



# Education Act 1996

## 1996 CHAPTER 56

### PART III

#### GRANT-MAINTAINED SCHOOLS

### CHAPTER I

#### PRELIMINARY

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

- (1) A school conducted by a governing body incorporated under this Part, Part II of the Education Act 1993 or Chapter IV of Part I of the Education Reform Act 1988 for the purpose of conducting the school shall be known as a grant-maintained school.
- (2) A governing body may be incorporated under this Part—
  - (a) in pursuance of proposals for the purpose published under section 193 in relation to an existing school (referred to in this Part as “proposals for acquisition of grant-maintained status”),
  - (b) in pursuance of proposals for the purpose published under section 211 or 212 in connection with the establishment of a school (referred to in this Part 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, the funding authority shall pay to the governing body of each grant-maintained school such annual grants as may be required to be paid under Chapter VI.

## CHAPTER II

### PROCEDURE FOR ACQUISITION OF GRANT-MAINTAINED STATUS

#### *Eligibility*

#### **184 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 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 167 and either—
  - (a) the proposals have been approved by the Secretary of State under section 169, 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 section 170(3).
- (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notice of the governing body's intention to discontinue the school has been served under section 173 and has not been withdrawn, or
  - (b) proposals by the governing body to discontinue the school have been published under section 41 (as applied by section 175(2)(b)) and approved by the Secretary of State under section 43 (as so applied).

#### **185 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 whether grant-maintained status should be sought for the school.
- (3) Subsection (2) does not apply in respect of any school year if a ballot has been held in accordance with section 189 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) 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

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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 161.

#### *Initiation of procedure*

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

- (1) Where the governing body of a school which is eligible for grant-maintained status decide by a resolution passed at a meeting of that body to hold a ballot of parents on the question whether grant-maintained status should be sought for the school, they shall—
- (a) secure that the ballot is held in accordance with section 189 within the period of 10 weeks beginning with the date of the resolution, and
  - (b) give notice in writing that the ballot is to be held—
    - (i) to the local education authority, and
    - (ii) 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) 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 189 within the period of 12 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.

### **187 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 whether grant-maintained status should be sought for the school.
- (2) A request under subsection (1) 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 20 per cent. of the number of registered pupils at the school; and in this subsection “registered” means shown in the register kept under section 434 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 189 within the period of 10 weeks beginning with the date on which the request was received, and
  - (b) give notice in writing that the ballot is to be held—
    - (i) to the local education authority, and
    - (ii) if the school is a voluntary school, to any person holding property on trust for the purposes of the school.

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- (4) Notice under subsection (3)(b) 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) does not apply if in the case of the school in question a ballot has been held in accordance with section 189 within the period of 12 months ending with the date immediately preceding the date on which the request is received, unless the Secretary of State gives consent in writing for a new ballot to be held.
- (6) A request under subsection (1) shall be taken to have been received by a governing body if given or sent to the chairman of the governing body or to the clerk to the governing body.

### *Information*

#### **188 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) applies, the governing body shall—
  - (a) make available to the parent for inspection at the school (at all reasonable times and free of charge) 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 189, or
  - (b) where the governing body are under a duty by virtue of section 186, 187 or 191 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) 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) supply copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

### *Ballot of parents*

#### **189 Ballot of parents**

- (1) Where the governing body of a school are under a duty by virtue of section 186 or 187 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.

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- (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 the school (at all reasonable times and free of charge) a document containing the information required by subsection (3)(a) 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.

## **190 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 189 if he is a registered parent of a registered pupil at the school.
- (2) In subsection (1) “registered” means shown in the register kept under section 434 as that register has effect on the date immediately following the end of the period of 14 days beginning with—
  - (a) the date on which the relevant resolution or request was passed or received by the governing body, or
  - (b) where the Secretary of State gives his consent for the purposes of section 186(3) or 187(5), the date on which he gives that consent.
- (3) In subsection (2) “the relevant resolution or request” means the resolution under section 186, or request under section 187, by reference to which the ballot is required to be held (or, where the ballot is a second ballot held by virtue of section 191, by reference to which the first ballot was required to be held).

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

- (1) Where in any ballot held in accordance with section 189 (other than one held by virtue of this section)—
  - (a) the total number of votes cast by persons eligible to vote is less than 50 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 14 days beginning with the day after that on which the result of the first ballot is determined.

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- (2) In such a case—
- (a) the result of the first ballot shall be disregarded for the purposes of section 193(1), and
  - (b) subject to the modifications mentioned in subsection (3), section 189 shall apply as it applies in a case where the governing body of a school are under a duty by virtue of section 186 or 187 to secure that a ballot is held.
- (3) The modifications are—
- (a) that section 189(3)(a) shall be omitted, and
  - (b) that section 189(4) shall be read as if the information there referred to were the information given for the purposes of the first ballot.

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

- (1) Subsection (2) applies where it appears to the Secretary of State—
- (a) that any requirements of section 189 or 191 have been contravened in the case of a ballot held in purported compliance with section 189,
  - (b) that the arrangements for a ballot so held did not accord with any guidance given by him for the purposes of section 189,
  - (c) that a governing body have acted unreasonably in the discharge of their duties under section 189 or 191,
  - (d) that persons other than those eligible to do so have purported to vote in a ballot so held,
  - (e) that ballot papers returned for the purposes of a ballot so held have been marked by persons other than those to whom they were issued or those duly authorised to act on their behalf,
  - (f) that persons who were eligible to vote in a ballot so held have been prevented or hindered from doing so, or from doing so freely in accordance with their own opinions, by any other person, or
  - (g) that voting in a ballot so held is likely to have been influenced to a significant extent by the dissemination of information appearing to the Secretary of State to be to a material extent false or misleading.
- (2) The Secretary of State may by notice in writing given to the governing body—
- (a) declare the ballot void, and
  - (b) require that a fresh ballot be held in accordance with section 189 before such date as he may specify in the notice.
- (3) Where—
- (a) by a notice under subsection (2) 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 190(1) shall have effect in relation to the fresh ballot as if “registered” meant shown in the register kept under section 434 as that register has effect on the date specified for the purposes of this subsection.

### **193 Publication of proposals**

- (1) Subsection (2) applies where the result of a ballot held in accordance with section 189 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 made by or under paragraph 1 of Schedule 20,
  - (b) publish any notice in respect of the proposals for the time being required by any such provisions, and
  - (c) submit to the Secretary of State a copy of the published proposals.
- (3) References in this Part to proposals published under this section are, in any case where the Secretary of State has modified such proposals in pursuance of this Part, references to the proposals as so modified.
- (4) For the purposes of this Part, 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 20 has effect for the purpose of supplementing this section.

#### *Approval and implementation of proposals*

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

- (1) Proposals published under section 193 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 193, 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—
    - (i) approve them without modification, or
    - (ii) 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 193 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 193 within such period as he may specify.
- (4) Where the Secretary of State imposes a requirement under subsection (1) or (3) for the publication of further proposals, section 193(2) and Schedule 20 shall apply as they apply in the case mentioned in section 193(1), but with the following modifications—
  - (a) the reference in section 193(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

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- (b) the reference in paragraph 2(1)(a) of Schedule 20 to the ballot shall be read as referring to the last ballot held in accordance with section 189 in relation to the school before the requirement in question was imposed.

