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# Education Reform Act 1988

## 1988 CHAPTER 40

### PART I **E+W**

#### SCHOOLS

### CHAPTER III **E+W**

#### FINANCE AND STAFF

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

- C1** Provisions of Pt. I Ch. III (other than ss. 33, 49 and Sch. 4) modified (25. 2. 1992) by [S.I. 1992/164, reg. 2\(3\)](#).  
Pt. I Ch. III applied (with modifications) (1.1.1994) by [S.I. 1993/3104, reg.2\(2\)](#)  
Pt. I Ch. III extended (1.1.1994) by [1993 c. 35, s. 215\(4\)](#); [S.I. 1993/3106, art. 4, Sch. 1](#) (as amended by [S.I. 1994/436, art.2](#)).  
Pt. I Ch. III applied (1.1.1994) by [1993 c. 35, s. 215\(5\)](#); [S.I. 1993/3106, art. 4, Sch. 1](#) (as amended by [S.I. 1994/436, art.2](#)).  
Pt. I Ch. III modified (*temp.*) (31.12.1995) by [S.I. 1995/3114, regs.2, 3, 5, 6, 7, 8](#).  
Pt. I Ch. III modified (31.12.1995) by [S.I. 1995/3114, regs.4, 7](#).

##### *Financing of schools maintained by local education authorities*

### **33 Schemes for financing county and voluntary schools. **E+W****

- (1) It shall be the duty of every local education authority to prepare a scheme in accordance with this Chapter and submit it for the approval of the Secretary of State in accordance with section 34 of this Act.
- (2) The scheme shall provide for—
  - (a) the determination in respect of each financial year of the authority, for each school required to be covered by the scheme in that year, of the share to be

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- appropriated for that school in that year of the part of the general schools budget of the authority for that year which is available for allocation to individual schools under the scheme (referred to below in this Chapter, in relation to such a school, as the school's budget share); and
- (b) the delegation by the authority of the management of a school's budget share for any year to the governing body of the school where such delegation is required or permitted by or under the scheme.
- (3) For the purposes of this Chapter, a school is required to be covered in any financial year by a scheme made under this section by a local education authority if either—
- (a) immediately before the beginning of that year it is a county or voluntary school maintained by that authority; or
- (b) at any time during that year it becomes a county or voluntary school so maintained (whether by virtue of being established as a new school of that description or by virtue of becoming a county or voluntary school where it was not, immediately before it became so, a school of either description).
- (4) For the purposes of this Chapter—
- (a) references, in relation to any local education authority, to the general schools budget of the authority for any financial year, are references to the amount appropriated by the authority for meeting expenditure in that year in respect of all schools required to be covered in that year by any scheme made under this section by that authority; and
- (b) the part of the general schools budget of any such authority for any financial year which is available for allocation to individual schools under a scheme under this section (referred to below in this Chapter, in relation to any such authority, as the authority's aggregated budget for the year) is the amount remaining after deducting from the amount of the general schools budget of the authority for that year—
- (i) the amount of any expenditure of the authority in that year on heads or items of expenditure which fall in accordance with section 38 of this Act to be left out of account in determining the authority's aggregated budget for the year (referred to below in this Chapter as excepted heads or items of expenditure); and
- (ii) any other amounts which fall in accordance with the scheme to be deducted in determining the authority's aggregated budget for the year.
- (5) In relation to any scheme under this section, any reference in subsection (4) above to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme; and a scheme under this section must provide for all amounts relevant to the determination of a school's budget share under the scheme for any financial year to be determined initially before the beginning of that year.
- (6) In this Chapter—
- (a) references to a school in respect of which financial delegation is required for any financial year under a scheme under this section are references to a school conducted by a governing body to whom the local education authority concerned are for the time being required by or under the scheme to delegate the management of the school's budget share for that year (and the governing body of such a school are said to have a right to a delegated budget for the year);

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- (b) references to a school which has a delegated budget are references to a school conducted by a governing body to whom a local education authority have for the time being delegated the management of the school's budget share for any financial year in pursuance of such a scheme (whether that delegation is required by the scheme or not); and
- (c) references, in relation to any scheme under this section, to excluded expenditure under the scheme are references to the aggregate of any amounts which fall in the case of that scheme to be deducted by virtue of subsection (4) (b)(ii) above in determining the aggregated budget of the authority concerned for any financial year.

