



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### 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
  - (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

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- (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 <sup>M1</sup>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.

#### Subordinate Legislation Made

**P1** S. 20: power conferred by s. 20(7) exercised: 1.9.1999 appointed by [S.I. 1998/2083](#), [art. 2](#)

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

**C1** S. 20 extended (1.4.1999) by [S.I. 1999/704](#), [reg. 2\(4\)](#).

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### Marginal Citations

M1 1996 c. 56.

## 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
  - (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 <sup>M2</sup>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.

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- (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;
  - (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—

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- (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).

#### Marginal Citations

M2 1996 c. 56.

## 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;
  - (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—

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- (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 <sup>M3</sup>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 <sup>M4</sup>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 <sup>M5</sup>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 <sup>M6</sup>Charities Act 1993;
  - (b) “premises” includes a teacher’s dwelling-house.

#### Marginal Citations

- M3** 1993 c. 10.  
**M4** 1993 c. 10.  
**M5** 1993 c. 10.  
**M6** 1993 c. 10.

### *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.

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- (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.

#### Commencement Information

- II** S. 24 wholly in force at 1.4.1999; s. 24 not in force at Royal Assent see s. 145(3); s. 24(2)-(5) in force at 1.10.1998 by [S.I. 1998/2212](#), art. 2, [Sch 1](#), Pt. 1; s. 24 in force at 1.4.1999 in so far as not already in force by [S.I. 1999/1016](#), art. 2(1), [Sch. 1](#) (with arts. 3-6, [Sch. 4](#)).

## 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

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- (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
    - (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—



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- (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.

#### Commencement Information

- I2** S. 26 wholly in force at 1.4.1999; s. 26 not in force at Royal Assent see s. 145(3); s. 26(2)-(8) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1, Pt. I; s. 26 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

VALID FROM 28/07/2000

#### [<sup>F1</sup>26A Plans of local learning and skills councils.

- (1) In preparing a school organisation plan a local education authority in England shall have regard to the plans of any relevant local learning and skills council published under section 22 of the Learning and Skills Act 2000.
- (2) Subsection (3) applies if a school organisation plan prepared by a local education authority in England is being considered by the school organisation committee or by the adjudicator.
- (3) The committee or the adjudicator shall have regard to the plans of any relevant local learning and skills council published under section 22 of the Learning and Skills Act 2000.
- (4) A local learning and skills council is a relevant council if any of its area falls within the area of the local education authority concerned.]

#### Textual Amendments

- F1** Ss. 26A, 26B inserted (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and 1.1.2000 otherwise) by 2000 c. 21, s. 149, Sch. 9 para. 81; S.I. 2000/2559, art. 2(3), Sch. Pt. III; S.I. 2000/3230, art. 2, Sch.

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VALID FROM 28/07/2000

## [<sup>F2</sup>26B Plans of National Council.

- (1) In preparing a school organisation plan a local education authority in Wales shall have regard to the plans of the National Council for Education and Training for Wales published under section 43 of the Learning and Skills Act 2000.
- (2) Subsection (3) applies if a school organisation plan prepared by a local education authority in Wales is being considered by the school organisation committee or by the adjudicator.
- (3) The committee or the adjudicator shall have regard to the plans of the National Council for Education and Training for Wales published under section 43 of the Learning and Skills Act 2000.
- (4) In this section references to the school organisation committee are to the committee established by the authority under regulations made under section 27.
- (5) In this section references to the adjudicator are to—
  - (a) such person appointed as adjudicator under those regulations as may be determined in accordance with them, or
  - (b) such persons appointed as a panel of adjudicators under those regulations as may be so determined.]

### Textual Amendments

**F2** Ss. 26A, 26B inserted (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and 1.1.2001 otherwise) by 2000 c. 21, s. 149, **Sch. 9 para. 81**; S.I. 2000/1559, art. 2(3), **Sch. Pt. III**; S.I. 2000/3230, art. 2, **Sch.**

## 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;
  - (b) for disapplying in relation to Wales any such provision which would otherwise apply in relation to Wales only;

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- (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

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

C2 Pt. II Chapter II modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, Sch.

