determining whether to carry out any examination under that section in respect of grant-maintained schools and, if he determines to do so, the nature of the examination, the Comptroller and Auditor General shall have regard to any relevant published report of any study promoted or undertaken by the Audit Commission for Local Authorities and the National Health Service in England and Wales under section 220 of the Education Reform Act 1988.

#### *Interpretation*

#### **155 Interpretation of Part II**

- (1) In this Part of this Act—
 

“premises” includes any interest in or easement, right or charge in, to or over premises,

“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, and

“registered”, in relation to parents or pupils, or their names or addresses, means shown in the register kept under section 80 of the Education Act 1944.
- (2) The following provisions apply for the purposes of this Part of this Act.



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- (3) References to the character of a school are to the kind of school it is determined by any matter relating to—
  - (a) the provision of education at the school, or
  - (b) the arrangements for admission of pupils to the school,the alteration of which would amount to a change in the character of the school.
- (4) References to a relevant age group are to an age group in which pupils are or will normally be admitted to the school in question.
- (5) 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.
- (6) The transfer to a reception class of pupils who have been admitted to a school for nursery education shall be treated as admission to the school.
- (7) References, in relation to proposals under this Part of this Act, to the date of publication of the proposals are—
  - (a) to the date on which the requirements of this Part of this Act, or of regulations made by virtue of this Part of 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 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.
- (8) References in section 38 of this Act to liabilities incurred by a local authority shall not be read as including liabilities of such an authority to make payments to or in respect of any person in pursuance of any duty imposed on the authority under any statutory provision.
- (9) A person employed by a local education authority is to be regarded as employed to work at a school if his employment with the authority for the time being involves work at that school.
- (10) Subject to section 39(2) of this Act, a person employed by such an authority is to be regarded as employed to work solely at a school if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school.
- (11) Nothing in this Part of this Act or in any order made under it relating to the trusts subject to which any land or other property or rights transferred under this Part are to be held by the transferee shall be taken as prejudicing any modification of those trusts after that transfer under any provision of this Part or otherwise.

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## PART III

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Introductory*

#### **156 Meaning of “special educational needs” and “special educational provision” etc**

- (1) For the purposes of the Education Acts, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) For the purposes of this Act, subject to subsection (3) below, a child has a “learning difficulty” if—
  - (a) he has a significantly greater difficulty in learning than the majority of children of his age,
  - (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority, or
  - (c) he is under the age of five years and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when over that age.
- (3) A child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.
- (4) In the Education Acts, “special educational provision” means—
  - (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority (other than special schools) or grant-maintained schools in their area, and
  - (b) in relation to a child under that age, educational provision of any kind.
- (5) In this Part of this Act, “child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

#### *Code of practice*

#### **157 Code of Practice**

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice giving practical guidance in respect of the discharge by local education authorities and the governing bodies of maintained or grant-maintained schools, or grant-maintained special schools, of their functions under this Part of this Act.
- (2) It shall be the duty of—
  - (a) local education authorities, and such governing bodies, exercising functions under this Part of this Act, and

- (b) any other person exercising any function for the purpose of the discharge by local education authorities, and such governing bodies, of functions under this Part of this Act,  
to have regard to the provisions of the code.
- (3) On any appeal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.
- (4) The Secretary of State shall publish the code as for the time being in force.

### **158 Making and approval of code**

- (1) Where the Secretary of State proposes to issue or revise a code of practice, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay it before both Houses of Parliament.
- (4) If the draft is approved by resolution of each House, the Secretary of State shall issue the code in the form of the draft and the code shall come into effect on such day as the Secretary of State may by order appoint.

#### *Special educational provision: general*

### **159 Review of arrangements**

A local education authority shall keep under review the arrangements made by them for special educational provision and, in doing so, shall, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult the funding authority and the governing bodies of county, voluntary, maintained special and grant-maintained schools in their area.

### **160 Qualified duty to secure education of children with special educational needs in ordinary schools**

- (1) Any person exercising any functions under this Part of this Act in respect of a child with special educational needs who should be educated in a school shall secure that, if the conditions mentioned in subsection (2) below are satisfied, the child is educated in a school which is not a special school unless that is incompatible with the wishes of his parent.
- (2) The conditions are that educating the child in a school which is not a special school is compatible with—
  - (a) his receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources.

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## **161 Duties of governing body etc. in relation to pupils with special educational needs**

- (1) The governing body, in the case of a county, voluntary or grant-maintained school, and the local education authority, in the case of a maintained nursery school, shall—
  - (a) use their best endeavours, in exercising their functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision which his learning difficulty calls for is made,
  - (b) secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
  - (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.
  
- (2) In subsection (1)(b) above, “the responsible person” means—
  - (a) in the case of a county, voluntary or grant-maintained school, the head teacher or the appropriate governor (that is, the chairman of the governing body or, where the governing body have designated another governor for the purposes of this paragraph, that other governor), and
  - (b) in the case of a nursery school, the head teacher.
  
- (3) To the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs—
  - (a) the governing bodies of county, voluntary and grant-maintained schools shall, in exercising functions relating to the provision for such children, consult the local education authority, the funding authority and the governing bodies of other such schools, and
  - (b) in relation to maintained nursery schools, the local education authority shall, in exercising those functions, consult the funding authority and the governing bodies of county, voluntary and grant-maintained schools.
  
- (4) Where a child who has special educational needs is being educated in a county, voluntary or grant-maintained school or a maintained nursery school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources,
 that the child engages in the activities of the school together with children who do not have special educational needs.
  
- (5) The annual report for each county, voluntary, maintained special or grant-maintained school shall include a report containing such information as may be prescribed about the implementation of the governing body’s policy for pupils with special educational needs; and in this subsection “annual report” means the report prepared under the articles of government for the school in accordance with section 30 of the Education (No. 2) Act 1986 or, as the case may be, paragraph 8 of Schedule 6 to this Act.

## **162 Provision of goods and services in connection with special educational needs**

- (1) A local education authority may for the purpose only of assisting—
  - (a) the governing bodies of county, voluntary or grant-maintained schools in their or any other area in the performance of the governing bodies' duties under section 161(1)(a) of this Act, or
  - (b) the governing bodies of maintained or grant-maintained special schools in their or any other area in the performance of the governing bodies' duties, supply goods or services to them.
- (2) The terms on which goods or services are supplied by local education authorities to the governing bodies of grant-maintained schools or grant-maintained special schools, or to the governing bodies of county, voluntary or maintained special schools in any other area, under this section may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed.
- (3) This section is without prejudice to the generality of any other power of local education authorities to supply goods or services.

## **163 Special educational provision otherwise than in schools**

- (1) Where a local education authority are satisfied that it would be inappropriate for the special educational provision (or any part of the special educational provision) which a learning difficulty of a child in their area calls for to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.
- (2) Before making an arrangement under this section, a local education authority shall consult the child's parent.

## **164 Provision outside England and Wales for certain children**

- (1) A local education authority may make such arrangements as they think fit to enable a child for whom they maintain a statement under section 168 of this Act to attend an institution outside England and Wales which specialises in providing for children with special needs.
- (2) In subsection (1) above, "children with special needs" means children who have particular needs which would be special educational needs if those children were in England and Wales.
- (3) Where a local education authority make arrangements under this section in respect of a child, those arrangements may in particular include contributing to or paying—
  - (a) fees charged by the institution,
  - (b) expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it,
  - (c) his travelling expenses, and
  - (d) expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.
- (4) This section is without prejudice to any other powers of a local education authority.

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*Status: This is the original version (as it was originally enacted).*

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*Identification and assessment of children with special educational needs*

**165 General duty of local education authority towards children for whom they are responsible**

- (1) A local education authority shall exercise their powers with a view to securing that, of the children for whom they are responsible, they identify those to whom subsection (2) below applies.
- (2) This subsection applies to a child if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part of this Act, a local education authority are responsible for a child if he is in their area and—
  - (a) he is a registered pupil at a maintained, grant-maintained or grant-maintained special school,
  - (b) education is provided for him at a school which is not a maintained, grant-maintained or grant-maintained special school at the expense of the authority or the funding authority,
  - (c) he does not come within paragraph (a) or (b) above but is a registered pupil at a school and has been brought to the authority's attention as having (or probably having) special educational needs, or
  - (d) he is not a registered pupil at a school, is not under the age of two years or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

**166 Duty of District Health Authority or local authority to help local education authority**

- (1) Where it appears to a local education authority that any District Health Authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part of this Act, they may request the help of the authority, specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request unless—
  - (a) they consider that the help requested is not necessary for the purpose of the exercise by the local education authority of those functions, or
  - (b) subsection (3) below applies.
- (3) This subsection applies—
  - (a) in the case of a District Health Authority, if that authority consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the National Health Service Act 1977, it is not reasonable for them to comply with the request, or
  - (b) in the case of a local authority, if that authority consider that the request is not compatible with their own statutory or other duties and obligations or unduly prejudices the discharge of any of their functions.
- (4) Regulations may provide that, where an authority are under a duty by virtue of subsection (2) above to comply with a request to help a local education authority in the

making of an assessment under section 167 of this Act or a statement under section 168 of this Act, they must, subject to prescribed exceptions, comply with the request within the prescribed period.

- (5) In this section, “local authority” means a county council, a metropolitan district council, a London borough council or the Common Council of the City of London.

### **167 Assessment of educational needs**

- (1) Where a local education authority are of the opinion that a child for whom they are responsible falls, or probably falls, within subsection (2) below, they shall serve a notice on the child’s parent informing him—
- (a) that they propose to make an assessment of the child’s educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the authority from whom further information may be obtained, and
  - (d) of the parent’s right to make representations, and submit written evidence, to the authority within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this subsection if—
- (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
- (a) a local education authority have served a notice under subsection (1) above and the period specified in the notice in accordance with subsection (1)(d) above has expired, and
  - (b) the authority remain of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (2) above,
- they shall make an assessment of his educational needs.
- (4) Where a local education authority decide to make an assessment under this section, they shall give notice in writing to the child’s parent of that decision and of their reasons for making it.
- (5) Schedule 9 to this Act (which makes provision in relation to the making of assessments under this section) shall have effect.
- (6) Where, at any time after serving a notice under subsection (1) above, a local education authority decide not to assess the educational needs of the child concerned they shall give notice in writing to the child’s parent of their decision.

### **168 Statement of special educational needs**

- (1) If, in the light of an assessment under section 167 of this Act of any child’s educational needs and of any representations made by the child’s parent in pursuance of Schedule 10 to this Act, it is necessary for the local education authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs.

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- (2) The statement shall be in such form and contain such information as may be prescribed.
- (3) In particular, the statement shall—
  - (a) give details of the authority’s assessment of the child’s special educational needs, and
  - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by subsection (4) below.
- (4) The statement shall—
  - (a) specify the type of school or other institution which the local education authority consider would be appropriate for the child,
  - (b) if they are not required under Schedule 10 to this Act to specify the name of any school in the statement, specify the name of any school or institution (whether in the United Kingdom or elsewhere) which they consider would be appropriate for the child and should be specified in the statement, and
  - (c) specify any provision for the child for which they make arrangements under section 163 of this Act and which they consider should be specified in the statement.
- (5) Where a local education authority maintain a statement under this section—
  - (a) unless the child’s parent has made suitable arrangements, the authority—
    - (i) shall arrange that the special educational provision specified in the statement is made for the child, and
    - (ii) may arrange that any non-educational provision specified in the statement is made for him in such manner as they consider appropriate, and
  - (b) if the name of a maintained, grant-maintained or grant-maintained special school is specified in the statement, the governing body of the school shall admit the child to the school.
- (6) Subsection (5)(b) above does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) Schedule 10 to this Act (which makes provision in relation to the making and maintenance of statements under this section) shall have effect.

## **169 Appeal against decision not to make statement**

- (1) If, after making an assessment under section 167 of this Act of the educational needs of any child for whom no statement is maintained under section 168 of this Act, the local education authority do not propose to make such a statement, they shall give notice in writing of their decision, and of the effect of subsection (2) below, to the child’s parent.
- (2) In such a case, the child’s parent may appeal to the Tribunal against the decision.
- (3) On an appeal under this section, the Tribunal may—
  - (a) dismiss the appeal,
  - (b) order the local education authority to make and maintain such a statement, or
  - (c) remit the case to the authority for them to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to



determine the special educational provision which any learning difficulty the child may have calls for.

### **170 Appeal against contents of statement**

- (1) The parent of a child for whom a local education authority maintain a statement under section 168 of this Act may—
  - (a) when the statement is first made,
  - (b) where the description in the statement of the authority's assessment of the child's special educational needs, or the special educational provision specified in the statement, is amended, or
  - (c) where, after conducting an assessment of the educational needs of the child under section 167 of this Act, the local education authority determine not to amend the statement,appeal to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.
- (2) Subsection (1)(b) above does not apply where the amendment is made in pursuance of paragraph 8 or 11(3)(b) of Schedule 10 to this Act or directions under section 197 of this Act; and subsection (1)(c) above does not apply to a determination made following the service of notice under paragraph 10 of Schedule 10 to this Act of a proposal to amend the statement.
- (3) On an appeal under this section, the Tribunal may—
  - (a) dismiss the appeal,
  - (b) order the authority to amend the statement, so far as it describes the authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
  - (c) order the authority to cease to maintain the statement.
- (4) On an appeal under this section the Tribunal shall not order the local education authority to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—
  - (a) the parent has expressed a preference for the school in pursuance of arrangements under paragraph 3 of Schedule 10 to this Act, or
  - (b) in the proceedings the parent, the local education authority or both have proposed the school.
- (5) Before determining any appeal under this section the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

### **171 Access for local education authority to certain schools**

- (1) This section applies where—
  - (a) a local education authority maintain a statement for a child under section 168 of this Act, and
  - (b) in pursuance of the statement education is provided for the child at—
    - (i) a school maintained by another local education authority,
    - (ii) a grant-maintained school, or

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(iii) a grant-maintained special school.

- (2) Any person authorised by the local education authority shall be entitled to have access at any reasonable time to the premises of any such school for the purpose of monitoring the special educational provision made in pursuance of the statement for the child at the school.

## **172    Reviews of educational needs**

- (1) Regulations may prescribe the frequency with which assessments under section 167 of this Act are to be repeated in respect of children for whom statements are maintained under section 168 of this Act.
- (2) Where—
- (a) the parent of a child for whom a statement is maintained under section 168 of this Act asks the local education authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
  - (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make a further assessment under that section, the authority shall comply with the request.
- (3) If in any case where subsection (2)(a) and (b) above applies the authority determine not to comply with the request—
- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- (4) On an appeal under subsection (3) above the Tribunal may—
- (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act.
- (5) A statement under section 168 of this Act shall be reviewed by the local education authority—
- (a) on the making of an assessment in respect of the child concerned under section 167 of this Act, and
  - (b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.
- (6) Regulations may make provision—
- (a) as to the manner in which reviews of such statements are to be conducted,
  - (b) as to the participation in such reviews of such persons as may be prescribed, and
  - (c) in connection with such other matters relating to such reviews as the Secretary of State considers appropriate.

## **173    Assessment of educational needs at request of child's parent**

- (1) Where—
- (a) the parent of a child for whom a local education authority are responsible but for whom no statement is maintained under section 168 of this Act asks the

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- authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
- (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make an assessment under that section,
- the authority shall comply with the request.
- (2) If in any case where subsection (1)(a) and (b) above applies the authority determine not to comply with the request—
- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- (3) On an appeal under subsection (2) above the Tribunal may—
- (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act.

#### **174 Assessment of educational needs at request of governing body of grant-maintained school**

- (1) Where in the case of a child for whom a local education authority are responsible but for whom no statement is maintained under section 168 of this Act—
- (a) a grant-maintained school is specified in a direction in respect of the child under section 13 of this Act,
  - (b) the governing body of the school ask the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act, and
  - (c) such an assessment has not been made within the period of six months ending with the date on which the request is made,
- the local education authority shall serve a notice under subsection (2) below on the child's parent.
- (2) The notice shall inform the child's parent—
- (a) that the local education authority propose to make an assessment of the child's educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the authority from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to the authority within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (3) Where—
- (a) a local education authority have served a notice under subsection (2) above and the period specified in the notice in accordance with subsection (2)(d) above has expired, and
  - (b) the authority are of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (4) below,
- they shall make an assessment of his educational needs under section 167 of this Act.

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- (4) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary to determine the special educational provision which any learning difficulty he may have calls for.
- (5) Where a local education authority decide in pursuance of this section to make an assessment under that section, they shall give notice in writing to the child's parent, and to the governing body of the grant-maintained school, of that decision and of their reasons for making it.
- (6) Where, at any time after serving a notice under subsection (2) above, a local education authority decide not to assess the educational needs of the child concerned, they shall give notice in writing to the child's parent and to the governing body of the grant-maintained school of their decision.

**175 Assessment of educational needs of children under two**

- (1) Where a local education authority are of the opinion that a child in their area who is under the age of two years falls, or probably falls, within subsection (2) below—
  - (a) they may, with the consent of his parent, make an assessment of the child's educational needs, and
  - (b) they shall make such an assessment at the request of his parent.
- (2) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) An assessment under this section shall be made in such manner as the authority consider appropriate.
- (4) After making an assessment under this section, the authority—
  - (a) may make a statement of the child's special educational needs, and
  - (b) may maintain that statement,in such manner as they consider appropriate.

**176 Duty of District Health Authority or National Health Service trust to notify parent etc**

- (1) This section applies where a District Health Authority or a National Health Service trust, in the course of exercising any of their functions in relation to a child who is under the age of five years, form the opinion that he has (or probably has) special educational needs.
- (2) The health authority or trust shall—
  - (a) inform the child's parent of their opinion and of their duty under this section, and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the health authority or trust, bring it to the attention of the appropriate local education authority.

- (3) If the health authority or trust are of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, they shall inform the parent accordingly.

### *Special Educational Needs Tribunal*

#### **177 Constitution of Tribunal**

- (1) There shall be established a tribunal, to be known as the Special Educational Needs Tribunal (referred to in this Part of this Act as “the Tribunal”), to exercise the jurisdiction conferred on it by this Part of this Act.
- (2) There shall be appointed—
- (a) a President of the Tribunal (referred to in this Part of this Act as “the President”),
  - (b) a panel of persons (referred to in this Part of this Act as “the chairmen’s panel”) who may serve as chairman of the Tribunal, and
  - (c) a panel of persons (referred to in this Part of this Act as “the lay panel”) who may serve as the other two members of the Tribunal apart from the chairman.
- (3) The President and the members of the chairmen’s panel shall each be appointed by the Lord Chancellor.
- (4) The members of the lay panel shall each be appointed by the Secretary of State.
- (5) Regulations may—
- (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as may be determined from time to time by the President, and
  - (b) make such other provision in connection with the establishment and continuation of the Tribunal as the Secretary of State considers necessary or desirable.
- (6) The Secretary of State may, with the consent of the Treasury, provide such staff and accommodation as the Tribunal may require.

#### **178 The President and members of the panels**

- (1) No person may be appointed President or member of the chairmen’s panel unless he has a seven year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).
- (2) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed.
- (3) If, in the opinion of the Lord Chancellor, the President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.
- (4) Each member of the chairmen’s panel or lay panel shall hold and vacate office under the terms of the instrument under which he is appointed.
- (5) The President or a member of the chairmen’s panel or lay panel—
- (a) may resign office by notice in writing to the Lord Chancellor or (as the case may be) the Secretary of State, and

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- (b) is eligible for re-appointment if he ceases to hold office.

### **179 Remuneration and expenses**

- (1) The Secretary of State may pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and allowances as he may, with the consent of the Treasury, determine.
- (2) The Secretary of State may defray the expenses of the Tribunal to such amount as he may, with the consent of the Treasury, determine.

### **180 Tribunal procedure**

- (1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part of this Act and the initiation of such an appeal.
- (2) The regulations may, in particular, include provision—
  - (a) as to the period within which, and the manner in which, appeals are to be instituted,
  - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any appeal is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another,
  - (c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,
  - (d) for the holding of hearings in private in prescribed circumstances,
  - (e) for hearings to be conducted in the absence of any member, other than the chairman,
  - (f) as to the persons who may appear on behalf of the parties,
  - (g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
  - (h) requiring persons to attend to give evidence and produce documents,
  - (i) for authorising the administration of oaths to witnesses,
  - (j) for the determination of appeals without a hearing in prescribed circumstances,
  - (k) as to the withdrawal of appeals,
  - (l) for the award of costs or expenses,
  - (m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),
  - (n) for the registration and proof of decisions and orders, and
  - (o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.
- (3) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may with the consent of the Treasury determine.
- (4) The Arbitration Act 1950 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Act.
- (5) Any person who without reasonable excuse fails to comply with—

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- (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of subsection (2)(g) above, or
- (b) any requirement imposed by the regulations by virtue of subsection (2)(h) above,

is guilty of an offence.

- (6) A person guilty of an offence under subsection (5) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **181 Supervision of and appeals from Tribunal**

- (1) In paragraph 15 of Part I of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under direct supervision of Council on Tribunals), after sub-paragraph (d) there is inserted—
  - “(e) the Special Educational Needs Tribunal constituted under section 177 of the Education Act 1993”.
- (2) In section 11(1) of that Act (appeals from certain tribunals), for “15(a) or (d)” there is substituted “15(a), (d) or (e)”.

### *Special schools and independent schools*

### **182 Special schools**

- (1) A school which is specially organised to make special educational provision for pupils with special educational needs and is for the time being approved by the Secretary of State under section 188 of this Act shall be known as a special school.
- (2) A special school maintained by a local education authority shall be known as a maintained special school.
- (3) A special school conducted by a governing body incorporated in pursuance of proposals for the purpose—
  - (a) made by the funding authority under section 183 of this Act, or
  - (b) made under section 186 of this Act,shall be known as a grant-maintained special school.
- (4) Schedule 11 to this Act (which provides for the government and conduct of grant-maintained special schools) shall have effect.

### **183 Establishment, etc. of maintained or grant-maintained special schools**

- (1) The funding authority may establish in the area of any local education authority a school which is specially organised to make special educational provision for pupils with special educational needs if—
  - (a) an order under section 12(1) of this Act applies to the area, and
  - (b) the school is intended to provide relevant education for pupils in the area, whether or not it also provides other education or education for pupils from outside the area.
- (2) Where a local education authority intend—

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- (a) to establish a school which is specially organised to make special educational provision for pupils with special educational needs,
  - (b) to make any prescribed alteration to a maintained special school, or
  - (c) to discontinue such a school,
- they shall serve under subsection (6) below notice of their proposals.
- (3) Where the funding authority—
- (a) intend to establish a school which is specially organised to make special educational provision for pupils with special educational needs,
  - (b) are of the opinion that any prescribed alteration should be made to a grant-maintained special school, or
  - (c) are of the opinion that such a school should be discontinued,
- and an order under section 12(1) of this Act applies to the area concerned, they shall serve under subsection (6) below notice of their proposals.
- (4) Where the governing body of a grant-maintained special school intend—
- (a) to make any prescribed alteration to the school, or
  - (b) to discontinue the school,
- they shall serve under subsection (6) below notice of their proposals.
- (5) Except in pursuance of proposals under this section approved under section 184 of this Act—
- (a) a local education authority or the funding authority may not establish a school which is specially organised to make special educational provision for pupils with special educational needs,
  - (b) no prescribed alteration may be made to a maintained or grant-maintained special school, and
  - (c) a maintained or grant-maintained special school may not be discontinued.
- (6) Notice for the purposes of subsections (2) to (4) above shall be served on—
- (a) the Secretary of State, and
  - (b) such other persons as may be prescribed,
- and shall give such information as may be prescribed.
- (7) If the proposals are approved under section 184 of this Act, the body which served the notice or, in the case of proposals under subsection (3)(b) or (c) above, the governing body of the school shall implement them.
- (8) If proposals under subsection (3)(a) above are so approved, a governing body of the school shall be incorporated on such date as may be specified in the proposals (referred to in this Part of this Act as the “incorporation date”).
- (9) In relation to the establishment of a school in pursuance of proposals under subsection (3)(a) above, regulations may apply any provision of Chapter IV or V of Part II of this Act with or without modification.
- (10) In this Part of this Act—
- (a) references to the discontinuance of a maintained special school are to the local education authority ceasing to maintain it, and
  - (b) references to an alteration to a school include the transfer of the school to a new site.



## **184 Procedure for dealing with proposals**

- (1) Before a body serve notice of any proposals under section 183 of this Act they shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the body shall have regard to any guidance given from time to time by the Secretary of State.
- (2) Any person may, within such period (which shall not be less than two months beginning with the date on which the notice is served) as may be specified in the notice under that section, submit objections to the proposals to the body which served the notice.
- (3) Within one month after the end of the period for making objections specified in the last notice to be served under that section, the body which served the notice shall transmit to the Secretary of State copies of all objections which have been duly made (and not withdrawn in writing), together with their observations on them.
- (4) The Secretary of State may, after considering the proposals, any objections to the proposals and any observations on the objections, reject the proposals, approve them without modification or, after consulting the body which served notice of them and, in the case of proposals under section 183(3)(b) or (c) of this Act, the governing body, approve them with such modifications as he thinks desirable.
- (5) The Secretary of State may modify any proposals required under section 183 of this Act to be implemented—
  - (a) in the case of proposals under section 183(3)(b) or (c) of this Act—
    - (i) at the request of the governing body, or
    - (ii) at the request of the funding authority and after consulting the governing body, or
  - (b) in any other case, at the request of the body which served notice of the proposals.
- (6) References in this Part of this Act to proposals under section 183 of this Act, in any case where the Secretary of State has modified such proposals in pursuance of this section, are to the proposals as so modified.
- (7) Service of a notice under that section which is sent by post in accordance with section 113 of the Education Act 1944 (notices) shall be taken to have been effected on the second day after the day on which the notice is posted.

## **185 Approval of premises of maintained or grant-maintained special schools**

- (1) Where a body serve under section 183(6) of this Act notice of proposals for the establishment of a school which is specially organised to make special educational provision for pupils with special educational needs, they shall submit to the Secretary of State the particulars in respect of the proposed premises of the school mentioned in subsection (3) below.
- (2) Where a body serve under section 183(6) of this Act notice of proposals for making a prescribed alteration to a special school, they shall if the Secretary of State so directs submit to him the particulars in respect of the premises or proposed premises of the school mentioned in subsection (3) below.
- (3) The particulars are—

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- (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
  - (b) such other particulars in respect of the premises or proposed premises of the school as the Secretary of State may require,
- and they shall be submitted at such time and in such form and manner as the Secretary of State may direct.
- (4) The particulars submitted under subsection (3)(a) above shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
- (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990, that document.
- (5) Particulars submitted under this section in respect of the premises or proposed premises of the school require the approval of the Secretary of State.
- (6) Where any proposals falling within subsection (1) or (2) above are required to be implemented, they shall be implemented in accordance with any particulars approved under this section.

#### **186 Maintained special school becoming grant-maintained special school**

- (1) Regulations may make provision for maintained special schools, or any class or description of such schools, to cease to be maintained by the local education authority and become grant-maintained special schools.
- (2) Regulations shall require, before a maintained special school becomes a grant-maintained special school in pursuance of the regulations—
- (a) the submission to the Secretary of State of proposals for the purpose by the governing body of the school, and
  - (b) the approval of such proposals, as originally submitted or as modified by the Secretary of State (whether before or after they are approved).
- (3) If the proposals are so approved, a governing body of the school shall be incorporated in accordance with Schedule 11 to this Act on the date of approval (referred to in this Part of this Act as the “incorporation date”).
- (4) Regulations made for the purposes of this section may apply any provision of—
- (a) Chapter II, III or V of Part II of this Act,
  - (b) section 184 of this Act, or
  - (c) section 273 of this Act,
- with or without modification.

#### **187 Groups including grant-maintained special schools**

- (1) Regulations may modify the provisions of Chapter IX of Part II of this Act for the purpose of securing that—

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- (a) two or more grant-maintained special schools, or one or more grant-maintained special schools together with one or more grant-maintained schools, may be conducted as a group by a single governing body,
- (b) a special school maintained by a local education authority may cease to be so maintained and may be conducted by a governing body incorporated under that Chapter, and
- (c) a grant-maintained special school may become a member of a group of schools conducted by such a governing body,

and that, where a group of schools including one or more special schools is conducted by such a governing body, the governing body are appropriately constituted.

- (2) Regulations made for the purpose mentioned in subsection (1) above may modify sections 183 to 185 and 188 of this Act and Schedule 11 to this Act.
- (3) Where that Chapter applies to special schools by virtue of regulations—
  - (a) section 22(1) of this Act shall not be read as applying to such schools,
  - (b) a special school conducted by a governing body incorporated under that Chapter shall be known as a grant-maintained special school, and
  - (c) references in Chapter I of Part V of this Act to a group of grant-maintained schools include a group of one or more grant-maintained special schools together with one or more grant-maintained schools.

## **188 Approval of special schools**

- (1) The Secretary of State may approve any school which is specially organised to make special educational provision for pupils with special educational needs, not being a maintained or grant-maintained school, and may give his approval before or after the school is established.
- (2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.
- (3) Any school which—
  - (a) is established in pursuance of proposals approved under section 184 of this Act, or
  - (b) immediately before the coming into force of this section, is a special school,shall be treated, subject to subsection (4) below, as approved under this section.
- (4) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school while approved under this section, and
  - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3) above) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4) above, the requirements which may be imposed by the regulations include requirements—
  - (a) which call for arrangements to be approved by the Secretary of State, or
  - (b) as to the organisation of any special school as a primary school or as a secondary school.

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- (6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a special school—
  - (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.
- (7) Where approval is withdrawn from a maintained special school or grant-maintained special school, the local education authority or, as the case may be, the governing body shall serve under section 183 of this Act notice of their proposals to discontinue the school.
- (8) For the purposes of proposals made under subsection (7) above—
  - (a) that section shall have effect as if the school had not ceased to be a special school on the withdrawal of the approval, and
  - (b) section 184 of this Act shall have effect as if subsections (1) to (3), and the reference in subsection (4) to the rejection of proposals, were omitted.

### **189 Approval of independent schools**

- (1) The Secretary of State may approve an independent school as suitable for the admission of children for whom statements are maintained under section 168 of this Act.
- (2) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school as a condition of its approval under this section,
  - (b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and
  - (c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as the Secretary of State sees fit to impose.
- (4) In any case where there is a failure to comply with such a condition imposed under subsection (3) above, the Secretary of State may withdraw his approval.
- (5) No person shall so exercise his functions under this Part of this Act that a child with special educational needs is educated in an independent school unless—
  - (a) the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements are maintained under section 168 of this Act, or
  - (b) the Secretary of State consents to the child being educated there.

### **190 Provision of education at non-maintained schools**

- (1) Subsection (2) below applies where—
  - (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school, and
  - (b) either the name of the school is specified in a statement in respect of the child under section 168 of this Act or the local education authority are satisfied that

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his interests require the necessary special educational provision to be made for him at a school which is not a maintained school and that it is appropriate for the child to be provided with education at the particular school.

- (2) Where this subsection applies, the local education authority shall—
  - (a) pay the whole of the fees payable in respect of the education provided for him at the school, and
  - (b) if board and lodging are provided for the child at the school and the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided, pay the whole of the fees payable in respect of the board and lodging.
- (3) In this section, “maintained school” means—
  - (a) a school maintained by a local education authority,
  - (b) a grant-maintained school, and
  - (c) a grant-maintained special school.

#### *Variation of deeds*

### **191 Variation of trust deeds etc. by order**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 188 or 189 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.

## **PART IV**

### **SCHOOL ATTENDANCE**

#### *School attendance orders*

### **192 School attendance orders**

- (1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.
- (2) That period shall not be less than fifteen days beginning with the day on which the notice is served.
- (3) If—
  - (a) a parent on whom a notice has been served under subsection (1) above fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and

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- (b) in the opinion of the authority it is expedient that the child should attend school,  
the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.
- (4) A school attendance order shall (subject to any amendment made by the local education authority) continue in force for so long as the child is of compulsory school age, unless—
  - (a) it is revoked by the authority, or
  - (b) a direction is made in respect of it under section 198(2) or 202(5) of this Act.
- (5) Where a maintained or grant-maintained school is named in a school attendance order, the local education authority shall inform the governing body and the head teacher.
- (6) Where a maintained or grant-maintained school is named in a school attendance order the governing body (and, in the case of a maintained school, the local education authority) shall admit the child to the school.
- (7) Subsection (6) above does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (8) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

### **193 Choice of school: child without statement of special educational needs**

- (1) This section applies where a local education authority are required by virtue of section 192(3) of this Act to serve a school attendance order in respect of a child, other than a child for whom they maintain a statement under section 168 of this Act.
- (2) Before serving the order, the authority shall serve on the parent a notice in writing—
  - (a) informing him of their intention to serve the order,
  - (b) specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and
  - (c) stating the effect of subsections (3) to (6) below.
- (3) If the notice specifies one or more alternative schools and the parent selects one of them within the period of fifteen days beginning with the day on which the notice is served, the school selected by him shall be named in the order.
- (4) If—
  - (a) within the period mentioned in subsection (3) above—
    - (i) the parent applies for the child to be admitted to a school maintained by a local education authority and, where that authority are not the authority by whom the notice was served, notifies the latter authority of the application, or
    - (ii) the parent applies for the child to be admitted to a grant-maintained school and notifies the authority by whom the notice was served of the application, and
  - (b) the child is offered a place at the school as a result of the application,

that school shall be named in the order.

(5) If—

- (a) within the period mentioned in subsection (3) above, the parent applies to the local education authority by whom the notice was served for education to be provided for the child at a school which is not maintained by a local education authority and is not a grant-maintained school, and
- (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 6 of the Education (Miscellaneous Provisions) Act 1953,

that school shall be named in the order.

(6) If, within the period mentioned in subsection (3) above—

- (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, and in respect of which no application is made under subsection (5) above, and notifies the local education authority by whom the notice was served of the application,
- (b) the child is offered a place at the school as a result of the application, and
- (c) the school is suitable to his age, ability and aptitude and to any special educational needs he may have,

that school shall be named in the order.

#### **194 Specification of schools in notices under section 193(2)**

(1) Subject to subsection (3) below, a local education authority shall not, if it appears to them that subsection (2) below applies in relation to any school, specify the school in a notice under section 193(2) of this Act unless they are responsible for determining the arrangements for the admission of pupils to the school.

(2) This subsection applies where, if the child concerned were admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child's age group would exceed the number fixed—

- (a) in the case of a maintained school, in accordance with section 26 of the Education Reform Act 1988 (admissions to county and voluntary schools), and
- (b) in the case of a grant-maintained school, in accordance with sections 149 to 151 of this Act,

as the number of pupils in that age group which it is intended to admit to the school in the school year in which he would be admitted.

(3) Subsection (1) above does not prevent a local education authority specifying in a notice under section 193(2) of this Act any maintained or grant-maintained school if there is no maintained or grant-maintained school in their area—

- (a) which subsection (1) above does not (apart from this subsection) prevent them from specifying, and
- (b) which is, in their opinion, a reasonable distance from the home of the child concerned,

and, in the opinion of the authority, the school is a reasonable distance from the home of the child concerned.

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- (4) A local education authority shall not specify in a notice under section 193(2) of this Act a school from which the child concerned is permanently excluded.
- (5) Before deciding to specify a particular maintained or grant-maintained school in a notice under section 193(2) of this Act a local education authority shall consult—
  - (a) the governing body, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (6) Where a local education authority decide to specify a particular maintained or grant-maintained school in a notice under section 193(2) of this Act they shall, before serving the notice, serve notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (7) A governing body or local education authority on whom notice is served under subsection (6) above may, within the period of fifteen days beginning with the day on which the notice was received, apply to the Secretary of State for a direction under this section and if they do so, shall inform the local education authority which served the notice.
- (8) Where the Secretary of State gives a direction under this section, the school or schools to be specified in the notice under section 193(2) of this Act shall be determined in accordance with the direction.

**195 Amendment of order at request of parent: child without statement of special educational needs**

- (1) This section applies where a school attendance order is in force in respect of a child, other than a child for whom the local education authority maintain a statement under section 168 of this Act.
- (2) If at any time—
  - (a) the parent applies for the child to be admitted to a school maintained by a local education authority or grant-maintained school which is different from the school named in the order,
  - (b) the child is offered a place at the school as a result of the application, and
  - (c) the parent requests the local education authority by whom the order was served to amend it by substituting that school for the one currently named,
 the authority shall comply with the request.
- (3) If at any time—
  - (a) the parent applies to the authority for education to be provided for the child at a school which is not maintained by a local education authority or a grant-maintained school and which is different from the school named in the order,
  - (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 6 of the Education (Miscellaneous Provisions) Act 1953, and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,



the authority shall comply with the request.

(4) If at any time—

- (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, which is different from the school named in the order and in respect of which no application is made under subsection (3) above,
- (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and to any special educational needs he may have, and
- (c) the parent requests the authority to amend the order by substituting that school for the one currently named,

the authority shall comply with the request.

#### **196 Choice of school: child with statement of special educational needs**

(1) Subsections (2) and (3) below apply where a local education authority are required by virtue of section 192(3) of this Act to serve a school attendance order in respect of a child for whom they maintain a statement under section 168 of this Act.

(2) Where the statement specifies the name of a school that school shall be named in the order.

(3) Where the statement does not specify the name of a school—

- (a) the authority shall, in accordance with paragraph 10 of Schedule 10 to this Act, amend the statement so that it specifies the name of a school, and
- (b) that school shall then be named in the order.

(4) Where—

- (a) a school attendance order is in force in respect of a child for whom the local education authority maintain a statement under section 168 of this Act, and
- (b) the name of the school specified in the statement is changed,

the local education authority shall amend the order accordingly.

#### **197 Revocation of order at request of parent**

(1) This section applies where a school attendance order is in force in respect of a child.

(2) If at any time the parent applies to the local education authority requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request, unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

(3) If a parent is aggrieved by a refusal of the local education authority to comply with a request under subsection (2) above, he may refer the question to the Secretary of State.

(4) Where a question is referred to the Secretary of State under subsection (3) above, he shall give such direction determining the question as he thinks fit.

(5) Where the child in question is one for whom the authority maintain a statement under section 168 of this Act—

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- (a) subsections (2) to (4) above do not apply if the name of a school or other institution is specified in the statement, and
  - (b) in any other case a direction under subsection (4) above may require the authority to make such amendments in the statement as the Secretary of State considers necessary or expedient in consequence of his determination.
- (6) In this section, “suitable education” has the meaning given by section 192(8) of this Act.

*School attendance: offences and education supervision orders*

**198 Offence: failure to comply with school attendance order**

- (1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.
- (2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.
- (3) A direction under subsection (2) above does not affect the duty of the local education authority to take further action under section 192 of this Act if at any time the authority are of the opinion that having regard to any change of circumstances it is expedient to do so.
- (4) In this section, “suitable education” has the meaning given by section 192(8) of this Act.

**199 Offence: failure to secure regular attendance at school of registered pupil**

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- (2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.
- (3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—
  - (a) with leave,
  - (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
  - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- (4) The child shall not be taken to have failed to attend regularly at the school if the parent proves—
  - (a) that the school at which the child is a registered pupil is not within walking distance of the child’s home, and
  - (b) that no suitable arrangements have been made by the local education authority or the funding authority for any of the following—
    - (i) his transport to and from the school,
    - (ii) boarding accommodation for him at or near the school, and

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- (iii) enabling him to become a registered pupil at a school nearer to his home.
- (5) In subsection (4) above, “walking distance” means—
  - (a) in relation to a child who is under the age of eight years, two miles, and
  - (b) in relation to a child who has attained the age of eight years, three miles, in each case measured by the nearest available route.
- (6) If it is proved that the child has no fixed abode, subsection (4) above shall not apply, but the parent shall be acquitted if he proves—
  - (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
  - (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
  - (c) if the child has attained the age of six years, that he has made at least two hundred attendances during the period of twelve months ending with the date on which the proceedings were instituted.
- (7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.
- (8) In this section “leave”, in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

## **200 Presumption of age**

- (1) This section applies for the purposes of any proceedings for an offence under section 198 or 199 of this Act.
- (2) In so far as it is material, the child in question shall be presumed to have been of compulsory school age at any time unless the parent proves the contrary.
- (3) Where a court is obliged by virtue of subsection (2) above to presume a child to have been of compulsory school age, section 95(1) of the Education Act 1944 (provisions as to evidence) does not apply.

## **201 Institution of proceedings and punishment**

- (1) Proceedings for an offence under section 198 or 199 of this Act shall not be instituted except by a local education authority.
- (2) A person guilty of an offence under section 198 or 199 of this Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **202 Education supervision orders**

- (1) Before instituting proceedings for an offence under section 198 or 199 of this Act, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.

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- (2) The court—
- (a) by which a person is convicted of an offence under section 198 of this Act, or
  - (b) before which a person is charged with an offence under section 199 of this Act,
- may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.
- (3) Where, following such a direction, a local education authority decide not to apply for an education supervision order they shall inform the court of the reasons for their decision.
- (4) Unless the court has directed otherwise, the information required under subsection (3) above shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.
- (5) Where—
- (a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order, and
  - (b) the court decides that section 36(3) of the Children Act 1989 (education supervision orders) prevents it from making the order,
- the court may direct that the school attendance order shall cease to be in force.
- (6) In this section—
- “appropriate local authority” has the same meaning as in section 36(9) of the Children Act 1989, and
  - “education supervision order” means an education supervision order under that Act.

### *Exemption*

#### **203 Exemption where child attains 5 years during term**

Where—

- (a) a child attains the age of five years during the school term of a grant-maintained school, and
- (b) arrangements have been made for the admission of the child to that school at the start of the next school term,

then, during the period beginning with his attaining that age and ending with the start of that next school term, section 36 of the Education Act 1944 (duty of parents to secure the education of their children) and section 192 of this Act shall not apply to the child.

