



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### PART I

#### MEASURES TO RAISE STANDARDS OF SCHOOL EDUCATION

#### CHAPTER I

##### LIMIT ON INFANT CLASS SIZES

### **1 Duty to set limit on infant class sizes**

- (1) The Secretary of State shall by regulations—
  - (a) impose a limit on class sizes for infant classes at maintained schools; and
  - (b) specify the school years in relation to which any such limit is to have effect.
- (2) Any limit imposed under this section shall specify the maximum number of pupils that a class to which the limit applies may contain while an ordinary teaching session is conducted by a single qualified teacher.
- (3) Subject to subsections (4) and (5), regulations under this section shall be so framed that—
  - (a) the maximum number specified in pursuance of subsection (2) is 30, and
  - (b) that limit has effect in relation to the 2001-02 school year and any subsequent year.
- (4) Regulations under this section may—
  - (a) provide for any limit imposed under this section to take effect—
    - (i) at the same time in the case of each of the age groups into which the pupils in infant classes fall, or

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- (ii) at different times (which may be earlier than the beginning of the school year mentioned in subsection (3)) in the case of different such age groups;
  - (b) provide that, in any circumstances specified in the regulations, any such limit either is not to apply or is to operate in such manner as is so specified.
- (5) The Secretary of State may by order amend subsection (3)—
- (a) by substituting for “30” such other number as is specified in the order; or
  - (b) by substituting for the reference to the 2001-02 school year a reference to such other school year as is so specified.
- (6) Where any limit imposed under this section applies to an infant class at a maintained school, the local education authority and the governing body shall exercise their functions with a view to securing that that limit is complied with in relation to that class.

## **2 Plans by LEAs for reducing infant class sizes**

- (1) Every local education authority shall prepare a statement setting out the arrangements which the authority propose to make for the purpose of securing that any limit imposed under section 1 is complied with in relation to infant classes at schools maintained by the authority.
- (2) The statement shall—
- (a) contain such information as to the proposed arrangements, and
  - (b) take such form,
- as may be prescribed; and in preparing the statement the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (3) In the course of preparing the statement the authority shall carry out such consultation as may be prescribed.
- (4) A prescribed body or person, or a body or person falling within any prescribed category, shall provide the authority—
- (a) with such documents or information, or
  - (b) with such other assistance,
- as the authority may reasonably request from that body or person for the purpose of enabling them to prepare the statement.
- (5) The authority shall submit the statement to the Secretary of State for his approval—
- (a) by such date as may be prescribed, or
  - (b) by such later date as he may allow, where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to the authority;
- and different dates may be prescribed for different authorities.
- (6) If the Secretary of State decides not to approve the authority’s proposed arrangements—
- (a) he shall notify the authority of his decision and of his reasons for it; and
  - (b) the authority shall prepare a revised statement under this section in respect of their proposed arrangements.

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- (7) Where the authority are required by subsection (6) to prepare a revised statement, the preceding provisions of this section shall apply to it as they applied to the original statement, except that—
- (a) in preparing the revised statement the authority shall have regard to the Secretary of State’s reasons for not approving their original proposals; and
  - (b) the revised statement shall be submitted to the Secretary of State by such date as he may determine.
- (8) In subsection (4) “document” includes information recorded otherwise than in legible form, and the reference to the provision of a document is, in the case of information so recorded, a reference to the provision of a copy of that information in legible form.

### **3 Payment of grant in connection with reductions in infant class sizes**

- (1) Regulations shall make provision for the payment by the Secretary of State of grants to local education authorities in respect of expenditure incurred or to be incurred by them for the purpose of securing that any limit imposed under section 1 is complied with in relation to infant classes at schools maintained by them.
- (2) Regulations under this section shall provide for the Secretary of State—
- (a) to withhold grants under the regulations from a local education authority where no proposed arrangements by that authority have been approved by him under section 2; and
  - (b) when determining whether any grant (and, if so, what amount) should be paid by him under the regulations to a local education authority, to have regard to their proposed arrangements as so approved.
- (3) Regulations under this section may provide—
- (a) for the payment of grant under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and
  - (b) for requiring local education authorities to whom payments have been made under the regulations to comply with such requirements as may be so determined.

### **4 Interpretation of Chapter I**

In this Chapter—

“class” means a group in which pupils are taught in an ordinary teaching session;

“infant class” means a class containing pupils the majority of whom will attain the age of five, six or seven during the course of the school year;

“ordinary teaching session” does not include a school assembly or other school activity usually conducted with large groups of pupils;

“qualified teacher”, in relation to an infant class, means—

- (a) a person who is a qualified teacher in relation to that class for the purposes of section 218(1)(a) of the Education Reform Act 1988 (regulations relating to teachers' qualifications, etc.), or
- (b) any other person who in accordance with regulations under that provision may be employed as a teacher of that class.

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## CHAPTER II

### GENERAL RESPONSIBILITIES OF LOCAL EDUCATION AUTHORITIES

#### *Duty to promote high standards of education*

#### **5 Duty of LEAs to promote high standards in primary and secondary education**

After section 13 of the Education Act 1996, there shall be inserted—

##### **“13A Duty to promote high standards in primary and secondary education**

- (1) A local education authority shall ensure that their functions relating to the provision of education to which this section applies are (so far as they are capable of being so exercised) exercised by the authority with a view to promoting high standards.
- (2) This section applies to education for—
  - (a) persons of compulsory school age (whether at school or otherwise); and
  - (b) persons of any age above or below that age who are registered as pupils at schools maintained by the authority;
 and in subsection (1) “functions” means functions of whatever nature.”

#### *Education development plans*

#### **6 Preparation of education development plans**

- (1) Every local education authority shall prepare an education development plan for their area, and shall prepare further such plans at such intervals as may be determined by or in accordance with regulations.
- (2) An education development plan shall consist of—
  - (a) a statement of proposals, which sets out proposals by the authority for developing their provision of education for children in their area, whether by—
    - (i) raising the standards of education provided for such children (whether at schools maintained by the authority or otherwise than at school), or
    - (ii) improving the performance of such schools,
 or otherwise; and
  - (b) annexes to that statement.
- (3) In subsection (2) “children” means—
  - (a) persons of compulsory school age (whether at school or otherwise), or
  - (b) persons of any age above or below that age who are registered as pupils at schools maintained by the authority.
- (4) The statement of proposals must—
  - (a) deal with such matters, and relate to such period, as may be determined by or in accordance with regulations, and

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- (b) be approved by the Secretary of State under section 7.
- (5) The annexes to the statement—
  - (a) must contain such material as may be prescribed; and
  - (b) may contain such other material as the authority consider relevant to their proposals as set out in the statement.
- (6) In preparing an education development plan the authority shall have regard, in particular, to the education of children (within the meaning of subsection (2)) who have special educational needs.
- (7) In the course of preparing an education development plan the authority shall consult—
  - (a) the governing body and head teacher of every school maintained by the authority;
  - (b) the appropriate diocesan authority for any foundation or voluntary school in their area which is a Church of England, Church in Wales or Roman Catholic Church school; and
  - (c) such other persons as they consider appropriate.
- (8) In its operation at any time before the appointed day (as defined by section 20(7)), subsection (7)(a) above shall be read as referring also to the governing body of every grant-maintained or grant-maintained special school situated in the authority's area.
- (9) In performing their functions under this section the authority shall have regard to any guidance given from time to time by the Secretary of State.

## **7 Approval, modification and review of statement of proposals**

- (1) Where a local education authority have prepared an education development plan in accordance with section 6, they shall, by such date as may be determined by or in accordance with regulations, submit the plan to the Secretary of State for him to approve the authority's statement of proposals under this section.
- (2) The Secretary of State may in the case of any statement submitted to him under this section—
  - (a) approve the statement in any of the following ways, namely wholly or in part, for a limited period of time, or subject to conditions;
  - (b) require the authority to make such modifications to the statement as he may specify; or
  - (c) reject the statement.
- (3) If the Secretary of State approves the statement—
  - (a) he shall notify the authority of his decision; and
  - (b) the authority shall implement the proposals set out in the statement, so far as approved by the Secretary of State, as from such date as he may determine.
- (4) If the Secretary of State requires the authority to make modifications or rejects the statement—
  - (a) he shall notify the authority of his decision and of his reasons for it, and
  - (b) the authority shall prepare a revised statement and submit it to the Secretary of State for his approval under this section by such date as he may determine.

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- (5) Once the Secretary of State has approved an authority's statement of proposals under subsection (2), he shall keep under review the authority's proposals, as approved by him, and their implementation by the authority, and—
- (a) where he is of the opinion that the statement should be modified (or further modified), he may withdraw his approval and require the authority to make such modifications to the statement as he may specify; and
  - (b) where he is of the opinion that the authority's proposals are not being properly implemented by them, he may withdraw his approval for such period as he thinks fit.
- (6) If under subsection (5) the Secretary of State withdraws his approval of a statement of proposals—
- (a) he shall notify the authority of his decision and of his reasons for it; and
  - (b) in a case falling within paragraph (a) of that subsection, the authority shall prepare a revised statement and submit it to him for his approval under this section by such date as he may determine.
- (7) Section 6 shall apply to the preparation of a revised statement under subsection (4) (b) or (6)(b) above, with such modifications (if any) as the Secretary of State may determine.
- (8) At any time after the Secretary of State has approved an authority's statement of proposals under subsection (2)—
- (a) the authority may submit modifications to the statement to the Secretary of State for his approval,
  - (b) the Secretary of State may approve the modifications, whether in whole or in part, for a limited period of time, or subject to conditions, and
  - (c) if and to the extent that he approves those modifications, he shall notify the authority of his decision and—
    - (i) the statement shall have effect with the modifications, and
    - (ii) the authority shall implement their proposals as modified, as from such date as he may determine.
- (9) Once the Secretary of State has approved—
- (a) an authority's statement of proposals under subsection (2), or
  - (b) the modification of an authority's statement of proposals under subsection (8),
- the authority shall publish their education development plan (or their plan as so modified) in such manner and by such date as may be prescribed, and shall provide such persons as may be prescribed with copies of that plan or of a summary version of that plan.
- (10) In section 484 of the Education Act 1996 (education standards grants) references to "eligible expenditure" include expenditure for or in connection with the implementation by local education authorities of their education development plans.

*Intervention by Secretary of State*

**8 Reserve power of Secretary of State to secure proper performance of LEA's functions**

After section 497 of the Education Act 1996 there shall be inserted—

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#### **“497A Power to secure proper performance of LEA’s functions**

- (1) This section applies to a local education authority’s functions (of whatever nature) which relate to the provision of education—
  - (a) for persons of compulsory school age (whether at school or otherwise), or
  - (b) for persons of any age above or below that age who are registered as pupils at schools maintained by the authority.
- (2) If the Secretary of State is satisfied (either on a complaint by any person interested or otherwise) that a local education authority are failing in any respect to perform any function to which this section applies to an adequate standard (or at all), he may exercise his powers under subsection (3) or (4).
- (3) The Secretary of State may under this subsection direct an officer of the authority to secure that that function is performed in such a way as to achieve such objectives as are specified in the direction.
- (4) The Secretary of State may under this subsection give an officer of the authority such directions as the Secretary of State thinks expedient for the purpose of securing that the function—
  - (a) is performed, on behalf of the authority and at their expense, by such person as is specified in the direction, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified;and such directions may require that any contract or other arrangement made by the authority with that person contains such terms and conditions as may be so specified.
- (5) Where the Secretary of State considers it expedient that the person specified in directions under subsection (4) should perform other functions to which this section applies in addition to the function to which subsection (2) applies, the directions under subsection (4) may relate to the performance of those other functions as well; and in considering whether it is expedient that that person should perform any such additional functions, the Secretary of State may have regard to financial considerations.
- (6) Any direction under this section may either—
  - (a) have effect for an indefinite period until revoked by the Secretary of State, or
  - (b) have effect until any objectives specified in the direction have been achieved (as determined in accordance with the direction).
- (7) Any direction given under subsection (3) or (4) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.

#### **497B Power to secure proper performance: further provisions**

- (1) Where the Secretary of State gives directions under section 497A(4) to an officer of a local education authority, the person specified in those directions shall, in the performance of the function or functions specified in the directions, be entitled to exercise the powers conferred by this section.

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- (2) The specified person shall have at all reasonable times—
  - (a) a right of entry to the premises of the authority, and
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the performance of the specified function or functions.
- (3) In exercising the right to inspect records or other documents under subsection (2), the specified person—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used, or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
 to afford him such assistance as he may reasonably require (including, in particular, the making of information available for inspection or copying in a legible form).
- (4) Without prejudice to subsection (2), the authority shall give the specified person all assistance in connection with the performance of the specified function or functions which they are reasonably able to give.
- (5) Subsection (2) shall apply in relation to any school maintained by the authority as it applies in relation to the authority; and without prejudice to that subsection (as it so applies)—
  - (a) the governing body of any such school shall give the specified person all assistance in connection with the exercise of his functions which they are reasonably able to give; and
  - (b) the governing body of any such school and the authority shall secure that all such assistance is also given by persons who work at the school.
- (6) Any reference in this section to the specified person includes a reference to any person assisting him in the performance of the specified function or functions.
- (7) In this section “document” and “records” each include information recorded in any form.”

*Parent governor representatives on education committees*

**9 Education committees to include representatives of parent governors**

At the end of section 499 of the Education Act 1996 (power of Secretary of State to direct appointment of members of education committees) there shall be added—

- “(6) Regulations may require—
- (a) any such committee as is mentioned in subsection (1) or (3), and



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- (b) any sub-committee appointed by any authorities within subsection (1) or (3), or by any committee within paragraph (a) of this subsection, for the purpose mentioned in subsection (5)(b),  
to include one or more persons elected, in accordance with the regulations, as representatives of parent governors at maintained schools in relation to which the committee or sub-committee acts.
- (7) Regulations may make provision—
- (a) the number of persons who are to be elected for the purposes of subsection (6) in the case of any local education authority;
  - (b) the procedure to be followed in connection with the election of such persons and the persons who are entitled to vote at such an election;
  - (c) the circumstances in which persons are qualified or disqualified for being so elected or for holding office once elected;
  - (d) the term of office of persons so elected and their voting rights;
  - (e) the application to any such committee or sub-committee, with or without any modification, of any provision made by or under any other enactment and relating to committees or (as the case may be) sub-committees of a local authority;
  - (f) such other matters connected with such elections or persons so elected as the Secretary of State considers appropriate.
- (8) Regulations may also make provision—
- (a) enabling the Secretary of State to determine, where he considers it expedient to do so in view of the small number of maintained schools in relation to which a committee or sub-committee acts, that the requirement imposed on the committee or sub-committee by virtue of subsection (6) is to have effect as if it referred to representatives of parents of registered pupils (rather than representatives of parent governors) at those schools;
  - (b) for any regulations under subsection (7) to have effect, where the Secretary of State makes any such determination, with such modifications as may be prescribed.
- (9) In subsections (6) and (8) “maintained school” and “parent governor” have the same meaning as in the School Standards and Framework Act 1998.”

## CHAPTER III

### EDUCATION ACTION ZONES

#### **10 Establishment of education action zones**

- (1) If the Secretary of State considers that it is expedient to do so with a view to improving standards in the provision of education at any particular maintained schools, he may by order provide for those schools to constitute collectively an education action zone for the purposes of this Chapter.
- (2) An education action zone shall be established in the first instance for three years; but the Secretary of State may, by an order made before the end of that period, provide for the zone to continue in existence for a further two years.

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- (3) At any time when an education action zone is in existence, the Secretary of State may by order vary the order establishing the zone by adding to the schools for the time being included in that order—
  - (a) any school in relation to which section 15 applies by virtue of subsection (1), (4) or (6) of that section; or
  - (b) with a view to enabling it to achieve improving standards in the provision of education once it becomes a maintained school, any new school which has a temporary governing body.
- (4) No order shall be made by the Secretary of State under subsection (1), (2) or (3) except on an application made for the purpose with the consent of the governing body of every school which it is proposed should be a participating school.
- (5) Any school which ceases to be a participating school by virtue of subsection (2) may nevertheless be included in a further order under subsection (1).
- (6) In this Chapter—
  - (a) references to a governing body shall be read as including the temporary governing body of a new school;
  - (b) “participating school”, in relation to an education action zone, means one of the schools for the time being included in the order under subsection (1) by which the zone is established.
- (7) In this section “new school” has the meaning given by section 72(3).
- (8) Unless the Secretary of State by order otherwise provides, nothing in this Chapter applies in relation to Wales.

## **11 Establishment of Education Action Forum for zone**

- (1) An order establishing an education action zone under section 10(1) shall provide for the establishment of an Education Action Forum for the zone.
- (2) An Education Action Forum shall be a body corporate and shall be constituted in accordance with the order under section 10(1) by which it is established.
- (3) The order shall require the members of an Education Action Forum to include—
  - (a) one person appointed by the governing body of each of the participating schools, unless the governing body of any such school choose not to make such an appointment; and
  - (b) either one or two persons appointed by the Secretary of State.
- (4) Schedule 1 has effect in relation to an Education Action Forum.
- (5) The Forum established for an education action zone shall be dissolved by order of the Secretary of State with effect from the time when the zone ceases to exist in accordance with section 10(2).
- (6) An order under subsection (5) may make provision for the transfer of property, staff, rights and liabilities of the Forum and for the preparation of a final statement of accounts.

## **12 Functions of Education Action Forum**

- (1) An Education Action Forum shall have as its main object the improvement of standards in the provision of education at each of the participating schools.
- (2) A Forum may, under arrangements made by the governing body of a participating school in respect of any prescribed function of that body relating to the conduct of the school, either—
  - (a) discharge that function on behalf of the governing body until such time as they may specify in a request to the Forum to cease discharging the function on their behalf; or
  - (b) assume full responsibility for the discharge of that function during the whole of the period for which the Forum remains in existence.
- (3) Regulations may make provision—
  - (a) as to the circumstances in which the governing body of a participating school may make arrangements under subsection (2);
  - (b) for the procedure to be followed by such a governing body in connection with the making of any such arrangements;
  - (c) for the procedure to be followed by an Education Action Forum when discharging any function by virtue of that subsection;
  - (d) for statutory provisions relating to governing bodies of maintained schools to apply, with any prescribed modifications, to an Education Action Forum when discharging any function by virtue of paragraph (b) of that subsection.
- (4) Regulations may, in relation to the discharge by an Education Action Forum of any function of a governing body under sections 54 and 57(1) to (3), Schedule 16 or paragraph 27 of Schedule 17, make any such provision as may be made by an order under section 81 (application of employment law during financial delegation).
- (5) The Secretary of State may by a direction provide for any scheme under Chapter IV of Part II of this Act which relates to a participating school to have effect with such modifications as he considers appropriate in a case where an Education Action Forum is discharging any function in relation to the school by virtue of subsection (2)(b).
- (6) Before giving a direction under subsection (5) the Secretary of State shall consult the local education authority.

## **13 Disapplication of pay and conditions order in relation to teachers at participating schools**

For section 3 of the School Teachers' Pay and Conditions Act 1991 there shall be substituted—

### **“3 Special provisions as to schools in education action zones**

- (1) A pay and conditions order shall not apply to the statutory conditions of employment of the school teachers in a participating school the governing body of which—
  - (a) have, by notice to the Secretary of State, made an application for exemption; and

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- (b) pursuant to that application are for the time being exempted from subsections (6) and (7) of section 2 above by virtue of an order under subsection (4) below.
- (2) Before making an application under subsection (1) above, the governing body of the participating school concerned shall consult the school teachers employed at the school with respect to the proposed application.
- (3) A notice of application under subsection (1) above shall specify a date, at least three months after the date of the notice, with effect from which the governing body of the participating school concerned intend to make their own provision as to the statutory conditions of employment of the school teachers employed at the school.
- (4) On receipt of a notice of application under subsection (1) above the Secretary of State may, by statutory instrument, make an order—
  - (a) naming the school; and
  - (b) specifying, as the date with effect from which, by virtue of the order, subsections (6) and (7) of section 2 above are not to apply, the date specified in the notice of application or such other date as may be agreed between the governing body and the Secretary of State.
- (5) Where by virtue of an order under subsection (4) above a pay and conditions order ceases to apply in relation to any school, the statutory conditions of employment of the school teachers employed at the school shall be—
  - (a) such as may be determined by the governing body, or
  - (b) so far as the governing body have not made any determination with respect to any such conditions of employment, those having effect under the order immediately before it ceased to apply;
 and (so far as necessary) the local education authority shall give effect to any such determination of the governing body.
- (6) In this section “participating school” means one of the schools for the time being included in an order under section 10(1) of the School Standards and Framework Act 1998 establishing an education action zone.”

## CHAPTER IV

### INTERVENTION IN SCHOOLS CAUSING CONCERN

#### *Intervention by LEAs*

#### **14 Powers of intervention exercisable by LEAs**

- (1) If at any time section 15 applies to a maintained school by virtue of any of the following provisions of that section, namely—
  - (a) subsection (1) (school subject to formal warning),
  - (b) subsection (4) (school with serious weaknesses), or
  - (c) subsection (6) (school requiring special measures),

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the provisions mentioned in subsection (2) below (which confer powers of intervention on local education authorities) shall also apply to the school at that time unless excluded by subsection (3) below (intervention by Secretary of State).

- (2) Those provisions are—
- (a) section 16 (power to appoint additional governors); and
  - (b) section 17 (power to suspend right to delegated budget).
- (3) Those provisions shall not apply to a school to which section 15 applies by virtue of subsection (6) of that section (school requiring special measures) if, in connection with the same report falling within paragraph (a) of that subsection—
- (a) the Secretary of State has exercised in relation to the school his power under section 18 (power to appoint additional governors) and any additional governors appointed in the exercise of that power remain in office; or
  - (b) he has exercised in relation to the school his power under section 19 (power to direct closure of school).
- (4) In this Chapter—
- (a) “Chief Inspector” and “member of the Inspectorate”, and
  - (b) references to special measures being, or not being, required to be taken in relation to a school,
- have the same meaning as in the School Inspections Act 1996.

## **15 Cases where LEA may exercise powers of intervention**

- (1) This section applies to a maintained school by virtue of this subsection if—
- (a) the local education authority have—
    - (i) given the governing body a warning notice in accordance with subsection (2), and
    - (ii) given the head teacher of the school a copy of the notice at the same time as the notice was given to the governing body;
  - (b) the governing body have failed to comply, or secure compliance, with the notice to the authority’s satisfaction within the compliance period; and
  - (c) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under either or both of sections 16 and 17 (whether or not the notice is combined with a notice under section 62(3) (c)).
- (2) A local education authority may give a warning notice to the governing body of a maintained school where—
- (a) the authority are satisfied—
    - (i) that the standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercise their powers under either or both of sections 16 and 17, or
    - (ii) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
    - (iii) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise); and
  - (b) the authority have previously informed the governing body and the head teacher of the matters on which that conclusion is based; and

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- (c) those matters have not been remedied to the authority's satisfaction within a reasonable period.
- (3) For the purposes of subsections (1) and (2) a "warning notice" is a notice in writing by the local education authority setting out—
- (a) the matters referred to in subsection (2)(b);
  - (b) the action which they require the governing body to take in order to remedy those matters; and
  - (c) the period within which that action is to be taken by the governing body ("the compliance period").
- (4) This section applies to a maintained school by virtue of this subsection if—
- (a) a report of an inspection of the school has been made under Part I of the School Inspections Act 1996 in which the person making it stated that in his opinion the school had serious weaknesses; and
  - (b) where any subsequent report of an inspection of the school has been made under Part I of that Act, that opinion has not been superseded by the person making the report stating that in his opinion—
    - (i) the school no longer has serious weaknesses, or
    - (ii) special measures are required to be taken in relation to the school.
- (5) For the purposes of subsection (4) a school has serious weaknesses if, although giving its pupils in general an acceptable standard of education, it has significant weaknesses in one or more areas of its activities.
- (6) This section applies to a maintained school by virtue of this subsection if—
- (a) a report of an inspection of the school has been made under Part I of the School Inspections Act 1996 in which the person making it stated that in his opinion special measures were required to be taken in relation to the school;
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion; and
  - (c) where any subsequent report of an inspection of the school has been made under Part I of that Act, the person making it did not state that in his opinion special measures were not required to be taken in relation to the school.