#### *Mainstream schools maintained by LEAs*

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

- (1) Where a local education authority propose—
- to establish a new community or foundation school, or
  - to make any prescribed alteration to a community school, or
  - 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—
- any persons (referred to in this Part as “promoters”) propose to establish a new foundation or voluntary school, or
  - 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—
- contain such information, and
  - be published in such manner,
- as may be prescribed.
- (4) Proposals under this section may if the relevant body or promoters think fit—
- specify an age below 10 years and six months and an age above 12 years, and
  - 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—

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- (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 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.

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

- C3** S. 28 amended (1.4.1999) by [S.I. 1999/125](#), [art. 2\(3\)](#).
- C4** S. 28 extended (10.3.1999) by [S.I. 1999/362](#), [reg. 6\(2\)\(3\)](#).
- C5** S. 28 applied (with modifications) (1.9.1999) by [S.I. 1999/2259](#), [regs. 5\(1\), 10](#), [Sch. 1](#).  
 S. 28 applied (with modifications) (1.9.1999) by [S.I. 1999/2259](#), [regs. 5\(2\), 10](#), [Sch. 2](#).  
 S. 28 applied (with modifications) (1.9.1999) (*temp.*) by [S.I. 1999/2633](#), [regs. 4, 5\(1\)](#), [Sch. 1](#).  
 S. 28 modified (1.9.1999) by [S.I. 1999/2633](#), [reg. 5\(2\)](#), [Sch. 2](#).
- C6** S. 28 modified (1.9.1999) by [S.I. 1999/2633](#), [reg. 5\(2\)](#), [Sch. 2](#).
- C7** S. 28; Power to modify conferred (prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 74\(2\)\(a\)](#) 216 (with [ss. 210\(8\), 214\(4\)](#))

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**Status:** Point in time view as at 01/09/1999. This version of this part contains provisions that are not valid for this point in time.  
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- C8** S. 28(3)(7)(8)(10)(11) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, **Sch. 1 Pt. I** Table 3 (as amended (W.) (1.2.2006) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2006 (S.I. 2006/173), regs. 1(1), **12**)
- C9** S. 28(3) applied (with modifications) (1.9.1999) by S.I. 1999/2213, reg. 15, **Sch.4**.  
s. 28(3): s. 28(3)(except para. (b)) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C10** S. 28(3)(5)(6)(8)(10)(11) applied (with modifications) (E.) (1.9.2000) by S.I. 2000/2195, art. 4(1), **Sch. 1**
- C11** S. 28(5) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, **Sch. 1 Pt. I** Table 1
- C12** S. 28(5) applied (with modifications) by S.I. 1999/2213, reg. 15, **Sch.4**  
s. 28(5) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C13** S. 28(6) applied (with modifications) by S.I. 1999/2213, reg. 15, **Sch.4**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/2213, reg. 15(2)(4), **Sch. 5 Pt. I para.1**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/2213, reg. 15(2)(4), **Sch. 5 Pt. I para. 2(a)**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, **Sch.**
- C14** S. 28(7) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C15** S. 28(10) applied (with modifications) (1.9.1999) by S.I. 1999/2213, reg. 15, **Sch.4**.  
s. 28(10) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**

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#### Commencement Information

- I3** S. 28 wholly in force at 1.9.1999; s. 28 not in force at Royal Assent see s. 145(3); s. 28(9) in force at 1.2.1999 by S.I. 1998/3198, art. 2(2), **Sch.**; s. 28(5)(10) in force at 1.4.1999 by S.I. 1999/1016, art. 2(1), **Sch. 1** (with arts. 3-6, **Sch. 4**); S. 28 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, **Schs. 5-7**).

## 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
  - (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.

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- (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.

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

**C16** S. 29(5) modified (1.9.1999) by [S.I. 1999/2213, reg. 15\(2\)\(4\)](#), [Sch. 5 Pt. 1 para. 2\(b\)](#).

**C17** S. 29(5) modified (1.9.1999) by [S.I. 1999/704, regs. 21, 22](#), [Sch.](#)

**Commencement Information**

**I4** S. 29 wholly in force at 1.9.1999; s. 29 not in force at Royal Assent see s. 145(3); s. 29(8) in force at 1.2.1999 by [S.I. 1998/3198, art. 2\(2\)](#), [Sch.](#); s. 29(4)(9) in force at 1.4.1999 by [S.I. 1999/1016, art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-6](#), [Sch. 4](#)); s. 29 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323, art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

**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 <sup>M7</sup>Education Act 1944 or an earlier Act,
- no such notice may be served without the consent of the Secretary of State.
- (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

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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.
- (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

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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.