### **195 Incorporation of governing body**

- (1) Where any proposals are approved under section 194, 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 20.
- (2) Where any proposals are approved under section 194, 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 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—
    - (i) an express reference to the new governing body or the governing body incorporated under this section, or
    - (ii) 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.

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

Schedule 21 (which makes provision in relation to the period after approval and before the date of implementation) has effect in relation to a school once proposals are approved under section 194.

#### *Expenses in connection with proposals*

### **197 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 the preceding provisions of this Chapter.
- (2) Payments under subsection (1) 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 189 if the



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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),
  - (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), 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.

*Alteration of county school proposed for grant-maintained status*

**198 Proposals by governing body for alteration of county school proposed for grant-maintained status**

- (1) This section applies where—
  - (a) the governing body of a county school (“the school proposed for grant-maintained status”) have published proposals for acquisition of grant-maintained status which have not been withdrawn or determined,
  - (b) the local education authority have published proposals for any of the purposes mentioned in section 35(1)(c) or (d) (alteration, etc. of county school) in respect of one or more schools in the area, and
  - (c) the governing body of the school proposed for grant-maintained status intend to make a significant change in the character, or a significant enlargement of the premises, of the school, being a change or enlargement to be made for the purpose of ensuring consistency in the provision of education in the area of the local education authority if the proposals made by the authority are implemented.
- (2) The governing body of the school proposed for grant-maintained status may publish in such manner as may be required by regulations proposals for a significant change in the character, or significant enlargement of the premises, of the school for the purpose mentioned in subsection (1)(c).
- (3) Chapter VII (alteration etc. of grant-maintained school) shall apply in relation to proposals published under this section as it applies in relation to proposals published under section 259 (proposals for change of character etc. by governing body) but—
  - (a) as if the governing body of the school proposed for grant-maintained status were the governing body of a grant-maintained school, and
  - (b) with the modifications in subsections (4) and (5) below.
- (4) The particulars of the proposals shall not give as the time or any of the times of implementation of the proposals a time earlier than the date of implementation of the proposals for acquisition of grant-maintained status.

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- (5) The statement accompanying the proposals shall (in addition to complying with section 259(5))—
- (a) state that the proposals are published in connection with the proposed acquisition of grant-maintained status,
  - (b) state the circumstances in which the governing body are authorised under this section to publish such proposals, and
  - (c) describe the proposals published by the local education authority in connection with which the proposals under this section are published.
- (6) Proposals published under this section may, if the governing body think fit—
- (a) specify an age below 10 years and six months and an age above 12 years, and
  - (b) provide that the school is to be a school for providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.

### **199 Approval or rejection by Secretary of State of proposals under section 198**

- (1) This section applies where, after proposals for acquisition of grant-maintained status have been published in respect of any school which is eligible for grant-maintained status but before those proposals are withdrawn or determined, proposals in respect of the school are published under section 198.
- (2) The Secretary of State shall consider both sets of proposals together but shall not determine the proposals under section 198 until he has made his determination with respect to the proposals for acquisition of grant-maintained status.
- (3) If the Secretary of State approves the proposals for acquisition of grant-maintained status, he may approve the proposals under section 198.
- (4) If the Secretary of State rejects the proposals for acquisition of grant-maintained status, he shall reject the proposals under section 198.

### *Supplementary*

### **200 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 193, are to the date specified (in accordance with regulations under section 189(3)(a)) 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) “the originating ballot”—
  - (a) where section 193(2) applies, means the ballot by reference to which it applies, and

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- (b) where the proposals are required to be published by virtue of a requirement imposed by the Secretary of State under section 194(1) or (3), means the last ballot held in accordance with section 189 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 22, and
  - (d) if he is to be a first, foundation or sponsor governor, the term of office proposed for him in accordance with that paragraph or, in the case of a foundation governor who is to hold office *ex officio*, the fact that he is to do so.
- (5) “The incorporation date” means the date on which the governing body are incorporated.

### CHAPTER III

#### PROPERTY, STAFF AND CONTRACTS

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

#### **201 Transfer of property etc**

- (1) Subject to subsection (3), 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) 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) are—
  - (a) all land or other property which, immediately before the date of implementation of the proposals, was property used or held by the authority for the purposes of the school, and
  - (b) all rights and liabilities subsisting immediately before the date of implementation of the proposals which were acquired or incurred by the authority for those purposes.
- (3) Subsection (1) shall not apply to rights and liabilities under any contract of employment; and subsection (1)(a) 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),
  - (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.

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- (4) Any land or other property of a local authority excluded by virtue of subsection (3) (a) 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)—
- (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) 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)—
- (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) References in this section 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.
- (10) This section is subject to section 198 of the Education Reform Act 1988 (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this subsection to the transfer date are to the date of implementation of the proposals.

## **202    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), 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

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- (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) 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) 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) 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) “former employer”—
  - (a) in relation to a person to whom this section applies by virtue of subsection (1)(a), 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), 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 as if originally made between him and the governing body of the grant-maintained school.
- (7) Without prejudice to subsection (6)—
  - (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) 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.

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- (9) An order under this section may designate a person either individually or as a member of a class or description of employees.

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

### **203 “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 whether grant-maintained status should be sought for the school is to be considered (not being a case falling within section 186(3)), or
  - (b) where the governing body have received a request under subsection (1) of section 187, 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)) if—
    - (i) the meeting is not held,
    - (ii) the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed, or
    - (iii) the resolution is passed but the result of the ballot to which the notice under section 186(1)(b) 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)) if the result of the ballot to which the notice under section 187(3)(b) relates does not show a majority in favour of seeking grant-maintained status for the school;
  - (c) if—
    - (i) proposals which by reference to the result of a ballot to which a notice under section 186(1)(b) or 187(3)(b) relates are required to be published under section 193, or
    - (ii) 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 191 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 194(1) or (3) on withdrawal or (as the case may be) rejection of—
- (a) the original proposals, or

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- (b) any further proposals required to be published by virtue of section 194(1) or (3) in respect of the school without a further ballot.
- (6) Proposals published under section 193 shall not be treated for the purposes of subsection (3)(c) as rejected in any case where the Secretary of State imposes a requirement under section 194(3) or as withdrawn in any case where he imposes a requirement under section 194(1) for the publication of further proposals.

## **204 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) 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 205 in relation to any land, where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.
- (4) In the case of a disposal made or contract entered into after proposals for acquisition of grant-maintained status have been approved, “the required consent”—
  - (a) (if it is agreed between the local authority and the new governing body that the value of the land in question does not exceed £6,000) is the consent of the new governing body, and
  - (b) (if paragraph (a) 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 205) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given.
- (7) This section has effect notwithstanding anything in section 123 of the Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (8) In this section and section 205—
  - (a) references to disposing of land include granting or disposing of any interest in land, and

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- (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) (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

## **205 Wrongful disposals of land**

- (1) This section applies where—
  - (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have made a disposal, or have entered into a contract, in contravention of section 204(1).
- (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) shall have effect—
  - (a) where it is made after the date of implementation of the proposals, as if the local authority (and not the governing body) were party to the contract, and
  - (b) as if 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)) the Education Assets Board may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) 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) the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
  - (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the Compulsory Purchase Act 1965 or section 52A of the Land Compensation Act 1973, and



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- (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.
- (9) Section 204(8) applies for the purposes of this section.