## **16 Power of LEA to appoint additional governors**

- (1) If at any time this section applies to a maintained school in accordance with section 14(1), then (subject to subsections (2) and (3)) the local education authority may appoint such number of additional governors as they think fit.
- (2) Where this section so applies in the case of a school falling within section 15(1) (school subject to formal warning), the power conferred by subsection (1) above is only exercisable within the period of two months following the end of the compliance period.
- (3) Where this section so applies in the case of a school falling within section 15(6) (school requiring special measures), the power conferred by subsection (1) above is only exercisable if the following conditions are satisfied, namely—
- (a) the relevant document has been sent to the Secretary of State;
  - (b) the authority have received a notice in writing from the Secretary of State in which he acknowledges receipt of that document; and

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- (c) a period of not less than ten days has elapsed since the date of the notice.
- (4) The Secretary of State may in respect of any particular school determine that subsection (3)(c) shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (5) In relation to any appointment made by the local education authority by virtue of subsection (1) to the governing body of a school, the instrument of government for the school shall have effect as if (despite anything in Part II of Schedule 9) it provided for the local education authority to appoint such number of additional governors as they think fit.
- (6) If at any time—
- (a) this section applies to a voluntary aided school other than one falling within section 15(6), and
  - (b) the local education authority have exercised their power to appoint additional governors under subsection (1),
- the appropriate appointing authority may appoint such number of additional foundation governors as is equal to the number of additional governors appointed by the authority.
- (7) Any additional foundation governors appointed under subsection (6)—
- (a) shall cease to hold office at the time when the additional governors appointed by the authority cease to do so; and
  - (b) shall not be eligible for re-appointment except where, and to the extent that, those governors are re-appointed.
- (8) If—
- (a) at any time this section applies to a voluntary aided school falling within section 15(6), and
  - (b) neither of paragraphs (a) and (b) of section 14(3) for the time being applies in connection with the same report falling within section 15(6)(a),
- the appropriate appointing authority may (subject to subsection (9)) appoint such number of additional foundation governors as they think fit.
- (9) The power conferred by subsection (8) is only exercisable if the following conditions are satisfied, namely—
- (a) the relevant document has been sent to the Secretary of State;
  - (b) the appropriate appointing authority have received a notice in writing from the Secretary of State informing them that he has received that document; and
  - (c) a period of not less than ten days has elapsed since the date of the notice.
- (10) In the case of any appointment made by virtue of subsection (6) or (8) to the governing body of a school, the instrument of government for the school shall have effect as if (despite paragraph 14 of Schedule 9) the instrument provided for the appropriate appointing authority to appoint such number of additional foundation governors as they are authorised to appoint under subsection (6) or (8) (as the case may be).
- (11) Subject to subsection (12), references in this section to the appropriate appointing authority in relation to any voluntary aided school are references—
- (a) to the appropriate diocesan authority, if it is a Church of England school, Church in Wales school or Roman Catholic Church school; or

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- (b) in any other case, to the person or persons by whom the foundation governors are appointed.
- (12) Where, in the case of any voluntary aided school not falling within subsection (11)(a), there are different powers to appoint foundation governors, references in this section to the appropriate appointing authority are references—
- (a) to all those persons who have any such power acting jointly, or
  - (b) if they are unable to agree, to such of them acting jointly, or such one of them, as the Secretary of State may, after consulting all those persons, determine.
- (13) In this section “the relevant document” means a copy of a statement prepared—
- (a) under section 18 of the School Inspections Act 1996, or
  - (b) under section 17 of that Act, if the school does not have a delegated budget within the meaning of Part II of this Act.

## **17 Power of LEA to suspend right to delegated budget**

- (1) If at any time—
- (a) this section applies to a maintained school in accordance with section 14(1), and
  - (b) the school has a delegated budget within the meaning of Part II of this Act, then (subject to subsections (2) and (3)) the local education authority may, by giving the governing body of the school notice in writing of the suspension, suspend the governing body’s right to a delegated budget with effect from the receipt of the notice by the governing body.
- (2) Where this section so applies in the case of a school falling within section 15(1) (school subject to formal warning), the power conferred by subsection (1) above is only exercisable within the period of two months following the end of the compliance period.
- (3) Where this section so applies in the case of a school falling within section 15(6) (school requiring special measures), the power conferred by subsection (1) above is only exercisable if the following conditions are satisfied, namely—
- (a) a copy of a statement prepared under section 18 of the School Inspections Act 1996 has been sent to the Secretary of State;
  - (b) the authority have received a notice in writing from the Secretary of State in which he acknowledges receipt of that document; and
  - (c) a period of not less than ten days has elapsed since the date of the notice.
- (4) The Secretary of State may in respect of any particular school determine that subsection (3)(c) shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (5) A copy of a notice given under subsection (1) shall be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (6) A suspension imposed under this section shall have effect for the purposes of Chapter IV of Part II of this Act as if made under paragraph 1 of Schedule 15 to this Act, but there shall be no right of appeal under paragraph 3 of that Schedule against such a suspension.



### *Intervention by Secretary of State*

## **18 Power of Secretary of State to appoint additional governors**

- (1) If at any time section 15 applies to a maintained school by virtue of subsection (6) of that section (school requiring special measures), the Secretary of State may appoint such number of additional governors as he thinks fit; and he may nominate one of those governors to be the chairman of the governing body in place of any person who has been elected as chairman of that body.
- (2) Before making any such appointment in relation to a voluntary aided school, the Secretary of State shall consult—
  - (a) in the case of a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority; or
  - (b) in any other case, the person who appoints the foundation governors.
- (3) A governor appointed under this section—
  - (a) shall hold office as governor for such term, and
  - (b) if nominated as chairman of the governing body, shall be chairman of that body for such period,as the Secretary of State may determine.
- (4) The Secretary of State may pay to any governor appointed under this section such remuneration and allowances as the Secretary of State may determine.
- (5) In relation to any appointment made by the Secretary of State by virtue of subsection (1) to the governing body of a school, the instrument of government for the school shall have effect as if (despite anything in Part II of Schedule 9) it provided for the Secretary of State to appoint such number of additional governors as he thinks fit.
- (6) Where the Secretary of State has exercised his power under this section in relation to a school, then—
  - (a) in any such case—
    - (i) the local education authority may not exercise their power under paragraph 1 of Schedule 15 to suspend the governing body's right to a delegated budget, and
    - (ii) if they have already exercised that power or their power under section 17(1), the Secretary of State shall, if requested to do so by the governing body, revoke the suspension; and
  - (b) in the case of a voluntary aided school, nothing in paragraph 14 of Schedule 9 shall be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Secretary of State under this section.
- (7) The revocation of a suspension under subsection (6)(a) shall—
  - (a) be notified to the local education authority in writing; and
  - (b) take effect from such date as is specified in that notification.

## **19 Power of Secretary of State to direct closure of school**

- (1) If at any time section 15 applies to a maintained school by virtue of subsection (6) of that section (school requiring special measures), the Secretary of State may give a

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direction to the local education authority requiring the school to be discontinued on a date specified in the direction.

- (2) Before giving a direction under subsection (1), the Secretary of State shall consult—
  - (a) the local education authority and the governing body of the school;
  - (b) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority;
  - (c) in the case of any other foundation or voluntary school, the person who appoints the foundation governors; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (3) On giving a direction under subsection (1) the Secretary of State shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (4) Where the local education authority are given a direction under subsection (1), they shall discontinue the school in question on the date specified in the direction; and nothing in sections 29 to 33 shall apply to their discontinuance of the school under this section.
- (5) In this section any reference to the discontinuance of a maintained school is to the local education authority ceasing to maintain it.

## PART II

### NEW FRAMEWORK FOR MAINTAINED SCHOOLS

#### CHAPTER I

##### INTRODUCTORY

###### *The new categories of schools*

### **20 New categories of maintained schools**

- (1) Schools maintained by local education authorities on or after the appointed day shall be divided into the following categories—
  - (a) community schools;
  - (b) foundation schools;
  - (c) voluntary schools, comprising—
    - (i) voluntary aided schools, and
    - (ii) voluntary controlled schools;
  - (d) community special schools; and
  - (e) foundation special schools.
- (2) A school maintained by a local education authority is a school falling within one of the categories set out in subsection (1) if—
  - (a) it became a school of that category on the appointed day in accordance with Schedule 2 (and has not changed its category under Schedule 8); or

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- (b) it was established as a school of that category under section 28 or 31 (and has not changed its category under Schedule 8); or
  - (c) it has become a school of that category in accordance with Schedule 8.
- (3) Schedule 2 makes provision for, and in connection with, the allocation to the categories set out in subsection (1) of schools which immediately before the appointed day were (within the meaning of the Education Act 1996)—
- (a) county, voluntary or maintained special schools, or
  - (b) grant-maintained or grant-maintained special schools.
- (4) As from the appointed day a local education authority shall maintain (as a school falling within one of those categories)—
- (a) any school within subsection (3)(a) which was maintained by the authority immediately before that day; and
  - (b) (subject to subsection (5)) any school within subsection (3)(b) which immediately before that day was situated within the authority’s area.
- (5) Where a grant-maintained school within subsection (3)(b)—
- (a) was, immediately before becoming such a school, maintained by a local education authority (“the former maintaining authority”) other than the one within whose area it was then situated, and
  - (b) remains outside the area of the former maintaining authority immediately before the appointed day,
- nevertheless, if an order made by the Secretary of State before that day so provides, as from that day the school shall be maintained (as a school falling within one of the categories set out in subsection (1)) by the former maintaining authority rather than the authority in whose area it is situated on that day.
- (6) In this section “school” means a primary, secondary or special school, including a nursery school which is a special school but excluding—
- (a) a nursery school which is not a special school; and
  - (b) a pupil referral unit.
- (7) In this Act—
- “the appointed day” (except in Part I of Schedule 32) means such day as may be appointed for the purposes of this section by an order made by the Secretary of State;
  - “maintained school” means (unless the context otherwise requires) a community, foundation or voluntary school or a community or foundation special school.
- (8) Any reference in this Act to the categories set out in subsection (1) or to any such category is to be read, in its application to voluntary schools, as (or as including) a reference to the sub-categories set out in subsection (1)(c)(i) and (ii) or to any such sub-category.

## **21 Kinds of foundation and voluntary schools and types of foundations**

- (1) There may be three kinds of foundation school—
- (a) those having a foundation established otherwise than under this Act;
  - (b) those belonging to a group of schools for which a foundation body acts under this section; and

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- (c) those not falling within either of paragraphs (a) and (b).
- (2) There may be three kinds of voluntary controlled or voluntary aided school—
- (a) those having a foundation established otherwise than under this Act;
  - (b) those belonging to a group of schools for which a foundation body acts under this section; and
  - (c) those not falling within either of paragraphs (a) and (b) but having been either of the following immediately before the appointed day, namely—
    - (i) a voluntary school, or
    - (ii) a grant-maintained school that was a voluntary school immediately before becoming grant-maintained,within the meaning of the Education Act 1996.
- (3) For the purposes of this Act—
- (a) “foundation”, in relation to a foundation or voluntary school, means—
    - (i) any body of persons (whether incorporated or not but excluding the governing body) which holds land on trust for the purposes of the school, or
    - (ii) a foundation body;
  - (b) a school “has” a foundation if—
    - (i) such a body of persons exists for holding land on trust for the purposes of the school, or
    - (ii) the school belongs to a group of schools for which a foundation body acts under this section; and
  - (c) references to land or other property held on trust, or by trustees, for the purposes of a school include references to land or other property which—
    - (i) is held on trust for purposes which (whether the trust deed expressly so provides or not) include the purposes of the school, and
    - (ii) is used for the purposes of the school.
- (4) For the purposes of this Act—
- (a) “foundation body” means a body corporate established under this section to perform, in relation to three or more schools each of which is either a foundation or a voluntary school, the following functions, namely—
    - (i) to hold property of those schools for the purposes of the schools, and
    - (ii) to appoint foundation governors for those schools; and
  - (b) “the group”, in relation to a foundation body, means the group of three or more schools for which the body performs those functions.
- (5) The Secretary of State may by regulations make provision for and in connection with—
- (a) the establishment, membership, functions and winding up of a foundation body, and
  - (b) the steps to be taken in connection with schools joining or leaving the group.
- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) with respect to the transfer of property, rights and liabilities to and from a foundation body when schools join or leave the group but do not change category in accordance with Schedule 8;

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- (b) with respect to the revision or replacement of the instruments of government of schools joining or leaving the group in such circumstances and the reconstitution of their governing bodies;
  - (c) authorising a foundation body to appoint foundation governors to every school in the group;
  - (d) prescribing a model instrument of government for adoption by a foundation body subject to variations approved by the Secretary of State;
  - (e) for conferring functions with respect to the resolution of disputes—
    - (i) between schools in the group, or
    - (ii) between one or more such schools and a foundation body,on such person or body as may be specified in the regulations;
  - (f) in connection with a school leaving the group—
    - (i) for requiring the publication of proposals under paragraph 2 of Schedule 8 (procedure for changing category of school);
    - (ii) for enabling the Secretary of State to require the publication under that paragraph of proposals for the school to become a school of a category specified by him;
    - (iii) for preventing a voluntary school from becoming one falling within subsection (2)(a) unless any conditions specified in pursuance of paragraph 4(2)(b) of that Schedule are satisfied in relation to the school;
  - (g) for the dissolution of a foundation body by order of the Secretary of State;
  - (h) for enabling the Secretary of State, in the case of any land held by a foundation body immediately before its dissolution which by virtue of this Act could not be disposed of without his consent, to determine how that land is to be dealt with on its dissolution;
  - (i) for conferring functions on school organisation committees and adjudicators including any functions which might otherwise be conferred on the Secretary of State.
- (7) Regulations made in pursuance of subsection (6)(b) may, in connection with the making or variation of instruments of government in preparation for schools joining or leaving the group, modify paragraph 1 of Schedule 12 in its operation in relation to such instruments of government.
- (8) The Secretary of State may, after consulting a foundation body, make an order modifying the instrument of government adopted by that body.
- (9) Regulations may make provision for applying to foundation special schools, with or without modifications—
- (a) any of the provisions of subsections (3) to (8); or
  - (b) any provision of Schedule 21 to this Act (transfers of land on appointed day).

## **22 Maintenance and other funding of schools**

- (1) A local education authority are under a duty to maintain the following schools—
- (a) any maintained schools which they are required to maintain by virtue of section 20(4) or (5);
  - (b) any maintained schools established by them under section 28 or 31;

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- (c) any maintained schools established in their area under section 28 otherwise than by them or any other local education authority; and
  - (d) any maintained nursery school established by them.
- (2) Subsection (1) has effect subject to the transfer under this Part of a maintained school from the area of one local education authority to that of another, and to the provisions of this Part relating to the discontinuance of schools.
- (3) In the case of a community school, a community special school or a maintained nursery school, the local education authority's duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty of making premises available to be used for the purposes of the school.
- (4) In the case of a foundation, voluntary controlled or foundation special school, the local education authority's duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty, under paragraph 2 of Schedule 3 or paragraph 13 or 15 of Schedule 6, of providing new premises for the school under and in accordance with paragraph 2 of Schedule 3 or (as the case may be) paragraph 16 of Schedule 6.
- (5) In the case of a voluntary aided school, the local education authority's duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, except any expenses that by virtue of paragraph 3 of Schedule 3 are payable by the governing body, and
  - (b) the duty, under paragraph 4 of Schedule 3 or paragraph 14 of Schedule 6, of providing new premises for the school under and in accordance with that paragraph.
- (6) For the purposes of this Act the expenses of maintaining a foundation, voluntary or foundation special school include the payment of rates.
- (7) Schedule 3 (which makes provision as to the functions of governing bodies, local education authorities and the Secretary of State as to the funding of foundation, voluntary and foundation special schools) shall have effect.
- (8) In this Act—
- (a) in relation to a school maintained (or proposed to be maintained) by a local education authority, "the local education authority" means that authority; and
  - (b) in relation to schools falling within subsections (3) to (6), "maintain" shall be read in accordance with those subsections.
- (9) In this Act "maintained nursery school" means a nursery school which is maintained by a local education authority and is not a special school.

## **23 Charitable status of maintained schools, etc**

- (1) The following shall be charities which are exempt charities for the purposes of the Charities Act 1993—
- (a) the governing body of any foundation, voluntary or foundation special school; and
  - (b) any foundation body established under section 21;

but no governing body of a community or community special school shall be a charity.

- (2) So far as it is a charity, any institution which—
- (a) is administered by or on behalf of any body to which subsection (1)(a) or (b) applies, and
  - (b) is established for the general purposes of, or for any special purpose of or in connection with, that body or any school or schools falling within subsection (1)(a),
- shall also be an exempt charity for the purposes of the Charities Act 1993.
- (3) Any foundation established otherwise than under this Act which has no property other than the premises of any school or schools falling within subsection (1)(a) shall be a charity which (subject to section 3(5B) of the Charities Act 1993) is not required to be registered for the purposes of that Act (but is not an exempt charity for the purposes of that Act).
- (4) In this section—
- (a) “charity” and “institution” have the same meaning as in the Charities Act 1993;
  - (b) “premises” includes a teacher’s dwelling-house.

#### *New arrangements for organisation of schools*

## **24 School organisation committees**

- (1) Each local education authority in England shall establish a school organisation committee for their area.
- (2) A school organisation committee shall be constituted in accordance with regulations made by the Secretary of State.
- (3) Those regulations must be so framed as to secure that every school organisation committee includes at least one person within each of the following categories—
- (a) a member of the local education authority;
  - (b) a person nominated by the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the authority’s area; and
  - (c) a person nominated by the bishop of any Roman Catholic Church diocese any part of which is comprised in the authority’s area.
- (4) In this Act any reference to “the school organisation committee” in relation to—
- (a) a local education authority in England,
  - (b) a school maintained or proposed to be maintained by such a local education authority, or
  - (c) any proposals relating to such a school,
- is a reference to the school organisation committee established for the local education authority’s area.
- (5) Schedule 4 has effect in relation to school organisation committees.

**25 Adjudicators**

- (1) The Secretary of State shall appoint for England such number of persons to act as adjudicators for the purposes of this Act as he considers appropriate.
- (2) Any matter which by virtue of this Act is required to be referred to “the adjudicator” shall be referred to such person appointed under this section as may be determined in accordance with regulations under Schedule 5.
- (3) Accordingly in this Act “the adjudicator”, in relation to any such matter, means the person mentioned in subsection (2).
- (4) Schedule 5 has effect in relation to adjudicators.

**26 School organisation plans**

- (1) Every local education authority shall prepare a school organisation plan for their area, and shall prepare further such plans at such times as may be prescribed.
- (2) A school organisation plan is a statement which sets out—
  - (a) how the authority propose to exercise their functions during the prescribed period with a view to securing the provision of primary and secondary education that will meet the needs of the population of their area during that period; and
  - (b) any facilities which the authority expect to be available outside their area for providing such education.
- (3) A school organisation plan must deal with such matters, and take such form, as may be prescribed.
- (4) The matters prescribed for the purposes of subsection (3) shall include the provision which the authority propose to make during the period in question for children with special educational needs.
- (5) A school organisation plan prepared by a local education authority in England requires the approval of the school organisation committee or the adjudicator; and regulations may make provision with regard to the procedure to be followed in connection with the preparation and approval of such plans.
- (6) Regulations under subsection (5) may, in particular, make provision—
  - (a) requiring a local education authority in England to publish a draft school organisation plan prepared by them, and enabling objections to be made to it;
  - (b) requiring—
    - (i) the draft plan (whether as published by the authority or as revised by them in the light of any such objections), and
    - (ii) all such objections,
 to be submitted to the school organisation committee;
  - (c) authorising the matters so submitted to be also submitted, in any prescribed circumstances, to the adjudicator;
  - (d) for the functions of the school organisation committee in relation to the matters submitted to them by the authority, or in relation to any proposals made by the adjudicator, including power for the committee—
    - (i) to approve a draft plan with or without modifications, or



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- (ii) to prepare a school organisation plan for publication by the authority as their approved plan;
  - (e) for the functions of the adjudicator in relation to any matters submitted to him by virtue of paragraph (c), or referred to him by the committee in the exercise of any function conferred by virtue of paragraph (d), including power for the adjudicator—
    - (i) to approve a draft plan either with modifications proposed by the committee or without modifications, or
    - (ii) to make proposals to the committee for modifications to be made to the draft plan;
  - (f) requiring the publication of the plan as approved;
  - (g) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations.
- (7) A school organisation plan prepared by a local education authority in Wales requires adoption by the authority; and regulations may make provision with regard to the procedure to be followed in connection with the preparation and adoption of such plans.
- (8) Regulations under subsection (7) may, in particular, make provision—
  - (a) requiring a local education authority in Wales to publish a draft school organisation plan prepared by them, and to consult such bodies or persons in connection with the draft plan as may be prescribed;
  - (b) requiring the authority, in the light of such consultation, either—
    - (i) to adopt the draft plan with or without modifications, or
    - (ii) to prepare a further draft school organisation plan for publication and consultation in accordance with any provision made by virtue of paragraph (a);
  - (c) requiring the publication of the plan as adopted by the authority;
  - (d) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations.

## **27 Power to require committees or adjudicators for Wales**

- (1) Regulations may make provision—
  - (a) for the establishment by local education authorities in Wales of school organisation committees; and
  - (b) for the appointment by the Secretary of State of adjudicators, or panels of adjudicators, for Wales;and the regulations may provide for any of the provisions of sections 24 and 25 and Schedules 4 and 5 to apply for the purposes of the regulations with or without modifications.
- (2) In connection with any provision made by virtue of subsection (1), regulations may make provision—
  - (a) for applying in relation to Wales any provision of section 26, Chapter II of this Part or Chapter I of Part III which would otherwise apply in relation to England only;

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- (b) for disapplying in relation to Wales any such provision which would otherwise apply in relation to Wales only;
- (c) for any statutory provision to have effect with such modifications as appear to the Secretary of State to be appropriate.

## CHAPTER II

### ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS

#### *Mainstream schools maintained by LEAs*

#### **28 Proposals for establishment or alteration of community, foundation or voluntary school**

- (1) Where a local education authority propose—
  - (a) to establish a new community or foundation school, or
  - (b) to make any prescribed alteration to a community school, or
  - (c) to make any prescribed alteration to a foundation school consisting of an enlargement of the premises of the school,
 the authority shall publish their proposals under this section.
- (2) Where—
  - (a) any persons (referred to in this Part as “promoters”) propose to establish a new foundation or voluntary school, or
  - (b) the governing body of a foundation or voluntary school propose to make any prescribed alteration to the school,
 those persons or (as the case may be) the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,
 as may be prescribed.
- (4) Proposals under this section may if the relevant body or promoters 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 providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.
- (5) Before publishing any proposals under this section, the relevant body or promoters shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body or promoters shall have regard to any guidance given from time to time by the Secretary of State.
- (6) Where any proposals published under this section relate to a school or proposed school in England, the relevant body or promoters shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

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to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.

- (7) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body or promoters shall send—
- (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (8) Schedule 6 has effect (for both England and Wales) in relation to—
- (a) the procedure for dealing with proposals under this section and their implementation; and
  - (b) the provision of premises or other assistance in connection with their implementation.
- (9) Where any proposals published under this section—
- (a) are for the transfer of a school to a site in a different area, or
  - (b) relate to a school which is, or (in the case of a new school) is proposed to be, situated in an area other than that of the local education authority who maintain, or (as the case may be) who it is proposed should maintain, the school,
- the provisions of subsection (6) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (10) In this section “the relevant body or promoters” means the local education authority, governing body or promoters mentioned in subsection (1) or (2) (as the case may be).
- (11) In this Part—
- (a) “alteration”, in the context of a prescribed alteration to a maintained school, means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change—
    - (i) in the religious character of the school, or
    - (ii) whereby the school would acquire or lose a religious character; and
  - (b) “area” (without more) means a local education authority area.
- (12) Any regulations made for the purposes of subsection (1)(b) or (2)(b) may be framed by reference to the opinion of the local education authority.