#### Marginal Citations

M7 1944 c. 31.

### *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



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- (b) such information in connection with those proposals as may be prescribed, 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).

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

- C18** S. 31 extended (10.3.1999) by S.I. 1999/362, reg. 6(4).
- C19** S. 31 modified (prosp.) by Education Act 2002 (c. 32), ss. 74(1)(a), 216 (with ss. 210(8), 214(4))
- C20** S. 31: Power to modify conferred (prosp.) by Education Act 2002 (c. 32), ss. 74(2)(a), 216 (with ss. 210(8), 214(4))
- C21** S. 31(3) except paragraph (b) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
S. 31(3) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.
- C22** S. 31(4) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
S. 31(4) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.
- C23** S. 31(5) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.  
S. 31(5) modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, Sch.
- C24** S. 31(6) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.
- C25** S. 31(7) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
S. 31(7) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.
- C26** S. 31(9) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
S. 31(9) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.

#### Commencement Information

- I5** S. 31 wholly in force at 1.9.1999; s. 31 not in force at Royal Assent see s. 145(3); s. 31(4)(9) in force at 1.4.1999 by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4); s. 31 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### 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—
- the local education authority;
  - any other local education authority who would in his opinion be affected by the discontinuance of the school;
  - in the case of a foundation special school which has a foundation, the person who appoints the foundation governors; and

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- (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—
  - (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.

#### **Commencement Information**

- I6** S. 33 wholly in force at 1.9.1999; s. 33 not in force at Royal Assent see s. 145(3); s. 33(4) in force at 1.2.1999 by S.I. 1998/3198, art. 2(2), Sch.; s. 33 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

*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.

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### *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.

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

- C27** S. 36 extended (10.3.1999) by S.I. 1999/362, **reg. 30(1)(b)**  
S. 36 extended (10.3.1999) by S.I. 1999/362, **reg. 49(7)(b)**  
**C28** S. 36(1) applied (1.9.1999) by S.I. 1999/2262, **reg. 36(3)**.
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#### **Commencement Information**

- I7** S. 36 wholly in force at 1.9.1999; s. 36(3) in force at Royal Assent see s. 145; s. 36 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, Schs. 5-7).

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### *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.

#### **Commencement Information**

- 18** S. 37 wholly in force at 1.9.1999; s. 37(1)(2) in force for certain purposes at Royal Assent see s. 145(5); s. 37 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

### *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.

#### **Commencement Information**

- 19** S. 38 wholly in force at 1.9.1999; s. 38 not in force at Royal Assent see s. 145(3); s. 38(3) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1](#), [Pt. I](#); s. 38 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

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

- (1) The governing body of a maintained school shall in accordance with regulations—

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- (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,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.

#### Commencement Information

**I10** S. 39 partly in force; s. 39 not in force at Royal Assent see s. 145(3); s. 39(1) in force for certain purposes at 1.10.1998 by [S.I. 1998/2212, art. 2, Sch. 1, Pt. I](#); s. 39(2)(3) in force at 1.9.1999 by [S.I. 1999/2323, art. 2\(1\), Sch. 1](#) (with [arts. 3-5, Schs. 5-7](#)).

#### *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;

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- (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—
- (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.

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### Commencement Information

- III** S. 42 wholly in force at 1.9.1999; s. 42 not in force at Royal Assent see s. 145(3); s. 42(1)(2) in force for specified purpose at 1.4.1999 by S.I. 1999/1016, art. 2(1), **Sch. 1** (with arts. 3-6, **Sch. 4**); s. 41 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, **Schs. 5-7**).

## 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.
- (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;

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- (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.

#### **Commencement Information**

**I12** S. 43 wholly in force at 1.9.1999; s. 43 not in force at Royal Assent see. s. 145(3); s. 43(4) in force at 1.4.1999 by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4); s. 43 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### *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—
  - (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;



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- (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 <sup>M8</sup>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.

