



# Education Act 1993 (repealed)

## 1993 CHAPTER 35

### 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 <sup>M1</sup>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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### Commencement Information

- II** S. 22 wholly in force at 1.4.1994 ; s. 22 not in force at Royal Assent see s. 308(3); s. 22(1)(2)(a)(3) wholly in force and s. 22(2)(b) in force for specified purpose at 1.1.1994 by S.I. 1993/3106, art. 4, **Sch. 1**; s. 22 in force at 1.4.1994 insofar as not already in force by S.I. 1994/507, **art. 3(1)**

### Marginal Citations

- M1** 1988 c. 40.

## CHAPTER II

### PROCEDURE FOR ACQUISITION OF GRANT-MAINTAINED STATUS

### Modifications etc. (not altering text)

- C1** Pt. II Chapter II (ss. 23-37) modified (1.5.1994) by S.I. 1994/1041, **reg. 17(2)(a)**

### *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.
- (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 <sup>M2</sup>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 <sup>M3</sup>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 <sup>M4</sup>Education Act 1980 (as applied by section 59(2)(b) of the <sup>M5</sup>Further and Higher Education Act 1992).

### Marginal Citations

- M2** 1980 c. 20.  
**M3** 1944 c. 31.  
**M4** 1980 c. 20.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

**M5** 1992 c. 13.

## **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 <sup>M6</sup>Education (No.2) Act 1986.

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

- C2** S. 24 applied (1.1.1994) by S.I. 1993/3115, **reg.2**  
 S. 24 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 4(1)(2)**
- C3** S. 24(2) restricted (1.1.1994) by S.I. 1993/3115, **reg. 3(2)**
- C4** S. 24(3) modified (1.1.1994) by S.I. 1993/3115, **reg. 3(1)**
- C5** S. 24(4) modified (1.1.1994) by S.I. 1993/3115, **reg. 3(3)**

### **Marginal Citations**

- M6** 1986 c. 61.

### *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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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.

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

C6 Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 4(3)(4)

**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 <sup>M7</sup>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.
- (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

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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.

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

C7 Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 4(3)(4)

**Marginal Citations**

M7 1944 c. 31.

*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.

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

C8 Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 4(3)(4)  
S. 27 applied (1.5.1994) (with modifications) by S.I. 1994/1041, reg. 31(7)

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### *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
  - (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.

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

- C9** Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 4(3)(4)**  
 Ss. 28 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg.31(8)**

## **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 <sup>M8</sup>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).

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

- C10** Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 4(3)(4)**  
S. 29 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 31(9)**

**Marginal Citations**

- M8** 1944 c. 31.

**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—

- (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.

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

- C11** Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 4(3)(4)**  
Ss. 30-31 applied (1.5.1994) by S.I. 1994/1041, **reg. 31(10)**

**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,

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- (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 <sup>M9</sup>Education Act 1944 as that register has effect on the date specified for the purposes of this subsection.

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

**C12** Ss. 25-31 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 4(3)(4)**

S. 31 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 10**

Ss. 30-31 applied (1.5.1994) by S.I. 1994/1041, **reg. 31(10)**

**C13** S. 31(3) modified (18.2.1994) by S.I. 1993/3106, art. 5, **Sch. 2 para. 2(8)** (as inserted (18.12.1994) by S.I. 1994/436, **art. 2(3)**)

**Marginal Citations**

**M9** 1944 c. 31.

**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,
  - (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.



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- (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.

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

C14 s. 32 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2),5

*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.

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

C15 Ss. 33-34 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2), 6(1)(3)(4)

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### 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
  - (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.

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

**C16** Ss. 33-34 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 6(1)(3)(4)**

**C17** S. 34(1)(2) applied (1.5.1994) by S.I. 1994/1041, **reg. 35(1)**

### 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.

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

**C18** S. 35 modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

S. 35 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 7**

S. 35 applied (1.5.1994) (with modifications) by S.I. 1994/1041, **reg. 18(1)**

S. 35 and specified provisions of Pt.II Chapter III applied (with modifications) (9.5.1994) by S.I. 1994/1084, **reg. 3, Sch. 1**

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### 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.