## PART V

### SCHOOLS FAILING TO GIVE AN ACCEPTABLE STANDARD OF EDUCATION

#### CHAPTER I

##### IDENTIFICATION OF SCHOOLS REQUIRING SPECIAL MEASURES

###### *Introductory*

#### **204 Extension of the Education (Schools) Act 1992**

- (1) This Chapter, in its application to inspections under section 9 of the Education (Schools) Act 1992 or by any member of the Inspectorate, applies to the inspection of any county, voluntary, maintained special, grant-maintained or grant-maintained special school.
- (2) In this Part of this Act—
  - “appropriate appointing authority” means, in relation to any aided or special agreement school—
    - (a) the appropriate diocesan authority, if it is a Church of England school, Church in Wales school or Roman Catholic Church school, and
    - (b) in any other case, the person who appoints the foundation governors,
  - “appropriate authority”, in relation to any county, voluntary or maintained special school, means the school’s governing body or, if the governing body do not have a delegated budget, the local education authority and, in relation to a grant-maintained or grant-maintained special school, means the school’s governing body,
  - “inspection by a member of the Inspectorate” means a section 9 inspection carried out by a member of the Inspectorate or an inspection under section 2(2)(b), 3(1), 6(2)(b) or 7(1) of that Act,
  - “member of the Inspectorate” means the Chief Inspector, any of Her Majesty’s Inspectors of Schools in England or, as the case may be, Wales and any additional inspector, and
  - “section 9 inspection” means an inspection under section 9 of that Act;and other expressions used in this Part and that Act have the same meaning in this Part as in that Act.
- (3) For the purposes of this Part of this Act, special measures are required to be taken in relation to a school if the school is failing or likely to fail to give its pupils an acceptable standard of education.
- (4) Paragraphs 9 to 12 of Schedule 2 to that Act shall cease to have effect in relation to county, voluntary, maintained special, grant-maintained and grant-maintained special schools.

### *Inspections and reports*

#### **205 Section 9 inspections by members of the Inspectorate**

- (1) Where an inspection of a school is required under section 9 of the Education (Schools) Act 1992 but the Chief Inspector is satisfied that it is not reasonably practicable to secure that the school is inspected by a suitable registered inspector, he shall secure that it is inspected by a member of the Inspectorate.
- (2) Where an inspection is conducted by a member of the Inspectorate by virtue of this section, that Act shall have effect (unless the context otherwise requires) in relation to the inspection as if the member of the Inspectorate were a registered inspector.
- (3) If the Chief Inspector so elects in the case of any inspection of a school by a member of the Inspectorate under section 2(2)(b), 3(1), 6(2)(b) or 7(1) of that Act, that inspection shall be treated for the purposes of section 9(1) and (2) of that Act and sections 209 to 212 of this Act as if it were an inspection under section 9 of that Act and the member of the Inspectorate were a registered inspector.

#### **206 Section 9 inspections by registered inspectors**

- (1) Where a section 9 inspection by a registered inspector has been completed, the inspector shall make in writing a report of the inspection and a summary of the report.
- (2) Where the inspector is of the opinion that special measures are required to be taken in relation to the school he shall submit a draft of the report of the inspection to the Chief Inspector.
- (3) If the Chief Inspector so requests, an inspector who has submitted a draft under subsection (2) above shall provide the Chief Inspector with such further information as the Chief Inspector may specify.
- (4) The Chief Inspector shall inform an inspector who has submitted a draft under subsection (2) above whether he agrees or disagrees with the inspector's opinion.
- (5) Where—
  - (a) the Chief Inspector informs the inspector that he disagrees with the inspector's opinion, but
  - (b) the inspector remains of the opinion that special measures are required to be taken in relation to the school,
 the inspector may not make a report expressing that opinion unless the terms in which he makes the report are substantially the same (except as to the statement required by subsection (7)(b) below) as the draft or as a subsequent draft submitted to the Chief Inspector under this subsection.
- (6) Where a subsequent draft is submitted under subsection (5) above, the Chief Inspector shall inform the inspector whether he agrees or disagrees with the inspector's opinion.
- (7) A report made by a registered inspector who is of the opinion that special measures are required to be taken in relation to the school shall—
  - (a) state his opinion, and
  - (b) state whether the Chief Inspector agrees or disagrees with his opinion.
- (8) If a report of an inspection of a school by a registered inspector is made in circumstances where—

- (a) he is of the opinion that special measures are not required to be taken in relation to the school, but
  - (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
- the person making the report shall state his opinion in the report.

## **207 Reports of inspections by members of the Inspectorate**

- (1) Where on the completion of any inspection of a school under section 2(2)(b), 3(1), 6(2)(b) or 7(1) of the Education (Schools) Act 1992 by a member of the Inspectorate, he is of the opinion that special measures are required to be taken in relation to the school, he shall—
  - (a) prepare in writing a report of the inspection and a summary of the report, and
  - (b) state his opinion in the report.
- (2) If on the completion of any such inspection of a school by a member of the Inspectorate in circumstances where—
  - (a) he is of the opinion that special measures are not required to be taken in relation to the school, but
  - (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,the member of the Inspectorate shall prepare in writing a report of the inspection and a summary of the report and state his opinion in the report.
- (3) A report of a section 9 inspection of a school by a member of the Inspectorate shall, if he is of the opinion that special measures are required to be taken in relation to the school, state his opinion.
- (4) If a report of a section 9 inspection of a school by a member of the Inspectorate is made in circumstances where—
  - (a) he is of the opinion that special measures are not required to be taken in relation to the school, but
  - (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,the member of the Inspectorate shall state his opinion in the report.

## **208 Timing of section 9 inspections by registered inspectors**

- (1) The carrying out of a section 9 inspection shall be completed by the time allowed under subsection (2) below and the making of the report required by section 206 of this Act shall be completed within the period allowed under subsection (2) below.
- (2) The time, and the period, allowed shall be such as may be prescribed, subject to any such extension of the period as the Chief Inspector may consider necessary to make; but the total period allowed must not exceed the prescribed period extended by three months.

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- (3) The Chief Inspector shall give notice in writing of any extension under subsection (2) above to—
- (a) the inspector,
  - (b) the local education authority in the case of a county, voluntary or maintained special school, and
  - (c) the governing body.
- (4) This section does not apply to a section 9 inspection carried out by a member of the Inspectorate.

## **209 Destination of reports**

- (1) In the case of a report of a section 9 inspection of a school, the person making it shall without delay—
- (a) send a copy of the report together with the summary of it to the appropriate authority for the school and, if it is a grant-maintained or grant-maintained special school, to the Secretary of State, and
  - (b) if in the case of a county, voluntary or maintained special school it states that he is of the opinion that special measures are required to be taken in relation to the school, and either that person is a member of the Inspectorate or the report states that the Chief Inspector agrees with his opinion, send a copy of the report and summary to the Secretary of State.
- (2) In the case of a report of an inspection of a school made by a member of the Inspectorate which is required by section 207(1)(b) of this Act to state that he is of the opinion that special measures are required to be taken in relation to the school, the member of the Inspectorate shall send a copy of the report together with the summary of it to the appropriate authority for the school and the Secretary of State.
- (3) In any case, copies of the report and summary shall be sent by the person who made the report—
- (a) to the Chief Inspector (unless the report was made by a member of the Inspectorate),
  - (b) to the head teacher of the school,
  - (c) in the case of a county, voluntary or maintained special school, to whichever of the local education authority and the governing body are not the appropriate authority,
  - (d) in the case of a school having foundation governors, to the person who appoints them and (if different) to the appropriate appointing authority,
  - (e) to any person named as a sponsor of the school in the instrument of government, and
  - (f) in the case of any school in a group of grant-maintained schools in respect of which any person has power to appoint an externally appointed core governor under a provision of the instrument of government made in pursuance of Schedule 8 to this Act, to that person.
- (4) The appropriate authority shall—
- (a) make a copy of any report and summary sent to the authority under subsection (1) or (2) above available for inspection by members of the public at such times and at such place as may be reasonable,



- (b) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), to any person who asks for one, and
- (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the summary as soon as is reasonably practicable.

### *Special measures*

## **210 Special measures by appropriate authority**

- (1) Where—
  - (a) a report of a section 9 inspection of a school, or
  - (b) a report of an inspection of a school made by a member of the Inspectorate which is required by section 207(1)(b) of this Act to state that he is of the opinion that special measures are required to be taken in relation to the school,is sent to the appropriate authority they shall prepare a written statement of the action which they propose to take in the light of the report and the period within which they propose to take it.
- (2) It is the duty of the appropriate authority to prepare the statement within the period allowed by this subsection, that is—
  - (a) such period as may be prescribed, or
  - (b) if, in the case of any report where the person making it states that he is of the opinion that special measures are required to be taken in relation to the school, and either that person is a member of the Inspectorate or the report states that the Chief Inspector agrees with his opinion, the Secretary of State is of the opinion that the urgency of the case requires a shorter period, such period as the Secretary of State may direct,but this subsection does not relieve the appropriate authority of any duty to prepare a statement which has not been performed within that period.
- (3) Where such a statement has been prepared by the appropriate authority they shall, before the end of the prescribed period, send copies of it—
  - (a) to the Chief Inspector,
  - (b) in the case of a county, voluntary or maintained special school, to whichever of the governing body and the local education authority are not the appropriate authority,
  - (c) in the case of a grant-maintained or grant-maintained special school, to the Secretary of State, and
  - (d) in such circumstances as may be prescribed, to such other persons (if any) as may be prescribed.
- (4) If in the case of a county, voluntary or maintained special school—
  - (a) the statement is prepared in response to a report of an inspection of the school in which the person who made the report expresses the opinion that special measures are required to be taken in relation to the school, and
  - (b) that person is a member of the Inspectorate or the report states that the Chief Inspector agrees with his opinion,

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the appropriate authority shall, before the end of the prescribed period, send a copy of the statement to the Secretary of State.

- (5) The appropriate authority shall also send a copy of the statement—
- (a) in the case of a school having foundation governors, to the person who appoints them and (if different) to the appropriate appointing authority,
  - (b) to any person named as a sponsor of the school in the instrument of government, and
  - (c) in the case of any school in a group of grant-maintained schools in respect of which any person has power to appoint an externally appointed core governor under a provision of the instrument of government made in pursuance of Schedule 8 to this Act, to that person.
- (6) The appropriate authority shall—
- (a) make any statement prepared by them under this section available for inspection by members of the public, at such times and at such place as may be reasonable,
  - (b) provide a copy of the statement, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement as soon as is reasonably practicable.
- (7) Where the governing body of a school have prepared a statement under this section, they shall in the report referred to in section 30 of the Education (No. 2) Act 1986 or, as the case may be, in paragraph 8 of Schedule 6 to this Act state the extent to which the proposals set out in the statement (or if there is more than one, the most recent statement) have been carried into effect.

## **211 Additional special measures by local education authority**

- (1) This section applies in circumstances where—
- (a) in a report of an inspection of a county, voluntary or maintained special school the governing body of which have a delegated budget the person who made the report expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion, and
  - (c) the local education authority receive a copy of a statement prepared under section 210 of this Act in response to the report or the period prescribed for the purposes of subsection (3) of that section expires.
- (2) The local education authority shall—
- (a) prepare a written statement of any action they propose to take in the light of the report, and the period within which they propose to take such action, or, if they do not propose to take any such action, of their reasons for not doing so, and
  - (b) send a copy of the statement prepared under paragraph (a) above, together with their comments on any statement prepared under section 210 of this Act of which they have received a copy, to the Secretary of State and the Chief Inspector and, in the case of an aided or special agreement school, to

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the person who appoints the foundation governors and (if different) to the appropriate appointing authority.

- (3) It is the duty of the local education authority to prepare the statement within the period allowed by this subsection, that is—
- (a) such period as may be prescribed, or
  - (b) if in the case of any report the Secretary of State is of the opinion that the urgency of the case requires a shorter period, such period as the Secretary of State may direct,

but this subsection does not relieve the local education authority of any duty to prepare a statement which has not been performed within that period.

## **212 Monitoring special measures and further inspections**

- (1) This section applies in circumstances where—
- (a) in a report of an inspection of a school the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) a statement has been prepared under section 210 of this Act or the period prescribed for the purposes of subsection (3) of that section has expired, and
  - (d) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school, he did not express the opinion in the report that special measures were not required to be taken in relation to the school.
- (2) Regulations may make provision with a view to securing that any measures taken by the appropriate authority and, in the case of a school which has a delegated budget, the local education authority for improving the standard of education at the school are monitored in accordance with the regulations by such persons as may be prescribed.
- (3) The regulations may, in particular, provide for reports to be made, by such persons and at such intervals as may be prescribed.
- (4) The regulations may authorise the Secretary of State to require the Chief Inspector to conduct further inspections of the school and prepare further reports of such inspections.
- (5) In respect of cases where any report prepared in pursuance of a requirement imposed by virtue of subsection (4) above—
- (a) states that, in the opinion of the person who prepared the report, special measures are required to be taken in relation to the school, but the grounds for that opinion are substantially different from the grounds for the opinion in any preceding report by a registered inspector or member of the Inspectorate, or
  - (b) states that, in the opinion of that person, special measures are not required to be taken in relation to the school,

the regulations may make provision corresponding to any of the provisions made by this Chapter.

## CHAPTER II

### NEW POWERS OVER SCHOOLS REQUIRING SPECIAL MEASURES

#### *Miscellaneous powers and restrictions*

#### **213 Schools to which sections 214 to 217 apply**

Sections 214 to 217 of this Act apply only to county, voluntary and maintained special schools and do not apply to a school at any time unless, at that time—

- (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
- (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
- (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
- (d) the Secretary of State has not exercised his powers under section 220 of this Act in relation to the school.

#### **214 Appointment of additional governors**

(1) If at any time—

- (a) this section applies in relation to any county, controlled or maintained special school, and
- (b) the conditions in subsection (2) below are satisfied,

the local education authority may appoint such number of additional governors as they think fit.

(2) Those conditions are that—

- (a) a copy of a statement prepared—
  - (i) in the case of a school not having a delegated budget, under section 210 of this Act, and
  - (ii) in any other case, under section 211 of this Act,
 has been sent to the Secretary of State,
- (b) the local education authority have received a notice in writing in which the Secretary of State acknowledges receipt of the copy, and
- (c) not less than ten days have elapsed since the date of the notice.

(3) The Secretary of State may in respect of any particular school determine that subsection (2)(c) above shall have effect as if the reference to ten days were to such shorter period as he may determine.

(4) In relation to any appointment made by the local education authority by virtue of subsection (1) above to the governing body of a school—

- (a) the instrument of government for the school, or

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- (b) if the governing body of the school are constituted in accordance with arrangements under section 12 of the Education (No. 2) Act 1986 (temporary governing bodies for new schools), those arrangements, shall have effect as if, notwithstanding paragraph (b) of section 3(2), (3), (4) and (5) of that Act (governing bodies for county schools, etc.), the instrument or, as the case may be, arrangements authorised the local education authority to appoint such number of additional governors as they think fit.
- (5) If at any time—
- (a) this section applies in relation to an aided or special agreement school, and
- (b) the conditions in subsection (6) below are satisfied,
- the appropriate appointing authority may appoint such number of additional foundation governors as they think fit.
- (6) Those conditions are—
- (a) that a period of ten days has elapsed since—
- (i) in the case of a school not having a delegated budget, the period prescribed for the purposes of section 210(3) of this Act expired, and
- (ii) in any other case, the period allowed under section 211(3) of this Act for preparing a statement under that section expired, or
- (b) that the Secretary of State has received a copy of a statement prepared—
- (i) in the case of a school not having a delegated budget, under section 210 of this Act, and
- (ii) in any other case, under section 211 of this Act,
- and has served notice in writing on the appropriate appointing authority stating that the power conferred by subsection (5) above is exercisable.
- (7) The Secretary of State may by notice in writing served on the appropriate appointing authority determine that subsection (6)(a) above shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (8) In the case of any appointment made by virtue of subsection (5) above to the governing body of a school—
- (a) the instrument of government for the school, or
- (b) if the governing body are constituted in accordance with arrangements under section 12 of the Education (No. 2) Act 1986, those arrangements,
- shall have effect as if, notwithstanding section 4(3) of that Act (foundation governors for aided and special agreement schools), the instrument or, as the case may be, arrangements authorised the appropriate appointing authority to appoint such number of additional foundation governors as they think fit.
- (9) Where in the case of any aided or special agreement school which is not a Church of England school, Church in Wales school or Roman Catholic Church school there are different powers to appoint foundation governors, references in this section (other than subsection (6) and (7)) to the appropriate appointing authority are to—
- (a) all those persons who have any such power acting jointly, or
- (b) if they are unable to agree, such of them acting jointly, or such one of them, as the Secretary of State may, after consulting all those persons, determine.

## **215 Suspension of right to delegated budget**

- (1) If at any time—
- (a) this section applies in relation to any county, controlled or maintained special school in respect of which financial delegation is required, and
  - (b) the conditions in subsection (2) below are satisfied,
- the local education authority may by giving the governing body of the school notice of suspension suspend the right to a delegated budget with effect from the receipt by the governing body of the notice; 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.
- (2) Those conditions are that—
- (a) a copy of a statement prepared under section 211 of this Act has been sent to the Secretary of State,
  - (b) the local education authority have received a notice in writing in which the Secretary of State acknowledges receipt of the copy, and
  - (c) not less than ten days have elapsed since the date of the notice.
- (3) The Secretary of State may in respect of any particular school determine that subsection (2)(c) above shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (4) A suspension by virtue of this section shall have effect for the purposes of Chapter III of Part I of the Education Reform Act 1988 as if made under section 37 of that Act, but subsection (8)(a) of that section (right to appeal against imposition of suspension) does not apply in relation to a suspension by virtue of this section.
- (5) Expressions used in this section and that Chapter have the same meaning as in that Chapter.

## **216 Grouping and de-grouping**

- (1) If at any time—
- (a) this section applies in relation to any county, voluntary or maintained special school, and
  - (b) the local education authority have received a copy of the report referred to in section 213(a) of this Act,
- they may not pass a resolution under section 9 of the Education (No. 2) Act 1986 (grouping of schools under single governing body) for two or more schools to be grouped if any of the schools is a school to which this section applies.
- (2) If at any time—
- (a) this section applies in relation to any county, voluntary or maintained special school, and
  - (b) the Secretary of State has received a copy of the report referred to in section 213(a) of this Act,
- he may by order under section 9(6) of the Education (No. 2) Act 1986 bring to an end any grouping under that section of schools which include a school to which this section applies, whether or not the grouping is one in respect of which his consent was at any time required under section 10 of that Act.

## **217 Prohibition on ballot under Part II**

- (1) If at any time—
  - (a) this section applies in relation to any county or voluntary school, and
  - (b) the governing body have received a copy of the report referred to in section 213(a) of this Act,then, notwithstanding anything in sections 25 or 26 of this Act, the governing body of the school may not secure that any ballot is held under Chapter II of Part II of this Act.
- (2) If at any time—
  - (a) this section applies in relation to a maintained special school, and
  - (b) the governing body have received a copy of the report referred to in section 213(a) of this Act,regulations under section 186 of this Act shall not apply in relation to the school.

### *Education associations*

## **218 Power to establish education associations**

- (1) Where—
  - (a) the powers conferred by section 220 of this Act are exercisable by the Secretary of State in relation to a school, and
  - (b) he is of the opinion that the school should be conducted by a body corporate established under this section and that no suitable body corporate have been so established,he may by order provide for the establishment of a body corporate under the name given in the order.
- (2) Bodies corporate established under this section shall be known as “education associations”.
- (3) An education association shall consist of not less than five members appointed by the Secretary of State, one of whom shall be so appointed as chairman.
- (4) Before making an order under this section in the case of a voluntary school, the Secretary of State shall consult—
  - (a) if it is a Church of England school, Church in Wales school or Roman Catholic Church school, the appropriate diocesan authority, and
  - (b) in any other case, the person who appoints the foundation governors.
- (5) An education association—
  - (a) must include at least one member who appears to the Secretary of State to have experience of, and to have shown capacity in, the provision of primary or secondary education or to have held, and shown capacity in, any position carrying responsibility for the provision of such education,
  - (b) if the association conduct any school which was a voluntary school, must include at least one member who appears to the Secretary of State to have experience of, and to have shown capacity in, the provision of education in voluntary schools, and
  - (c) if the association conduct a special school, must include at least one member who appears to the Secretary of State to have experience of, and to have shown capacity in, providing for children with special educational needs,

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but one person may satisfy the requirement in paragraph (a) above as well as that in paragraph (b) or (c) above.

- (6) Schedule 12 to this Act has effect in respect of education associations.
- (7) Subject to the following provisions of this Chapter—
  - (a) references in any enactment to the governing body of any school, or to the foundation governors of any school, are to be read, in relation to a school conducted by an education association, as references to that association, and
  - (b) references in any enactment to the governors of any school are to be read, in relation to a school conducted by an education association, as references to the members of the association.
- (8) Where an education association conduct more than one school, then, subject to the following provisions of this Chapter, any provision of an enactment which applies to schools shall apply separately in relation to each of the schools.

## **219 Supervision of education associations by the Secretary of State**

- (1) An education association shall, in exercising their functions, comply with any directions given by the Secretary of State.
- (2) Before giving a direction under this section, the Secretary of State shall consult the education association or (as the case may be) each education association to which the direction applies unless, for reasons of urgency, it is not in his opinion reasonably practicable for him to do so.
- (3) The Secretary of State shall publish any directions given by him under this section in such manner as he thinks fit.

## **220 Transfer of responsibility for conducting school to an education association**

- (1) The powers conferred by this section are exercisable by the Secretary of State in relation to any county school or voluntary school at any time if, at that time—
  - (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) the Secretary of State has received a statement prepared under section 210 of this Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired, and
  - (d) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school, he did not express the opinion in the report that special measures were not required to be taken in relation to the school.
- (2) Where—
  - (a) the powers conferred by this section are exercisable by the Secretary of State in relation to a school,
  - (b) he is of the opinion that the school should be conducted by an education association, and



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- (c) if the school is a voluntary school, he has consulted the person who appoints the school's foundation governors and such other persons as he thinks appropriate,  
he may by order provide for the school to be conducted by an education association named in the order as from such date as may be specified in the order (referred to in this Part of this Act as the "transfer date").
- (3) On making an order under this section the Secretary of State shall give notice in writing of the order to the governing body and head teacher of the school, to the local education authority and (except in the case of a school in Wales before the Schools Funding Council for Wales begin to exercise their functions) the funding authority.
- (4) On the transfer date—
  - (a) the local education authority whose duty it was immediately before that date to maintain the school as a county or voluntary school shall cease to have that duty, and
  - (b) any special agreement relating to the school shall cease to have effect.

## **221 Effect of order under section 220**

- (1) This section applies in relation to a school where an order under section 220 of this Act has been made.
- (2) A school conducted by an education association may not cease to be so conducted unless—
  - (a) it becomes a grant-maintained school, or
  - (b) the school is discontinued.
- (3) The following subsections have effect subject to the following provisions of this Chapter.
- (4) Subject to subsection (7) below, references in any enactment to grant-maintained schools include schools conducted by education associations.
- (5) References in any enactment to schools the governing bodies of which are incorporated under Chapter II of Part II of this Act (however expressed) include schools conducted by education associations.
- (6) Subject to subsection (7) below, references in any enactment—
  - (a) to any school becoming grant-maintained (whether the reference is to its acquiring grant-maintained status or is expressed in any other form), or
  - (b) to the date of implementation of the proposals under which it becomes grant-maintained,are in the case of schools conducted by education associations references to the school beginning to be conducted by the association or, as the case may be, to the transfer date.
- (7) References in any enactment to schools the governing bodies of which are incorporated under Chapter IV of Part II of this Act (however expressed) do not include schools conducted by education associations.

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## **222 Functions of education associations**

- (1) Where an order under section 220 of this Act provides for an education association to conduct a school, the association may as from the transfer date conduct the school; and their power under this subsection is to conduct a school of the same description as the school immediately before that date.
- (2) An education association shall conduct any school for which they are the governing body so as to secure, so far as it is practicable to do so, the elimination of any deficiencies in the conduct of the school identified in any report made by a registered inspector or member of the Inspectorate.
- (3) A school conducted by an education association shall not be regarded as of a different description, where changes have been made in the character or premises of the school since the transfer date, to that immediately before that date if the changes—
  - (a) did not require authorisation under Chapter VII of Part II of this Act, or
  - (b) were authorised under that Chapter.
- (4) Subject to any provision made by the articles of government for the school, an education association may provide education at any school conducted by them which is neither primary nor secondary education if—
  - (a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years,
  - (b) it is part-time education suitable to the requirements of junior pupils who have not attained the age of five years and the school provides full-time education for junior pupils of the same age, or
  - (c) they do so as agents for a local education authority under arrangements made with the authority for the purpose.

## **223 Conduct of school**

- (1) Each school conducted by an education association shall be conducted in accordance with an instrument to be known as the articles of government.
- (2) Subject to any express provision of the articles of government, the school shall be conducted in accordance with any trust deed relating to it.
- (3) The initial articles of government for such a school shall be such as are prescribed and, subject to subsection (4) below, shall have effect as from the transfer date.
- (4) Such of the articles as may be prescribed shall have effect as from such date prior to the transfer date as may be prescribed.
- (5) The education association may, with the consent of the Secretary of State—
  - (a) make new articles of government in place of the existing articles for the school, or
  - (b) modify the existing articles for the school.
- (6) The Secretary of State may by a direction under this section, in the case of schools conducted by education associations, any class of such schools specified in the direction or any particular school conducted by an education association so specified, require each education association conducting any school to which the direction applies to modify its articles of government in any manner so specified.

- (7) Before giving a direction under this section, the Secretary of State shall consult each education association conducting any school to which the direction applies.

## **224 School conducted by education association acquiring grant-maintained status**

- (1) Where the Secretary of State—
- (a) has received a copy of a report under section 227(2) of this Act in respect of a school conducted by an education association, and
  - (b) is of the opinion that the school should become a grant-maintained school,
- he may give notice in writing of his opinion to the head teacher of the school, the education association, the local education authority and (except in the case of a school in Wales before the Schools Funding Council for Wales have begun to exercise their functions) the funding authority.
- (2) An education association which receive a notice under subsection (1) above in respect of a school shall, within the period of three months beginning with the receipt of the notice, publish proposals under section 32 of this Act.
- (3) In relation to proposals published under section 32 of this Act by virtue of this section and the incorporation of a governing body in pursuance of such proposals, Chapters II and V of Part II of this Act shall have effect—
- (a) as if the school to which the proposals relate had continued, after the transfer date, to be a county or, as the case may be, voluntary school, and
  - (b) with such other modifications as may be prescribed.

## **225 Discontinuance of school conducted by education association**

- (1) Where the Secretary of State is of the opinion that a school conducted by an education association should be discontinued, he shall give notice in writing of his opinion and of the discontinuance date to—
- (a) the education association,
  - (b) the local education authority,
  - (c) the funding authority (except in the case of a school in Wales before the Schools Funding Council for Wales have begun to exercise their functions), and
  - (d) if the school provides education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council.
- (2) The education association shall cease to conduct the school—
- (a) on the date specified in the notice, or
  - (b) if at the request of the education association the Secretary of State subsequently fixes another date (whether in substitution for the date specified in the notice or in substitution for a date previously fixed under this subsection), on that date.
- (3) Where the Secretary of State has given notice under this section, he may by order make provision for the disposal of the school property and the discharge of any liabilities of the education association in respect of the school.
- (4) An order under subsection (3) above may make any such provision (except provision for the dissolution of the education association) as is made by, or may be made by an

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order under, sections 111 to 116 of this Act where proposals for the discontinuance of a grant-maintained school have been approved under section 106 of this Act.

## **226 Winding-up of education association**

- (1) Where subsection (2) below applies to the school or, as the case may be, each of the schools conducted or formerly conducted by an education association, the Secretary of State may by order provide for the dissolution of the association and the transfer to him of the property, rights and liabilities of the association.
- (2) This section applies where—
  - (a) the Secretary of State has approved proposals for the school to become a grant-maintained school, or
  - (b) the Secretary of State has given notice under section 225 of this Act of his opinion that the school should be discontinued.

## **227 Reports showing school no longer requires special measures**

- (1) Where, on the completion of any inspection of a school conducted by an education association under section 2(2)(b), 3(1), 6(2)(b) or 7(1) of the Education (Schools) Act 1992 by a member of the Inspectorate, he is of the opinion that special measures are not required to be taken in relation to the school, he shall prepare in writing a report of the inspection and a summary of the report and state his opinion in the report.
- (2) The member of the Inspectorate shall send a copy of the report, together with a summary of it, to the head teacher of the school, the education association and the Secretary of State.
- (3) The education association shall—
  - (a) make any copy report and summary sent to them under subsection (2) above available for inspection by members of the public at such times and at such place as may be reasonable,
  - (b) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), to any person who asks for one, and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the summary as soon as is reasonably practicable.
- (4) Section 9 of that Act does not apply to schools conducted by education associations.

## **228 Regulations for the purposes of Chapter II**

- (1) Regulations may provide for any enactments relating to grant-maintained schools (or schools including grant-maintained schools), including enactments relating to the acquisition of grant-maintained status, to have effect in relation to—
  - (a) the transfer to an education association under section 220 of this Act of responsibility for the conduct of any school and the subsequent conduct of the school by the association,
  - (b) the discontinuance under section 225 of this Act of any school conducted by an education association, and

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- (c) the transfer to a governing body incorporated in pursuance of proposals published by virtue of section 224 of this Act of responsibility for the conduct of any school conducted by an education association,  
with such modifications as seem to the Secretary of State to be necessary or desirable.
- (2) Subsection (1) above does not apply in relation to schools which are or were maintained special schools; but regulations may provide for sections 220 to 227 of this Act to have effect in relation to any such schools as they have effect in relation to county schools but with such modifications as seem to the Secretary of State to be necessary or desirable.
- (3) Regulations may make such provision as the Secretary of State considers necessary or desirable in relation to—
  - (a) the transfer to an education association under section 220 of this Act of responsibility for the conduct of any maintained special school and the subsequent conduct of the school by the association, and
  - (b) where a former maintained special school is being conducted by an education association, the discontinuance of the school under section 225 of this Act.
- (4) In relation to any former maintained special school being conducted by an education association—
  - (a) section 186 of this Act shall apply as it applies to any maintained special school, but as if the reference in subsection (1) to the school ceasing to be maintained by the local education authority were to its ceasing to be conducted by an education association, and
  - (b) section 224 of this Act shall apply—
    - (i) as if the reference in subsection (1) to a grant-maintained school were to a grant-maintained special school,
    - (ii) as if the reference in subsection (2) to section 32 of this Act were to section 186 of this Act, and
    - (iii) with the omission of subsection (3).

## PART VI

### MISCELLANEOUS

#### *Establishment, alteration etc. of maintained schools*

#### **229 Proposals for establishment, etc. of schools by local education authority**

- (1) In section 12 of the Education Act 1980 (establishment and alteration of county schools) in subsection (1), after “county school” in paragraph (d) there is inserted “or to transfer a county school to a new site in the area” and, after that subsection, there is inserted—
  - “(1A) Before publishing the proposals the local education authority shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the authority shall have regard to any guidance given from time to time by the Secretary of State.

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(1B) The Secretary of State shall publish any guidance given by him for the purposes of subsection (1A) above in such manner as he thinks fit.”

(2) In subsection (3) of that section—

- (a) “voluntary” is omitted, and
- (b) after “affected by the proposals” there is inserted “by the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies)”.

(3) Where—

- (a) an order under section 12 of this Act applies to the area of a local education authority, and
- (b) the authority publish proposals under section 12 of that Act which affect the provision of relevant education in the area,

the funding authority shall be included among the persons who may submit objections to the proposals.

### **230 Proposals for establishment, etc. of voluntary schools by promoters, etc**

(1) In section 13 of the Education Act 1980 (establishment and alteration of voluntary schools) in subsection (1), after “the school” in paragraph (b) there is inserted “or to transfer the school to a new site” and, after subsection (1A), there is inserted—

“(1B) Before publishing any proposals under this section, the persons concerned shall—

- (a) in the case of proposals under subsection (1)(a) above, consult the local education authority, and
- (b) in the case of proposals under subsection (1)(a) or (b) above, consult such other persons as appear to them to be appropriate;

and in discharging their duty under this subsection, they shall have regard to any guidance given from time to time by the Secretary of State.

(1C) The Secretary of State shall publish any guidance given by him for the purposes of subsection (1B) above in such manner as he thinks fit.”

(2) In subsection (3) of that section—

- (a) “voluntary” is omitted, and
- (b) after “affected by the proposals” there is inserted “by the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies)”.

(3) After subsection (3) of that section there is inserted—

“(3A) Where the proposals are to transfer a school to a site in a different area, objections under subsection (3) above to the proposals may also be made by any ten or more local government electors for that area.”

(4) In subsection (6) of that section, after “below” there is inserted—

- “(a) in the case of any proposals approved by the Secretary of State to transfer a controlled school to a new site, it shall be the duty of the local education authority to implement the proposals (and any associated proposals for a change in the character of the school) so far

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- as they involve the provision of premises or the removal or provision of equipment, and
- (b) in any other case”.
- (5) At the end of that section there is added—
- “(8) Where proposals under this section for the transfer of a school to a site in a different area are approved—
- (a) in the case of any voluntary school—
- (i) the references in subsection (6) above to the local education authority are to the authority for the new area, and
- (ii) upon the transfer the duty to maintain the school shall transfer to that authority, and
- (b) in the case of any controlled school, the First Schedule to the Education Act 1946 (provision of premises by maintaining authority) shall apply as if the duty to maintain the school had been transferred to the local education authority for the new area.”
- (6) Where—
- (a) an order under section 12 of this Act applies to the area of a local education authority, and
- (b) any persons publish proposals under section 13 of that Act which affect the provision of relevant education in the area,
- the funding authority shall be included among the persons who may submit objections to the proposals.

#### *Nursery education*

### **231 Nursery education in grant-maintained schools**

- (1) No person may—
- (a) publish proposals under section 48 or 49 of this Act for the establishment of any nursery school, or
- (b) publish proposals under section 96 or 97 of this Act, or give notice of proposals under section 183(3) or (4) of this Act, for a school to become a nursery school.
- (2) Subject to subsection (1) above, proposals under sections 48, 49, 96, 97 or 183(3) or (4) of this Act may, in particular, be made for the purpose of securing the provision of education for junior pupils who have not attained the age of five years.

#### *Rationalisation of school places*

### **232 Directions to bring forward proposals to remedy excessive provision**

- (1) Where the Secretary of State is of the opinion that the provision for primary or secondary education in maintained schools in the area of any local education authority is excessive, then, for the purpose of remedying the excess—
- (a) he may by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and

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- (b) in the case of any voluntary school in the area, he may by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school.
- (2) Where the Secretary of State is of the opinion that the provision for primary or secondary education in grant-maintained schools in the area of any local education authority is excessive and an order under section 12(1) of this Act applies to the area, he may by an order under this subsection direct the funding authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools for the purpose of remedying the excess.
- (3) An order under subsection (1) or (2) above shall—
  - (a) require the proposals to be published or, as the case may be, notice of the proposals to be served not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (1)(a) or (2) above may not require the proposals to relate to any named school.

**233 Directions to bring forward proposals for additional provision in maintained schools**

- (1) The powers conferred by subsection (2) below are exercisable where—
  - (a) an order under section 12(1)(b) of this Act applies to the area of a local education authority, and
  - (b) the Secretary of State is of the opinion that the schools providing relevant education which are available for the area are not sufficient for the purposes of section 8 of the Education Act 1944 and that additional provision for relevant education should be made in maintained schools in the area.
- (2) The Secretary of State may—
  - (a) by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any voluntary school in the area, by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school,

in the case of any such order with a view to securing that provision is made for such additional number of pupils in the area as may be specified in the order.
- (3) An order under subsection (2) above shall—
  - (a) require the proposals to be published or, as the case may be, notice of the proposals to be served not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (2)(a) above may not require the proposals to relate to any named school.



- (5) Paragraph 7 of Schedule 2 to this Act does not apply in relation to the implementation of any proposals under section 12 of the Education Act 1980 where the Secretary of State has made an order under subsection (2) above.

### **234 Publication of proposals by the Secretary of State**

- (1) Where—
- (a) the Secretary of State has in relation to the area of any local education authority made an order under section 232(1) or (2) of this Act directing the local education authority, the funding authority or the governing body of a voluntary school to make proposals for the establishment, alteration or discontinuance of schools or, as the case may be, for the alteration of their school, and
  - (b) the time allowed under the order, and under any other order under that section relating to that area, for the publication of the proposals or, as the case may be, the service of notice of the proposals has expired,
- he may make in such manner as may be prescribed any such proposals as might have been made in accordance with the order or orders relating to that area by the person or persons to whom the directions were given.
- (2) Proposals made under this section shall—
- (a) include particulars of the proposed time or times of implementation of the proposals, and
  - (b) except where they are proposals to cease to maintain or discontinue any school or relate to a special school—
    - (i) include particulars of the number of pupils proposed to be admitted to the school to which the proposals relate in each relevant age group in the first school year in relation to which the proposals have been wholly implemented, and
    - (ii) if, in the case of a grant-maintained school, pupils are proposed to be admitted for nursery education, give the prescribed information.
- (3) For the purposes of subsection (2)(b) above admission to a maintained school for nursery education shall be disregarded; and section 155(4) to (6) of this Act applies for the purposes of that subsection as it applies for the purposes of Part II of this Act.
- (4) Proposals made under this section shall be accompanied by a statement which—
- (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
  - (b) explains the effect of subsection (5) below.
- (5) Within the period of one month beginning with the date on which the proposals are made, objections to the proposals may be made by any of the following—
- (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors for the area,
  - (c) the governing body of any school affected by the proposals and, in the case of a voluntary school, the person or persons who are named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944), and

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- (d) any local education authority concerned.
- (6) Where—
  - (a) an order under section 12 of this Act applies to the area of a local education authority, and
  - (b) the Secretary of State makes proposals under this section which affect the provision of relevant education in the area,
 the funding authority shall be included among the persons who may submit objections to the proposals.
- (7) The reference in subsection (5) above to the date on which the proposals are made is to the date on which the prescribed requirements in respect of the proposals are satisfied.

### **235 Public inquiry into proposals**

- (1) This section applies where in relation to the area of any local education authority the Secretary of State has made proposals under section 234 of this Act, otherwise than in pursuance of section 236(1) of this Act, which he has not withdrawn.
- (2) If objections have been made under section 234(5) of this Act within the period allowed under that subsection, then, unless all objections so made have been withdrawn in writing within that period, the Secretary of State shall cause a local inquiry to be held to consider his proposals, any proposals he refers to the inquiry and any objections.
- (3) Any proposals referred to a local inquiry under this section require the approval of the Secretary of State (if they would not require such approval apart from this subsection).
- (4) Where the Secretary of State has a duty to cause a local inquiry to be held under this section, he shall refer to the inquiry any proposals—
  - (a) made by him in relation to the area of the local education authority (and not withdrawn) but in respect of which he is not required under this section to cause a local inquiry to be held,
  - (b) made by the local education authority, or made in relation to the area by the funding authority, in the exercise of their powers to make proposals for the establishment, alteration or discontinuance of schools (and not withdrawn), or
  - (c) made by the governing body of any voluntary school in the area in exercise of their powers to make proposals for the alteration of their school (and not withdrawn),
 which are not determined before he causes the inquiry to be held and appear to him to be related to the proposals made under section 234 of this Act in respect of which he is required under this section to cause the inquiry to be held.
- (5) Subsection (4) above does not require the Secretary of State to refer any proposals to the inquiry if, before he causes the inquiry to be held, he forms the opinion that the proposals ought to be implemented unless, before the proceedings on the inquiry are concluded or (if earlier) the proposals are determined, he subsequently forms a different opinion.
- (6) It shall not be open to the inquiry to question the principles specified in the order under section 232 or 233 of this Act.
- (7) Section 250(2) to (5) of the Local Government Act 1972 (giving evidence at and defraying costs of inquiries) applies to inquiries held under this section.

- (8) References in this section to the determination of any proposals are to any determination whether or not to approve, adopt or implement the proposals under section 12 or 13 of the Education Act 1980, Part II of this Act or section 184 of this Act.

### **236 Adoption of proposals and approval of related proposals**

- (1) Where the Secretary of State has made proposals under section 234 of this Act in respect of which he is required to cause a local inquiry to be held, he may when he has considered the report of the person appointed to hold the inquiry do one or more of the following—
- (a) adopt, with or without modifications, or determine not to adopt the proposals or any other proposals made by him under that section which he referred to the inquiry,
  - (b) approve, with or without modifications, or reject any other proposals which he referred to the inquiry, and
  - (c) make any such further proposals under section 234 of this Act as might have been made in accordance with the order or orders relating to the area of the local education authority concerned by the person or persons to whom the directions were given.
- (2) Where the Secretary of State has made proposals under section 234 of this Act in respect of which he is not required to cause a local inquiry to be held and which he is not required to refer to such an inquiry, he may, after considering any objections made (and not withdrawn) under subsection (5) of that section within the period allowed under that subsection, adopt, with or without modifications, or determine not to adopt, the proposals.
- (3) Proposals adopted by the Secretary of State under this section shall have effect—
- (a) if they relate to a maintained school, as if they had been—
    - (i) made by the local education authority under their powers to make proposals for the establishment, alteration or discontinuance of schools, or
    - (ii) in the case of a voluntary school, made by the governing body under their powers to make proposals for the alteration of their school, and approved by the Secretary of State under section 12 or 13 of the Education Act 1980 or, as the case may be, section 184 of this Act, and
  - (b) if they relate to a grant-maintained school, as if they had been made by the funding authority under those powers and approved by the Secretary of State under Part II of this Act or, as the case may be, section 184 of this Act;
- and the provisions of the Education Act 1980, or Part II or section 185 of this Act, relating to the approval of particulars of premises or proposed premises of schools shall have effect accordingly.