## **206 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 set out in subsection (1)) 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 207) 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) shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (8) This section does not apply to—
  - (a) a works contract (within the meaning of Part III of the Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act,
  - (b) a works contract (within the meaning of Part I of the Local Government Act 1988) which is entered into in accordance with section 4 of that Act,
  - (c) a contract to dispose of land (within the meaning of section 204) 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) (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

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## **207 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 206 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) shall have effect—
  - (a) where it is made after the date of implementation of the proposals, as if the local authority (and not the governing body) were party to the contract, and
  - (b) as if the repudiation were made by the local authority.

## **208 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),

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 201 above and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
  - (b) the references to taking action include appropriating property for any purpose.

## **209 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) 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,

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- (b) the dismissal (otherwise than under section 143(6) or 144(3) (special provisions as to religious education in voluntary schools)) of a person to whom subsection (3) 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 133(1) to (3) (determination of staff complement for schools).
- (5) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, “the required consent” is that of the new governing body.
- (6) In any other case “the required consent” is that of both the existing governing body and the Secretary of State.

### *Supplementary*

## **210 Supplementary provisions about transfers**

- (1) No duty of a local education authority under section 60(2) or (as the case may be) 61(2) to convey their interest in any site or buildings to the trustees of a voluntary 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), then, in connection with the site in question, sections 60(2) to (7), 61(2) and (3) and 62 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), or imposed by section 70(1), 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 201(1)(a) 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 204 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 section 61(4) or (5), section 201(1)(a) shall not apply to any rights or liabilities of any local authority under the agreement; and any directions given before that date under section 61(6), 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 195.

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## CHAPTER IV

### ESTABLISHING NEW GRANT-MAINTAINED SCHOOLS

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

#### **211 Proposals by funding authority**

- (1) This section has effect in respect of the area of a local education authority if an order under section 27(1) 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.

#### **212 Proposals by promoters**

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

#### **213 Provisions supplementary to sections 211 and 212**

- (1) Part II of Schedule 20 has effect for the purpose of supplementing sections 211 and 212.
- (2) Subsection (3) 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 212 shall, in addition to the matters required to be specified by virtue of paragraph 7 of Schedule 20—
  - (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

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- (b) state whether there is a trust deed or other instrument relating to the existing independent school.
- (4) References in this Part to proposals published under section 211 or 212 are, in any case where the Secretary of State has modified such proposals in pursuance of this Part, references to the proposals as so modified.
- (5) No proposals may be published under section 211 or 212 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 19, or
  - (b) part-time education suitable to the requirements of junior pupils.

#### *Approval and implementation of proposals*

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

- (1) Proposals published under section 211 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 20 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 212 require the approval of the Secretary of State.
- (3) Where under subsection (1) or (2) any proposals require the approval of the Secretary of State, he may—
  - (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the funding authority (and, in the case of proposals under section 212, the promoters) approve them with such modifications as he thinks desirable.
- (4) In relation to Wales, subsection (3) 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 211, particulars in respect of the proposed premises of the school prepared under paragraph 12 of Schedule 20 must be adopted by the funding authority.
- (6) In the case of proposals published under section 212, particulars in respect of the proposed premises of the school submitted under paragraph 12 of Schedule 20 require the approval of the funding authority.
- (7) Where proposals published under section 211 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—

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- (a) make any determination under subsection (7) 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.

## **215 Implementation of proposals**

- (1) Where any proposals are approved or adopted under section 214, 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 20.
- (2) Where any proposals published under section 211 are so approved or adopted, the funding authority shall implement the proposals or, in a case where, under this subsection, the Secretary of State modifies the proposals at their request, shall implement the proposals as so modified.
- (3) Where any proposals published under section 212 are so approved, the promoters shall implement the proposals or, in a case where, under this subsection, the Secretary of State modifies the proposals at their request, shall implement 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 214(5) or (6).

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

- (1) Where proposals have been approved or adopted under section 214, the powers conferred on the governing body by or under this Part 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 212, 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) 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 214, 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 (funding of grant-maintained schools) 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) such requirements as they may from time to time determine (whether before, at or after the time when the grant is made).

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- (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) may be imposed where any grant is made under subsection (2) in respect of the provision of premises for the school if any freehold interest in the premises in respect of which the grant is paid is, or is to be, held on trust for the purposes of the school.
- (9) In this section “site” does not include playing fields.

### *Supplementary*

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

## **CHAPTER V**

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

#### *The governing instruments*

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

- (1) For every governing body of a grant-maintained school there shall be—
  - (a) an instrument (known as the instrument of government) providing for the constitution of the governing body, and
  - (b) an instrument (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.

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(4) Schedule 22 (membership and proceedings etc. of governing bodies) shall have effect.

(5) Schedule 23 (content of articles of government) shall also have effect.

## **219 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.

(4) Before making any regulations under this section the Secretary of State shall consult—

- (a) a body appearing to him to be representative of the Church of England,
- (b) a body appearing to him to be representative of the Church in Wales, and
- (c) a body appearing to him to be representative of the Roman Catholic Church,

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

## **220 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—

- (i) of an instrument made under paragraph (a), or

- (ii) of an instrument of government made under section 57(1)(a) of the Education Act 1993 or Chapter IV of Part I of the Education Reform Act 1988 which has effect (by virtue of Schedule 39 to this Act) as if made under paragraph (a),

by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit;

but he 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) 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.



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- (4) An order under subsection (3)—
- (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.

## **221 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) or, where articles made under section 58(1)(a) of the Education Act 1993 or Chapter IV of Part I of the Education Reform Act 1988 have effect (by virtue of Schedule 39 to this Act) as if made in accordance with this Part, 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,

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- (b) (if the direction relates only to a school having foundation governors) the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
- (c) (if the direction relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors) a body appearing to the Secretary of State to be representative of the church in question in matters relating to the provision of education in grant-maintained schools having foundation governors.

### *Governors*

#### **222 Categories of governors**

Schedule 24 (expressions used in connection with categories of governors) shall have effect.

#### **223 Parent governors**

- (1) Subject to subsection (6), 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), 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)—
  - (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) paragraph 7 of Schedule 8 (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 of any vacancy arising for a parent governor,

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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) 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.

## **224 Teacher governors**

- (1) Subject to subsection (4), 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), 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) paragraph 7 of Schedule 8 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 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.

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## **225 Head teacher**

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

## **226 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 211,
 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), 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)).
- (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 shall, despite subsection (3), 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

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- (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 provided that 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 provided that such persons might also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (6) In the case of a grant-maintained school established in pursuance of proposals published under section 211—
  - (a) any provision of the instrument made by virtue of subsection (3)(a)(i) 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) 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.

## **227 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 211,shall provide for the Secretary of State to have power, where any of subsections (2) to (4) 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 Part I of the School Inspections Act 1996, 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 17 of that 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 Act have the same meaning as in that Act.
- (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.

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- (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 211,
- shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of section 226(3) shall not apply for the purposes of the appointment by virtue of this section of any first governor.