### 34 Preparation and imposition of schemes. **E+W**

- (1) A scheme prepared by a local education authority under section 33 of this Act shall be submitted to the Secretary of State on or before such date as the Secretary of State may by order direct, either generally or in relation to any local education authority, or any class or description of such authorities, specified in the order.
- (2) In preparing a scheme under that section a local education authority shall take into account any guidance given by the Secretary of State (whether generally or in relation to that authority or to any class or description of local education authorities to which that authority belongs) as to the provisions he regards as appropriate for inclusion in the scheme.
- (3) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.
- (4) Before preparing such a scheme a local education authority shall consult the governing body and the head teacher of every [<sup>F1</sup>county, voluntary or special] school maintained by the authority.
- (5) Such a scheme shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve such a scheme—
  - (a) either without modifications or with such modifications as he thinks fit after consulting the authority concerned; and
  - (b) subject to such conditions as he may specify in giving his approval.
- (6) If in the case of any local education authority either—
  - (a) the authority fail to submit a scheme as required by subsection (1) above; or
  - (b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection does not accord with any guidance given by him for the purposes of this section and cannot be made to do so merely by modifying it;he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 33 of this Act in relation to the financing by the authority of county and voluntary schools as he considers appropriate.
- (7) A scheme imposed by the Secretary of State by virtue of subsection (6) above—
  - (a) shall be treated as if made under section 33 by the local education authority concerned; and
  - (b) shall come into force on such date as may be specified in the scheme.

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### Textual Amendments

F1 Words in s. 34(4) substituted (25. 2. 1992) by S.I. 1992/164, reg. 4(2).

## 35 Replacement and variation of schemes. **E+W**

- (1) Subject to the following provisions of this section, a scheme may be replaced or varied by a subsequent scheme made under section 33 of this Act by the local education authority concerned.
- (2) Section 33 shall apply for the purposes of a scheme replacing or varying a previous scheme with the omission of subsection (1); and subsection (1) of section 34 of this Act shall not apply in relation to such a scheme.
- (3) A scheme prepared by a local education authority under section 33 which—
  - (a) replaces a previous scheme; or
  - (b) makes any significant variation of a previous scheme;
 shall be submitted to the Secretary of State for his approval.
- (4) A scheme under section 33 varying a previous scheme which is not required by subsection (3)(b) above to be submitted to the Secretary of State for his approval is referred to below in this section as a “minor variation scheme”.
- (5) Subsections (4) and (5) of section 34 shall not apply in relation to a minor variation scheme.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of subsection (3)(b) above.
- (7) Where a local education authority propose to make a scheme under section 33 which in their opinion is a minor variation scheme, the authority shall notify the Secretary of State in writing of their proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.
- (8) In any such case the authority shall, if so required by the Secretary of State before the end of the period of two months beginning with the date on which he receives notification under subsection (7) above of the authority’s proposal, send to him a copy of their proposed scheme; and it shall be for the Secretary of State to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in an order under subsection (6) above.
- (9) A scheme made under section 33 may also be varied by a direction given by the Secretary of State, as from such date as may be specified in the direction.
- (10) Before giving such a direction the Secretary of State shall consult the local education authority concerned and such other persons as he thinks fit.

## 36 Delegation to governing body of management of school’s budget share. **E+W**

- (1) This section applies where in the case of any local education authority the authority’s financial provision for county and voluntary schools is subject to regulation by a scheme.