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

- C19** S. 36 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 8**  
S. 36 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 19**

#### Commencement Information

- I2** S. 36 wholly in force at 1.4.1994; s. 36 not in force at Royal Assent see s. 308(3); s. 36(1)(2) in force at 1.1.1994 by S.I. 1993/3106, art. 4, **Sch. 1**; S. 36 in force at 1.4.1994 insofar as not already in force by S.I. 1994/507, **art. 3(1)**

#### 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)

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- 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

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

**C20** S. 35 and Pt. II Chapter III applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 3, Sch. 1

*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—
- (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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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<sup>M10</sup> 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.

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

**C21** S. 38 modified (1.1.1994) by S.I. 1993/3103, reg. 4, Sch.3

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

S. 38 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 9**

S. 38 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 20**

#### **Marginal Citations**

**M10** 1988 c. 40.

### **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.
- (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

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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.

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

- C22** S. 39 modified (1.1.1994) by S.I. 1993/3103, reg. 4, **Sch.3**  
S. 39 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 21**
- C23** S. 39(2)-(4)(6)-(9) applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 10**

*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

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- (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,
  - (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.

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

**C24** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2), 11

**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 <sup>M11</sup>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.



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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- (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 <sup>M12</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (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.

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

**C25** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C26** S. 41(1)-(4) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

**Marginal Citations**

**M11** 1988 c. 40.

**M12** 1972 c. 70.

**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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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 (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 <sup>M13</sup>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 <sup>M14</sup>Compulsory Purchase Act 1965 or section 52A of the <sup>M15</sup>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.

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

**C27** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C28** S. 42(1)(4) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

**Marginal Citations**

**M13** 1981 c. 67.

**M14** 1965 c. 56.

**M15** 1973 c. 26.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### 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.
- (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 <sup>M16</sup>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 <sup>M17</sup>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.

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

**C29** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C30** S. 43(1)(3) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

#### Marginal Citations

**M16** 1980 c. 65.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

**M17** 1988 c. 9.

#### **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.

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

**C31** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C32** S. 44(1)(3) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

#### **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 <sup>M18</sup>Education Reform Act 1988, and
  - (b) the references to taking action include appropriating property for any purpose.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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

**C33** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C34** S. 45(1)(2)(4) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

**Marginal Citations**

**M18** 1988 c. 40.

**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 <sup>M19</sup>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 <sup>M20</sup>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.

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

**C35** Ss. 40-46 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 11**

**C36** S. 46(1)(5) modified (1.1.1994) by S.I. 1993/3103, **reg. 4, Sch.3**

**Marginal Citations**

**M19** 1944 c. 31.

**M20** 1986 c. 61.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### *Supplementary*

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

- (1) No duty of a local education authority under paragraph 6 of the First Schedule to the <sup>M21</sup>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 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 <sup>M22</sup>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 <sup>M23</sup>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 <sup>M24</sup>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 ”.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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

**C37** S. 47 modified (1.1.1994) by S.I. 1993/3103, reg. 4, Sch.3

**Commencement Information**

**I3** S. 47 wholly in force at 1.4.1994; s. 47 not in force at Royal Assent see s. 308(3); s. 47(5)-(9) in force at 1.1.1994 by S.I. 1993/3106, art. 4, Sch.1; s. 47 in force at 1.4.1994 insofar as not already in force by S.I. 1994/507, art. 3(1)

**Marginal Citations**

**M21** 1946 c.50.

**M22** 1988 c. 40.

**M23** 1992 c. 13.

**M24** 1988 c. 40.

## 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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- (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.



*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.

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

**C38** S. 52(1) applied (with modifications) (19.8.1994) by S.I. 1994/653, **reg. 13A** (as inserted (19.8.1994) by S.I. 1994/2003, **reg. 6(3)**)

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### **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—
  - (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.

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

**C39** S. 53(1) applied (1.4.1994) by S.I. 1994/653, **regs. 14(1)**

**C40** S. 53(4)-(7) applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 14(2)**

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*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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### *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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

## 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 <sup>M25</sup>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 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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

#### Marginal Citations

M25 1988 c. 40.

### 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 <sup>M26</sup>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.

#### Marginal Citations

M26 1988 c. 40.

### Governors

### 59 Categories of governors.

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

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

## 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 <sup>M27</sup>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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

#### Marginal Citations

M27 1986 c. 61.

### 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 <sup>M28</sup>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.

#### Marginal Citations

M28 1986 c. 61.

### 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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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
  - (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).



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- (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.

#### **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.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- (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 <sup>M29</sup>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.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.

#### Marginal Citations

M29 1944 c. 31.