### **237 Supplementary provisions**

- (1) An order under section 232 or 233 of this Act may not require any significant change to be made in the religious character of a voluntary school.
- (2) Where the governing body of a voluntary school make any proposals in pursuance of an order under section 232 or 233 of this Act—

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- (a) the person or persons who are named in the school’s instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) shall be included among the persons who may submit objections to the proposals, and
  - (b) the local education authority shall re-imburse any expenditure reasonably incurred by the governing body in making the proposals.
- (3) Proposals made in pursuance of an order under section 232 of this Act may not be withdrawn without the consent of the Secretary of State and such consent may be given on such conditions (if any) as the Secretary of State considers appropriate.
- (4) Where—
- (a) proposals made by the governing body of a voluntary school in pursuance of an order under section 232 or 233 of this Act are approved, or
  - (b) proposals adopted by the Secretary of State under section 236 of this Act have effect as mentioned in subsection (3)(a)(ii) of that section,
- then, notwithstanding anything in section 13(5) of the Education Act 1980, the local education authority shall defray the cost of implementing the proposals.
- (5) Notwithstanding anything in section 23 of this Act, a county or voluntary school is not eligible for grant-maintained status—
- (a) if the local education authority have made any proposals in pursuance of an order under section 232 of this Act to cease to maintain the school which have not been withdrawn and no determination whether or not to approve or implement the proposals has been made under section 12 of the Education Act 1980 or section 236 of this Act, or
  - (b) if the Secretary of State has made any proposals under section 234 of this Act for the local education authority to cease to maintain the school which have not been withdrawn and no determination whether or not to adopt the proposals has been made under section 236 of this Act.
- (6) Section 273(4) and (5) of this Act does not apply in relation to any proposals under section 12(1)(d) or 13(1)(b) of the Education Act 1980 made in pursuance of an order under section 232 of this Act.
- (7) In sections 232 to 236 of this Act, “powers to make proposals for the alteration of their school”, in relation to the governing body of a voluntary school, means their powers to publish proposals under section 13(1)(b) of the Education Act 1980.
- (8) In sections 232 to 236 of this Act—
- (a) “powers to make proposals for the establishment, alteration or discontinuance of schools” means—
    - (i) in relation to the local education authority, all or any of the powers to publish proposals under section 12 of the Education Act 1980,
    - (ii) in relation to the funding authority, all or any of the powers to publish proposals under sections 48, 97 or 105 of this Act, and
    - (iii) in relation to either authority, the power to serve notice of proposals under section 183 of this Act,
  - (b) references to maintained schools include maintained special schools established in hospitals, and
  - (c) references to grant-maintained schools include grant-maintained special schools.

### *Incorporation of governing bodies*

#### **238 Incorporation of governing bodies**

- (1) A governing body constituted in pursuance of Part I of the Education (No. 2) Act 1986 (county, voluntary and maintained special schools) on or after the appointed day shall be constituted as a body corporate.
- (2) A governing body so constituted before that day shall, as constituted on that day, become on that day a body corporate.
- (3) On the incorporation of a governing body by virtue of subsection (2) above, any property, rights or liabilities attributable to the governing body immediately before incorporation shall be transferred to, and by virtue of this section vest in, the body corporate.
- (4) For the purposes of subsection (3) above, property, rights or liabilities are attributable to a governing body if—
  - (a) in the case of any land or other property, it was held by or on behalf of any persons as members or former members of the governing body, and
  - (b) in the case of rights or liabilities, they were acquired or incurred by or on behalf of any such persons,and are so held or, as the case may be, they subsist immediately before the incorporation of the governing body.
- (5) A governing body incorporated by virtue of this section shall be known as “The governing body of ...” with the addition of the name of the school.
- (6) The application of the seal of any such governing body must be authenticated by the signature—
  - (a) of the chairman of the governing body, or
  - (b) of some other member authorised either generally or specially by the governing body to act for that purpose,together with the signature of any other member.
- (7) Every document purporting to be an instrument made or issued by or on behalf of any such governing body and—
  - (a) to be duly executed under the seal of the governing body, or
  - (b) 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.
- (8) References in subsections (1) and (2) above to a governing body do not include a temporary governing body constituted under arrangements made under that Act.
- (9) Schedule 13 to this Act (provisions supplementary to this section and section 239 of this Act) shall have effect.
- (10) In this and that section and that Schedule, “appointed day” means the day appointed under section 308(3) of this Act for the commencement of this section.

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### **239 Powers of incorporated governing bodies**

- (1) A governing body incorporated by virtue of section 238 of this Act may do anything (including in particular the things referred to in the following subsections) which appears to them to be necessary or expedient for the purpose of or in connection with the exercise of any of the functions conferred on them under or in pursuance of any enactment.
- (2) A governing body so incorporated may—
  - (a) acquire and dispose of land and other property,
  - (b) enter into contracts, other than contracts of employment,
  - (c) invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on,
  - (d) accept gifts of money, land and other property and apply it, or hold and administer it on trust, for any of those purposes, and
  - (e) do anything incidental to the conduct of the school.
- (3) Subsections (1) and (2) above have effect subject to—
  - (a) any provisions of the instrument of government or articles of government for the school, and
  - (b) if the school has a delegated budget (defined in section 33(6)(b) of the Education Reform Act 1988), any provisions of the scheme under that section which covers the school.
- (4) The governing body so incorporated of an aided school may enter into contracts for the employment of teachers and other staff, subject to any provisions of the articles of government for the school other than any provisions for the time being excluded by section 45(2) of that Act (aided schools having delegated budgets) from applying to the school.

### *The curriculum*

### **240 National Curriculum**

- (1) In section 2 of the Education Reform Act 1988 (the National Curriculum) in subsection (2)(c) (arrangements for assessing pupils at or near the end of each key stage) for “at or near the end” there is substituted “in respect”.
- (2) After section 3(5) of that Act (power of head teacher to determine key stage for a particular pupil) there is inserted—
 

“(5A) If at any time, in the case of a pupil of compulsory school age, subsection (3) above does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—

  - (a) in the case of paragraphs (a) to (c), 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, and
  - (b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attained the age of fifteen and ending when he ceases to be of compulsory school age.”
- (3) At the end of section 3(6) of that Act (interpretation) there is added—

“and

“school year” means the period beginning with the first school term to begin after July and ending with the beginning of the next school year.”

(4) In section 4 of that Act (duty to establish National Curriculum by order) for subsection (5) there is substituted—

“(5) An order under subsection (2)(c) above—

- (a) may confer or impose such functions on the governing body and the head teacher and (in the case of maintained schools) on the local education authority as appear to the Secretary of State to be required, and
- (b) may specify any such assessment arrangements as may for the time being be made by a person specified in the order.

(6) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.

(7) The duties that may be imposed by virtue of subsection (5)(a) above include, in relation to persons exercising power in pursuance of provision made by virtue of subsection (6) above, the duty to permit them—

- (a) to enter the premises of the school,
- (b) to observe the implementation of the arrangements, and
- (c) to inspect, and take copies of, documents and other articles.

(8) 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 (other than provisions conferring or imposing functions as mentioned in subsection (5)(a) above) as appear to the Secretary of State to be expedient; and any provision 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) In section 117 of that Act (obligation to enter pupils for prescribed examinations), at the end of subsection (2) (exceptions) there is added “but this subsection does not apply to an examination which is part of the assessment arrangements for key stage four and applies in the case of that pupil; and in this subsection, in relation to that pupil, “assessment arrangements” has the meaning given by section 2(2)(c) of this Act and “key stage four” means the period referred to in section 3(3)(d) of this Act”.

## **241 Sex education**

(1) In section 2(1) of the Education Reform Act 1988 (content of curriculum), after “school” in paragraph (a) there is inserted—

- “(aa) in the case of a secondary school, provision for sex education for all registered pupils at the school;

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- (ab) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education”.
- (2) In section 114(1) of the Education Act 1944 (interpretation), after the definition of “Senior pupil” there is inserted—
  - ““Sex education” includes education about—
    - (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus, and
    - (b) any other sexually transmitted disease”.
- (3) After section 17 of the Education Reform Act 1988 there is inserted—

**“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.”

- (4) The Secretary of State shall so exercise the power conferred by section 4 of that Act to revise the National Curriculum as to secure that the subject of science does not include—
  - (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus,
  - (b) any other sexually transmitted disease, or
  - (c) aspects of human sexual behaviour, other than biological aspects,
 and sections 20, 21 and 232(4) of that Act (procedure for making orders), and section 242 of this Act, shall not apply to any order made only for the purposes of this subsection.
- (5) The governing body of every maintained or grant-maintained school and, in relation to pupils who are provided with secondary education, the governing body of every maintained special school shall—
  - (a) make, and keep up to date, a separate written statement of their policy with regard to the provision of sex education, and
  - (b) make copies of the statement available for inspection (at all reasonable times) by parents of registered pupils at the school and provide a copy of the statement free of charge to any such parent who asks for one.
- (6) In relation to any county, or controlled, secondary school, and in relation to any pupils who are provided with secondary education in a maintained special school, section 18 of the Education (No. 2) Act 1986 (policy for curriculum in county etc. schools), shall have effect with the omission of subsections (2) and (6)(c)(i) and of the references to the matters mentioned in subsection (2) of that section.

**242 Temporary procedure for making certain orders**

- (1) Where this section applies in relation to any proposals by the Secretary of State to make an order under section 3(4) or 4(2)(a) or (b) of the Education Reform Act 1988 (orders relating to foundation subjects, key stages and attainment targets), or regulations under section 17 of that Act (exceptions from National Curriculum)—



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- (a) the Secretary of State shall make such arrangements for consultation about the proposals as he considers appropriate, and
  - (b) sections 20 and 21 of that Act (procedure for representations in relation to England and Wales) shall not apply.
- (2) Where, at any time after the commencement of this section and before 1st September 1996, the Secretary of State proposes to make such an order or such regulations, this section applies in relation to the proposals unless, at any time before the commencement of this section—
- (a) they were referred under section 20(2) of that Act, or
  - (b) notice of them was given under section 21(2) of that Act.
- (3) Where the Secretary of State proposes, at any time on or after 1st September 1996, to make such an order or such regulations, this section applies in relation to the proposals if arrangements under this section for consultation about the proposals were made before that date.

#### **243 Procedure for making certain orders: Wales**

In section 21 of the Education Reform Act 1988, for subsections (2) and (3) there are substituted—

“(2) The Secretary of State shall refer the proposal to the Curriculum Council for Wales (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—
- (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.

- (3A) 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.

- (3B) 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

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- (c) allow a period of not less than one month for the submission of evidence and representations with respect to the issues arising.”

*Replacement of the National Curriculum Council and  
the School Examinations and Assessment Council*

**244 The School Curriculum and Assessment Authority**

- (1) There shall be a body corporate known as the School Curriculum and Assessment Authority.
- (2) The Authority shall consist of not less than ten nor more than fifteen members appointed by the Secretary of State.
- (3) Of the members of the Authority, the Secretary of State—
  - (a) shall appoint one as chairman, and
  - (b) may appoint another as deputy chairman.
- (4) The Secretary of State shall include among the members of the Authority persons who appear to him—
  - (a) to have experience of, and to have shown capacity in, the provision of education, or
  - (b) to have held, and to have shown capacity in, any position carrying responsibility for the provision of education.
- (5) Where in carrying out his functions under subsection (4) above the Secretary of State proposes to appoint a person who appears to him to have experience of, and to have shown capacity in, the provision of education, he shall have regard to the desirability of including persons engaged in the provision of primary or secondary education.
- (6) Schedule 14 to this Act shall have effect with respect to the Authority.

**245 Functions**

- (1) The School Curriculum and Assessment Authority shall, so far as relevant for the purposes of advancing education—
  - (a) keep under review all aspects of the curriculum for maintained schools in England and all aspects of school examinations and assessment,
  - (b) advise the Secretary of State on such matters concerned with the curriculum for maintained schools in England or with school examinations and assessment as he may refer to them or as they may see fit,
  - (c) 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 maintained schools in England or with school examinations and assessment,
  - (d) publish and disseminate, and assist in the publication and dissemination of, information relating to the curriculum for maintained schools in England or to school examinations and assessment,
  - (e) make arrangements with appropriate bodies for auditing the quality of assessments made in pursuance of assessment arrangements,
  - (f) advise the Secretary of State on the exercise of his powers under section 5(1) of the Education Reform Act 1988 (approval of external qualifications),

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- (g) advise the Secretary of State on such other matters connected with the provision of education in maintained schools in England, or in non-maintained special schools there, as the Secretary of State may specify by order, and
  - (h) carry out such ancillary activities as the Secretary of State may direct.
- (2) The Authority shall supply the Secretary of State with such reports and other information with respect to the carrying out of their functions as he may require.
- (3) In carrying out their functions, the Authority shall—
- (a) comply with any directions given by the Secretary of State,
  - (b) act in accordance with any plans approved by him, and
  - (c) so far as relevant, have regard to the requirements of section 1 of the Education Reform Act 1988 (requirements which curriculum for maintained school must satisfy).
- (4) For the purposes of paragraph (h) of subsection (1) above, activities are ancillary activities in relation to the Authority if the Secretary of State considers it is appropriate for the Authority to carry out those activities for the purposes of or in connection with the carrying out by the Authority of any of their other functions under that subsection.
- (5) In this section—
- “assessment arrangements” and “maintained school” have the same meanings as in Chapter I of Part I of the Education Reform Act 1988, and
  - “non-maintained special school” means a special school not maintained by a local education authority.

#### **246 Dissolution of existing Councils**

The National Curriculum Council and the School Examinations and Assessment Council are hereby dissolved.

#### **247 Transfer of property**

- (1) The Secretary of State may by order provide for the transfer to the School Curriculum and Assessment Authority of—
- (a) such of the land or other property of the National Curriculum Council or the School Examinations and Assessment Council, and
  - (b) such of the rights and liabilities of either of those councils (other than rights and liabilities arising under contracts of employment),
- as, in his opinion, need to be transferred to enable the Authority to carry out their functions properly.
- (2) No order under subsection (1) above may be made after the end of the period of six months beginning with the day on which section 244 of this Act comes into force.
- (3) Any order under subsection (1) above made before the day on which section 244 of this Act comes into force shall come into force on that day.
- (4) Where immediately after the end of the period within which an order under subsection (1) above may be made any property, rights or liabilities remain vested in the National Curriculum Council or the School Examinations and Assessment Council, they shall forthwith vest in the Secretary of State.

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- (5) The Secretary of State may by order provide that there shall be substituted for the period mentioned in subsection (2) above such shorter period as he may specify in the order, being a period ending no earlier than the day on which the order comes into force.

## **248 Transfer of staff**

- (1) This section applies to any person who—
- (a) is employed by the National Curriculum Council or School Examinations and Assessment Council immediately before section 244 of this Act comes into force, and
  - (b) is designated as respects the School Curriculum and Assessment Authority by order of the Secretary of State.
- (2) A contract of employment between a person to whom this section applies and the National Curriculum Council or School Examinations and Assessment Council shall have effect, from the day on which the order under subsection (1)(b) above comes into force, as if originally made between him and the Authority.
- (3) Without prejudice to subsection (2) above—
- (a) all the rights, powers, duties and liabilities of the National Curriculum Council or School Examinations and Assessment Council under or in connection with a contract to which that subsection applies shall by virtue of that subsection be transferred to the Authority on the day on which the order under subsection (1)(b) above comes into force, and
  - (b) anything done before that day by or in relation to the National Curriculum Council or School Examinations and Assessment Council in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the Authority.
- (4) Subsections (2) and (3) 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 (2) above.
- (5) An order under subsection (1)(b) above may designate a person either individually or as falling within a class or description of employee.
- (6) No order under subsection (1)(b) above may be made after the end of the period of six months beginning with the day on which section 244 of this Act comes into force.
- (7) Any order under subsection (1)(b) above made before the day on which section 244 of this Act comes into force shall come into force on that day.
- (8) The Secretary of State may by order provide that there shall be substituted for the period mentioned in subsection (6) above such shorter period as he may specify in the order, being a period ending no earlier than the day on which the order comes into force.

### *Curriculum Council for Wales*

#### **249 Finance**

In Schedule 2 to the Education Reform Act 1988, for paragraph 11 there is substituted—

#### *“Finance*

- 11 (1) The Secretary of State may make grants to the Council of such amount as he thinks fit in respect of expenses incurred or to be incurred by it in carrying out its functions.
- (2) The payment of grant under this paragraph shall be subject to the fulfilment of such conditions as the Secretary of State may determine.
- (3) The Secretary of State may also impose such requirements as he thinks fit in connection with the payment of grant under this paragraph.”

#### **250 Proceedings**

In that Schedule, there is inserted before paragraph 14—

- “13A (1) The chairman of the School Curriculum and Assessment Authority, or a representative of his, shall be entitled to attend and take part in deliberations (but not in decisions) at meetings of the Council or any committee of the Council.
- (2) The Council shall provide the chairman of the School Curriculum and Assessment Authority with such copies of any documents distributed to members of the Council or of any such committee as he may require.”

#### **251 Accounts**

- (1) In that Schedule, paragraph 18 (accounts) shall be amended as follows.
- (2) In sub-paragraph (1)(b), “in such form as the Secretary of State may direct with the approval of the Treasury” is omitted.
- (3) After sub-paragraph (1) there is inserted—
- “(1A) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it;
- (b) the manner in which the information contained in it is to be presented; or
- (c) the methods and principles according to which the statement is to be prepared.”

#### **252 Transfer of functions in relation to Wales**

- (1) The Secretary of State may by order transfer any function of the School Curriculum and Assessment Authority in relation to Wales to the body established by section 14(1) (b) of the Education Reform Act 1988 (Curriculum Council for Wales).

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- (2) An order under this section may contain such supplementary, incidental, consequential or transitional provisions as the Secretary of State thinks fit, including provisions—
- (a) for the transfer of staff; and
  - (b) for the transfer of property, rights and liabilities held, enjoyed or incurred in connection with any function transferred.

### **253 Change of name**

- (1) In section 14(1)(b) of the Education Reform Act 1988, for “the Curriculum Council for Wales” there is substituted “Awdurdod Cwricwlwm ac Asesu Cymru or the Curriculum and Assessment Authority for Wales”.
- (2) Schedule 15 to this Act (amendments consequential on the change of name) shall have effect.

### *Religious education*

### **254 Duty to reconvene conference on agreed syllabus of religious education**

- (1) Within six months of the commencement of this section the local education authority shall reconvene any conference—
  - (a) which they have convened for the purpose set out in paragraph 1 or 12 of the Fifth Schedule to the Education Act 1944 (procedure for preparing and bringing into operation an agreed syllabus of religious education) or section 11(8) of the Education Reform Act 1988 (standing advisory councils on religious education), and
  - (b) to which subsection (2) below applies.
- (2) This subsection applies to any conference—
  - (a) which has not made a recommendation under paragraph 9 or 13(2) of that Schedule, and
  - (b) in respect of which the authority have not made a report under paragraph 10 or 13(4) of that Schedule.
- (3) Where a conference is convened (or reconvened) after the commencement of this section, paragraph 2 of that Schedule shall have effect as if at the end of the proviso there were inserted “and the number of persons appointed to any committee under that sub-paragraph to represent each denomination or religion required to be represented shall, so far as consistent with the efficient discharge of the committee’s functions, reflect broadly the proportionate strength of that denomination or religion in the area”.

### **255 Duty to constitute new standing advisory council on religious education**

- (1) Within six months of the commencement of this section the local education authority shall constitute a new council under section 11 of the Education Reform Act 1988 (standing advisory councils on religious education).
- (2) For the purposes of the constitution required by subsection (1) above (and of any subsequent constitution) that section shall have effect as if at the end of subsection (5) there were inserted “and the number of members appointed to any representative group under paragraph (a) of that subsection to represent each denomination or religion

required to be represented shall, so far as consistent with the efficient discharge of the group's functions, reflect broadly the proportionate strength of that denomination or religion in the area”.

## **256 Reconsideration of agreed syllabus**

(1) For paragraph 12 of the Fifth Schedule to the Education Act 1944 (reconsideration of agreed syllabus) there is substituted—

“12 (1) A local education authority shall cause a conference to be convened at any time required by sub-paragraph (2) or (3) of this paragraph for the purpose of reconsidering any agreed syllabus for the time being adopted by them which was adopted before the appointed day.

(2) Where they adopted the syllabus before 29th September 1988, they shall convene a conference within the period of one year beginning with the appointed day.

(3) Where they adopted the syllabus on or after 29th September 1988, they shall convene a conference—

(a) within the period of five years beginning with the date on which they adopted it, or

(b) within the period of one year beginning with the appointed day, whichever is the later.

(4) A local education authority shall from time to time cause further conferences to be convened for the purpose of reconsidering any agreed syllabus for the time being adopted by them (whether adopted before, on or after the appointed day); and no such conference shall be convened later than the expiry of the period of five years beginning with the date on or after the appointed day on which—

(a) the authority adopted the syllabus, or

(b) the authority gave effect to a recommendation under paragraph 13 of this Schedule that the syllabus should continue to be the agreed syllabus.

(5) In this paragraph—

(a) “appointed day” means the day appointed for the commencement of section 256 of the Education Act 1993, and

(b) references to the date on which a local education authority adopt a syllabus include a reference to the date which the Secretary of State directs is to be the date from which a syllabus prepared under paragraph 11 of this Schedule is to be deemed to be the agreed syllabus.”

(2) In paragraph 13 of that Schedule (procedure on reconsideration of agreed syllabus)—

(a) in sub-paragraph (2), after “agreed syllabus” there is inserted “and it appears to the local education authority that the syllabus reflects the fact that the religious traditions in Great Britain are in the main Christian while taking account of the teaching and practices of the other principal religions represented in Great Britain”, and

(b) in sub-paragraph (4)—

(i) “either” is omitted, and

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(ii) after “unanimous agreement” there is inserted—

“(aa) the conference unanimously recommend that the existing syllabus should continue to be the agreed syllabus but the local education authority consider that sub-paragraph (2) of this paragraph prevents them from giving effect to the recommendation”.

**257 Power of Secretary of State to direct standing advisory council to revoke determination or discharge duty**

After section 12 of the Education Reform Act 1988 (determination by advisory councils) there is inserted—

**“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.
- (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.”

**258 Access to meetings and documents of standing advisory council and conference on agreed syllabus of religious education**

- (1) This section applies to—
  - (a) any conference convened for the purpose set out in paragraph 1 or 12 of the Fifth Schedule to the Education Act 1944 (procedure for preparing and bringing into operation an agreed syllabus of religious education) or section 11(8) of the Education Reform Act 1988 (standing advisory councils on religious education), and
  - (b) any standing advisory council constituted under that section of that Act.
- (2) Regulations may make provision—
  - (a) for meetings of conferences or councils to be, subject to prescribed exceptions, open to members of the public,



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- (b) requiring conferences or councils to give notice, in such manner as may be prescribed, of the time and place of such meetings, and
  - (c) requiring conferences or councils, at such time or times as may be prescribed,
    - (i) to make available for inspection, or
    - (ii) to provide on payment of such fee as they think fit (not exceeding the cost of supply),copies of the agendas and reports for such meetings to members of the public.
- (3) Regulations made under subsection (2) above may apply to—
- (a) committees appointed by local education authorities under paragraph 2 of the Fifth Schedule to the Education Act 1944,
  - (b) sub-committees appointed by conferences under that Schedule, and
  - (c) representative groups on councils appointed under section 12(4) of the Education Reform Act 1988,
- as they apply to conferences and councils.

## **259 Inspection of religious education**

- (1) Section 13 of the Education (Schools) Act 1992 (religious education) is amended as follows.
- (2) For subsections (1) to (3) there is substituted—
- “(1) It shall be the duty of the governing body of—
    - (a) any voluntary school, or
    - (b) any grant-maintained school,in which denominational education is given to any pupils to secure that that education is inspected under this section.
  - (2) It shall be the duty of the governing body of—
    - (a) any voluntary school, or
    - (b) any grant-maintained school falling within subsection (3) below,to secure that the content of the school’s collective worship is inspected under this section.
  - (3) A grant-maintained school falls within this subsection if—
    - (a) it was a voluntary school immediately before it became grant-maintained,
    - (b) it was established in pursuance of proposals published under section 49 of the Education Act 1993 and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 3 to that Act makes provision as to the religious education for pupils at the school, or
    - (c) it is a school in respect of which proposals for the required provision for religious education to be provision for religious education in accordance with the tenets of a particular religion or religious denomination are approved under section 98 of that Act.
- (3A) In this section—
- (a) “denominational education”, in relation to a school, means any religious education which—

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- (i) is required by section 2(1)(a) of the Education Reform Act 1988 to be included in the school’s basic curriculum, but
  - (ii) is not required by any enactment to be given in accordance with an agreed syllabus,
  - (b) “the required provision for religious education” means the provision for religious education for pupils at the school which is required as mentioned in paragraph (a)(i) above, and
  - (c) references to collective worship are references to collective worship required by section 6 of that Act.”
- (3) For subsection (7) there is substituted—
- “(7) It shall be the general duty of a person conducting an inspection under this section—
- (a) if the inspection is conducted by virtue of subsection (1) above, to report on the quality of the denominational education provided by the school for pupils to whom denominational education is given by the school, or
  - (b) if the inspection is conducted by virtue of subsection (2) above, to report on the content of the school’s collective worship,
- and any such person may report on the spiritual, moral, social and cultural development of pupils at the school.”

#### *Admissions and exclusions*

### **260 Arrangements for admissions**

- (1) In this section “co-ordinated arrangements for admissions”, in relation to any two or more maintained or grant-maintained schools, means arrangements under an agreement to which this section applies for the purpose of co-ordinating arrangements for admitting pupils to the schools concerned.
- (2) Co-ordinated arrangements for admissions, if—
  - (a) contained in an agreement approved by the Secretary of State under this section, or
  - (b) made in pursuance of a scheme under this section,
 and any provision contained in any other arrangements for admitting pupils to any maintained or grant-maintained school in pursuance of a scheme under this section, shall have effect in the case of any school to which they relate notwithstanding anything in section 6(2) of the Education Act 1980 (parental preferences) or in the instrument or articles of government for the school.
- (3) This section applies to an agreement made in relation to any two or more maintained or grant-maintained schools to which each authority responsible for determining the arrangements for admitting pupils to any of the schools is a party, whether or not any local education authority for any area in which any of the schools are situated is also a party.
- (4) The Secretary of State may make a scheme under this section for the purpose of co-ordinating arrangements, or assisting in the co-ordination of arrangements, for admitting pupils to any maintained or grant-maintained schools to which the scheme applies.

- (5) A scheme under this section may in particular require each authority responsible for determining the arrangements for admitting pupils to any of the schools to which the scheme applies—
- (a) to include in their arrangements for admitting pupils such provisions as may be required by the scheme,
  - (b) to secure the making in accordance with the scheme of an agreement for the purpose of co-ordinating arrangements for admitting pupils to the schools to which the scheme applies, or
  - (c) to secure the modification in accordance with the scheme of any such agreement to which they are party.
- (6) Before making a scheme under this section the Secretary of State shall, in respect of each school which appears to him to be a school to which the scheme will apply, consult—
- (a) the governing body, and
  - (b) in the case of any maintained school, the local education authority.
- (7) A scheme under this section may apply to—
- (a) all schools which for the time being are maintained or grant-maintained schools,
  - (b) all schools which for the time being are maintained or grant-maintained schools falling within any category of such schools specified in the scheme, or
  - (c) any maintained or grant-maintained school so specified.
- (8) Section 111 of the Education Act 1944 (revocation and variation) applies to a scheme under this section as it applies to directions under that Act.

## **261 Restrictions on power to exclude pupils**

- (1) The head teacher of any school maintained by a local education authority or grant-maintained school may not—
- (a) exclude a pupil from the school for an indefinite period, or
  - (b) so exercise the power to exclude a pupil from the school for one or more fixed periods that the pupil is so excluded for more than fifteen school days in any one term.
- (2) Subsection (1) above has effect, in the case of a school having articles of government, notwithstanding anything in the articles.
- (3) Where, on the day on which this section comes into force, a pupil stands excluded from such a school for an indefinite period—
- (a) he shall be treated as if he had been excluded from the school by the head teacher until the expiry of the period of one month beginning with that day and as if, in the case of a county, controlled or maintained special school, the local education authority had been so informed, and
  - (b) any direction given before that day—
    - (i) under section 24(c)(ii) or 25(d)(ii) of the Education (No. 2) Act 1986 (pupil to be reinstated within period specified in direction), or
    - (ii) by a committee of the governing body of a grant-maintained school to the head teacher under a corresponding provision of the articles of government,

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which specifies a period ending later than the expiry of the period of one month beginning with that day shall have effect as if it specified a period ending with that expiry.

- (4) Subsection (1)(b) above does not apply to any exclusion of a pupil which has taken effect before the day on which this section comes into force; but in exercising on or after that day the power referred to in that subsection, account shall be taken of any school days on which the pupil was excluded from the school in the same term in pursuance of one or more exclusions which took effect before that day.
- (5) In this section, “grant-maintained school” includes a grant-maintained special school.

## **262 Exclusion of pupils: funding**

- (1) Subsection (2) below applies where a pupil is permanently excluded from any school maintained by a local education authority or any grant-maintained school and, in the financial year in which the exclusion first takes effect—
- (a) he is subsequently provided with education at a school maintained by a local education authority, education otherwise than at school provided by such an authority or education at a grant-maintained school, and
  - (b) the person accountable for that education (referred to below as “the new provider”) is not the same as the person accountable for the education provided for him immediately before his exclusion (referred to below as “the former provider”).
- (2) The former provider shall pay to the new provider an amount determined in accordance with regulations as the appropriate amount of funding to be transferred to the new provider in respect of that pupil for that financial year.
- (3) Every local education authority shall, where any scheme made by them under section 33 of the Education Reform Act 1988 (financing county and voluntary schools) does not make the provision required by subsection (4) below, exercise their powers to revise the scheme so that it makes such provision.
- (4) The provision required by this subsection, in relation to a local education authority, is—
- (a) provision requiring the authority, where a pupil is permanently excluded from a school and the exclusion first takes effect in a financial year in which the school is required to be covered by the scheme, to reduce the school’s budget share for that year by an amount determined in accordance with regulations as the appropriate amount of funding in respect of that pupil for that year to be subtracted from the school’s budget share, and
  - (b) provision requiring the authority, where a pupil admitted to a school in a financial year in which the school is required to be covered by the scheme has been permanently excluded from a school maintained by them or any other local education authority or any grant-maintained school and the exclusion (as well as the admission) first took effect in that year, to allocate for the purposes of the school in that year an amount determined in accordance with regulations as the appropriate amount of funding in respect of that pupil for that year to be allocated for those purposes.
- (5) Expressions used in subsection (4) above and in Chapter III of Part I of the Education Reform Act 1988 have the same meaning in that subsection as in that Chapter.

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- (6) Subject to subsection (7) below, for the purposes of this section—
- (a) the local education authority are accountable for education provided at any school maintained by them or education provided by them otherwise than at school, and
  - (b) the governing body are accountable for education provided at a grant-maintained school.
- (7) Where a pupil is permanently excluded from any school maintained by a local education authority or grant-maintained school and, in the financial year in which the exclusion first takes effect, the following events subsequently occur—
- (a) he is first provided with education for which a different local education authority or, in the case of exclusion from a grant-maintained school, any local education authority are accountable (referred to below as “the first new provider”) and which is provided in a pupil referral unit or otherwise than at school, and, at any time afterwards
  - (b) he is provided with education at a grant-maintained school or for which a local education authority other than the first new provider are accountable,
- then, in relation to the education mentioned in paragraph (b) above, the first new provider is to be treated as accountable for the education provided for the pupil immediately before the exclusion first took effect.
- (8) Any dispute as to whether any local education authority or governing body of a grant-maintained school are entitled to be paid any amount under this section by any such other person shall be determined by the Secretary of State.
- (9) For the purposes of this section the permanent exclusion of a pupil does not take effect until—
- (a) any review under the articles of government of the decision to exclude him has been completed, and
  - (b) either any time for appealing under section 26 of the Education (No. 2) Act 1986 or those articles has expired without such an appeal being made or such an appeal has been finally concluded.
- (10) In this section, “grant-maintained school” includes a grant-maintained special school.

### *Information*

#### **263 Provision of information about CTCs and CCTAs**

In section 16(7) of the Education (Schools) Act 1992 (power to require governing body of school or local education authority to provide information) after “grant-maintained school” there is inserted—

- “(aa) the proprietor of any city technology college or city college for the technology of the arts”.

#### **264 Distribution of information about certain schools by other schools**

- (1) Where the governing body of any school providing primary education receive a request which—
- (a) is made by the governing body of any school providing secondary education, and

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- (b) relates to the distribution of information about the school providing secondary education to parents of pupils at the school providing primary education without charge to those parents,

the governing body of that school shall secure that the request is treated no less favourably (whether as to services provided or as to the terms on which they are provided) than any such request made by the governing body of any other school providing secondary education.

- (2) In this section, “school” means any maintained school, grant-maintained school or grant-maintained special school.

## **265 Distribution of information about further education institutions by schools**

- (1) The Secretary of State may by regulations require—
  - (a) the governing body of any maintained, grant-maintained or grant-maintained special school which provides secondary education, and
  - (b) the proprietor of any city technology college or city college for the technology of the arts,
 to provide such persons as may be prescribed with such categories of information falling within subsection (2) below as may be prescribed.
- (2) Information falls within this subsection if it is—
  - (a) published under section 50 of the Further and Higher Education Act 1992 (information with respect to institutions within the further education sector), and
  - (b) made available to governing bodies and proprietors for distribution.
- (3) Information provided under subsection (1) above shall be provided in such form and manner as may be prescribed.

### *Appeal committees*

## **266 Lay members for admission appeal committees**

Schedule 16 to this Act (introduction of lay members into certain committees hearing appeals against admission decisions) shall have effect.

## **267 Duty to advertise for lay members for appeal committees**

- (1) This section applies—
  - (a) in the case of an appeal committee constituted in accordance with Part I of Schedule 2 to the Education Act 1980, to the local education authority or governing body of an aided or special agreement school required by section 7 of that Act or section 26 of the Education (No. 2) Act 1986 to make arrangements for enabling appeals to be made to that committee, and
  - (b) in the case of an appeal committee constituted for the purposes of paragraph 5(1) of Schedule 6 to this Act, to the governing body of a grant-maintained school required by the articles of government for the school to make arrangements for appeals to that committee.

- (2) The Secretary of State may by regulations require any local education authority or governing body to which this section applies—
- (a) to advertise, in such manner and at such times as may be prescribed, for persons eligible to be lay members of any appeal committee required to be constituted for the purposes of arrangements made by that authority or body to apply to the authority or body for appointment as such members, and
  - (b) in appointing persons as such members, to consider any persons eligible to be so appointed who have applied to the authority or body in response to an advertisement placed in pursuance of paragraph (a) above.

## **268 Indemnity for legal costs and expenses of members of appeal committees**

- (1) This section applies—
- (a) in the case of an appeal committee constituted in accordance with Part I of Schedule 2 to the Education Act 1980, to the local education authority or governing body of an aided or special agreement school required by section 7 of that Act or section 26 of the Education (No. 2) Act 1986 to make arrangements for enabling appeals to be made to that committee, and
  - (b) in the case of an appeal committee constituted for the purposes of paragraph 5(1) of Schedule 6 to this Act, to the governing body of a grant-maintained school required by the articles of government for the school to make arrangements for appeals to that committee.
- (2) It shall be the duty of any local education authority or governing body to which this section applies to indemnify the members of any appeal committee required to be constituted for the purposes of arrangements made by that authority or body against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that committee.

## **269 Investigation by Local Commissioner of decisions of certain appeal committees**

In section 25(5) of the Local Government Act 1974 (certain appeal committees to be subject to investigation by Local Commissioner)—

- (a) for “paragraph 1” there is substituted “paragraphs 1 and 2”, and
- (b) at the end there is added “or for the purposes of paragraph 5 of Schedule 6 to the Education Act 1993”.

### *Admission arrangements for aided etc. schools*

## **270 Arrangements under section 6(6) of the Education Act 1980: modification or replacement**

In section 6 of the Education Act 1980 (under subsection (6) of which governors of an aided or special agreement school may require the local education authority to enter into admission arrangements which override the duty to comply with any expressed parental preference) there is inserted at the end—

- “(7) If one of the parties to arrangements under subsection (6) above proposes that the arrangements should be modified or replaced by substitute arrangements

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but the other party does not agree, the party making the proposal may refer the matter to the Secretary of State.

- (8) On a reference under subsection (7) above, the Secretary of State may—
- (a) direct that the arrangements shall remain as they are;
  - (b) direct that they shall be modified or replaced as proposed; or
  - (c) direct that they shall be modified in such other manner, or replaced by such other substitute arrangements, as may be specified in the direction.
- (9) Where the Secretary of State directs as mentioned in subsection (8)(b) or (c) above, the modification or, as the case may be, the substitute arrangements shall have effect, from such date as may be specified in the direction, as if agreed between the parties.”

### *Sponsor governors*

## **271 Sponsor governors for aided secondary schools**

- (1) After section 4 of the Education (No. 2) Act 1986 (governing bodies for aided etc. schools) there is inserted—

### **“4A Sponsor governors for aided secondary schools**

- (1) The instrument of government for any aided secondary school shall, if a direction under this section so requires—
- (a) name as a sponsor of the school a person specified in the direction, and
  - (b) provide for the governing body of the school to include such number of governors appointed by the sponsor, not exceeding four, as is so specified.
- (2) A direction under this section in respect of a school, other than a direction under subsection (4) or (5) below—
- (a) may only be given at the request, or with the consent, of the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (3) A direction under this section varying or revoking a previous direction—
- (a) may only be made after consulting the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (4) Where proposals approved under section 13 of the Education Act 1980 (establishment and alteration of voluntary schools)—
- (a) provide for a secondary school to be maintained by the local education authority as a voluntary school,
  - (b) name a person as a sponsor of the school, and



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- (c) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor, the Secretary of State shall, if he makes an order under section 15 of the Education Act 1944 (classification of schools) directing that the school be an aided school, give a direction under this section for the purpose of implementing the proposals.
- (5) Where an order under section 54 of this Act directs that a secondary school be an aided school and the proposals published by the governing body under that section—
- (a) name a person as a sponsor of the school, and
- (b) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor, the Secretary of State shall give a direction under this section for the purpose of implementing the proposals.
- (6) Where the instrument of government for any aided secondary school names two or more persons as sponsors of the school—
- (a) the number of governors appointed under the instrument by virtue of this section may not exceed four, and
- (b) the instrument may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (7) Where in pursuance of this section the instrument of government for a school names a person as a sponsor of the school, section 4(3)(a) of this Act shall have effect as if it required the instrument to provide for such number of foundation governors as will lead to their outnumbering the other governors by two.
- (8) In this section “direction” means a direction contained in an order made by the Secretary of State; but section 63(1) of this Act shall not apply to the power of the Secretary of State to make orders under this section.”
- (2) At the end of section 8(2) of that Act (term of office) there is added “or in the case of governors appointed by a person named in the instrument as a sponsor of the school, for such term (not being less than five nor more than seven years) as may be specified in the instrument.”
- (3) In section 9 of that Act (grouping)—
- (a) after subsection (1) there is inserted—
- “(1A) A local education authority may not make such a resolution if the instrument of government of any of the schools names a person as a sponsor of the school unless all the schools are secondary schools”, and
- (b) in subsection (7)(b) after “such school” there is inserted “but the instrument of government does not name any person as a sponsor of the school

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

## **272 Power of governing body of county school to propose change of character etc**

- (1) This section applies where—

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- (a) the governing body of a county school (referred to in this section as the “school proposed for grant-maintained status”) have published proposals for acquisition of grant-maintained status which have not been withdrawn or determined,
  - (b) the local education authority have published proposals for the purpose mentioned in section 12(1)(d) of the Education Act 1980 (alteration, etc. of county school) in respect of one or more schools in the area, and
  - (c) the governing body of the school proposed for grant-maintained status intend to make a significant change in the character, or significant enlargement of the premises, of the school, being a change or enlargement to be made for the purpose of ensuring consistency in the provision made in the area of the local education authority if the proposals made by the authority are implemented.
- (2) The governing body of the school proposed for grant-maintained status may publish in such manner as may be required by regulations proposals for a significant change in the character, or significant enlargement of the premises, of the school for the purpose mentioned in subsection (1)(c) above.
- (3) Chapter VII of Part II of this Act shall apply in relation to proposals published under this section as it applies in relation to proposals published under section 96 of this Act but—
- (a) as if the governing body of the school proposed for grant-maintained status were the governing body of a grant-maintained school, and
  - (b) with the modifications in subsections (4) and (5) below.
- (4) The particulars of the proposals shall not give as the time or any of the times of implementation of the proposals a time earlier than the date of implementation of the proposals for acquisition of grant-maintained status.
- (5) The statement accompanying the proposals shall (in addition to the matters referred to in section 96(5) of this Act)—
- (a) state that the proposals are published in connection with the proposed acquisition of grant-maintained status,
  - (b) state the circumstances in which the governing body are authorised under this section to publish such proposals, and
  - (c) describe the proposals published by the local education authority in connection with which the proposals under this section are published.
- (6) Expressions used in this section or section 273 of this Act and in Part II of this Act have the same meaning as in that Part.

**273 Power to make and deal with proposals in the case 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) (ceasing to maintain schools) or (d) of the Education Act 1980, 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; and where the procedure for acquisition of grant-maintained status is pending (within the meaning of Chapter III of Part II of this Act) in respect of any

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voluntary school, no notice of the governing body's intention to discontinue the school may be served under section 14 of the Education Act 1944.

- (3) This subsection 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 proposals in respect of the school are published under section 272 of this Act, 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 where subsection (3) above applies—
- (a) any proposals under section 12 of that Act shall require the approval of the Secretary of State where they would not do so apart from this subsection, and
  - (b) the Secretary of State shall consider the proposals under section 12 or 13 of that Act or section 272 of this Act and the proposals for acquisition of grant-maintained status together but shall not determine the proposals under section 12 or 13 of that Act or section 272 of this Act until he has made his determination with respect to the proposals for acquisition of grant-maintained status.
- (5) If in any case where subsection (3) above applies the Secretary of State approves the proposals for acquisition of grant-maintained status—
- (a) where there are proposals under section 12 of that Act, he may approve them if they were made under subsection (1)(d) of that section and the governing body incorporated under section 34 of this Act give their consent, but shall otherwise reject them,
  - (b) where there are proposals under section 13 of that Act, he may approve them if they were made for the purpose referred to in section 272(1)(c) of this Act, but shall otherwise reject them, and
  - (c) where there are proposals under section 272 of this Act, he may approve them.
- (6) If in any case where subsection (5) above applies proposals under section 12 or 13 of that Act are approved, the proposals shall be treated for the purposes of Part II of this Act as if they had been published under section 96, and approved under section 98, of this Act; and section 99 of this Act shall apply accordingly.
- (7) If subsection (3) above applies in a case where—
- (a) there are proposals under section 272 of this Act, and
  - (b) the Secretary of State rejects the proposals for acquisition of grant-maintained status,
- the Secretary of State shall reject the proposals under section 272 of this Act.

