
Status: Point in time view as at 01/09/2003. This version of this chapter contains provisions that are not valid for this point in time.

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Education Act 2002

2002 CHAPTER 32

PART 3

MAINTAINED SCHOOLS

CHAPTER 1

GOVERNMENT OF MAINTAINED SCHOOLS

19 Governing bodies

- (1) Each maintained school shall have a governing body, which shall be a body corporate constituted in accordance with regulations.
- (2) Regulations shall provide for a governing body to consist of—
 - (a) persons elected or appointed as parent governors,
 - (b) persons elected or appointed as staff governors,
 - (c) persons appointed as local education authority governors,
 - (d) except in the case of a voluntary aided school, persons appointed as community governors,
 - (e) in the case of a foundation school, a foundation special school or a voluntary school, persons appointed as foundation governors or partnership governors, and
 - (f) such other persons as may be prescribed.
- (3) Regulations may make provision as to—
 - (a) the number of governors, or of governors falling within any category,
 - (b) the person or persons by whom, and the manner in which, governors are to be elected or appointed,
 - (c) eligibility for election or appointment as governors of any category, or for voting in an election of such governors,
 - (d) the term of office of governors,

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- (e) resignation or removal from office of governors,
 - (f) the payment of allowances to governors,
 - (g) meetings and proceedings of governing bodies,
 - (h) the election by the governors of a chairman and vice chairman of the governing body,
 - (i) the establishment by a governing body of committees,
 - (j) the appointment of persons other than governors to serve on committees of governing bodies,
 - (k) the delegation of functions by governing bodies, and
 - (l) other matters relating to the constitution or procedure of governing bodies.
- (4) Regulations made by virtue of subsection (3)(a) must secure that the majority of the governors of a voluntary aided school are persons appointed as foundation governors.
- (5) Subsection (3)(k) has effect subject to the provisions of any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities' financial schemes) which relates to the school.
- (6) Schedule 1 (which contains general provisions relating to the governing body as a body corporate) shall have effect.
- (7) In discharging any function conferred by regulations under this section, a local education authority or the governing body of a maintained school shall have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
 - (b) in relation to Wales, by the National Assembly for Wales.
- (8) Subsection (1) has effect subject to section 24; and regulations under this section may include provision with respect to the governing bodies of federations.

Commencement Information

- I1** S. 19(6) in force at 1.10.2002 for E. by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))
- I2** S. 19(1) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#) (with [Sch. para. 4](#))
- I3** S. 19(2)-(5)(7) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124](#), [art. 2](#)
- I4** S. 19(6) in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)
- I5** S. 19(8) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 4](#)
- I6** S. 19(8) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

20 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) Regulations shall make provision with respect to the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments.

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- (3) Regulations under subsection (2) may require any person responsible for the making, review or variation of an instrument of government to 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.
- (4) Subsection (1) has effect subject to section 24; and regulations under subsection (2) may include provision with respect to instruments of government for federations.
- (5) 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

- I7** S. 20(1)(5) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I8** S. 20(2)(3) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)
- I9** S. 20(4) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124, art. 4](#)
- I10** S. 20(4) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667, art. 4](#)

21 General responsibility 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 in relation to the conduct of a maintained school (whether generally or with respect to particular matters) of—
 - (i) the local education authority,
 - (ii) the governing body, and
 - (iii) the head teacher, and
 - (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

- I11** S. 21(1)(2)(4) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I12** S. 21(3) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)

22 Training and support of governors

The local education authority shall—

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- (a) (to the extent that they are not otherwise required to secure the provision of such information) secure that every governor is provided, free of charge, with such information as they consider appropriate in connection with the discharge of his functions as governor, and
- (b) secure that there is made available to every governor, free of charge, such training as they consider necessary for the effective discharge of those functions.

Commencement Information

I13 S. 22 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

23 Clerk to the governing body

Regulations may make provision—

- (a) requiring the appointment of a clerk to the governing body of a maintained school and authorising or requiring the appointment of clerks to committees of the governing body;
- (b) prescribing the body by whom any such appointment is to be made and any restrictions or other requirements relating to any such appointment;
- (c) as to the dismissal of any such clerk and the procedure to be followed in connection with his dismissal;
- (d) authorising the governing body or a committee of the governing body, where the clerk fails to attend a meeting of theirs, to appoint one of their number to act as clerk for the purposes of the meeting.