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

- C29** S. 44 applied (with modifications) (1.9.1999) by S.I. 1999/704, **reg. 13**.
- C30** S. 44 modified (temp.) (E.) (2.9.2002) by The Education Act 2002 (Transitional Provisions etc.) (England) Regulations 2002 (S.I. 2002/2113), **reg. 7**
- C31** S. 44(1) extended (1.9.1999) by S.I. 1999/2243, **reg. 5(1)**.  
S. 44(1) restricted (1.9.1999) by S.I. 1999/2243, **reg. 6(1)**.  
S. 44(1) extended (1.9.1999) by S.I. 1999/2262, **reg. 5(1)**.  
S. 44(1) amended (1.9.1999) by S.I. 1999/2262, **reg.7**.
- C32** S. 44(5) modified (20.11.1998) by S.I. 1998/2670, **reg.3(1)(2)**
- C33** S. 44(6) modified (20.11.1998) by S.I. 1998/2670, **reg.3(1)**

#### Commencement Information

- I13** S. 44 wholly in force at 1.9.1999; s. 44 not in force at Royal Assent see s. 145(3); s. 44(5)(6) in force at 1.10.1998 by S.I. 1998/2212, art. 2, **Sch. 1**, Pt. I; s. 44 in force at 1.9.1999, in so far as not already in force, by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, Schs. 5-7).

#### Marginal Citations

- M8** 1996 c. 56.

## CHAPTER IV

### FINANCING OF MAINTAINED SCHOOLS

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

- C34** Pt. 2 Ch. 4 (ss. 45-53) modified (20.11.1998) by S.I. 1998/2670, **reg. 3(1)(3)**

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### *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.
- (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).

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

C35 S. 45(3)(4) modified (20.11.1998) by S.I. 1998/2670, reg. 3(4)

VALID FROM 01/10/2002

#### **[<sup>F3</sup>45A Determination of specified budgets of LEA**

- (1) For the purposes of this Part, a local education authority’s “LEA 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.
- (2) For the purposes of this Part, a local education authority’s “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).
- (3) 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 schools budget for that year such planned expenditure by the authority

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in respect of that year as they may determine should be so deducted in accordance with regulations.

- (4) Regulations under subsection (3) may—
- (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority's schools budget;
  - (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely—
    - (i) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations, and
    - (ii) such other conditions as may be so specified or determined.
- (5) Before the end of January in any financial year, a local education authority shall—
- (a) determine the proposed amount of their schools budget for the following financial year, and
  - (b) give notice of their determination to the Secretary of State and to the governing body of every school maintained by the authority.]

#### Textual Amendments

- F3** S. 45A inserted (1.10.2002 for E., 4.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 41(1), 216(4)** (with **ss. 210(8), 214(4)**); [S.I. 2002/2439](#), **art. 3** (with **art. 4, Sch. para. 1**); [S.I. 2003/2961](#), **art. 5, Sch. Pt. II**

VALID FROM 01/10/2002

#### [<sup>F4</sup>45B Power of Secretary of State to set minimum schools budget for LEA

- (1) If it appears to the Secretary of State that, in all the circumstances, the amount proposed in a notice under section 45A(5) as a local education authority's schools budget for a financial year is inadequate, the Secretary of State may, within the period of fourteen days beginning with the day on which the notice was given, give the authority a notice under subsection (4) or (5).
- (2) If at the end of January in any financial year a local education authority have failed to give the Secretary of State a notice under section 45A(5) in relation to their schools budget for the following financial year, the Secretary of State may, at any time after the end of that January, give the authority a notice under subsection (4) or (5).
- (3) In this section and section 45C “the year under consideration” means the financial year to which the notice under section 45A(5) relates or, in a case falling within subsection (2), the financial year in relation to which such a notice ought to have been given.
- (4) A notice under this subsection is a notice determining the minimum amount of the authority's schools budget for the year under consideration.
- (5) A notice under this subsection is a notice which—

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- (a) specifies the amount which the Secretary of State would have determined as the minimum amount of the authority's schools budget for the year under consideration if he had acted under subsection (4), and
  - (b) states the Secretary of State's intention to determine the minimum amount of the authority's schools budget for the following financial year.
- (6) A notice under subsection (4) or (5) must include a statement of the Secretary of State's reasons for giving the notice.
- (7) The Secretary of State may act under different subsections in relation to different authorities.