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- (2) Subject to section 37(4) of this Act, in the case of any county or voluntary school maintained by the authority in respect of which financial delegation is required for any financial year under the scheme, it shall be the duty of the authority to put at the disposal of the governing body of the school in respect of that year a sum equal to the school's budget share for that year to be spent for the purposes of the school.
- (3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body shall be such as may be provided by or under the scheme.
- (4) Subject to section 49(1) of this Act, the authority may not delegate to the governing body of any school required to be covered by the scheme in any financial year the power to spend any sum appropriated by the authority for the purposes of the school in that year otherwise than as required or permitted under the scheme.
- (5) The governing body of any school which has a delegated budget—
  - (a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to them in respect of the school's budget share for any financial year as they think fit for the purposes of the school; and
  - (b) may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their power under paragraph (a) above in relation to any part of that sum.
- (6) 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 power under subsection (5) above.

**F237** **Withdrawal of delegation.** **E+W**

- (1) Where it appears to a local education authority, in the case of any school in respect of which financial delegation is required for the current financial year under a scheme, that the governing body of the school—
  - (a) have been guilty of a substantial or persistent failure to comply with any requirements applicable under the scheme; or
  - (b) are not managing the appropriation or expenditure of the sum put at their disposal for the purposes of the school in a satisfactory manner;the authority may suspend the governing body's right to a delegated budget by giving the governing body (subject to subsection (3) below) not less than one month's notice of suspension.
- (2) Any such notice shall specify the grounds for the proposed suspension, giving particulars of any failure alleged on the part of the governing body to comply with any requirements applicable under the scheme and of any alleged mismanagement on their part; and a copy of the notice shall be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (3) A local education authority may suspend the right to a delegated budget of any governing body to whom they have given notice under subsection (1) above before the expiry of the period of notice if it appears to them to be necessary to do so by reason of gross incompetence or mismanagement on the part of that governing body or other emergency; but in such a case the authority shall immediately give to the Secretary of State written notification of their action and the reasons for it.

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- (4) During any period when a governing body’s right to a delegated budget is suspended under this section the duty of the local education authority concerned under section 36(2) of this Act shall not apply in relation to that governing body.
- (5) It shall be the duty of the authority concerned—
  - (a) to review before the beginning of every financial year any suspension under this section which is for the time being in force;
  - (b) for the purposes of that review, to afford the governing body concerned and the head teacher of the school an opportunity of making representations with respect to the suspension and to have regard to any representations made by that body or the head teacher; and
  - (c) to revoke any such suspension where they consider it appropriate to do so.
- (6) The authority shall give the governing body concerned and the head teacher written notification of their decision on any such review.
- (7) The revocation of any such suspension shall take effect as from the beginning of the next following financial year.
- (8) A governing body shall be entitled to appeal to the Secretary of State against—
  - (a) the imposition of any suspension under this section; and
  - (b) any refusal of a local education authority to revoke any such suspension on any review required under this section.
- (9) On any such appeal the Secretary of State—
  - (a) may allow or reject the appeal; and
  - (b) shall have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuance or recurrence.

#### Textual Amendments

**F2** S. 37(8)(a) excluded (1.1.1994) by 1993 c. 35, s. 215(4); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C2** S. 37 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

### 38 Schemes: determination of budget shares. **E+W**

- (1) The provision to be included in a scheme for determining the budget share for any financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of a formula laid down by the scheme for the purpose of dividing among all such schools the aggregated budget for that year of the local education authority concerned.
- (2) In this section “formula” includes methods, principles and rules of any description, however expressed; and references in this Chapter, in relation to a scheme, to the allocation formula under the scheme, are references to the formula laid down by the scheme in accordance with subsection (1) above.
- (3) The allocation formula under a scheme—

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- (a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of registered pupils at that school on such date or dates as may be determined by or under the scheme in relation to that year; and
  - (b) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).
- (4) In the case of any scheme, the following heads or items of expenditure, so far as taken into account in determining the general schools budget of the local education authority concerned for any financial year, shall be left out of account in determining the authority's aggregated budget for that year—
- (a) all expenditure of a capital nature;
  - (b) all expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature;
  - (c) expenditure falling to be taken into account in determining central government grants of any prescribed description; and
  - (d) such other items of expenditure as may be prescribed.