Commencement Information

I14 S. 23 in force at 1.3.2003 except in relation to W. by [S.I. 2003/124](#), [art. 2](#)

24 Federations of schools

- (1) In prescribed cases, the governing bodies—
 - (a) of two or more maintained schools,
 - (b) of an existing federation and of one or more maintained schools, or
 - (c) of two or more existing federations,
 may, after complying with prescribed conditions and in accordance with prescribed procedure, provide for their respective schools to be federated for the purposes of this Chapter.
- (2) In this Chapter “federation” means a group of schools that are federated by virtue of this section, and “federated school” means a school forming part of a federation.
- (3) Where any schools are federated by virtue of this section, they shall—
 - (a) have a single governing body constituted under a single instrument of government, and
 - (b) in prescribed cases, be treated as a single school for the purposes of such enactments as may be prescribed, other than any enactment contained in Chapter 2 of Part 2 of the School Standards and Framework Act 1998 (c. 31)

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(establishment, alteration or discontinuance of schools) or in Part 3 of that Act (school admissions).

- (4) Regulations may make provision—
- (a) as to the dissolution of governing bodies on the formation of a federation,
 - (b) enabling the governing body of a federation to continue in existence as a body corporate when one or more schools join or leave the federation,
 - (c) as to the circumstances in which and manner in which a federation may be dissolved, or one or more schools may leave a federation,
 - (d) enabling the governing body of a federation that is dissolved to be replaced either by governing bodies for each of the constituent schools or by governing bodies which include the governing body of a new federation,
 - (e) as to the transition from one governing body to another,
 - (f) as to the transfer of property, rights and liabilities between governing bodies, or between local education authorities and governing bodies, and
 - (g) as to such other matters relating to federations, federated schools or the formation or dissolution of federations as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (5) Regulations made by virtue of subsection (4)(f) in relation to the transfer of property, rights and liabilities may—
- (a) provide for prescribed matters to be determined by the Secretary of State or the National Assembly for Wales,
 - (b) apply with modifications any provision of Schedule 10 to the Education Reform Act 1988 (c. 40) (supplementary provisions with respect to transfers under that Act), or
 - (c) make provision equivalent to that made by any provision of that Schedule.
- (6) In any enactment—
- (a) any reference to the governing body or governors of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation, and
 - (b) any reference to the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation.

Commencement Information

- I15** S. 24(1) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124, art. 4](#)
- I16** S. 24(1) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I17** S. 24(2)-(6) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

25 Federations: supplementary provisions

- (1) Regulations may make provision modifying any provision contained in—
- (a) Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (c. 31) (intervention in schools causing concern), or
 - (b) sections 49 to 51 of, and Schedule 15 to, that Act (financial delegation),
- in the application of the provision to federated schools or their governing bodies.

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- (2) The modifications that may be made by virtue of subsection (1) include, in particular, modifications—
- (a) enabling powers conferred by the provisions referred to in that subsection to be exercised in relation to all the schools in a federation even though the circumstances by reference to which the powers are exercisable exist only in relation to one or more of those schools, and
 - (b) requiring the apportionment of any costs or expenses incurred by the governing body of a federation.
- (3) If regulations made by virtue of section 24 allow the formation of a federation comprising schools within different categories, the regulations may make provision modifying any enactment which relates to schools within a particular category, or to the governing bodies of schools within a particular category, in the application of the enactment to schools forming part of such a federation or to the governing bodies of such federations.
- (4) In subsection (3) references to categories of maintained schools are references to the categories set out in section 20(1) of the School Standards and Framework Act 1998.

Commencement Information

I18 S. 25 in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

26 Collaboration between schools

Regulations may—

- (a) enable the governing bodies of two or more maintained schools to arrange for any of their functions to be discharged jointly or by a joint committee of theirs,
- (b) provide for the appointment by two or more governing bodies of a joint committee of those governing bodies for the purposes of discharging any functions in pursuance of any such arrangements, and
- (c) provide that any enactment relating to those functions or the governing bodies by whom they are to be discharged is to have effect subject to all necessary modifications in its application in relation to those functions and the governing bodies by whom they are to be discharged.