### 66 Sponsor governors.

- (1) The instrument of government for the governing body of a grant-maintained secondary school may—
- name a person as a sponsor of the school, and
  - 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—
- for the person so named to be a sponsor of the school, and
  - 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—
- 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
  - 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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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,
  - [<sup>F1</sup>(ba) to borrow such sums as the governing body think fit and, in connection with such borrowing, to grant any mortgage, charge or other security over any land or other property of the governing body,]
  - (c) to acquire and dispose of land and other property,

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- [<sup>F2</sup>(6) The power to borrow sums and grant security mentioned in subsection (5)(ba) above may only be exercised with the written consent of the Secretary of State (which may be given for particular borrowing or for borrowing of a particular class); but this subsection does not apply in relation to loans under section 92 of this Act.]
- (7) The power to dispose of land mentioned in subsection (5)(c) [<sup>F3</sup>above may]only be exercised with the written consent of the Secretary of State.
- (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.

#### Textual Amendments

**F1** S.68(5)(ba) inserted (1.9.1996) by 1996 c. 50, s. 7(2); S.I. 1996/2022, art. 2

**F2** S. 68(6) substituted (1.9.1996) by 1996 c. 50, s. 7(3); S.I. 1996/2022, art. 2

**F3** Words in s. 68(7) substituted (1.9.1996) by 1996 c. 50, s. 7(4); S.I. 1996/2022, art. 2

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

**C41** S. 68 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 16

## 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

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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 <sup>M30</sup>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.

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

C42 Ss. 69-70 applied (1.4.1994) by S.I. 1994/653, reg. 17

**Marginal Citations**

M30 1991 c. 49.

**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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.

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

**C43** Ss. 69-70 applied (1.4.1994) by S.I. 1994/653, reg. 17

*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 <sup>M31</sup>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,
 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,

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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 <sup>M32</sup>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.

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

**C44** Ss. 71-76 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 18

**Marginal Citations**

**M31** 1986 c. 61.

**M32** 1986 c. 61.

**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—



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- (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 <sup>M33</sup>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.

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

**C45** Ss. 71-76 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 18

**Marginal Citations**

**M33** 1986 c. 61.

**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 <sup>M34</sup>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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- (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 <sup>M35</sup>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.

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

- C46** Ss. 71-76 applied (with modifications) (1.4.1994) by [S.I. 1994/653, reg. 18](#)  
 Ss. 73-75 applied (with modifications) (1.5.1994) by [S.I. 1994/1041, reg. 42](#)

**Marginal Citations**

- M34** 1944 c. 31.  
**M35** 1944 c. 31.

**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 <sup>M36</sup>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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.

- (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 <sup>M37</sup>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.

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

C47 Ss. 71-76 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 18

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

Ss. 73-75 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 42**

#### **Marginal Citations**

**M36** 1986 c. 61.

**M37** 1986 c. 61.

## **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.

- (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 <sup>M38</sup>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.

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

**C48** Ss. 71-76 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 18**

Ss. 73-75 applied (with modifications) (1.5.1994) by S.I. 1994/1041, **reg. 42**

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### Marginal Citations

M38 1944 c. 31.

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

- (1) Section 15(2) to (6) of the <sup>M39</sup>Education (No. 2) <sup>M40</sup>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 <sup>M41</sup>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 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.

### Modifications etc. (not altering text)

C49 Ss. 71-76 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 18

### Marginal Citations

M39 1986 c. 61.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

**M40** 1986 c. 61.

**M41** 1986 c. 61.

**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.

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

**C50** S. 78 applied (1.4.1994) by S.I. 1994/653, reg. 15

*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.

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

**C51** Ss. 79-80 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2), 19

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

## 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 <sup>M42</sup>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 <sup>M43</sup>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.

### Modifications etc. (not altering text)

**C52** Ss. 79-80 applied (with modifications) (1.4.1994) by [S.I. 1994/653](#), [regs. 2\(2\)](#), 19

### Marginal Citations

**M42** 1986 c. 61.

**M43** 1986 c. 61.

## CHAPTER VI

### FUNDING OF GRANT-MAINTAINED SCHOOLS

### Modifications etc. (not altering text)

**C53** [Pt. II Chapter VI](#) (ss. 81-95) applied (with modifications) (E.W.)(1.4.1994) by [S.I. 1994/653](#), [reg. 23](#)  
[Pt. II Chapter VI](#) (ss. 81-95) applied (with modifications) (E.W.)(21.9.1994) by [1994 c. 30](#), [s. 12\(6\)\(b\)](#)  
[\(7\)](#); [S.I. 1994/2204](#), [art. 2\(1\)](#)

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

Pt II Chapter VI (ss. 81-95) applied (E.W.) (9.5.1994) by S.I. 1084, reg. 8(1), Sch. 2 Pt. I

### *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.

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

**C54** Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, Sch. 3 Pt. II para. 12(2)

## **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



*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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.
- (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.