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*Local management of schools*

**274 Revision of schemes for financing schools maintained by local education authorities**

(1) For section 34(4) of the Education Reform Act 1988 (duty to consult before preparing a scheme) there is substituted—

- “(4) Before preparing such a scheme a local education authority shall consult—
- (a) the governing body and the head teacher of every county, voluntary or special school maintained by the authority,
  - (b) the governing body of every grant-maintained school in the area of the authority, and
  - (c) the governing body of every grant-maintained special school which—
    - (i) is established under section 183 of the Education Act 1993 in the authority’s area, or
    - (ii) before becoming a grant-maintained special school was a special school maintained by the authority,

but the Secretary of State may, by notice in writing to the authority, dispense with the duty imposed under paragraphs (b) and (c) above in respect of such schools, or class or description of schools, as are specified in the notice.”

(2) For section 35 of that Act (replacement and variation of schemes) there is substituted—

**“35 Revision of schemes**

- (1) Subject to the following provisions of this section, a local education authority may revise the whole or any part of any scheme made by them under section 33 of this Act.
- (2) Section 34(2) and (3) of this Act shall apply where the local education authority are preparing any revision under this section as they apply where they are preparing a scheme under section 33 of this Act.
- (3) Where the local education authority propose to make a significant variation of the scheme—
  - (a) they shall first consult every governing body and head teacher whom they are obliged to consult under section 34(4) of this Act, and
  - (b) they shall then submit a copy of their proposals to the Secretary of State for his approval,
 and where the proposals are so submitted section 34(5) of this Act shall apply to the scheme as revised as it applies to a scheme prepared under section 33.
- (4) A revision which does not make a significant variation of the scheme is referred to in this section as a “minor revision”; and the Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of this section.
- (5) Where a local education authority propose to revise a scheme and the revision is in their opinion a minor revision, the authority shall give the Secretary of State notice in writing of their proposal, giving brief particulars of the nature of the revision proposed to be made.

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- (6) 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 notice under subsection (5) above of the authority's proposal, send to him a copy of the scheme as proposed to be revised; and it shall be for the Secretary of State to determine whether or not any revision is a minor revision.
- (7) The Secretary of State may by a direction revise the whole or any part of a scheme made under section 33 of this Act, as from such date as may be specified in the direction.
- (8) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit."
- (3) In section 40(2) of that Act (initial implementation), after "the scheme" there is inserted "as first made under section 33 of this Act".
- (4) In section 51(2)(a)(i) (interpretation), after "Act" there is inserted "as from time to time revised under section 35 of this Act".
- (5) In the case of a scheme made before the commencement of this section, subsection (3) above shall not have effect so as to alter the date which, immediately before commencement, is the date by reference to which the beginning of the initial period of the scheme is determined to an earlier date.

## **275 Publication and auditing of financial statements**

- (1) In section 42 of the Education Reform Act 1988 (publication of schemes and financial statements etc.)—
  - (a) in subsection (4), paragraphs (f) to (i) are omitted,
  - (b) subsection (5)(b) is omitted,
  - (c) in subsection (6) after "with respect to" there is inserted—
    - "(aa) the planned financial provision in that year specified in the statement prepared by the authority under subsection (3) above", and
  - (d) for subsection (8) there is substituted—
    - "(8) The authority shall furnish—
      - (a) the governing body of each school required to be covered by the scheme in any financial year, and
      - (b) the governing bodies of such grant-maintained schools in the authority's area and grant-maintained special schools mentioned in section 34(4)(c) of this Act as may be prescribed,with a copy of each statement prepared by the authority under this section in relation to that year or, in such circumstances as may be prescribed, with such part or parts of it as may be prescribed."
- (2) After that section there is inserted—

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**“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.”
- (3) In Schedule 4 to that Act (financing of new schools) in paragraph 2, sub-paragraphs (3)(b) and (c) and (4)(b) and (c) are omitted.

**276 Application of schemes to special schools**

For section 43 of the Education Reform Act 1988 (application of schemes to special schools) there is substituted—

**“43 Application of schemes to special schools**

- (1) The Secretary of State may by regulations require or authorise schemes to cover special schools maintained by local education authorities.
- (2) Sections 39(1) and (10) and 40 of this Act shall not apply to schools required to be covered by a scheme by virtue of regulations under subsection (1) above.
- (3) Regulations under subsection (1) above may require or authorise schemes to include provision for requiring 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 the year—
  - (a) in the case of all schools required to be covered by a scheme in any financial year by virtue of the regulations; or
  - (b) in the case of such schools required to be covered by a scheme in any financial year by virtue of the regulations as the Secretary of State may direct.
- (4) The Secretary of State may by regulations—
  - (a) make in any provisions of this Chapter such amendments as appear to him to be required in consequence of any provision made in regulations under subsection (1) above; and

- (b) provide that any scheme shall have effect with such modifications as appear to him to be appropriate in consequence of any provision so made.”

*School leaving date*

**277 Compulsory school age**

- (1) Subsections (2) and (3) below apply to determine for the purposes of any enactment whether a person is of compulsory school age.
- (2) A person begins to be of compulsory school age when he attains the age of five years.
- (3) A person ceases to be of compulsory school age at the end of the day which is the school leaving date for any calendar year if—
  - (a) he attains the age of sixteen years after that day but before the beginning of the school year next following,
  - (b) he attains that age on that day, or
  - (c) subject to paragraph (a) above, if that day is the school leaving date next following his attaining that age.
- (4) The Secretary of State may by order determine the day in any calendar year which is to be the school leaving date for that year.

*Local education authority finance*

**278 Grants for education support and training**

- (1) Section 1 of the Education (Grants and Awards) Act 1984 (education support grants) is amended as follows.
- (2) For “education support grants” and “education support grant”, in each place where one of those expressions appears, there is substituted “grants for education support and training” or, as the case may be, “grant for education support and training”.
- (3) In subsection (3)(b) “not exceeding 70 per cent. of the expenditure so approved” is omitted.
- (4) After subsection (4) there is inserted—
  - “(4A) Conditions and requirements determined under subsection (4)(b) and (c) above may include conditions and requirements obliging the local education authority to delegate decisions about the spending of—
    - (a) grant for education support and training, and
    - (b) amounts allocated by the authority to meet prescribed expenditure which is approved by the Secretary of State,to such persons as may be determined by or in accordance with the regulations.”
- (5) In section 3 of that Act (regulations), subsections (2) and (5) and, in subsection (3), the words “not being regulations to which subsection (2) above applies” are omitted.
- (6) In section 50(1) of the Education (No. 2) Act 1986 (grants for teacher training, etc.)—

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- (a) for “local education authorities and other persons” there is substituted “persons other than local education authorities”, and
- (b) for the words from the end of paragraph (a) to the end of the subsection there is substituted—

“and

- (b) such other classes of person as may be prescribed”.

## **279 Inter-authority recoupment**

- (1) In section 51 of the Education (No. 2) Act 1986 (recoupment), for subsections (1) to (4) there is substituted—

“(1) The Secretary of State may by regulations provide, in relation to cases where any provision for education to which this section applies is made by a local education authority in respect of a person who belongs to the area of another such authority, for requiring or authorising the other authority to pay to the providing authority—

- (a) such amount as the authorities may agree; or
- (b) failing agreement, such amount as may be determined by or under the regulations.

(2) This section applies to primary, secondary and further education and to part-time education for those who have not attained the age of five years.

(3) The regulations may provide for the amounts payable by one authority to another—

- (a) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas); and
- (b) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State considers appropriate.

(4) The regulations may provide for the amounts so payable, in such cases as may be specified in or determined in accordance with the regulations, to be such amounts as may be determined by the Secretary of State.”

- (2) In section 63 of that Act (orders and regulations)—

- (a) in subsection (2) after “section” there is inserted “51 or”, and
- (b) after that subsection there is inserted—

“(2A) No regulations may be made under section 51 of this Act unless a draft has been laid before and approved by resolution of each House of Parliament.”



### *Charges in maintained schools*

#### **280 Musical instrument tuition**

In section 106(3) of the Education Reform Act 1988 (exceptions from the prohibition of charges in maintained schools) for paragraph (a) there is substituted—

- “(a) tuition in playing any musical instrument, where the tuition is provided either individually or to a group of no more than four pupils; or”.

### *Assistance for voluntary schools*

#### **281 Grants by Secretary of State in respect of aided and special agreement schools**

- (1) The Secretary of State may—
- (a) in the case of any aided school or special agreement school, or
  - (b) where proposals have been approved under section 13 of the Education Act 1980 (establishment etc. of voluntary schools) for a school or proposed school to be maintained as a voluntary school and the Secretary of State has made an order under section 15 of the Education Act 1944 (classification of schools) directing that the school be an aided school,
- make grants to the governing body in respect of expenditure falling within subsection (2) below incurred by them.
- (2) The expenditure referred to in subsection (1) above is expenditure in respect of the provision, alteration or repair of premises or equipment for the school or proposed school.
- (3) The amount of any grant paid under this section to the governing body in respect of any such expenditure—
- (a) shall not exceed 85 per cent. of the expenditure, and
  - (b) in the case of any prescribed class or description of such expenditure, shall be such as may be determined in accordance with regulations.
- (4) The times at which, and the manner in which, payments are made in respect of grant under this section shall be such as may be determined from time to time by the Secretary of State.
- (5) Without prejudice to any other duty of his, the Secretary of State shall, in performing functions relating to the exercise of the power under this section to make grants in respect of expenditure on—
- (a) such alterations to school buildings as are referred to in section 15(3)(a) of the Education Act 1944 (alterations required by local education authority in order to comply with prescribed standards), and
  - (b) the repair of school buildings,
- give priority to paying grant in respect of expenditure which is necessary for the performance by governing bodies of their duties; and the amount of any grant paid in the exercise of that power in respect of such expenditure on the repair of school buildings shall be 85 per cent. of the expenditure.
- (6) A governing body to whom any payment is made in respect of grant under this section shall comply with such requirements determined by the Secretary of State as he may from time to time impose.

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- (7) Such requirements—
- (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, removed or varied by the Secretary of State.
- (8) Such requirements may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the Secretary of State of the whole or any part of the following amount.
- (9) That amount is—
- (a) the amount of the payments made in respect of the grant under this section, or
  - (b) so much of the value of any premises or equipment in respect of which grant was paid under this section as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (10) No such requirement as is referred to in subsection (8) above may be imposed where any payment is made in respect of grant under this section if—
- (a) the grant is made in respect of the provision, alteration or repair of premises for a school or proposed school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.
- (11) No grant may be paid under this section—
- (a) in respect of any expenses incurred in the provision of any premises which it is the duty of the local education authority to provide, or
  - (b) in the case of a special agreement school, in respect of expenses incurred in the execution of proposals to which the special agreement relates or of repairs or alterations for the execution of which provision is made by the agreement.
- (12) In relation to a proposed school, the references in this section to the governing body, in relation to any time before such a body are constituted, are to the persons who propose to establish the school; and where requirements are imposed in relation to grant paid under this section to such persons, the governing body, when they are constituted, as well as those persons shall comply with the requirements.
- (13) In this section “repair” does not include repair falling within section 15(3)(b) of the Education Act 1944 (repair for which governing body are not responsible).

## **282 Power of LEA to assist governors of aided or special agreement school**

- (1) A local education authority may give to the governors of an aided or special agreement school such assistance as the authority think fit in relation to the carrying out by the governors of any obligation under—
- (a) section 15(3)(a) of the Education Act 1944 (duty to defray certain maintenance expenses),
  - (b) paragraph 2 of the First Schedule to the Education Act 1946 (duty to defray expenses of providing school buildings on site to which school transferred under section 16 of the Education Act 1944), or
  - (c) section 13(5) of the Education Act 1980 (duty to implement proposal to alter, etc. school).

(2) In section 15 of the Education Act 1944, after subsection (4) there is inserted—

“(4A) For the purposes of subsection (4) of this section, the governors of an aided school or a special agreement school shall not be regarded as unable to carry out their obligations under subsection (3)(a) of this section if they are able to carry them out with the benefit of assistance under section 282(1) of the Education Act 1993 (power of local education authority to give assistance).”

(3) In section 90 of the Education Act 1944 (compulsory purchase of land by local education authority) after subsection (1) there is inserted—

“(1A) The proviso in subsection (1) of this section shall not apply where the local education authority propose that expenditure to be incurred in connection with the purchase should ultimately be borne by them under section 282(1) of the Education Act 1993 (power of local education authority to give assistance).”

(4) In paragraph 2 of the First Schedule to the Education Act 1946, the existing provision becomes sub-paragraph (1) and after that sub-paragraph there is inserted—

“(2) For the purposes of paragraph (c) of sub-paragraph (1) of this paragraph, the governors of an aided school or a special agreement school shall not be regarded as unable to carry out their obligations under this paragraph if they are able to carry them out with the benefit of assistance under section 282(1) of the Education Act 1993 (power of local education authority to give assistance).”

### **283 Power of LEA to assist promoters of voluntary school**

A local education authority may give to persons required under section 13(5) of the Education Act 1980 to implement proposals involving the establishment of a school such assistance as the authority think fit in relation to the carrying out by those persons of their obligations under that provision.

### **284 Duty to convey interest in premises provided under section 282(1) or 283**

(1) Where assistance under section 282(1) or 283 of this Act consists of the provision of any premises for use for the purposes of a school, the local education authority shall convey their interest in the premises to the trustees of the school to be held on trust for the purposes of the school.

(2) If any doubt or dispute arises as to the persons to whom a local education authority are required to make a conveyance under subsection (1) above, the conveyance shall be made to such persons as the Secretary of State thinks proper.

(3) Where trustees make a disposal of an interest conveyed to them by a local education authority under subsection (1) above, they shall be liable to pay to that authority an amount equal to the net proceeds of the disposal.

(4) In subsection (3) above—

“disposal” includes part disposal, and

“net proceeds”, in relation to a disposal, means the amount accruing on the disposal less any expenditure reasonably incurred for the purposes of making it.

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*Status: This is the original version (as it was originally enacted).*

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**285 Disapplication of section 123(2) of the Local Government Act 1972**

Subsection (2) of section 123 of the Local Government Act 1972 (which prohibits a local authority from making a disposal of land under that section below market value without the consent of the Secretary of State) shall not apply in the case of a disposal—

- (a) to the governors of an aided or special agreement school, or
- (b) to persons proposing to establish a school which is proposed to be maintained by a local education authority as a voluntary school and to be an aided school.

**286 Repeal of section 3(4) of the Education Act 1968**

Section 3(4) of the Education Act 1968 (power of local education authority to provide, or assist in providing, temporary accommodation at voluntary school) shall cease to have effect.

*Voluntary and grant-maintained schools: endowments*

**287 Religious educational trusts: adoption of statutory trusts**

- (1) This section applies to endowments which are—
- (a) regulated by an existing scheme under the Endowed Schools Acts 1869 to 1948 as applied by section 86(1) of the Education Act 1944 or by an order, whenever made, under section 2 of the Education Act 1973; and
  - (b) held under any such scheme or order on trusts which provide for capital or income or both to be applicable for or in connection with—
    - (i) the provision of religious education at relevant schools, or relevant schools of any description (but not only at a particular school or schools) in a diocese or other geographical area; or
    - (ii) the provision of premises for relevant schools, or relevant schools of any description (but not only at a particular school or schools) at which religious education is or is to be provided in a diocese or other geographical area;
- but this section does not apply to an endowment if or in so far as it constitutes a religious education fund.
- (2) The trustees of any endowments to which this section applies may, by resolution complying with subsection (6) below, adopt the uniform statutory trusts as the trusts on which those endowments are to be held.
- (3) The uniform statutory trusts are those set out in Schedule 17 to this Act.
- (4) On the adoption by trustees of the uniform statutory trusts in respect of any endowments the scheme or order which regulates the endowments shall have effect as if the uniform statutory trusts are incorporated in the scheme or order to the exclusion of the corresponding provisions of the scheme or order.
- (5) The trustees of two or more endowments which are held on the uniform statutory trusts may, by resolution complying with subsection (6) below, consolidate all or any of those endowments and, where they do so, the endowments shall be treated, for all purposes, as held for the purposes of a single charity.
- (6) For a resolution to comply with this subsection—

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*Status: This is the original version (as it was originally enacted).*

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- (a) it must be passed by a simple majority of the trustees or, if the trustees are a body corporate or a company, by a simple majority of the members of the body corporate or an ordinary resolution of the company; and
  - (b) it must be recorded in the records of the decisions of the trustees affecting the endowments of the trust.
- (7) Where trustees pass a resolution under subsection (2) above it shall be their duty to send a copy of the resolution to the Secretary of State.
- (8) The uniform statutory trusts applicable to endowments to which this section applies shall not affect—
- (a) the rights of any person under the third proviso to section 2 of the School Sites Act 1841, section 86(3) of the Education Act 1944 or section 1 of the Reverter of Sites Act 1987 (rights replacing certain reversionary interests in land); or
  - (b) the rights of any local education authority which have arisen or may arise under paragraph 7 or 8 of the First Schedule to the Education Act 1946 (rights in relation to school sites provided by such authorities);
- except in so far as any right falling within paragraph (a) above is extinguished by an order under section 2 of the Education Act 1973 made by virtue of section 5 of the Reverter of Sites Act 1987.
- (9) In this section—
- “company” means a company formed under the Companies Acts;
  - “the Companies Acts” means the Companies Act 1985, the Companies Act 1948 or any Act repealed by that Act of 1948;
  - “endowment” includes property not subject to any restriction on the expenditure of capital;
  - “existing” means in force on the day on which this section comes into force;
  - “provision”, in relation to premises, means provision by the purchase of a site, the erection of premises or the maintenance, improvement or enlargement of premises;
  - “relevant school” means a voluntary school or a grant-maintained school.
  - “religious education” means religious education in accordance with the tenets of a particular religion or religious denomination; and
  - “religious education fund” includes a Sunday school fund.
- (10) In Schedule 17 to this Act as incorporated in any scheme or order—
- “the area” means the diocese or other geographical area within which the trust assets may be applied under the scheme or order, as the case may be;
  - “relevant school” means a relevant school at which the religious education provided for in the scheme or order, as the case may be, is or is to be provided; and
  - “the relevant trust assets” means the endowments in respect of which the trustees have adopted the uniform statutory trusts, including the income derived therefrom.

## **288 Religious educational trusts: supplementary provision**

- (1) Section 2 of the Education Act 1973 (special powers as to certain trusts for religious education) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In subsection (4), at the end (definition of “use for appropriate educational purposes”) there is inserted “including, in particular, but without prejudice to the generality of the foregoing words, use for any purpose specified in Schedule 17 to the Education Act 1993.”
- (3) In subsection (3), after “dwelling-house” there is inserted “and may consolidate any endowments to be dealt with by the scheme”.
- (4) After subsection (5) there is inserted—
  - “(5A) Where a scheme given effect under this section provides for the endowments dealt with by the order or any part of them to be used for the purposes specified in Schedule 17 to the Education Act 1993, any such scheme may provide for the endowments thereby dealt with or any part of them to be added to any existing endowment applicable for those purposes (whether it is so applicable by virtue of a scheme given effect under this section or otherwise).”

*Voluntary and grant-maintained schools: teachers' pay and conditions*

## **289 Employment of certain teachers: pay and conditions**

After section 3 of the School Teachers' Pay and Conditions Act 1991 (special provisions as to grant-maintained schools) there is inserted—

### **“3A Special provisions for teachers on transfer of employment**

- (1) This section applies where a school teacher employed to teach at an independent school—
  - (a) which becomes a county or voluntary school in pursuance of proposals published under section 12(1)(b) or, as the case may be, 13(1)(a) of the Education Act 1980, or
  - (b) in place of which a grant-maintained school is established in pursuance of proposals published under section 49 of the Education Act 1993,
 becomes employed (in the case of a county or voluntary school) by the local education authority or the governing body or (in the case of a grant-maintained school) by the governing body in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981.
- (2) A pay and conditions order shall not apply to the statutory conditions of employment of such a teacher unless he gives notice in writing to the new employer that the order is to so apply.
- (3) Where the governing body of an aided school receive notice given under subsection (2) above, they shall inform the local education authority.”

*Independent schools*

## **290 Independent schools: employment of teachers etc**

- (1) At the end of section 71 of the Education Act 1944 (independent schools: complaints) there is added—

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*Status: This is the original version (as it was originally enacted).*

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- “(4) If at any time the Secretary of State is satisfied that a person whose employment is prohibited or restricted by virtue of regulations under section 218(6) of the Education Reform Act 1988—
- (a) is employed in a registered or provisionally registered school in contravention of those regulations, or
  - (b) is the proprietor of such a school,
- he may order that the school be struck off the register or, as the case may be, that the Registrar is not to register the school.
- (5) In this section, and in sections 72 and 73 of this Act, “employee” means a person employed in work which brings him regularly into contact with persons who have not attained the age of nineteen years.”
- (2) In sections 71(1)(d) and (2), 72(2)(e), (3) and (4) and 73(3) of that Act, after “teacher” in each place where it occurs there is inserted “or other employee”.
- (3) In section 218 of the Education Reform Act 1988 (school etc. regulations)—
- (a) at the end of subsection (6)(b) “or” is omitted,
  - (b) after subsection (6)(c) there is added “or
    - (d) by the proprietors of independent schools or at such schools as teachers or in any such work”, and
  - (c) in subsection (12) after “section” there is inserted “other than in subsection (6)(d) above”.

## **291 Training for unqualified teachers in CTCs or CCTAs**

In section 218 of the Education Reform Act 1988 (school etc. regulations), after subsection (2) there is inserted—

“(2A) The regulations may impose requirements on persons carrying on city technology colleges or city colleges for the technology of the arts as to the training and teaching experience of persons employed as teachers at such colleges who seek to become (in relation to schools) qualified teachers; and such requirements shall have effect for the purposes of section 105 of this Act as requirements of the agreements under which the colleges are maintained.”

## **292 Independent schools that are children’s homes**

- (1) In section 63 of the Children Act 1989 (children not to be cared for and accommodated in unregistered children’s homes) for subsection (6) there is substituted—

“(6) An independent school is a children’s home at any time if at that time accommodation is provided for children at the school and either—

- (a) in each year that fell within the period of two years ending at that time accommodation was provided for more than three of the children at the school, or under arrangements made by the proprietor of the school, for more than 295 days in that year, or
- (b) it is intended to provide accommodation for more than three of the children at the school, or under arrangements made by the proprietor of the school, for more than 295 days in any year,

unless the school is approved by the Secretary of State under section 189(1) of the Education Act 1993 (approval of independent schools for children with

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*Status: This is the original version (as it was originally enacted).*

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statements); and in this subsection “year” means a period of twelve months and “proprietor” has the same meaning as in the Education Act 1944.”

- (2) In section 70 of the Education Act 1944 (registration of independent schools) after subsection (4) there is inserted—

“(4A) Regulations made under subsection (4) above may in particular require the proprietor of a school to furnish the Registrar with such information as is required by the local authority for the purpose of determining whether the school is a children’s home (within the meaning of the Children Act 1989).”

### **293 Corporal punishment**

- (1) Section 47 of the Education (No. 2) Act 1986 (corporal punishment) is amended as follows.

- (2) In subsection (1), after “pupil” there is inserted “to whom this subsection applies” and after that subsection there is inserted—

“(1A) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified if the punishment was inhuman or degrading.

(1B) In determining whether punishment is inhuman or degrading regard shall be had to all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects.”

- (3) In subsection (5)—

- (a) for the words preceding paragraph (a) there is substituted “Subsection (1) above applies to a pupil”, and  
 (b) for “but” there is substituted “and in this section “pupil””.

### **294 Corporal punishment: Scotland**

- (1) Section 48A of the Education (Scotland) Act 1980 (corporal punishment) is amended as follows.

- (2) In subsection (1), after “pupil” there is inserted “to whom this subsection applies” and after that subsection there is inserted—

“(1A) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified if the punishment was inhuman or degrading.

(1B) In determining whether punishment is inhuman or degrading regard shall be had to all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects.”

- (3) In subsection (5) for the words preceding paragraph (a) there is substituted “In this section “pupil” means a person for whom education is provided at a school or for whom school education is provided by an education authority otherwise than at a school.

(5A) Subsection (1) above applies to a pupil-”



- (4) In subsection (8)(a) for “(5)(a)(iii)” there is substituted “(5A)(a)(iii)”.

*Goods and services for grant-maintained or grant-maintained special schools*

## **295 Provision of goods and services by local education authorities**

- (1) Where the Secretary of State by order provides for this section to apply to a local education authority, the functions of the authority shall include the supply by the authority of such goods or services as may be specified in the order to the governing bodies of grant-maintained or grant-maintained special schools in such area as may be so specified.
- (2) The area specified in the order may not extend beyond the area which comprises—
  - (a) the area of the authority, and
  - (b) the area of any other local education authority which shares any boundary with the authority.
- (3) The terms on which goods and services are supplied by a local education authority in the exercise of a function exercisable by virtue of this section shall be such as can reasonably be expected to secure that the full cost of exercising the function is recovered by the authority.
- (4) This section may not apply to a local education authority after the expiry of the period of two years beginning when it first applies to the authority.
- (5) This section is without prejudice to the generality of any other enactment conferring functions on local education authorities.

*Local education authorities: education committees*

## **296 Abolition of requirement to establish education committees**

Section 6(2) of, and Part II of the First Schedule to, the Education Act 1944 (education committees) are omitted.

## **297 Power of Secretary of State to direct appointment of members of committees**

- (1) Subsection (2) below applies to any local authorities which in accordance with section 102(1) of the Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as local education authorities.
- (2) The Secretary of State may by directions to any local authorities to which this subsection applies require every such committee, or any such committee of a description specified in the direction, to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts.
- (3) Subsection (4) below applies to any two or more local authorities which in accordance with section 102(1) of the Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as local education authorities.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The Secretary of State may by directions to any local authorities to which this subsection applies require every such committee, or any such committee of a description specified in the direction, to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts or in such area as may be specified in the direction.
- (5) The power of the Secretary of State to give directions under subsection (2) or (4) above shall be exercisable in relation to any sub-committees which are—
- (a) appointed by the authorities concerned or any such committee as is mentioned in that subsection, and
  - (b) so appointed wholly or partly for the purpose of discharging the authorities' functions as mentioned in that subsection or the committee's functions with respect to education,
- as it is exercisable in relation to the committees themselves.

*Exceptional provision*

**298 Exceptional provision of education in school or elsewhere**

- (1) Each local education authority shall make arrangements for the provision of suitable full-time or part-time education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
- (2) A school established (whether before or after the commencement of this section) and maintained by a local education authority which—
- (a) is specially organised to provide education for such children, and
  - (b) is not a county school or special school,
- shall be known as a “pupil referral unit”.
- (3) A local education authority may secure the provision of boarding accommodation at any pupil referral unit.
- (4) A local education authority may make arrangements for the provision of suitable full-time or part-time education otherwise than at school for those young persons who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
- (5) Section 9(2) of the Education Act 1944 (schools, other than nursery schools or special schools, established by LEAs to be known as county schools) shall have effect subject to subsection (2) above.
- (6) Any child for whom education is provided otherwise than at school in pursuance of this section, and any young person for whom full-time education is so provided in pursuance of this section, shall be treated for the purposes of the Education Acts as a pupil.
- (7) In this section “suitable education”, in relation to a child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.

- (8) Schedule 18 to this Act (pupil referral units) shall have effect.

### *Supplementary*

#### **299 Stamp duty**

- (1) Subject to subsection (5) below, stamp duty shall not be chargeable in respect of any transfer effected under or by virtue of any of the following sections of this Act: 38 (taken with section 198 of, and Schedule 10 to, the Education Reform Act 1988), 116(3) and (4), 226(1) and 247.
- (2) Subject to subsection (5) below, stamp duty shall not be chargeable in respect of any transfer to a funding authority under or by virtue of section 114 or 225(3) of this Act.
- (3) Subject to subsection (5) below, stamp duty shall not be chargeable in respect of any transfer to a local education authority—
  - (a) under or by virtue of section 114(1)(a), 132(2) or 225(3) of this Act of property which immediately after the transfer is held by the authority for the purposes of a maintained school, or
  - (b) under or by virtue of section 114(2) or 225(3) of this Act of property which immediately after the transfer is held by the authority for the purposes of a new county school.
- (4) Subject to subsection (5) below, stamp duty shall not be chargeable in respect of any transfer to the governing body of a grant-maintained school—
  - (a) under or by virtue of section 114(2) or 225(3) of this Act, or
  - (b) in the case of a school established under section 48(2) or 49 of this Act, from the funding authority.
- (5) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsections (1) to (4) above shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

#### **300 Publication of guidance**

- (1) The Secretary of State shall publish any guidance given by him for the purposes of any of the provisions mentioned in subsection (2) below in such manner as he thinks fit.
- (2) Those provisions are sections 28, 48, 49, 96(3), 97(4), 104(2), 105(4) and 184(1) of this Act.

#### **301 Orders, regulations and directions**

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under any of the excepted provisions) shall be exercised by statutory instrument.

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*Status: This is the original version (as it was originally enacted).*

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- (2) For the purposes of subsection (1) above the excepted provisions are sections 9, 12, 39, 57, 70, 111, 136, 150, 191, 225, 232, 233 and 295, the definition of “Church in Wales school” in section 305 and paragraph 5 of Schedule 4 and paragraph 3 of Schedule 11.
- (3) A statutory instrument containing any order or regulations under this Act, other than under section 218, 220, 226, 247(5), 248(8) or 308, or paragraph 1(4) of Schedule 3, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) No regulations shall be made under paragraph 1(4) of Schedule 3 to this Act unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.
- (5) Before making any regulations under section 56 of this Act, the Secretary of State shall consult—
  - (a) a body appearing to him to be representative of the Church of England,
  - (b) a body appearing to him to be representative of the Church in Wales, and
  - (c) a body appearing to him to be representative of the Roman Catholic Church, in matters relating to the provision of education in grant-maintained schools having foundation governors.
- (6) Orders or regulations under this Act made by the Secretary of State, and orders made by the funding authority under section 57, 70 or 136 of this Act or paragraph 5 of Schedule 4 to this Act, may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the person making the order or regulations thinks fit.
- (7) Section 111 of the Education Act 1944 (revocation and variation) applies to directions given by the funding authority under this Act as it applies to directions given under that Act.

### **302 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) any sums required for the payment by the Secretary of State of grants or other contributions under this Act,
- (b) any other expenses of the Secretary of State under this Act, and
- (c) any increase attributable to this Act in the sums so payable under any other enactment.

### **303 Construction of references to old and new law**

- (1) Any reference, whether express or implied, in this Act or any other enactment, instrument or document to a provision of Parts II to IV of this Act is to be read, in relation to the times, circumstances or purposes in relation to which a corresponding provision of the repealed enactments had effect and so far as the nature of the reference permits, as including a reference to that corresponding provision.
- (2) Any reference, whether express or implied, in any enactment, instrument or document to a provision of the repealed enactments is to be read, in relation to the times, circumstances or purposes in relation to which a corresponding provision of Parts II to IV of this Act has effect and so far as the nature of the reference permits, as including a reference to that corresponding provision.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Any reference in any provision of the Education Acts to a funding authority, in relation to any function which, under a corresponding provision of the repealed enactments, was exercisable by the Secretary of State is to be read, in relation to the times, circumstances or purposes in relation to which the corresponding provision of the repealed enactments had effect and so far as the nature of the reference permits, as a reference to the Secretary of State.
- (4) In this section, “the repealed enactments” means the enactments specified in Part I of Schedule 21 to this Act.

### **304 Meaning of “school” in the Education Acts**

- (1) In section 14(5) of the Further and Higher Education Act 1992 (“school” means an institution providing primary or secondary education, whether or not it also provides further education, etc.) before “further education” there is inserted “part-time education suitable to the requirements of junior pupils”.
- (2) In the definition of “primary school” in section 114(1) of the Education Act 1944 (“primary school” means, subject to regulations under section 1 of the Education Act 1964, a school for providing primary education, whether or not it also provides further education) before “further education” there is inserted “part-time education suitable to the requirements of junior pupils or”.

### **305 General interpretation**

- (1) In this Act—

“alterations”, in relation to any school premises, includes improvements, extensions and additions and “alter” shall be read accordingly,

“Church in Wales school” means a school in the Province of Wales in which the religious education provided is provided in accordance with the faith and practice of the Church in Wales and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Finance for the diocese of the Church in Wales in which the school is situated or such other person as the Secretary of State may by order designate in respect of that diocese,

“Church of England school” means a school in the Province of Canterbury or York in which the religious education provided is provided in accordance with the faith and practice of the Church of England and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Education for the diocese of the Church of England in which the school is situated,

“contract of employment”, “employee” and “employer” have the same meaning as in the Employment Protection (Consolidation) Act 1978, and “employed” means employed under a contract of employment,

“financial year” means a period of twelve months ending with 31st March,

“functions” includes powers and duties,

“land” includes buildings and other structures, land covered with water, and any interest in land,

“liability” includes obligation,

“local authority” means a county council, a district council, a London borough council or the Common Council of the City of London,

“local education authority”—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in relation to a school maintained or proposed to be maintained by a local education authority, means that authority, and
  - (b) in relation to a grant-maintained school, means the local education authority for the area in which the school is situated,
- “maintained school” means any county school or voluntary school and any maintained special school which is not established in a hospital,
- “modifications” includes additions, alterations and omissions and “modify” shall be construed accordingly,
- “prescribed” means prescribed by regulations,
- “regulations” means regulations made by the Secretary of State, and
- “Roman Catholic Church school” means a school in which the religious education provided is provided in accordance with the faith and practice of the Roman Catholic Church and “appropriate diocesan authority”, in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated.
- (2) References in this Act to an interest in land include any easement, right or charge in, to or over land.
  - (3) This Act shall be construed as one with the Education Act 1944; but where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of that Act, the meaning given for the purposes of that Act shall not apply for the purposes of that provision.
  - (4) Before making an order in respect of any diocese in Wales in exercise of the power conferred by the definition of “appropriate diocesan authority”, the Secretary of State shall consult the bishop for the diocese.

### 306 Index

The expressions listed in the left-hand column below are respectively defined by or (as the case may be) are to be interpreted in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
admission for nursery education (in Part II)	section 155(5)
admission to school (in Part II)	section 155(6)
alterations	section 305(1)
appropriate appointing authority (in Part V)	section 204(2)
appropriate authority (in Part V)	section 204(2)
appropriate diocesan authority (in relation to a Church of England, Church in Wales or Roman Catholic Church school)	section 305(1)
authority responsible for election arrangements under the Education	section 80(2)

*Status: This is the original version (as it was originally enacted).*

<i>Expression</i>	<i>Relevant provision</i>
(No. 2) Act 1986 (in Chapter V of Part II)	
capital grants	sections 83(1) and 89
the chairmen’s panel (in Part III)	section 177(2)
change in character of a school (in Part II)	section 103(1)
character of school (in Part II)	section 155(3)
child (in Part III)	section 156(5)
Church in Wales school	section 305(1)
Church of England school	section 305(1)
contract of employment	section 305(1)
core governor	section 122 and Schedule 8
date of publication of proposals (in Part II)	section 155(7)
date of implementation of proposals for acquisition of grant-maintained status	section 37(2)
date of implementation of proposals for establishment of new grant-maintained school	section 54
dissolution date (in sections 111 to 116)	section 111(6)
education associations	section 218(2)
eligible governor (in Part II)	paragraph 4 of Schedule 7
employed, employee, employer	section 305(1)
employed to work at a school (in Part II)	section 155(9)
employed to work solely at a school (in Part II)	section 155(10)
financial year	section 305(1)
first governor (in Part II)	paragraphs 7 and 12 of Schedule 7
foundation governor (in Part II)	paragraphs 8 and 13 of Schedule 7
functions	section 305(1)
funding authority	section 5
governing body (during transition to grant-maintained status)	sections 34(2)
governing body in liquidation (in sections 111 to 116)	section 111(3)
governor of an elected category (in Part II)	paragraph 3 of Schedule 7
grant-maintained school	sections 22(1) and 221(4)

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*Status: This is the original version (as it was originally enacted).*

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<i>Expression</i>	<i>Relevant provision</i>
grant-maintained school formerly conducted by a governing body in liquidation (in sections 111 to 116)	section 111(5)
grant-maintained special school	sections 182(3) and 187(3)(b)
grant regulations (in Chapter VI of Part II)	section 81(2)
incorporation date (in Part II)	sections 37(5) and 54
incorporation date (in Part III)	section 183(8) and 186(3)
initial governor (in Part II)	paragraph 2 of Schedule 7
inspection by a member of the Inspectorate (in Part V)	section 204(2)
interest in land	section 305(2)
land	section 305(1)
the lay panel (in Part III)	section 177(2)
learning difficulty	section 156(2)
liabilities incurred by a local education authority (in Part II)	section 155(8)
liability	section 305(1)
local authority	section 305(1)
local education authority	section 305(1)
maintained school	section 305(1)
maintained special school	section 182(2)
maintenance grants	sections 81(1) and 87(1)
member of the Inspectorate (in Part V)	section 204(2)
modifications	section 305(1)
new governing body (in Part II)	section 34(2)
parent governor (in Part II)	paragraphs 5 and 10 of Schedule 7
pending (in relation to proposals for the acquisition of grant-maintained status published under section 32)	section 32(4)
pending (in relation to the procedure for acquisition of grant-maintained status)	section 40(1)
premises (in Part II)	section 155(1)
prescribed	section 305(1)
the President (in Part III)	section 177(2)



*Status: This is the original version (as it was originally enacted).*

<i>Expression</i>	<i>Relevant provision</i>
procedure applicable under the Education (No. 2) Act 1986 (in Chapter V of Part II)	section 80(3)
promoters (in Part II)	section 49(1)
proposals (in Chapter VII of Part II)	section 103(3)
proposals for acquisition of grant-maintained status	section 22(2)
proposals for the establishment of a new grant-maintained school	section 22(2)
prospectively disqualified (in Chapter V of Part II)	section 80(4)
pupil referral unit	section 298(2)
the purposes of the school (in Chapter VI of Part II)	section 81(4)
reception class (in Part II)	section 155(1)
registered, in relation to parents or pupils, etc. (in Part II)	section 155(1)
regulations	section 305(1)
relevant age group (in Part II)	section 155(4)
relevant education	section 12(7)
relevant particulars (in relation to a proposed initial governor of a grant-maintained school)	section 37(4)
Roman Catholic Church school	section 305(1)
school attendance order	section 192(3)
school property (in sections 111 to 116)	section 111(4)
school which is eligible for grant-maintained status (in Part II)	section 23
schools the governing bodies of which are incorporated under Chapter II of Part II	section 221(5)
schools the governing bodies of which are incorporated under Chapter IV of Part II	section 221(7)
section 9 inspection (in Part V)	section 204(2)
section 105 loan liabilities (in sections 111 to 116)	section 111(7)
special educational needs	section 156(1)
special educational provision	section 156(4)

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*Status: This is the original version (as it was originally enacted).*

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<i>Expression</i>	<i>Relevant provision</i>
special measures (in Part V)	section 204(3)
special purpose grants	sections 82(1) and 88
special school	section 182(1)
sponsor governor (in Part II)	paragraphs 9 and 14 of Schedule 7
teacher governor (in Part II)	paragraphs 6 and 11 of Schedule 7
transfer date (in Part V)	section 220(2)
the Tribunal (in Part III)	section 177(1)

### **307 Amendments etc**

- (1) Schedule 19 to this Act (which makes minor and consequential amendments) shall have effect.
- (2) Schedule 20 to this Act (which makes transitional provisions and savings) shall have effect.
- (3) The enactments mentioned in Schedule 21 to this Act are repealed to the extent mentioned in the third column.

### **308 Short title, commencement, etc**

- (1) This Act may be cited as the Education Act 1993.
- (2) The Education Acts 1944 to 1992 and this Act may be cited together as the Education Acts 1944 to 1993 (referred to in this Act as “the Education Acts”).
- (3) This Act (other than sections 240, 301 to 303, 305, 306 and this section) shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions and for different purposes.
- (4) Subject to subsection (5) below, this Act extends to England and Wales only.
- (5) The amendment or repeal by this Act of an enactment which extends to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Sections 3 and 4.

#### THE FUNDING AUTHORITIES

##### *Supplementary powers*

- 1 (1) Subject to sub-paragraph (2) below, a funding authority may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular—
- (a) acquiring and disposing of land and other property,
  - (b) entering into contracts,
  - (c) investing sums not immediately required for the purpose of the discharge of their functions, and
  - (d) accepting gifts of money, land or other property.
- (2) A funding authority shall not borrow money.
- 2 (1) The Secretary of State may authorise a funding authority to purchase compulsorily any land required for the purpose of implementing any proposals under section 48, 49 or 97 of this Act which are required to be implemented.
- (2) The Acquisition of Land Act 1981 shall apply to compulsory purchase under this paragraph.

##### *Tenure of members*

- 3 (1) A person shall hold and vacate office as a member of a funding authority in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A person may at any time by notice in writing to the Secretary of State resign his office as a member of a funding authority.
- 4 If the Secretary of State is satisfied that a member of a funding authority—
- (a) has been absent from meetings of the authority for a period longer than six consecutive months without the permission of the authority, or
  - (b) is unable or unfit to discharge the functions of a member,
- the Secretary of State may by notice in writing to that member remove him from office and thereupon the office shall become vacant.

##### *Salaries, allowances and pensions*

- 5 (1) A funding authority—
- (a) shall pay to their members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine, and

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- (b) shall, as regards any member in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.
- (2) If a person ceases to be a member of a funding authority and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the authority to make to that person a payment of such amount as the Secretary of State may determine.
- (3) A funding authority shall pay to the members of any of their committees who are not members of the authority such travelling, subsistence and other allowances as the Secretary of State may determine.
- (4) A determination or direction of the Secretary of State under this paragraph requires the approval of the Treasury.

#### *Staff*

- 6 (1) A funding authority may, with the approval of the Secretary of State as to numbers, appoint such employees as they think fit on such terms and conditions as to remuneration and other matters as the authority may determine.
- (2) A determination under sub-paragraph (1) above requires the approval of the Secretary of State given with the consent of the Treasury.
- (3) An employee of a funding authority may not be appointed as a member of the authority, and a member of a funding authority may not be appointed as an employee of the authority.

#### *Chief officer*

- 7 (1) One of the employees of a funding authority shall be the chief officer.
- (2) The first chief officer shall be appointed by the Secretary of State on such terms and conditions as to remuneration and other matters as the Secretary of State may with the consent of the Treasury determine.
- (3) Each subsequent chief officer shall be appointed by the authority with the approval of the Secretary of State.