## **228 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 212,
- 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), the instrument may provide for any foundation governorship to be held *ex officio*.
- (4) Subject to subsection (7), 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 230(2) may not be appointed to hold office *ex officio*.
- (6) Subject to subsections (8) and (9), 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 (as defined by section 78(2)) to the existing governing body to be entitled to appoint the foundation governors for the governing body of the grant-maintained school;

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- (c) (in the case of a grant-maintained school established in pursuance of proposals under section 212) provide for the promoters to be entitled to appoint the foundation governors;
- (d) (where the instrument provides for a foundation governorship to be held *ex officio*) provide for it to be held by the holder of a specified office;

and in this subsection “specified” means specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.

- (8) In the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, the instrument shall (despite anything in subsection (6)) have effect 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 212, subsection (6) above shall not apply in relation to the appointment of any foundation governor before the date of implementation of the proposals.

## **229 Sponsor governors**

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

### **230 Additional governors**

- (1) The instrument of government for the governing body of a grant-maintained school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the appointing authority, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) 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) “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*

### **231 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, where changes have been made in the character or premises of the school since the date of implementation of the proposals, be regarded as of a different description 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 (alteration etc. of grant-maintained schools), or
  - (b) were authorised under that Chapter.
- (4) Subject to subsections (6) and (7) 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) 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;



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- (c) power 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;
  - (d) to acquire and dispose of land and other property;
  - (e) to enter into contracts, including, in particular, contracts for the employment of teachers and other staff;
  - (f) 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 201; and
  - (g) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for such purposes.
- (6) The power to borrow sums and grant security mentioned in subsection (5)(c) 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 255.
- (7) The power to dispose of land mentioned in subsection (5)(d) may only be exercised with the written consent of the Secretary of State.
- (8) Without prejudice to subsection (4), 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 19,
  - (b) it is part-time education suitable to the requirements of junior pupils who have not attained the age of five 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.

## **232 Joint schemes**

- (1) Two or more grant-maintained schools may enter into a scheme under this section (referred to in this section and section 233 as a “joint scheme”).
- (2) A joint scheme may—
- (a) authorise or require the governing bodies of the schools to which the scheme applies to establish joint committees constituted in accordance with the scheme,
  - (b) provide for the meetings and proceedings of any joint committee so constituted, and
  - (c) authorise or require the governing bodies of the schools to which the scheme applies to delegate, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined to any joint committee so constituted.
- (3) A scheme providing for any joint committee must provide for the committee—
- (a) to consist only of persons who are governors of the schools to which the scheme applies, and

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- (b) to include a head teacher of one of those schools, a parent governor of one of those schools and a first or foundation governor of one of those schools.
- (4) A joint scheme may authorise or require the governing bodies of the schools to which the scheme applies to exercise jointly, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined; but such a scheme may not provide for the joint exercise of any function relating to the employment of teachers unless it also provides for the establishment of a joint committee to exercise that function.
- (5) In relation to any teacher employed in pursuance of a joint scheme, the School Teachers' Pay and Conditions Act 1991 shall have effect as if he were employed by the joint committee required to be established under subsection (4) 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 despite 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 430) contained in an agreement approved by the Secretary of State under that section or made in pursuance of a scheme under that section.

### **233 Making and varying joint schemes**

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

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- (c) (in the case of a direction for a scheme to cease to have effect) to which the scheme applies.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as minor for the purposes of this section.

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

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

- (1) Where proposals are required to be published under section 193 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 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 235(1)), and
  - (b) any election or appointment required by subsection (7),is held or made if possible before that date, and otherwise as soon as possible afterwards.
- (3) Subject to subsection (4), any person who on the date of publication of the proposals is an eligible governor of an elected category on the existing governing body shall be named in the proposals as published as a proposed initial governor of that category.
- (4) If the number of governors of any elected category to be specified in the proposals is less than the number which, on the date of publication of the proposals, will be the number of eligible governors of that category on the existing governing body, such of the eligible governors of that category as may before the date of publication of the proposals be determined—
  - (a) by agreement between them, or
  - (b) in default of agreement, by drawing lots,shall be named in the proposals as published as the proposed initial governors of that category.
- (5) The existing governing body shall secure that any persons required to be named in the proposals in accordance with subsection (4) are determined before the date of publication of the proposals.
- (6) Subsection (7) 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 shall secure that such number of persons are elected or appointed, by the procedure applicable under Chapter IV of Part II (government of LEA-maintained schools), to hold office on the proposed governing body as governors of that category as is required to make up the difference between

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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) 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) as an initial governor of that category before the date of publication of the proposals.

### **235 Section 234: supplementary provisions**

- (1) Subject to subsection (2), where the members of the existing governing body of a school to which section 234 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) if—
- (a) his term of office is due to come to an end after the proposed date of publication of the proposals, or
  - (b) it would not in their view be reasonably practicable, in the time available between the date on which his term of office is due to come to an end and the proposed date of publication of the proposals, to fill the vacancy by the procedure applicable under Chapter IV of Part II.
- (3) Without prejudice to paragraph 11(1) of Schedule 8 (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 Chapter IV of Part II, and any requirements of the instrument of government of the school to fill a vacancy arising by virtue of subsection (1), shall be four years.
- (4) Where any such election or appointment as is referred to in section 234(2) 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.

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

- (1) Where proposals are required to be published under section 193 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 193 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 (as defined by section 78(2)) to the existing governing body shall select the persons who are to be the initial foundation governors.

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- (3) The duties under subsections (1) and (2) 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) shall, if possible, be named in the proposals as published as a proposed initial first or, as the case may be, foundation governor.
- (5) In the case of any person so selected who is not named in the proposals as published, the existing governing body shall—
  - (a) give the Secretary of State notice in writing of the relevant particulars in respect of the person selected before such date as may be specified in directions given by the Secretary of State, and
  - (b) publish at such time and in such manner as may be prescribed notice of his selection.
- (6) Where the Secretary of State is notified of any particulars under subsection (5), 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) is carried out in accordance with that subsection.
- (8) Where any selection falls in accordance with subsection (2) 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 377 or 378 (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.

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

- (1) This section applies where proposals published under section 193 are pending in respect of a school.
- (2) If a person named in the proposals as a proposed governor of an elected category who has been elected under section 234 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), the authority responsible for election arrangements in relation to the school shall secure that a person is elected or appointed by the procedure applicable under Chapter IV of Part II to hold office on the proposed governing body in his place.
- (3) Where in a case to which subsection (2) 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

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by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.

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

the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body who is at that time an eligible governor of that category and who is neither named in the proposals nor prospectively disqualified as mentioned in paragraph (b).

- (5) Where in a case to which subsection (4)(a) 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 Chapter IV of Part II,

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) applies there is no such eligible governor at the time in question, subsection (2) shall apply as if the former proposed governor had been elected under section 234.

- (7) If a person named in the proposals as a proposed governor of an elected category who has been 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),
  - (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.

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

- (1) Where proposals published under section 193 are pending in respect of a county school and a person selected under section 236(1) 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 193 are pending in respect of a voluntary school and a person selected under section 236(2) 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 (as defined by section 78(2)) to the existing governing body.