Commencement Information

I19 S. 26 in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)

27 Power of governing body to provide community facilities etc.

- (1) The governing body of a maintained school shall have power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of—
- (a) pupils at the school or their families, or
 - (b) people who live or work in the locality in which the school is situated.
- (2) The power under subsection (1) includes, in particular, power for a governing body to—
- (a) incur expenditure,

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- (b) enter into arrangements or agreements with any person,
 - (c) co-operate with, or facilitate or co-ordinate the activities of, any person, and
 - (d) provide staff, goods, services and accommodation to any person.
- (3) Subject to the provisions of Chapter 3 of Part 6 of the Education Act 1996 (c. 56) (charges in connection with education), a governing body may charge for any services or facilities provided under this section.
- (4) This section has effect subject to section 28.

Modifications etc. (not altering text)

- C1** S. 27 modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 3(1)**; s. 27 modified (E.) (temp. from 1.10.2002) by [S.I. 2002/2316](#), **reg. 3(1)**
- C2** S. 27 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), **regs. 1, 31**

Commencement Information

- I20** S. 27 partly in force; s. 27 not in force at Royal Assent, see s. 216; s. 27 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), **art. 4** (as amended by [S.I. 2002/2018](#), **arts. 2-4**)
- I21** S. 27 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), **art. 5, Sch. Pt. II**

28 Limits on power to provide community facilities etc.

- (1) Section 27(1) does not enable a governing body to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in—
- (a) the school’s instrument of government, or
 - (b) any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities’ financial schemes) which relates to the school.
- (2) Regulations may make provision preventing governing bodies from doing, by virtue of section 27(1), anything which is specified, or is of a description specified, in the regulations.
- (3) A governing body shall exercise the power conferred by section 27(1) only if and to the extent that they are satisfied that anything which they propose to do will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.
- (4) Before exercising the power under section 27(1) a governing body—
- (a) shall consult—
 - (i) the local education authority,
 - (ii) the staff of the school, and
 - (iii) the parents of registered pupils of the school,
 - (b) where the proposed exercise of the power would affect registered pupils of the school and the governing body consider it appropriate in view of their age and understanding to consult all or some of them, shall consult the registered pupils or such of them as the governing body consider it appropriate to consult, and

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- (c) shall consult such other persons as the governing body consider appropriate.
- (5) In exercising the power under section 27(1) or consulting under subsection (4), a governing body shall have regard—
- (a) 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, and
 - (b) to any advice given to them from time to time by the local education authority.

Modifications etc. (not altering text)

- C3** S. 28 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), [regs. 1, 31](#)
- C4** S. 28(3) modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 3\(2\)](#)

Commencement Information

- I22** S. 28 partly in force; s. 28 not in force at Royal Assent, see s. 216; s. 28 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) (as amended by [S.I. 2002/2018](#), [arts. 2-4](#))
- I23** S. 28 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)

29 Additional functions of governing body

- (1) The governing body of a maintained school shall—
- (a) establish procedures for dealing with all complaints relating to the school or to the provision of facilities or services under section 27, other than complaints falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of a statutory provision other than this section, and
 - (b) publicise the procedures so established.
- (2) In establishing or publicising procedures under subsection (1), the governing body 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.
- (3) 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 purposes of receiving any instruction or training included in the secular curriculum for the school.
- (4) In subsection (3) “maintained school” does not include a maintained nursery school.
- (5) The governing body and head teacher of—
- (a) a community or voluntary controlled school,
 - (b) a community special school, or
 - (c) a maintained nursery school,
- shall comply with any direction given to them by the local education authority concerning the health and safety of persons on the school’s premises or taking part in any school activities elsewhere.

Commencement Information

- I24** S. 29 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)

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I25 S. 29 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

30 **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) 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;
 - (c) enable the governors’ report to be combined with any other document whose preparation by the governing body is required by or under any enactment.
- (3) The governing body of a maintained school shall provide the local education authority with such reports in connection with the discharge of the functions of the governing body as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of the authority’s 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.

Modifications etc. (not altering text)

C5 S. 30 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), [reg. 3\(1\)](#)

Commencement Information

I26 S. 30 partly in force; s. 30 not in force at Royal Assent, see s. 216; s. 30 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

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PROSPECTIVE

31 Control of school premises

Regulations may make provision relating to the control by the governing body of a maintained school of the occupation and use of school premises.