## **29 Proposals for discontinuance of community, foundation, voluntary or maintained nursery school**

- (1) Where a local education authority propose to discontinue—
- (a) a community, foundation or voluntary school, or
  - (b) a maintained nursery school,
- the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation or voluntary school propose to discontinue the school, the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
- (a) contain such information, and

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- (b) be published in such manner,  
as may be prescribed.
- (4) Before publishing any proposals under this section, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Where any proposals published under this section relate to a school in England, the relevant body shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the school organisation committee for the area of the local education authority who maintain the school.
- (6) Where any proposals published under this section relate to a school in Wales, the relevant body shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (7) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.
- (8) Where any proposals published under this section relate to a school which is situated in an area other than that of the local education authority who maintain it, the provisions of subsection (5) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).
- (10) In this Part any reference to a local education authority—
  - (a) discontinuing a school, or
  - (b) implementing proposals to discontinue a school (whether published by the authority or the governing body),
 is to the authority ceasing to maintain the school.

### **30 Notice by governing body to discontinue foundation or voluntary school**

- (1) Subject to the following provisions of this section, the governing body of a foundation or voluntary school may discontinue the school by serving on the Secretary of State and the local education authority at least two years' notice of their intention to do so.
- (2) If expenditure has been incurred on the school premises (otherwise than in connection with repairs)—
  - (a) by the Secretary of State,
  - (b) by the Funding Agency for Schools,
  - (c) by any local education authority, or
  - (d) by an authority which was a local education authority within the meaning of any enactment repealed by the Education Act 1944 or an earlier Act,
 no such notice may be served without the consent of the Secretary of State.

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- (3) If discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall, before serving a notice under this section, consult the appropriate further education funding council.
- (4) If, while a notice under subsection (1) is in force in respect of a foundation or voluntary school, the governing body inform the local education authority that they are unable or unwilling to carry on the school until the notice expires, the authority—
  - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and
  - (b) shall be entitled to use the school premises free of charge for that purpose.
- (5) While the school is being so conducted—
  - (a) the authority shall keep the school premises in good repair, and
  - (b) any interest in the premises which is held for the purposes of the school shall be deemed, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, to be vested in the authority.
- (6) Despite the provisions of subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if they had continued to carry on the school during the unexpired period of the notice.
- (7) A notice served under subsection (1) may not be withdrawn without the consent of the local education authority.
- (8) If a foundation or voluntary school is discontinued under this section, the duty of the local education authority to maintain the school as a foundation or voluntary school shall cease.
- (9) Nothing in section 29 or 33 applies to any such discontinuance of a foundation or voluntary school.
- (10) Where—
  - (a) land occupied by a foundation or voluntary school is held by any trustees for the purposes of the school, and
  - (b) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site,then if the trustees (being entitled to do so) give any notice to the governing body which purports to terminate the school's occupation of the land, any such notice shall not be effective to terminate its occupation of the land unless the requirements of subsection (11) are complied with in relation to the notice (without prejudice to any other statutory or other requirements falling to be so complied with).
- (11) The requirements of this subsection are—
  - (a) that the period of notice must—
    - (i) be reasonable having regard to the length of time that would be required to discontinue the school (if the governing body chose to do so), and
    - (ii) in any event must not be less than two years; and
  - (b) that a copy of the notice must be given to the Secretary of State and the local education authority at the time when the notice is given to the governing body.

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- (12) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(b) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them.
- (13) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(b) (including a question as to whether subsection (12) applies in any particular circumstances), it shall be determined by the Secretary of State.

*Special schools maintained by LEAs*

**31 Proposals for establishment, alteration or discontinuance of community or foundation special school**

- (1) Where a local education authority intend—
- (a) to establish a new community or foundation special school, or
  - (b) to make any prescribed alteration to such a school, or
  - (c) to discontinue such a school,
- the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation special school propose—
- (a) to make any prescribed alteration to the school, or
  - (b) to discontinue the school,
- the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
- (a) contain such information, and
  - (b) be published in such manner,
- as may be prescribed.
- (4) Before publishing any proposals under this section, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Where any proposals published under this section relate to a school or proposed school in England, the relevant body shall send—
- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.
- (6) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body shall send—
- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

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to the Secretary of State.

- (7) The relevant body shall also send a copy of any proposals to which subsection (5) or (6) applies to such other bodies or persons as may be prescribed.
- (8) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.
- (9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).

### **32 Direction requiring discontinuance of community or foundation special school**

- (1) The Secretary of State may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a community or foundation special school, give a direction to the local education authority by whom the school is maintained requiring the school to be discontinued on a date specified in the direction.
- (2) A direction under subsection (1) may require the local education authority to notify any persons or class of persons specified in the direction.
- (3) Before giving a direction under subsection (1), the Secretary of State shall consult—
  - (a) the local education authority;
  - (b) any other local education authority who would in his opinion be affected by the discontinuance of the school;
  - (c) in the case of a foundation special school which has a foundation, the person who appoints the foundation governors; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (4) On giving a direction under subsection (1) the Secretary of State shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where a local education authority are given a direction under subsection (1), they shall discontinue the school in question on the date specified in the direction; and nothing in section 31 or 33 applies to any such discontinuance of the school under this section.

*Further provisions relating to establishment, alteration or discontinuance of schools*

### **33 Further provisions relating to establishment, alteration or discontinuance of schools**

- (1) Except in pursuance of proposals falling to be implemented under paragraph 5 or 10 of Schedule 6—
  - (a) no maintained school shall be established or discontinued;
  - (b) no prescribed alteration shall be made to any such school; and
  - (c) no maintained nursery school shall be discontinued.
- (2) No alteration falling within section 28(11)(a)(i) or (ii) shall be made to any maintained school.
- (3) Subsection (1) has effect subject to sections 19(4), 30(9) and 32(5).
- (4) Regulations may, in relation to proposals published under section 28, 29 or 31, require any of the following, namely—

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- (a) the body or promoters who published the proposals,
- (b) the school organisation committee, and
- (c) the adjudicator,

to provide such information relating to the proposals to such persons, and at such times, as may be prescribed.

#### *Rationalisation of school places*

### **34 Rationalisation of school places**

Schedule 7 (which provides for the Secretary of State to give directions to local education authorities and governing bodies to bring forward proposals for the rationalisation of school places, and for such proposals to be made by him) shall have effect.

#### *Change of category of school*

### **35 School changing from one category to another**

- (1) Schedule 8 makes provision for and in connection with—
  - (a) enabling a maintained school within one of the categories set out in section 20(1) to become a school within another of those categories, and
  - (b) in certain circumstances, requiring proposals to be published for a voluntary aided school to become a school within another of those categories;
 and a maintained school may not so change its category otherwise than in accordance with that Schedule.
- (2) Except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of paragraph 3 of Schedule 8, that Schedule does not apply at any time before the end of such period as may be prescribed.

## **CHAPTER III**

### **GOVERNMENT OF MAINTAINED SCHOOLS**

#### *Governing bodies*

### **36 Governing bodies**

- (1) Each maintained school shall have a governing body, which shall be a body corporate constituted in accordance with Schedule 9.
- (2) Schedule 10 has effect in relation to the general powers of the governing body and other matters relating to it as a body corporate.
- (3) Schedule 11 has effect in relation to the membership and proceedings of the governing body and other matters including the appointment of a clerk to, or to any committee of, the governing body.



### *Instruments of government*

#### **37 Instruments of government**

- (1) For every maintained school there shall be an instrument (known as the instrument of government) which determines the constitution of the governing body and other matters relating to the school.
- (2) Schedule 12 has effect with respect to the contents and making of instruments of government and the review and variation of such instruments.
- (3) The governing body of a maintained school shall not conduct the school under a name other than the one for the time being set out in the school's instrument of government.

### *Functions of governing body*

#### **38 General responsibility of governing body for conduct of school**

- (1) Subject to any other statutory provision, the conduct of a maintained school shall be under the direction of the school's governing body.
- (2) The governing body shall conduct the school with a view to promoting high standards of educational achievement at the school.
- (3) Regulations may—
  - (a) set out terms of reference for governing bodies of maintained schools;
  - (b) define the respective roles and responsibilities of governing bodies and head teachers of such schools, whether generally or with respect to particular matters, including the curriculum for such schools;
  - (c) confer functions on governing bodies and head teachers of such schools.
- (4) The governing body of a maintained school shall, in discharging their functions, comply with—
  - (a) the instrument of government; and
  - (b) (subject to any other statutory provision) any trust deed relating to the school.

#### **39 Additional functions of governing body**

- (1) The governing body of a maintained school shall in accordance with regulations—
  - (a) establish procedures for dealing with all complaints relating to the school other than those falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of any other statutory provision; and
  - (b) publicise the procedures so established.
- (2) The governing body of a maintained school may require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.
- (3) The governing body and head teacher of—
  - (a) a community or voluntary controlled school, or
  - (b) a community special school,

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shall comply with any direction given to them by the local education authority concerning the health or safety of persons on the school's premises or taking part in any school activities elsewhere.

*Control of school premises*

**40 Control of use of school premises by governing body**

Schedule 13 has effect in relation to the control by the governing body of a maintained school of the occupation and use of the school premises.

*Fixing of school holidays and times of sessions*

**41 Responsibility for fixing dates of terms and holidays and times of sessions**

- (1) In the case of a community, voluntary controlled or community special school—
  - (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end; and
  - (b) the governing body shall determine the times of the school sessions.
- (2) In the case of a foundation, voluntary aided or foundation special school the governing body shall determine—
  - (a) the dates and times when the school terms and holidays are to begin and end, and
  - (b) the times of the school sessions.
- (3) Regulations may make provision—
  - (a) as to the procedure to be followed where the governing body of a school within subsection (1) propose to make any change in the times of the school sessions;
  - (b) as to the implementation of any such proposal;
  - (c) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school;
  - (d) that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals.
- (4) In this section “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

*Reports and parents' meetings*

**42 Governors' reports and other information**

- (1) Once in every school year the governing body of a maintained school shall prepare a report (a “governors' report”) dealing with such matters, and otherwise complying with such requirements, as may be specified in regulations.
- (2) Such regulations may—

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- (a) impose requirements on the governing body of a maintained school with respect to—
    - (i) the giving of copies of a governors' report to such persons as may be prescribed, and
    - (ii) making such copies available for inspection at the school;
  - (b) make provision for—
    - (i) enabling the governing body to determine the language or languages in which a governors' report is to be produced and the form or forms in which it is to be produced;
    - (ii) requiring them to comply with any direction given by the local education authority with respect to any additional language to be used or with respect to any additional form in which the report is to be produced.
- (3) The governing body of a maintained school shall provide the local education authority with such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (4) The head teacher of a maintained school shall provide the governing body or (as the case may be) the local education authority with such reports in connection with the discharge of his functions as the governing body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (5) Where a requirement under subsection (4) is imposed on the head teacher by the authority—
- (a) the authority shall notify the governing body of that requirement; and
  - (b) the head teacher shall give the governing body a copy of any report made by him in complying with it.

#### **43 Annual parents' meetings**

- (1) Once in every school year the governing body of a maintained school shall hold a meeting (an “annual parents' meeting”) which is open to—
- (a) all parents of registered pupils at the school;
  - (b) the head teacher; and
  - (c) such other persons as the governing body may invite.
- (2) The purpose of the meeting shall be to provide an opportunity for discussion of—
- (a) the governors' report;
  - (b) the discharge by the governing body, the head teacher and the local education authority of their functions in relation to the school;
  - (c) the aims and values of the school;
  - (d) how the spiritual, moral, cultural, mental and physical development of pupils is to be promoted at the school;
  - (e) how pupils are to be prepared for the opportunities, responsibilities and experiences of adult life and citizenship;
  - (f) the standards of educational achievement of pupils; and
  - (g) how the governing body are to promote the good behaviour, discipline and well-being of pupils.

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- (3) A governing body may, however, refrain from holding an annual parents' meeting in a particular school year if—
- (a) the school is a community or foundation special school which is established in a hospital and the governing body are of the opinion that it would be impracticable to hold such a meeting in that year; or
  - (b) the school is a maintained school other than one within paragraph (a), the governing body are of the opinion that it would be impracticable to hold such a meeting in that year, and at least 50 per cent. of the registered pupils at the school are boarders at the time when they form that opinion.
- (4) Regulations may make provision—
- (a) for the proceedings at an annual parents' meeting to be under the control of the governing body;
  - (b) as to the procedure to be followed at any such meeting, including provision restricting the right to vote on any question put to the meeting to parents of registered pupils at the school;
  - (c) imposing requirements on the governing body, the head teacher and the local education authority in relation to resolutions which have been passed at any such meeting, including requirements framed by reference to any opinion formed by the governing body;
  - (d) for enabling the governing body or (as the case may be) the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as the parent of a registered pupil at the school.

#### *Government of new schools*

#### **44 Arrangements for government of new schools**

- (1) Where proposals for the establishment of a maintained school fall to be implemented under paragraph 5 or 10 of Schedule 6, the local education authority shall make arrangements providing for the constitution of a temporary governing body for the school.
- (2) Once constituted in accordance with arrangements made under subsection (1) the temporary governing body shall continue in existence until such time as the governing body are constituted for the school under an instrument of government.
- (3) The local education authority shall secure that the governing body are so constituted—
  - (a) as soon as is reasonably practicable after the time when the requirement for there to be an instrument of government for the school takes effect in accordance with subsection (4), and
  - (b) in any event not later than the last day of the term in which the school first admits pupils.
- (4) The requirement for there to be an instrument of government for a school (imposed by section 37) shall take effect in relation to a school falling within subsection (1) above as from the school opening date; and for the purposes of this Part proposals for the establishment of a maintained school shall be taken to be implemented on that date.
- (5) Regulations may make provision with respect to—

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- (a) the making and termination of arrangements for the constitution of temporary governing bodies, including such arrangements made in anticipation of proposals falling to be implemented as mentioned in subsection (1);
  - (b) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors, and the appointment of clerks to such bodies;
  - (c) the transition from a temporary governing body to a governing body constituted under an instrument of government; and
  - (d) such other matters relating to temporary governing bodies as the Secretary of State considers appropriate.
- (6) Regulations under subsection (5) may, in connection with any matters falling within that subsection—
- (a) modify any provision made by or under any of Schedules 9 to 12;
  - (b) apply any such provision with or without modifications;
  - (c) make provision corresponding or similar to any such provision.
- (7) Subject to subsection (8), the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period—
- (a) beginning with the school opening date, and
  - (b) ending with the time when the governing body are constituted for the school under an instrument of government;
- and for the purposes of sections 495 to 498 of the Education Act 1996 (general default powers of the Secretary of State) the temporary governing body of a school shall also be so treated at any time falling before the school opening date.
- (8) Despite subsection (7), nothing in any of the following provisions, namely—
- (a) section 36,
  - (b) section 37(1) or (2), or
  - (c) (subject to any regulations made by virtue of subsection (5)) any of Schedules 9 to 12,
- applies to any temporary governing body.
- (9) In this Part “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.

## CHAPTER IV

### FINANCING OF MAINTAINED SCHOOLS

#### *Budgetary framework*

#### **45 Maintained schools to have budget shares**

- (1) For the purposes of the financing of maintained schools by local education authorities, every such school shall have, for each financial year, a budget share which is allocated to it by the authority which maintains it.

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- (2) Sections 46 and 47 have effect for determining the amount of a school’s budget share for a financial year.
- (3) In this Chapter—
- (a) references to schools maintained by a local education authority do not include schools which are not maintained schools as defined by section 20(7);
  - (b) references, in a context referring to a local education authority, to a maintained school or to a school maintained by such an authority shall be read as including a new school—
    - (i) which on implementation of proposals under section 28 or 31 or paragraph 5 of Schedule 7 will be a community, foundation or voluntary school or a community or foundation special school maintained by the authority, and
    - (ii) which has a temporary governing body; and
  - (c) references to the governing body of a maintained school or of a school maintained by a local education authority shall accordingly be read as including the temporary governing body of a new school falling within paragraph (b).
- (4) In this Chapter “new school” (without more) has the meaning given by section 72(3).

#### **46 Determination of LEA’s local schools budget and individual schools budget**

- (1) For the purposes of this Part a local education authority’s “local schools budget” for a financial year is the amount appropriated by the authority for meeting all expenditure by the authority in that year of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools).
- (2) For the purposes of this Part a local education authority’s “individual schools budget” for a financial year is the amount remaining after deducting from the authority’s local schools budget for that year such planned expenditure by the authority in respect of the year as they may determine should be so deducted in accordance with regulations.
- (3) Regulations under subsection (2) may—
- (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority’s local schools budget; and
  - (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be so deducted subject to either or both of the following, namely—
    - (i) such limit or limits (however framed) as may be specified by the regulations; and
    - (ii) such other conditions as may be so specified.

#### **47 Determination of school’s budget share**

- (1) For the purposes of this Part a maintained school’s budget share for a financial year is such amount as the local education authority may determine, in accordance with regulations, to allocate to the school out of the authority’s individual schools budget for that year.
- (2) Regulations under this section may, in particular, make provision—

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- (a) as to the time when schools' budget shares are to be initially determined by local education authorities;
  - (b) specifying—
    - (i) factors or criteria which such authorities are to take into account, or
    - (ii) requirements as to other matters with which such authorities are to comply,in determining such shares, whether generally or in such cases as are specified in the regulations;
  - (c) requiring adjustments to be made to such shares by such authorities in respect of—
    - (i) pupils permanently excluded from schools maintained by them, or
    - (ii) pupils admitted to schools maintained by them who have been permanently excluded from other maintained schools;
  - (d) as to the treatment of new schools, including provision authorising the determination of nil amounts as the budget shares of such schools;
  - (e) authorising or requiring such authorities to take account of matters arising during the course of a financial year—
    - (i) by redetermining budget shares for that year, or
    - (ii) by making adjustments to such shares for the following year,in accordance with the regulations, and requiring them in that connection to disregard such matters as may be specified in the regulations;
  - (f) requiring consultation to be carried out by such authorities in relation to the factors or criteria which are to be taken into account in determining such shares and as to the time and manner of such consultation;
  - (g) enabling the Secretary of State, where it appears to him to be expedient to do so, to authorise such authorities to determine (or redetermine) budget shares, to such extent as he may specify, in accordance with arrangements approved by him (in place of those provided for by the regulations).
- (3) Regulations made in pursuance of subsection (2)(c) may provide for the adjustments to be made on such basis as may be prescribed, which may involve the deduction from one school's budget share of an amount which is greater or less than that allocated to another school's budget share in respect of the excluded pupil.

#### *Local education authority schemes*

### **48 LEAs' financial schemes**

- (1) Each local education authority shall prepare a scheme dealing with such matters connected with the financing of the schools maintained by the authority as are required to be dealt with in the scheme by or by virtue of—
  - (a) regulations made by the Secretary of State; or
  - (b) any provision of this Part.
- (2) Regulations under subsection (1) may, in particular, require a scheme to deal with—
  - (a) the carrying forward from one financial year to another of surpluses and deficits arising in relation to schools' budget shares;
  - (b) amounts which may be charged against schools' budget shares;

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- (c) amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used;
  - (d) the imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets, including conditions prescribing financial controls and procedures;
  - (e) terms on which services and facilities are provided by the authority for schools maintained by them.
- (3) Where there is any inconsistency between a scheme prepared by a local education authority under subsection (1) and any other rules or regulations made by the authority which relate to the funding or financial management of schools which they maintain, the terms of the scheme shall prevail.
- (4) Schedule 14 (which provides for the approval or imposition of schemes by the Secretary of State and for the revision of schemes) shall have effect.
- (5) In this Part any reference to “the scheme”, in relation to a maintained school, is a reference to the scheme prepared (or by virtue of paragraph 1(6) of Schedule 14 treated as prepared) by the local education authority under this section, as from time to time revised under paragraph 2 of that Schedule.

#### *Financial delegation*

### **49 Maintained schools to have delegated budgets**

- (1) Every maintained school shall have a delegated budget.
- (2) A new school shall have a delegated budget as from the school opening date, unless a different date applies by virtue of subsection (3).
- (3) Such a school shall have a delegated budget—
- (a) as from a date earlier than the school opening date if the local education authority so determine; or
  - (b) as from a later date if the authority so determine with the written approval of the Secretary of State; or
  - (c) as from such date as the Secretary of State may determine, if the authority have determined that the school should have a delegated budget as from a later date but that date is not approved by him.
- (4) Subject to—
- (a) section 50 (right of governing body to spend budget share where school has a delegated budget),
  - (b) paragraph 4 of Schedule 15 (power of governing body to spend amounts out of budget share where delegation of budget suspended),
  - (c) section 489(2) of the Education Act 1996 (education standards grants), and
  - (d) any provisions of the scheme,
- a local education authority may not delegate to the governing body of any maintained school the power to spend any part of the authority’s local schools budget.
- (5) Any amount made available by a local education authority to the governing body of a maintained school (whether under section 50 or otherwise)—



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- (a) shall remain the property of the authority until spent by the governing body or the head teacher; and
  - (b) when spent by the governing body or the head teacher, shall be taken to be spent by them or him as the authority's agent.
- (6) Subsection (5)(b) does not apply to any such amount where it is spent—
- (a) by way of repayment of the principal of, or interest on, a loan, or
  - (b) (in the case of a voluntary aided school) to meet expenses payable by the governing body under paragraph 3(1) or (2) of Schedule 3 or paragraph 14(2) of Schedule 6.
- (7) In this Part—
- (a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school's budget share; and
  - (b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.

## **50 Effect of financial delegation**

- (1) Where a maintained school has a delegated budget in respect of the whole or part of a financial year the local education authority shall secure that in respect of that year there is available to be spent by the governing body—
- (a) where the school has a delegated budget in respect of the whole of that year, a sum equal to the school's budget share for the year, or
  - (b) where the school has a delegated budget in respect of only part of that year, a sum equal to that portion of the school's budget share for the year which has not been spent.
- (2) The times at which, and the manner in which, any amounts are made available by the authority to the governing body in respect of any such sum shall be such as may be provided by or under the scheme.
- (3) Subject to any provision made by or under the scheme, the governing body may spend any such amounts as they think fit—
- (a) for any purposes of the school; or
  - (b) (subject also to any prescribed conditions) for such purposes as may be prescribed.
- (4) In subsection (3) "purposes of the school" does 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;
- but any such purposes may be prescribed by regulations under paragraph (b) of that subsection.
- (5) Nothing in subsection (3) shall be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under paragraph 6 of Schedule 11 (or, in the case of temporary governors of a new school, regulations under section 44(5)).

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- (6) The governing body may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their powers under subsection (3) in relation to any amount such as is mentioned in that subsection.
- (7) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under subsection (3) or (6).

### *Suspension of financial delegation*

## **51 Suspension of financial delegation for mismanagement etc**

Schedule 15 (which provides for the suspension by a local education authority of a governing body's right to a delegated budget in the case of failure to comply with requirements as to delegation or of financial mismanagement, etc.) shall have effect.

### *Information*

## **52 Financial statements**

- (1) Before the beginning of each financial year a local education authority shall prepare a statement containing such information relating to their planned expenditure in that year as may be prescribed.
- (2) After the end of each financial year a local education authority shall prepare a statement containing such information with respect to the following matters as may be prescribed—
  - (a) the planned expenditure in that year specified in the statement prepared by the authority under subsection (1),
  - (b) expenditure actually incurred, or treated by the authority as having been incurred, by them in the year, and
  - (c) any other resources allocated by the authority in the year to schools maintained by them during any part of the year.
- (3) A statement under this section shall—
  - (a) be prepared in such form, and
  - (b) be published in such manner and at such times,
 as may be prescribed.
- (4) The authority shall furnish the governing body and head teacher of each school maintained by them with a copy of each statement prepared by the authority under this section or, if regulations so provide, with a copy of such part or parts of it as may be prescribed.
- (5) A governing body provided with such a copy under subsection (4) shall secure that a copy of it is available for inspection (at all reasonable times and free of charge) at the school.
- (6) Subsection (5) does not apply to a temporary governing body of a new school at any time before the school opening date.