- (3) Subsections (8) and (9) of section 236 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),
- (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.

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

- (1) Paragraph 7 of Schedule 8 shall apply in relation to the election of a person under section 234 or 237 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 in relation to a school to which section 234 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.

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- (3) Where the authority responsible for election arrangements in relation to a school to which section 234 or 237 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 234 or 237 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 193 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), 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) an election or appointment is required for determining a proposed initial governor of any category if—
  - (a) it is required under section 234 or 237, 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.

#### **240 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 234 to 239.

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

#### **241 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



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- (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) the “appointing authority”, in relation to any appointment, means the person entitled to make the appointment.

#### *General and supplementary*

### **242 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 is without prejudice to the generality of paragraph 11 of Schedule 22.

### **243 Chapter V: interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) References to the authority responsible for election arrangements 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 paragraph 7(3) of Schedule 8 (such arrangements to be made by the local education authority or the school’s governing body depending on the type of school).
- (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 193 and in sections 234(7) and 237(2), to the procedure applicable under Chapter IV of Part II are references—
  - (a) except where any provision made by virtue of section 81 (appointment of parent governors by governing body) applies, to the holding of an election under that Chapter, 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 219 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.

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

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## CHAPTER VI

### FUNDING OF GRANT-MAINTAINED SCHOOLS

#### *Grants: general*

#### **244 Maintenance grants**

- (1) Subject to the provisions of this Part, the funding authority shall make annual grants (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 232(6),
  - (b) any requirements imposed by the funding authority under section 247(1), 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 19.

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

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

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- (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.

## **246 Capital grants**

- (1) Grant regulations may provide for the payment by the funding authority to the governing bodies of grant-maintained schools of grants (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) 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), the Secretary of State shall consult the funding authority.
- (5) A direction under subsection (3) 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.

## **247 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) as the funding authority may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) 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)—
  - (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), may at any time be varied by the funding authority.

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- (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), or a requirement required to be imposed by the regulations (by virtue of subsection (9)) or by directions under section 24, 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), 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) may at any time be waived or removed by the funding authority with the consent of the Secretary of State.
- (6) The requirements 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 capital grant 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) may be imposed where any payment is made in respect of capital grant if—
- (a) the grant is made in respect of the provision, alteration or repair of premises for a school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.
- (9) Grant regulations may require the funding authority to impose any such requirements as may be imposed under the preceding provisions of this section.

## **248 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.

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- (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 247(6) 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 this section, by any of sections 216 and 244 to 247, or by paragraph 6 of Schedule 21 in such manner (if any) as may be specified in or determined in accordance with grant regulations.

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

#### **249 Application of sections 250 to 254**

Before the Schools Funding Council for Wales begin to exercise their functions, sections 250 to 254 shall have effect in relation to grant-maintained schools in Wales in place of sections 244(1) and (3), 245(1), 246(1), 247 and 248.

#### **250 Maintenance grants**

- (1) Subject to the provisions of this Part, the Secretary of State shall make annual grants (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 232(6),
  - (b) any requirements imposed by the Secretary of State under section 253(1) or (3), 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.

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

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## **251 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 (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.

## **252 Capital grants**

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

## **253 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) as the Secretary of State may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) 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)—
  - (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), 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), and
  - (b) is subject, in the case of a requirement of the kind mentioned in subsection (2)(b), to the provisions of the regulations relating to the determination of the requirements that may be imposed in the case of payments in respect of the grants in question.

- (6) The requirements—
- (a) which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grant, or
  - (b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grant are made,
- may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the Secretary of State of the whole or any part of the following amount.
- (7) That amount is—
- (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) 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.

## **254 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 253(6) 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.

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- (5) In this section references to an over-payment of maintenance grant in respect of a financial year are to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in question in respect of the year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

### *Loans*

#### **255 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 (“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 Wales before the Schools Funding Council for Wales begin to exercise their functions, means the Secretary of State, and
  - (b) 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*

#### **256 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) 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, in the case of a local education authority to which this section applies in respect of any financial year, recover from the authority 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.



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- (4) Subject to subsection (5), sums recoverable by virtue of this section in respect of a school for any financial year—
  - (a) shall be of such amounts, and
  - (b) shall fall due on such date or dates,as may be determined by the Secretary of State.
- (5) The amount of any sum so recoverable shall be determined by reference to any amount—
  - (a) which has previously been determined under section 257 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)) which is estimated by the Secretary of State as the amount which will initially be determined under section 257 as the total amount recoverable in respect of the school and financial year in question,and which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) The Secretary of State may recover sums due to him under this section in either or both of the following ways—
  - (a) by requiring the local education authority to pay the whole or any part of any such sum at such time or times as he thinks fit, and
  - (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whenever passed) or from any amount payable by him to the authority under Part III of Schedule 8 to the Local Government Finance Act 1988 (redistributed non-domestic rates).

## **257 Determination of total amount recoverable under section 256**

- (1) The total amount recoverable by virtue of section 256 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 (“recoupment regulations”).
- (2) Subject to any provision made by such regulations by virtue of subsection (3), 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 256 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) an excess amount is recovered under section 256 in respect of a financial year if the aggregate amount of the sums recovered under that section for that year from the local education authority—
  - (a) in respect of any school in respect of which sums are recoverable from the authority under that section, or

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(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.

## **258 Provisions consequential on section 256**

- (1) For the purposes of sections 492 and 493 (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 256 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) 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 256 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 492 or 493.

## **CHAPTER VII**

### ALTERATION ETC. OF GRANT-MAINTAINED SCHOOLS

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

- (1) Subject to subsection (2), where the governing body of a grant-maintained school intend to make a significant change in the character, or a significant enlargement of the premises, of the school or to transfer the school to a new site they shall—
  - (a) publish proposals for that purpose in such manner as may be prescribed, and
  - (b) submit to the Secretary of State a copy of the published proposals.
- (2) No proposals shall be published under this section for the purpose of making a significant change in the religious character of a school unless the trustees under any trust deed relating to the school have given their consent in writing to the change in question; and the requirement to publish proposals under subsection (1) does not apply in relation to a transfer of a school to a new site if it is intended to return to the existing site within three years of the time of the transfer.
- (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

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- (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).
  - (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 Secretary of State by any of the following—
    - (a) any ten or more local government electors for the area,
    - (b) the governing body of any school affected by the proposals,
    - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
    - (d) any local education authority concerned.
  - (7) Where the proposals are to transfer a school to a site in a different area, objections under subsection (6) to the proposals may also be submitted 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 28 days after the first.

## **260 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 27(1) 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 section 27(1) 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; and subsection (2) does not apply in relation to a transfer of a school to a new site if it is intended to return to the existing site within three years of the time of the transfer.
- (4) Before publishing any proposals under this section the funding authority shall consult—
  - (a) such persons as appear to them to be appropriate, and

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- (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) 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).
- (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) any ten or more local government electors for the area,
  - (b) the governing body of the school to which the proposals relate,
  - (c) the governing body of any other school affected by the proposals,
  - (d) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
  - (e) any local education authority concerned.
- (8) Where the proposals are to transfer a school to a site in a different area, objections under subsection (7) to the proposals may also be submitted 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.