### **39 Schemes: provision for financial delegation. E+W**

- (1) A scheme shall include provision for requiring, in the case of each [<sup>F3</sup>secondary] school required to be covered by the scheme in any financial year, the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.
- [<sup>F4</sup>(2) A scheme shall include provision for requiring, in the case of each primary school required to be covered by the scheme in any financial year which—
- (a) satisfies the qualifying condition on a qualifying date in relation to that year which falls before the beginning of that year; or
  - (b) falls in accordance with the scheme to be regarded as qualifying for delegation in respect of that year on the assumption that, if a forecast made in accordance with the scheme of the number of registered pupils it will have on a qualifying date in relation to that year which falls within that year proves to be correct, it will satisfy the qualifying condition on that date;
- the delegation by the local education authority concerned to the governing body of the school of the management of the school's budget share for that year.]
- [<sup>F4</sup>(3) For the purposes of this section—
- (a) a primary school is to be treated as satisfying the qualifying condition at any time when it has two hundred or more registered pupils; and
  - (b) “qualifying date” means, in relation to any financial year, any date which is a qualifying date in accordance with any provision made by or under the scheme in question.]
- (4) References in this Chapter to the delegation requirement under any scheme are references—

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- (a) [<sup>F5</sup>in relation to a secondary school required to be covered by the scheme in any financial year], to any provision included in the scheme by virtue of subsection (1) above; and
- [<sup>F4</sup>(b) in relation to a primary school required to be covered by the scheme in any financial year, to any provision included in the scheme by virtue of subsection (2) above.]
- (5) The application of the delegation requirement under a scheme in relation to any school is subject to section 40 of this Act in the case of any school to which that section applies.
- [<sup>F4</sup>(6) Subject to subsections (7) and (8) below, once the delegation requirement under a scheme applies in relation to a primary school in respect of any financial year it shall continue to apply in respect of each succeeding financial year.
- (7) Subject to subsection (8) below, the delegation requirement under a scheme shall cease to apply in relation to a primary school to which that requirement for the time being applies if the number of registered pupils at the school—
- (a) falls below the number for the time being required under subsection (3)(a) above for such a school to be treated as satisfying the qualifying condition or, in the case of a school to which that requirement applies by virtue of any provision made under subsection (2)(b) above, either fails to reach or falls below that number; and
- (b) remains below that number for such period as may be specified in the scheme.
- (8) Where subsection (7) above applies in the case of any primary school the delegation requirement under the scheme in question shall cease to apply in relation to the school as from the beginning of the financial year beginning next after the period mentioned in paragraph (b) of that subsection comes to an end in the case of that school.
- (9) The application of subsections (7) and (8) above in relation to any school is without prejudice to the subsequent application of the delegation requirement under the scheme in question in relation to that school in respect of any financial year subsequent to that mentioned in subsection (8).]
- (10) A scheme may provide for the delegation by the local education authority concerned to the governing body of any school to which the delegation requirement under the scheme does not apply in any financial year of the management of the school's budget share for that year.
- (11) Any delegation by a local education authority under a scheme to the governing body of any school of the management of the school's budget share shall be subject to such conditions as may be imposed by or under the scheme.
- (12) Conditions so imposed may in particular relate to—
- (a) the arrangements to be made for management of the expenditure of any sum made available to the governing body of any school in accordance with the scheme (and in particular for authorising expenditure, or transactions involving commitments to expenditure, to be met from any such sum);
- (b) the keeping and audit of accounts and records with respect to such expenditure, and the keeping of records with respect to such transactions; and
- (c) the provision to the local education authority concerned by the governing body of—



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- (i) copies of accounts and records required to be kept by virtue of any condition imposed under paragraph (b) above; and
- (ii) such other documents and information relating to the application of any such sum as the authority may from time to time require.