### **53 Certification of statements by Audit Commission**

- (1) A local education authority shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 28(1)(d) of the Audit Commission Act 1998 for certifying—
  - (a) such statement or statements prepared by the authority under section 52 above, or
  - (b) such part or parts of any such statement or statements,as may be specified in the directions; and for the purposes of section 28(1)(d) of that Act any statement under section 52 above shall be treated as a return by the authority.
- (2) The arrangements made by the Audit Commission in pursuance of subsection (1) shall include arrangements for sending to the Secretary of State—
  - (a) a copy of the statement or statements so certified, or
  - (b) a copy of the part or parts so certified,as the case may be.
- (3) Directions given under subsection (1) may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.

## **CHAPTER V**

### **STAFFING AND CONDUCT OF SCHOOLS**

#### *Staffing of schools*

### **54 Staffing of community, voluntary controlled and community special schools**

- (1) Schedule 16 has effect in relation to the staffing of community, voluntary controlled and community special schools.
- (2) If at any time a community, voluntary controlled or community special school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15—
  - (a) Schedule 16 shall not apply; and
  - (b) subsections (3) to (5) below shall apply instead.
- (3) The number of teachers and non-teaching staff to be employed at the school shall be determined by the local education authority.
- (4) The authority may appoint, suspend and dismiss teachers and other staff at the school as the authority think fit.
- (5) The authority shall, in connection with the exercise of their functions under subsection (4), consult the governing body to such extent as the authority think fit.
- (6) In relation to reserved teachers at a voluntary controlled school, Schedule 16 or (as the case may be) subsection (4) above has effect subject to section 58.

**55 Staffing of foundation, voluntary aided and foundation special schools**

- (1) Schedule 17 has effect in relation to the staffing of foundation, voluntary aided and foundation special schools.
- (2) If at any time a foundation, voluntary aided or foundation special school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15, Schedule 17 shall apply to the school subject to subsections (3) to (7) below.
- (3) The number of teachers and non-teaching staff to be employed at the school shall be determined by the local education authority.
- (4) Except with the consent of the authority, the governing body shall not—
  - (a) appoint any teacher to be employed at the school or engage, or make arrangements for the engagement of, any person to provide his services as a teacher at the school, or
  - (b) dismiss any teacher at the school.
- (5) The authority may give the governing body directions—
  - (a) as to the educational qualifications of the teachers to be employed for giving secular education; or
  - (b) requiring them to dismiss any teacher at the school;
 but the authority shall not give any directions under paragraph (a) except after consulting the governing body.
- (6) The authority may give directions to the governing body as to the number and conditions of service of persons employed at the school for the purposes of the care and maintenance of the school premises.
- (7) Where the trust deed relating to the school provides for a person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement under Schedule 13) the use of those premises is or would be under the control of any such person, the reference in subsection (6) to the governing body shall be read as a reference to that person.
- (8) Schedule 17 or (as the case may be) subsections (4) and (5) above have effect subject to section 58.

**56 Staffing for non-school activities**

- (1) This section applies to a maintained school if—
  - (a) activities other than school activities (“non-school activities”) are carried on on the school premises, and
  - (b) all non-school activities which are so carried on are carried on under the management or control of the school’s governing body.
- (2) The relevant staffing provisions shall, to such extent as the local education authority may determine, apply in relation to persons employed to work—
  - (a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the school premises, or
  - (b) solely for the purposes of non-school activities so carried on, as if all activities so carried on were school activities.

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- (3) The local education authority shall give the governing body notice in writing of any determination by the authority under subsection (2).
- (4) In subsection (2) “the relevant staffing provisions” means—
  - (a) in relation to a community, voluntary controlled or community special school, the provisions of Schedule 16 and section 57; and
  - (b) in relation to a foundation, voluntary aided or foundation special school, the provisions of Schedule 17 and section 57.
- (5) Nothing in this section applies to a school within subsection (1) at any time when the school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15.

## **57 Payments in respect of dismissal, etc**

- (1) It shall be for the governing body of a maintained school to determine—
  - (a) whether any payment should be made by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and
  - (b) the amount of any such payment.
- (2) Subsection (1) does not, however, apply in relation to a payment which the local education authority are required to make—
  - (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or
  - (b) under any statutory provision.
- (3) The local education authority—
  - (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and
  - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (4) Costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school’s budget share for one or more financial years except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met.
- (5) Costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school’s budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996.

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- (7) Nothing in this section applies to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15.

*Appointment and dismissal of teachers of religious education*

**58 Appointment and dismissal of certain teachers at schools with a religious character**

- (1) In this section—
- (a) subsections (2) to (6) apply to a foundation or voluntary controlled school which has a religious character; and
  - (b) subsection (7) applies (subject to subsection (8)) to a voluntary aided school which has a religious character;
- and references in this Chapter to a school which has (or does not have) a religious character shall be construed in accordance with section 69(3).
- (2) Where the number of the teaching staff of a school to which this subsection applies is more than two, the teaching staff shall include persons who—
- (a) are selected for their fitness and competence to give such religious education as is required in accordance with arrangements under paragraph 3(3) of Schedule 19 (arrangements for religious education in accordance with the school's trust deed or with the tenets of the school's specified religion or religious denomination), and
  - (b) are specifically appointed to do so.
- (3) The number of reserved teachers in such a school shall not exceed one-fifth of the number of the teaching staff, including the head teacher (and for this purpose, where the number of the teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five).
- (4) The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher.
- (5) Where the appropriate body propose to appoint a person to be a reserved teacher in such a school, that body—
- (a) shall consult the foundation governors, and
  - (b) shall not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (2)(a).
- (6) If the foundation governors of such a school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may require the appropriate body to dismiss him from employment as a reserved teacher in the school.
- (7) If a teacher appointed to give religious education in a school to which this subsection applies fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority.
- (8) Subsection (7) does not apply—
- (a) where the school has a delegated budget, or
  - (b) to religious education in accordance with an agreed syllabus.

(9) In this section—

“the appropriate body” means—

- (a) in relation to a foundation school, the governing body, and
  - (b) in relation to a voluntary controlled school, the local education authority;
- “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of subsection (2).

*Religious opinions etc. of staff*

**59 Staff at community, secular foundation or voluntary, or special school**

(1) This section applies to—

- (a) a community school or a community or foundation special school, or
- (b) a foundation or voluntary school which does not have a religious character.

(2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—

- (a) from being a teacher at the school, or
- (b) from being employed for the purposes of the school otherwise than as a teacher.

(3) No teacher at the school shall be required to give religious education.

(4) No teacher at the school shall receive any less remuneration 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.

**60 Staff at foundation or voluntary school with religious character**

(1) This section applies to a foundation or voluntary school which has a religious character.

(2) If the school is a foundation or voluntary controlled school, then (subject to subsections (3) and (4) below) section 59(2) to (4) shall apply to the school as they apply to a foundation or voluntary controlled school which does not have a religious character.

(3) Section 59(2) to (4) shall not so apply in relation to a reserved teacher at the school; and instead subsection (5) below shall apply in relation to such a teacher as it applies in relation to a teacher at a voluntary aided school.

(4) In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) regard may be had to that person’s ability and fitness to preserve and develop the religious character of the school.

(5) If the school is a voluntary aided school—

- (a) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons—

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- (i) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or
  - (ii) who attend religious worship in accordance with those tenets, or
  - (iii) who give, or are willing to give, religious education at the school in accordance with those tenets; and
- (b) regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.
- (6) If the school is a voluntary aided school, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed for the purposes of the school otherwise than as a teacher.
- (7) Where immediately before the appointed day a teacher at a school which on that day becomes a school to which this section applies enjoyed, by virtue of section 304 or 305 of the Education Act 1996 (religious opinions of staff etc.), any rights not conferred on him by this section as a teacher at a school to which it applies, he shall continue to enjoy those rights (in addition to those conferred by this section) until he ceases to be employed as a teacher at the school.
- (8) In this section “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of section 58(2).

*Discipline: general*

**61 Responsibility of governing body and head teacher for discipline**

- (1) The governing body of a maintained school shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
- (a) shall make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under subsection (4); and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate;
 and in exercising their functions under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body shall consult (in such manner as appears to them to be appropriate)—
- (a) the head teacher; and
  - (b) parents of registered pupils at the school.
- (4) The head teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—



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- (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;
  - (c) securing that the standard of behaviour of pupils is acceptable; and
  - (d) otherwise regulating the conduct of pupils.
- (5) The head teacher shall in determining such measures—
- (a) act in accordance with the current statement made by the governing body under subsection (2)(a); and
  - (b) have regard to any notification or guidance given to him under subsection (2)(b).
- (6) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the head teacher, so far as it is not determined by the governing body.
- (7) The measures determined by the head teacher under subsection (4) shall be publicised by him in the form of a written document as follows—
- (a) he shall make the measures generally known within the school and to parents of registered pupils at the school; and
  - (b) he shall in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons employed, or otherwise engaged to provide their services, at the school.

## **62 LEA’s reserve power to prevent a breakdown of discipline**

- (1) The local education authority may, in the circumstances mentioned in subsection (2) or where subsection (3) applies, take such steps in relation to a maintained school as they consider are required to prevent the breakdown, or continuing breakdown, of discipline at the school.
- (2) The circumstances are that—
- (a) in the opinion of the authority—
    - (i) the behaviour of registered pupils at the school, or
    - (ii) any action taken by such pupils or their parents,is such that the education of any registered pupils at the school is (or is likely in the immediate future to become) severely prejudiced; and
  - (b) the governing body have been informed in writing of the authority’s opinion.
- (3) This subsection applies where—
- (a) a warning notice has been given in accordance with section 15(2) referring to the safety of pupils or staff at the school being threatened by a breakdown of discipline at the school,
  - (b) the governing body have failed to comply, or secure compliance, with the notice to the authority’s satisfaction within the compliance period, and
  - (c) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under subsection (1) of this section (whether or not in conjunction with exercising their powers under either or both of sections 16 and 17);
- and a notice under paragraph (c) of this subsection may be combined with a notice under section 15(1)(c).

- (4) Steps taken by a local education authority under subsection (1) may include the giving of any direction to the governing body or head teacher.

*School attendance targets*

**63 School attendance targets**

- (1) Regulations may make provision for and in connection with—
- (a) requiring, or
  - (b) enabling the Secretary of State to require,
- governing bodies of maintained schools to secure that annual targets are set for reducing the level of unauthorised absences on the part of relevant day pupils at their schools.
- (2) Regulations under this section may, in particular, make provision—
- (a) for the Secretary of State to impose such a requirement on the governing body of a maintained school where—
    - (i) the specified condition is for the time being satisfied in relation to the school, and
    - (ii) he considers it appropriate to impose the requirement;
  - (b) for such a requirement to be imposed by the Secretary of State in such manner, and for such period, as may be specified in or determined in accordance with the regulations;
  - (c) for the Secretary of State, where he considers it appropriate to do so, to exempt the governing body of a maintained school, in relation to any school year, from a requirement imposed by virtue of subsection (1)(a) or (b).
- (3) For the purposes of subsection (2)(a)(i) the specified condition is for the time being satisfied in relation to a maintained school if in the previous school year the level of unauthorised absences on the part of relevant day pupils at the school (as determined in accordance with the regulations) exceeded such level as may for that year be specified in or determined in accordance with the regulations.
- (4) In this section—
- “relevant day pupil” means a pupil registered at a maintained school who is of compulsory school age and is not a boarder;
- “unauthorised absence”, in relation to such a pupil, means any occasion on which the pupil is recorded as absent without authority pursuant to regulations under section 434 of the Education Act 1996 (registration of pupils).

*Exclusion of pupils*

**64 Power of head teacher to exclude pupils**

- (1) The head teacher of a maintained school may exclude a pupil from the school for a fixed period or permanently.
- (2) The head teacher may not exercise the power to exclude a pupil from the school for one or more fixed periods such that the pupil is so excluded for more than 45 school days in any one school year.

- (3) A pupil may not be excluded from a maintained school (whether by suspension, expulsion or otherwise) except by the head teacher in accordance with this section.
- (4) In this Act “exclude”, in relation to the exclusion of a child from a school, means exclude on disciplinary grounds (and “exclusion” shall be construed accordingly).

## **65 Exclusion of pupils: duty to inform parents, etc**

- (1) Where the head teacher of a maintained school excludes any pupil, the head teacher shall (without delay) take reasonable steps to inform the relevant person of the following matters—
  - (a) the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded);
  - (b) the reasons for the exclusion;
  - (c) that he may make representations about the exclusion to the governing body, and
  - (d) the means by which such representations may be made.
- (2) Where the head teacher decides that any exclusion of a pupil for a fixed period should be made permanent, he shall (without delay) take reasonable steps to inform the relevant person of—
  - (a) his decision, and
  - (b) the matters specified in paragraphs (b) to (d) of subsection (1).
- (3) Subsection (4) applies where the head teacher—
  - (a) excludes any pupil in circumstances where the pupil would, as a result of the exclusion—
    - (i) be excluded from the school for a total of more than five school days in any one term, or
    - (ii) lose an opportunity to take any public examination,
  - (b) excludes a pupil permanently, or
  - (c) decides that any exclusion of a pupil should be made permanent.
- (4) Where this subsection applies, the head teacher shall (without delay) inform the local education authority and the governing body of the following matters—
  - (a) the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded), or
  - (b) his decision that any exclusion of a pupil for a fixed period should be made permanent,and (in either case) of the reasons for it.
- (5) In this section and in sections 66 and 67 “the relevant person” means—
  - (a) in relation to a pupil under the age of 18, a parent of his;
  - (b) in relation to a pupil who has attained that age, the pupil himself.
- (6) Where regulations under paragraph 4 of Schedule 11 require the governing body of a maintained school to establish a discipline committee, references in this section and sections 66 to 68 to the governing body of such a school shall be construed as references to their discipline committee.

**66 Functions of governing body in relation to excluded pupils**

- (1) Subsections (2) to (6) apply where the governing body of a maintained school are informed under section 65(4) of any exclusion or decision to which that provision applies.
- (2) The governing body shall in any such case—
  - (a) consider the circumstances in which the pupil was excluded;
  - (b) consider any representations about the exclusion made to the governing body—
    - (i) by the relevant person in pursuance of section 65(1)(c) or (2)(b), or
    - (ii) by the local education authority;
  - (c) allow each of the following, namely—
    - (i) the relevant person, and
    - (ii) an officer of the local education authority nominated by the authority, to attend a meeting of the governing body and to make oral representations about the exclusion; and
  - (d) consider any oral representations so made.
- (3) In a case where it would be practical for the governing body to give a direction to the head teacher requiring the reinstatement of a pupil, they shall in addition consider whether he should be reinstated immediately, reinstated by a particular date or not reinstated.
- (4) If the governing body decide that the pupil should be reinstated, they shall forthwith—
  - (a) give the appropriate direction to the head teacher, and
  - (b) inform the relevant person and the local education authority of their decision.
- (5) The head teacher shall comply with any direction of the governing body for the reinstatement of a pupil who has been excluded from the school.
- (6) If the governing body decide that the pupil should not be reinstated, they shall forthwith—
  - (a) inform the relevant person, the head teacher and the local education authority of their decision, and
  - (b) in addition, in the case of a pupil who is permanently excluded, give the relevant person notice in writing referring to that decision and stating the following matters—
    - (i) the reasons for the decision,
    - (ii) his right to appeal against the decision,
    - (iii) the person to whom he should give any notice of appeal,
    - (iv) that any notice of appeal must contain the grounds of appeal, and
    - (v) the last date on which an appeal may be made.
- (7) Where—
  - (a) the head teacher of a maintained school excludes a pupil otherwise than as mentioned in section 65(3), and
  - (b) the governing body receive any representations made in pursuance of section 65(1)(c) or (2)(b) by the relevant person about the exclusion,they shall consider those representations.

- (8) Regulations may provide that, where a governing body of a maintained school are required under this section to take any step, the duty must, subject to such exceptions as may be prescribed, be performed within the prescribed period; but such a provision shall not relieve the governing body of the duty to take any step which has not been taken within that period.

#### **67 Appeals against exclusion of pupils**

- (1) A local education authority shall make arrangements for enabling the relevant person to appeal against any decision of the governing body under section 66 not to reinstate a pupil who has been permanently excluded from a school maintained by the authority.
- (2) Schedule 18 has effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (1); and in subsections (3) and (4) “appeal panel” means an appeal panel constituted in accordance with paragraph 2 of that Schedule.
- (3) The decision of an appeal panel on an appeal pursuant to arrangements made under subsection (1) shall be binding on the relevant person, the governing body, the head teacher and the local education authority.
- (4) Where on such an appeal the appeal panel determines that the pupil in question should be reinstated, the panel shall either—
- (a) direct that he is to be reinstated immediately, or
  - (b) direct that he is to be reinstated by a date specified in the direction.

#### **68 Exclusion of pupils: guidance**

- (1) This section applies to any functions of—
- (a) the head teacher or the governing body of a maintained school,
  - (b) a local education authority, or
  - (c) an appeal panel constituted in accordance with paragraph 2 of Schedule 18, conferred by or under any of sections 64 to 67 and Schedule 18.
- (2) In discharging any such function, such a person or body shall have regard to any guidance given from time to time by the Secretary of State.

### **CHAPTER VI**

#### **RELIGIOUS EDUCATION AND WORSHIP**

##### *Religious education*

#### **69 Duty to secure due provision of religious education**

- (1) Subject to section 71, in relation to any community, foundation or voluntary school—
- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
  - (b) the head teacher shall secure,

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that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 352(1)(a) of the Education Act 1996.

- (2) Schedule 19 has effect for determining the provision for religious education which is required by section 352(1)(a) of that Act to be included in the basic curriculum of schools within each of the following categories, namely—
  - (a) community schools and foundation and voluntary schools which do not have a religious character,
  - (b) foundation and voluntary controlled schools which have a religious character, and
  - (c) voluntary aided schools which have a religious character.
- (3) For the purposes of this Part a foundation or voluntary school has a religious character if it is designated as a school having such a character by an order made by the Secretary of State.
- (4) An order under subsection (3) shall state, in relation to each school designated by the order, the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 (or, as the case may be, each such religion or religious denomination).
- (5) The procedure to be followed in connection with—
  - (a) the designation of a school in an order under subsection (3), and
  - (b) the inclusion in such an order, in relation to a school, of the statement required by subsection (4),
 shall be specified in regulations.

### *Religious worship*

## **70 Requirements relating to collective worship**

- (1) Subject to section 71, each pupil in attendance at a community, foundation or voluntary school shall on each school day take part in an act of collective worship.
- (2) Subject to section 71, in relation to any community, foundation or voluntary school—
  - (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
  - (b) the head teacher shall secure,
 that subsection (1) is complied with.
- (3) Schedule 20 makes further provision with respect to the collective worship required by this section, including provision relating to—
  - (a) the arrangements which are to be made in connection with such worship, and
  - (b) the nature of such worship.

*Exceptions and special arrangements etc.*

**71 Exceptions and special arrangements; provision for special schools**

- (1) If the parent of a pupil at a community, foundation or voluntary school requests that he may be wholly or partly excused—
  - (a) from receiving religious education given in the school in accordance with the school's basic curriculum,
  - (b) from attendance at religious worship in the school, or
  - (c) both from receiving such education and from such attendance,the pupil shall be so excused until the request is withdrawn.
- (2) In subsection (1)—
  - (a) the reference to religious education given in accordance with the school's basic curriculum is to such education given in accordance with the provision included in the school's basic curriculum by virtue of section 352(1)(a) of the Education Act 1996, and
  - (b) the reference to religious worship in the school includes religious worship which by virtue of paragraph 2(6) of Schedule 20 takes place otherwise than on the school premises.
- (3) Where in accordance with subsection (1) a pupil has been wholly or partly excused from receiving religious education or from attendance at religious worship and the local education authority are satisfied—
  - (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused,
  - (b) that the pupil cannot with reasonable convenience be sent to another community, foundation or voluntary school where religious education of the kind desired by the parent is provided, and
  - (c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere,the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.
- (4) A pupil may not be withdrawn from school under subsection (3) unless the local education authority are satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of a school session (or, if there is only one, the school session) on that day.
- (5) Where the parent of a pupil who is a boarder at a community, foundation or voluntary school requests that the pupil be permitted—
  - (a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or
  - (b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs,the governing body shall make arrangements for giving the pupil reasonable opportunities for doing so.

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- (6) Arrangements under subsection (5) may provide for making facilities for such education or worship available on the school premises, but any expenditure entailed by the arrangements shall not be met from the school's budget share or otherwise by the local education authority.
- (7) Regulations shall make provision for securing that, so far as practicable, every pupil attending a community or foundation special school—
- (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.

## CHAPTER VII

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Further provisions relating to new schools*

#### **72 Further provisions relating to new schools**

- (1) Regulations may make provision for—
- (a) the staffing and conduct of a new school in advance of the school opening date;
  - (b) the determination of matters in connection with a new school in advance of that date;
  - (c) the taking of decisions by a temporary governing body, or (where power to do so is delegated to him) by the head teacher, as to expenditure in connection with a new school at a time when it does not have a delegated budget;
  - (d) such other matters relating to new schools as the Secretary of State considers appropriate.
- (2) Regulations under subsection (1) may, in connection with any matters falling within that subsection, apply any provision of the Education Acts with or without modification.
- (3) In this section “new school” means a school or proposed school—
- (a) for which there is a temporary governing body constituted under section 44, or
  - (b) for which there is no such body but for which such a body—
    - (i) are required to be so constituted by virtue of subsection (1) of that section, or
    - (ii) may be so constituted in accordance with such anticipatory arrangements as are mentioned in subsection (5)(a) of that section.

#### *Transfers of staff and land*

#### **73 Transfer of staff on appointed day**

- (1) Subsections (5) to (7) below (“the staff transfer provisions”) apply where on the appointed day—
- (a) a special agreement school becomes a voluntary aided school, or



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- (b) a grant-maintained school becomes a community or voluntary controlled school, or
  - (c) a grant-maintained special school becomes a community special school,in accordance with Schedule 2.
- (2) Subject to subsection (3), the staff transfer provisions apply in the circumstances mentioned in subsection (1) to any person who immediately before the appointed day—
  - (a) is employed by the local education authority to work solely at an existing school within subsection (1)(a), or
  - (b) is employed by the local education authority to work at such an existing school and is designated for the purposes of this subsection by an order made by the Secretary of State, or
  - (c) is employed by the governing body of an existing school within subsection (1)(b) or (c).
- (3) The staff transfer provisions do not apply—
  - (a) to any person employed as mentioned in subsection (2) whose contract of employment terminates on the day immediately preceding the appointed day; or
  - (b) to any person employed as mentioned in subsection (2)(a) or (b) who before that day—
    - (i) has been appointed or assigned by the local education authority to work solely at another school as from that day, or
    - (ii) has been withdrawn from work at the school with effect from that day.
- (4) A person who before the appointed day has been appointed or assigned by—
  - (a) the local education authority, or
  - (b) the governing body of an existing school within subsection (1)(b) or (c),to work at a school, or (as the case may be) at the existing school, as from that day shall be treated for the purposes of this section as if he had been employed by the authority or governing body immediately before that day to do such work at the school as he would have been required to do on or after that day under his contract of employment with the authority or that body.
- (5) The contract of employment between a person to whom the staff transfer provisions apply and his former employer shall have effect from the appointed day as if originally made between him and his new employer.
- (6) Without prejudice to subsection (5)—
  - (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 new employer on the appointed day, 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 day to have been done by or in relation to the new employer.
- (7) Subsections (5) and (6) 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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(8) In this section—

“existing school” means a school which becomes a school of a different category on the appointed day as mentioned in subsection (1), and “new school” means the school of a different category which an existing school then becomes;

“the former employer” and “the new employer”—

- (a) where the staff transfer provisions apply by virtue of subsection (2)(a) or (b), means the local education authority and the governing body of the new school respectively, and
- (b) where the staff transfer provisions apply by virtue of subsection (2)(c), means the governing body of the existing school and the local education authority respectively;

and references to a special agreement, grant-maintained or grant-maintained special school are references to such a school within the meaning of the Education Act 1996.

- (9) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (2)(a) as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.
- (10) An order under this section may designate a person either individually or as a member of a class or description of employees.

#### **74 Transfer of land on appointed day**

Schedule 21 (which makes provision for transfers of land and certain rights and liabilities on the appointed day in respect of schools which become community, foundation, voluntary or community special schools on that day) shall have effect.