#### *Committees*

- 8 (1) A funding authority may establish a committee for any purpose.
- (2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the authority.
- (3) Such a committee may include persons who are not members of the authority.
- (4) The authority shall keep under review the structure of committees established by them under this paragraph and the scope of each such committee's activities.

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### *Delegation of functions*

- 9 A funding authority may authorise the chairman, the chief officer or any committee established by them under paragraph 8 above to exercise such of their functions as they may determine.

### *Proceedings*

- 10 Without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to a funding authority under section 6 of this Act—
- (a) a representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the authority or of any of their committees, and
  - (b) the authority shall provide the Secretary of State with such copies of any documents distributed to members of the authority or of any of their committees as he may require.
- 11 The validity of any proceedings of a funding authority or of any of their committees shall not be affected by a vacancy amongst the members or by any defect in the appointment of a member.
- 12 Subject to the preceding provisions of this Schedule, a funding authority may regulate their own procedure and that of any of their committees.

### *Application of seal and proof of instruments*

- 13 The application of the seal of a funding authority shall be authenticated by the signature—
- (a) of the chairman or of some other person authorised either generally or specifically by the authority to act for that purpose, and
  - (b) of one other member.
- 14 Every document purporting to be an instrument made or issued by or on behalf of a funding authority and to be duly executed under their seal, or to be signed or executed by a person authorised by the authority 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.

### *Accounts*

- 15 (1) It shall be the duty of a funding authority—
- (a) to keep proper accounts and proper records in relation to the accounts,
  - (b) to prepare in respect of each financial year of the authority a statement of accounts, and
  - (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it,
  - (b) the manner in which the information contained in it is to be presented, or

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- (c) the methods and principles according to which the statement is to be prepared,  
 and shall contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament.
- (3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph, “financial year” means the period beginning with the date on which the authority is established and ending with the next following 31st March, and each successive period of twelve months.

*Status of funding authorities*

- 16 A funding authority shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the authority shall not be regarded as property of, or property held on behalf of, the Crown.

SCHEDULE 2

Section 12 etc.

DISTRIBUTION OF FUNCTIONS WHERE ORDER MADE UNDER SECTION 12

**PART I**

INTRODUCTORY

- 1 (1) Where an order under section 12 of this Act is in force, the Education Acts shall have effect subject to—
- (a) this Schedule, and
  - (b) the provisions of this Act which modify the effect of any provision of those Acts, or confer new functions, in respect of any area to which such an order applies.
- (2) In particular, to the extent that this Schedule governs the payments to be made to any local education authority or the governing body of any grant-maintained school in respect of charges by that authority or body for the provision of board and lodging (at a boarding school or otherwise than at school), the proviso to section 52(1) of the Education Act 1944 and section 111(2) to (6) of the Education Reform Act 1988 (charges) shall not apply; and in this Schedule section 52(1) of the Education Act 1944 and section 111(1) of the Education Reform Act 1988 are referred to as the “existing charging provisions”.

## PART II

### FUNCTIONS WHERE RESPONSIBILITY FOR PROVIDING SUFFICIENT SCHOOL PLACES IS SHARED

#### *Introductory*

- 2 If an order under section 12(1)(a) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

#### *Responsibility for providing sufficient school places*

- 3 (1) If the schools providing relevant education which are available for the area are not sufficient, the funding authority shall, for the purpose of securing the availability of sufficient schools providing such education for the area, exercise their powers to make proposals for the establishment, alteration and discontinuance of schools.
- (2) In performing that duty, the funding authority shall have regard to the need for securing that special educational provision is made for pupils who have special educational needs.
- (3) The schools available for any area shall not be treated as sufficient for the purposes of this paragraph unless they are sufficient for the purposes of section 8(1) of the Education Act 1944 (duty of local education authority to secure availability of schools).
- (4) Nothing in this paragraph requires a funding authority to take any action where to do so would not be an effective use of their resources.
- (5) In this paragraph, “powers to make proposals for the establishment, alteration and discontinuance of schools” means all or any of the powers to publish proposals under sections 48, 97 or 105 of this Act or give notice of proposals under section 183 of this Act.

## PART III

### FUNCTIONS WHERE RESPONSIBILITY FOR PROVIDING SUFFICIENT SCHOOL PLACES IS TRANSFERRED

#### *Introductory*

- 4 If an order under section 12(1)(b) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

#### *Responsibility for providing sufficient school places*

- 5 (1) The duty under section 8(1) of the Education Act 1944 shall be discharged by the funding authority instead of the local education authority.
- (2) In discharging that duty the funding authority shall, in particular, have regard to the matters referred to in section 8(2)(c) of that Act (provision for pupils who have special educational needs).

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- (3) The funding authority may provide board and lodging otherwise than at school for pupils at maintained or grant-maintained schools; and, where the authority do so, the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the authority not exceeding the cost to the authority of the provision.
- (4) Where the governing body of a grant-maintained school provide board and lodging at the school for pupils there, the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the governing body not exceeding the cost to the governing body of the provision.
- 6 (1) The local education authority may continue to secure the provision of relevant education falling within section 8(1) of that Act and (subject to paragraph 7 below) to secure the provision of schools for that purpose.
- (2) In exercising those powers the local education authority shall, in particular, have regard to the matters referred to in section 8(2) of that Act (which include separation of primary and secondary education, and boarding accommodation for those for whom boarding is desirable).
- (3) Where the local education authority—
  - (a) provide board and lodging at a maintained school for pupils there, or
  - (b) provide board and lodging otherwise than at school for pupils at maintained or grant-maintained schools,
 the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the authority not exceeding the cost to the authority of the provision.

*Powers to establish, maintain and alter schools*

- 7 (1) The local education authority may not exercise the power under section 9 of that Act to establish any school, or to begin to maintain as a county school any school which is not such a school, (in both cases referred to in this paragraph as “the school in question”) unless—
  - (a) under section 14 of the Education Act 1944 or section 12 of the Education Act 1980 their duty to maintain one or more other schools ceases, and
  - (b) the school in question is intended to provide education for pupils in the area which was served by the other school or (as the case may be) the other schools.
- (2) This paragraph does not apply—
  - (a) to special schools,
  - (b) to nursery schools,
  - (c) where relevant education is only primary education, if the school in question is or will be a secondary school which also provides primary education, or
  - (d) where relevant education is only secondary education, if the school in question is or will be a primary school which also provides secondary education.
- 8 (1) No proposals in respect of any school (referred to in this paragraph as “the school in question”) published under section 13(1)(a) of the Education Act 1980 (proposal that existing or proposed school should be maintained as a voluntary school) may be implemented unless—



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- (a) under section 14 of the Education Act 1944 or section 12 of the Education Act 1980 the duty of the local education authority to maintain one or more other schools ceases, and
  - (b) the school in question is intended to provide education for pupils in the area which was served by the other school or (as the case may be) the other schools.
- (2) This paragraph does not apply—
- (a) where relevant education is only primary education, if the school in question is or will be a secondary school which also provides primary education, or
  - (b) where relevant education is only secondary education, if the school in question is or will be a primary school which also provides secondary education.

*Charges for board and lodging or independent education*

- 9 (1) Sub-paragraph (3) below applies where—
- (a) any pupil of compulsory school age ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at school) or with education at a school which is not a maintained or grant-maintained school,
  - (b) the funding authority are of the opinion that it is not practicable for the pupil to obtain admission to any maintained or grant-maintained school which is a reasonable distance from his home and provides efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, and
  - (c) the authority are of the opinion that it is appropriate for the pupil to be provided with the particular board and lodging or, as the case may be, education.
- (2) Sub-paragraph (3) below also applies where—
- (a) any pupil ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at school) or with education at a school which is not a maintained or grant-maintained school, and
  - (b) the funding authority are of the opinion that—
    - (i) the conditions in sub-paragraph (1) above have been, but are no longer, met by reason only of the pupil having ceased to be of compulsory school age or sub-paragraph (1)(b) above having ceased to apply, and
    - (ii) it would not be desirable for the pupil to cease to be provided with the particular board and lodging or, as the case may be, education.
- (3) Where this sub-paragraph applies—
- (a) if board and lodging is provided by the funding authority, no charge shall be payable to the authority under this Schedule in respect of the board and lodging,
  - (b) if board and lodging is provided at a maintained or grant-maintained school or by a local education authority, the funding authority shall pay the whole of the charges payable to any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging, and

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- (c) in any other case the funding authority shall pay the whole of the fees payable in respect of the board and lodging or, as the case may be, the education.
- (4) This paragraph does not apply in the case of a pupil for whom a statement is maintained under section 168 of this Act.
- 10 (1) This paragraph applies where any pupil ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at school) or with education at a school which is not a maintained or grant-maintained school.
- (2) If board and lodging is provided at a school maintained by the responsible education authority and the authority are of the opinion that it is desirable for the pupil to be provided with board and lodging, or board and lodging otherwise than at school is provided by the authority, (but in any of those cases paragraph 9(3) above does not apply) then—
- (a) the authority may remit the whole or any part of the charges payable to them under this Schedule in respect of the board and lodging, and
- (b) if they are of the opinion that, in order to avoid financial hardship to the pupil's parent, the parent should not pay the whole or any part of those charges, the authority shall remit the whole or, as the case may be, that part of those charges.
- (3) If board and lodging otherwise than at school is provided by the funding authority or board and lodging is provided at a grant-maintained school or a school maintained by another local education authority (but in any of those cases paragraph 9(3) above does not apply)—
- (a) the responsible education authority may pay the charges payable to the funding authority, or any local education authority or governing body, under this Schedule or the existing charging provisions in respect of the board and lodging, and
- (b) if they are of the opinion that it is desirable for the pupil to be provided with board and lodging, they shall pay so much (if any) of those charges as in their opinion is required to be paid by them in order to avoid financial hardship to the parent.
- (4) In any other case to which this paragraph applies (but paragraph 9(3) above does not apply)—
- (a) the local education authority may pay the whole of the fees payable in respect of the board and lodging or, as the case may be, the education, and
- (b) if they are of the opinion that it is desirable for the pupil to be provided with board and lodging and appropriate for him to be provided with the particular board and lodging, they shall pay so much (if any) of the fees payable in respect of board and lodging as in their opinion is required to be paid by them in order to avoid financial hardship to the parent, and
- (c) if they are of the opinion that it is desirable for the pupil to be provided with education otherwise than in a maintained or grant-maintained school and appropriate for him to be provided with the particular education, they shall pay so much (if any) of the fees payable in respect of the education as in their opinion is required to be paid by them in order to avoid financial hardship to the parent.
- (5) In this paragraph the “responsible education authority”, in relation to a pupil ordinarily resident in any area, means the local education authority for the area.

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- (6) This paragraph does not apply in the case of a pupil for whom a statement is maintained under section 168 of this Act.
- 11 (1) Where a pupil in the area for whom a statement is maintained under section 168 of this Act is attending a maintained or grant-maintained school, this paragraph applies if he is provided with board and lodging at the school or otherwise than at school and either—
- (a) the school is named in the statement and—
    - (i) the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the particular board and lodging are also provided, or
    - (ii) the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless board and lodging are also provided and that it is appropriate for him to be provided with the particular board and lodging, or
  - (b) the school is not named in the statement but the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him unless board and lodging are also provided and that it is appropriate for him to be provided with the particular board and lodging.
- (2) Where the board and lodging is provided by the responsible education authority, no charge shall be payable to the authority under this Schedule in respect of the board and lodging.
- (3) Where the board and lodging is provided by the funding authority or another local education authority or at a grant-maintained school or a school maintained by another local education authority, the responsible education authority shall pay the charges payable to the funding authority or any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging.
- (4) In any other case to which this paragraph applies, the responsible education authority shall pay to the person providing the board and lodging the whole of the fees in respect of the board and lodging.
- (5) In this paragraph the “responsible education authority”, in relation to a pupil, means the local education authority responsible for the pupil for the purposes of Part III of this Act.
- 12 (1) Where a pupil in the area for whom a statement is maintained under section 168 of this Act is attending a maintained or grant-maintained school and is provided with board and lodging at the school or otherwise than at school, then—
- (a) where the board and lodging is provided by the responsible education authority, the authority may remit the whole or any part of the charges payable to them under this Schedule in respect of the board and lodging,
  - (b) where the board and lodging is provided by the funding authority or another local education authority or at a grant-maintained school or a school maintained by another local education authority, the responsible education authority may pay the whole or any part of the charges payable to the funding authority or any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging, and

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- (c) in any other case, the responsible education authority may pay to the person providing the board and lodging the whole or any part of the fees in respect of the board and lodging.
- (2) In this paragraph the “responsible education authority”, in relation to a pupil, means the local education authority responsible for the pupil for the purposes of Part III of this Act.

*General*

- 13 (1) The following provisions shall not apply—
- (a) sections 50 and 52 of the Education Act 1944 (power of LEA to provide board and lodging otherwise than at school and recovery of charges from parents),
  - (b) section 6(2)(a)(ii) of the Education (Miscellaneous Provisions) Act 1953 (payment by LEA of fees and boarding charges where pupil attends non-maintained school because of shortage of places in maintained and grant-maintained schools), and
  - (c) section 111 of the Education Reform Act 1988 (charges and remission of charges for board and lodging in maintained and grant-maintained schools).
- (2) Any charges payable to the local education authority, the funding authority or the governing body of a grant-maintained school under this Schedule may be recovered summarily as a civil debt.
- 14 (1) Section 193 of this Act shall have effect as if for subsection (5) there were substituted—
- “(5) If—
- (a) within the period mentioned in subsection (3) above, the parent applies to the funding authority, or the local education authority by whom the notice was served, for education to be provided for the child at a school which is not a school maintained by a local education authority or a grant-maintained school and, in the case of an application to the funding authority, notifies the local education authority by whom the notice was served of the application,
  - (b) the child is offered a place at the school, and
  - (c) either the funding authority are required under paragraph 9 of Schedule 2 to this Act to pay the fees payable in respect of the education provided at the school or the local education authority agree to pay the whole of those fees under paragraph 10 of Schedule 2 to this Act,
- that school shall be named in the order.”
- (2) Section 195 of this Act shall have effect as if for subsection (3) there were substituted—
- “(3) If at any time—
- (a) the parent applies to the funding authority or the local education authority by whom the notice was served for education to be provided for the child at a school which is not a school maintained by a local education authority or a grant-maintained school and is different from the school named in the order,

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- (b) the child is offered a place at the school,
  - (c) either the funding authority are required under paragraph 9 of Schedule 2 to this Act to pay the fees payable in respect of the education provided at the school or the local education authority agree to pay the whole of those fees under paragraph 10 of Schedule 2 to this Act, and
  - (d) the parent requests the local education authority to amend the order by substituting that school for the one currently named,
- the authority shall comply with the request.”.

#### PART IV

##### FUNCTIONS WHERE RESPONSIBILITY EITHER SHARED OR TRANSFERRED

###### *Introductory*

- 15 If an order under section 12(1)(a) or (b) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

###### *Responsibility for providing sufficient school places*

- 16 In relation to any power under section 48 of this Act to publish proposals for the establishment of a grant-maintained school—
- (a) references to establishing a school for the purpose of providing primary education include establishing a primary school which also provides secondary education, and
  - (b) references to establishing a school for the purpose of providing secondary education include establishing a secondary school which also provides primary education.
- 17 (1) Where relevant education is only primary education—
- (a) no proposals may be published under section 97 of this Act in respect of any grant-maintained school which is a secondary school or if the implementation of the proposals would cause the school to become a secondary school,
  - (b) no proposals may be published under section 105 of this Act in respect of any grant-maintained secondary school, and
  - (c) no direction may be given under section 151(2) of this Act to the governing body of any grant-maintained secondary school.
- (2) Where relevant education is only secondary education—
- (a) no proposals may be published under section 97 of this Act in respect of any grant-maintained school which is a primary school or if the implementation of the proposals would cause the school to become a primary school,
  - (b) no proposals may be published under section 105 of this Act in respect of any grant-maintained primary school, and
  - (c) no direction may be given under section 151(2) of this Act to the governing body of any grant-maintained primary school.

- 18 The funding authority shall not by virtue of paragraph 3 or 5 of this Schedule be under any duty in respect of junior pupils who have not attained the age of five years.

*Boarding schools*

- 19 The powers of the funding authority to publish proposals under sections 48 and 97 of this Act or to give notice of proposals under section 183 of this Act may, in particular, be so exercised as to secure the provision of boarding accommodation at boarding schools.

*Other modifications of Part II*

- 20 Section 96 of this Act shall have effect as if the funding authority were among the persons who may submit objections under subsection (6) of that section to proposals under that section.
- 21 Section 104 of this Act shall have effect as if—
- (a) the reference in subsection (3) to the local education authority included the funding authority, and
  - (b) the funding authority were among the persons who may submit objections under subsection (7) of that section to proposals under that section.
- 22 Section 109 of this Act shall have effect as if—
- (a) subsection (1)(a) were omitted, and
  - (b) the funding authority were among the persons required to be consulted under subsection (5)(b).
- 23 Section 149(4) of this Act shall have effect as if the reference to the Secretary of State were to the funding authority.

SCHEDULE 3

Sections 32 and 50.

PROPOSALS FOR SCHOOLS TO BECOME, OR BE  
ESTABLISHED AS, GRANT-MAINTAINED SCHOOLS

**PART I**

PROPOSALS FOR ACQUISITION OF GRANT-MAINTAINED STATUS

*Publication of proposals and notice*

- 1 (1) Where proposals are required to be published under section 32 of this Act, they shall be published by being—
- (a) posted at or near the main entrance to the school, or (if there is more than one main entrance) all of them,
  - (b) posted in at least one conspicuous place within the area served by the school, and

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- (c) 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) Within the period of ten days beginning with the date of publication of the proposals there shall be published in at least one newspaper circulating in that area a notice in respect of the proposals containing such summary of the proposals as the governing body may think appropriate (including, in particular, the information required by sub-paragraph (3) below).
- (3) The notice 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 approved, the school will on that date cease to be maintained by the local education authority,
  - (d) state that, if the proposals are approved, the school will on and after that date be conducted by a governing body incorporated under Part II of this Act and receive annual grants from the funding authority,
  - (e) give the information required to be specified in the proposals by paragraph 4(1)(a) and (2)(a) below,
  - (f) state where the proposals may be inspected, and
  - (g) explain the effect of paragraph 5 below.
- (4) The Secretary of State may by regulations make such provision (whether by way of modification of, or substitution for, the provisions of sub-paragraphs (1) to (3) above) as he considers appropriate in relation to—
- (a) the publication of proposals for acquisition of grant-maintained status, and
  - (b) the publication of such notice (if any) in respect of proposals for acquisition of grant-maintained status as may be prescribed.

*Statement to be annexed to proposals*

- 2 (1) There shall be annexed to any proposals published under section 32 of this Act 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, the percentage of those eligible to vote who voted, 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 including, in the case of a school which has a particular religious character, that character and the religion or religious denomination (if any) in accordance with whose tenets religious education is provided,
  - (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.
- (2) The statement so annexed shall be treated for the purposes of section 32 of this Act and of paragraph 1 above as forming part of the proposals.

*Statement to accompany published proposals*

- 3 Any proposals published under section 32 of this Act shall be accompanied by a statement which shall—
- (a) describe the requirements of Part II of this Act as to the membership of the governing body of a grant-maintained school,
  - (b) state that the head teacher will be a governor of the school ex officio if the school becomes a grant-maintained school,
  - (c) explain the circumstances in which a person named in the proposals in accordance with section 71 or 73 of this Act, or regulations made by virtue of section 77 of this Act, as a proposed initial governor may be replaced under section 74 or 75 of this Act or the regulations,
  - (d) explain the procedure applicable under Part II of this Act in each case in which such a replacement is required,
  - (e) if the determination of an initial governor of an elected category is pending on the date of publication of the proposals, explain the requirements applicable under Part II of this Act in any such case,
  - (f) explain the effect of paragraph 5 below, and
  - (g) give such other information as may be prescribed.

*Details of proposals*

- 4 (1) Any proposals published under section 32 of this Act shall—
- (a) where any person is proposed as a sponsor of the school, state the name of that person and the number of initial sponsor governors to be appointed by him (in accordance with section 66 of this Act),
  - (b) specify the number of initial parent, teacher and first or, as the case may be, foundation governors proposed for the governing body (in accordance with sections 60 to 65 of this Act),
  - (c) give the name of the person who is the head teacher of the school on the date of publication of the proposals,
  - (d) give the relevant particulars in respect of each person required by section 71 or 73 of this Act, or regulations made by virtue of section 77 of this Act, to be named in the proposals as published as a proposed initial governor,
  - (e) where it is proposed that any foundation governorship be held ex officio, specify the relevant office,
  - (f) if the determination of an initial governor of an 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 paragraph 3(e) above,
  - (g) give the name under which it is proposed that the governing body should be incorporated under section 34 of this Act, and
  - (h) specify the proposed date of implementation of the proposals.
- (2) The proposals shall describe the arrangements it is proposed to adopt, if the school becomes a grant-maintained school, in respect of—
- (a) the admission of pupils to the school,
  - (b) the provision to be made at the school for pupils who have special educational needs, and
  - (c) the induction of newly qualified teachers at the school and the in-service training and professional development of teachers at the school.



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- (3) In giving the information required by sub-paragraph (2)(a) above, the proposals shall in particular specify the number of pupils proposed 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 and, if pupils are proposed to be admitted for nursery education, give the prescribed information.

#### *Objections to proposals*

- 5 Within the period of two months beginning with the date of publication of any proposals under section 32 of this Act, objections to the proposals may be submitted to the Secretary of State by any of the following—
- (a) any ten or more local government electors for the area,
  - (b) any persons holding property on trust for the purposes of the school,
  - (c) the governing body of any school affected by the proposals, and
  - (d) any local education authority concerned.

#### *Interpretation*

- 6 (1) For the purposes of this Part of this Schedule, the determination of an initial governor of an elected category is pending on the date of publication of any proposals under section 32 of this Act if sub-paragraph (2) or (3) below applies.
- (2) This sub-paragraph applies if an election or appointment required by section 71(7) of this Act has not been held or made by the date of publication.
- (3) This sub-paragraph applies if—
- (a) an election or appointment required for filling an outstanding vacancy for a governor of an elected category on the existing governing body has not been held or made by the date of publication, and
  - (b) the vacancy falls to be taken into account in determining whether an election or appointment is required by section 71(7) of this Act.

## **PART II**

### PROPOSALS FOR ESTABLISHMENT OF NEW GRANT-MAINTAINED SCHOOL

#### *Content of proposals*

- 7 (1) Proposals published under section 48 or 49 of this Act shall—
- (a) where any person is proposed as a sponsor of the school, state the name of that person and the number of sponsor governors to be appointed by him (in accordance with section 66 of this Act),
  - (b) specify the number of initial first or, as the case may be, foundation governors proposed for the governing body (in accordance with sections 63 to 65 of this Act),
  - (c) specify the number of parent and teacher governors proposed for the governing body (in accordance with sections 60 and 61 of this Act),
  - (d) specify in the case of initial first, initial foundation or sponsor governors their proposed term of office (not being less than five nor more than seven years),

- (e) where it is proposed that any foundation governorship be held ex officio, specify the relevant office,
  - (f) give the name under which it is proposed that the governing body should be incorporated under section 52 of this Act, and
  - (g) specify the proposed incorporation date and the proposed date of implementation of the proposals.
- (2) The proposals shall describe the arrangements it is proposed to adopt in respect of the admission of pupils to the school and, in particular, shall specify the number of pupils proposed to be admitted to the school in each relevant age group in the first school year beginning on or after the date of implementation of the proposals and, if pupils are proposed to be admitted for nursery education, give the prescribed information.

*Statement to be annexed to proposals*

- 8 There shall be annexed to any proposals published under section 48 or 49 of this Act a statement briefly describing the intended character of the proposed school including, in the case of proposals published under section 49 of this Act for a school which is intended to have a particular religious character, that character and the religion or religious denomination (if any) in accordance with whose tenets religious education is to be provided.

*Statement to accompany published proposals*

- 9 Any proposals published under section 48 or 49 of this Act shall be accompanied by a statement explaining the effect of paragraph 10 or (as the case may be) paragraph 11 below.

*Objections*

- 10 (1) Within the period of two months beginning with the date of publication of any proposals under section 48 of this Act, objections to the proposals may be submitted to the funding authority by any of the following—
- (a) if the proposals are for a school which may provide education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors for the area,
  - (c) the governing body of any school affected by the proposals, and
  - (d) any local education authority concerned.
- (2) Within one month after the end of the period referred to in sub-paragraph (1) above, the funding authority shall send to the Secretary of State copies of any objections made under that sub-paragraph (and not withdrawn in writing) within the period allowed under that sub-paragraph, together with their observations on them.
- 11 Within the period of two months beginning with the date of publication of any proposals under section 49 of this Act, objections to the proposals may be submitted to the Secretary of State by any of the following—
- (a) if the proposals are for a school which may provide education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,

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- (b) the funding authority, (except, in relation to Wales, before the Schools Funding Council for Wales begin to exercise their functions),
- (c) any ten or more local government electors for the area,
- (d) the governing body of any school affected by the proposals, and
- (e) any local education authority concerned.

*Approval of school premises*

- 12 (1) Where proposals for the establishment of a new grant-maintained school are published under section 48 of this Act, the funding authority shall prepare the particulars in respect of the proposed premises of the school mentioned in sub-paragraph (3) below.
- (2) Where proposals for the establishment of a new grant-maintained school are published under section 49 of this Act, the particulars in respect of the proposed premises of the school mentioned in sub-paragraph (3) below shall be submitted to the funding authority, at such time and in such form and manner as the authority may direct, by the promoters.
- (3) The particulars are—
- (a) particulars of the provision made or to be made in respect of the means of access to and within the proposed premises of the school, and
  - (b) such other particulars in respect of the proposed premises of the school as may be required or, in the case of proposals published under section 49 of this Act, as the funding authority may require.
- (4) The particulars prepared or submitted under sub-paragraph (3)(a) above shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
- (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990, that document.

SCHEDULE 4

Section 35.

ACQUISITION OF GRANT-MAINTAINED STATUS: EXERCISE  
OF POWERS BEFORE DATE OF IMPLEMENTATION

*Introductory*

- 1 The functions conferred by or under paragraphs 2 to 5 below on the new governing body or any members of the body—
- (a) may be exercised by them at any time during the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals, but
  - (b) may be exercised only for the purpose of or in connection with the conduct of the school on or after the date of implementation of the proposals,

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and those functions shall be exercised in accordance with any requirements of regulations (or in the case of paragraph 3 or 5 below, of the directions or order in question) as to the circumstances, manner and conditions of their exercise.

*Powers to contract, etc.*

- 2 The new governing body may—
- (a) enter into contracts including, in particular, contracts for the employment of teachers and other staff, and
  - (b) acquire and dispose of land and other property.

*Access to school*

- 3 Any member of, or person authorised by, the new governing body, shall if the Secretary of State directs that this paragraph applies in relation to the school, be entitled to have access to and use the premises of the school.

*Information*

- 4 (1) If the new governing body request the existing governing body or the local education authority in writing to provide them with such information falling within sub-paragraph (2) below as may be prescribed, the existing governing body or, as the case may be, authority shall comply with the request.
- (2) Information falls within this sub-paragraph if—
- (a) it is held by the existing governing body or, as the case may be, the local education authority, and
  - (b) it relates to the school, including persons employed to work at the school and pupils at the school.

*General powers of Secretary of State*

- 5 (1) The Secretary of State may by order make such provision as he considers appropriate in connection with the school's transition to grant-maintained status and the impending transfer of responsibility for the conduct of the school.
- (2) An order under sub-paragraph (1) above may in particular provide for any provision of this Act specified in the order to have effect as if references to the governing body included the new governing body.
- (3) Such an order may in particular—
- (a) exclude or modify any powers of the local education authority or of the existing governing body in relation to any matter to which any power exercisable by the new governing body in accordance with any provision made by virtue of sub-paragraph (2) above applies,
  - (b) require the new governing body to be consulted before the local education authority or the existing governing body exercise in relation to the school any function of a description so specified or take in relation to the school any action of a description so specified, and
  - (c) require or enable the new governing body to participate in the exercise in relation to the school of any such function or the taking in relation to the school of any such action.

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*Grants to new governing body*

- 6 (1) The funding authority may make grants to the new governing body of a school in respect of expenditure incurred or to be incurred by that body in pursuance of any provision made by or under paragraphs 2 to 5 above in respect of the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals.
- (2) The funding authority may impose on a new governing body to whom such a grant is made such requirements as they may from time to time determine (whether before, at or after the time when the grant is made).
- (3) Such requirements may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the funding authority of the whole or any part of the following amount.
- (4) That amount is—
- (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.

*Liability for expenses of new governing body*

- 7 The duty of a local education authority to maintain any school shall not apply in relation to any expenses incurred by the new governing body of the school.

SCHEDULE 5

Sections 55 and 117.

GOVERNING BODIES OF GRANT-MAINTAINED SCHOOLS

*Introductory*

- 1 In this Schedule—
- “school” means a grant-maintained school, and
  - “instrument”, in relation to a school, means the instrument of government for the school.

*Election of governors*

- 2 The instrument for a school may make provision—
- (a) as to the procedure for the election of members of the governing body, and
  - (b) for the determination of any questions arising in connection with, or matters relating to, such elections.

*Disqualification for, tenure of and removal from office*

- 3 A person who is a member of the teaching or other staff at a school which is required to have first governors shall be disqualified for holding office as such a governor on the governing body.

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- 4 The instrument for a school may make provision as to the circumstances in which  
persons are to be disqualified for holding office as members of the governing body.
- 5 Subject to paragraph 10 below, the instrument for a school must provide for each  
governor of an elected category to hold office for a term of four years.
- 6 (1) Subject to paragraph 10 below, the instrument for a school must make the following  
provision for the term of office of—
- (a) first or, as the case may be, foundation governors, other than a foundation  
governor who is a governor *ex officio*, and
  - (b) where there are sponsor governors, those governors.
- (2) Except where sub-paragraph (3), (4) or (5) below applies, such a governor is to hold  
office for such term (not being less than five nor more than seven years) as may be  
specified in the instrument.
- (3) The initial instrument must provide, except where sub-paragraph (4) or (5) below  
applies—
- (a) subject to paragraph (b) below, for such a governor to hold office for such  
term as was specified in the proposals for acquisition of grant-maintained  
status or, as the case may be, the proposals for the establishment of a new  
grant-maintained school as the proposed term of office for initial governors  
of the category in question, and
  - (b) in the case of a governing body incorporated in pursuance of proposals for  
the establishment of a new grant-maintained school which name a person  
as a sponsor of the school, for any sponsor governor to hold office for such  
term as was specified as the proposed term of office for such governors in  
those proposals.
- (4) Any additional first or foundation governor appointed in pursuance of provision  
made in the instrument by virtue of section 67(2) of this Act is to hold office for  
such term (not being more than five years) as may be specified in the terms of that  
governor's appointment.
- (5) Any first governor appointed in pursuance of provision made in the instrument by  
virtue of section 64 of this Act is to hold office for such term (not being less than  
five nor more than seven years) as may be specified in the terms of his appointment.
- 7 No provision made in the instrument by virtue of paragraph 5 or 6 above or 10  
below shall be taken to prevent a governor—
- (a) from being elected or appointed for a further term, or
  - (b) from being disqualified, by virtue of paragraph 3 above or any provision  
made by virtue of paragraph 4 above, for continuing to hold office.
- 8 The instrument for a school must provide that any member of the governing body  
may at any time resign his office.
- 9 (1) The instrument for a school must provide that any foundation governor (other than  
one holding office *ex officio*) and any sponsor governor may be removed from office  
by the person or persons who appointed him.
- (2) For the purposes of this paragraph, an initial foundation governor shall be  
treated as having been appointed by the person or persons entitled to appoint  
foundation governors under provision included in the instrument in accordance with  
section 65(7)(b) of this Act.

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*Initial appointments: terms of office*

- 10 (1) The instrument for a school must, until every initial governor has ceased to hold office, make the provision required by sub-paragraphs (2) and (3) below.
- (2) In the case of a governing body incorporated under Chapter II—
- (a) an initial governor of an elected category who was a governor of that category on the governing body of the school immediately before the incorporation date shall hold office for the remainder of his term of office on the former governing body, and
  - (b) an initial governor of an elected category who was elected under section 71, or elected or nominated under section 74, of this Act to hold office as such shall hold office for a term of four years.
- (3) An initial first governor, initial foundation governor (other than a foundation governor who is a governor ex officio) or initial sponsor governor shall hold office for such term (not being less than five nor more than seven years) beginning with the incorporation date as may be specified as his proposed term of office in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (4) In the case of a governing body incorporated under Chapter IV, the instrument for a school must, until every governor of an elected category appointed before the date of implementation of the proposals has ceased to hold office, provide for any such governor to hold office for the prescribed term.

*Meetings and proceedings*

- 11 The proceedings of the governing body of a school shall not be invalidated by—
- (a) any vacancy among their number, or
  - (b) any defect in the election or appointment of any governor.
- 12 Subject to the provisions of Chapter V and any instrument of government or articles of government made under that Chapter, the governing body of a school may regulate their own procedure.
- 13 (1) The instrument for a school may make provision as to the meetings and proceedings of the governing body.
- (2) The provision that may be made in pursuance of this paragraph 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 the governing body's functions, in such circumstances as may be specified in the instrument, to committees established by that body or to any member of that body, and
  - (d) as to the procedure (including any quorum) when business is transacted by members of the governing body of a particular category.
- (3) The provision mentioned in sub-paragraph (2)(b) above may provide for a committee to include persons who are not members of the governing body.
- (4) The instrument shall make provision for an appeal committee for the purposes of paragraph 5(1) of Schedule 6 to this Act to include among its members (with full

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voting powers) a person nominated by the governing body from among persons who are eligible to be lay members.

- (5) A person is eligible to be a lay member for the purposes of sub-paragraph (4) above if—
- (a) he is a person without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity), and
  - (b) he does not have, or has not at any time had, any connection with—
    - (i) the school, or
    - (ii) any person who is a member of, or employed by, the governing body of the school,
 of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the school.

*Allowances for governors*

- 14 (1) The governing body of a school may pay to their members such travelling, subsistence or other allowances as may be determined in accordance with a scheme made by the governing body and approved by the Secretary of State.
- (2) A scheme under this paragraph may be varied or revoked by a subsequent scheme made under this paragraph.

*Seal etc.*

- 15 (1) The application of the seal of the governing body of a school must be authenticated by the signature—
- (a) of the chairman of the governing body, or
  - (b) of some other member authorised either generally or specially by the governing body to act for that purpose,
- together with the signature of any other member.
- (2) Every document purporting to be an instrument made or issued by or on behalf of the governing body of a school and—
- (a) to be duly executed under the seal of the governing body, or
  - (b) 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.

SCHEDULE 6

Sections 55 and 117.

CONTENT OF ARTICLES OF GOVERNMENT FOR GRANT-MAINTAINED SCHOOLS

*Introductory*

- 1 In this Schedule—
- “school” means a grant-maintained school, and



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“articles”, in relation to a school, means the articles of government for the school.

*Performance and delegation of functions*

- 2 (1) The articles must make provision as to the functions to be exercised in relation to the school by—
- (a) the Secretary of State,
  - (b) the funding authority,
  - (c) the governing body,
  - (d) any committee or other body established by the governing body,
  - (e) the head teacher, and
  - (f) any other persons specified in or determined under the articles.
- (2) The articles must also include provision as to the delegation of such functions by those on whom they are imposed or conferred by or under the articles.
- (3) The articles 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.

*Staff*

- 3 (1) The articles must include provision as to—
- (a) disciplinary rules and procedures applicable to members of the staff of the school, and
  - (b) procedures for giving them opportunities for seeking redress of any grievances relating to their employment.
- (2) The articles must also include provision as to arrangements—
- (a) for giving any member of the staff an opportunity of making representations as 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,
  - (b) for requiring the governing body or any persons authorised under the articles to dismiss him to have regard to any representations made by him before taking any decision to dismiss him, and
  - (c) for giving 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.

*Admission and exclusion of pupils*

- 4 The articles must—
- (a) provide for the governing body to be responsible for determining the arrangements for admitting pupils to the school, and
  - (b) include provision as to the policy to be followed in deciding admissions.
- 5 (1) The articles must include provision as to arrangements for appeals (in such circumstances as may be provided by the articles) to an appeal committee constituted

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in accordance with the instrument of government against any decision or action taken—

- (a) by the governing body, or
- (b) by any persons authorised under the articles to take any decision or action of the kind in question,

in relation to admissions of pupils to the school or the permanent exclusion of a pupil from the school.

- (2) The articles must enable the governing body to make such arrangements jointly with the governing body of one or more other grant-maintained schools.
- 6 The articles must require the governing body to publish, for each school year, particulars of—
- (a) the arrangements for admission of pupils to the school, and
  - (b) 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 5(1) above, in relation to the admission of pupils to the school.

#### *Curriculum*

- 7 (1) The articles must include provision for securing the discharge by the governing body and the head teacher of duties imposed on them under Chapter I of Part I of the Education Reform Act 1988 (the curriculum).
- (2) The articles must include provision as 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 those duties.
- (3) The articles must require 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—
- (a) which are made to them by any persons connected with the community served by the school, or
  - (b) which are made to them by the chief officer of police and are connected with his responsibilities.

#### *Annual reports*

- 8 (1) The articles must require the governing body to prepare once in every school year a report in such form and containing such information as the articles may require.
- (2) The articles must require the governing body to take such steps as are reasonably practicable to secure that—
- (a) the registered 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
  - (b) copies of the report are available for inspection (at all reasonable times and free of charge) at the school.

*Annual parents' meetings*

- 9 (1) The articles must require 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—
- (a) all parents of registered pupils at the school, and
  - (b) such other persons as the governing body may invite.
- (2) The articles must include provision as to—
- (a) the procedure to be followed and the matters to be considered at such a meeting,
  - (b) the determination of any questions arising in connection with such a meeting, and
  - (c) 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, such a meeting or any resolutions passed at it.

SCHEDULE 7

Section 59.

CATEGORIES OF GOVERNORS

**PART I**

INTRODUCTORY

*Application*

- 1 (1) This Schedule applies, in relation to the governing body of a grant-maintained school, for the purposes of Part II of this Act.
- (2) Part II of this Schedule applies for the purpose of determining who are to be the initial governors of a grant-maintained school.
- (3) Part III of this Schedule applies for the purpose of determining who are to be the governors of a grant-maintained school on and after the incorporation date.

*General interpretation*

- 2 References to an initial governor are to any person who becomes a member of the governing body on the incorporation date.
- 3 References to a governor of an elected category are to a person who is a parent or teacher governor within the meaning of the Education (No. 2) Act 1986 or this Schedule.
- 4 In relation to any proposals for acquisition of grant-maintained status in respect of a school, a person who is a governor of an elected category on the existing governing body of the school is an eligible governor of that category if—
- (a) his term of office as a governor is due to end after the date of implementation of the proposals, and
  - (b) he has notified the existing governing body that he is willing to serve on the proposed governing body and has not withdrawn that notification.

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## PART II

### INITIAL GOVERNORS

#### *Parent governors*

- 5 (1) In relation to a governing body to be incorporated under Chapter II, “parent governor” means—
- (a) a person who, immediately before the incorporation date in relation to the school, is a parent governor (within the meaning of the Education (No. 2) Act 1986) in relation to the school, or
  - (b) a person elected or appointed under section 71, or elected, appointed or nominated under section 74, of this Act to hold office as an initial parent governor on the governing body.
- (2) A person elected under section 71 of this Act to hold office as an initial parent governor must be elected by registered parents of registered pupils at the school and a person elected or appointed under that section to hold such office must himself when he is elected or appointed be such a parent.
- (3) A person elected, appointed or nominated under section 74 of this Act to hold office as an initial parent governor—
- (a) in the case of an election, must be elected by registered parents of registered pupils at the school and must himself when he is elected be such a parent, and
  - (b) in the case of an appointment or nomination, must be a registered parent of a registered pupil at the school at the time of his appointment or nomination.

#### *Teacher governors*

- 6 (1) In relation to a governing body to be incorporated under Chapter II, “teacher governor” means—
- (a) a person who, immediately before the incorporation date in relation to the school, is a teacher governor (within the meaning of the Education (No. 2) Act 1986) in relation to the school, or
  - (b) a person elected under section 71, or elected or nominated under section 74, of this Act to hold office as an initial teacher governor on the governing body.
- (2) A person elected under section 71 of this Act to hold office as an initial teacher governor must be elected by teachers at the school and must himself when he is elected be such a teacher.
- (3) A person elected or nominated under section 74 of this Act to hold office as an initial teacher governor—
- (a) in the case of an election, must be elected by teachers at the school and must himself when he is elected be such a teacher, and
  - (b) in the case of a nomination, must be a teacher at the school at the time of his nomination.

#### *First governors*

- 7 (1) In relation to a governing body to be incorporated under Chapter II, “first governor” means a person who is selected under section 73(1), or nominated under

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section 75(1), of this Act and appears to the persons selecting or nominating him to be committed to the good government and continuing viability of the school.

- (2) In relation to a governing body to be incorporated under Chapter IV, “first governor” means a person appointed by the funding authority who appears to them to be committed to the good government and continuing viability of the proposed school.

#### *Foundation governors*

- 8 (1) In relation to a governing body to be incorporated under Chapter II, “foundation governor” means a person who—
- (a) is selected under section 73(2), or nominated under section 75(2), of this Act,
  - (b) where the statement annexed under paragraph 2 of Schedule 3 to this Act to the proposals for acquisition of grant-maintained status describes the religious character of the school, is appointed for the purpose of securing that (subject to the approval or adoption under section 98 of this Act of any proposals) the religious character of the school is such as is indicated in the statement, and
  - (c) where there is a trust deed relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with the deed.
- (2) In relation to a governing body to be incorporated under Chapter IV, “foundation governor” means a person who—
- (a) is appointed by the promoters,
  - (b) where the statement annexed under paragraph 8 of Schedule 3 to this Act to the proposals for the establishment of a new grant-maintained school describes the religious character of the school, is appointed for the purpose of securing that (subject to the approval or adoption under section 98 of this Act of any proposals) the religious character of the proposed school is such as is indicated in the statement, and
  - (c) where there is a trust deed relating to the proposed school, is appointed for the purpose of securing that the proposed school is conducted in accordance with that deed.