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

- (1) Proposals published under section 259 require the approval of the Secretary of State.
- (2) Proposals published under section 260 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) any proposals require the approval of the Secretary of State, he may—

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- (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the governing body (and, in the case of proposals published under section 260, the funding authority) approve them with such modifications as he thinks desirable.
- (4) Where proposals published under section 260 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) 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.

## **262 Approval of school premises**

- (1) Where the governing body of a grant-maintained school publish proposals under section 259, they shall, if the funding authority so direct, submit to the authority, at such time and in such form and manner as the authority may direct, the particulars mentioned in subsection (3); and particulars so submitted require the approval of the funding authority under this section.
- (2) Where the funding authority publish proposals under section 260, they shall, if in their opinion the circumstances so require, prepare the particulars mentioned in subsection (3); 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 260, as may be required.
- (4) The particulars prepared or submitted under subsection (3)(a) shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
- (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) (if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990) that document.

## **263 Implementation of proposals, etc**

- (1) Where any proposals are approved or adopted under section 261, 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 262.

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- (3) The Secretary of State may, at the request of a governing body, modify any proposals published under section 259 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 260 which the governing body are required to implement under this section.
- (5) Neither the governing body of a grant-maintained school nor any other person shall make any significant change in the character, or significant enlargement of the premises, of the school or transfer the school to a new site, or undertake to do any of those things, unless proposals have been published under section 259 or 260 and any requirements of section 261 have been complied with.
- (6) Subsection (5) 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 any transfer of a school to a new site falling within section 259(2) or 260(3).

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

- (1) The Secretary of State may by order provide for this Part to have effect with the modifications in subsections (2) to (7) in relation to any proposals published by the governing body of a grant-maintained school under section 259 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 261(1) and 263(3) 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 259 within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).

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- (6) Where sections 261(1) and 263(3) 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 263, the funding authority may at their request modify the proposals.
- (7) Paragraph 20 of Schedule 4 shall not apply in relation to the proposals.
- (8) In this Part—
  - (a) references to approval under, or the requirements of, section 261 include approval under, or the requirements of, this section, and
  - (b) references to the modification of proposals under section 263(3) include the modification of proposals under subsection (6)(c).
- (9) This section does not apply to proposals published under section 198 (to which this Chapter is applied by subsection (3) of that section); and section 263(3) is not disapplied by this section in the case of proposals treated for the purposes of this Part (by virtue of section 37(9) or 43(6)) as if they had been approved under section 261.

## **265 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 35 or 41, 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 as if they had been published under section 260 and approved under section 261, and
  - (b) shall be implemented in accordance with any particulars approved under section 39 or (as the case may be) 44.
- (3) Subsection (2) is subject to section 210.

## **266 Chapter VII: interpretation**

- (1) References in this Part to a change in the character of a school do not include any change resulting only from persons beginning or ceasing to be provided with—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age,
  - (b) part-time education suitable to the requirements of junior pupils who have not attained the age of five 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 19.

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- (2) 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 261, references in this Chapter to the proposals are references to the proposals as approved or adopted, subject to any modifications of the proposals under section 263(3) or (4).

## CHAPTER VIII

### DISCONTINUANCE OF GRANT-MAINTAINED SCHOOLS

#### *Proposals for discontinuance*

#### **267 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 28 days after that at which the first resolution was passed.
- (2) Before passing such a resolution as is mentioned in subsection (1)(a), 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).
- (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) any ten or more local government electors,
  - (b) the governing body of any school affected by the proposals,



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- (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
- (d) any local education authority concerned.

## **268 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 27(1) 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) 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).
- (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) any ten or more local government electors,
  - (b) the governing body of the school to which the proposals relate,
  - (c) the governing body of any school affected by the proposals,
  - (d) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), 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.

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

- (1) Proposals published under section 267 require the approval of the Secretary of State.
- (2) Proposals published under section 268 require the approval of the Secretary of State if—

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- (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) any proposals require the approval of the Secretary of State, he may—
- (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the governing body (and, in the case of proposals published under section 268, 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 268 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) 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.

## **270 Implementation of proposals**

- (1) Where any proposals are approved under section 269, 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 268, 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 267 or 268 and approved or adopted under section 269.

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

- (1) The Secretary of State may by order provide for this Part to have effect with the modifications in subsections (2) to (7) in relation to any proposals published by the

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- governing body of a grant-maintained school under section 267 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 269(1) 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 267 within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
  - (6) Where section 269(1) does not apply to the proposals—
    - (a) the proposals shall require the approval of the funding authority,
    - (b) the funding authority may reject them, approve them without modification or, after consulting the governing body, approve them with the substitution of a different date for the date of discontinuance proposed,
    - (c) where the funding authority approve them, they shall give notice in writing of that fact and of the discontinuance date to the governing body, and
    - (d) the reference in section 270(2)(b) to the Secretary of State shall be read as a reference to the funding authority.
  - (7) Paragraph 21(b) of Schedule 4 shall not apply in relation to the proposals.
  - (8) References in this Part to approval under section 269 include approval under this section.

#### *Withdrawal of grant*

### **272 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.

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- (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) 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) 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 the time so specified (or allowed), either—
  - (a) give notice in writing to the governing body extending the period within which those measures are required to be taken, or
  - (b) after consulting the local education authority (and, if the school provides education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council) give notice in writing to the governing body that the funding authority's duty to maintain the school will cease on a specified date.
- (6) Where the Secretary of State gives a notice under subsection (2) or (5) 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 273 shall have effect as if subsection (6)(a) above and section 273(4) and (5) were omitted.

### **273      Withdrawal or variation of notice under section 272**

- (1) The Secretary of State may by giving notice in writing to the governing body—
  - (a) withdraw a notice under section 272(2) or (5)(b),
  - (b) vary a notice under section 272(2) in relation to which section 272(3) applies or a notice under section 272(5)(b) 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

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- (c) vary a notice under section 272(2), so far as relating to any measures specified in it by virtue of section 272(4)(b).
- (2) If by virtue of subsection (1)(c) 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 272(4)(c) a time which is not earlier than that time or, where the time so specified has been extended under section 272(5)(a), than that time as so extended.
- (3) Any variation under subsection (2) of the time specified in a notice is without prejudice to any further extension of that time under section 272(5)(a).
- (4) Where the Secretary of State withdraws a notice by virtue of subsection (1)(a), 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), he shall give a copy of the notice as varied to the funding authority.

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

### **274 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 269, or
  - (b) the Secretary of State has given notice to the governing body of a grant-maintained school under section 272 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) apply for the purposes of this section and sections 275 to 279.
- (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 279 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) applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).

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- (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 275(5).
- (7) “Section 67 loan liabilities”, in relation to a governing body in liquidation, means any liabilities in respect of any loans made under section 67 (or section 105 of the Education Act 1944) which were transferred to the governing body under section 201.

## **275 Winding up**

- (1) An order under section 274 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), and
  - (d) the preparation and audit of the governing body’s final accounts.
- (2) The provision referred to in subsection (1)(c) is provision authorised to be made—
- (a) by section 277 (for or in connection with the transfer of the school property), or
  - (b) by section 278 (in respect of the discharge of the liabilities of the governing body).
- (3) An order under section 274 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 274—
- (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), an order under section 274 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 67 loan liabilities which fall to be transferred or terminated under section 278) have been discharged,
  - (b) all costs of the winding up have been met,
  - (c) any provision authorised by any of sections 277 to 279 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.