#### **75 Transfer of land by governing body to trustees**

- (1) Where a building is to be provided for a foundation or voluntary school and the building—
  - (a) is to form part of the school premises, and
  - (b) is 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 building is to be constructed.
- (2) Paragraph 1 of Schedule 22 does not apply to any transfer required by subsection (1).

#### *Disposals of land and on discontinuance*

#### **76 Disposals of land in case of certain schools and disposals on discontinuance**

Schedule 22 (which makes provision as to the disposal of land held for the purposes of foundation, voluntary or foundation special schools and as to the property of maintained schools on their discontinuance) shall have effect.

## **77 Control of disposals or changes in use of school playing fields**

- (1) Except with the consent of the Secretary of State, a body to whom this subsection applies shall not dispose of any playing fields—
  - (a) which are, immediately before the date of the disposal, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date.
- (2) Subsection (1) applies—
  - (a) to a local authority; and
  - (b) in any case where the consent of the Secretary of State is not required to any such disposal by virtue of either of paragraphs 1 and 2 of Schedule 22—
    - (i) to the governing body of a maintained school, and
    - (ii) to a foundation body.
- (3) Except with the consent of the Secretary of State, a local authority shall not take any action (other than the making of a disposal falling within subsection (1)) which is intended or likely to result in a change of use of any playing fields—
  - (a) which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date,whereby the playing fields will be used for purposes which do not consist of or include their use as playing fields by such a school for the purposes of the school.
- (4) Subsection (3) does not, however, apply where the land in question will, on a change of use falling within that subsection, become used in connection with the provision by a local authority of educational facilities for a maintained school or any recreational facilities.
- (5) For the purposes of this section the Secretary of State’s consent may be given in relation to a particular disposal or change of use or generally in relation to disposals or changes of use of a particular description, and in either case may be given subject to conditions.
- (6) This section has effect despite anything in section 123 or 127 of the Local Government Act 1972 (general power to dispose of land) or in any other enactment; and any consent which a local authority are required to obtain by virtue of this section shall be in addition to any consent required by virtue of either of those sections.
- (7) In this section—

“local authority” includes a parish council;

“playing fields” means land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land.
- (8) For the purposes of this section any reference to a maintained school includes, in relation to any time falling before the appointed day, a reference to the school as—
  - (a) a county, voluntary or maintained special school, or
  - (b) a grant-maintained or grant-maintained special school,within the meaning of the Education Act 1996.

(9) Nothing in this section applies in relation to Wales.

### *Rating*

#### **78 Rating of maintained schools**

For the purposes of Part III of the Local Government Finance Act 1988 (non-domestic rating) the occupier of any hereditament so far as consisting of the premises of a maintained school shall be taken to be—

- (a) the local education authority, where it is a community, voluntary controlled or community special school; or
- (b) the governing body, where it is a foundation, voluntary aided or foundation special school.

### *Stamp duty*

#### **79 Stamp duty**

- (1) Subject to subsection (2), stamp duty shall not be chargeable in respect of any transfer to a local authority under any of the following provisions, namely—
  - (a) paragraph 4 or 7 of Schedule 21 or any corresponding provision of regulations under paragraph 10 of Schedule 2,
  - (b) paragraph 4(2), 5(4), 6(2)(b), 7(2) or 8(2)(b) of Schedule 22, or
  - (c) any regulations under paragraph 5 of Schedule 8.
- (2) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsection (1) shall be treated as duly stamped unless—
  - (a) it is stamped with the duty to which it would be liable but for that subsection, or
  - (b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.
- (3) In subsection (1) any reference to a transfer under any provision or regulations mentioned in that subsection shall be read as a reference to a transfer under that provision or those regulations taken with section 198 of, and Schedule 10 to, the Education Reform Act 1988 if those provisions of that Act apply to the transfer by virtue of any provision of this Act or that Act.

### *Further education*

#### **80 Provision of further education**

- (1) The governing body of any maintained school shall be responsible for determining whether or not to provide—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or

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- (b) full-time education suitable to the requirements of persons who have attained the age of 19;  
but the governing body of a community or foundation special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.
- (2) It shall be the duty of the governing body of any such school which provides such education to secure that, except in such circumstances as may be prescribed, such education is not provided at any time in a room where pupils are at that time being taught.
- (3) This section shall not apply to part-time education provided under a partnership arrangement to which section 60A of the Further and Higher Education Act 1992 (as inserted by section 125(4) of this Act) applies.

#### *Modification of employment law*

### **81 Application of employment law during financial delegation**

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment, and in particular in any enactment—
  - (a) conferring powers or imposing duties on employers,
  - (b) conferring rights on employees, or
  - (c) otherwise regulating the relations between employers and employees,as he considers necessary or expedient in consequence of the operation of sections 54 and 57(1) to (3), Schedule 16 and paragraph 27 of Schedule 17.
- (2) Before making any order under this section the Secretary of State shall consult—
  - (a) such associations of local authorities,
  - (b) such bodies representing the interests of governors of foundation or voluntary schools, and
  - (c) such organisations representing staff in maintained schools,as appear to him to be concerned.

#### *Supplementary provisions*

### **82 Modification of trust deeds**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to—
  - (a) a school which is or is to become a foundation, voluntary or foundation special school, or
  - (b) property held on trust for the purposes of such a school,as appear to him to be necessary or expedient in connection with the operation of any provision of this Act or anything done under or for the purposes of any such provision.
- (2) Before making an order under this section the Secretary of State shall consult—
  - (a) the governing body of the school in question;
  - (b) any trustees holding property on trust for the purposes of the school;

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- (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
  - (d) such other persons as he considers appropriate.
- (3) Any modification made by an order under this section may be made so as to have permanent effect or to have effect for such period as is specified in the order.

**83 Modification of provisions making governors of foundation or voluntary school ex officio trustees**

- (1) Where any provision of a trust deed or other instrument made before 1st July 1981 would, apart from this subsection, have the effect that the persons who are for the time being governors of a foundation or voluntary school were by virtue of their office trustees of any property held for the purposes of, or in connection with, the school, that provision shall instead have effect as if the only governors of the school were—
- (a) the foundation governors,
  - (b) those appointed by the local education authority, and
  - (c) any co-opted governor nominated by a minor authority.
- (2) Subsection (1) is without prejudice to any power to amend any such provision as is mentioned in that subsection.

**PART III**

SCHOOL ADMISSIONS

**CHAPTER I**

ADMISSION ARRANGEMENTS

*Code of practice*

**84 Code of practice**

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate in respect of the discharge by—
- (a) local education authorities,
  - (b) the governing bodies of maintained schools,
  - (c) appeal panels, and
  - (d) adjudicators,
- of their respective functions under this Chapter.
- (2) The code may include guidelines setting out aims, objectives and other matters in relation to the discharge of their functions under this Chapter by local education authorities and such governing bodies.
- (3) It shall be the duty of—

- (a) each of the bodies and persons mentioned in subsection (1) when exercising functions under this Chapter, and
  - (b) any other person when exercising any function for the purposes of the discharge by a local education authority, or the governing body of a maintained school, of functions under this Chapter,
- to have regard to any relevant provisions of the code.
- (4) The Secretary of State shall publish the code as for the time being in force.
- (5) The Secretary of State may under subsection (1)—
- (a) make separate provision (by means of separate codes of practice) in relation to different functions under this Chapter of the bodies and persons mentioned in that subsection;
  - (b) make different provision for England and for Wales (whether or not by means of separate codes of practice);
- and references in this section to “the code” or to functions under this Chapter shall have effect, in relation to any such separate code of practice, as references to that code or to functions under this Chapter to which it relates (as the case may be).
- (6) In this Chapter—
- “admission arrangements” and “the admission authority” have the meaning given by section 88;
  - “appeal panel” means a panel constituted under Schedule 24 or 25 for the purpose of hearing an appeal under this Chapter;
  - “child” (except in sections 96 and 97) includes a person who has not attained the age of 19;
  - “maintained school” means a community, foundation or voluntary school;
  - “the relevant standard number”, in relation to a maintained school, a relevant age group and a school year, means the standard number applying under Schedule 23 to the school in relation to that age group and year.

## **85 Making and approval of code of practice**

- (1) Where the Secretary of State proposes to issue or revise a code of practice under section 84, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament.
- (4) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the 40-day period, the Secretary of State shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Secretary of State may by order appoint.
- (6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.
- (7) In this section “40-day period”, in relation to the draft of a proposed code, means—

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- (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
- (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- (8) In this section references to a proposed code include a proposed revised code.

### *Parental preferences*

## **86 Parental preferences**

- (1) A local education authority shall make arrangements for enabling the parent of a child in the area of the authority—
- (a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and
  - (b) to give reasons for his preference.
- (2) Subject to subsections (3) and (6) and section 87 (children excluded from two or more schools), a local education authority and the governing body of a maintained school shall comply with any preference expressed in accordance with arrangements made under subsection (1).
- (3) The duty imposed by subsection (2) does not apply—
- (a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;
  - (b) if the preferred school is a foundation or voluntary aided school and compliance with the preference would be incompatible with any special arrangements under section 91 (admission arrangements to preserve the religious character of a foundation or voluntary aided school); or
  - (c) if the arrangements for admission to the preferred school—
    - (i) are wholly based on selection by reference to ability or aptitude, and
    - (ii) are so based with a view to admitting only pupils with high ability or with aptitude,
 and compliance with the preference would be incompatible with selection under those arrangements.
- (4) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of measures required to be taken in order to ensure compliance with the duty imposed by section 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes).
- (5) No prejudice shall, however, be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed—
- (a) the relevant standard number, or
  - (b) the admission number fixed in accordance with section 93,
- whichever is the greater.
- (6) Where—



- (a) the admission arrangements for two or more maintained schools provide for co-ordinated admissions on the part of those schools, and
  - (b) they are approved by the Secretary of State for the purposes of this subsection, they shall have effect in relation to each of those schools despite anything in subsection (2).
- (7) Where the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application shall be regarded for the purposes of this section as having expressed a preference for that school in accordance with arrangements made under subsection (1).
- (8) The duty imposed by subsection (2) in relation to a preference expressed in accordance with arrangements made under subsection (1) shall apply also in relation to—
- (a) any application for the admission to a maintained school of a child who is not in the area of the authority maintaining the school, and
  - (b) any application made by a parent as mentioned in section 438(4) or 440(2) of the Education Act 1996 (application for a particular school to be named in a school attendance order);
- and references in subsection (3) to a preference and a preferred school shall be construed accordingly.
- (9) Where admission arrangements for a school provide for all pupils admitted to the school to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of this section to be wholly based on selection by reference to ability or aptitude, whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.

## **87 No requirement to admit children permanently excluded from two or more schools**

- (1) The duty imposed by section 86(2) does not apply in the case of a child to whom subsection (2) below applies.
- (2) Where a child has been permanently excluded from two or more schools, this subsection applies to him during the period of two years beginning with the date on which the latest of those exclusions took effect.
- (3) Subsection (2) applies to a child whatever the length of the period or periods elapsing between those exclusions and regardless of whether it has applied to him on a previous occasion.
- (4) However, a child shall not be regarded as permanently excluded from a school for the purposes of this section if—
- (a) although so excluded he was reinstated as a pupil at the school following the giving of a direction to that effect to the head teacher of the school; or
  - (b) he was so excluded at a time when he had not attained compulsory school age.
- (5) In this section “school” means—
- (a) in relation to any time before or after the appointed day, a school maintained by a local education authority; or

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- (b) in relation to any time before the appointed day, a grant-maintained or grant-maintained special school within the meaning of the Education Act 1996.
- (6) For the purposes of this section the permanent exclusion of a child from a school shall be regarded as having taken effect on the school day as from which the head teacher decided that he should be permanently excluded.
- (7) Nothing in this section applies to a child unless at least one of the two or more exclusions mentioned in subsection (2) took effect on or after 1st September 1997.

### *Admission arrangements*

## **88 Admission authorities and admission arrangements**

- (1) In this Chapter “the admission authority”—
  - (a) in relation to a community or voluntary controlled school, means—
    - (i) the local education authority, or
    - (ii) where with the governing body’s agreement the authority have delegated to them responsibility for determining the admission arrangements for the school, the governing body; and
  - (b) in relation to a foundation or voluntary aided school, means the governing body.
- (2) In this Chapter “admission arrangements”, in relation to a maintained school, means the arrangements for the admission of pupils to the school, including the school’s admission policy.

## **89 Procedure for determining admission arrangements**

- (1) The admission authority for a maintained school shall, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.
- (2) Before determining the admission arrangements which are to apply for a particular school year, the admission authority shall consult the following about the proposed arrangements, namely—
  - (a) the local education authority (where the governing body are the admission authority),
  - (b) the admission authorities for all other maintained schools in the relevant area or for such class of such schools as may be prescribed, and
  - (c) the admission authorities for maintained schools of any prescribed description.
- (3) In subsection (2) “the relevant area” means—
  - (a) the area of the local education authority; or
  - (b) if regulations so provide, such other area (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.
- (4) Once the admission authority have carried out any such consultation, the authority shall—

- (a) determine that their proposed arrangements (either in their original form or with such modifications as the authority think fit) shall be the admission arrangements for the school year in question; and
  - (b) (except in such cases as may be prescribed) notify the bodies whom they consulted under subsection (2) of those admission arrangements.
- (5) Where an admission authority—
  - (a) have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined,

the authority shall (except in a case where their proposed variations fall within any description of variations prescribed for the purposes of this subsection) refer the proposed variations to the adjudicator, and shall (in every case) notify the bodies whom they consulted under subsection (2) of the proposed variations.
- (6) The adjudicator shall consider whether the arrangements should have effect with those variations until the end of that year; and if he determines that the arrangements should so have effect or that they should so have effect subject to such modification of those variations as he may determine—
  - (a) the arrangements shall have effect accordingly as from the date of his determination; and
  - (b) the admission authority shall (except in such cases as may be prescribed) notify the bodies whom they consulted under subsection (2) of the variations subject to which the arrangements are to have effect.
- (7) In relation to a maintained school in Wales any reference to the adjudicator in subsection (5) or (6) shall be read as a reference to the Secretary of State.
- (8) Regulations may make provision—
  - (a) specifying matters to which any consultation required by subsection (2) is, or is not, to relate;
  - (b) as to the manner in which, and the time by which, any such consultation is to be carried out;
  - (c) as to the manner in which, and the time by which, any notification required by this section is to be given;
  - (d) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (5)(b);
  - (e) authorising an admission authority, where they have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;
  - (f) for the application of any of the requirements of subsections (5) and (6) to variations proposed to be made by virtue of paragraph (e), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (5);
  - (g) as to such other matters connected with the procedure for determining or varying admission arrangements under this section as the Secretary of State considers appropriate.

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- (9) Where the local education authority are the admission authority for a community or voluntary controlled school, they shall—
- (a) when preparing for consultation under subsection (2) their proposed arrangements for any school year, consult the governing body about the admission arrangements which the authority may propose for the school; and
  - (b) in addition consult the governing body before making any reference under subsection (5).

## **90 Reference of objections to adjudicator or Secretary of State**

- (1) Where—
- (a) admission arrangements have been determined by an admission authority under section 89(4), but
  - (b) a body consulted by the admission authority under section 89(2) wish to make an objection about those arrangements, and
  - (c) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,
- that body may refer the objection to the adjudicator.
- (2) Where—
- (a) admission arrangements have been determined by an admission authority under section 89(4), but
  - (b) any parent of a prescribed description wishes to make an objection about those arrangements, and
  - (c) the objection falls within any description of objections prescribed for the purposes of this paragraph,
- that person may refer the objection to the adjudicator.
- (3) On a reference under subsection (1) or (2) the adjudicator shall either—
- (a) decide whether, and (if so) to what extent, the objection should be upheld, or
  - (b) in such cases as may be prescribed, refer the objection to the Secretary of State for that question to be decided by him.
- (4) Where the objection is referred to the Secretary of State under subsection (3)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.
- (5) In relation to a maintained school in Wales—
- (a) the reference to the adjudicator in subsection (1) or (2) shall be read as a reference to the Secretary of State;
  - (b) subsections (3) and (4) shall not apply; and
  - (c) where any objection is referred to the Secretary of State by virtue of paragraph (a) above, he shall decide whether, and (if so) to what extent, the objection should be upheld.
- (6) Where the adjudicator or the Secretary of State decides that an objection referred to him under this section should be upheld to any extent, his decision on the objection may specify the modifications that are to be made to the admission arrangements in question.

- (7) In the case of any objection referred to him under this section, the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the objection and the reasons for it.
- (8) The decision of the adjudicator or the Secretary of State on the objection shall, in relation to the admission arrangements in question, be binding on the admission authority and on all persons by whom an objection about those arrangements may be made under subsection (1) or (2); and if that decision is to uphold the objection to any extent, those arrangements shall forthwith be revised by the admission authority in such a way as to give effect to the decision.
- (9) Regulations may make provision—
- (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator or the Secretary of State under subsection (1) or (2), or
    - (ii) the adjudicator or the Secretary of State is required to determine an objection referred to him under subsection (2);
  - (b) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator or the Secretary of State under subsection (1) or (2) but has not yet been determined;
  - (c) as to the manner in which any matters required to be published under subsection (7) are to be published;
  - (d) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
  - (e) prohibiting or restricting the reference under subsection (1) or (2), within such period following a decision by the adjudicator or the Secretary of State under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question;
  - (f) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator or the Secretary of State relating to the admission arrangements for another school, and the procedure to be followed in such a case.
- (10) Regulations shall make provision for the cases to be referred to the Secretary of State under subsection (3)(b) to include cases where the objection is concerned with admissions criteria relating to a person's religion or religious denomination.

## **91 Special arrangements to preserve religious character of foundation or voluntary aided school**

- (1) This section makes provision for the inclusion in the admission arrangements for a foundation or voluntary aided school which has a religious character of arrangements in respect of the admission of pupils to the school for preserving the religious character of the school (“special arrangements”).
- (2) Where any special arrangements desired by the governing body of such a school are agreed to by the local education authority—
- (a) the governing body may incorporate them in the proposed admission arrangements for a school year which are subject to consultation under section 89(2); and

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- (b) if the governing body do so, subsection (1) of section 90 shall apply to any objection about the special arrangements which—
  - (i) is made by any of the admission authorities consulted under section 89(2)(b) or (c), and
  - (ii) falls within that subsection,
 as it applies to any other objection falling within that subsection.
- (3) Where any special arrangements desired by the governing body of such a school are not agreed to by the local education authority—
  - (a) the governing body may incorporate a draft of any such arrangements in the proposed admission arrangements for a school year which are subject to consultation under section 89(2); but
  - (b) if the governing body do so—
    - (i) they shall refer the draft arrangements to the adjudicator, and
    - (ii) they shall not determine to adopt those arrangements for inclusion in the admission arrangements for the school unless (and to the extent that) the adjudicator or the Secretary of State decide under this section that they may do so, and
    - (iii) any of the bodies consulted under section 89(2) may make an objection in the prescribed manner to the adjudicator about the draft arrangements.
- (4) On such a reference the adjudicator shall either—
  - (a) decide whether (having regard to any objections received by him under subsection (3)) the draft arrangements may be adopted by the governing body, whether with or without modification, or
  - (b) in such cases as may be prescribed, refer the draft arrangements (and any objections so received) to the Secretary of State for that question to be decided by him.
- (5) Where the draft arrangements are referred to the Secretary of State under subsection (4)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.
- (6) In relation to a maintained school in Wales—
  - (a) any reference to the adjudicator in subsection (3)(b)(i) or (iii) shall be read as a reference to the Secretary of State;
  - (b) subsections (4) and (5) shall not apply; and
  - (c) where any draft arrangements are referred to the Secretary of State by virtue of paragraph (a) above, he shall decide whether (having regard to any objections received by him by virtue of that paragraph) the draft arrangements may be adopted by the governing body, whether with or without modification.
- (7) In the case of any draft arrangements referred to him under this section, the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the reference and the reasons for it.
- (8) The decision of the adjudicator or the Secretary of State on any such reference shall, in relation to the draft arrangements in question, be binding on the governing body and on all the bodies whom they consulted under section 89(2).
- (9) Regulations under section 90(3)(b) or (9) shall apply in relation to references and objections made under this section with such modifications as may be prescribed.

- (10) Where a governing body have, in accordance with the preceding provisions of this section (and, so far as applicable, sections 89 and 90), determined that the admission arrangements for their school should include any special arrangements, those provisions shall apply, with any necessary modifications, on any subsequent occasion—
- (a) when the governing body desire to modify those special arrangements; or
  - (b) where the local education authority agreed to any such arrangements, when the authority withdraw their agreement to those arrangements or any part of them, whether with a view to seeking any modification of them or otherwise.

## **92 Publication of information about admissions**

- (1) A local education authority shall, for each school year, publish the prescribed information about—
- (a) the admission arrangements for each of the following, namely—
    - (i) the maintained schools in their area, and
    - (ii) if regulations so provide, such maintained schools outside their area as may be determined by or in accordance with the regulations;
  - (b) the authority's arrangements for the provision of education at schools maintained by another local education authority or not maintained by a local education authority;
  - (c) the arrangements made by the authority under sections 86(1) (parental preferences) and 94(1) (admission appeals); and
  - (d) such other matters of interest to parents of pupils seeking admission to schools within paragraph (a) or (b) above as may be prescribed.
- (2) The governing body of a foundation or voluntary aided school shall, for each school year, publish the prescribed information about—
- (a) the admission arrangements for the school;
  - (b) the arrangements made by the governing body under section 94(2) (admission appeals); and
  - (c) such other matters of interest to parents of pupils seeking admission to the school as may be prescribed.
- (3) The governing body of a school maintained by a local education authority—
- (a) shall publish such information as respects that school as may be required by regulations; and
  - (b) may publish such other information with respect to the school as they think fit.
- (4) For the purposes of subsection (3) information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (5) A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the information referred to in subsection (2) or (3).
- (6) Regulations may make provision as to—
- (a) the procedure to be followed by a local education authority before publishing information under subsection (1); and

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- (b) the time by which, and the manner in which, information required to be published under any provision of this section is to be published.

### *Admission numbers*

## **93 Fixing admission numbers**

- (1) The admission authority for a maintained school shall not fix as the admission number for any relevant age group and any school year a number which is less than the relevant standard number.
- (2) Subject to section 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes), the admission authority may fix as the admission number for any relevant age group and any school year a number which exceeds the relevant standard number.
- (3) Schedule 23 (determination, variation and review of standard numbers) shall have effect.
- (4) A proposal may be made to the admission authority in accordance with subsection (5) by whichever of the governing body and the local education authority are not the admission authority for fixing as the admission number for any relevant age group and any school year a number which exceeds both—
  - (a) the relevant standard number, and
  - (b) any admission number fixed, or proposed to be fixed, for that age group and year by the admission authority.
- (5) Any such proposal—
  - (a) shall be made in writing,
  - (b) may relate to one or more relevant age groups, and
  - (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (6) If the admission authority do not give the body making the proposal notice in writing rejecting the proposal within the period of two months beginning with the day after that on which the proposal was received by the admission authority, the admission authority shall give effect to the proposal.
- (7) Where the admission authority give such notice within that period, the body making the proposal may, within 28 days of receiving the notice, make an application under paragraph 4(3) or 8(3) (as the case may be) of Schedule 23 for a decision increasing the relevant standard number.
- (8) Regulations may provide for the operation of subsection (1) and section 86(5) to be suspended to such extent as the Secretary of State considers appropriate for the purpose of enabling—
  - (a) admission authorities to review under paragraph 11 of Schedule 23 any standard number applicable to admissions to an infant class at any maintained school, and
  - (b) any application to reduce any such number under paragraph 4(4) or 8(4) (as the case may be) of that Schedule to be decided in accordance with that Schedule, following the coming into force of regulations under section 1 by virtue of which any limit on class sizes is to apply, or be varied, in relation to any such class.



- (9) Regulations under subsection (8) may provide for any suspension to apply—
- (a) in relation to such age groups,
  - (b) for such period, and
  - (c) subject to such conditions,
- as may be specified in the regulations; and in that subsection “infant class” has the meaning given by section 4.
- (10) In this section references, in relation to a school, to the “admission number” for any relevant age group and any school year are references to the number of pupils in that age group it is intended to admit to the school in that school year.