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

C55 Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, Sch. 3 Pt. II para. 12(2)

**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.

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

C56 Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, Sch. 3 Pt. II para. 12(2)

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

#### **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—
  - (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

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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- (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.
- (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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

*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
- (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.

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

**C57** Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, **Sch. 3 Pt. II para. 12(2)**

**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)

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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.

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

**C58** Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, Sch. 3 Pt. II para. 12(2)

**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—
  - (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,

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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.

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

**C59** Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, **Sch. 3 Pt. II para. 12(2)**

**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
  - (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.

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*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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## *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.
- (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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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 <sup>M44</sup>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.

**Marginal Citations**

**M44** 1988 c. 41.

**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).
- (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—



*Status: Point in time view as at 01/09/1996.*

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- (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.

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

**C60** Ss. 81(2), 82(2), 83(2), 88, 89, 90, 94 extended by S.I. 1994/507, art. 4, **Sch. 3 Pt. II para. 12(2)**

**95 Provisions consequential on section 93.**

- (1) For the purposes of sections 51 and 52 of the <sup>M45</sup>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 <sup>M46</sup>Education (No. 2) Act 1986.

**Marginal Citations**

**M45** 1986 c. 61.

**M46** 1986 c. 61.

**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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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 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 <sup>M47</sup>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.

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

- C61** S. 96 modified (1.1.1994) by S.I. 1993/3103, reg. 4, **Sch.3**  
S. 96 modified (21.9.1994) by 1994 c. 30, **art. 12(5)(7)**; S.I. 1994/2204, **art. 2(1)**
- C62** S. 96(3) excluded by S.I. 1994/507, art. 3, **Sch. 3 Pt. I para. 1(1)**
- C63** S. 96(6)(a) excluded by S.I. 1994/507, art. 3, **Sch. 3 Pt. I para. 1(2)**
- C64** S. 96(8) applied (1.4.1994) by S.I. 1994/653, **reg. 25**

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### Marginal Citations

M47 1992 c. 13.

## 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,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 <sup>M48</sup>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

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- (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.

#### Marginal Citations

M48 1992 c. 13.

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

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

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

C65 S. 98(2)(4)(5) applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 29

### 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

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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<sup>M49</sup>Town and Country Planning Act 1990, that document.

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

C66 S. 99(1) modified by S.I. 1994/507, art. 3, Sch. 3 Pt. 1 para. 2(2).

**Marginal Citations**

M49 1990 c. 8.

## 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

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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—
  - (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

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- (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 <sup>M50</sup>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.

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

**C67** S. 102 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 28

**C68** S. 102(2) modified (1.1.1994) by S.I. 1993/3103, reg. 4, Sch.3

### **Marginal Citations**

**M50** 1980 c. 20.

## **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—
  - (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,

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- (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.
- (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.



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- (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 <sup>M51</sup>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.

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

**C69** S. 104 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 30

**C70** S. 104(2) excluded by S.I. 1994/507, art. 3, Sch. 3, Pt. I para. 3

**Marginal Citations**

**M51** 1992 c. 13.

**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 <sup>M52</sup>Further and Higher Education Act 1992 applies, the appropriate further education funding council,
  - (b) any ten or more local government electors,

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- (c) the governing body of the school to which the proposals relate,
  - (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.

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

**C71** [S. 105\(5\)](#) applied (with modifications) (1.4.1994) by [S.I. 1994/653](#), [reg. 31](#)

**Marginal Citations**

**M52** [1992 c. 13](#).

**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.

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

**C72** [S. 106\(2\)\(5\)\(6\)](#) applied (with modifications) (1.4.1994) by [S.I. 1994/653](#), [reg. 32](#)

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### **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,  
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,

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- (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

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- (b) after consulting the local education authority and, if the school provides education to which section 2(1) of the <sup>M53</sup>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.
- (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.

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

**C73** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

**Marginal Citations**

**M53** 1992 c. 13.

**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.

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

**C74** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

*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—
- (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 <sup>M54</sup>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.