#### Textual Amendments

- F4** Ss. 45B, 45C inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c.32\)](#), **ss. 42, 216** (with **ss. 210(8), 214(4)**); [S.I. 2002/2439](#), **art. 3** (with [Sch.](#))

VALID FROM 01/10/2002

#### **45C Effect of notice under section 45B(4)**

- (1) The local education authority may, within the period of fourteen days beginning with the date of a notice under section 45B(4), give the Secretary of State notice of their objection to his determination, giving reasons for their objection.
- (2) Where the local education authority have given notice of their objection under subsection (1), the notice under section 45B(4) shall cease to have effect, but the Secretary of State may by order prescribe the minimum amount of the authority's schools budget for the year under consideration.
- (3) The amount prescribed under subsection (2) must not be greater than the amount specified in the notice under section 45B(4).
- (4) An order under subsection (2) may relate to two or more authorities.
- (5) No order under subsection (2) may be made in relation to one or more authorities in England unless a draft of the order has been laid before and approved by a resolution of the House of Commons.
- (6) Where—
  - (a) a notice under section 45B(4) has been given to a local education authority and no notice of objection has been given during the period specified in subsection (1), or
  - (b) an order has been made under subsection (2),
 the local education authority shall determine a schools budget for the year under consideration which is not less than the amount specified in relation to the authority in the notice or order.]

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### Textual Amendments

- F4** Ss. 45B, 45C inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c.32\)](#), [ss. 42, 216](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/2439](#), [art. 3](#) (with [Sch.](#))

## 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—
  - (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;

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- (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.

VALID FROM 02/09/2002

### *F<sup>S</sup>Schools forums*

#### **Textual Amendments**

- F5** Cross-heading and s. 47A inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002](#) (c. 32), [ss. 43, 216](#) (with [ss. 210\(8\), 214\(4\)](#)); S.I. 2002/2002, [art. 4](#)

#### **47A Schools forums**

- (1) Every local education authority shall in accordance with regulations establish for their area before such date as may be prescribed a body, to be known as a schools forum, representing the governing bodies and head teachers of schools maintained by the authority and, if the authority so determine, also representing such bodies as the authority may from time to time in accordance with regulations determine.
- (2) Subsection (1) does not apply in relation to the Common Council of the City of London or the Council of the Isles of Scilly.
- (3) The purpose of a schools forum is to advise the relevant authority on such matters relating to the authority's schools budget as may be prescribed by regulations under section 45A(3) or by regulations under this subsection.
- (4) Regulations under section 45A(3) or under subsection (3) may include provision requiring a relevant authority to have regard to advice given by their schools forum, or requiring a relevant authority to consult their schools forum in relation to prescribed matters or before taking prescribed decisions.

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- (5) Regulations may make provision as to the constitution, meetings and proceedings of a schools forum.
- (6) Regulations made by virtue of subsection (5) may include provision enabling the Secretary of State in prescribed circumstances to remove from membership of a schools forum any non-schools member.
- (7) Regulations may make provision with respect to expenses of a schools forum.
- (8) Except as provided by regulations, the expenses of a schools forum shall be defrayed by the relevant authority.
- (9) In this section—
  - “non-schools member”, in relation to a schools forum, means a member other than a schools member;
  - “relevant authority”, in relation to a schools forum, means the local education authority by whom the forum is established;
  - “schools member”, in relation to a schools forum, means a member elected to represent governing bodies or head teachers of schools maintained by the relevant authority.]

#### *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;
  - (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.

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- (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.

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

**C36** S. 48 excluded (10.3.1999) by [S.I. 1999/362](#), [reg. 6\(5\)](#).

*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—
- as from a date earlier than the school opening date if the local education authority so determine; or
  - as from a later date if the authority so determine with the written approval of the Secretary of State; or
  - 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—
- section 50 (right of governing body to spend budget share where school has a delegated budget),
  - paragraph 4 of Schedule 15 (power of governing body to spend amounts out of budget share where delegation of budget suspended),
  - section 489(2) of the <sup>M9</sup>Education Act 1996 (education standards grants), and
  - 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)—
- shall remain the property of the authority until spent by the governing body or the head teacher; and
  - 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—
- by way of repayment of the principal of, or interest on, a loan, or
  - (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—



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- (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.

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

C37 S. 49(6)(b) modified (20.11.1998) by S.I. 1998/2670, reg. 3(5)

**Marginal Citations**

M9 1996 c. 56.

**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)).
- (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.

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- (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).