32 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 or a maintained nursery 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 time of the school sessions;
 - (b) as to the implementation of any such proposal;
 - (c) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school.
- (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.

Commencement Information

I27 S. 32 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

33 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 is to provide an opportunity for discussion of the manner in which the school has been, and is to be, conducted, and of any other matters relating to the school raised by parents of registered pupils.

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(3 Regulations may make provision as to circumstances in which a governing body are to be exempt from the obligation imposed by subsection (1).

Commencement Information

I28 S. 33(1)(2) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

I29 S. 33(3) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124](#), [art. 2](#)

34 Arrangements for government of new schools

- (1) Where proposals for the establishment of a maintained school fall to be implemented under any enactment, 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 before such date as may be determined in accordance with regulations.
- (4) The requirement for there to be an instrument of government for a school (imposed by section 20) shall take effect in relation to a school falling within subsection (1) above as from the date determined under subsection (3).
- (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 exercise by a temporary governing body before the school opening date of the powers conferred by section 27,
 - (d) the transition from a temporary governing body to a governing body constituted under an instrument of government, and
 - (e) such other matters relating to temporary governing bodies as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (6) Regulations under subsection (5) may, in connection with any matters falling within that subsection—
 - (a) modify any provision made under any of sections 19, 20 or 23 or by Schedule 1;
 - (b) apply any such provision with or without modifications;
 - (c) make provision corresponding or similar to any such provision.
- (7) Subject to subsection (8), the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period—
 - (a) beginning with the school opening date, and

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- (b) ending with the time when the governing body are constituted for the school under an instrument of government;
- and for the purposes of section 30(3) of this Act and sections 495 to 498 of the Education Act 1996 (c. 56) (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 20(1),
 - (b) (subject to any regulations made under subsection (5)) Schedule 1, or
 - (c) (subject to any regulations made under subsection (5)) regulations made under section 19, 20 or 23,
- applies to any temporary governing body.
- (9) In this section “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.

Commencement Information

I30 S. 34 in force at 1.4.2003 except in relation to W. by [S.I. 2003/124](#), [art. 4](#)

35 Staffing of community, voluntary controlled, community special and maintained nursery schools

- (1) This section applies to—
- (a) community schools,
 - (b) voluntary controlled schools,
 - (c) community special schools, and
 - (d) maintained nursery schools.
- (2) Any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the local education authority.
- (3) The teaching staff of any school to which this section applies shall include—
- (a) a person appointed as head teacher, or
 - (b) a person appointed to carry out the functions of the head teacher of the school—
 - (i) pending the appointment of a head teacher, or
 - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—
- (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
 - (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
 - (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—

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- (i) the provision of facilities and services under section 27, or
 - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body, and
 - (d) confer functions on local education authorities, governing bodies and head teachers.
- (6) In relation to teachers at a voluntary controlled school who are reserved teachers within the meaning of section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character), regulations under subsection (4) shall have effect subject to the provisions of that section.
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998—
- (a) regulations under subsection (4) shall not apply, and
 - (b) the provisions of Part 1 of Schedule 2 shall apply instead.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
 - (b) in relation to Wales, by the National Assembly for Wales.

Commencement Information

I31 S. 35(1)-(3)(6)-(8) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

I32 S. 35(4)(5) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124](#), [art. 4](#)

36 Staffing of foundation, voluntary aided and foundation special schools

- (1) This section applies to—
- (a) foundation schools,
 - (b) voluntary aided schools, and
 - (c) foundation special schools.
- (2) Except as provided by regulations under subsection (4), any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the governing body of the school.
- (3) The teaching staff of any school to which this section applies shall include—
- (a) a person appointed as head teacher, or
 - (b) a person appointed to carry out the functions of the head teacher of the school—
 - (i) pending the appointment of a head teacher, or
 - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—

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- (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
 - (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
 - (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—
 - (i) the provision of facilities and services under section 27, or
 - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body,
 - (d) enable teachers and other staff to be employed by the local education authority in prescribed cases, and
 - (e) confer functions on local education authorities, governing bodies and head teachers.
- (6) Regulations under subsection (4) shall have effect subject to section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character).
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998, regulations under subsection (4) shall have effect subject to the provisions of Part 2 of Schedule 2.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
 - (b) in relation to Wales, by the National Assembly for Wales.