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

C75 Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2), 33

**Marginal Citations**

M54 1944 c. 31.

**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—
  - (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

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- (d) anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.

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

**C76** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

**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).

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

**C77** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

**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 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



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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.

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

**C78** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, regs. 2(2), 33

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

## **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 <sup>M55</sup>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 <sup>M56</sup>Education Act 1980 on the school premises,

the amount of those liabilities shall be treated for the purposes of section 14 of the <sup>M57</sup>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.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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

**C79** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

**Marginal Citations**

**M55** 1980 c. 20.

**M56** 1980 c. 20.

**M57** 1944 c. 31.

**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 <sup>M58</sup>Financial Services Act 1986 which falls within—

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- (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<sup>M59</sup> 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.

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

**C80** Ss. 109-116 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 33**

**Marginal Citations**

**M58** 1986 c. 60.

**M59** 1986 c. 60.

## CHAPTER IX

### GROUPS OF GRANT-MAINTAINED SCHOOLS

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

**C81** Pt. II Chapter IX (ss. 117-127) modified (8.4.1994) by S.I. 1994/779, **art. 3**

#### 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.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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- (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.

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- (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.

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

**C82** Ss. 119-123 applied (with modifications) (1.10.1994) by S.I. 1994/2281, **reg. 2**

**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.

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

**C83** Ss. 119-123 applied (with modifications) (1.10.1994) by S.I. 1994/2281, **reg. 2**

**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.

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

**C84** Ss. 119-123 applied (with modifications) (1.10.1994) by S.I. 1994/2281, **reg. 2**

**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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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

**C85** Ss. 119-123 applied (with modifications) (1.10.1994) by S.I. 1994/2281, reg. 2

**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.

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

**C86** Ss. 119-123 applied (with modifications) (1.10.1994) by S.I. 1994/2281, reg. 2

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

#### **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—
  - (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,



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- (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,
  - (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

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- (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.

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

**C87** S. 127(2)(a)(b) excluded (8.4.1994) by S.I. 1994/779, reg. 3(c)

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

## 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.

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

- C88** S. 128 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**  
S. 128 applied (1.4.1994) by S.I. 1994/653, **reg. 34**

#### *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.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

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

- C89** S. 129 applied (1.4.1994) by S.I. 1994/653, **reg. 35**  
 S. 129 applied (9.5.1994) by S.I. 1994/1084, **reg. 8(1), Sch. 2 Pt. I**

*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 [<sup>F4</sup>section 68(7)] of this Act does not apply to a transfer required by this subsection.
- (3) In this section “site” does not include playing fields.

**Textual Amendments**

- F4** Words in s. 130(2) substituted 1.9.1996) by 1996 c. 50, s. 10, **Sch. 3 para. 11** ; S.I. 1996/2022, **art. 2**

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

- C90** S. 130(2) applied (with modifications) (9.5.1994) by S.I. 1994/1084, **reg. 8(1), Sch. 2 Pt. I**

**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 <sup>M60</sup>Schools Sites Act 1841 (which relates to the sale or exchange of land held

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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 required to pay any sum to a local education authority under paragraph 8 of the First Schedule to the <sup>M61</sup>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.

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

**C91** S. 131 applied (with modifications) (E.W.) (1.4.1994) by S.I. 1994/653, reg. 36

**C92** S. 131(1) applied (with modifications) (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt. I

**Marginal Citations**

**M60** 1841 c. 38.

**M61** 1946 c. 50.

**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

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- (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.

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

**C93** S. 132 applied (with modifications) (1.4.1994) by S.I. 1994/653, reg. 36

S. 132 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt. I

**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,

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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.

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

- C94** S. 134(1) applied (with modifications) (1.4.1994) by S.I. 1994/653, 36  
S. 134(1) applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

**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 <sup>M62</sup>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)).
- (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.

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

- C95** S. 135 applied (with modifications) (1.4.1994) by S.I. 1994/653, **reg. 36**  
S. 135 applied (with modifications) (1.4.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

**Marginal Citations**

- M62** 1954 c. 56.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### *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.