#### *Sponsor governors*

- 9 In relation to a governing body to be incorporated under Chapter II, “sponsor governor” means a person appointed by a person named as a sponsor of the school in the proposals for acquisition of grant-maintained status.

### **PART III**

#### **GOVERNORS OTHER THAN INITIAL GOVERNORS**

#### *Parent governors*

- 10 (1) “Parent governor” means a person who—
- (a) is elected by registered parents of registered pupils at the school,
  - (b) is appointed under a provision of the instrument of government made by virtue of section 60(3) of this Act,
  - (c) is appointed by virtue of section 60(6) of this Act, or

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(d) is an initial parent governor.

(2) To qualify for such election, the person must himself when he is elected be a registered parent of a registered pupil at the school.

*Teacher governors*

- 11 (1) “Teacher governor” means a person who—
- (a) is elected by teachers at the school,
  - (b) is appointed by virtue of section 61(4) of this Act, or
  - (c) is an initial teacher governor.
- (2) To qualify for such election, the person must himself when he is elected be a teacher at the school.

*First governors*

- 12 “First governor” means—
- (a) a person appointed by the governing body who appears to them to be committed to the good government and continuing viability of the school,
  - (b) a person appointed under a provision of the instrument of government made by virtue of section 64 of this Act who appears to the person appointing him to be committed to the good government and continuing viability of the school, or
  - (c) an initial first governor.

*Foundation governors*

- 13 “Foundation governor” means a person who—
- (a) is appointed otherwise than by a local education authority or the funding authority,
  - (b) where paragraph 8(1)(b) or (2)(b) above applies, is appointed for the purpose there referred to, and
  - (c) where there is a trust deed relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with that deed.

*Sponsor governors*

- 14 “Sponsor governor” means—
- (a) a person appointed by a person named in the instrument of government as a sponsor of the school,
  - (b) while the instrument of government is the initial instrument, a person appointed by a person named as a sponsor of the school in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school, or
  - (c) an initial sponsor governor.

## SCHEDULE 8

Section 122.

### CORE GOVERNORS FOR GROUPS

#### *Introductory*

- 1 The provision made for core governors in the instrument of government for the governing body of a group must be in accordance with this Schedule.

#### *Kinds of core governor*

- 2 (1) Core governors may be either—
- (a) appointed by the governing body, or
  - (b) externally appointed.
- (2) Externally appointed core governors may be either—
- (a) appointed in respect of a particular school in the group, being a school—
    - (i) which was a voluntary school immediately before it became grant-maintained, or
    - (ii) which was established in pursuance of proposals published under section 49 of this Act, or
  - (b) where the group consists only of such schools, appointed in respect of the group otherwise than by the governing body.
- (3) A person appointed as mentioned in sub-paragraph (2)(a) above must be appointed by the persons named in the instrument of government for the group as being entitled to appoint externally appointed core governors in respect of the school.
- (4) A person appointed as mentioned in sub-paragraph (2)(a) above must be appointed—
- (a) where any statement annexed to the proposals in pursuance of which the school became a grant-maintained school described the religious character of the school, for the purpose of securing that (subject to any change in the character of the school which may be authorised by or under Part II of this Act) the religious character of the school is such as was indicated in the statement, and
  - (b) where there is a trust deed relating to the school, for the purpose of securing that the school is conducted in accordance with the deed.
- (5) Core governors, other than externally appointed core governors appointed in respect of particular schools in the group, must be appointed from among persons who appear to the person making the appointment to be committed to the good government and continuing viability of all the schools in the group.
- (6) A person who is a member of the teaching or other staff at any of the schools in the group is disqualified from holding office as a core governor, other than an externally appointed core governor.

#### *Groups consisting only of former voluntary schools or section 49 schools*

- 3 (1) This paragraph applies in the case of such a group as is mentioned in paragraph 2(2) (b) above.

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- (2) The minimum number of externally appointed core governors (referred to in this paragraph as “MN”) is one greater than the number of governors other than externally appointed core governors.
- (3) Any head teacher of a school in the group who has chosen not to be a governor shall be counted as one for the purposes of sub-paragraph (2) above.
- (4) In respect of each school in the group there must be the same number of externally appointed core governors.
- (5) The total number of externally appointed core governors in respect of schools in the group must not be less than the highest number, not exceeding MN, that is consistent with sub-paragraph (4) above.

*Other groups*

- 4 (1) This paragraph applies in the case of a group other than such a group as is mentioned in paragraph 2(2)(b) above.
- (2) If any school in the group falls within paragraph 2(2)(a) above, one externally appointed governor must be appointed in respect of that school.
- (3) The appropriate number of the core governors must (on the date or dates on which they respectively take office) be parents of registered pupils at schools in the group, and the appropriate number of the core governors must (on the date or dates on which they respectively take office) be members of the local community; but one person may satisfy both requirements.
- (4) In sub-paragraph (3) above “the appropriate number” means not less than two or, if all but one of the schools in the group fall within paragraph 2(2)(a) above, at least one.
- (5) In appointing core governors, the governing body must secure that those governors include persons appearing to the governing body to be members of the local business community (and such persons may also satisfy one or both of the requirements of sub-paragraph (3) above).
- (6) The number of core governors must be such number, not being—
  - (a) less than five, or
  - (b) subject to paragraph (a) above, more than the number of schools in the group, as will secure that they and the parent governors outnumber the other governors.
- (7) Any head teacher of a school in the group who has chosen not to be a governor shall be counted as one for the purposes of sub-paragraph (6) above.

SCHEDULE 9

Section 167.

MAKING OF ASSESSMENTS UNDER SECTION 167

*Introductory*

- 1 In this Schedule, “assessment” means an assessment of a child’s educational needs under section 167 of this Act.



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*Medical and other advice*

- 2 (1) Regulations shall make provision as to the advice which a local education authority are to seek in making assessments.
- (2) Without prejudice to the generality of sub-paragraph (1) above, the regulations shall, except in such circumstances as may be prescribed, require the authority to seek medical, psychological and educational advice and such other advice as may be prescribed.

*Manner, and timing, of assessments, etc.*

- 3 (1) Regulations may make provision—
- (a) as to the manner in which assessments are to be conducted,
  - (b) requiring the local education authority, where, after conducting an assessment under section 167 of this Act of the educational needs of a child for whom a statement is maintained under section 168 of this Act, they determine not to amend the statement, to serve on the parent of the child notice giving the prescribed information, and
  - (c) in connection with such other matters relating to the making of assessments as the Secretary of State considers appropriate.
- (2) Sub-paragraph (1)(b) above does not apply to a determination made following the service of notice under paragraph 10 of Schedule 10 to this Act of a proposal to amend the statement.
- (3) Regulations may provide that, where a local education authority are under a duty to make an assessment, the duty must, subject to prescribed exceptions, be performed within the prescribed period.
- (4) Such provision shall not relieve the authority of the duty to make an assessment which has not been performed within that period.

*Attendance at examinations*

- 4 (1) Where a local education authority propose to make an assessment, they may serve a notice on the parent of the child concerned requiring the child's attendance for examination in accordance with the provisions of the notice.
- (2) The parent of a child examined under this paragraph may be present at the examination if he so desires.
- (3) A notice under this paragraph shall—
- (a) state the purpose of the examination,
  - (b) state the time and place at which the examination will be held,
  - (c) name an officer of the authority from whom further information may be obtained,
  - (d) inform the parent that he may submit such information to the authority as he may wish, and
  - (e) inform the parent of his right to be present at the examination.

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### *Offence*

- 5 (1) Any parent who fails without reasonable excuse to comply with any requirements of a notice served on him under paragraph 4 above commits an offence if the notice relates to a child who is not over compulsory school age at the time stated in it as the time for holding the examination.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## SCHEDULE 10

Section 168.

### MAKING AND MAINTENANCE OF STATEMENTS UNDER SECTION 168

#### *Introductory*

- 1 In this Schedule, “statement” means a statement of a child’s special educational needs under section 168 of this Act.

#### *Copy of proposed statement*

- 2 Before making a statement, a local education authority shall serve on the parent of the child concerned—
- (a) a copy of the proposed statement, and
  - (b) a written notice explaining the arrangements under paragraph 3 below, the effect of paragraph 4 below and the right to appeal under section 170 of this Act and containing such other information as may be prescribed,
- but the copy of the proposed statement shall not specify any matter in pursuance of section 168(4) of this Act or any prescribed matter.

#### *Choice of school*

- 3 (1) Every local education authority shall make arrangements for enabling a parent on whom a copy of a proposed statement has been served under paragraph 2 above to express a preference as to the maintained, grant-maintained or grant-maintained special school at which he wishes education to be provided for his child and to give reasons for his preference.
- (2) Any such preference must be expressed or made within the period of fifteen days beginning—
- (a) with the date on which the written notice mentioned in paragraph 2(b) above was served on the parent, or
  - (b) if a meeting has (or meetings have) been arranged under paragraph 4(1)(b) or (2) below, with the date fixed for that meeting (or the last of those meetings).
- (3) Where a local education authority make a statement in a case where the parent of the child concerned has expressed a preference in pursuance of such arrangements as to the school at which he wishes education to be provided for his child, they shall specify the name of that school in the statement unless—
- (a) the school is unsuitable to the child’s age, ability or aptitude or to his special educational needs, or

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- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.
- (4) A local education authority shall, before specifying the name of any maintained, grant-maintained or grant-maintained special school in a statement, consult the governing body of the school and, if the school is maintained by another local education authority, that authority.

#### *Representations*

- 4 (1) A parent on whom a copy of a proposed statement has been served under paragraph 2 above may—
- (a) make representations (or further representations) to the local education authority about the content of the statement, and
  - (b) require the authority to arrange a meeting between him and an officer of the authority at which the statement can be discussed.
- (2) Where a parent, having attended a meeting arranged by a local education authority under sub-paragraph (1)(b) above, disagrees with any part of the assessment in question, he may require the authority to arrange such meeting or meetings as they consider will enable him to discuss the relevant advice with the appropriate person or persons.
- (3) In this paragraph—
- “relevant advice” means such of the advice given to the authority in connection with the assessment as they consider to be relevant to that part of the assessment with which the parent disagrees, and
  - “appropriate person” means the person who gave the relevant advice or any other person who, in the opinion of the authority, is the appropriate person to discuss it with the parent.
- (4) Any representations under sub-paragraph (1)(a) above must be made within the period of fifteen days beginning—
- (a) with the date on which the written notice mentioned in paragraph 2(b) above was served on the parent, or
  - (b) if a meeting has (or meetings have) been arranged under sub-paragraph (1)(b) or (2) above, with the date fixed for that meeting (or the last of those meetings).
- (5) A requirement under sub-paragraph (1)(b) above must be made within the period of fifteen days beginning with the date on which the written notice mentioned in paragraph 2(b) above was served on the parent.
- (6) A requirement under sub-paragraph (2) above must be made within the period of fifteen days beginning with the date fixed for the meeting arranged under sub-paragraph (1)(b) above.

#### *Making the statement*

- 5 (1) Where representations are made to a local education authority under paragraph 4(1)(a) above, the authority shall not make the statement until they have considered the representations and the period or the last of the periods allowed by paragraph 4 above for making requirements or further representations has expired.

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- (2) The statement may be in the form originally proposed (except as to the matters required to be excluded from the copy of the proposed statement) or in a form modified in the light of the representations.
- (3) Regulations may provide that, where a local education authority are under a duty (subject to compliance with the preceding requirements of this Schedule) to make a statement, the duty, or any step required to be taken for performance of the duty, must, subject to prescribed exceptions, be performed within the prescribed period.
- (4) Such provision shall not relieve the authority of the duty to make a statement, or take any step, which has not been performed or taken within that period.

*Service of statement*

- 6 Where a local education authority make a statement they shall serve a copy of the statement on the parent of the child concerned and shall give notice in writing to him—
  - (a) of his right under section 170(1) of this Act to appeal against the description in the statement of the authority’s assessment of the child’s special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact, and
  - (b) of the name of the person to whom he may apply for information and advice about the child’s special educational needs.

*Keeping, disclosure and transfer of statements*

- 7 (1) Regulations may make provision as to the keeping and disclosure of statements.
- (2) Regulations may make provision, where a local education authority become responsible for a child for whom a statement is maintained by another authority, for the transfer of the statement to them and for Part III of this Act to have effect as if the duty to maintain the transferred statement were their duty.

*Change of named school*

- 8 (1) Sub-paragraph (2) below applies where—
  - (a) the parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the local education authority to substitute for that name the name of a maintained, grant-maintained or grant-maintained special school specified by the parent, and
  - (b) the request is not made less than twelve months after—
    - (i) a request under this paragraph,
    - (ii) the service of a copy of the statement under paragraph 6 above,
    - (iii) if the statement has been amended, the date when notice of the amendment is given under paragraph 10(3)(b) below, or
    - (iv) if the parent has appealed to the Tribunal under section 170 of this Act or this paragraph, the date when the appeal is concluded,
 whichever is the later.
- (2) The local education authority shall comply with the request unless—
  - (a) the school is unsuitable to the child’s age, ability or aptitude or to his special educational needs, or

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- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.
- (3) Where the local education authority determine not to comply with the request—
  - (a) they shall give notice of that fact and of the effect of paragraph (b) below to the parent of the child, and
  - (b) the parent of the child may appeal to the Tribunal against the determination.
- (4) On the appeal the Tribunal may—
  - (a) dismiss the appeal, or
  - (b) order the local education authority to substitute for the name of the school or other institution specified in the statement the name of the school specified by the parent.
- (5) Regulations may provide that, where a local education authority are under a duty to comply with a request under this paragraph, the duty must, subject to prescribed exceptions, be performed within the prescribed period.
- (6) Such provision shall not relieve the authority of the duty to comply with such a request which has not been complied with within that period.

*Procedure for amending or ceasing to maintain a statement*

- 9 (1) A local education authority may not amend, or cease to maintain, a statement except in accordance with paragraph 10 or 11 below.
- (2) Sub-paragraph (1) above does not apply where the local education authority—
  - (a) cease to maintain a statement for a child who has ceased to be a child for whom they are responsible,
  - (b) amend a statement in pursuance of paragraph 8 above,
  - (c) are ordered to cease to maintain a statement under section 170(3)(c) of this Act, or
  - (d) amend a statement in pursuance of directions under section 197 of this Act.
- 10 (1) Before amending a statement, a local education authority shall serve on the parent of the child concerned a notice informing him—
  - (a) of their proposal, and
  - (b) of his right to make representations under sub-paragraph (2) below.
- (2) A parent on whom a notice has been served under sub-paragraph (1) above may, within the period of fifteen days beginning with the date on which the notice is served, make representations to the local education authority about their proposal.
- (3) The local education authority—
  - (a) shall consider any representations made to them under sub-paragraph (2) above, and
  - (b) on taking a decision on the proposal to which the representations relate, shall give notice in writing to the parent of their decision.
- (4) Where a local education authority make an amendment under this paragraph to the description in a statement of the authority's assessment of a child's special educational needs or to the special educational provision specified in a statement, they shall give notice in writing to the parent of his right under section 170(1) of this

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Act to appeal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.

- (5) A local education authority may only amend a statement under this paragraph within the prescribed period beginning with the service of the notice under subparagraph (1) above.
- 11 (1) A local education authority may cease to maintain a statement only if it is no longer necessary to maintain it.
- (2) Where the local education authority determine to cease to maintain a statement—
- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the parent of the child, and
  - (b) the parent of the child may appeal to the Tribunal against the determination.
- (3) On an appeal under this paragraph the Tribunal may—
- (a) dismiss the appeal, or
  - (b) order the local education authority to continue to maintain the statement in its existing form or with such amendments of the description in the statement of the authority's assessment of the child's special educational needs or the special educational provision specified in the statement, and such other consequential amendments, as the Tribunal may determine.
- (4) Except where the parent of the child appeals to the Tribunal under this paragraph, a local education authority may only cease to maintain a statement under this paragraph within the prescribed period beginning with the service of the notice under subparagraph (2) above.

## SCHEDULE 11

Section 182.

### GOVERNMENT AND CONDUCT OF GRANT-MAINTAINED SPECIAL SCHOOLS

#### *Constitution of governing body and conduct of school*

- 1 (1) For every governing body of a grant-maintained special school there shall be—
- (a) an instrument (to be known as the instrument of government) providing for the constitution of the governing body, and
  - (b) an instrument (to be known as the articles of government) in accordance with which the school is to be conducted.
- (2) The instrument and articles of government—
- (a) shall comply with any requirements imposed by or under Part III of this Act, and
  - (b) may make any provision authorised by or under that Part to be made and such other provision as may be necessary or desirable.
- (3) Subject to any express provision of the instrument or articles of government, the school shall be conducted in accordance with any trust deed relating to it.

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*Initial instruments and articles of government*

- 2
- (1) The initial instrument of government for the governing body of a grant-maintained special school, and the initial articles of government for such a school, shall be such as are prescribed.
  - (2) The initial instrument of government shall have effect as from the incorporation date.
  - (3) The initial articles of government shall have effect as from the date of implementation of the proposals made under section 183(3)(a) or 186 of this Act but, in the case of a governing body incorporated in pursuance of proposals made under section 183(3)(a) of this Act, such of the articles as may be prescribed shall have effect as from the incorporation date.

*Subsequent instruments of government*

- 3
- (1) The Secretary of State may—
    - (a) if the governing body of a grant-maintained special school submit a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
    - (b) if such a governing body submit draft modifications of an instrument made under paragraph (a) above, by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit,but shall not make a new instrument otherwise than in the terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the governing body.
  - (2) The Secretary of State may by order modify the instrument of government for the governing body of any grant-maintained special school.
  - (3) An order under sub-paragraph (2) above—
    - (a) may relate to all grant-maintained special schools, to any category of such schools specified in the order or to any such school so specified, but
    - (b) shall not be made unless the Secretary of State has consulted the governing body of each grant-maintained special school to which the order relates.
  - (4) Where, by reason of the making of a new instrument, or the modification of an instrument, under this paragraph, the number of governors of any category will (unless the required number of governors of that category resign) exceed the number provided for in the instrument, the new instrument or, as the case may be, the instrument as modified shall provide—
    - (a) for such number of governors of that category as is required to eliminate the excess to cease to hold office, and
    - (b) for the selection of those who are to cease to hold office.

*Subsequent articles of government*

- 4
- (1) The governing body of a grant-maintained special school may, with the consent of the Secretary of State—
    - (a) make new articles of government in place of the existing articles for the school, or
    - (b) modify the existing articles for the school.

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- (2) The Secretary of State may by a direction under this paragraph require the governing bodies of grant-maintained special schools or any class of such schools specified in the direction or the governing body of any particular grant-maintained special school so specified to modify their articles of government in any manner so specified.
- (3) Before giving a direction under this paragraph, the Secretary of State shall consult the governing body or (as the case may be) each governing body to which the direction applies.

*Parent governors*

- 5 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include not less than three nor more than five parent governors.
- (2) Subject to sub-paragraph (5) below, the parent governors—
  - (a) in the case of a school not established in a hospital, shall be elected by persons who are registered parents of registered pupils at the school, and
  - (b) in the case of a school so established, shall be appointed by the other members of the governing body.
- (3) To qualify for such election a person must himself when he is elected be a registered parent of a registered pupil at the school; and to qualify for appointment under sub-paragraph (2)(b) above a person must when he is appointed be such a parent or, if that is not reasonably practicable, a parent of one or more children of compulsory school age.
- (4) The instrument shall provide for each parent governor to hold office for a term of four years.
- (5) In the case of a school not established in a hospital, the instrument shall provide that 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,
 the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (6) The instrument shall require governors, in appointing a person under a provision made by virtue of sub-paragraph (5) above—
  - (a) to appoint a person who is the registered 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 with special educational needs or, if that also is not reasonably practicable, a person who is the parent of a person of any age with special educational needs.

*Teacher governors*

- 6 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include either one or two teacher governors.



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- (2) Each teacher governor shall be elected by persons who are teachers at the school.
- (3) To qualify for such election, a person must himself when he is elected be a teacher at the school.
- (4) The instrument shall provide for each teacher governor to hold office for a term of four years.

*Head teacher*

- 7 The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include (as a governor ex officio) the person who is for the time being the head teacher.

*First governors*

- 8 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include first governors.
- (2) The instrument shall provide for such number of first governors as will secure that they outnumber the other governors.
- (3) The instrument—
  - (a) shall require—
    - (i) that, where it is reasonably practicable, at least two of the first governors shall be (on the date or dates on which they respectively take office) parents of registered pupils at the school, and
    - (ii) that at least two of the first governors shall be persons with experience of education for those with special educational needs, but one person may satisfy both requirements, and
  - (b) shall require the governing body, in appointing first governors, to secure that those governors include a person appearing to them to be a member of the local business community (and such a person may also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (4) The instrument shall provide for the first governors to be appointed by the governing body from among persons who appear to the governing body to be committed to the good government and continuing viability of the school.
- (5) The instrument shall provide for first governors to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument.
- (6) A person who is a member of the teaching or other staff at the school shall be disqualified for holding office as a first governor.
- (7) References in this paragraph to governors other than first governors do not include sponsor governors.

*Power of Secretary of State to replace first governors*

- 9 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the Secretary of State to have power, where any of sub-paragraphs (2) to (4) below apply, to replace all or any of the first governors.

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- (2) This sub-paragraph applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This sub-paragraph applies where—
- (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of this Act, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
  - (d) the Secretary of State has received a statement prepared under section 210 of this Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;
- and expressions used in this sub-paragraph and in that Part have the same meaning as in that Part.
- (4) This sub-paragraph applies where in the opinion of the Secretary of State any action taken or proposed by the governing body of the school, or any failure of the governing body to act, is prejudicial to the provision of education by the school.
- (5) The instrument of government for a grant-maintained special school shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of paragraph 8(3) above shall not apply for the purposes of the appointment by virtue of this paragraph of any first governor.

*Sponsor governors*

- 10 The instrument of government for the governing body of a grant-maintained special school which provides secondary education may—
- (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the instrument.

*Additional governors*

- 11 (1) The instrument of government for the governing body of a grant-maintained special school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the governing body, during any period when any additional governors appointed by the Secretary of State by virtue of sub-paragraph (1) above are in office, to appoint a number of additional first governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.

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- (3) Any additional first governor appointed in pursuance of such a provision is to hold office for such term (not being more than five years) as may be specified in the terms of his appointment.

*Powers*

- 12 Section 68 of this Act shall have effect in relation to the governing body of a grant-maintained special school with such modifications as may be prescribed.

*Transitory provisions*

- 13 Regulations may modify the provisions of paragraphs 5 to 12 above in relation to—
- (a) the initial instrument of government, or
  - (b) governors holding office, elected or appointed, before the date of implementation of the proposals in pursuance of which the governing body are constituted.

*General application of enactments*

- 14 In relation to any governing body incorporated in pursuance of proposals under section 183(3)(a) or 186 of this Act or any school conducted or formerly conducted by such a governing body, regulations may provide for any provision of—
- (a) Schedules 5 and 6 to this Act,
  - (b) Chapters VI, VII, VIII and X of Part II of this Act, and
  - (c) any other enactment (not contained in Part II of this Act) relating to grant-maintained schools or maintained special schools (or schools including such schools),
- to have effect with or without modification.

SCHEDULE 12

Section 218.

EDUCATION ASSOCIATIONS

*Supplementary powers*

- 1 (1) Subject to sub-paragraph (2) below and to the articles of government of any school they conduct, an education association may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular—
- (a) acquiring and disposing of land and other property,
  - (b) entering into contracts,
  - (c) investing sums not immediately required for the purpose of the discharge of their functions, and
  - (d) accepting gifts of money, land or other property.
- (2) An education association shall not borrow money except money lent under section 92 of this Act.
- (3) The power to dispose of land mentioned in sub-paragraph (1)(a) above—

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- (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.

#### *Tenure of members*

- 2 (1) A person shall hold and vacate office as a member of an education association in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A person may at any time by notice in writing to the Secretary of State resign his office as a member of an education association.
- 3 If the Secretary of State is satisfied that a member of an education association—
  - (a) has been absent from meetings of the association for a period longer than six consecutive months without the permission of the association, or
  - (b) is unable or unfit to discharge the functions of a member,the Secretary of State may by notice in writing to that member remove him from office and thereupon the office shall become vacant.

#### *Salaries, allowances and pensions*

- 4 (1) The Secretary of State may—
  - (a) pay to the members of an education association such salaries or fees, and such travelling, subsistence or other allowances, as he may determine, and
  - (b) may, as regards any member of the association in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.
- (2) If a person ceases to be a member of an education association and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may make to that person a payment of such amount as the Secretary of State may determine.
- (3) A determination of the Secretary of State under this paragraph requires the approval of the Treasury.

#### *Committees*

- 5 (1) An education association may establish a committee for any purpose.
- (2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the association.
- (3) Such a committee may include persons who are not members of the association.
- (4) The association shall keep under review the structure of committees established by them under this paragraph and the scope of each such committee's activities.

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### *Delegation of functions*

- 6 An education association may authorise the chairman or any committee established by them under paragraph 5 above to exercise such of their functions as they may determine.

### *Proceedings*

- 7 The validity of any proceedings of an education association or of any of their committees shall not be affected by a vacancy amongst the members or by any defect in the appointment of a member.
- 8 Subject to the preceding provisions of this Schedule, an education association may regulate their own procedure and that of any of their committees.

### *Application of seal and proof of instruments*

- 9 The application of the seal of an education association shall be authenticated by the signature—
- (a) of the chairman or of some other person authorised either generally or specifically by the association to act for that purpose, and
  - (b) of one other member.
- 10 Every document purporting to be an instrument made or issued by or on behalf of an education association and to be duly executed under their seal, or to be signed or executed by a person authorised by the association 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.

## SCHEDULE 13

Sections 238 and 239.

### INCORPORATED GOVERNING BODIES FOR COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

### *Property, rights and liabilities*

- 1 On the incorporation under section 238(1) of this Act of a governing body (“the new governing body”) constituted under an instrument of government for two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986—
- (a) all land and other property which, immediately before the date of incorporation, was property of the governing body of any of those schools used or held for the purposes of the school in question, and
  - (b) all rights and liabilities of the governing body of any of those schools subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body.
- 2 On the incorporation under section 238(1) of this Act of a governing body (“the new governing body”) for a school which, immediately before the incorporation date, was conducted by a temporary governing body constituted under arrangements made under section 12 of that Act—

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- (a) all land and other property which, immediately before the date of incorporation, was property of the temporary governing body used or held for the purposes of the school, and
  - (b) all rights and liabilities of the temporary governing body subsisting immediately before that date which were acquired or incurred for those purposes,
- shall be transferred to and, by virtue of this Act, vest in the new governing body.

#### *Contracts of employment*

- 3 Without prejudice to the generality of the provisions of section 238 of this Act and paragraphs 1 and 2 above, where those provisions effect a transfer of rights and liabilities under a contract of employment—
- (a) the contract shall have effect from the date of incorporation as if originally made between the employee and the incorporated governing body, and
  - (b) without prejudice to paragraph (a) above, 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 the incorporated governing body,
- but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by those provisions.

#### *School premises*

- 4 (1) Section 22 of the Education Act 1944 (powers of local education authority as to use and care of premises of voluntary schools) is amended as follows.
- (2) At the end of subsection (3) (premises to be under the control of the governing body, subject to any directions of the local education authority etc.) there is added “except to the extent provided by any transfer of control agreement into which they may enter under subsection (3A) of this section.”
- (3) After that subsection there is inserted—
- “(3A) Subject to subsection (3B) below the governing body of any voluntary school shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises; and—
- (a) they may do so notwithstanding that the trust deed for the school would, apart from this subsection, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
  - (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would obtain if control were being exercised by the governing body.
- (3B) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the

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local education authority's consent to the agreement in so far as it makes such provision.

(3C) A transfer of control agreement shall be taken to include the following terms, namely—

- (a) that the governing body shall notify the controlling body of—
  - (i) any directions given to the governing body by virtue of subsection (1) or (2) of this section; and
  - (ii) any determination made by the foundation governors under subsection (1) of this section;
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
  - (i) shall do so in accordance with any directions or determinations from time to time notified to that body in pursuance of paragraph (a) of this subsection; and
  - (ii) shall have regard to the desirability of the premises being made available for community use; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
  - (i) the use of the specified premises at those times shall be under the control of the governing body; and
  - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

notwithstanding that their use at those times would, apart from this paragraph, be under the control of the controlling body.

(3D) Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, paragraph (c) of subsection (3C) above shall not have effect in relation to that agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.

(3E) Where the governing body enter into a transfer of control agreement, they shall so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of subsection (3C)(a) of this section.”

(4) For subsection (5) (which provides that, where the trust deed provides for any person other than the governing body being entitled to control the occupation and use of the school premises, the section shall have effect with the substitution for references to the governors of references to that person) there is substituted—

“(5) Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that, disregarding

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any transfer of control agreement, the use of those premises is or would be under the control of such a person, this section shall have effect in relation to the school with the substitution for references to the governing body of references to that person.”

(5) After that subsection there is inserted—

“(6) In this section—

“community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;

“the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;

“school hours” means any time during a school session or during a break between sessions on the same day;

“school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with section 21 of the Education (No. 2) Act 1986; and

“transfer of control agreement” means an agreement which, subject to subsection (3C) of this section, provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.”

(6) In subsections (1) to (3) and (4), for “the governors” in each place there is substituted “the governing body”.

5 For section 42 of the Education (No. 2) Act 1986 (which requires the articles of government of every county or maintained special school to provide for the use of the school premises outside school hours to be under the control of the governing body, subject to directions given by the local education authority) there is substituted—

**“42 Control of use of premises outside school hours.**

(1) The articles of government for every county and maintained special school shall provide—

(a) for the use of the school premises outside school hours to be under the control of the governing body except to the extent provided by any transfer of control agreement into which they may enter by virtue of paragraph (c) below;

(b) for the governing body in exercising control of the use of the school premises outside school hours—

(i) to comply with any directions given to them by the local education authority by virtue of this sub-paragraph; and

(ii) to have regard to the desirability of the premises being made available for community use;

(c) for the governing body to have power to enter into a transfer of control agreement if their purpose, or one of their purposes, in doing



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- so is to promote community use of the school premises outside school hours; and
- (d) for the governing body so far as reasonably practicable to secure, where they enter into a transfer of control agreement, that the controlling body exercises control in accordance with any directions given to the governing body by virtue of paragraph (b)(i) above.
- (2) A transfer of control agreement shall be taken to include the following terms, namely—
- (a) that the governing body shall notify the controlling body of any directions given to the governing body by virtue of subsection (1)(b)(i) above;
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
- (i) shall do so in accordance with any directions from time to time notified to that body in pursuance of paragraph (a) above; and
- (ii) shall have regard to the desirability of the premises being made available for community use outside school hours; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
- (i) the use of the specified premises at those times shall be under the control of the governing body, and
- (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,
- notwithstanding that their use at those times would, apart from this paragraph, be under the control of the controlling body.
- (3) Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, paragraph (c) of subsection (2) above shall not have effect in relation to that agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (4) In this section—
- “community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;
- “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;

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“school hours” means any time during a school session or during a break between sessions on the same day, and “outside school hours” shall be construed accordingly;

“school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with section 21 of this Act; and

“transfer of control agreement” means an agreement which, subject to subsection (2) above, provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times outside school hours as may be so specified, of such body or person as may be so specified.”

*School premises: pre-commencement agreements*

- 6 (1) This paragraph applies in any case where—
- (a) at any time before the appointed day, the governing body of a voluntary school entered, or purported to enter, into a transfer of control agreement (the “relevant agreement”),
  - (b) the school is a voluntary school on that day, and
  - (c) on that day the procedure for acquisition of grant-maintained status is not for the time being pending (as defined in section 40 of this Act) or, if it is, proposals for acquisition of grant-maintained status (within the meaning of Part II of this Act) are not approved.
- (2) Any question arising as to the validity of the relevant agreement at any time on or after the appointed day shall be determined as if, at the time when the governing body entered, or purported to enter, into the agreement (and at all times thereafter), section 22 of the Education Act 1944 had had effect with the amendments made by paragraph 4 above.
- (3) As from the appointed day, section 22 of that Act shall have effect in relation to the relevant agreement with the amendments made by paragraph 4 above, except that subsection (3D) shall so have effect with the substitution for the words “if, at the time of entering into it, the governors were of the opinion that” of the words “if and to the extent that”.
- (4) In their application with respect to any time before the coming into force of paragraph 6 of Schedule 1 to the Education Act 1980 (which removed certain references to the managers or foundation managers) the provisions of this paragraph (other than this sub-paragraph) and the amendments made by paragraph 4 above shall have effect—
- (a) as if any reference to the governing body of a school included a reference to the managers of the school, and
  - (b) as if any reference to the foundation governors of the school included a reference to the foundation managers of the school.
- (5) In its application with respect to any time before the coming into force of section 21 of the Education (No. 2) Act 1986, as originally enacted, the subsection (6) inserted into section 22 of the Education Act 1944 by paragraph 4 above shall have effect with the omission of the definition of “school session”, which expression shall accordingly be given the meaning that it would have had at that time.

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- (6) Nothing in this Schedule shall be taken to imply that the relevant agreement would not have been valid at any time apart from this paragraph.
- (7) Expressions used in this paragraph and in section 22 of the Education Act 1944, as amended by paragraph 4 above, have the same meaning in this paragraph as they have in that section as so amended.
- 7 (1) This paragraph applies in any case where—
- (a) at any time before the appointed day, the governing body of a county or maintained special school entered, or purported to enter, into a transfer of control agreement (the “relevant agreement”),
  - (b) the school is a county school or, as the case may be, a maintained special school on the appointed day, and
  - (c) on that day the procedure for acquisition of grant-maintained status is not for the time being pending (as defined in section 40 of this Act) or, if it is, proposals for acquisition of grant-maintained status (within the meaning of Part II of this Act) are not approved.
- (2) Any question arising as to the validity of the relevant agreement at any time on or after the appointed day shall be determined as if, at the time when the governing body entered, or purported to enter, into the agreement (and at all times thereafter)—
- (a) the Education (No. 2) Act 1986 had had effect with the substitution, for section 42, of the section 42 set out in paragraph 5 above, and
  - (b) the articles of government for the school had included the provision required by the section 42 so substituted.
- (3) As from the appointed day, section 42 of that Act, as substituted by paragraph 5 above, shall have effect in relation to the relevant agreement, except that subsection (3) shall so have effect with the substitution for the words “if, at the time of entering into it, the governing body were of the opinion that” of the words “if and to the extent that”.
- (4) Nothing in this Schedule shall be taken to imply that the relevant agreement would not have been valid at any time apart from this paragraph.
- (5) Expressions used in this paragraph and in section 42 of that Act, as substituted by paragraph 5 above, have the same meaning in this paragraph as they have in that section as so substituted.

#### *Dissolution and discontinuance*

- 8 (1) A governing body incorporated under section 238 of this Act are dissolved by virtue of this paragraph—
- (a) if the school they conduct is discontinued,
  - (b) where the school becomes a grant-maintained school or grant-maintained special school, when the local education authority cease to maintain the school, or
  - (c) if a new governing body of the school are constituted under the Education (No. 2) Act 1986.
- (2) Where such a governing body conduct two or more schools, sub-paragraph (1) above applies when, in relation to each of the schools, paragraph (a), (b) or (c) is satisfied.
- 9 (1) Where such a governing body are to be dissolved by reason of—

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- (a) the discontinuance of the county, voluntary or maintained special school which they conduct, or
    - (b) in the case of a governing body conducting two or more such schools, the discontinuance of each such school conducted by them,

they shall have power to transfer any land or other property of theirs which is used or held for the purposes of the school to any person who provides education.
  - (2) Where such a governing body are so dissolved—
    - (a) any such land or property for which no provision has been made under sub-paragraph (1) above for transfer, and
    - (b) all rights and liabilities of the governing body subsisting immediately before the date of dissolution which were acquired or incurred for the purposes of the school in question,

shall be transferred to and, by virtue of this Act, vest in the local education authority.
  - (3) Sub-paragraphs (1) and (2) above do not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.
- 10 (1) This paragraph applies where such a governing body dissolved by virtue of paragraph 8 above are the governing body of two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986.
- (2) Where none of the schools in the group are discontinued, then in the case of each school formerly a member of the group—
    - (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
    - (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.
  - (3) An order made by virtue of sub-paragraph (2) above may provide that—
    - (a) the whole or any part of any such land and other property which was property of the governing body used or held for the purposes of the schools in the group, and
    - (b) any such rights and liabilities of the governing body which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body of the school.
  - (4) Where not all of the schools in the group are discontinued, then in the case of each school formerly a member of the group which is not discontinued—
    - (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
    - (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,

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shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.

- (5) An order made by virtue of sub-paragraph (4) above may provide that—
- (a) the whole or any part of any such land and other property which was property of the governing body used or held for the purposes of any school which is to be discontinued or the schools in the group, and
  - (b) any such rights and liabilities of the governing body which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body of the school.

- (6) Sub-paragraph (5) above does not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.

- 11 (1) This paragraph applies in relation to the governing body of two or more schools grouped in pursuance of a resolution under section 9 of the Education (No. 2) Act 1986.

- (2) Where one or more schools conducted by the governing body are discontinued but the governing body are not dissolved by reason of the discontinuance, then in the case of each school formerly a member of the group which is discontinued—

- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
- (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be held by the governing body for the purposes of the schools in the group.

- (3) Sub-paragraph (2) above does not apply to any land or other property held by the governing body on trust for the purposes of a voluntary school; and any such land or other property so held shall be transferred to and, by virtue of this Act, vest in the trustees of the school.

- (4) Where, in the case of one or more schools conducted by the governing body, new governing bodies are constituted under the Education (No. 2) Act 1986 to conduct those schools but the governing body are not dissolved by reason of the constitution of such bodies, then in the case of each school formerly a member of the group—

- (a) all land and other property which, immediately before the date of dissolution, was property of the governing body used or held for the purposes of that school, and
- (b) all rights and liabilities of the governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this Act, vest in the new governing body of the school in accordance with the order providing for the instrument of government for the school.

- 12 For the purposes of this Schedule, references to the discontinuance of a school are—

- (a) to its discontinuance under section 14 of the Education Act 1944 (discontinuance by governors of voluntary schools), or

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- (b) to the local education authority ceasing to maintain it in accordance with proposals under section 12 of the Education Act 1980 (discontinuance of county or voluntary schools) or section 183 of this Act.

*General*

- 13 (1) Where personal data are transferred under section 238(3) of this Act to a governing body incorporated by virtue of that section—
- (a) any entry made in respect of the governing body constituted immediately before the appointed day as a data user in the register maintained under section 4 of the Data Protection Act 1984, or
- (b) any application for registration as a data user made by that body under section 6 of that Act,
- shall have effect as if it were made in respect of or, as the case may be, by the governing body so incorporated.
- (2) Expressions used in sub-paragraph (1) above and in that Act shall have the same meaning in that sub-paragraph as in that Act.
- 14 Where a transfer under section 238 of this Act or this Schedule relates to registered land, it shall be the duty of the transferor to execute any such instrument under the Land Registration Acts 1925 to 1986, to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.
- 15 Paragraphs 6 to 8 of Schedule 10 to the Education Reform Act 1988 (construction of agreements) shall apply in relation to transfers effected by section 238 of this Act or this Schedule as they apply to transfers to which that Schedule applies.

SCHEDULE 14

Section 244.

SCHOOL CURRICULUM AND ASSESSMENT AUTHORITY

*Status*

- 1 The Authority shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and their property shall not be regarded as property of, or property held on behalf of, the Crown.

*Powers*

- 2 (1) The Authority may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of their functions.
- (2) In particular, the Authority may—
- (a) acquire or dispose of land or other property,
- (b) enter into contracts,
- (c) form bodies corporate or subscribe for shares or stock,
- (d) invest any sums not immediately required for the purpose of carrying out their functions,

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- (e) accept gifts of money, land or other property, and
  - (f) borrow money.
- 3 (1) The Authority may also give to any person or body (whether or not in the United Kingdom) such assistance, other than financial assistance, as they may determine.
- (2) The Authority may give assistance under this paragraph on such terms, including terms as to payment, as they may determine.
- (3) The consent of the Secretary of State shall be required for the exercise of any power conferred by this paragraph.

*Chief officer*

- 4 (1) The Authority shall have a chief officer.
- (2) The first chief officer shall be appointed by the Secretary of State on such terms and conditions as he thinks fit.
- (3) Each subsequent chief officer shall be appointed by the Authority with the approval of the Secretary of State on such terms and conditions as the Authority may with the approval of the Secretary of State determine.

*Chairman and chief officer: division of functions*

- 5 (1) The Secretary of State may, on appointing a person to be the chairman of the Authority, confer on him such additional functions in relation to the Authority as may be specified in the appointment.
- (2) The functions for the time being conferred by virtue of appointment as chief officer of the Authority shall not include any function for the time being conferred under sub-paragraph (1) above on the chairman of the Authority.

*Tenure of office*

- 6 (1) A person shall hold and vacate office as a member or as chairman or deputy chairman of the Authority in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A person may at any time by notice in writing to the Secretary of State resign his office as a member or as chairman or deputy chairman of the Authority.
- 7 The Secretary of State may, if satisfied that a member of the Authority—
- (a) has been absent from meetings of the Authority for a continuous period of more than six months without the permission of the Authority, or
  - (b) is unable or unfit to discharge the functions of a member,
- remove him from office by giving him notice in writing and thereupon the office shall become vacant.
- 8 If the chairman or deputy chairman of the Authority ceases to be a member of the Authority, he shall also cease to be chairman or deputy chairman.

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*Payments to members*

- 9 (1) The Authority shall pay to their members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine.
- (2) The Authority shall, as regards any member in whose case the Secretary of State may so determine, pay, or make provision for the payment of, such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.
- (3) If a person ceases to be a member of the Authority and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Authority to make to that person a payment of such amount as the Secretary of State may determine.
- (4) A determination or direction of the Secretary of State under this paragraph requires the approval of the Treasury.