#### Commencement Information

- I14** S. 50 wholly in force; s. 50 not in force at Royal Assent see s. 145(3); s. 50(3) and (4) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I, Sch. 2 Pt. I para. 1 and s. 50 in force at 1.4.1999 (so far as it is not already in force) by Sch. 1 Pt. IV of the same S.I.

### *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.

VALID FROM 02/09/2002

### *[<sup>F6</sup>Expenditure incurred for community purposes*

#### Textual Amendments

- F6** Cross-heading and s. 51A inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002](#) (c. 32), ss. 40, 216, [Sch. 3 para. 4](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#)

#### **51A Expenditure incurred for community purposes**

- (1) Expenditure incurred by the governing body of a maintained school in the exercise of the power conferred by section 27 of the Education Act 2002 (power of governing body to provide community facilities etc.) shall, as against third parties, be treated as part of the expenses of maintaining the school under section 22, but if met by the local education authority may be recovered by them from the governing body.
- (2) Except as provided by regulations under section 50(3)(b), no expenditure incurred by the governing body of a maintained school in the exercise of the power referred to in subsection (1) shall be met from the school's budget share for any financial year.
- (3) Subsection (2) applies at a time when the school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15, as well as a time when it does have a delegated budget.]

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## 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 <sup>M10</sup>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.

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- (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.

#### Marginal Citations

**M10** 1998 c. 18.

## 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.

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

- C38** S. 54(3)-(5) applied (1.9.1999) by [S.I. 1999/2243](#), **reg. 51(2)**.  
S. 54(3)-(5) applied (1.9.1999) by [S.I. 1999/2262](#), **regs. 48, 51(2)**.
- C39** S. 54(4) modified (1.9.1999) by [S.I. 1999/2243](#), **reg. 51(4)**.  
S. 54(4) applied (with modifications) (1.9.1999) by [S.I. 1999/2262](#), **regs. 48, 51(4)**.
- C40** S. 54(4)(5) modified (1.9.1999) by [S.I. 1999/2243](#), **reg. 52(3)**

#### **Commencement Information**

- I15** S. 54 wholly in force at 1.9.1999; s. 54 not in force at Royal Assent see s. 145(3); s. 54 in force for certain purposes at 1.2.1999 by [S.I. 1999/120](#), **art. 2(1)**, **Sch. 1**; s. 54 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), **art. 2(1)**, **Sch. 1** (with **arts. 3-5**, **Schs. 5-7**).

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## 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.

### Modifications etc. (not altering text)

- C41** S. 55(3)-(7) applied (1.9.1999) by [S.I. 1999/2243](#), [reg. 52\(2\)](#).  
S. 55(3)-(7) applied (1.9.1999) by [S.I. 1999/2262](#), [regs. 48, 52\(2\)](#).
- C42** S. 55(4)(5) modified (1.9.1999) by [S.I. 1999/2243](#), [reg. 52\(3\)](#).  
S. 55(4)(5) modified (1.9.1999) by [S.I. 1999/2243](#), [reg. 52\(4\)](#).  
S. 55(4)(5) applied (with modifications) (1.9.1999) by [S.I. 1999/2262](#), [regs. 48, 52\(3\)](#).  
S. 55(4)(5) applied (with modifications) (1.9.1999) by [S.I. 1999/2262](#), [regs. 48, 52\(4\)](#).

### Commencement Information

- I16** S. 55 wholly in force at 1.9.1999; s. 55 not in force at Royal Assent see s. 145(3); s. 55 in force for certain purposes at 1.2.1999 by [S.I. 1999/120](#), [art. 2\(1\)](#), [Sch. 1](#); s. 55 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-5, Schs. 5-7).

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## 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.
- (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.

### Modifications etc. (not altering text)

- C43** S. 56 applied (1.9.1999) by [S.I. 1999/2243, reg. 49\(2\)](#).  
 S. 56 applied (1.9.1999) by [S.I. 1999/2243, reg. 50\(2\)](#).  
 S. 56 applied (with modifications) (1.9.1999) by [S.I. 1999/2262, regs. 48, 49\(2\)](#).  
 S. 56 applied (with modifications) (1.9.1999) by [S.I. 1999/2262, regs. 48, 50\(2\)](#).

## 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

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- (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 <sup>M11</sup>Employment Rights Act 1996.
- (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.