### *Admission appeals*

## **94 Appeal arrangements: general**

- (1) A local education authority shall make arrangements for enabling the parent of a child to appeal against—
- (a) any decision made by or on behalf of the authority as to the school at which education is to be provided for the child in the exercise of the authority’s functions, other than a decision leading to or embodied in a direction under section 96 (directions for admission), and
  - (b) in the case of a community or voluntary controlled school maintained by the authority, any decision made by or on behalf of the governing body refusing the child admission to the school.
- (2) The governing body of a foundation or voluntary aided school shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school.
- (3) Joint arrangements may be made under subsection (2) by the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority.
- (4) A local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority may make joint arrangements consisting of—
- (a) such of the arrangements made by the authority in pursuance of subsection (1) as the authority may determine; and
  - (b) arrangements made by the governing body or bodies in pursuance of subsection (2).
- (5) Schedule 24 has effect in relation to the making and hearing of appeals pursuant to arrangements made under this section.
- (6) The decision of an appeal panel on an appeal under Schedule 24 shall be binding on—
- (a) the local education authority or the governing body by whom or on whose behalf the decision under appeal was made, and
  - (b) in the case of a decision made by or on behalf of a local education authority, the governing body of a community or voluntary controlled school at which the appeal panel determines that a place should be offered to the child in question.

**95 Appeals relating to children to whom section 87 applies**

- (1) Nothing in section 94(1) or (2) requires any arrangements to be made for enabling the parent of a child to appeal against a decision—
  - (a) made by or on behalf of the admission authority for a maintained school, and
  - (b) refusing the child admission to the school,
 in a case where, at the time when the decision is made, section 87(2) applies to the child.
- (2) Where a local education authority are the admission authority for a community or voluntary controlled school, the authority shall make arrangements for enabling the governing body of the school to appeal against any decision made by or on behalf of the authority to admit to the school a child to whom, at the time when the decision is made, section 87(2) applies.
- (3) Schedule 25 has effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (2).
- (4) The decision of an appeal panel on an appeal made pursuant to arrangements under subsection (2) shall be binding on the local education authority and the governing body.

*Power to direct admission of child to school***96 Direction to admit child to specified school**

- (1) The local education authority may give a direction under this section if, in the case of any child in their area, either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—
  - (a) he has been refused admission to the school, or
  - (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
  - (a) which is a reasonable distance from the child's home, and
  - (b) from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of the Secretary of State under section 97(4), specify a school in the area referred to in subsection (1).
- (4) A direction under this section to admit a child shall not specify a school if his admission would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- (5) Where a school is specified in a direction under this section, the governing body shall admit the child to the school.
- (6) Subsection (5) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

- (8) In this section and section 97 “school” means a maintained school.

**97 Procedure for giving direction under section 96**

- (1) Before deciding to give a direction under section 96, the local education authority shall consult—
- (a) the parent of the child, and
  - (b) the governing body of the school they propose to specify in the direction.
- (2) Where the local education authority decide to give such a direction specifying any school—
- (a) they shall, before doing so, serve a notice in writing of their decision on the governing body and head teacher of the school, and
  - (b) they shall not give the direction until the period for referring the matter to the Secretary of State under subsection (3) has expired and, if it is so referred, the Secretary of State has made his determination.
- (3) The governing body may, within the period of 15 days beginning with the day on which the notice was served, refer the matter to the Secretary of State and, if they do so, shall inform the local education authority.
- (4) On a reference under subsection (3) the Secretary of State may determine which school is to be required to admit the child and, if he does so, that school shall be specified in the direction.
- (5) The Secretary of State shall not make a determination under subsection (4) in relation to a school if the child’s admission to the school would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- (6) Where the local education authority give a direction specifying a school, they shall give notice in writing of that fact to the governing body and head teacher of the school.

*Nursery and special schools, etc: children with statements*

**98 Admission for nursery education or to nursery or special school: children with statements of special educational needs**

- (1) Children admitted to a school for nursery education and subsequently transferred to a reception class at the school shall be regarded for the purposes of this Chapter as admitted to the school (otherwise than for nursery education) on being so transferred.
- (2) The admission of children to a school for nursery education shall be disregarded for the purpose of—
- (a) applying in relation to a primary school any provision of section 93 or Schedule 23 which refers to the number of pupils admitted or intended to be admitted to a school in any school year, or
  - (b) determining for the purposes of any provision of section 93 or Schedule 23 what is a relevant age group in relation to a primary school.
- (3) Subject to subsection (4), nothing in this Chapter applies in relation to—
- (a) nursery schools, or

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- (b) children who will be under compulsory school age at the time of their proposed admission.
- (4) Where the arrangements for the admission of pupils to a maintained school provide for the admission to the school of children who will be under compulsory school age at the time of their proposed admission, this Chapter shall apply in relation to the admission of such pupils to the school otherwise than for nursery education.
- (5) Regulations may make provision in connection with the arrangements for the admission of pupils to community or foundation special schools, and for the allocation between the local education authority and the governing body of such a school of functions in connection with such arrangements.
- (6) Apart from section 92(3) to (6) and subsection (5) above, nothing in this Chapter applies in relation to special schools.
- (7) Subject to subsections (8) and (9), nothing in this Chapter applies in relation to children for whom statements of special educational needs are maintained under section 324 of the Education Act 1996.
- (8) Any provision made by, or (as the case may be) by virtue of, section 84 or 92(3) to (6) or this section applies, or (as the case may be) may be made so as to apply, in relation to such children.
- (9) Such children shall, in addition, be taken into account for the purposes of—
  - (a) the reference in section 86(5) or (9) to a number of pupils, and
  - (b) the fixing of admission numbers under section 93 and the determination, variation and review of standard numbers under Schedule 23.
- (10) In subsection (8) the reference to any provision made by this section includes a reference to subsection (4) only so far as it has effect for the purposes mentioned in subsection (9).

## CHAPTER II

### SELECTION OF PUPILS

#### *Partial selection*

#### **99 General restriction on selection by ability or aptitude**

- (1) No admission arrangements for a maintained school may make provision for selection by ability unless—
  - (a) they make provision for a permitted form of such selection; or
  - (b) the school is a grammar school (as defined by section 104(7)).
- (2) The following are permitted forms of selection by ability—
  - (a) any selection by ability authorised by section 100 (pre-existing arrangements);
  - (b) any selection by ability authorised by section 101 (pupil banding); and
  - (c) any selection by ability conducted in connection with the admission of pupils to the school for secondary education suitable to the requirements of pupils who are over compulsory school age.

- (3) No admission arrangements for a maintained school may make provision for selection by aptitude unless they make provision for a permitted form of such selection.
- (4) The following are permitted forms of selection by aptitude—
  - (a) any selection by aptitude authorised by section 100 (pre-existing arrangements); and
  - (b) any selection by aptitude authorised by section 102 (aptitude for particular subjects).
- (5) For the purposes of this Chapter—
  - (a) a school's admission arrangements make provision for selection by ability or by aptitude if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group to be so admitted by reference to ability or to aptitude (as the case may be);
  - (b) "ability" means either general ability or ability in any particular subject or subjects;
  - (c) "admission arrangements" has the meaning given by section 88(2); and
  - (d) "maintained school" means a community, foundation or voluntary school.

#### **100 Permitted selection: pre-existing arrangements**

- (1) Where at the beginning of the 1997-98 school year the admission arrangements for a maintained school made provision for selection by ability or by aptitude (and they have at all times since that date continued to do so), the admission arrangements for the school may continue to make such provision so long as there is, as compared with the arrangements in force at the beginning of that year—
  - (a) no increase in the proportion of selective admissions in any relevant age group, and
  - (b) no significant change in the basis of selection.
- (2) In relation to any time before the appointed day, the reference in subsection (1) to a maintained school is a reference to the school as a county, voluntary or grant-maintained school within the meaning of the Education Act 1996.
- (3) In this section "the proportion of selective admissions", in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to ability or to aptitude (as the case may be).
- (4) Nothing in this section applies to a school with selective admission arrangements (as defined by section 104(2)).

#### **101 Permitted selection: pupil banding**

- (1) Subject to subsections (2) to (4), the admission arrangements for a maintained school may make provision for selection by ability to the extent that the arrangements are designed to secure—
  - (a) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among applicants for admission to the school in that age group, and
  - (b) that no level of ability is substantially over-represented or substantially under-represented.

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- (2) Subsection (1) does not apply if the arrangements have the effect that, where an applicant for admission has been allocated to a particular range of ability by means of some process of selection by reference to ability, some further such process is required or authorised to be carried out in relation to him for the purpose of determining whether or not he is to be admitted to the school.
- (3) The introduction for a maintained school of admission arrangements to which subsection (1) applies shall be one of the alterations to such a school which are prescribed for the purposes of section 28.
- (4) Such arrangements are not authorised for any school by this section unless proposals for the school to have such arrangements have been published under section 28 and have fallen to be implemented under Schedule 6.
- (5) Where the admission arrangements for a school make both such provision for selection by ability as is mentioned in subsection (1) above and such provision for selection by aptitude as is mentioned in section 102(1), nothing in this section shall be taken to prevent those arrangements—
  - (a) from authorising or requiring a process of selection to be carried out at any stage for the purpose of establishing that an applicant for admission has a relevant aptitude; or
  - (b) from having the effect of giving priority to such an applicant with a relevant aptitude irrespective of his level of ability.

## **102 Permitted selection: aptitude for particular subjects**

- (1) Subject to subsection (2), the admission arrangements for a maintained school may make provision for the selection of pupils for admission to the school by reference to their aptitude for one or more prescribed subjects where—
  - (a) the admission authority for the school are satisfied that the school has a specialism in the subject or subjects in question; and
  - (b) the proportion of selective admissions in any relevant age group does not exceed 10 per cent.
- (2) Subsection (1) does not apply if the admission arrangements make provision for any test to be carried out in relation to an applicant for admission which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question.
- (3) Where, however, the admission arrangements for a school make both such provision for selection by aptitude as is mentioned in subsection (1) and such provision for selection by ability as is mentioned in section 101(1), the reference in subsection (2) above to a test of ability does not include any such test for which provision may be made under that section.
- (4) In this section “the proportion of selective admissions”, in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to aptitude for the subject or subjects in question.
- (5) In this section “test” includes assessment and examination.

**103 Permitted selection: introduction, variation or abandonment of provision for such selection**

- (1) In connection with the determination of a maintained school's admission arrangements for a particular school year, sections 89 and 90 shall, except to the specified extent, apply in relation to the making or abandonment by those arrangements of provision for any permitted form of selection by ability or aptitude as they apply in relation to the making or abandonment by those arrangements of provision for other matters.
- (2) In subsection (1) "the specified extent" means the extent to which those admission arrangements would effect an alteration in the provision made by the school's admission arrangements as respects any such form of selection (whether by introducing, varying or abandoning any such form of selection) which constitutes a prescribed alteration for the purposes of section 28.
- (3) Any admission arrangements to which section 101(1) applies (whether authorised by section 100 or section 101) may be varied if (and only if) the arrangements as varied are designed to secure the objectives mentioned in section 101(1)(a) and (b).

*Grammar schools***104 Designation of grammar schools**

- (1) Where the Secretary of State is satisfied that a maintained school had selective admission arrangements at the beginning of the 1997-98 school year, he may by order designate the school as a grammar school for the purposes of this Chapter.
- (2) A school has selective admission arrangements for the purposes of this Chapter if its admission arrangements make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability.
- (3) For the purpose of deciding whether a school's admission arrangements fall within subsection (2), any such additional criteria as are mentioned in section 86(9) shall be disregarded.
- (4) Where a maintained school is a grammar school—
  - (a) sections 105 to 109 have effect for prescribing procedures for altering the school's admission arrangements so that it no longer has selective admission arrangements; and
  - (b) its admission arrangements shall not be so altered except in accordance with those sections.
- (5) Regulations may make provision—
  - (a) for enabling the Secretary of State to make an order designating as a grammar school for the purposes of this Chapter a maintained school established in substitution for one or more discontinued schools each of which either has been or could have been so designated under this section (whether by virtue of subsection (1) or by virtue of the regulations); and
  - (b) for any provisions of this Chapter, or any regulations made under it, to have effect in relation to any such school with such modifications as may be prescribed.

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- (6) In this section “maintained school” includes, in relation to any time before the appointed day—
- (a) a county or voluntary school, or
  - (b) a grant-maintained school,
- within the meaning of the Education Act 1996; and in the application of subsection (1) to a maintained school on or after the appointed day the reference to the school shall be read, in connection with determining the nature of its admission arrangements at the beginning of the 1997-98 school year, as a reference to it as a school within paragraph (a) or (b) above.
- (7) In this Chapter “grammar school” means a school for the time being designated under this section.

### **105 Procedure for deciding whether grammar schools should retain selective admission arrangements**

- (1) The Secretary of State may by regulations make provision for ballots of parents to be held, at their request, for determining whether the grammar schools to which such ballots relate should retain selective admission arrangements.
- (2) Ballot regulations may provide for a ballot under this section to relate—
  - (a) to all grammar schools within the area of a prescribed local education authority or within such other area as may be prescribed,
  - (b) to a prescribed group of grammar schools, or
  - (c) to any grammar school not falling within paragraph (a) or (b).
- (3) Ballot regulations may make provision—
  - (a) requiring a request for a ballot under this section to be made by means of a petition signed by parents eligible to request the ballot;
  - (b) prescribing the form of any such petition and other requirements (whether as to the procedure to be followed or otherwise) which are to be complied with in relation to any such petition;
  - (c) prescribing the body (“the designated body”) to which any such petition is to be sent and which, under arrangements made by the Secretary of State, is to—
    - (i) make the arrangements for the holding of ballots under this section, and
    - (ii) discharge such other functions with respect to such petitions and the holding of such ballots as may be prescribed (which may include the determination of any question arising as to the validity of any request for a ballot or as to a person’s eligibility to request or vote in a ballot);
  - (d) requiring prescribed bodies or persons, or bodies or persons falling within any prescribed category—
    - (i) to provide the designated body or any other person with any prescribed information requested by that body or person, or
    - (ii) to publish prescribed information in such manner as may be prescribed;
  - (e) authorising any such bodies or persons to charge a fee (not exceeding the cost of supply) for documents supplied by them in pursuance of regulations made by virtue of paragraph (d)(i);



- (f) prescribing the terms of the question on which a ballot under this section is to be held and the manner in which such a ballot is to be conducted;
  - (g) enabling the Secretary of State, in any prescribed circumstances, to declare a previous ballot under this section void and require the holding of a fresh ballot;
  - (h) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations.
- (4) Ballot regulations may provide—
- (a) for parents of any prescribed description to register with the designated body, in such manner and at such time as may be prescribed, in order to be eligible to request or vote in a ballot;
  - (b) that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals.
- (5) Ballot regulations may provide for a request for a ballot under this section to be made, in any prescribed circumstances, by means of two or more petitions.
- (6) The information required to be provided in pursuance of subsection (3)(d) may include the names and addresses of parents of any prescribed description.
- (7) Ballot regulations may provide for sections 496 and 497 of the Education Act 1996 (default powers of Secretary of State) to apply to proprietors of independent schools in relation to a duty imposed by or under the regulations.
- (8) Where—
- (a) a ballot has been held under this section, and
  - (b) the result of the ballot was to the effect that the schools or school in question should retain selective admission arrangements,
- no further ballot relating to the schools or school shall be held under this section within such period as is specified in ballot regulations.
- (9) The Secretary of State may make (or arrange for the making of) payments in respect of any expenses incurred by—
- (a) the governing body of a school maintained by a local education authority,
  - (b) the proprietor of an independent school, or
  - (c) a local education authority,
- in complying with any obligations which may be imposed by regulations made under subsection (3)(d)(i) or (ii).
- Payments under this subsection may be made on such terms as the Secretary of State may determine.
- (10) For the purposes of this section and sections 106 and 107, in their application in relation to any time falling before the appointed day, a grant-maintained school or a grant-maintained special school within the meaning of the Education Act 1996 shall be taken—
- (a) to be a school maintained by a local education authority, and
  - (b) to be maintained by the authority in whose area it is situated.
- (11) In this section and section 106 “ballot regulations” means regulations made under this section.

**106 Ballot regulations: eligibility of parents to request or vote in ballot**

- (1) In relation to a ballot under section 105(2)(a), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are—
- (a) registered parents of registered pupils at the following schools, namely—
    - (i) where the ballot relates to all grammar schools within the area of a prescribed local education authority, all schools maintained by that authority; or
    - (ii) where the ballot relates to all grammar schools within a prescribed area, all schools maintained by a local education authority which are situated in such area as may be prescribed, together with (if the regulations so provide) all schools maintained by such local education authority as may be prescribed;
  - (b) registered parents of registered pupils at independent schools where—
    - (i) such parents are resident, and
    - (ii) the schools are situated,
 

within the area of the prescribed local education authority or (as the case may be) the prescribed area; and
  - (c) parents of children of a prescribed description where such parents—
    - (i) are resident within the area of the prescribed local education authority or (as the case may be) the prescribed area, and
    - (ii) have registered with the designated body in accordance with section 105(4)(a).
- (2) In relation to a ballot under section 105(2)(b) or (c), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are registered parents of registered pupils at any school from which a prescribed number of pupils have transferred to the grammar school or schools in question—
- (a) at such age or ages, and
  - (b) during such period,
- as may be determined in accordance with the regulations; and such regulations may provide that where, within that period, any such grammar school has been established in substitution for another school, the schools are to be treated as a single school for the purposes of determining eligibility.
- (3) Ballot regulations shall provide—
- (a) in relation to a ballot under section 105(2)(a), that a request for such a ballot must be made by a number of eligible parents equal to at least 20 per cent. of all parents falling within subsection (1)(a) or (b) above; and
  - (b) in relation to a ballot under section 105(2)(b) or (c), that a request for such a ballot must be made by at least 20 per cent. of all parents falling within subsection (2) above.
- (4) Ballot regulations may provide for a parent's eligibility for the purposes of—
- (a) making a request for a ballot,
  - (b) voting in a ballot, or
  - (c) determining the number of parents required to make a request by virtue of subsection (3),

to be determined by reference to such different times as may be determined in accordance with the regulations.

- (5) Ballot regulations may make provision for determining whether parents are resident in an area for the purposes of subsection (1)(b) or (c).

## **107 Restriction on publication of material etc. relating to ballots**

- (1) An authority or body to whom this section applies shall not incur any expenditure for the purpose of—
- (a) publishing any material which, in whole or in part, appears designed to influence—
    - (i) eligible parents in deciding whether or not to request a ballot under section 105, or
    - (ii) the outcome of such a ballot; or
  - (b) assisting any person to publish any such material; or
  - (c) influencing, or assisting any person to influence, by any other means—
    - (i) eligible parents in deciding whether or not to request such a ballot, or
    - (ii) the outcome of such a ballot.
- (2) This section applies to—
- (a) any local education authority, and
  - (b) the governing body of any school maintained by a local education authority.
- (3) Nothing in subsection (1) shall be taken to prevent an authority or body to whom this section applies from incurring expenditure on publishing or otherwise providing to any person (whether or not in pursuance of any duty to do so)—
- (a) any factual information so far as it is presented fairly; or
  - (b) a fair and reasonable assessment by the authority or body of the likely consequences of the result of a ballot under section 105 being in favour of the schools or school in question ceasing to have selective admission arrangements; or
  - (c) an accurate statement by the authority or body of their intentions or proposals in the event of such a result.
- (4) In determining for the purposes of subsection (3) whether—
- (a) any information is presented fairly, or
  - (b) an assessment is fair and reasonable,
- regard shall be had to any guidance given from time to time by the Secretary of State.
- (5) In this section any reference to expenditure—
- (a) in relation to the governing body of a school which has a delegated budget within the meaning of Part II of this Act (or, in relation to any time before the appointed day, Part II of the Education Act 1996), is a reference to expenditure out of the school's budget share; or
  - (b) in relation to the governing body of a grant-maintained or grant-maintained special school within the meaning of that Act (where this section applies to such a school by virtue of section 105(10)), is a reference to expenditure out of maintenance grants paid under Chapter VI of Part III of that Act.

**108 Implementation of decision that school should cease to have selective admission arrangements**

- (1) Subsection (2) applies where the result of a ballot held under section 105 shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of the grammar school or schools to which the ballot related ceasing to have selective admission arrangements.
- (2) The admission authority for a grammar school to which the ballot related shall secure that their admission arrangements are revised (in accordance with sections 89 and 90) so that, as from the beginning of such school year as may be prescribed, the school no longer has selective admission arrangements.
- (3) Where the Secretary of State is satisfied that, in pursuance of subsection (2), a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.

**109 Proposals by governing body of grammar school to end selective admission arrangements**

- (1) This section has effect for enabling the admission arrangements of a grammar school to be revised (otherwise than in circumstances where section 108(2) applies) so that the school no longer has selective admission arrangements and its admission arrangements instead either—
  - (a) make no provision for selection by ability, or
  - (b) make provision for one or more of the following, namely—
    - (i) any selection by ability authorised by section 101,
    - (ii) any selection by aptitude authorised by section 102, and
    - (iii) any selection by ability such as is mentioned in section 99(2)(c).
- (2) Any such revision of the admission arrangements of a grammar school shall be one of the alterations to a maintained school which are prescribed for the purposes of section 28; but any proposals for any such revision of the admission arrangements of a grammar school which is a community school shall be published under that section by the governing body and not by the local education authority.
- (3) Regulations may provide—
  - (a) that, in their application to any proposals for any such revision of the admission arrangements of a grammar school, any provision of section 28 or Schedule 6 shall have effect with such modifications as may be prescribed;
  - (b) that, in any prescribed circumstances following the making of a request for a ballot to be held under section 105, any such proposals under section 28 shall be of no effect.
- (4) Regulations made under section 105 may make provision, in relation to cases where any such proposals under section 28 have fallen to be implemented under paragraph 5 or 10 of Schedule 6, for requiring the school to which the proposals relate to be disregarded for the purposes of any regulations made under section 105(2).
- (5) Where the Secretary of State is satisfied that, by reason of the implementation of any such proposals, a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.

## PART IV

### OTHER PROVISIONS ABOUT SCHOOL EDUCATION

#### *Home-school agreements*

#### **110 Home-school agreements**

- (1) The governing body of a school which is—
  - (a) a maintained school, or
  - (b) a city technology college or a city college for the technology of the arts,shall adopt a home-school agreement for the school, together with a parental declaration to be used in connection with the agreement.
- (2) For the purposes of this section and section 111 a “home-school agreement” is a statement specifying—
  - (a) the school’s aims and values;
  - (b) the school’s responsibilities, namely the responsibilities which the school intends to discharge in connection with the education of pupils at the school who are of compulsory school age;
  - (c) the parental responsibilities, namely the responsibilities which the parents of such pupils are expected to discharge in connection with the education of their children while they are registered pupils at the school; and
  - (d) the school’s expectations of its pupils, namely the expectations of the school as regards the conduct of such pupils while they are registered pupils there;and “parental declaration” means a document to be used by qualifying parents for recording that they take note of the school’s aims and values and its responsibilities and that they acknowledge and accept the parental responsibilities and the school’s expectations of its pupils.
- (3) The governing body shall take reasonable steps to secure that the parental declaration is signed by every qualifying parent.
- (4) Subsection (3) does not, however, require the governing body to seek the signature of a qualifying parent if, having regard to any special circumstances relating to the parent or the pupil in question, they consider that it would be inappropriate to do so.
- (5) Where the governing body consider that a registered pupil at the school has a sufficient understanding of the home-school agreement as it relates to him, they may invite the pupil to sign the parental declaration as an indication that he acknowledges and accepts the school’s expectations of its pupils.
- (6) The governing body shall discharge their duty under subsection (3), and (where they decide to exercise it) shall exercise their power under subsection (5), as follows—
  - (a) in the case of a pupil attending the school on the relevant date, as soon after that date as is reasonably practicable; and
  - (b) in the case of a pupil admitted to the school after the relevant date, as soon after the date of his admission as is reasonably practicable.
- (7) The governing body shall from time to time review the home-school agreement.

