



Education and Inspections Act 2006

2006 CHAPTER 40

PART 3

FURTHER PROVISIONS ABOUT MAINTAINED SCHOOLS

Foundation, voluntary and foundation special schools

33 Requirements as to foundations

(1) After section 23 of SSFA 1998 insert—

“23A Foundation and foundation special schools: requirements as to foundations

- (1) This section applies to any foundation or foundation special school having a foundation if any one or more of the following conditions is met.
- (2) Condition A is that the school was established as a foundation or foundation special school in pursuance of proposals falling to be implemented under Schedule 2 to the Education and Inspections Act 2006.
- (3) Condition B is that the school—
 - (a) acquired its foundation, or
 - (b) became a school whose instrument of government provides for the majority of governors to be foundation governors,in pursuance of proposals falling to be implemented under regulations under section 24 of that Act.
- (4) Condition C is that the school changed category from voluntary aided school to foundation school in pursuance of proposals falling to be implemented under regulations under section 24 of that Act and has an instrument of government providing for the majority of governors to be foundation governors.

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- (5) No institution may act as the foundation of a school to which this section applies unless—
- (a) it is a body corporate of a prescribed description,
 - (b) it is a charity (whether by virtue of section 23(3) or otherwise), and
 - (c) it has as its purpose, or one of its purposes, the advancement of the education of pupils at the school or schools in respect of which it acts as the foundation.
- (6) The foundation of a school to which this section applies shall, in carrying out its functions in relation to the school, promote community cohesion.
- (7) Where any members of the foundation are to be local authorities or persons appointed by local authorities, the proportion of voting rights exercisable by such members must not exceed 20 per cent. of the total voting rights exercisable by members.
- (8) Where any of the charity trustees in relation to the foundation are to be appointed by local authorities—
- (a) the proportion of the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total number of charity trustees, and
 - (b) the voting rights exercisable by the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total voting rights exercisable by charity trustees.
- (9) Regulations may disqualify persons from acting as charity trustee in relation to a school to which this section applies.
- (10) In this section and section 23B—
- “charity” has the same meaning as in the Charities Act 1993;
 - “charity trustee”, in relation to a school to which this section applies, means any individual who is for the purposes of the Charities Act 1993 a charity trustee in relation to the school's foundation;
 - “foundation” means a foundation established otherwise than under this Act;
 - “institution” has the same meaning as in the Charities Act 1993;
 - “purpose” includes object.

23B Powers of Secretary of State in relation to charity trustees of foundations

- (1) Regulations may make provision enabling the Secretary of State in prescribed cases by direction—
- (a) to remove any charity trustee of a school to which section 23A applies, even though the person is not disqualified by virtue of subsection (9) of that section;
 - (b) to appoint a person to be a charity trustee of such a school (whether in place of a trustee removed by him under paragraph (a) or otherwise).
- (2) Regulations under subsection (1) may make provision as to the effect of a direction given by the Secretary of State under the regulations, and may in particular provide for any such direction to have the same effect as an order

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of the Charity Commission for England and Wales under section 18 of the Charities Act 1993 for the removal or appointment of a charity trustee.

- (3) Nothing in this section affects the powers of the Charity Commission for England and Wales under any enactment.”
- (2) In relation to any time before the commencement of section 1A(1) of the Charities Act 1993 (c. 10) (which provides for the establishment of the Charity Commission for England and Wales as a body corporate), any reference in section 23B of SSFA 1998 (as inserted by subsection (1) of this section) to the Charity Commission for England and Wales is to be read as a reference to the Charity Commissioners for England and Wales.

Commencement Information

- I1** S. 33 in force at 1.4.2007 for specified purposes by [S.I. 2007/935, art. 5\(h\)](#)
- I2** S. 33 in force at 25.5.2007 in so far as not already in force by [S.I. 2007/935, art. 7\(h\)](#)

34 Parent councils for certain foundation or foundation special schools

After section 23 of EA 2002 insert—

“23A Parent councils

- (1) A school is for the purposes of this section a “qualifying school” if—
- it is a foundation or foundation special school in England,
 - it has a foundation established otherwise than under the School Standards and Framework Act 1998, and
 - the instrument of government for the school provides that the majority of governors are to be foundation governors.
- (2) The governing body of any qualifying school must establish in accordance with regulations a body to be known as a parent council.
- (3) The purpose of a parent council is to advise the governing body on matters relating to the conduct of the school and the exercise by the governing body of their powers under section 27.
- (4) Regulations may make provision as to—
- the person or persons by whom, and the manner in which, members of a parent council are to be elected or appointed,
 - eligibility for election or appointment,
 - the duration of membership, and
 - meetings and proceedings of a parent council.
- (5) Regulations—
- must require the majority of members of a parent council to be parent members, and
 - may enable a person who is not the parent of a registered pupil to be a member of a parent council if appointed in accordance with the regulations by the parent members.

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- (6) Regulations may confer functions relating to parent councils on the governing bodies of qualifying schools.
- (7) The governing body of a qualifying school must, in exercising their functions under this section with respect to the school's parent council, have regard to any guidance given from time to time by the Secretary of State.
- (8) The reference in subsection (1)(b) to a foundation is to be read in accordance with section 21 of the School Standards and Framework Act 1998.
- (9) In this section “parent member”, in relation to a parent council, means a member of the council who is the parent of a registered pupil at the school.”