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

**C44** S. 57 modified (temp.) (1.4.1999) by [S.I. 1999/638, reg.6](#).

**C45** S. 57(3)(4)(5) excluded (1.4.1999) by [S.I. 1999/638, reg.7](#).

**C46** S. 57(3) excluded (1.4.1999) by [S.I. 1999/638, reg.8](#).

**Marginal Citations**

**M11** 1996 c. 18.

*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

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- 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).

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

- C47** S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, reg. 49(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, reg. 50(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, reg. 51(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, reg. 52(3).  
 S. 58(2)-(6)(9) applied (with modifications) (1.9.1999) by S.I. 1999/2262, regs. 48, 49(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, regs. 48, 50(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, regs. 48, 51(3).  
 S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, regs. 48, 52(3).
- C48** S. 58(7) applied (1.9.1999) by S.I. 1999/2243, reg. 52(4).  
 S. 58(7) applied (1.9.1999) by S.I. 1999/2262, regs. 48, 52(4).



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### *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.

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

- C49** S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 49(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 50(4)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 51(2)**.  
S. 59 applied with modifications (1.9.1999) by S.I. 1999/2243, **reg. 52(5)**.  
S. 59 applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 49(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(4)**.  
S. 59 applied with modifications (1.9.1999) by S.I. 1999/2262, **regs. 48, 51(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(4)**.
- C50** S. 59(2)-(4) modified (1.9.1999) by S.I. 1999/2243, **reg. 50(5)**.  
S. 59(2)-(4) applied (with modifications) by S.I. 1999/2243, **reg. 52(6)**.  
S. 59(2)-(4) applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(5)**.  
S. 59(2)-(4) applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(6)**.

#### **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.

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- (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—
    - (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 <sup>M12</sup>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).

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

- C51** S. 60 applied (1.9.1999) by S.I. 1999/2243, **reg. 49(3)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2243, **reg. 50(5)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2243, **reg. 51(3)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2243, **reg. 52(6)**.  
 S. 60 applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 49(3)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(5)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 51(3)**.  
 S. 60 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(6)**.

#### Marginal Citations

- M12** 1996 c. 56.

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**Status:** Point in time view as at 01/09/1999. This version of this part contains provisions that are not valid for this point in time.  
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*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—
  - (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.

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

**C52** S. 61 applied with modifications (1.9.1999) by S.I. 1999/2262, **reg. 59**.

**C53** S. 61 extended (with modifications) (1.9.1999) by S.I. 1999/2243, **reg. 59**.

**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—

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- (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 <sup>M13</sup>Education Act 1996 (registration of pupils).

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

**C54** S. 63 extended (*temp.*) (16.2.1999) by [S.I. 1999/129](#), **reg.2**.

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**Marginal Citations**

**M13** 1996 c. 56.

*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).

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

**C55** Ss. 64-68 restricted (13.8.1999) by [S.I. 1999/2323](#), **art. 4**, **Sch. 6**, **para. 1**

**C56** S. 64(2)(3): Power to apply (with modifications) conferred (24.7.2002) by [Education Act 2002 \(c. 32\)](#), **ss. 52(8)(9)**, **216** (with [ss. 210\(8\)](#), [214\(4\)](#))

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- C57** S. 64(2)(3): Power to apply (with modifications) conferred (24.7.2002) by [Education Act 2002 \(c. 32\)](#), [ss. 52\(8\)\(9\), 216](#) (with [ss. 210\(8\), 214\(4\)](#))
- C58** S. 64(4) extended (16.6.1999) by [S.I. 1999/1439, reg. 13\(2\)](#).

## 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.

### Modifications etc. (not altering text)

- C59** Ss. 64-68 restricted (13.8.1999) by [S.I. 1999/2323, art. 4, Sch. 6 para. 1](#)

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**C60** Ss. 65-67: Power to apply (with modifications) conferred (24.7.2002) by [Education Act 2002 \(c. 32\)](#), [ss. 52\(8\)\(9\), 216](#) (with [ss. 210\(8\), 214\(4\)](#))

## **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

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- (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.