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- (8) Where the home-school agreement is revised by the governing body following such a review, subsections (3) to (6) shall, in the case of pupils admitted to the school after the revision takes effect, accordingly apply in relation to the revised agreement.
- (9) Before adopting the home-school agreement or parental declaration, or revising that agreement, the governing body shall consult—
- (a) all qualifying parents, and
  - (b) such other persons as may be prescribed.
- (10) In this section—
- “qualifying parent” means a registered parent of a pupil at the school who is of compulsory school age;
- “the relevant date” means such date as the Secretary of State may by order appoint or such later date as he may determine in the case of the school in question.

## **111 Supplementary provisions about home-school agreements**

- (1) In discharging any function under section 110 the governing body of a school shall have regard to any guidance given from time to time by the Secretary of State.
- (2) If the Secretary of State by order so provides, the governing body of a school to which subsection (1) of that section applies shall ensure that any form of words—
- (a) specified in the order, or
  - (b) having such effect as is so specified,
- is not used in a home-school agreement or (as the case may be) in a parental declaration.
- (3) An order under subsection (2) may apply—
- (a) to any school specified in the order, or
  - (b) to any description of school so specified.
- (4) Neither the governing body of a school to which section 110(1) applies nor the local education authority where it is the admission authority for such a school shall—
- (a) invite any person to sign the parental declaration at a time when the child in question has not been admitted to the school;
  - (b) make it a condition of a child being admitted to the school that the parental declaration is signed in respect of the child; or
  - (c) make any decision as to whether or not to admit a child to the school by reference to whether any such declaration is or is not likely to be signed in respect of the child;
- and in this subsection “admission authority” has the meaning given by section 88(1).
- (5) No person shall be excluded from such a school or suffer any other adverse consequences on account of any failure to comply with any invitation to sign the parental declaration.
- (6) A home-school agreement shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.

*Extension of educational opportunities for Key Stage 4 pupils*

**112 Extended work experience for Key Stage 4 pupils**

- (1) Section 560 of the Education Act 1996 (work experience during compulsory schooling) shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted—
  - “(1) The enactments relating to the prohibition or regulation of the employment of children shall not apply to the employment of a child in his last two years of compulsory schooling if the employment is in pursuance of arrangements made—
    - (a) by a local education authority, or
    - (b) by the governing body of a school on behalf of such an authority, with a view to providing him with work experience as a part of his education.
  - (2) For the purposes of subsection (1) a child shall be taken to be in his last two years of compulsory schooling as from the beginning of the last two school years at his school during the whole or part of which he is of compulsory school age.”
- (3) In subsection (6) (disapplication of sections 495 and 496 of the Act), the words “or the governing body of a grant-maintained school” shall be omitted.

**113 Provision of secondary education for Key Stage 4 pupils by FE institutions**

- (1) In section 18(1) of the Further and Higher Education Act 1992 (principal powers of a further education corporation), after paragraph (a) there shall be inserted—
  - “(aa) in pursuance of arrangements made—
    - (i) by a local education authority, or
    - (ii) by the governing body of a school on behalf of such an authority,provide secondary education to pupils in the fourth key stage, and”.
- (2) After section 52 of that Act there shall be inserted—

**“52A Duty to safeguard pupils receiving secondary education**

- (1) This section applies where secondary education is provided to pupils in the fourth key stage—
  - (a) by a further education corporation in pursuance of arrangements falling within section 18(1)(aa) of this Act, or
  - (b) by a designated institution in pursuance of arrangements made—
    - (i) by a local education authority, or
    - (ii) by the governing body of a school on behalf of such an authority.
- (2) The governing body of the corporation or institution shall secure that, except in such circumstances as may be prescribed by regulations, no education is provided to a person who has attained the age of nineteen years in a room in which any such pupils are for the time being receiving secondary education.”

*School meals***114 Nutritional standards for school lunches**

- (1) Regulations may prescribe nutritional standards, or other nutritional requirements, which (subject to such exceptions as may be provided for by or under the regulations) are to be complied with in connection with the provision of school lunches for registered pupils at schools maintained by local education authorities.
- (2) Where a local education authority or the governing body provide school lunches for registered pupils at such a school, they shall secure that any applicable provisions of regulations under this section are complied with.
- (3) Subsection (2) applies—
  - (a) whether the lunches are provided on school premises or at any other place where education is being provided; and
  - (b) whether they are being provided in pursuance of any statutory requirement or otherwise.
- (4) Regulations under this section may—
  - (a) make different provision for pupils of different ages;
  - (b) authorise the Secretary of State to determine the time as from which any provisions of the regulations are to apply to a particular local education authority or school.
- (5) In this section “school lunch”, in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, whether involving a set meal or the selection of items by him or otherwise.

**115 Extension of LEA functions concerning school lunches, etc**

- (1) Section 512 of the Education Act 1996 (provision by LEAs of meals etc. at maintained schools) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
 

“(1A) A local education authority shall, if requested to do so by or on behalf of any registered pupils at a school maintained by the authority, provide school lunches for those pupils; but the authority shall not be required to provide a school lunch—

  - (a) where in the circumstances it would be unreasonable for them to do so, or
  - (b) where the pupil in question has not attained compulsory school age and is being provided with part-time education.

(1B) Any school lunches provided by a local education authority under subsection (1A) may—

  - (a) be provided either on the school premises or at any place other than the school premises where education is being provided for the pupils in question; and
  - (b) take such form as the authority think fit.”
  - (3) In subsection (2) (obligation to charge for meals etc.), after “subsection (1)” there shall be inserted “or (1A)”.



- (4) In subsection (3), for paragraphs (a) and (b) there shall be substituted—
- “(a) shall so exercise their power under subsection (1) as to ensure that a school lunch is provided for him, which shall be provided free of charge, and
  - (b) if in the exercise of that power they provide him with milk, shall provide it free of charge.”
- (5) After subsection (5) there shall be added—
- “(6) In this section “school lunch”, in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, whether involving a set meal or the selection of items by him or otherwise.”

## **116 Transfer of LEA functions concerning school lunches, etc. to governing bodies**

After section 512 of the Education Act 1996 there shall be inserted—

### **“512A Transfer of functions under section 512 to governing bodies**

- (1) The Secretary of State may by order make provision for imposing on the governing body of any school to which the order applies a duty or duties corresponding to one or more of the duties of the local education authority which are mentioned in subsection (2).
- (2) Those duties are—
- (a) the duty to provide school lunches in accordance with section 512(1A) and (1B);
  - (b) the duty to provide school lunches free of charge in accordance with section 512(3)(a); and
  - (c) the duty to provide milk free of charge in accordance with section 512(3)(b).
- (3) An order under this section may (subject to subsection (6)) apply to—
- (a) all maintained schools; or
  - (b) any specified class of such schools; or
  - (c) all such schools, or any specified class of such schools, maintained by specified local education authorities.
- (4) Where any duty falls to be performed by the governing body of a school by virtue of an order under this section—
- (a) the corresponding duty mentioned in subsection (2) shall no longer fall to be performed by the local education authority in relation to the school; and
  - (b) if the duty corresponds to the one mentioned in subsection (2)(b) or (c), section 533(3) shall not apply to any school lunches or milk provided by the governing body in pursuance of the order.
- (5) An order under this section may provide for section 513(2) not to apply—
- (a) to local education authorities generally, or
  - (b) to any specified local education authority,

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either in relation to all pupils for whom provision is made by the authority under section 513 or in relation to all such pupils who are of such ages as may be specified.

- (6) An order under this section shall not operate to—
- (a) impose any duty on the governing body of a school, or
  - (b) relieve a local education authority of any duty in relation to a school, at any time when the school does not have a delegated budget; and such an order may provide for section 512(2)(b) above to have effect, in relation to any provision made at any such time by the local education authority for pupils at the school, with such modifications as may be specified.
- (7) In this section—
- “delegated budget” and “maintained school” have the same meaning as in the School Standards and Framework Act 1998;
- “school lunch” has the same meaning as in section 512 above;
- “specified” means specified in an order under this section.”

## PART V

### NURSERY EDUCATION

#### *Nursery education*

#### **117 Definition of “nursery education”**

In this Part “nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere).

#### *General duty of local education authority*

#### **118 Duty of LEA as respects availability of nursery education**

- (1) A local education authority shall secure that the provision (whether or not by them) of nursery education for children who—
- (a) have not attained compulsory school age, but
  - (b) have attained such age as may be prescribed,
- is sufficient for their area.
- (2) In determining for the purposes of subsection (1) whether the provision of such education is sufficient for their area a local education authority—
- (a) may have regard to any facilities which they expect to be available outside their area for providing such education; and
  - (b) shall have regard to any guidance given from time to time by the Secretary of State.

*Early years development partnerships***119 Early years development partnerships**

- (1) Every local education authority shall establish for their area a body to be known as an early years development partnership (“the partnership”).
- (2) In establishing the partnership and determining its constitution the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (3) The authority may establish a sub-committee of the partnership for any part of their area.
- (4) The authority shall make arrangements—
  - (a) for the meetings and proceedings of the partnership and any such sub-committee, and
  - (b) for the partnership (and any such sub-committee) to be provided with accommodation and with such services as the authority consider appropriate.
- (5) The functions of the partnership shall be to work with the authority—
  - (a) in reviewing the sufficiency of the provision of nursery education for the authority’s area for the purposes of section 118, and
  - (b) in preparing early years development plans under section 120.
- (6) The Secretary of State may by order confer on early years development partnerships such additional functions as are specified in the order.

*Early years development plans***120 Early years development plans**

- (1) Every local education authority shall, in conjunction with the early years development partnership for their area—
  - (a) prepare an early years development plan for their area, and
  - (b) prepare further such plans at such intervals as may be determined by or in accordance with regulations.
- (2) An early years development plan shall consist of—
  - (a) a statement of proposals, which sets out the authority’s proposals for complying with their duty under section 118, and
  - (b) annexes to that statement.
- (3) The statement of proposals must—
  - (a) deal with such matters, and relate to such period, as may be determined by or in accordance with regulations, and
  - (b) be approved by the Secretary of State under section 121.
- (4) In relation to the form and content of the annexes to the statement the authority shall have regard to any guidance given from time to time by the Secretary of State.

**121 Approval, modification and review of statement of proposals**

- (1) Where an early years development plan has been prepared in accordance with section 120, the authority shall, by such date as may be determined by or in accordance with regulations, submit the plan to the Secretary of State for him to approve the authority's statement of proposals under this section.
- (2) The Secretary of State may in the case of any statement submitted to him under this section—
  - (a) approve the statement in any of the following ways, namely wholly or in part, for a limited period of time, or subject to conditions;
  - (b) require the authority to make such modifications to the statement as he may specify; or
  - (c) reject the statement.
- (3) If the Secretary of State approves the statement—
  - (a) he shall notify the authority of his decision; and
  - (b) the authority shall implement the proposals set out in the statement, so far as approved by the Secretary of State, as from such date as he may determine.
- (4) If the Secretary of State requires the authority to make modifications or rejects the statement—
  - (a) he shall notify the authority of his decision and of his reasons for it; and
  - (b) the authority shall prepare a revised statement and submit it to the Secretary of State for his approval under this section by such date as he may determine.
- (5) Once the Secretary of State has approved an authority's statement of proposals under subsection (2), he shall keep under review the authority's proposals, as approved by him, and their implementation by the authority, and—
  - (a) where he is of the opinion that the statement should be modified (or further modified), he may withdraw his approval and require the authority to make such modifications to the statement as he may specify; and
  - (b) where he is of the opinion that the authority's statement is not being properly implemented by them, he may withdraw his approval for such period as he thinks fit.
- (6) If under subsection (5) the Secretary of State withdraws his approval of a statement of proposals—
  - (a) he shall notify the authority of his decision and of his reasons for it; and
  - (b) in a case falling within paragraph (a) of that subsection, the authority shall prepare a revised statement and submit it to him for his approval under this section by such date as he may determine.
- (7) Section 120 shall apply to the preparation of a revised statement under subsection (4) (b) or (6)(b), with such modifications (if any) as the Secretary of State may determine.
- (8) At any time after the Secretary of State has approved an authority's statement of proposals under subsection (2)—
  - (a) the authority may, with the agreement of the early years development partnership, submit modifications to the statement to the Secretary of State for his approval, and
  - (b) the Secretary of State may approve the modifications, whether in whole or in part, for a limited period of time, or subject to conditions, and

- (c) if and to the extent that he approves those modifications, he shall notify the authority of his decision and—
  - (i) the statement shall have effect with the modifications, and
  - (ii) the authority shall implement their proposals as modified, as from such date as he may determine.
- (9) Once the Secretary of State has approved—
  - (a) an authority’s statement of proposals under subsection (2), or
  - (b) the modification of an authority’s statement of proposals under subsection (8), the authority shall publish their early years development plan (or their plan as so modified) in such manner and by such date as may be prescribed, and shall provide such persons as may be prescribed with copies of that plan or of a summary of that plan.

#### *Inspection of nursery education*

### **122 Inspection of nursery education**

- (1) Schedule 26 (inspections, etc. of providers of nursery education) shall have effect.
- (2) Schedule 1 to the Nursery Education and Grant-Maintained Schools Act 1996 (which is superseded by Schedule 26 to this Act) shall cease to have effect.
- (3) Any register of nursery education inspectors established by the Chief Inspector under Schedule 1 to that Act shall be treated as established by him under Schedule 26 to this Act; and accordingly anything done under Schedule 1 to that Act in connection with the registration of (or any refusal to register) any person in that register shall, if effective immediately before the commencement of this section, continue to have effect as if done under Schedule 26 to this Act.
- (4) In subsection (3) “the Chief Inspector” means Her Majesty’s Chief Inspector of Schools in England or Her Majesty’s Chief Inspector of Schools in Wales.

#### *Further provisions relating to nursery education*

### **123 Children with special educational needs**

- (1) It shall be the duty of—
  - (a) any local education authority or other person providing relevant nursery education, and
  - (b) any person employed by such an authority or other person, or otherwise engaged to provide his services, in the provision of such education,
 (except where a duty is already imposed by subsection (2) of section 313 of the Education Act 1996) to have regard to the provisions of the code of practice issued under that section (practical guidance in respect of the discharge of functions under Part IV of that Act).
- (2) That code of practice may include practical guidance in respect of the provision of relevant nursery education for children with special educational needs in circumstances where functions under Part IV of the Education Act 1996 do not fall to be discharged.

- (3) But unless that code of practice includes provision made by virtue of subsection (2)—
- (a) the Secretary of State shall publish a document explaining how the practical guidance contained in that code applies in circumstances where functions under Part IV of the Education Act 1996 do not fall to be discharged, and
  - (b) the duty imposed by subsection (1) includes a duty to have regard to the provisions of that document.
- (4) In this section “relevant nursery education” means nursery education which is provided—
- (a) by a local education authority, or
  - (b) by any other person who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a).

#### **124 Travel arrangements for children receiving nursery education otherwise than at school**

After section 509 of the Education Act 1996 there shall be inserted—

##### **“509A Travel arrangements for children receiving nursery education otherwise than at school**

- (1) A local education authority may provide a child with assistance under this section if they are satisfied that, without such assistance, he would be prevented from attending at any premises—
  - (a) which are not a school or part of a school, but
  - (b) at which relevant nursery education is provided,
 for the purpose of receiving such education there.
- (2) The assistance which may be provided for a child under this section consists of either—
  - (a) making arrangements (whether for the provision of transport or otherwise) for the purpose of facilitating the child’s attendance at the premises concerned, or
  - (b) paying the whole or any part of his reasonable travel expenses.
- (3) When considering whether to provide a child with assistance under this section in connection with his attendance at any premises, a local education authority may have regard (among other things) to whether it would be reasonable to expect alternative arrangements to be made for him to receive relevant nursery education at any other premises (whether nearer to his home or otherwise).
- (4) Where the assistance to be provided for a child under this section consists of making arrangements for the provision of transport, the authority may, if they consider it appropriate to do so, determine that the assistance shall not be so provided unless—
  - (a) the child’s parent, or
  - (b) the person providing the relevant nursery education concerned,
 agrees to make to the authority such payments in respect of the provision of the transport (not exceeding the cost to the authority of its provision) as they may determine.

- (5) In this section “relevant nursery education” means nursery education which is provided—
- (a) by a local education authority, or
  - (b) by any other person—
    - (i) who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
    - (ii) who is in receipt of grants under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996.”

## PART VI

### PARTNERSHIP ARRANGEMENTS IN WALES

#### **125 Partnership arrangements to secure provision of certain further education in Wales**

- (1) The Further and Higher Education Act 1992 shall be amended as follows.
- (2) In section 5 (administration of funds by further education funding councils), after subsection (5) there shall be inserted—
 

“(5A) The Further Education Funding Council for Wales may give financial support to a local education authority for an area in Wales for the purposes of any partnership arrangement made by the authority to which section 60A of this Act applies.”
- (3) In section 18 (principal powers of a further education corporation)—
  - (a) in subsection (1), the words “and those powers” to the end shall be omitted, and
  - (b) after subsection (3) there shall be added—
    - “(4) In addition to the powers conferred by subsection (1) above, a further education corporation which conducts one or more educational institutions situated in Wales may—
      - (a) secure the provision of full-time or part-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19, but only if that provision is made under a partnership arrangement to which section 60A of this Act applies, and
      - (b) supply goods or services in connection with the securing of the provision of education under paragraph (a) above.
    - (5) Subsections (2) and (3) above shall apply for the purposes of subsection (4) above as they apply for the purposes of subsection (1), except that references in those subsections to the provision of education shall be construed as references to the securing of the provision of education.

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

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(6) The powers conferred by subsection (1) above and the powers conferred by subsection (4) above are referred to in section 19 of this Act as the corporation’s principal powers.”

(4) After section 60 there shall be inserted—

**“60A Partnership arrangements to secure provision of certain further education in Wales**

(1) An arrangement is a partnership arrangement to which this section applies if—

- (a) it is made by—
  - (i) one or more local education authorities for areas in Wales, and
  - (ii) one or more governing bodies of Welsh further education institutions,

for the purpose of securing the provision of education within subsection (3),

- (b) it provides for the facilities connected with the provision of education under the arrangement to be provided—
  - (i) in part, at one or more schools maintained by the local education authority which is a party to the arrangement (or where more than one local education authority is a party, by each of them), and
  - (ii) in part, at one or more Welsh further education institutions conducted by the governing body which is a party to the arrangement (or, where more than one governing body is a party, by each of them),
- (c) it is made with the consent of—
  - (i) the Further Education Funding Council for Wales, and
  - (ii) the governing body of each school at which, in accordance with the arrangement, facilities are to be provided, and
- (d) it is approved by the Secretary of State.

(2) For the purposes of subsection (1) above—

- (a) “Welsh further education institution” means an institution which is within the further education sector and is situated in Wales, and
- (b) a designated institution shall be treated as conducted by the governing body of the institution.

(3) Education is within this subsection if it is full-time or part-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19.

(4) The following bodies shall exercise their functions with a view to securing that any education provided under a partnership arrangement to which this section applies is provided and funded in accordance with the arrangement—

- (a) each local education authority which is a party to the arrangement;
- (b) each governing body of an institution (or institutions) within the further education sector which is a party to the arrangement;
- (c) the Further Education Funding Council for Wales;



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

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- (d) each governing body of a school which consented to the arrangement.
- (5) Schedule 5A to this Act shall have effect in relation to partnership arrangements to which this section applies.”
- (5) After Schedule 5 there shall be inserted the Schedule set out in Schedule 27 to this Act.

## **126 Provisions relating to education provided under partnership arrangements**

- (1) The Education Act 1996 shall have effect in relation to education provided under relevant partnership arrangements subject to the following provisions of this section.
- (2) For the purposes of that Act—
  - (a) full-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19 which is provided at a school at which education within section 2(2)(a) of that Act is also provided shall not be regarded as secondary education, and
  - (b) a person for whom full-time or part-time education suitable to the requirements of such persons is being provided at a school shall not be regarded as a pupil,if that education is being provided under a relevant partnership arrangement.
- (3) Accordingly, education within subsection (2)(a) above which is provided under a relevant partnership arrangement shall, for the purposes of that Act, be regarded as further education.
- (4) In this section “relevant partnership arrangement” means a partnership arrangement to which section 60A of the Further and Higher Education Act 1992 (as inserted by section 125(4)) applies.

## **PART VII**

### **MISCELLANEOUS AND GENERAL**

#### *Code of practice for local education authorities and maintained schools*

## **127 Code of practice for securing effective relationships between LEAs and maintained schools**

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate with a view to securing effective relationships between local education authorities and the schools maintained by them—
  - (a) in relation to promoting high standards of education in such schools; and
  - (b) in relation to the discharge of relevant functions of such authorities in relation to such schools.
- (2) In discharging their functions in relation to any maintained school, it shall be the duty of—
  - (a) the local education authority,
  - (b) the governing body, and

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

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- (c) the head teacher,  
to have regard to any relevant provisions of the code.
- (3) Section 85 shall apply in relation to the code as it applies in relation to a code of practice under section 84.
- (4) The Secretary of State shall publish the code as for the time being in force.
- (5) The Secretary of State may under subsection (1) make different provision for England and Wales (whether or not by means of separate codes of practice); and references in this section to “the code” accordingly apply to any such separate code of practice.
- (6) For the purposes of this section the relevant functions of a local education authority are the functions exercisable by or on behalf of such an authority under—
- (a) sections 6 and 7 (so far as they relate to schools maintained by the authority),
  - (b) section 15(2),
  - (c) section 16(1),
  - (d) section 17(1),
  - (e) section 42(3) and (4),
  - (f) sections 54 and 55,
  - (g) section 62(1),
  - (h) Schedules 9 and 11 (so far as they relate to the appointment and removal of LEA governors),
  - (i) Schedule 13,
  - (j) paragraphs 1 and 2 of Schedule 15,
  - (k) Schedules 16 and 17, and
  - (l) section 25 of the School Inspections Act 1996,
- and such other functions exercisable by or on behalf of a local education authority as the Secretary of State may determine for the purposes of this subsection.

*Financial assistance to non-maintained schools*

**128 Financial assistance to non-maintained schools**

- (1) For section 18 of the Education Act 1996 there shall be substituted—

**“18 Financial assistance to non-maintained schools**

- (1) Subject to subsection (2), a local education authority may—
- (a) assist any primary or secondary non-maintained school (whether inside or outside their area);
  - (b) make arrangements for pupils to be provided with primary or secondary education at such schools.
- (2) Except in accordance with regulations, a local education authority may not under subsection (1) make any grant or other payment (whether to the proprietor of a school or otherwise) in respect of—
- (a) fees or expenses (of whatever nature) which are payable in connection with the attendance of a pupil at a school, or
  - (b) such other matters as may be prescribed.

- (3) Regulations made for the purposes of subsection (2)(a) may provide that, in such circumstances as may be specified in or determined in accordance with the regulations, a local education authority—
- (a) shall exercise their power under subsection (1)(b) in relation to a pupil at a non-maintained school so as to pay the whole of—
    - (i) the fees payable in respect of the education provided for the pupil, and
    - (ii) if board and lodging are provided for him at the school, the fees payable in respect of the board and lodging, and
    - (iii) any expenses of a prescribed description which are payable in connection with his attendance at the school; or
  - (b) may exercise that power in relation to such a pupil so as to pay the whole or part of any fees or expenses falling within all or any of subparagraphs (i) to (iii) of paragraph (a) above.
- (4) In this section references to non-maintained schools are references to schools which are not maintained by any local education authority.”
- (2) In consequence of subsection (1), section 16(1)(c) of the Education Act 1996 (power of local education authority to assist primary or secondary school not maintained by the authority) shall cease to have effect.

## **129 Payment of school expenses; grant of scholarships, etc**

For section 518 of the Education Act 1996 there shall be substituted—

### **“518 Payment of school expenses; grant of scholarships, etc**

- (1) A local education authority, for the purpose of enabling persons to take advantage of any educational facilities available to them, may in such circumstances as may be specified in or determined in accordance with regulations—
- (a) pay such expenses of children attending community, foundation, voluntary or special schools as may be necessary to enable them to take part in any school activities,
  - (b) grant scholarships, exhibitions, bursaries and other allowances in respect of persons over compulsory school age.
- (2) Regulations may make provision—
- (a) for requiring a local education authority to make, in relation to each financial year, a determination relating to the extent to which they propose to exercise their power under subsection (1)(b) in that year; and
  - (b) for authorising an authority to determine not to exercise that power in a financial year—
    - (i) generally,
    - (ii) in such cases as may be prescribed, or
    - (iii) in such cases as may be determined by the authority.”