Commencement Information

I3 S. 34 in force at 25.5.2007 by [S.I. 2007/935](#), [art. 7\(i\)](#)

35 Funding of voluntary aided schools: meaning of “capital expenditure”

- (1) Part 2 of Schedule 3 to SSFA 1998 (funding of voluntary aided schools) is amended as follows.
- (2) In paragraph 3, as it applies in relation to England, omit sub-paragraph (3) (the definition of “capital expenditure” for the purposes of the Schedule).
- (3) After paragraph 9 insert—

9A “Meaning of “capital expenditure”

- (1) This paragraph applies for the purposes of this Schedule as it applies in relation to England.
- (2) Subject to sub-paragraphs (3) and (4), references in this Schedule to capital expenditure, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, are references to—
 - (a) expenditure of the body or, as the case may be, the promoters which falls to be capitalised in accordance with proper accounting practices, or
 - (b) expenditure which would fall to be so capitalised were it to be incurred by the body or, as the case may be, the promoters.
- (3) The Secretary of State may by regulations prescribe classes or descriptions of expenditure which are to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to—
 - (a) any appropriate body, or any prescribed class or description of appropriate body;
 - (b) any promoters, or any prescribed class or description of promoters.
- (4) The Secretary of State may by direction provide that, in the case of a particular voluntary aided school—
 - (a) expenditure of a particular appropriate body which is expenditure of a particular class or description;

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- (b) expenditure of particular promoters which is expenditure of a particular class or description, is to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to that body, or as the case may be, those promoters.
- (5) Directions under sub-paragraph (4) may be expressed to have effect in specified circumstances or subject to specified conditions.
- (6) In this paragraph an “appropriate body”, in the case of a voluntary aided school, means—
- (a) the governing body of the school, or
 - (b) a relevant body in relation to the school (within the meaning of paragraph 5).
- 9B (1) For the purposes of paragraph 9A, “proper accounting practices”, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, means those accounting practices—
- (a) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the appropriate body, or as the case may be, the promoters, or
 - (b) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the [^{F1}local authority].
- (2) In the event of conflict between the accounting practices falling within paragraph (a) of sub-paragraph (1) and those falling within paragraph (b) of that sub-paragraph, only those falling within paragraph (a) are to be regarded as proper accounting practices.
- (3) In this paragraph an “appropriate body”, in the case of a voluntary aided school, has the same meaning as in paragraph 9A.”

Textual Amendments

- F1** Words in Pts. 1-7 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. 14(2)**

Commencement Information

- I4** S. 35 in force at 1.4.2007 for specified purposes by [S.I. 2007/935](#), art. 5(i)
- I5** S. 35 in force at 25.5.2007 in so far as not already in force by [S.I. 2007/935](#), art. 7(j)

36 Disposals and changes of use of land

Schedule 4 contains amendments of—

- (a) Schedule 22 to SSFA 1998 (disposals of land by foundation, voluntary or foundation special schools and disposals on discontinuance), and
- (b) section 77 of that Act (control of disposals or changes of use of school playing fields in relation to England),

and amendments which are consequential to those amendments.

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Commencement Information

I6 S. 36 in force at 25.5.2007 by [S.I. 2007/935](#), [art. 7\(k\)](#)

37 Staff at foundation or voluntary schools with religious character

- (1) In section 58 of SSFA 1998 (appointment and dismissal of certain teachers at schools with a religious character), omit subsection (4) (which prevents the head teacher of a foundation or voluntary controlled school being a reserved teacher).
- (2) In section 60 of SSFA 1998 (staff at foundation or voluntary school with religious character)—
- (a) in subsection (4), after “(whether foundation or voluntary controlled)” insert “ in a case where the head teacher is not to be a reserved teacher ”, and
 - (b) in subsection (6), after “voluntary aided school” insert “ in Wales ”.

Commencement Information

I7 S. 37 in force at 1.9.2008 for E. by [S.I. 2008/1971](#), [art. 2\(a\)](#) (with [art. 3](#))

I8 S. 37(1)(2)(a) in force at 30.6.2008 for W. by [S.I. 2008/1429](#), [art. 3\(1\)](#), [Sch. Pt. 1](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2006/2990 art. 4 by [S.I. 2008/54 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2007/935 art. 7(n) by [S.I. 2007/1271 art. 4](#)
- specified provision(s) transitional provisions for earlier commencing SI 2007/935 by [S.I. 2007/1271 art. 5](#)

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. 11A inserted by [2010 c. 26 s. 7](#)
- s. 88(A1) inserted by [2015 c. 20 Sch. 16 para. 1\(2\)](#)
- s. 93A inserted by [2009 c. 22 s. 246](#)
- s. 93A(7) words inserted by [S.I. 2016/413 reg. 235](#) (This amendment comes into force on the day that section 93A of the Education and Inspections Act 2006 (c. 40) comes into force. That provision is still prospective)
- s. 162(5A)(aa) inserted by [2010 nawm 1 Sch. 1 para. 20\(a\)](#)