



Education Act 2002

2002 CHAPTER 32

PART 3

MAINTAINED SCHOOLS

CHAPTER 1

GOVERNMENT OF MAINTAINED SCHOOLS

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) ([F1]local 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) [F2]the governing body of a maintained school in Wales]—
 - (a) shall consult—
 - (i) the [F3]local authority],
 - (ii) the staff of the school, and

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- (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
- (c) shall consult such other persons as the governing body consider appropriate.
- [^{F4}(4A) In exercising the power under section 27(1), the governing body of a maintained school shall have regard to any relevant children and young people's plan.
- (4B) In subsection (4A) “relevant children and young people's plan” has the meaning given by section 21(9).]
- ^{F5}(4C)
- (5) In exercising the power under section 27(1) or consulting under subsection (4), [^{F6}the governing body of a maintained school in Wales] shall have regard—
- (a) to any guidance given from time to time ^{F7}... by the National Assembly for Wales, and
- (b) to any advice given to them from time to time by the [^{F3}local authority].

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(3)**
- F2** Words in s. 28(4) substituted (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 88(2)**, 139(6); [S.I. 2014/889](#), art. 5(d)
- F3** 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)**
- F4** S. 28(4A)-(4C) inserted (25.5.2007 for E., 1.9.2008 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 38(2)**, 188(3); [S.I. 2007/1271](#), art. 3; [S.I. 2008/1429](#), art. 3(3), Sch. Pt. 3
- F5** S. 28(4C) omitted (13.5.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), **ss. 88(3)**, 139(6); [S.I. 2014/889](#), art. 5(d)
- F6** Words in s. 28(5) substituted (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 88(4)(a)**, 139(6); [S.I. 2014/889](#), art. 5(d)
- F7** Words in s. 28(5)(a) omitted (13.5.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), **ss. 88(4)(b)**, 139(6); [S.I. 2014/889](#), art. 5(d)

Modifications etc. (not altering text)

- C1** S. 28 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), **regs. 1, 31**
- C2** S. 28 applied (with modifications) (31.10.2005) by [The New Maintained Schools \(Wales\) Regulations 2005 \(S.I. 2005/2912\)](#), **regs. 1(1), 30(1)** (with **reg. 30(2)**)
- C3** S. 28 applied (with modifications) (25.5.2007) by [The School Governance \(New Schools\) \(England\) Regulations 2007 \(S.I. 2007/958\)](#), **regs. 1, 30**
- C4** S. 28(3) modified (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 3(2)**
- C5** S. 28(5) applied (with modifications) (1.2.2008) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2007 \(S.I. 2007/2979\)](#), **reg. 1(1), Sch. 1 para. 13**

Commencement Information

- I1** S. 28 in force at 2.9.2002 for E. by [S.I. 2002/2002](#), **art. 4** (as amended by [S.I. 2002/2018](#), arts. 2-4)

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12 S. 28 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), art. 5, **Sch. Pt. II**

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](#)