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

**C61** Ss. 64-68 restricted (13.8.1999) by [S.I. 1999/2323](#), [art. 4](#), [Sch. 6 para. 1](#)

**C62** Ss. 65-67: Power to apply (with modifications) conferred (24.7.2002) by [Education Act 2002 \(c. 32\)](#), [ss. 52\(8\)\(9\)](#), 216 (with [ss. 210\(8\)](#), [214\(4\)](#))

**Commencement Information**

**I17** S. 66 wholly in force at 1.9.1999; s. 66 not in force at Royal Assent see s. 145(3); s. 66(8) in force at 1.12.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. II](#); s. 66 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

**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.

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

**C63** Ss. 64-68 restricted (13.8.1999) by [S.I. 1999/2323](#), [art. 4](#), [Sch. 6 para. 1](#)

**C64** Ss. 65-67: Power to apply (with modifications) conferred (24.7.2002) by [Education Act 2002 \(c. 32\)](#), [ss. 52\(8\)\(9\)](#), 216 (with [ss. 210\(8\)](#), [214\(4\)](#))

**Commencement Information**

**I18** S. 67 wholly in force at 1.9.1999; s. 67 not in force at Royal Assent see s. 145(3); s. 67(2) in force for specified purpose at 1.4.1999 by [S.I. 1999/1016](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-6](#), [Sch. 4](#)); s. 67 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).



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## **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.

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

**C65** Ss. 64-68 restricted (13.8.1999) by [S.I. 1999/2323, art. 4, Sch. 6 para. 1](#)

## **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,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 <sup>MI4</sup>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—

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- (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.

#### Commencement Information

**I19** S. 69 wholly in force at 1.9.1999; s. 69 not in force at Royal Assent see s. 145(3); s. 69(2)-(5) in force at 1.10.1998 by 1998/2212, art. 2, Sch. 1, Pt. I; s. 69 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, Schs. 5-7).

#### Marginal Citations

**M14** 1996 c. 56.

### *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 <sup>M15</sup>Education Act 1996, and

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- (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.
- (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.

#### **Commencement Information**

**I20** S. 71 wholly in force at 1.9.1999; s. 71 not in force at Royal Assent see s. 145(3); s. 71(7) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1](#), Pt. I; s. 71 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

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### Marginal Citations

M15 1996 c. 56.

## 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
  - (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.

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- (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.
- (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;

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“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 <sup>M16</sup>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.

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

**C66** S. 73 excluded (10.3.1999) by [S.I. 1999/362](#), [reg.56](#).

**Marginal Citations**

**M16** 1996 c. 56.

**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).

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### *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 <sup>M17</sup>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;

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“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 <sup>M18</sup>Education Act 1996.
- (9) Nothing in this section applies in relation to Wales.

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

- C67** S. 77(1) restricted (28.7.2000) by 2000 c. 21, s. 131, **Sch. 8 para. 9(3)** (with s. 150)
- C68** S. 77(1) excluded (26.7.2002) by Education Act 1996 (c. 56), **Sch. 35A para. 10(4)** (as inserted by Education Act 2002 (c. 32), ss. 65, 216, **Sch. 7 Pt. 1 para. 1** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**)
- C69** S. 77 modified (*temp.*) (1.2.1999) by S.I. 1999/1, **reg.2**

**Commencement Information**

- I21** S. 77 wholly in force; s. 77 not in force at Royal Assent see s. 145(3); s. 77 except subsection (2)(b) in force at 1.10.1998 by S.I. 1998/2212, **art. 2, Sch. 1 Pt. I**; s. 77(2)(b) in force at 1.2.1999 by S.I. 1998/3198, **art. 2(2), Sch.**

**Marginal Citations**

- M17** 1972 c. 70.  
**M18** 1996 c. 56.

*Rating*

**78 Rating of maintained schools.**

For the purposes of Part III of the <sup>M19</sup>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.

**Marginal Citations**

- M19** 1988 c. 41.



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### *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 <sup>M20</sup>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 <sup>M21</sup>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.

#### **Marginal Citations**

- M20** 1891 c. 39.  
**M21** 1988 c. 40.

### *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
  - (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.

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- (3) This section shall not apply to part-time education provided under a partnership arrangement to which section 60A of the <sup>M22</sup>Further and Higher Education Act 1992 (as inserted by section 125(4) of this Act) applies.

#### Marginal Citations

M22 1992 c. 13.

### *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.

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

C70 S. 81(2) modified (*temp.*) (1.4.1999) by S.I. 1999/638, reg. 9.

### *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.

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