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

**C96** S. 136 applied (with modifications) (1.4.1994) by S.I. 1994/653, **regs. 2(2), 37**

S. 136 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

**C97** S. 136(1)(a)(b) modified (1.1.1994) by S.I. 1993/3103, **reg. 4 Sch.3**

#### **Commencement Information**

**I4** S. 136 wholly in force at 1.4.1994; s. 136 not in force at Royal Assent see s. 308(3); s. 136(1)(3) in force at 1.1.1994 by S.I. 1993/3106, art. 4, **Sch. 1**; s. 136 in force at 1.4.1994 insofar as not already in force by S.I. 1994/507, **art. 3(1)**

#### **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,



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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 <sup>M63</sup>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

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- (b) their ages and aptitudes.
- (7) Where under section 12 of the <sup>M64</sup>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 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.

#### **Marginal Citations**

**M63** 1988 c. 40.

**M64** 1988 c. 40.

*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

### **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 <sup>M65</sup>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.

#### **Marginal Citations**

**M65** 1988 c. 40.

### **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 <sup>M66</sup>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.

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*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

- (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 <sup>M67</sup>Education Reform Act 1988.
- (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.

#### **Marginal Citations**

**M66** 1988 c. 40.

**M67** 1988 c. 40.

## **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.

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- (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 <sup>M68</sup>Education Reform Act 1988 to be included in the school’s basic curriculum.

#### Marginal Citations

M68 1988 c. 40.

### 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—
- 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,
  - if there is more than one such syllabus, whichever of them the governing body shall determine, or
  - 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—
- it was a county school immediately before it became grant-maintained,
  - it was established in pursuance of proposals published under section 48 of this Act, or
  - 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—
- for being a teacher at the school, or
  - 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.

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- (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.

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

- C98** S. 143(2)-(4) applied (1.4.1994) by S.I. 1994/653, **reg. 36**  
 S. 143(2)-(4) applied (9.5.1994) by S.I. 1994/1084, **reg. 8(1), Sch. 2 Pt. I**

**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.
- (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 <sup>M69</sup>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.

**Marginal Citations**

- M69** 1944 c. 31.

**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

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- (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 <sup>M70</sup>Education Reform Act 1988 to be included in the school’s basic curriculum.

**Marginal Citations**

**M70** 1988 c. 40.

*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 <sup>M71</sup>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.

**Marginal Citations**

**M71** 1944 c. 31.

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

- (1) For section 11(3)(b) of the <sup>M72</sup>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 <sup>M73</sup>Education Reform Act 1988 there is added—

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- “(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.”

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

**C99** S. 147(1) restricted by S.I. 1994/507, art. 3, **Sch. 3 Pt. I para. 4**

**Marginal Citations**

**M72** 1988 c. 40.

**M73** 1988 c. 40.

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

In section 12 of the <sup>M74</sup>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.”



*Status: Point in time view as at 01/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II. (See end of Document for details)*

#### Marginal Citations

M74 1988 c. 40.

### *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.

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

C100 S. 149(2) modified (1.1.1994) by S.I. 1993/3103, reg. 4, Sch.3

#### **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—

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- (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—
  - (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.

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

**C101** Ss. 152-155 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**  
S. 152 applied (1.4.1994) by S.I. 1994/653, **reg. 39**

**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.
- (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 <sup>M75</sup>Children Act 1989 (review of provision for day care).

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

**C102** Ss. 152-155 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**  
S. 153 applied (1.9.1994) by S.I. 1994/1048 reg. 6(a)

**Commencement Information**

**I5** S. 153 wholly in force at 1.4.1994; s. 153 not in force at Royal Assent see s. 308(3); s. 153(1)(2)(4) in force at 1.1.1994 by S.I. 1993/3106, art. 4, **Sch. 1** ; s. 153 in force at 1.4.1994 insofar as not already in force by S.I. 1994/507, **art. 3(1)**

**Marginal Citations**

**M75** 1989 c. 41.

**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—

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- (a) whether he has carried out under section 6 of the <sup>M76</sup>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 <sup>M77</sup>Education Reform Act 1988.

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

**C103** Ss. 152-155 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**  
 S. 154 applied (1.4.1994) by S.I. 1994/653, **reg. 39**

**Marginal Citations**

**M76** 1983 c. 44.  
**M77** 1988 c. 40.

*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 <sup>M78</sup>Education Act 1944.
- (2) The following provisions apply for the purposes of this Part of this Act.
- (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.

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

**C104** Ss. 152-155 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

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**Marginal Citations**

**M78** 1944 c. 31.

**Status:**

Point in time view as at 01/09/1996.

**Changes to legislation:**

There are currently no known outstanding effects for the Education Act 1993 (repealed), Part II.