*Staff*

- 10 Subject to the approval of the Secretary of State given with the consent of the Treasury, the Authority—
- (a) may appoint such number of employees on such terms and conditions as they think fit, and
- (b) shall pay to their employees such remuneration and allowances as they may determine.
- 11 (1) Employment with the Authority shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) at the end of the list of Other Bodies there is inserted—
- “School Curriculum and Assessment Authority.”
- (2) The Authority shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to this paragraph in the sums payable under the Superannuation Act 1972 out of money provided by Parliament.
- (3) Where an employee of the Authority is, by reference to that employment, a participant in a scheme under section 1 of the Superannuation Act 1972 and is also a member of the Authority, the Treasury may determine that his service as such a member shall be treated for the purposes of the scheme as service as an employee of the Authority (whether or not any benefits are payable to or in respect of him by virtue of paragraph 9 above).

*Finance*

- 12 (1) The Secretary of State may make grants to the Authority of such amount as he thinks fit in respect of expenses incurred or to be incurred by the Authority in carrying out their functions.
- (2) The payment of grant under this paragraph shall be subject to the fulfilment of such conditions as the Secretary of State may determine.



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- (3) The Secretary of State may also impose such requirements as he thinks fit in connection with the payment of grant under this paragraph.

#### *Committees*

- 13 (1) The Authority may establish a committee for any purpose.
- (2) The Authority shall determine the number of a committee's members and the terms on which they are to hold and vacate office.
- (3) A committee may include persons who are not members of the Authority.
- (4) The Authority shall keep under review the structure of committees established under this paragraph and the scope of each committee's activities.

#### *Delegation*

- 14 The Authority may authorise the chairman, the deputy chairman, the chief officer or any committee established under paragraph 13 above to carry out such of the Authority's functions as the Authority may determine.

#### *Proceedings*

- 15 (1) A representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Authority or of any committee of the Authority.
- (2) The Authority shall provide the Secretary of State with such copies of any documents distributed to members of the Authority or of any such committee as he may require.
- 16 (1) Her Majesty's Chief Inspector of Schools in England, or a representative of his, shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Authority or of any committee of the Authority.
- (2) The Authority shall provide Her Majesty's Chief Inspector of Schools in England with such copies of any documents distributed to members of the Authority or of any such committee as he may require.
- 17 (1) The chairman of the Curriculum Council for Wales, or a representative of his, shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Authority or of any committee of the Authority.
- (2) The Authority shall provide the chairman of the Curriculum Council for Wales with such copies of any documents distributed to members of the Authority or of any such committee as he may require.
- 18 The validity of proceedings of the Authority shall not be affected by a vacancy among the members or any defect in the appointment of a member.
- 19 Subject to the preceding provisions of this Schedule, the Authority may regulate their own procedure and that of any of their committees.

#### *Accounts*

- 20 (1) The Authority shall—
- (a) keep proper accounts and proper records in relation to the accounts,

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- (b) prepare in respect of each financial year of the Authority a statement of accounts, and
  - (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it,
  - (b) the manner in which the information contained in it is to be presented, or
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph, “financial year” means the period beginning with the date on which the Authority is established and ending with the next following 31st of March, and each successive period of twelve months.

#### *Documents*

- 21 The application of the seal of the Authority shall be authenticated by the signature—
- (a) of the chairman or some other person authorised either generally or specially by the Authority to act for that purpose, and
  - (b) of one other member.
- 22 Any document purporting to be an instrument made or issued by or on behalf of the Authority and to be duly executed by a person authorised by the Authority 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.

### SCHEDULE 15

Section 253.

#### AMENDMENTS CONSEQUENTIAL ON SECTION 253

##### *The Public Records Act 1958 (c. 51)*

- 1 In Schedule 1 to the Public Records Act 1958, in Part II of the Table at the end of paragraph 3, for “Curriculum Council for Wales” there is substituted “Curriculum and Assessment Authority for Wales”.

##### *The Superannuation Act 1972 (c. 11)*

- 2 In Schedule 1 to the Superannuation Act 1972, in the list of Other Bodies, for “Curriculum Council for Wales” there is substituted “Curriculum and Assessment Authority for Wales”.

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*The House of Commons Disqualification Act 1975 (c. 24)*

- 3 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) for the entry relating to the Curriculum Council for Wales there is substituted—

“Any member of the Curriculum and Assessment Authority for Wales established under section 14 of the Education Reform Act 1988 in receipt of remuneration.”

*The Education Reform Act 1988 (c. 40)*

- 4 (1) The Education Reform Act 1988 is amended as follows.
- (2) In section 11(13), for “the Curriculum Council for Wales” there is substituted “the Curriculum and Assessment Authority for Wales”.
- (3) In section 14, for “Council”, in each place where it occurs, there is substituted “Authority”.
- (4) In section 16(6), for “the Curriculum Council for Wales” there is substituted “the Curriculum and Assessment Authority for Wales”.
- (5) Section 21 is amended as follows—
- (a) in subsection (2), for “the Curriculum Council for Wales” there is substituted “the Curriculum and Assessment Authority for Wales”; and
- (b) for “the Council”, in each place where it occurs, there is substituted “the Authority”.
- (6) In Schedule 2, for “Council”, in each place where it occurs, there is substituted “Authority”.

*The Charities Act 1993 (c. 10)*

- 5 In Schedule 2 to the Charities Act 1993 (exempt charities) for paragraph (f) there is substituted—
- “(f) the Curriculum and Assessment Authority for Wales;”.

*The Education Act 1993 (c. 35)*

- 6 (1) The Education Act 1993 is amended as follows.
- (2) In Schedule 14, in paragraph 17, for “the Curriculum Council for Wales”, in both places where it occurs, there is substituted “the Curriculum and Assessment Authority for Wales”.
- (3) In Schedule 19, in paragraph 43(1), for “the Curriculum Council for Wales” there is substituted “the Curriculum and Assessment Authority for Wales”.

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## SCHEDULE 16

Section 266

## SCHOOL ADMISSION APPEALS

- 1 Part I of Schedule 2 to the Education Act 1980 (constitution of committees hearing appeals against admission decisions) is amended as follows.

*Schools maintained by local education authorities*

- 2 (1) For paragraph 1(2) there is substituted—
- “(2) An appeal committee shall consist of—
- (a) one person nominated by the authority from among persons who are eligible to be lay members; and
  - (b) two, four or six other members nominated by the authority from among persons appointed by the authority under this paragraph.
- (2A) The authority shall not nominate a person under sub-paragraph (2)(a) above if he could be appointed by them under sub-paragraph (3)(a) below or is employed by them.
- (2B) Sufficient persons may be appointed by the authority to enable two or more committees to sit at the same time.”
- (2) In paragraph 1(3) after “appointed” there is inserted “by the authority”.
- (3) In paragraph 1(4) “by more than one” is omitted.
- (4) For paragraph 1(5) there is substituted—
- “(5) A person who is a member of the authority or employed by the authority shall not be chairman of an appeal committee.”

*Aided and special agreement schools*

- 3 (1) For paragraph 2(2) there is substituted—
- “(2) An appeal committee shall consist of—
- (a) one person nominated by the governors from among persons who are eligible to be lay members; and
  - (b) two, four or six other members nominated by the governors from among persons appointed by them under this paragraph.
- (2A) The governors shall not nominate under sub-paragraph (2)(a) above a person who falls within sub-paragraph (3)(a) or (b) below or is employed by the local education authority by which the school is maintained.
- (2B) Sufficient persons may be appointed by the governors to enable two or more committees to sit at the same time.”
- (2) In paragraph 2(3) after “appointed” there is inserted “by the governors”.
- (3) For paragraph 2(4) there is substituted—
- “(4) In an appeal committee—

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- (a) three members shall be nominated from among those mentioned in sub-paragraph (3)(b) above, in the case of a committee consisting of seven members;
- (b) two members shall be so nominated, in the case of a committee consisting of five members; and
- (c) one member shall be so nominated, in the case of a committee consisting of three members.”

*Lay members*

4 After paragraph 4 there is inserted—

*“Lay members*

- 4A (1) A person is eligible to be a lay member for the purposes of paragraphs 1(2)(a) and 2(2)(a) above if—
- (a) he is a person without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity), and
  - (b) he satisfies the conditions specified in sub-paragraph (2) below.
- (2) Those conditions are—
- (a) in the case of a person to be nominated as a lay member for the purposes of paragraph 1(2)(a) above, that he does not have, or has not at any time had, any connection with—
    - (i) the local education authority in question, or
    - (ii) any person who is a member of, or employed by, that authority,of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority, and
  - (b) in the case of a person to be nominated as a lay member for the purposes of paragraph 2(2)(a) above, that he does not have, or has not at any time had, any connection with—
    - (i) the school in question, or
    - (ii) any person who is a member of, or employed by, the governing body of that school,of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the school.”

SCHEDULE 17

Sections 287 and 288

UNIFORM STATUTORY TRUSTS FOR EDUCATIONAL ENDOWMENTS

- 1 The trustees may, after payment of any expenses incurred in connection with the administration of the trust, apply the capital and income of the relevant trust assets for any of the following purposes—
- (a) in or towards the purchase of a site for, or the erection, improvement or enlargement of, the premises of any relevant school in the area,

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- (b) for the maintenance of any relevant school in the area,
  - (c) in or towards the purchase of a site for, or the erection, improvement or enlargement of, the premises of a teacher's house for use in connection with any relevant school in the area, and
  - (d) for the maintenance of a teacher's house for use in connection with any relevant school in the area.
- 2 The trustees may also, after payment of any expenses incurred in connection with the administration of the trust, apply the income of the relevant trust assets for any of the following purposes—
- (a) in or towards the provision of advice, guidance and resources (including materials) in connection with any matter related to the management of, or education provided at, any relevant school in the area,
  - (b) the provision of services for the carrying out of any inspection of any relevant school in the area required by the Education (Schools) Act 1992, and
  - (c) to defray the cost of employing or engaging staff in connection with—
    - (i) the application of income of the relevant trust assets for either of the purposes referred to in sub-paragraphs (a) and (b) above, or
    - (ii) the application of capital or income of the relevant trust assets for any of the purposes referred to in paragraph 1 above.

## SCHEDULE 18

Section 298

### PUPIL REFERRAL UNITS

#### *General adaptations of enactments*

- 1 References in any enactment to the proprietor or governing body of a school shall be read, in relation to a pupil referral unit, as references to the local education authority.
- 2 References in any enactment to the head teacher of a school shall be read, in relation to a pupil referral unit, as references to the teacher in charge of the unit (whether known as the head teacher or not).

#### *Modifications of enactments by regulations*

- 3 Regulations may provide for any enactments relating to schools maintained by local education authorities (or schools including such schools)—
- (a) to apply in relation to pupil referral units,
  - (b) to apply in relation to such units with such modifications as may be prescribed, or
  - (c) not to apply in relation to such units.

#### *Registration*

- 4 (1) A person who is registered as a pupil at a school other than a pupil referral unit shall not, by reason only of being registered also as a pupil at such a unit, cease for the purposes of the Education Acts to be treated as a registered pupil at that school.

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- (2) In this Schedule, “registered” means shown in the register kept under section 80 of the Education Act 1944.

*Application of Local Government Act 1986*

- 5 A pupil referral unit is a maintained school for the purposes of section 2A(1)(b) of the Local Government Act 1986 (prohibition on promoting homosexuality).

*Curriculum*

- 6 (1) Section 17 of the Education (No. 2) Act 1986 (duty of LEA to state policy) applies in relation to pupil referral units as it applies in relation to county schools.
- (2) In relation to every pupil referral unit, the Secretary of State, the local education authority and the teacher in charge shall exercise their functions with a view to securing that the curriculum for the unit satisfies the requirements of section 1 of the Education Reform Act 1988 (balanced and broadly based curriculum) and of any other enactment which applies to the curriculum for pupil referral units.
- (3) Each local education authority shall, with the approval of the Secretary of State, make arrangements for the consideration and disposal of any complaint to the effect that the authority, or the teacher in charge of any pupil referral unit—
- (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 any enactment referred to in sub-paragraph (2) above, or
  - (b) have failed to discharge any such duty.
- (4) The Secretary of State shall not entertain under section 68 or 99 of the Education Act 1944 any complaint in respect of any local education authority, being a complaint—
- (a) for which arrangements are required to be made under sub-paragraph (3) above, or
  - (b) that a local education authority have failed to exercise their powers to secure compliance by the teacher in charge of a pupil referral unit with any such duty as is referred to in that sub-paragraph,
- unless a complaint in respect of the local education authority or, as the case may be, the teacher in charge of the unit has been made in respect of the same matter and disposed of in accordance with arrangements under that sub-paragraph.

*Discipline*

- 7 The teacher in charge of a pupil referral unit may on disciplinary grounds exclude a pupil from the unit.

*Political indoctrination, political issues and sex education*

- 8 Sections 44 to 46 of the Education (No. 2) Act 1986 (political indoctrination, treatment of political issues and sex education) apply in relation to pupil referral units as they apply in relation to county schools.

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### *Charges*

- 9 (1) Sections 106 to 111 and 118 of the Education Reform Act 1988 (charges) apply in relation to pupil referral units as if the references to governing bodies were omitted.
- (2) Section 111(2)(b) of that Act shall have effect in relation to a pupil provided with board and lodging at a unit as if after “that” there were inserted “for the time being”.

### *Application of Environmental Protection Act 1990*

- 10 A pupil referral unit is an educational institution for the purposes of Part IV of the Environmental Protection Act 1990 (litter).

### *Information*

- 11 Each local education authority shall make available, on such occasions, and in such form and manner, as may be prescribed, to registered parents of registered pupils at any pupil referral unit such information about the unit as may be prescribed.

### *Disapplication of Schedule 2*

- 12 Schedule 2 to this Act does not apply in relation to pupil referral units or the provision for pupils at such units of board and lodging (whether at units or elsewhere).

### *Children with special educational needs*

- 13 Sections 161(1) to (4), 162 and 168(5)(b) of this Act, and paragraph 3(4) of Schedule 10 to this Act, apply in relation to pupil referral units as they apply in relation to maintained schools.

### *School attendance orders*

- 14 (1) Where a pupil referral unit is named in a school attendance order—
- (a) the local education authority shall inform the teacher in charge of the unit, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the unit, that authority shall admit the child to the unit;
- but paragraph (b) above does not affect any power to exclude from a unit a pupil who is already a registered pupil there.
- (2) The reference to a school in section 193(4) of this Act does not include a pupil referral unit.
- (3) A local education authority shall, before deciding to specify a particular pupil referral unit in a notice under section 193(2) of this Act where another local education authority are responsible for determining the arrangements for the admission of pupils to the unit, consult that authority and, if they decide to specify the unit in the notice, they shall serve notice in writing of their decision on that authority.
- (4) Section 194(7) and (8) of this Act applies where a notice is served on a local education authority under sub-paragraph (3) above as it applies where notice is served under subsection (6) of that section.



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- (5) The parent of a child in respect of whom a school attendance order is in force may not under section 195 of this Act request the local education authority to amend the order by substituting a pupil referral unit for the school named in the order.
- (6) Where a child is a registered pupil at both a pupil referral unit and at a school other than a unit, the references in section 199 of this Act to the school at which he is a registered pupil shall be read as references to the unit.

## SCHEDULE 19

Section 307.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Children and Young Persons Act 1933 (c. 12)*

- 1 Section 10 of the Children and Young Persons Act 1933 (vagrants preventing children from receiving education) is omitted.
- 2 In section 30(1)(a) of that Act (interpretation) for the words from “for the purposes” to the end of paragraph (a) there is substituted “over compulsory school age (construed in accordance with section 277 of the Education Act 1993)”.

#### *The Education Act 1944 (c. 31)*

- 3 The Education Act 1944 is amended as follows.
- 4 Section 1(1) (general duty of Secretary of State) is omitted.
- 5 In section 6(1) (local education authorities) the words from “Subject” to “Act” are omitted.
- 6 Section 9(5) (definition of special school) is omitted.
- 7 In section 15 (voluntary schools) for “the maintenance contribution payable by the Minister under this Act”, in subsections (2) and (5), there is substituted “grants under section 281 of the Education Act 1993”.
- 8 In section 16(1) (transfer of schools to new sites, etc), “any county school or” and the words following “the new site” are omitted.
- 9 In section 26(4)(a) (special provisions as to religious education in county schools) after “particular” there is inserted “religion or”.
- 10 Section 35 (compulsory school age) is omitted.
- 11 Sections 37 (school attendance orders), 39 (duty of parents to secure regular attendance of registered pupils) and 40 (enforcement of school attendance) are omitted.
- 12 In section 50 (provision of board and lodging otherwise than at school)—  
    (a) in subsection (1) “by them” is omitted, and  
    (b) in subsection (2) after “with respect to the” there is inserted “religion or”.
- 13 In section 52 (recovery of cost of board and lodging otherwise than at school), in paragraph (a) of the proviso to subsection (1), “by the authority” is omitted.
- 14 In section 54 (power to ensure cleanliness)—

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- (a) in subsection (1) after “by them” there is inserted “and grant-maintained schools within their area”,
  - (b) in subsection (6) after “authority” there is inserted “or at a grant-maintained school”, and
  - (c) in subsection (7)—
    - (i) after “by the authority” there is inserted “or at a grant-maintained school within the area of the authority”, and
    - (ii) for “this Act” there is substituted “Part IV of the Education Act 1993”.
- 15 In section 55 (transport), at end of subsection (3) there is added “and to any wish of his parent for him to be provided with education at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres”.
- 16 Section 56 (power to provide education otherwise than at school) is omitted.
- 17 In section 58 (adaptation of enactments relating to employment of children) “for the purposes of this Act” is omitted.
- 18 In section 63(2) (exemption from local Acts and byelaws of buildings approved by the Secretary of State) after “plans for” there is inserted “or particulars in respect of”.
- 19 That subsection shall have effect as if the reference to plans approved by the Secretary of State included particulars given in pursuance of section 151(2)(b) of this Act.
- 20 In section 76 (pupils to be educated in accordance with the wishes of their parents) —
- (a) for “this Act” there is substituted “the Education Acts 1944 to 1993”, and
  - (b) before “and local education authorities” there is inserted “the funding authorities”.
- 21 In section 80(1) (registration of pupils at schools) after “to the Secretary of State” there is inserted “to the funding authorities”.
- 22 Sections 102 and 103 (contributions and grants by Secretary of State to aided and special agreement schools) are omitted.
- 23 In section 105 (power of Secretary of State to make loans to aided and special agreement schools in respect of initial expenditure)—
- (a) in subsection (2)—
    - (i) in paragraph (c)(i) after “premises” there is inserted “or on a transfer of the school to a new site” and for “a maintenance contribution” there is substituted “grants under section 281 of the Education Act 1993”,
    - (ii) in paragraph (c)(iii) for the words from “which” to the end there is substituted “being expenses in respect of which grants under section 281 of the Education Act 1993 may be paid”,
    - (iii) paragraph (d) is omitted, and
    - (iv) in the words following that paragraph, “maintenance contribution” is omitted and for “either of the last two foregoing sections” there is substituted “section 281 of the Education Act 1993”, and
  - (b) in subsection (3) after “representative of any” there is inserted “religion or”.

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- 24 In section 114 (interpretation)—
- (a) in subsection (1)—
    - (i) for the definition of “compulsory school age” there is substituted—

““Compulsory school age” shall be construed in accordance with section 277 of the Education Act 1993”,
    - (ii) in the definition of “registered pupil”, for “pupil registered as such” there is substituted “person registered as a pupil”,
    - (iii) in the definition of “secondary school”, “primary or” is omitted, and
    - (iv) in the definition of “special educational needs” and “special educational provision”, for “1 of the Education Act 1981” there is substituted “156 of the Education Act 1993”, and
  - (b) for subsection (1E)(b) there is substituted—

“(b) sections 25 to 27, 29, 37, 60, 63 and 65 of the Education Act 1993, paragraph 9 of Schedule 6 to that Act and Schedule 7 to that Act”.
- 25 In section 116 (saving as to persons of unsound mind and persons detained by order of a court) after “this Act” there is inserted “or by or under the Education Act 1993”.
- 26 In the First Schedule (local administration) Part I is omitted.
- 27 In the Fifth Schedule (procedure for preparing and bringing into operation an agreed syllabus of religious education)—
- (a) in paragraph 2(a) for “and other religious denominations” there is substituted “denominations and other religions and denominations of such religions”,
  - (b) in the proviso to paragraph 2 for “to represent other religious denominations” there is substituted “under sub-paragraph (a) above”,
  - (c) in paragraph 3 before “denomination”, in each place, there is inserted “religion”, and
  - (d) in paragraph 4—
    - (i) for “religious” there is substituted “religion”, and
    - (ii) for the words from “vacancy occurs” to the end there is substituted “person resigns or is withdrawn from the committee the authority shall appoint someone in his place in the same manner as that in which they made the original appointment”.
- 28 In the Eighth Schedule (amendment of enactments), the entry relating to section 10 of the Children and Young Persons Act 1933 is omitted.

*The Education Act 1946 (c. 50)*

- 29 In the First Schedule to the Education Act 1946 (maintenance of voluntary schools), in paragraph 2, for “section one hundred and three of the principal Act” there is substituted “section 281 of the Education Act 1993”.

*The Education (Miscellaneous Provisions) Act 1948 (c. 40)*

- 30 Section 9 of the Education (Miscellaneous Provisions) Act 1948 (presumption of age in proceedings to enforce attendance at school) is omitted.

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*Status: This is the original version (as it was originally enacted).*

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*The Education (Miscellaneous Provisions) Act 1953 (c. 33)*

- 31 In section 6(2) of the Education (Miscellaneous Provisions) Act 1953 (payment of tuition and boarding fees for pupils at non-maintained schools)—
- (a) for “the Education Act 1981” there is substituted “Part III of the Education Act 1993”,
  - (b) for “not maintained by them or another local education authority” (in both places) there is substituted “which is not a maintained school”,
  - (c) for “schools maintained by them and schools maintained by other local education authorities” there is substituted “maintained schools”,
  - (d) for “provided by them” in paragraphs (a)(ii) and (b) there is substituted “provided”,
  - (e) paragraph (a)(iii) is omitted, and
  - (f) at the end there is added—

“and in this subsection “maintained school” means any school maintained by a local education authority and any grant-maintained or grant-maintained special school, and paragraph (b) does not apply where section 190(2) of the Education Act 1993 applies”.

- 32 Section 10 of that Act (amendment of procedure for making school attendance orders) is omitted.

*The Agriculture (Safety, Health and Welfare Provisions) Act 1956 (c. 49)*

- 33 In section 24(1) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956 (interpretation) for “for the purposes of the Education Act 1944” there is substituted “(construed in accordance with section 277 of the Education Act 1993)”.

*The Public Records Act 1958 (c. 51)*

- 34 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part II of the Table at the end of paragraph 3 (organisations whose records are public records) there are inserted at the appropriate places—
- “Curriculum Council for Wales”,
  - “Funding Agency for Schools”,
  - “School Curriculum and Assessment Authority”, and
  - “Schools Funding Council for Wales”.

*The Church Schools (Assistance by Church Commissioners) Measure 1958 (1958 No. 2)*

- 35 In section 2(1) of the Church Schools (Assistance by Church Commissioners) Measure 1958 (interpretation) for “1953” there is substituted “1993”.

*The Factories Act 1961 (c. 34)*

- 36 In section 176(1) of the Factories Act 1961 (general interpretation) for the definition of “child” there is substituted—

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““child” means any person who is not over compulsory school age (construed in accordance with section 277 of the Education Act 1993) or over school age for the purposes of the Education (Scotland) Act 1946”.

*The Education Act 1962 (c. 12)*

- 37 Section 9 of the Education Act 1962 (school leaving dates in England and Wales) is omitted.

*The Education Act 1964 (c. 82)*

- 38 (1) Section 1 of the Education Act 1964 (middle schools) is amended as follows.
- (2) In subsection (1), after “1980” there is inserted “proposals with respect to a grant-maintained school or proposed grant-maintained school are submitted to the Secretary of State under sections 48, 49, 96 or 97 of the Education Act 1993 or proposals with respect to a county school are published under section 272 of that Act”.
- (3) In subsection (3), for “1962” there is substituted “1993”.

*The Education Act 1967 (c. 3)*

- 39 Section 1 of the Education Act 1967 (extended powers of Secretary of State to make contributions etc.) is omitted.

*The Criminal Justice Act 1967 (c. 80)*

- 40 In Schedule 3 to the Criminal Justice Act 1967 (increase of fines), the entries relating to section 10 of the Children and Young Persons Act 1933 and section 40(1) of the Education Act 1944 are omitted.

*The Education Act 1968 (c. 17)*

- 41 In section 1(1) of the Education Act 1968 (changes to character, size or situation of schools) for “1967” there is substituted “1993”.

*The Children and Young Persons Act 1969 (c. 54)*

- 42 Paragraphs 2 and 13 of Schedule 5 to the Children and Young Persons Act 1969 (minor and consequential amendments of enactments) are omitted.

*The Local Authorities (Goods and Services) Act 1970 (c. 39)*

- 43 (1) Subject to sub-paragraph (2) below, in the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) “public body” shall include the School Curriculum and Assessment Authority and the Curriculum Council for Wales.
- (2) The provision in sub-paragraph (1) above shall have effect as if made by an order under section 1(5) of that Act (power to provide that a person shall be a public body for the purposes of the Act).

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*The Local Authority Social Services Act 1970 (c. 42)*

44 At the end of Schedule 1 to the Local Authority Social Services Act 1970 (enactment conferring functions assigned to social service committee) there is added—

“Education Act 1993.

Help for local education authority in exercising functions under Part III of the Act”.

Section 166.

*The Education (Handicapped Children) Act 1970 (c. 52)*

45 In section 1(1)(b) of the Education (Handicapped Children) Act 1970 (mentally handicapped children) for the words from “for purposes” to the end of paragraph (b) there is substituted “of compulsory school age (construed in accordance with section 277 of the Education Act 1993)”.

*The Superannuation Act 1972 (c. 11)*

46 Employment with a funding authority shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of Other Bodies there is inserted—

“The Funding Agency for Schools.

The Schools Funding Council for Wales.”

47 A funding authority shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to paragraph 46 above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

48 Where an employee of a funding authority ceases to be such an employee and becomes a member of the authority and was by reference to his employment by the authority a participant in a scheme under section 1 of that Act, the Treasury may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the authority (whether or not any benefits are payable to him by virtue of paragraph 5 of Schedule 1 to this Act).

*The Local Government Act 1972 (c. 70)*

49 Section 101(9)(a) of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) is omitted.

50 In section 104(2)(a) of that Act (teachers not disqualified for being members of committees) for “for the purposes of the enactments relating to education” there is substituted “wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as local education authorities”.

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*The Education Act 1973 (c. 16)*

- 51 Section 1(2)(b) of the Education Act 1973 (general provisions as to educational trusts) is omitted.
- 52 In section 2 of that Act (special powers as to certain trusts for religious education)—
- (a) in subsection (1)(a) after “particular” there is inserted “religion or”,
  - (b) in subsection (1A)(b)—
    - (i) before “denomination” there is inserted “religion or”, and
    - (ii) for “85 or 86 of the Education Reform Act 1988” there is substituted “139 or 140 of the Education Act 1993”,
  - (c) in subsections (1C), (2) and (4) before “denomination”, in each place where it occurs, there is inserted “religion or”, and
  - (d) in subsection (9) for “1971” there is substituted “1993”.

*The Matrimonial Causes Act 1973 (c. 18)*

- 53 In section 29(2)(a) of the Matrimonial Causes Act 1973 (age limit on making certain orders in favour of children) for the words from “(that is to say” to “that section)” there is substituted “(construed in accordance with section 277 of the Education Act 1993)”.

*The Education (Work Experience) Act 1973 (c. 23)*

- 54 In section 1(4) of the Education (Work Experience) Act 1973 (interpretation)—
- (a) for “1973” there is substituted “1993”, and
  - (b) for the words from “by virtue of” to the end there is substituted “he would cease to be of compulsory school age”.

*The House of Commons Disqualification Act 1975 (c. 24)*

- 55 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices)—
- (a) there are inserted at the appropriate places—
    - “Any member of an education association in receipt of remuneration”,
    - “Any member of the Funding Agency for Schools in receipt of remuneration”, and
    - “Any member of the Schools Funding Council for Wales in receipt of remuneration”, and
  - (b) for the entry relating to the National Curriculum Council there is substituted—
    - “Any member of the School Curriculum and Assessment Authority established under section 244 of the Education Act 1993 in receipt of remuneration”.

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*The Sex Discrimination Act 1975 (c. 65)*

56 In section 23(1) of the Sex Discrimination Act 1975 (other discrimination by local education authorities) for “1981” there is substituted “1993”.

57 After section 23B of that Act (discrimination by Scottish Further and Higher Education Funding Councils) there is inserted—

**“23C Discrimination by Funding Agency for Schools or Schools Funding Council for Wales.**

It is unlawful for the Funding Agency for Schools or the Schools Funding Council for Wales in carrying out their functions by or under the Education Acts 1944 to 1993 to do any act which constitutes sex discrimination.”

58 In section 24(2)(d) of that Act (designated establishments) after “school age” there is inserted “(construed in accordance with section 277 of the Education Act 1993)”.

59 In section 25 of that Act (general duty in public sector of education)—

(a) in subsections (2) and (4) for “and 23” there is substituted “23, 23A and 23C”, and

(b) after subsection (6)(d) there is added—

“(e) the Funding Agency for Schools and the Schools Funding Council for Wales.”.

60 In section 82(1) of that Act (general interpretation) the definition of “upper limit of compulsory school age” is omitted.

61 In paragraph 1 of Schedule 2 to that Act (transitional exemption orders for educational admissions) for “89 of the Education Reform Act 1988” there is substituted “96 of the Education Act 1993”.

62 (1) Where under section 183(2)(b) of this Act a local education authority serve notice of proposals for a maintained special school to cease to be an establishment which admits pupils of one sex only, the responsible body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and the Secretary of State may make such an order accordingly.

(2) Where under section 96 of this Act the governing body of a grant-maintained school publish proposals for the school to cease to be an establishment which admits pupils of one sex only and Part II of this Act has effect with the modifications in section 101(2) to (7) of this Act in relation to the proposals, then—

(a) paragraph 1 of Schedule 2 to the 1975 Act shall not apply unless the proposals require the approval of the Secretary of State, and

(b) in any other case, the governing body shall be treated as having applied for the making by the funding authority of a transitional exemption order, and the funding authority may make such an order accordingly.

(3) Where under section 97 of this Act the funding authority submit to the Secretary of State a copy of proposals for a school to cease to be an establishment which admits pupils of one sex only, then—

(a) if the proposals require the approval of the Secretary of State, the governing body shall be treated as having applied for the making by him of a transitional exemption order, and

(b) in any other case, the governing body shall be treated as having applied for the making by the funding authority of such an order,



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and the Secretary of State or, as the case may be, the funding authority may make such an order accordingly.

- (4) Where proposals made by the Secretary of State under section 234 of this Act—
- (a) are for a school to cease to be an establishment which admits pupils of one sex only, and
  - (b) have effect as mentioned in section 236(3) of this Act,

the responsible body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and the Secretary of State may make such an order accordingly.

- (5) Where—
- (a) by reason of section 273(4)(b) of this Act any proposals for a school to cease to be an establishment which admits pupils of one sex only may not be determined until the Secretary of State has made his determination with respect to any proposals for acquisition of grant-maintained status, and
  - (b) the proposals for acquisition of grant-maintained status and the proposals for the school to cease to be such an establishment are approved (with or without modification),

paragraph 1 of Schedule 2 to the 1975 Act shall not apply but the new governing body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and he may make such an order accordingly.

- (6) In this paragraph—
- “responsible body” has the same meaning as in section 22 of the 1975 Act,
  - “the 1975 Act” means the Sex Discrimination Act 1975, and
  - “transitional exemption order” has the same meaning as in section 27 of the 1975 Act,

and references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school’s admissions arrangements as is mentioned in section 27(1) of the 1975 Act (single-sex establishments turning co-educational).

*The Education (School-leaving Dates) Act 1976 (c. 5)*

63 The Education (School-leaving Dates) Act 1976 is repealed.

*The Race Relations Act 1976 (c. 74)*

64 In section 18(1) of the Race Relations Act 1976 (other discrimination by local education authorities) for “1981” there is substituted “1993”.

65 After section 18B of that Act (discrimination by Scottish Further and Higher Education Funding Councils) there is inserted—

**“18C Discrimination by Funding Agency for Schools or Schools Funding Council for Wales.**

It is unlawful for the Funding Agency for Schools or the Schools Funding Council for Wales in carrying out their functions by or under the Education Acts 1944 to 1993 to do any act which constitutes racial discrimination.”

66 In section 19 of that Act (general duty in public sector of education)—

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- (a) in subsections (2) and (4) for “and 18” there is substituted “18, 18A and 18C”, and
- (b) after subsection (6)(d) there is added—
  - “(e) the Funding Agency for Schools and the Schools Funding Council for Wales.”.

67 In section 78(1) of that Act (general interpretation) the definition of “upper limit of compulsory school age” is omitted.

*The Criminal Law Act 1977 (c. 45)*

68 In Schedule 6 to the Criminal Law Act 1977 (increase of fines for certain summary offences) the entry relating to the Education Act 1944 is omitted.

*The National Health Service Act 1977 (c. 49)*

69 In section 28A(2) of the National Health Service Act 1977 (power to make payments to local education authority) for “1981” there is substituted “1993”.

70 In paragraph 1(a)(ii) of Schedule 1 to that Act (medical and dental inspection and treatment of pupils etc.) for the words from “special arrangements” to “1981” there is substituted “section 163 or 298 of the Education Act 1993”.

*The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)*

71 In section 5(2)(a) of the Domestic Proceedings and Magistrates' Courts Act 1978 (age limit on making certain orders in favour of children) for the words from “(that is to say” to “that section)” there is substituted “(construed in accordance with section 277 of the Education Act 1993)”.

*The Education Act 1980 (c. 20)*

72 The Education Act 1980 is amended as follows.

73 In section 7 (appeals against admission decisions) after “functions” there is inserted “(other than a decision leading to or embodied in a direction under section 13 of the Education Act 1993)”.

74 In section 9(2) (nursery schools and special schools) for “7 of the Education Act 1981” there is substituted “168 of the Education Act 1993”.

75 Sections 10 (determination of school to be named in school attendance order) and 11 (amendment of school attendance order) are omitted.

76 In section 13(1) (establishment and alteration of voluntary schools) “after consultation with the authority” is omitted.

77 In section 14 (approval of school premises)—

- (a) in subsection (1)(c), after “school” there is inserted “or the transfer of a school to a new site”, and
- (b) subsection (4) is omitted.

78 In section 16 (provisions supplementary to sections 12 to 15), after subsection (1) there is inserted—

“(1A) Subsection (1) above does not apply to the transfer of a school to a new site—

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- (a) if the transfer is authorised by an order under section 16(1) of the Education Act 1944,
- (b) if at the time of transfer the school is intended to return to the existing site within three years, or
- (c) if in the case of a county school the new site is in the same area and the local education authority are satisfied that it is expedient that the school should be transferred to the new site either because it is not reasonably practicable to make to the existing premises of the school the alterations necessary for securing that they conform to the prescribed standards or in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relating to housing or to town and country planning.”

79 In section 22 (school meals) after subsection (4) there is inserted—

“(4A) Where the governing body of a school which has a delegated budget within the meaning of Chapter III of Part I of the Education Reform Act 1988 provide pupils or other persons who receive education at the school with milk, meals or other refreshment, they—

- (a) must charge for anything so provided,
- (b) must charge every pupil the same price for the same quantity of the same item, and
- (c) must charge every person other than a pupil the same price for the same quantity of the same item.”

80 Paragraph 10 of Schedule 1 (school government: consequential amendments) is omitted.

81 In paragraph 1(3) and (4) of Schedule 2 (constitution of appeal committees) “or of any education committee of the authority”, in each place where it occurs, is omitted.

*The Education Act 1981 (c. 60)*

82 The Education Act 1981 is repealed except for sections 2(1), 11(1) and 17, the definition of “principal Act” in section 20(1), sections 20(2) and (3) and 21, paragraph 1 of Schedule 2, paragraphs 3, 4, 6, 7, 8(1) and (2)(b) and (d), 11, 12 and 14 of Schedule 3 and Schedule 4.

*The Representation of the People Act 1983 (c. 2)*

83 In paragraph 22(1)(i) of Schedule 1 to the Representation of the People Act 1983 (use of schools for the purpose of taking a poll) after “authority” there is inserted “a grant-maintained school”.

*The Value Added Tax Act 1983 (c. 55)*

84 In Note (2) of Group 6 of Schedule 6 to the Value Added Tax Act 1983 (meaning of “school” for purposes of determining whether provision of education is an exempt supply) for “1981” there is substituted “1993”.

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*The Registered Homes Act 1984 (c. 23)*

- 85 In section 1(6) of the Registered Homes Act 1984 (requirement of registration: independent schools) for “11(3)(a) of the Education Act 1981” there is substituted “189(1) of the Education Act 1993”.

*The Building Act 1984 (c. 55)*

- 86 In section 4(1)(a) of the Building Act 1984 (exemption of educational buildings etc.) for the words from “plans” to the end there is substituted—
- “(i) plans that have been approved by the Secretary of State,
  - (ii) particulars submitted and approved under section 14 of the Education Act 1980 or under regulations made under section 218(7) of the Education Reform Act 1988,
  - (iii) particulars approved or adopted under section 51, 99 or 185 of the Education Act 1993, or
  - (iv) particulars given in a direction under section 151 of that Act.”

*The Disabled Persons (Services, Consultation and Representation) Act 1986(c. 33)*

- 87 In section 5 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (disabled persons leaving special education)—
- (a) in subsection (1)(a) after “1981” there is inserted “or 168 of the Education Act 1993”,
  - (b) in subsection (8)—
    - (i) for “4 of Schedule 1 to the Education Act 1981” there is substituted “7 of Schedule 10 to the Education Act 1993”, and
    - (ii) for “made under section 7” there is substituted “maintained under section 168”, and
  - (c) in subsection (9) for “the Education Act 1981” there is substituted “Part III of the Education Act 1993”.

*The Education (No. 2) Act 1986 (c. 61)*

- 88 The Education (No. 2) Act 1986 is amended as follows.
- 89 In section 5(4)(b) (appointment of parent governors by governing body) the words after “by the authority” are omitted.
- 90 In section 9(5) (grouping)—
- (a) at the end of paragraph (a) there is inserted “or
    - (iv) section 183 of the Education Act 1993 (establishment, etc. of maintained special schools)”,
 and “or” at the end of sub-paragraph (ii) is omitted, and
  - (b) paragraph (b) is omitted,
- and that section shall have effect as if the transfer of a school to a new site in pursuance of section 16(1A)(c) of the Education Act 1980 were an alteration of a kind mentioned in subsection (5) of that section.
- 91 In section 11 (reviews)—

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- (a) after subsection (2)(a)(iii) there is inserted “or  
(iv) section 183 of the Education Act 1993  
(establishment, etc. of maintained special  
schools)”,  
and “or” at the end of sub-paragraph (ii) is omitted,
  - (b) subsection (2)(b) is omitted,
  - (c) in subsection (2)(c) “or (b)” is omitted,
  - (d) in subsections (3) and (6), for “(b)” there is substituted “(iv)”, and
  - (e) subsection (7) is omitted.
- 92 In section 12 (temporary governing bodies)—
- (a) in subsection (1)(a) after “the 1980 Act” there is inserted “or section 184 of the Education Act 1993”,
  - (b) in subsection (2)(a)(i) after “school” there is inserted “or a new school which is specially organised to make special educational provision for pupils with special educational needs”,
  - (c) subsection (3) is omitted, and
  - (d) in subsection (4) after “published” there is inserted “or, as the case may be, notice of the proposal has been duly served”.
- 93 In section 13 (effect of change of circumstances), in subsection (2), “or (b)” is omitted.
- 94 In section 18 (review of curriculum), for subsection (7)(b) there is substituted—
- “(b) the implementation of any proposal under section 183 of the Education Act 1993 (establishment, alteration and discontinuance of maintained special schools)”.
- 95 In section 22 (discipline), in paragraph (a)(ii) after “behaviour” there is inserted “and respect for others”.
- 96 In section 23 (exclusions) “or indefinite” in paragraphs (a)(ii) and (b) is omitted.
- 97 In section 24 (reinstatement in county etc. schools)—
- (a) in paragraph (a)(i), for “after consulting the governing body” there is substituted “(after giving the governing body an opportunity to express their views and after considering any views expressed within the prescribed period by the governing body)”,
  - (b) in paragraph (b), for “an exclusion which is for an indefinite period or is permanent” there is substituted “permanent exclusion”,
  - (c) paragraphs (c) and (e) are omitted, and
  - (d) in paragraph (f), “or (c)” is omitted.
- 98 In section 25 (reinstatement in aided etc. schools)—
- (a) in paragraph (c), for “consult the governing body” there is substituted “give the governing body an opportunity to express their views and to consider any views expressed within the prescribed period by the governing body”, and
  - (b) paragraphs (d), (e) and (f) are omitted.
- 99 Regulations may provide that, where a local education authority or governing body of a school are required under section 24 or 25 of that Act to take any step, the duty must, subject to prescribed exceptions, be performed within the prescribed period;

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- but such provision shall not relieve the authority or body of the duty to take any step which has not been taken within that period.
- 100 In section 38 (duties of local education authority and governing body in relation to appointment of staff)—
- (a) in subsection (4)(c) the words after “to the post” are omitted, and
  - (b) in subsection (6)(b) “or (4)(c)(ii)” is omitted,
- and any provision made by virtue of subsection (4)(c)(ii) of that section in the articles of government for any county, controlled, special agreement or maintained special school shall cease to have effect.
- 101 In section 47 (abolition of corporal punishment)—
- (a) in subsection (5)(b), for the words from “primary” (where first mentioned) to “full-time” there is substituted “education”, and
  - (b) at the end of subsection (6)(b) there is added “or by the funding authority or a local education authority under paragraph 9 or 10 of Schedule 2 to the Education Act 1993”.
- 102 In section 50 (grants for teacher training, etc.)—
- (a) in subsection (2)(b) for “capacity as an employee of the kind in question” there is substituted “employment”, and
  - (b) the following are omitted—
    - (i) in subsection (3)(c) “local education authorities, and other”, and
    - (ii) subsection (4).
- 103 In section 51 (recoupment)—
- (a) in subsection (8) for the words from the beginning to “references to” there is substituted “The reference in subsection (2) above to further education does not include a reference to”,
  - (b) subsection (9) is omitted,
  - (c) in subsection (10) for “pupil” there is substituted “person”,
  - (d) in subsection (11) for “this section” there is substituted “the regulations”, and
  - (e) subsection (13) is omitted.
- 104 In section 52 (recoupment: cross-border provisions) for subsection (2) there is substituted—
- “(2) Section 51(3) and (4) of this Act applies for the purposes of this section as it applies for the purposes of that”.
- 105 In section 54(12) (change of status of controlled school to aided school) paragraph (f) is omitted.
- 106 In section 58(1) (travelling and subsistence allowances for governors), in paragraph (a) for “county, voluntary and maintained special schools” there is substituted “any county, voluntary or maintained special school which does not have a delegated budget (construed in accordance with section 33(6)(b) of the Education Reform Act 1988)”.
- 107 In section 63 (orders and regulations)—
- (a) in subsection (3) for “or different circumstances” there is substituted “circumstances or areas”, and
  - (b) subsection (4) is omitted.