Commencement Information

- I33** S. 36(1)-(3)(6)-(8) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I34** S. 36(4)(5) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

37 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—

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- (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and
 - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (4) Subject to subsection (7), 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) Subject to subsection (7), costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).
- (7) Where a local education authority incur costs—
 - (a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or
 - (b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes,they shall recover those costs from the governing body except in so far as the authority agree with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.
- (8) Any amount payable by virtue of subsection (7) by the governing body of a maintained school to the local education authority shall not be met by the governing body out of the school's budget share for any financial year.
- (9) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.
- (10) Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of subsection (7).
- (11) Subsections (1) to (6) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998 (c. 31).
- (12) In this section “community purposes” means the purposes of the provision of facilities or services under section 27.

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Modifications etc. (not altering text)

- C6** S. 37 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 3(1)**

Commencement Information

- I35** S. 37 in force at 1.10.2002 for E. by [S.I. 2002/2439](#), **art. 3** (with transitional provisions and savings in [art. 4](#), Sch.)

VALID FROM 01/10/2003

38 Communication with schools

- (1) In considering whether to issue any guidance or other circular to the governing bodies or head teachers of maintained schools in the exercise of functions relating to education, the Secretary of State and the National Assembly for Wales shall have regard to—
- (a) the desirability of providing information about good educational practice, while recognising the professional expertise of teachers,
 - (b) the benefits that are expected to result from the issue of the guidance or other circular, and
 - (c) the desirability of avoiding—
 - (i) the sending of excessive material to governing bodies or head teachers, and
 - (ii) the imposition of excessive administrative burdens on governing bodies or head teachers.
- (2) In pursuance of the duty in subsection (1) the Secretary of State shall in respect of each academic year—
- (a) prepare a report listing—
 - (i) documents sent by him during the year to all governing bodies of maintained schools in England or to all head teachers of such schools, and
 - (ii) documents (not falling within sub-paragraph (i)) sent by him during the year to all governing bodies of maintained schools in England of a particular kind or to all head teachers of such schools of a particular kind, and
 - (b) lay a copy of the report before each House of Parliament, and include within it comparative statistics in respect of each of the two preceding academic years on documents falling within this subsection sent out by him.
- (3) In pursuance of the duty in subsection (1) the National Assembly for Wales shall in respect of each academic year prepare and publish a report listing—
- (a) documents sent by the Assembly during the year to all governing bodies of maintained schools in Wales or to all head teachers of such schools, and
 - (b) documents (not falling within paragraph (a)) sent by the Assembly during the year to all governing bodies of maintained schools in Wales of a particular kind or to all head teachers of such schools of a particular kind.

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- (4) The documents referred to in subsections (2) and (3) do not include any document sent by the Secretary of State or the National Assembly for Wales—
 - (a) otherwise than in the exercise of functions relating to education, or
 - (b) at the request of the person to whom it is sent.
- (5) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall list within it previous relevant documents issued by the Secretary of State or the National Assembly for Wales and shall state clearly those documents which are superseded by the current document.
- (6) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall state clearly the persons for whom any advice and guidance is intended.
- (7) In this section “academic year” means a period beginning with 1st August and ending with the next 31st July.

39 Interpretation of Chapter 1

- (1) In this Chapter—
 - “budget share” has the same meaning as in Part 2 of the School Standards and Framework Act 1998 (c. 31);
 - “federation” and “federated school” have the meaning given by section 24;
 - “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;
 - “maintained nursery school” means a nursery school which is maintained by a local education authority and is not a special school;
 - “statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).
- (2) In this Chapter—
 - (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.

Commencement Information

- I36** S. 39 partly in force; s. 39 not in force at Royal Assent, see s. 216; s. 39(2) and the definition of “budget share” in s. 39(1) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))
- I37** S. 39(1) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 4](#)
- I38** S. 39(1) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

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40 Amendments of Part 2 of School Standards and Framework Act 1998

Schedule 3 (which contains amendments of Part 2 of the School Standards and Framework Act 1998 relating to the power conferred by section 27 and to the engagement of staff otherwise than as employees) shall have effect.

Commencement Information

- I39** S. 40 partly in force; s. 40 not in force at Royal Assent, see s. 216; s. 40 in force for certain purposes for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#)
- I40** S. 40 in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)
- I41** S. 40 in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)

Status:

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Changes to legislation:

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