



Education Act 2002

2002 CHAPTER 32

PART 1 **E+W**

PROVISION FOR NEW LEGAL FRAMEWORKS

CHAPTER 3 **E+W**

POWERS TO FORM COMPANIES ETC

- 11 Powers of governing bodies to form or invest in companies to provide services etc. **E+W****
- (1) The governing body of a maintained school may form, or participate in forming, companies—
- (a) to provide services or facilities for any schools,
 - (b) to exercise relevant [^{F1}local authority] functions, or
 - (c) to make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons.
- (2) The governing body of a maintained school may, with a view to securing or facilitating—
- (a) the provision by a company of services or facilities for any schools,
 - (b) the exercise by a company of relevant [^{F1}local authority] functions, or
 - (c) the making by any person of arrangements of the kind referred to in subsection (1)(c),
- invest in the company which is to provide the services or facilities or exercise the functions or by which the arrangements are to be made or facilitated.
- (3) The governing body of a maintained school may form, or participate in forming, companies to purchase services or facilities for that school and other participating schools.

Changes to legislation: *Education Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (4) The governing body of a maintained school may, with a view to securing or facilitating the purchase by a company of services or facilities for that school and other participating schools, become a member of the company.
- (5) The governing body of a maintained school may provide staff to any company in relation to which they have exercised a power conferred by any of subsections (1) to (4).
- (6) Subsections (1) to (4) have effect subject to section 12.
- (7) In exercising the power conferred by subsection (5) the governing body of a maintained school shall have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (8) This section is without prejudice to any powers of the governing body of a maintained school exercisable otherwise than by virtue of this section.
- (9) In this section and section 12—
- “company” means a company registered under ^[F2]the Companies Act 2006] as a company limited by shares or a company limited by guarantee;
- “relevant ^[F1]local authority] functions”, in relation to a company, means ^[F3]the education functions] of any ^[F1]local authority][^[F4]that are or may become] exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment;
- “facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus;
- “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;
- “participating school”, in relation to a company, means a school whose governing body is, or is to be, a member of the company.
- (10) References in this section and section 12 to investing in a company include references to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**
- F2** Words in s. 11(9) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), **art. 1(2), Sch. 1 para. 198(2)** (with **art. 10**)
- F3** Words in s. 11(9) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(4)(a)**
- F4** Words in s. 11(9) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(4)(b)**

Commencement Information

- I1** S. 11 partly in force; s. 11 not in force at Royal Assent, see s. 216; s. 11 in force for E. at 20.1.2003 by [S.I. 2002/2952](#), **art. 2** (with savings and transitional provisions in [Sch.](#))
- I2** S. 11 in force at 20.1.2003 except in relation to W. by [S.I. 2002/2952](#), **art. 2**

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12 Limits on powers conferred by section 11 **E+W**

- (1) The governing body of a maintained school may not exercise any power conferred by any of subsections (1) to (4) of section 11 except—
 - (a) with the consent of the [F1local authority], and
 - (b) at a time when the school has a delegated budget (within the meaning of Part 2 of the School Standards and Framework Act 1998 (c. 31)).
- (2) A governing body—
 - (a) may not exercise any of those powers in relation to a company unless the company satisfies any applicable requirements of regulations under subsection (3), and
 - (b) may not, by virtue of section 11, remain a member of a company at any time when the company fails to satisfy any such requirements.
- (3) Regulations—
 - (a) shall provide that, except in such cases as may be prescribed, the company must be prohibited by its constitution from admitting to its membership any person who is not of a prescribed description, and
 - (b) may impose requirements with respect to—
 - (i) the constitution of the company, and
 - (ii) any other matter connected with the company’s affairs.
- (4) Without prejudice to the generality of paragraph (b) of subsection (3), regulations under that paragraph may require that the company be prohibited by its constitution from borrowing money, except with the consent of a prescribed person.
- (5) Regulations shall—
 - (a) provide that where one or more governing bodies have invested in a company by virtue of section 11, a [F1local authority] shall be designated as the supervising authority for the company,
 - (b) specify the persons by whom and the manner in which the power of designation is, or is in specified circumstances, exercisable,
 - (c) make provision about the duties of a [F1local authority] who are for the time being designated as the supervising authority for a company.
- (6) Regulations may also—
 - (a) require that where a [F1local authority] are for the time being designated as the supervising authority for a company the company shall provide prescribed information relating to its financial affairs to them at such times and in such manner as may be prescribed,
 - (b) provide that in prescribed circumstances a [F1local authority] who are for the time being so designated may direct any participating governing body to cease to be a member of the company or to take any other prescribed action in relation to the company, and
 - (c) prescribe the procedure for making such a direction.
- (7) In subsection (6)(b) “participating governing body”, in relation to a company, means any governing body of a maintained school who are a member of the company.
- (8) Regulations may restrict the circumstances in which a [F1local authority] may refuse to give any consent applied for under subsection (1).

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Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

Commencement Information

- I3** S. 12 partly in force; s. 12 not in force at Royal Assent, see s. 216; s. 12 in force for E. at 20.1.2003 by [S.I. 2002/2952](#), **art. 2** (with savings and transitional provisions in [Sch.](#))
- I4** S. 12 in force at 20.1.2003 except in relation to W. by [S.I. 2002/2952](#), **art. 2**

13 General powers of Secretary of State in relation to companies E+W

- (1) The Secretary of State may, if he considers it expedient to do so for purposes connected with any function of his relating to education—
- (a) form, or participate in forming, companies to carry on any activities which he considers likely to secure or facilitate the achievement of those purposes, or
 - (b) invest in any company which is to carry on such activities.
- (2) In this section “education” includes—
- (a) vocational training (including the preparation of young people for employment in general), and
 - (b) social and physical training (including the promotion of the development of young children),
- but does not include higher education.
- (3) In this section “company” means a company [^{F5}as defined in section 1(1) of the Companies Act 2006].
- (4) The reference in subsection (1) to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.
- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.

Textual Amendments

- F5** Words in s. 13(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), **art. 1(2), Sch. 1 para. 198(3)** (with [art. 10](#))

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1 by [S.I. 2004/571 Sch.](#)
- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1A and 2 by [S.I. 2005/2570 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 27(1A) inserted by [2010 c. 26 s. 4\(1\)](#)
- s. 29(2A)-(2D) inserted by [2009 c. 22 s. 260\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 250 omitted (1.9.2012) by virtue of 2011 c. 21, s. 29(9)(d); [S.I. 2012/1087](#), art. 3)
- s. 29B inserted by [2008 c. 25 s. 157](#)
- s. 8585A substituted for s. 85 by [2006 c. 40 s. 74\(1\)](#)
- s. 85A amendment to earlier affecting provision 2006 c. 40 s. 74(1) by [2011 c. 21 s. 31\(2\)](#)
- s. 85A(5) words substituted by [2009 c. 22 Sch. 12 para. 34](#)
- s. 86(1) s. 86 renumbered as s. 86(1) by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 86(2) inserted by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 88(2)-(7) inserted by [2006 c. 40 s. 74\(3\)](#)
- s. 88(7) repealed by [S.I. 2010/1080 Sch. 1 para. 45Sch. 2 Pt. 1](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 88(2)-(7) by 2006 c. 40, s 74(3) was repealed without ever being brought into force.)
- s. 142(9)(b) words substituted by [S.I. 2010/1158 Sch. 2 para. 11\(10\)\(b\)](#)
- s. 210A inserted by [2008 c. 25 Sch. 1 para. 79](#)