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- 108 In section 65(1) (interpretation) the definition of “the 1981 Act” is omitted.
- 109 Schedule 2 (new schools) is amended as follows—
- (a) in paragraph 2(1)(b) for “section 4” there is substituted “sections 4 and 4A”,
  - (b) in paragraph 2(2)—
    - (i) after “4” there is inserted “4A”, and
    - (ii) paragraph (b) is omitted,
  - (c) in paragraph 5(2), for “12(3) or (4)” there is substituted “12(4)” and in paragraph (b) the words after “proposal” are omitted,
  - (d) in paragraph 7(7) the words after “by the authority” are omitted, and
  - (e) in paragraph 9 after “Any person” there is inserted “other than a person who is to be named in the instrument of government as a sponsor of the school”.

*The Local Government Act 1988 (c. 9)*

- 110 Section 1(1)(j) of the Local Government Act 1988 (defined authorities) is omitted.
- 111 In Schedule 2 to that Act the words from “A joint education committee” to “1944” are omitted.

*The Education Reform Act 1988 (c. 40)*

- 112 The Education Reform Act 1988 is amended as follows.
- 113 In section 3(3) (foundation subjects and key stages)—
- (a) for “and (5)” there is substituted “(5) and (5A)”, and
  - (b) in paragraph (d) for the words from “majority”, in the second place in which it occurs, to the end there is substituted “expiry of the school year in which the majority of pupils in his class cease to be of compulsory school age”.
- 114 In section 8(2) (religious education required in the basic curriculum) for “84 to 86 of this Act” there is substituted “138 to 140 of the Education Act 1993”.
- 115 In section 9(7) (parent of boarder at maintained school requesting access to particular worship or religious education) after “particular” there is inserted “religion or”.
- 116 In section 11 (standing advisory councils on religious education)—
- (a) in subsection (4)(a) for “and other religious denominations” there is substituted “denominations and other religions and denominations of such religions”, and
  - (b) at the end of that section there is added—
    - “(13) The council shall send a copy of each report published by them under subsection (9) above—
      - (a) in the case of a council for an area in England, to the School Curriculum and Assessment Authority, and
      - (b) in the case of a council for an area in Wales, to the Curriculum Council for Wales.”
- 117 In section 13 (advisory councils: supplementary provisions) in subsections (1), (2) and (7)(b) before “denomination”, in each place, there is inserted “religion”.
- 118 Section 14 (establishment of curriculum and assessment councils) is amended as follows—

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- (a) in subsection (2) for “Each” there is substituted “The”,
  - (b) in subsection (3) for the words from “Curriculum Council, that” to “shall be” there is substituted “Council, in relation to Wales, shall be, so far as relevant for the purposes of advancing education”, and at the end of paragraph (c) there is inserted—
    - “(ca) to advise the Secretary of State on such other matters connected with the provision of education in maintained schools in Wales, or in non-maintained special schools there, as the Secretary of State may specify by order;”,
  - (c) in subsection (5) for “a” there is substituted “the”,
  - (d) in subsection (6) for “each” there is substituted “the”, and
  - (e) in subsection (7) for “each” there is substituted “the”.
- 119 In section 16 (development work and experiments)—
- (a) in subsection (3)(a) and (b) for “Curriculum Council” there is substituted “appropriate curriculum authority”, and
  - (b) at the end there is added—
    - “(6) In subsection (3) above, “appropriate curriculum authority” means, in relation to England, the School Curriculum and Assessment Authority and, in relation to Wales, the Curriculum Council for Wales.”.
- 120 In section 18 (pupils with statements of special educational needs) for “7 of the 1981 Act” there is substituted “168 of the Education Act 1993”.
- 121 In section 19 (temporary exceptions for individual pupils)—
- (a) in subsection (4)(c)(ii) for “7 of the 1981 Act” there is substituted “168 of the Education Act 1993”, and
  - (b) in subsection (6) for “5 of the 1981 Act” there is substituted “167 of the Education Act 1993”.
- 122 (1) Section 20 (procedure for making certain orders: England) is amended as follows.
- (2) In subsection (2), for “National Curriculum Council” there is substituted “School Curriculum and Assessment Authority”.
  - (3) For “the Council”, in each place where it occurs, there is substituted “the Authority”.
- 123 In section 22(3) (provision of information) for “section 58(5)(j) of this Act” there is substituted “paragraph 8 of Schedule 6 to the Education Act 1993”.
- 124 In section 24(2) (extension of certain provisions) for “14(4) of this Act” there is substituted “245(1) of the Education Act 1993”.
- 125 In section 36 (delegation to governing body of management of school’s budget share)—
- (a) in subsection (4) after “of this Act” there is inserted “and section 1(4A) of the Education (Grants and Awards) Act 1984 (grants for education support and training)”, and
  - (b) after subsection (5A) there is inserted—
    - “(5B) Any such governing body shall not exercise their powers under subsection (5) above to pay to governors any allowances other than travelling and subsistence allowances.”



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- 126 Chapter IV of Part I is omitted except for section 100(2) and (4) (provision of benefits and services for pupils by local education authorities).
- 127 In section 106 (prohibition of charges, etc. in maintained schools) for “57(5) of this Act” there is substituted, in each place, “ 68(8) of the Education Act 1993”.
- 128 In section 110(1) (charges and remissions policies) for “57(5) of this Act” there is substituted “ 68(8) of the Education Act 1993”.
- 129 In section 111 (charges for board and lodging at boarding schools)—
- (a) in subsection (1), for the words from “at the expense of” to the end there is substituted “there shall be payable in respect of the board and lodging by the parent of the pupil concerned (in the case of a school maintained by a local education authority) to the authority and (in the case of a grant-maintained school) to the governing body charges not exceeding the cost to the authority or governing body of providing the board and lodging”,
  - (b) in subsection (2), for paragraph (b) and the words following it there is substituted—
    - “(b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,

then, where the school is maintained by the local education authority for his area, that authority shall remit the whole of the charges payable under this section and, in any other case, that authority shall pay the whole of the charges payable under this section to the authority which maintain the school”,
  - (c) for subsection (3)(b) there is substituted—
    - “(b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him”,
  - (d) subsection (4) is omitted, and
  - (e) in subsection (5)—
    - (i) for “a local education authority” there is substituted “the local education authority for the pupil’s area”, and
    - (ii) in paragraph (b), after “payable” there is inserted “to another local education authority or” and “provided under arrangements made by the authority” is omitted.
- 130 In section 119(2) (interpretation of Part I) “52(4), 89 or 92” is omitted.
- 131 In section 163(1) (new education authorities for inner London) for “1988” there is substituted “1993”.
- 132 In section 166(5) (responsibility for schools) for “1988” there is substituted “1993”.
- 133 In section 197(6) (Education Assets Board to comply with directions) for “1992” there is substituted “1993”.
- 134 In section 198 (transfers under Parts I and II)—
- (a) in subsection (1)—
    - (i) “74” is omitted, and

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- (ii) after “of this Act” there is inserted “or section 38 of the Education Act 1993”, and
- (b) in subsection (4) after “under this Act” in each place there is inserted “or under the Education Act 1993”.
- 135 Section 200 (grant-maintained schools: school property) is omitted.
- 136 In section 218(7) (school etc. regulations) after “approval” there is inserted “or, in such cases as may be prescribed, the approval of the funding authority”.
- 137 In section 230 (stamp duty) the following are omitted—
  - (a) in subsection (1) the words from “section 74” to “96(2)”, and
  - (b) subsections (2), (3) and (4)(b).
- 138 In section 232 (orders and regulations)—
  - (a) in subsection (2) for “35(6)” there is substituted “35(4)”, and
  - (b) the following are omitted—
    - (i) in subsection (2) “53(2), 58(2), 59(1), 91, 94, 102”, and
    - (ii) in subsection (4)(b) “52(7)”.
- 139 In section 235 (general interpretation) the following are omitted—
  - (a) in subsection (1)—
    - (i) the definition of “the 1981 Act”, and
    - (ii) in the definition of “transfer date”, “74(9)”,
  - (b) in subsection (3)(b) “subject to section 75(2) of this Act”, and
  - (c) in subsection (5) “74”.
- 140 Paragraph 9 of Schedule 1 is omitted.
- 141 In Schedule 2 (curriculum and assessment councils) in paragraph 8(1) (payments for members) for paragraph (b) there is substituted—
  - “(b) shall, as regards any member of the Council in whose case the Secretary of State may so determine, pay, or make provision for the payment of, such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.”
- 142 For paragraph 10(b) of Schedule 3 (appointment etc. of staff during financial delegation) there is substituted—
  - “(b) less than 50 per cent. of the person’s remuneration will be, or is, met from the school’s delegated budget.”
- 143 Schedule 5 is omitted.
- 144 In Schedule 10 (supplementary provisions with respect to transfers)—
  - (a) in paragraph 1(4)(a)(i) (division and apportionment of property etc.) after “under this Act” there is inserted “or under the Education Act 1993”,
  - (b) in paragraph 2(1)(b) (identification of property, etc.) after “this Act” there is inserted “or of the Education Act 1993”,
  - (c) in paragraph 5 (proof of title by certificate) after “of this Act” there is inserted “or of the Education Act 1993”,
  - (d) in paragraph 7 (construction of agreements) after “of this Act” in each place there is inserted “or of the Education Act 1993”, and
  - (e) in paragraph 9(6)(b) (third parties affected by vesting provisions) after “of this Act” there is inserted “or of the Education Act 1993”.

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- 145 In Schedule 12 (minor and consequential amendments) paragraphs 26 to 28, 33 and 83 to 85 are omitted.

*The Employment Act 1989 (c. 38)*

- 146 In section 10(6) (removal of restrictions relating to employment of young persons) for “for the purposes of the Education Act 1944” there is substituted “(construed in accordance with section 277 of the Education Act 1993)”.

*The Children Act 1989 (c. 41)*

- 147 Section 27(4) of the Children Act 1989 (duty of local authority to assist local education authority) is omitted.
- 148 In section 28(4) of that Act (local authority support for children and families: consultation with local education authorities) for “the Education Act 1981” there is substituted “Part III of the Education Act 1993”.
- 149 In section 36(8) of that Act (consultation in respect of education supervision orders) the words from “social” to “of the” are omitted.
- 150 In section 105(1) of that Act (interpretation), in the definition of “special educational needs” for “1981” there is substituted “1993”.
- 151 In paragraph 3 of Schedule 2 to that Act (local authority support for children and families: assessment of children’s needs) for “the Education Act 1981” there is substituted “Part III of the Education Act 1993”.
- 152 In Part III of Schedule 3 to that Act (education supervision orders), in paragraph 13—
- (a) in sub-paragraph (1) for the words from “sections” to “children and” there is substituted “section 36 of the Education Act 1944 (duty to secure education of children) and section 199 of the Education Act 1993 (duty”, and
  - (b) in sub-paragraph (2)—
    - (i) in paragraph (a)(i) for “37 of the Act of 1944” there is substituted “192 of that Act”,
    - (ii) in paragraph (b)(i) for “37” there is substituted “192”, and
    - (iii) in paragraph (b)(ii) for “that Act” there is substituted “the Education Act 1944”.

- 153 In paragraph 3(3) of Schedule 9 (child minding and day care: exemption of certain schools) for “section 52(3) of the Education Reform Act 1988” there is substituted “the Education Act 1993”.

- 154 Paragraphs 4 and 36 of Schedule 12 to that Act (minor amendments) are omitted.

- 155 Paragraphs 4 and 8 of Schedule 13 to that Act (consequential amendments) are omitted.

*The Local Government and Housing Act 1989 (c. 42)*

- 156 In section 13 of the Local Government and Housing Act 1989 (voting rights of members of committees)—
- (a) subsection (2)(b) is omitted,
  - (b) for subsection (5) there is substituted—

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“(5) Nothing in this section shall prevent the appointment of a person who is not a member of a local education authority as a voting member of—

- (a) any committee or sub-committee appointed by the local authority wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as a local education authority,
- (b) any joint committee appointed by two or more local authorities wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as local education authorities, or
- (c) any sub-committee appointed by any such committee or joint committee wholly or partly for the purpose of discharging any of that committee’s functions with respect to education,

where that appointment is required by directions given by the Secretary of State under section 297 of the Education Act 1993 (power of Secretary of State to direct appointment of members of committees).”,

- (c) subsection (6) is omitted, and
- (d) in subsection (7) for “education committee or sub-committee of an education committee” there is substituted “committee, joint committee or sub-committee appointed for the purpose mentioned in that subsection

157 In Schedule 1 to that Act (political balance on local authority committees) in paragraph 4—

- (a) in sub-paragraph (1)—
  - (i) the definition of “education committee” is omitted, and
  - (ii) in paragraph (a) of the definition of “ordinary committee”, “education committee, their” is omitted, and
- (b) in sub-paragraph (2) in paragraph (a) of the definition of “ordinary committee”, “education committee or” is omitted.

158 Paragraph 98 of Schedule 11 to that Act (minor and consequential amendments) is omitted.

*The Planning (Consequential Provisions) Act 1990 (c. 11)*

159 Paragraph 78 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (consequential amendments) is omitted.

*The National Health Service and Community Care Act 1990 (c. 19)*

160 Paragraph 22 of Schedule 9 to the National Health Service and Community Care Act 1990 (minor and consequential amendments) is omitted.

*The School Teachers' Pay and Conditions Act 1991 (c. 49)*

161 In section 2 of the School Teachers' Pay and Conditions Act 1991 (orders relating to statutory conditions of employment), in subsections (6) and (7) for “section 3” there is substituted “sections 3 and 3A”.

*The Diocesan Boards of Education Measure 1991 (1991 No. 2)*

- 162 The Diocesan Boards of Education Measure 1991 is amended as follows.
- 163 In section 3 (transactions for which advice or consent of Diocesan Board required)
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- (a) in subsection (4) for the words from “by a resolution” to the end there is substituted “to hold a meeting to consider whether to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school, it shall—
- (a) give to the secretary of the Board for the diocese in which the school is situated at least seven days' notice that such a meeting is to be held at such time and place as is specified in the notice, and
- (b) have regard to any relevant advice given by the Board, when considering at the meeting whether to hold a ballot of parents on that question,
- and in paragraph (b) above, “relevant advice” means advice given in connection with the acquisition of grant-maintained status for the school whether given for the purposes of that school or for Church of England voluntary schools generally”,
- (b) in subsection (5) for “89 of the 1988 Act” there is substituted “96 of the Education Act 1993”, and
- (c) in subsection (6) “or (4)” is omitted.
- 164 In section 5 (proposals for acquisition of grant-maintained status)—
- (a) for “subsection (5) of section 62 of the 1988 Act” there is substituted “paragraph 2 of Schedule 3 to the Education Act 1993”, and
- (b) for “the advice given by the Board under section 3(4) above” there is substituted “any relevant advice (defined in section 3(4) above) given by the Board”.
- 165 In section 6(2) (Board to be consulted in certain cases) for “102 of the 1988 Act” there is substituted “136 of the Education Act 1993”.
- 166 In section 7(3) (powers of Board to give directions to governing bodies of aided church schools) for “1988” there is substituted “1993”.
- 167 In section 10 (interpretation)—
- (a) for the definition of “church school” in subsection (1) there is substituted—
- ““church school” means—
- (a) a Church of England voluntary school,
- (b) a grant-maintained school which was such a voluntary school immediately before it became grant-maintained,
- (c) a grant-maintained school established in pursuance of proposals published under section 49 of the Education Act 1993 where either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 3 to that Act provides for religious education at the school to accord with the faith and practice of the Church of England, or
- (d) a grant-maintained school in respect of which proposals for the required provision for religious education to be

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provision for religious education in accordance with the faith and practice of the Church of England are approved under section 98 of that Act”, and

- (b) in subsection (3)—
- (i) after “the 1988 Act” there is inserted “or the Education Act 1993”, and
  - (ii) for “that Act” there is substituted “those Acts”.

*The Further and Higher Education Act 1992 (c. 13)*

- 168 Section 13 of the Further and Higher Education Act 1992 (provision of further education in grant-maintained schools) is omitted.
- 169 Section 59(5) of that Act (changes to special schools) is omitted.
- 170 In section 90(1) of that Act (interpretation), in the definition of “the Education Acts”, for “1992” there is substituted “1993”.
- 171 In Schedule 8 to that Act (minor and consequential amendments)—
- (a) paragraphs 18 and 29 are omitted, and
  - (b) in paragraph 62(3) after “this Act” there is inserted “or (as the case may be) the Education Act 1993”.

*The Local Government Finance Act 1992 (c. 14)*

- 172 Paragraph 58 of Schedule 13 to the Local Government Finance Act 1992 (minor and consequential amendments) is omitted.

*The Education (Schools) Act 1992 (c. 38)*

- 173 (1) In section 9 of the Education (Schools) Act 1992 (schools inspection)—
- (a) in subsection (3) in paragraph (e) for the words from “11(3)(a)” to the end there is substituted “189(1) of the Education Act 1993 (approval of independent schools for children with statements)”;
  - (b) at the end of subsection (6) there is inserted “or to the content of collective worship which falls to be inspected under section 13”, and
  - (c) in subsection (7) for “section” there is substituted “Act”.
- (2) Schedule 2 to that Act is amended as follows.
- (3) In paragraph 1, for the words from “body” (at the end of the definition of “appropriate authority”) to the end there is substituted—

““inspection by a member of the Inspectorate” means a section 9 inspection carried out by a member of the Inspectorate or an inspection under section 2(2)(b), 3(1), 6(2)(b) or 7(1),

“member of the Inspectorate” means the Chief Inspector, any of Her Majesty’s Inspectors of Schools in England or, as the case may be, Wales and any additional inspector, and

“section 9 inspection” means an inspection under section 9,

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and for the purposes of this Part of this Schedule, special measures are required to be taken in relation to a school if the school is failing or likely to fail to give its pupils an acceptable standard of education.”

(4) For “an inspection” in paragraphs 2, 3(5), 4(1), 5(1), 6 and 7 there is substituted “a section 9 inspection” and for “Every inspection” in paragraph 3(1) there is substituted “Every section 9 inspection”.

(5) For paragraph 9 there is substituted—

“9 (1) Where a section 9 inspection by a registered inspector has been completed, the inspector shall make in writing a report of the inspection and a summary of the report.

(2) Where the inspector is of the opinion that special measures are required to be taken in relation to the school he shall submit a draft of the report of the inspection to the Chief Inspector.

(3) If the Chief Inspector so requests, an inspector who has submitted a draft under sub-paragraph (2) shall provide the Chief Inspector with such further information as the Chief Inspector may specify.

(4) The Chief Inspector shall inform an inspector who has submitted a draft under sub-paragraph (2) whether he agrees or disagrees with the inspector’s opinion.

(5) Where—

(a) the Chief Inspector informs the inspector that he disagrees with the inspector’s opinion, but

(b) the inspector remains of the opinion that special measures are required to be taken in relation to the school,

the inspector may not make a report expressing that opinion unless the terms in which he makes the report are substantially the same (except as to the statement required by sub-paragraph (7)(b)) as the draft or as a subsequent draft submitted to the Chief Inspector under this sub-paragraph.

(6) Where a subsequent draft is submitted under sub-paragraph (5), the Chief Inspector shall inform the inspector whether he agrees or disagrees with the inspector’s opinion.

(7) A report made by a registered inspector who is of the opinion that special measures are required to be taken in relation to the school shall—

(a) state his opinion, and

(b) state whether the Chief Inspector agrees or disagrees with his opinion.

(8) If a report of an inspection of a school by a registered inspector is made in circumstances where—

(a) he is of the opinion that special measures are not required to be taken in relation to the school, but

(b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the

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Inspectorate or the report stated that the Chief Inspector agreed with his opinion,

the person making the report shall state his opinion in the report.

- 9A (1) Where on the completion of any inspection of a school under section 2(2)(b), 3(1), 6(2)(b) or 7(1) by a member of the Inspectorate, he is of the opinion that special measures are required to be taken in relation to the school, he shall—
- (a) prepare in writing a report of the inspection and a summary of the report, and
  - (b) state his opinion in the report.
- (2) If on the completion of any such inspection of a school by a member of the Inspectorate in circumstances where—
- (a) he is of the opinion that special measures are not required to be taken in relation to the school, but
  - (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
- the member of the Inspectorate shall prepare in writing a report of the inspection and a summary of the report and state his opinion in the report.
- (3) A report of a section 9 inspection of a school by a member of the Inspectorate shall, if he is of the opinion that special measures are required to be taken in relation to the school, state his opinion.
- (4) If a report of a section 9 inspection of a school by a member of the Inspectorate is made in circumstances where—
- (a) he is of the opinion that special measures are not required to be taken in relation to the school, but
  - (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
- the member of the Inspectorate shall state his opinion in the report.
- 9B (1) The carrying out of a section 9 inspection shall be completed by the time allowed under sub-paragraph (2) and the making of the report required by paragraph 9 shall be completed within the period allowed under sub-paragraph (2).
- (2) The time, and the period, allowed shall be such as may be prescribed, subject to any such extension of the period as the Chief Inspector may consider necessary to make; but the total period allowed must not exceed the prescribed period extended by three months.
- (3) The Chief Inspector shall give notice in writing of any extension under sub-paragraph (2) to—
- (a) the inspector,
  - (b) the appropriate authority, and



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- (c) the Secretary of State, except in the case of a maintained nursery school.
  - (4) This paragraph does not apply to a section 9 inspection carried out by a member of the Inspectorate.
- 9C
- (1) In the case of a report of a section 9 inspection of a school, the person making it shall without delay—
    - (a) send a copy of the report together with the summary of it to the appropriate authority for the school, and
    - (b) if it states that he is of the opinion that special measures are required to be taken in relation to the school, and either that person is a member of the Inspectorate or the report states that the Chief Inspector agrees with his opinion, send a copy of the report and summary to the Secretary of State.
  - (2) In the case of a report of an inspection of a school made by a member of the Inspectorate which is required by paragraph 9A to state that he is of the opinion that special measures are required to be taken in relation to the school, the member of the Inspectorate shall send a copy of the report together with the summary of it to the appropriate authority for the school and to the Secretary of State.
  - (3) In any case, copies of the report and summary shall be sent by the person who made the report to the Chief Inspector (unless the report was made by a member of the Inspectorate).
  - (4) In the case of—
    - (a) a special school which is not a maintained or grant-maintained special school, or
    - (b) an independent school approved by the Secretary of State under section 189(1) of the Education Act 1993 (approval of independent schools for children with statements),the appropriate authority shall without delay send a copy of any report and summary sent to them under sub-paragraph (1) or (2) to the funding authority, or any local education authority, if the authority are paying fees in respect of the attendance of a registered pupil at the school.
  - (5) The appropriate authority shall—
    - (a) make any report and summary sent to the authority under sub-paragraph (1) or (2) available for inspection by members of the public at such times and at such place as may be reasonable,
    - (b) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), to any person who asks for one, and
    - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the summary as soon as is reasonably practicable.”
  - (6) For paragraphs 10 and 11 there is substituted—
    - “10 (1) Where—
      - (a) a report of a section 9 inspection of a school, or

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- (b) a report of an inspection of a school made by a member of the Inspectorate which is required by paragraph 9A to state that he is of the opinion that special measures are required to be taken in relation to the school,

is sent to the appropriate authority they shall prepare a written statement of the action which they propose to take in the light of the report and the period within which they propose to take it.

- (2) It is the duty of the appropriate authority to prepare the statement within the period allowed by this sub-paragraph, that is—
  - (a) such period as may be prescribed, or
  - (b) if, in the case of any report where the person making it states that he is of the opinion that special measures are required to be taken in relation to the school, and either that person is a member of the Inspectorate or the report states that the Chief Inspector agrees with his opinion, the Secretary of State is of the opinion that the urgency of the case requires a shorter period, such period as the Secretary of State may direct,

but this sub-paragraph does not relieve the appropriate authority of any duty to prepare a statement which has not been performed within that period.

- (3) Where such a statement has been prepared by the appropriate authority they shall, before the end of the prescribed period, send copies of it—
  - (a) to the Chief Inspector,
  - (b) to the Secretary of State, except in the case of a maintained nursery school, and
  - (c) in such circumstances as may be prescribed, to such other persons (if any) as may be prescribed.

- (4) In the case of—
  - (a) a special school which is not a maintained or grant-maintained special school, or
  - (b) an independent school approved by the Secretary of State under section 189(1) of the Education Act 1993 (approval of independent schools for children with statements),

the appropriate authority shall, before the end of the prescribed period, send a copy of any such statement prepared by them to the funding authority, or any local education authority, if the authority are paying fees in respect of the attendance of a registered pupil at the school.

- (5) The appropriate authority shall—
  - (a) make any statement prepared by them under this paragraph available for inspection by members of the public, at such times and at such place as may be reasonable,
  - (b) provide a copy of the statement, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement as soon as is reasonably practicable.

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- 11 (1) This paragraph applies in circumstances where—
- (a) in a report of an inspection of a school the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) a statement has been prepared under paragraph 10 or the period prescribed for the purposes of sub-paragraph (3) of that paragraph has expired, and
  - (d) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school, he did not express the opinion in the report that special measures were not required to be taken in relation to the school.
- (2) Regulations may make provision with a view to securing that any measures taken by the appropriate authority for improving the standard of education at the school are monitored in accordance with the regulations by such persons as may be prescribed.
- (3) The regulations may, in particular, provide for reports to be made by such persons and at such intervals as may be prescribed.
- (4) The regulations may authorise the Secretary of State to require the Chief Inspector to conduct further inspections of the school and prepare further reports of such inspections.
- (5) In respect of cases where any report prepared in pursuance of a requirement imposed by virtue of sub-paragraph (4) above—
- (a) states that, in the opinion of the person who prepared the report, special measures are required to be taken in relation to the school, but the grounds for that opinion are substantially different from the grounds for the opinion in any preceding report by a registered inspector or member of the Inspectorate, or
  - (b) states that, in the opinion of that person, special measures are not required to be taken in relation to the school,
- the regulations may make provision corresponding to any of the provisions made by this Part of this Schedule.”

(7) For paragraph 12 there is substituted—

- “12 (1) Where an inspection of a school is required under section 9 but the Chief Inspector is satisfied that it is not reasonably practicable to secure that the school is inspected by a suitable registered inspector, he shall secure that it is inspected by a member of the Inspectorate.
- (2) Where an inspection is conducted by a member of the Inspectorate by virtue of this paragraph, this Act shall have effect (unless the context otherwise requires) in relation to the inspection as if the member of the Inspectorate were a registered inspector.
- (3) If the Chief Inspector so elects in the case of any inspection of a school by a member of the Inspectorate under section 2(2)(b), 3(1), 6(2)(b) or 7(1), that inspection shall be treated for the purposes of section 9(1) and (2)
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and this Part of this Schedule as if it were an inspection under section 9 and the member of the Inspectorate were a registered inspector”.

- (8) In paragraph 14(4)—
- (a) in paragraph (b), for “the prescribed fee” there is substituted “such fee as they think fit (not exceeding the cost of supply)”, and
  - (b) in paragraph (c), after “education” there is inserted “or, as the case may be, who takes part in acts of collective worship the content of which falls to be inspected under section 13”.
- (9) In paragraph 15(3)—
- (a) in paragraph (b), for “the prescribed fee” there is substituted “such fee as they think fit (not exceeding the cost of supply)”, and
  - (b) in paragraph (c), after “education” there is inserted “or, as the case may be, who takes part in acts of collective worship the content of which falls to be inspected under section 13”.

*The Tribunals and Inquiries Act 1992 (c. 53)*

- 174 In paragraph 15(c) of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under general supervision of Council on Tribunals), for “section 58(5)(d) of the Education Reform Act 1988 (c. 40)” there is substituted “paragraph 5(1) of Schedule 6 to the Education Act 1993”.

*The Charities Act 1993 (c. 10)*

- 175 In Schedule 2 to the Charities Act 1993 (exempt charities) after paragraph (d) there is inserted—
- “(da) the School Curriculum and Assessment Authority;”.

SCHEDULE 20

Section 307.

TRANSITIONAL PROVISIONS AND SAVINGS

*Instruments and articles for grant-maintained schools incorporated under the old law*

- 1 (1) This paragraph applies in relation to a grant-maintained school the governing body of which were incorporated under Chapter IV of Part I of the Education Reform Act 1988.
- (2) If at the commencement of section 56 of this Act both an instrument of government and articles of government have been made for the school under that Chapter the instrument and articles so made—
- (a) shall have effect as if they contained such modifications as may be required by an order under section 308 of this Act, and
  - (b) shall (as so modified) have effect as if made by an order under section 57 of this Act and in accordance with Part II of this Act.
- (3) If sub-paragraph (2) above does not apply—
- (a) the instrument and articles of government prescribed by virtue of section 56 of this Act shall have effect as from the commencement of that section, and

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- (b) Part III of Schedule 7 to this Act shall have effect while those instruments are in force with such modifications as may be required by an order under section 308 of this Act.

*Grants: transitional arrangements*

- 2 (1) A commencement order may provide for any functions conferred on the Secretary of State by or under the old grants code or the transitory grants code for Wales, so far as relating to any amounts which—
- (a) fall, or may fall, to be paid in a financial year for which section 81 of this Act has effect or, as the case may be, after the commencement of section 82 or 83 of this Act, or
- (b) have been paid by the Secretary of State,
- in respect of any grant under that code, to be exercisable instead by the funding authority.
- (2) The order may provide for functions exercisable by the funding authority by virtue of sub-paragraph (1) above to be exercised in accordance with the order.
- (3) In this paragraph—
- “commencement order” means, in relation to England, an order under section 308 of this Act and, in relation to Wales, an order under section 4 of this Act,
- “the old grants code” means sections 79 and 80 of the Education Reform Act 1988 as they apply in relation to England, and
- “the transitory grants code for Wales” means sections 86 to 91 of this Act.

*Meaning of “funding authority” before Funding Agency for Schools begin to exercise functions*

- 3 (1) Before the Funding Agency for Schools begin to exercise their functions, references in the relevant provisions to the funding authority shall be read in relation to schools in England or the governing bodies of such schools as references to the Secretary of State.
- (2) The relevant provisions are—
- (a) paragraph 1(3) of Schedule 3 to this Act, and
- (b) paragraph 6 of Schedule 4 to this Act.

*Education committees etc and members of those committees*

- 4 (1) Sub-paragraph (2) below applies to—
- (a) any education committee established in accordance with paragraph 1 of Part II of the First Schedule to the Education Act 1944, and
- (b) any sub-committee of any such committee appointed in accordance with paragraph 10 of that Part,
- which is in existence immediately before the commencement of section 296 of this Act.
- (2) Any committee or sub-committee to which this sub-paragraph applies shall, for the purposes of any enactment, be treated as if it had been—
- (a) appointed at the commencement of that section—

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- (i) in the case of a committee, by the local authority, or
  - (ii) in the case of a sub-committee, by the committee appointed by the authority,
- in accordance with section 102(1) of the Local Government Act 1972, and
- (b) so appointed wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as a local education authority or, as the case may be, the committee's functions with respect to education.
- (3) Sub-paragraph (4) below applies to any person who is immediately before the commencement of section 296 of this Act a member of an education committee or sub-committee of such a committee appointed for a term of office.
- (4) Any person to whom this sub-paragraph applies shall, for the purposes of any enactment, be treated—
- (a) as if he had been appointed at the commencement of that section as a member of a committee or sub-committee appointed as mentioned in sub-paragraph (2) above for the residue of that term, and
  - (b) if he was a member of an education committee or sub-committee by virtue of directions given by the Secretary of State under paragraph 5A of Part II of the First Schedule to the Education Act 1944, as if he had been appointed at the commencement of that section as a member of a committee or sub-committee appointed as mentioned in sub-paragraph (2) above by virtue of directions given by the Secretary of State under section 297 of this Act.

*Lay members for existing admission appeal committees*

- 5 Paragraph 13(4) of Schedule 5 to this Act does not apply to any appeal committee constituted, before the commencement of that Schedule, in accordance with the instrument of government for any grant-maintained school for the purposes referred to in section 58(5)(d) of the Education Reform Act 1988 (articles of government - admission appeal committees) while all the members of the committee are persons who were nominated before commencement.
- 6 No amendment made by Schedule 16 to this Act applies to any appeal committee while all the members of the committee are persons who were nominated before the commencement of the amendment.

*General*

- 7 The provisions of this Schedule are without prejudice to the generality of section 301(6) of this Act.

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SCHEDULE 21

Sections 303 and 307.

REPEALS

PART I

REPEALS CONSEQUENTIAL ON PARTS II, III AND IV

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1933 c. 12.	The Children and Young Persons Act 1933.	Section 10.
1944 c. 31.	The Education Act 1944.	Sections 9(5), 37, 39 and 40. In the Eighth Schedule, the entry relating to section 10 of the Children and Young Persons Act 1933.
1948 c. 40.	The Education (Miscellaneous Provisions) Act 1948.	Section 9.
1953 c. 33.	The Education (Miscellaneous Provisions) Act 1953.	Section 10.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, the entries relating to section 10 of the Children and Young Persons Act 1933 and section 40(1) of the Education Act 1944.
1969 c. 54.	The Children and Young Persons Act 1969.	In Schedule 5, paragraphs 2 and 13.
1973 c. 16.	The Education Act 1973.	Section 1(2)(b).
1977 c. 45.	The Criminal Law Act 1977.	In Schedule 6, the entry relating to the Education Act 1944.
1980 c. 20.	The Education Act 1980.	Sections 10 and 11. In Schedule 1, paragraph 10.
1981 c. 60.	The Education Act 1981.	The whole Act except for sections 2(1), 11(1) and 17, the definition of “principal Act” in section 20(1), sections 20(2) and (3) and 21, paragraph 1 of Schedule 2, paragraphs 3, 4, 6, 7, 8, (1) and (2)(b) and (d), 11, 12 and 14 of Schedule 3 and Schedule 4.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1986 c. 61.	The Education (No. 2) Act 1986.	<p>In section 9(5), the “or” at the end of paragraph (a)(ii), and paragraph (b).</p> <p>In section 11, the “or” at the end of subsection (2)(a)(ii), subsection (2)(b), “or (b)” in subsection (2)(c) and subsection (7).</p> <p>Section 12(3).</p> <p>In section 13(2), “or (b)”.</p> <p>In section 65(1) the definition of “the 1981 Act”.</p> <p>In Schedule 2, paragraph 2(2)(b) and, in paragraph 5(2)(b), the words after “proposal”.</p>
1988 c. 40.	The Education Reform Act 1988.	<p>Chapter IV of Part I except for section 100(2) and (4).</p> <p>In section 119(2), “52(4), 89 or 92”.</p> <p>In section 198(1) “74”.</p> <p>Section 200.</p> <p>In section 230, the words in subsection (1) from “section 74” to “96(2)” and subsections (2), (3) and (4)(b).</p> <p>In section 232, in subsection (2) “53(2), 58(2), 59(1), 91, 94, 102” and in subsection (4)(b) “52(7)”.</p> <p>In section 235, in subsection (1) the definition of “the 1981 Act” and, in the definition of “transfer date”, “74(9)”, in subsection (3)(b) “subject to section 75(2) of this Act”, and in subsection (5) “74”.</p> <p>In Schedule 1, paragraph 9.</p> <p>Schedule 5.</p> <p>In Schedule 12, paragraphs 26 to 28, 33 and 83 to 85.</p>



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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1989 c. 41.	The Children Act 1989.	In Schedule 12, paragraphs 4 and 36. In Schedule 13, paragraphs 4 and 8.
1989 c. 42.	The Local Government and Housing Act 1989.	In Schedule 11, paragraph 98.
1990 c. 11.	The Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 78.
1990 c. 19.	The National Health Service and Community Care Act 1990.	In Schedule 9, paragraph 22.
1992 c. 13.	The Further and Higher Education Act 1992.	Section 13. Section 59(5). In Schedule 8, paragraphs 18 and 29.
1992 c. 14.	The Local Government Finance Act 1992.	In Schedule 13, paragraph 58.

## PART II

### OTHER REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1944 c. 31.	The Education Act 1944	Section 1(1). In section 6, the words in subsection (1) from “Subject” to “Act” and subsection (2). In section 16(1), “any county school or” and the words following “the new site”. Section 35. In section 50(1) “by them”. In paragraph (a) of the proviso to section 52(1), “by the authority”. Section 56. In section 58 “for the purposes of this Act”. Sections 102 and 103.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In section 105(2), paragraph (d) and, in the words following that paragraph, “maintenance contribution”.
		In section 114(1), in the definition of “secondary school”, “primary or”.
		Parts I and II of the First Schedule.
		In paragraph 13(4) of the Fifth Schedule “either”.
1946 c. 50.	The Education Act 1946.	In Part II of the Second Schedule, the entry relating to section 102 of the Education Act 1944.
1948 c. 40.	The Education (Miscellaneous Provisions) Act 1948.	In the First Schedule, the entry relating to section 56 of the Education Act 1944.
1953 c. 33.	The Education (Miscellaneous Provisions) Act 1953.	Section 6(2)(a)(iii).
		Section 8(1).
1959 c. 60.	The Education Act 1959.	The whole Act.
1962 c. 12.	The Education Act 1962.	Section 9.
1967 c. 3.	The Education Act 1967.	Section 1.
1968 c. 17.	The Education Act 1968.	Section 3(4).
		In Schedule 1, paragraphs 1 and 4.
1972 c. 11.	The Superannuation Act 1972.	In Schedule 1, in the list of Other Bodies, the entries relating to the National Curriculum Council and the School Examinations and Assessment Council.
1972 c. 70.	The Local Government Act 1972	Section 101(9)(a).
1975 c. 2.	The Education Act 1975.	The whole Act.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, the entry relating to membership of the School Examinations and Assessment Council.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1975 c. 65.	The Sex Discrimination Act 1975.	In section 82(1) the definition of the expression “upper limit of compulsory school age”.  In paragraph 1 of Schedule 2 “in accordance with subsection (1) or (2) of that section”.
1976 c. 5.	The Education (School-leaving Dates) Act 1976.	The whole Act.
1976 c. 74.	The Race Relations Act 1976.	In section 78(1) the definition of the expression “upper limit of compulsory school age”.
1980 c. 20.	The Education Act 1980.	In section 12(3) “voluntary”.  In section 13(1) “after consultation with the authority”.  In section 13(3) “voluntary”.  Section 14(4).  In Schedule 1, in paragraph 1(2) “102”, paragraph 12, in paragraph 21 “(1) and” and paragraphs 22 and 23.  In paragraph 1 of Schedule 2, in sub-paragraph (3) “or of any education committee of the authority” in each place where it occurs and in sub-paragraph (4) “or of any education committee of the authority” and “by more than one”.  In Schedule 3, paragraphs 4 and 13.
1984 c. 11.	The Education (Grants and Awards) Act 1984.	In section 1(3)(b), “not exceeding 70 per cent. of the expenditure so approved”.  In section 3, subsections (2) and (5) and, in subsection (3), the words “not being regulations to which subsection (2) above applies”.
1986 c. 61.	The Education (No. 2) Act 1986.	In section 5(4)(b) the words after “by the authority”.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		<p>In section 23(a)(ii) and (b) “or indefinite”.</p> <p>Section 24(c) and (e) and, in paragraph (f), “or (c)”.</p> <p>Section 25(d), (e) and (f).</p> <p>In section 38, in subsection (4)(c) the words after “to the post” and, in subsection (6)(b), “or (4)(c) (ii)”.</p> <p>In section 50, in subsection (3)(c) the words “local education authorities, and other”, and subsection (4).</p> <p>Section 51(9) and (13).</p> <p>Section 54(12)(f).</p> <p>Section 63(4).</p> <p>In Schedule 2, in paragraph 7(7) the words after “by the authority”.</p>
1988 c. 9.	The Local Government Act 1988	Section 1(1)(j).
1988 c. 40.	The Education Reform Act 1988.	<p>In Schedule 2, the words from “A joint education committee” to “1944”.</p> <p>In section 14, in subsection (1), paragraph (a), the word “and” immediately following paragraph (b), paragraph (c) and the words “each of”, subsection (4) and, in subsection (5), the words “or (as the case may be) subsection (4)(g)”.</p> <p>In section 25(1), the definition of the expression “the Curriculum Council”.</p> <p>Section 42(4)(f) to (i) and (5) (b).</p> <p>In section 111, subsection (4) and, in subsection (5)(b), the words “provided under</p>

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		arrangements made by the authority”.
		In Schedule 2, paragraphs 1 and 9, in paragraph 10(5) the words from “and accordingly” to the end and, in paragraph 18, the words “in such form as the Secretary of State may direct with the approval of the Treasury”.
		In paragraph 2 of Schedule 4, sub-paragraphs (3)(b) and (c) and (4)(b) and (c).
1989 c. 41.	The Children Act 1989	Section 27(4).
		In section 36(8), the words from “social” to “of the”.
1989 c. 42.	The Local Government and Housing Act 1989	In section 13, subsections (2) (b) and (6).
		In paragraph 4 of Schedule 1, in sub-paragraph (1) the definition of “education committee” and, in paragraph (a) of the definition of “ordinary committee”, “education committee, their” and in sub-paragraph (2), in paragraph (a) of the definition of “ordinary committee”, “education committee or”.
		In Schedule 11, paragraph 4.
1991 No. 2.	The Diocesan Boards of Education Measure 1991	In section 3(6) “or (4)”.
1992 c. 13.	The Further and Higher Education Act 1992.	In Schedule 8, paragraphs 6 and 24(a), (c) and (d).
1993 c. 10.	The Charities Act 1993.	In Schedule 2, paragraphs (e) and (g).