## **276 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 67 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 274.
- (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).

## **277 Disposal of school property**

- (1) Subject to the provisions of any order under section 274, 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—
  - (a) vested under subsection (1) in any person other than the funding authority, or
  - (b) vested in pursuance of an order under section 274,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 consideration) as may be so specified.
- (4) Subsection (3) 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 274 vests in any person property so held otherwise than by the governing body, 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 274(4)(b)), such an amount as the Secretary of State determines to be the market value of the premises as

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- 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); 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) 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) the Lands Tribunal determine a different amount from that determined by the Secretary of State,
- the Secretary of State 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) and, in the case of property vested in the local education authority, no order under section 274 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) or in any provision included in an order under section 274 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.

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

- (1) Where by virtue of an order under section 274 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 277(3).
- (2) Subsection (1) 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 274 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 43 (approval of proposals for establishment or 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 67 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) apply, but
- (b) no direction that the proposed school shall be an aided school has been given before the dissolution date,

any section 67 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), and
- (b) a new voluntary school is established on the school premises in pursuance of any proposals approved under section 43,

the amount of those liabilities shall be treated for the purposes of section 173 (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.

## **279 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 held 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), 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) 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

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- (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, 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)—
  - (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), any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (6) This section applies to any investment within the meaning of the Financial Services Act 1986 which falls within—
  - (a) any of paragraphs 1 to 6 of Schedule 1 to that Act (investments and investment business), or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any of paragraphs 1 to 6.
- (7) References in subsection (6) to any paragraphs of Schedule 1 to the Financial Services Act 1986 include references to those paragraphs as amended by any order under section 2 of that Act (power to extend or restrict scope of Act) which amends those paragraphs for the purposes of all the provisions of that Act.

## CHAPTER IX

### GROUPS OF GRANT-MAINTAINED SCHOOLS

#### **280 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 (known as the instrument of government) providing for the constitution of the governing body, and

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- (b) for each school in the group there shall be an instrument (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) The provisions of Schedules 22 and 23 (other than paragraph 14 of Schedule 22) shall have effect in relation to groups of grant-maintained schools with such modifications as may be prescribed.
- (6) Subject to any provision made by or under this Chapter, where there is a group of grant-maintained schools any provision of an enactment which applies to such schools shall apply separately in relation to each of the schools.
- (7) References in this Chapter to a group are to a group of grant-maintained schools conducted, or to be conducted, by a single governing body.

## **281 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 220 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 221 shall apply in relation to a school in a group as it applies in relation to other grant-maintained schools.

## **282 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)) more than the number of schools in the group.
- (3) Subject to subsection (6), 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 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,

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a person must when he is appointed be such a parent or, if that is not reasonably practicable, a parent of one or more children of compulsory school age.

- (5) The instrument shall provide for each parent governor to hold office for a term of four years.
- (6) The instrument shall provide that if—
  - (a) one or more vacancies for parent governors are required to be filled by election, and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies,
 the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (7) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (6)—
  - (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.

### **283 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 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.

### **284 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.

### **285 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 25 (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.

## **286 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) 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 Part I of the School Inspections Act 1996, 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 17 of that 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 Act have the same meaning as in that Act.
- (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 25 shall not apply for the purposes of the appointment by virtue of this section of any core governor.

## **287 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) 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 285(3) and Schedule 25 do not apply to additional core governors.

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## **288 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 231 on the governing body of a grant-maintained school.

## **289 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), 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 247(1) or, as the case may be, 253(1), 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 244(3) or, as the case may be, 250(2).

## **290 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,
  - (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,

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- (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) 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) 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 282 to 286, Schedule 25 and the instrument of government to have effect in relation to any person who becomes a member of the governing body—
    - (i) before the date of implementation of the proposals, or
    - (ii) before the date on which the first instrument under section 220(1) for the governing body comes into effect,with such modifications as may be prescribed.
- (6) Where proposals for the purposes of subsection (1)(a) in relation to any schools, or proposals for the purposes of subsection (1)(c) 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) are approved, regulations shall provide for the functions, during the period beginning with the approval of the

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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 relevant provision of this Act to apply with such modifications as may be prescribed.
- (9) For the purposes of subsection (8) “relevant provision of this Act” means—
- (a) any provision of this Part other than—
    - (i) section 198, 199, 291, 292, 294, 307 or 308, or
    - (ii) a provision of this Chapter, or
  - (b) any provision of this Act not contained in this Part which reproduces a provision of Part II of the Education Act 1993 (other than Chapter IX of that Part of that Act).
- (10) Regulations may make provision for the governing body of a group to be reconstituted where any change occurs in the membership of the group.
- (11) The Secretary of State may instead of, or in addition to, prescribing requirements for the purposes of subsection (1) 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.
- (12) In subsection (11) “maintained school” means any county school or voluntary school and any maintained special school not established in a hospital.
- (13) This section does not apply to nursery schools.

## CHAPTER X

### GENERAL AND MISCELLANEOUS

#### *Middle schools*

#### **291 Grant-maintained middle schools**

Proposals published under section 211, 212, 259 or 260 may, if the authority, persons or body making them think fit—

- (a) specify an age below 10 years and six months and an age above 12 years, and
- (b) provide that the school to which the proposals relate is to be a school for providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.



### *Nursery education*

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

- (1) No proposals may be published—
  - (a) under section 211 or 212 for the establishment of any nursery school, or
  - (b) under section 259 or 260 for a school to become a nursery school;and nothing in Chapter II applies to a nursery school.
- (2) Subject to subsection (1) above, proposals under section 211, 212, 259 or 260 may, in particular, be made for the purpose of securing the provision of education for junior pupils who have not attained the age of five.

### *Further education*

#### **293 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 19,

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

### *Teacher training*

#### **294 Provision of courses of initial teacher training**

- (1) Section 12 of the Education Act 1994 confers power on the governing body of a grant-maintained school—
  - (a) to provide courses of initial training for school teachers, or
  - (b) to join in a partnership or association with other eligible institutions, or (whether alone or jointly with other eligible institutions) to establish a body, for the purpose of providing such courses.
- (2) In subsection (1) “eligible institution” has the meaning given by section 4(2) of that Act.

### *Provision of benefits and services by local education authority*

#### **295 Provision of benefits and services for pupils etc. 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

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- (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools maintained by a local education authority and in relation to pupils at grant-maintained schools,

the authority shall in performing the duty, or exercising the power, treat pupils at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at schools maintained by a local education authority.

(2) Where—

- (a) a local education authority are under a duty, or have power, to provide any benefits or services for persons, other than pupils, receiving education at a school, and

- (b) the duty is to be performed, or the power may be exercised, both in relation to such persons at schools maintained by a local education authority and in relation to such persons at grant-maintained schools,

the authority shall in performing the duty, or in exercising the power, treat such persons at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than such persons at schools maintained by a local education authority.