**130 Transfer of assisted places**

(1) In section 3(2) of the Education (Schools) Act 1997 (regulations for purposes of transitional arrangements), after paragraph (f) there shall be added—

“(g) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has at any time held) an assisted place provided by a school under section 2(1), to authorise another school which is either—

(i) a former participating school, or

(ii) a new school authorised to provide assisted places by virtue of paragraph (f) above,

to provide for the pupil under section 2(1) the assisted place which the first-mentioned school was authorised to provide.”

(2) In section 75A(9A) of the Education (Scotland) Act 1980 (regulations in connection with assisted places)—

(a) the word “and” immediately preceding paragraph (b) shall be omitted; and

(b) after that paragraph there shall be inserted “; and

(c) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has, at any time since the beginning of the first term of the 1997-98 school year, held) an assisted place at a school under a scheme operated by virtue of subsection (1) above, to authorise another school which is, or is treated as, a participating school to provide for the pupil under such a scheme the assisted place which the first-mentioned school was authorised to provide.”

*Abolition of corporal punishment***131 Abolition of corporal punishment in schools etc**

(1) For section 548 of the Education Act 1996 there shall be substituted—

**“548 No right to give corporal punishment**

(1) Corporal punishment given by, or on the authority of, a member of staff to a child—

(a) for whom education is provided at any school, or

(b) for whom education is provided, otherwise than at school, under any arrangements made by a local education authority, or

(c) for whom specified nursery education is provided otherwise than at school,

cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.

(2) Subsection (1) applies to corporal punishment so given to a child at any time, whether at the school or other place at which education is provided for the child, or elsewhere.

- (3) The following provisions have effect for the purposes of this section.
- (4) Any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery.
- (5) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting—
- (a) an immediate danger of personal injury to, or
  - (b) an immediate danger to the property of, any person (including the child himself).
- (6) “Member of staff”, in relation to the child concerned, means—
- (a) any person who works as a teacher at the school or other place at which education is provided for the child, or
  - (b) any other person who (whether in connection with the provision of education for the child or otherwise)—
    - (i) works at that school or place, or
    - (ii) otherwise provides his services there (whether or not for payment),and has lawful control or charge of the child.
- (7) “Child” (except in subsection (8)) means a person under the age of 18.
- (8) “Specified nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age which is provided—
- (a) by a local education authority; or
  - (b) by any other person—
    - (i) who is (or is to be) in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
    - (ii) who is (or is to be) in receipt of grants under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996; or
  - (c) (otherwise than as mentioned in paragraph (a) or (b)) in any educational institution which would fall within section 4(1) above (definition of “school”) but for the fact that it provides part-time, rather than full-time, primary education.”
- (2) The following provisions of the Education Act 1996, namely—
- (a) section 549 (interpretation of section 548), and
  - (b) section 550 (no avoidance of section 548 by refusing admission to school etc.),
- shall cease to have effect.

*The funding authorities***132 Dissolution of Funding Agency for Schools**

- (1) The Funding Agency for Schools shall be dissolved on such date as the Secretary of State may by order specify (“the dissolution date”).
- (2) Prior to their dissolution the Agency shall—
  - (a) prepare, and submit to the Secretary of State for his approval, a plan for the disposal of property of the Agency to persons other than the Secretary of State; and
  - (b) once the plan is approved by the Secretary of State, make arrangements for the disposal of the property in question in accordance with the plan.
- (3) The Agency shall use their best endeavours to secure that any functions remaining to be discharged by them at any time after the commencement of this section are discharged by such date or dates falling before the dissolution date as the Secretary of State may determine.
- (4) Section 24 of the Education Act 1996 (directions by Secretary of State) applies to functions of the Agency under this section; and paragraph 15 of Schedule 2 to that Act (accounts) shall have effect for the purposes of subsection (3) above subject to such modifications as the Secretary of State may determine.
- (5) Any property, rights and liabilities to which the Agency are entitled or subject immediately before the dissolution date (whether or not capable of being transferred or assigned by the Agency) shall by virtue of this section become property, rights and liabilities of the Secretary of State on that date.
- (6) Any legal proceedings to which the Agency are a party immediately before the dissolution date may be continued on or after that date by or in relation to the Secretary of State.
- (7) Every agreement (whether written or not), and every instrument or other document, which relates to any property, right or liability of the Agency to which subsection (5) applies shall have effect, so far as may be required for continuing its effect on or after the dissolution date, as if—
  - (a) where the Agency is a party to it, the Secretary of State were substituted as that party,
  - (b) for any reference to the Agency there were substituted a reference to the Secretary of State,
  - (c) for any reference (however worded and whether express or implied) to the chairman, the chief officer or any member of the Agency there were substituted a reference to such officer or officers as the Secretary of State may appoint for the purpose, and
  - (d) for any reference to the office or place of business of the Agency there were substituted a reference to the principal office of the Secretary of State.

**133 Removal of power to establish Schools Funding Council for Wales**

Section 21 of the Education Act 1996 (which confers on the Secretary of State a power, so far unexercised, to establish the Schools Funding Council for Wales) shall cease to have effect.

### *School and nursery inspections*

#### **134 Publication of inspection reports**

- (1) After section 42 of the School Inspections Act 1996 there shall be inserted—

#### *“Publication of reports*

##### **42A Publication of inspection reports**

- (1) The Chief Inspector may in the case of—
- (a) any report by a member of the Inspectorate of an inspection carried out by him under any provision of this Act (whether the report is required by any such provision or is otherwise made in pursuance of his functions under that provision), or
  - (b) any report of an inspection under section 10 (other than one made by a member of the Inspectorate),
- arrange for the report to be published in such manner as the Chief Inspector considers appropriate.
- (2) Without prejudice to the generality of—
- (a) section 2(7)(c) or 5(7)(c), or
  - (b) subsection (1) above,
- the Chief Inspector may arrange for a report to which that provision applies to be published by electronic means.
- (3) For the purposes of the law of defamation any report published by the Chief Inspector under any of those provisions shall be privileged unless the publication is shown to be made with malice.
- (4) Nothing in subsection (3) shall be construed as limiting any privilege subsisting apart from that subsection.”

- (2) In Schedule 1 to the Nursery Education and Grant-Maintained Schools Act 1996 (inspections of nursery education), at the end of paragraph 13 (reports of inspections) there shall be added—

“(3) Section 42A(2) to (4) of the School Inspections Act 1996 shall apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in section 42A(2).”

- (3) In section 39 of the Education Act 1997 (reports of inspections of local education authorities), at the end of subsection (4) (publication of such reports) there shall be added “; and section 42A(2) to (4) of the School Inspections Act 1996 shall apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in section 42A(2).”

#### **135 Miscellaneous amendments relating to school and nursery inspections**

Schedule 28 (which contains amendments relating to inspections under the School Inspections Act 1996 and the Nursery Education and Grant-Maintained Schools Act 1996) shall have effect.

*Education Assets Board***136 Change of name of Education Assets Board**

- (1) The Education Assets Board shall be known instead as the Education Transfer Council.
- (2) For any reference to the Education Assets Board—
  - (a) in any statutory provision (other than this section), or
  - (b) in any instrument or document,
 there shall be substituted, as respects any time after the commencement of this section, a reference to the Education Transfer Council.
- (3) The Secretary of State may by order specify a different name by which the Council are to be known; and an order under this section may make such provision as appears to the Secretary of State to be necessary or expedient in consequence of the change of name effected by the order (including provision for amending statutory provisions).

**137 Education Transfer Council: alteration of functions and provision for dissolution**

- (1) Schedule 29 (which amends section 198 of, and Schedule 10 to, the Education Reform Act 1988, which relate to the functions of the Education Transfer Council) shall have effect.
- (2) The Secretary of State may by order make such further amendments of those provisions of that Act as he considers expedient.
- (3) Regulations may make provision—
  - (a) for the dissolution of the Education Transfer Council by order of the Secretary of State and for enabling him to determine how any property, rights and liabilities of the Council are to be dealt with in connection with their dissolution;
  - (b) for the subsequent establishment of a new body with such name as may be prescribed and constituted in the same manner as, or similarly to, the Council;
  - (c) for dealing with transfers of property, rights and liabilities under this Act or under the Education Reform Act 1988 at a time when the Council has been dissolved and either—
    - (i) a body has been subsequently established under paragraph (b), or
    - (ii) no such body has been so established.
- (4) Regulations under subsection (3) may, in connection with any matters falling within paragraph (b) or (c) of that subsection—
  - (a) modify any of the provisions of section 197 or 198 of, or Schedule 8 or 10 to, the Education Reform Act 1988;
  - (b) apply any of those provisions with or without modifications;
  - (c) make provision corresponding or similar to any of those provisions.

*Supplementary***138 Orders and regulations**

- (1) Subject to subsection (2), any power of the Secretary of State to make an order or regulations under this Act shall be exercised by statutory instrument.



- (2) Subsection (1) does not apply to any order under—
  - (a) section 11(5), 20(5), 21(8), 73, 82, 111(3)(a) or 142(1); or
  - (b) paragraph 5 of Schedule 5, paragraph 2 or 3 of Schedule 7, paragraph 3(5) or 4 of Schedule 10, paragraph 1 of Schedule 14, paragraph 10 of Schedule 21, paragraph 4(2) or 7(3)(c) of Schedule 22 or paragraph 5(3) of Schedule 32.
- (3) Subject to subsections (4) and (5), a statutory instrument containing any order or regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to any order under—
  - (a) section 20(7), 69(3), 85(5), 104, 110(10) or 145; or
  - (b) paragraph 4 or 8 of Schedule 23 or paragraph 1 of Schedule 32.
- (5) Subsection (3) also does not apply to—
  - (a) any order under—
    - (i) section 1(5),
    - (ii) paragraph 18 of Schedule 18, or
    - (iii) paragraph 17 of Schedule 24 or paragraph 14 of Schedule 25; or
  - (b) the first regulations to be made under—
    - (i) section 38(3) or 39(1),
    - (ii) section 46, 47 or 48(1), or
    - (iii) section 105 or 108(2);and no such order or regulations shall be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (6) If a draft of the statutory instrument containing any such regulations under section 105 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (7) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.
- (8) Any order or regulations under this Act may make different provision in relation to England and Wales respectively.
- (9) Nothing in this Act shall be read as affecting the generality of subsection (7).

### **139 Financial provisions**

- (1) There shall be paid out of money provided by Parliament—
  - (a) any sums required for the making by the Secretary of State of grants or loans under this Act;
  - (b) any other expenses of the Secretary of State under this Act; and
  - (c) any increase attributable to this Act in the sums so payable by virtue of any other Act.
- (2) There shall be paid into the Consolidated Fund—
  - (a) any sums received by the Secretary of State under or by virtue of this Act; and

- (b) any fees received by Her Majesty’s Chief Inspector of Schools in England, or Her Majesty’s Chief Inspector of Schools in Wales, under Schedule 26.

#### **140 Minor and consequential amendments and repeals**

- (1) The minor and consequential amendments set out in Schedule 30 shall have effect.
- (2) Unless the context otherwise requires, any reference in any enactment amended by this Act—
  - (a) to a maintained school, or
  - (b) to a community, foundation or voluntary school or a community or foundation special school,
 is a reference to such a school within the meaning of this Act.
- (3) The enactments specified in Schedule 31 (which include certain spent enactments) are repealed to the extent specified.
- (4) Any articles of government of a school which are in force under the Education Act 1996 immediately before the appointed day shall cease to have effect on that day.

#### *Construction*

#### **141 Minor authorities**

- (1) For the purposes of this Act a maintained school serves an area for which there are one or more minor authorities if the area served by the school is—
  - (a) a parish or community;
  - (b) an area in England which is not within a parish and is not situated in—
    - (i) a county for which there is no council, or
    - (ii) a county in which there are no district councils; or
  - (c) an area comprising two or more areas each of which falls within paragraph (a) or (b).
- (2) Where the area served by the school is a parish—
  - (a) the parish council (if there is one), or
  - (b) the parish meeting (if there is no parish council),
 is the minor authority in relation to the school.
- (3) Where the area served by the school is a community, the community council is the minor authority in relation to the school.
- (4) Where the area served by the school is an area falling within subsection (1)(b), any district council for the whole or part of the area is a minor authority in relation to the school.
- (5) Where the area served by the school is an area falling within subsection (1)(c), each of the relevant authorities is a minor authority in relation to the school.
- (6) In subsection (5) “the relevant authorities” means the bodies which, if the two or more constituent areas referred to in subsection (1)(c) were taken separately, would be minor authorities in relation to the school.

- (7) References in this section to the area served by a school are references to the area appearing to the local education authority to be served by the school.

## **142 General interpretation**

- (1) In this Act, unless the context otherwise requires—

“the appropriate further education funding council” has the meaning given by section 1(6) of the Further and Higher Education Act 1992;

“Church in Wales school” means a school in the Province of Wales in relation to which the religion or religious denomination specified under section 69(4) is “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 relation to which the religion or religious denomination specified under section 69(4) is “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;

“community or foundation special school” means a community special school or a foundation special school;

“contract of employment”, “employee” and “employer” have the same meaning as in the Employment Rights Act 1996;

“employment” (except in section 92(4)) means employment under a contract of employment, and “employed” shall be construed accordingly;

“maintained school” (except in Part III) has the meaning given by section 20(7);

“prescribed” means prescribed by regulations;

“reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age;

“regulations” means regulations made by the Secretary of State under this Act;

“relevant age group”, in relation to a school, means an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school;

“Roman Catholic Church school” means a school in relation to which the religion or religious denomination specified under section 69(4) is “Roman Catholic” and “appropriate diocesan authority”, in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated;

“school maintained by a local education authority”, in relation to any time on or after the appointed day, means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit;

“statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978.

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

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- (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) Any reference in this Act to the religion or religious denomination specified in relation to a school under section 69(4) shall be construed, in a case where more than one religion or religious denomination is so specified, as including a reference to any of those religions or religious denominations.
- (4) As a result of subsection (3), subsection (1) has the effect that a school may, for example, be both a Church of England school and a Roman Catholic Church school and so have a different appropriate diocesan authority in each of those capacities; and, in the case of a school with two appropriate diocesan authorities, any reference in this Act to “the appropriate diocesan authority” is—
  - (a) in relation to anything required to be done by or in relation to that authority, a reference to both of the authorities concerned; or
  - (b) in relation to anything authorised to be done by or in relation to that authority, a reference to either or both of the authorities concerned (or, in the context of section 16(6) or (8), to both of them acting together).
- (5) For the purposes of this Act children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class.
- (6) For the purposes of this Act references to disposing of land include references to—
  - (a) granting or disposing of any interest in land;
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  - (c) granting an option to purchase any land or any such interest.
- (7) For the purposes of this Act—
  - (a) a person employed by a local education authority is to be regarded as employed to work at a school if his employment with the authority for the time being involves work at that school; and
  - (b) a person employed by a local education authority is to be regarded as employed to work solely at a school if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school.
- (8) This Act shall be construed as one with the Education Act 1996; and (without prejudice to their generality) paragraphs 1 and 2 of Schedule 39 to that Act (construction of references etc.) apply to references in this Act to provisions of that Act.
- (9) Where, however, an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of that Act, the meaning given for the purposes of that provision shall apply instead of the one given for the purposes of that Act.
- (10) Subsection (1) of section 576 of that Act (meaning of “parent”) shall, in its application for the purposes of—
  - (a) section 43 or 62(2) of this Act, or
  - (b) paragraph 4 of Schedule 2 or paragraph 4 or 14 of Schedule 9 to this Act,
 be taken as referring only to persons within paragraph (a) or (b) of that subsection who are individuals.

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The expressions listed in the left-hand column below are defined by, or (as the case may be) are to be interpreted in accordance with, the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
ability (in Chapter II of Part III)	section 99(5)
adjudicator	section 25(3)
admission arrangements (in Part III in relation to a maintained school)	sections 88(2) and 99(5)
admission authority (in Chapter I of Part III in relation to a maintained school)	section 88(1)
admitted to a school for nursery education	section 142(5)
alteration (in Part II in the context of a prescribed alteration to a maintained school)	section 28(11)
appeal panel (in Chapter I of Part III)	section 84(6)
appointed day (except in Part I of Schedule 32)	section 20(7)
appropriate diocesan authority (in relation to a Church in Wales, Church of England or Roman Catholic Church school)	section 142(1) and (4)
appropriate further education funding council	section 142(1)
area (in Part II)	section 28(11)
budget share (in Part II)	section 47(1)
Chief Inspector (in Chapter IV of Part I)	section 14(4)
child (in Chapter I of Part III but not in sections 96 and 97)	section 84(6)
Church in Wales school	section 142(1)
Church of England school	section 142(1)
class (in Chapter I of Part I)	section 4
community or foundation special school	section 142(1)
“contract of employment” and other expressions relating to employment	section 142(1) and (7)
discontinuing, and implementing proposals to discontinue, a school (in Part II in relation to a local education authority)	section 29(10)

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

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<i>Expression</i>	<i>Relevant provision</i>
disposing of land	section 142(6)
education action zone (in Chapter III of Part I)	section 10(1)
exclude, exclusion (in relation to the exclusion of a child from a school)	section 64(4)
foundation (in relation to a foundation or voluntary school) (and having a foundation)	section 21(3)
foundation body	section 21(4)
foundation governor	paragraph 2 of Schedule 9
governing body	
(in Chapter III of Part I)	section 10(6)
(of a maintained school or of a school maintained by a local education authority) (in Chapter IV of Part II)	section 45(3)
grammar school (in Chapter II of Part III)	section 104(7)
group (in relation to a foundation body)	section 21(4)
individual schools budget (in Part II)	section 46(2)
infant class (in Chapter I of Part I)	section 4
land or other property held on trust, or by trustees, for the purposes of a school	section 21(3)(c)
local education authority (in relation to a school maintained, or proposed to be maintained, by such an authority)	section 22(8)
local schools budget (in Part II)	section 46(1)
maintain (in relation to a maintained school or a maintained nursery school)	section 22(8)
maintained school	
(generally)	section 20(7)
(in Chapter IV of Part II in a context referring to a local education authority)	section 45(3)
(in Chapter I of Part III)	section 84(6)
(in Chapter II of Part III)	section 99(5)
maintained nursery school	section 22(9)
member of the Inspectorate (in Chapter IV of Part I)	section 14(4)
minor authority	section 141
new school (in Chapter IV of Part II)	section 45(4)

<i>Expression</i>	<i>Relevant provision</i>
nursery education (in Part V)	section 117
ordinary teaching session (in Chapter I of Part I)	section 4
participating school (in Chapter III of Part I in relation to an education action zone)	section 10(6)
prescribed	section 142(1)
promoters (in Part II)	section 28(2)
qualified teacher (in Chapter I of Part I in relation to an infant class)	section 4
reception class	section 142(1)
regulations	section 142(1)
relevant age group	section 142(1)
relevant standard number (in Chapter I of Part III)	section 84(6)
right to a delegated budget (in Part II)	section 49(7)
Roman Catholic Church school	section 142(1)
scheme (in Part II in relation to a maintained school)	section 48(5)
school having a delegated budget (in Part II)	section 49(7)
school maintained by a local education authority	
(generally)	section 142(1)
(in Chapter IV of Part II)	section 45(3)
school opening date	section 44(9)
school organisation committee	section 24(4)
school requiring special measures (in Chapter IV of Part I)	section 14(4)
school which has a religious character (in Part II in relation to a foundation or voluntary school)	section 69(3)
school which has selective admission arrangements (in Chapter II of Part III)	section 104(2)
specified religion or religious denomination	section 142(3)
statutory provision	section 142(1)

*Final provisions***144 Transitional provisions etc**

- (1) Regulations may at any time make such incidental, consequential, transitional or supplementary provision as appears to the Secretary of State to be necessary or expedient for the general purposes, or any particular purposes, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for enabling any authority or body by whom any functions will become exercisable on the appointed day by virtue of any provision made by or under this Act to take before that day any steps (such as the establishment of committees or the undertaking of consultation) which are necessary or expedient in preparation for the exercise of those functions;
  - (b) for requiring any body—
    - (i) by whom any functions will cease to be exercisable at any time, or
    - (ii) who are required to be reconstituted as from any time,
 by virtue of any provision made by or under this Act to take before that time any steps (such as the provision of information, the furnishing of other assistance or the taking of any decision) which are necessary or expedient in preparation for the exercise of functions conferred on any authority or other body, by virtue of any such provision, as from that time or (as the case may be) in preparation for their reconstitution;
  - (c) for the making before the appointed day of arrangements for securing the satisfactory operation from that day of any such provision and for defraying the cost of any such arrangements;
  - (d) for prohibiting or restricting the taking of steps before the appointed day which, by virtue of any such provision, will cease to be capable of being taken as from that day;
  - (e) for enabling the determination under the regulations of matters pending immediately before the appointed day;
  - (f) for any provision of this Act which comes into force before—
    - (i) another such provision has come into force, or
    - (ii) anything falling to be done under another such provision (such as the approval of a school organisation plan) has been done,
 to have effect, until that other provision has come into force or (as the case may be) that thing has been done, with such modifications as are specified in the regulations;
  - (g) for amending, repealing or revoking (with or without savings) any statutory provision passed or made before the appointed day, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act.
- (3) Without prejudice to the generality of subsection (1) or any provision of subsection (2), regulations under subsection (1) may provide—
- (a) for any relevant provision to apply (with or without modification) to, or to any description of—
    - (i) schools maintained by a local education authority within the meaning of the Education Act 1996, or



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- (ii) grant-maintained or grant-maintained special schools within the meaning of that Act;
  - (b) for any provision so applied, or any provision of the regulations, to have effect in relation to schools despite anything in their articles or instruments of government;
  - (c) for any reference in this Act to the appointed day to have effect instead as a reference to such day as is specified in the regulations;
- and accordingly references to the appointed day in subsection (2) include, in relation to any purposes for which any provision made by virtue of paragraph (c) above has effect, references to any such other day as is mentioned in that paragraph.
- (4) In paragraph (a) of subsection (3) “relevant provision” means—
    - (a) (in relation to sub-paragraph (i) or (ii) of that paragraph) any provision of the Education Acts which is expressed to apply to, or to any description of, schools maintained by a local education authority within the meaning of this Act, or
    - (b) (in relation only to sub-paragraph (ii) of that paragraph) any provision of the Education Acts which is expressed to apply to, or to any description of, schools maintained by a local education authority within the meaning of the Education Act 1996;and in that paragraph and this subsection “school” includes a proposed school.
  - (5) The amendments that may be made under subsection (2)(g) shall be in addition (and without prejudice) to those made by any other provision of this Act.
  - (6) Nothing in this Act shall be read as prejudicing the generality of subsection (1).
  - (7) The transitional provisions and savings in Schedule 32 shall have effect.

#### **145 Short title, commencement and extent**

- (1) This Act may be cited as the School Standards and Framework Act 1998.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996.
- (3) Subject to subsections (4) and (5), this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions and for different purposes.
- (4) The following provisions come into force on the day on which this Act is passed—
  - sections 1 to 4;
  - sections 20 and 21;
  - section 36(3);
  - section 82;
  - sections 84 and 85;
  - section 130;
  - sections 138, 139, 141 to 144 and this section;
  - Schedule 2;
  - Parts I and III of Schedule 11;
  - paragraph 224 of Schedule 30 (and section 140(1) so far as relating thereto); and
  - Schedule 32.

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

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- (5) The following provisions come into force on the day on which this Act is passed, but for the purposes only of the preparation of instruments of government and the constitution of governing bodies and the exercise (in relation to those or any other matters) of any power to make regulations—  
sections 36(1) and (2) and 37(1) and (2); and  
Schedules 9, 10 and 12.
- (6) Subject to subsections (7) and (8), this Act extends to England and Wales only.
- (7) Section 130(2) extends to Scotland only; and this section extends also to Scotland.
- (8) The amendment or (subject to subsection (9)) repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland, and section 140 extends accordingly.
- (9) The entry in Schedule 31 relating to the Education (Scotland) Act 1980 extends to Scotland only.