*Transfer and disposal of premises*

**296 Transfer of premises to trustees**

- (1) Where grant under section 216(2) or capital grant is paid to the governing body of a grant-maintained school established in pursuance of proposals published under section 212 in respect of the provision of a site for the school or of school buildings, a requirement shall be imposed under section 216 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—

- (a) to form part of the school premises, and  
 (b) to be constructed partly on land held by the governing body and partly on land held on trust for the purposes of the school by persons other than the governing body,

the governing body shall transfer to those persons the land held by the governing body on which the buildings are to be constructed; and section 231(7) does not apply to a transfer required by this subsection.

- (3) In this section “site” does not include playing fields.

**297 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,

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- 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) shall, in a case where any interest in the new site has vested in any trustees of the school, be treated for the purposes of section 14 of the Schools Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.
- (3) Where trustees of a grant-maintained school are required to pay any sum to the Secretary of State under subsection (1) 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) in a case in which they may also be required to pay any sum to a local education authority under section 62(2) in respect of the disposal of the same premises, section 62(2) 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 section 62(2).
- (5) In subsection (3)(a) “site” does not include playing fields.

## **298 Disposal of premises transferred under section 201**

- (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 201(1)(a), 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), the Secretary of State may—
- (a) require the premises or any part of the premises to be transferred to such local authority as the Secretary of State may specify, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate, or
  - (b) where he does not impose a requirement under paragraph (a), 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.

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- (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), and
  - (b) the reference in subsection (2)(b) 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 297.

### **299 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 201(1)(a), 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.

### **300 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) 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 296 or in pursuance of section 297(3)) to be held on trust by the trustees of the school,
- then, if at any time the trustees dispose of the premises, the Secretary of State may require them to pay to him or to the funding authority the whole or any part of the proceeds of the disposal.

### **301 Interpretation of sections 296 to 300**

- (1) For the purposes of sections 297 and 298, 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 296 to 300 “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 297 to 300—
- (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)—
- (a) references to the acquisition of premises from a governing body or trustees include, in the case of any premises held under a tenancy to which Part II of the Landlord and Tenant Act 1954 (“the 1954 Act”) applies, the termination of that tenancy under that Part of that Act, and
  - (b) the reference to the purchase money paid in respect of such an acquisition includes any compensation paid by the landlord on the quitting of any such premises by the governing body or trustees (whether or not the compensation is required to be paid by section 37 of that Act (compensation where order for new tenancy precluded on certain grounds)).
- (5) In subsection (4) expressions to which a meaning is given for the purposes of the 1954 Act have the same meaning as in that Act.

#### *Modification of instruments*

### **302 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 in any scheme under section 232, 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 263.
- (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.

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- (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.

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

Any provision of an instrument relating to any land held for the purposes of a voluntary school which—

- (a) confers on any person an option to acquire an interest in that land, or
- (b) provides (in whatever terms) for the determination or forfeiture of any such interest,

in the event of the school's ceasing to be a voluntary school or (as the case may be) ceasing to be maintained by a specified local education authority shall, if the school becomes a grant-maintained school, have effect as if the event referred to were the school's ceasing to be a school which is either a grant-maintained school or a voluntary school.

*Religious opinions etc. of staff*

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

- (1) Subject to section 306, subsections (2) to (4) apply in relation to a grant-maintained school if—
- (a) it was a county school immediately before it became grant-maintained,
  - (b) it was established in pursuance of proposals published under section 211, or
  - (c) it was established in pursuance of proposals published under section 212 and neither any trust deed relating to the school nor the statement required by paragraph 8 of Schedule 20 makes provision as to the religious education for pupils at the school.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—
- (a) for being a teacher at the school, or
  - (b) for being employed (otherwise than as a teacher) for the purposes of the school.
- (3) No teacher at the school shall be required to give religious education.
- (4) No teacher at the school shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
- (a) by reason of the fact that he does or does not give religious education, or
  - (b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

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

- (1) Subject to section 306, subsections (2) and (3) 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 212 and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 20 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), in the case of a school which was a voluntary school immediately before it became grant-maintained, any of the provisions of section 146 (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.

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

- (1) Where, in the case of a school in relation to which section 304(2) to (4) 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 261—
- (a) section 305(2) and (3) shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) subject to subsection (2), section 304(2) to (4) shall cease to apply in relation to the school from that time.
- (2) Without prejudice to section 305(2) and (3), section 304(2) to (4) 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 261—
- (a) section 304(2) to (4) shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) section 305(2) and (3) 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 352(1)(a) to be included in the school’s basic curriculum.

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

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### *Exclusion of pupils*

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

- (1) The head teacher of any grant-maintained school may not—
  - (a) so exercise the power to exclude a pupil from the school for one or more fixed periods that the pupil is so excluded for more than 15 school days in any one term, or
  - (b) exclude a pupil from the school for an indefinite period;but this subsection is without prejudice to the power to exclude a pupil from the school permanently.
- (2) Subsection (1) has effect, in the case of a school having articles of government, despite anything in the articles.

### *Appeal committees*

#### **308 Duties of governing body in relation to appeal committees**

- (1) This section applies to any governing body of a grant-maintained school who are required by the articles of government for the school to make arrangements for appeals to such an appeal committee as is mentioned in paragraph 6(1) of Schedule 23 (appeals against decisions on admissions or exclusions).
- (2) The Secretary of State may by regulations require any governing body to which this section applies—
  - (a) to advertise, in such manner and at such times as may be prescribed, for persons eligible to be lay members of any appeal committee required to be constituted for the purposes of arrangements made by that body to apply to the body for appointment as such members; and
  - (b) in appointing persons as such members, to consider any persons eligible to be so appointed who have applied to the body in response to an advertisement placed in pursuance of paragraph (a).
- (3) A governing body to which this section applies shall indemnify the members of any appeal committee required to be constituted for the purposes of arrangements made by that body against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that committee.

### *Supplementary*

#### **309 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 may be given, and withdrawn, in such manner as the governing body may require.



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

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

#### *Interpretation*

### **311 Interpretation of Part III**

- (1) In this Part—

“Church in Wales school” means a school in the Province of Wales in which the religious education provided is provided in accordance with the faith and practice of the Church in Wales and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Finance for the diocese of the Church in Wales in which the school is situated or such other person as the Secretary of State may by order designate in respect of that diocese;

“Church of England school” means a school in the Province of Canterbury or York in which the religious education provided is provided in accordance with the faith and practice of the Church of England and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Education for the diocese of the Church of England in which the school is situated;

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

“Roman Catholic Church school” means a school in which the religious education provided is provided in accordance with the faith and practice of the Roman Catholic Church and “appropriate diocesan authority”, in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated.
- (2) Before making an order in respect of any diocese in Wales in exercise of the power conferred by the definition of “appropriate diocesan authority” the Secretary of State shall consult the bishop for the diocese.
- (3) The following provisions apply for the purposes of this Part.

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- (4) 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.
- (5) 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.
- (6) References, in relation to proposals under this Part, to the date of publication of the proposals are—
- (a) to the date on which the requirements of this Part, or of regulations made by virtue of this Part, 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.
- (7) In this Part references to “local government electors for the area” are references to such electors for the local education authority area in which the school in question is, or is to be, situated.
- (8) Nothing in this Part, 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.