#### Textual Amendments

- F3** Word in s. 39(1) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(1)  
**F4** S. 39(2)(3)(4)(b)(6)-(9) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(a)  
**F5** Words in s. 39(4)(a) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(b)

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

- C3** S. 39 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

#### 40 Initial implementation of delegation requirements under schemes. **E+W**

- (1) The delegation requirement under a scheme shall not apply in relation to any school which comes within the scheme in any financial year falling within the scheme's initial period until a date specified in the scheme.
- (2) For the purposes of this section, a scheme's initial period (subject to any order made under subsection (4) below) is the period of three years beginning with the date on which the scheme comes into force.
- (3) Different dates may be specified under subsection (1) above in relation to different schools or categories of school and in relation to schools coming within the scheme in different financial years or at different times within the same financial year; but—
  - (a) each date so specified must coincide with the beginning of a financial year; and
  - (b) no date may be so specified which falls after the beginning of the financial year next following the end of the scheme's initial period.
- (4) The Secretary of State may by order—
  - (a) substitute a date specified in the order for any date specified in a scheme under subsection (1) above (including one so specified by virtue of a previous order under this subsection); and
  - (b) extend any scheme's initial period until such date as may be specified in the order.
- (5) For the purposes of this section, a school—
  - (a) comes within a scheme in any financial year if that financial year is the first financial year in which the school is required to be covered by the scheme; and
  - (b) comes within the scheme at the beginning of that year if it is then a school required to be so covered and otherwise at the time within that year when it first becomes such a school.

#### 41 Extension of delegation requirement under schemes in the case of primary schools. **E+W**

- (1) The Secretary of State may by regulations—

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- (a) amend paragraph (a) of subsection (3) of section 39 of this Act by substituting a lower number for the number of registered pupils for the time being required under that paragraph for a primary school to be treated as satisfying the qualifying condition for the purposes of that section; or
  - (b) amend subsection (1) of that section so as to require a scheme to include such provision as is there mentioned in relation to primary schools as well as secondary schools and make in any other provisions of this Chapter such consequential amendments as appear to him to be required.
- (2) Any such regulations may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision made in those regulations by virtue of subsection (1)(a) or (b) above.

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

C4 S. 41 modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**42 Publication of schemes and financial statements, etc. E+W**

- (1) A scheme shall be published in such manner as may be prescribed—
  - (a) on its coming into force; and
  - (b) on such subsequent occasions as may be prescribed.
- (2) The following provisions of this section apply where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (3) Before the beginning of each financial year the authority shall prepare a statement of the financial provision they plan to make in that year for county and voluntary schools maintained by them.
- (4) The statement shall contain the following particulars in relation to the financial year in question—
  - (a) the amount of the general schools budget of the authority for that year (as initially determined for the purposes of the scheme);
  - (b) the amount of the authority's aggregated budget for that year (as so determined);
  - (c) such particulars as may be prescribed of amounts deducted in respect of—
    - (i) excepted heads or items of expenditure; or
    - (ii) excluded expenditure under the scheme;
 in arriving at the amount specified in the statement by virtue of paragraph (b) above;
  - (d) such particulars of the allocation formula under the scheme as may be prescribed;
  - (e) in the case of each school required to be covered by the scheme in that year, the planned expenditure per pupil arising from the division of the school's budget share (as so determined) by the initial pupil number;
  - (f) in the case of each such school, the planned expenditure per pupil on excepted services arising from the division of the amount of the expenditure on such services planned by the authority for the purposes of the school by the initial pupil number;

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- (g) in the case of each such school, the planned expenditure per pupil arising from the division by the initial pupil number of so much of the authority's excluded expenditure under the scheme (as so determined) as is appropriated by the authority for meeting expenditure for the purposes of the school;
  - (h) in the case of each such school, the amount of any expenditure of a capital nature planned for the purposes of the school;
  - (i) such particulars as may be prescribed of the basis on which the authority determine in the case of each such school—
    - (i) the amount of expenditure on excepted services by reference to which the information required to be included in the statement under paragraph (f) above is determined; and
    - (ii) the part of the authority's excluded expenditure under the scheme by reference to which the information required to be included in the statement under paragraph (g) above is determined; and
  - (j) such further information with respect to the financial provision the authority plan to make in that year for county and voluntary schools maintained by them as may be prescribed.
- (5) For the purposes of subsection (4) above—
- (a) “the initial pupil number” means, in relation to a financial year, the number of registered pupils at the school in question required under the scheme to be used in applying the allocation formula under the scheme for initial determination of the school's budget share for the year; and
  - (b) services are excepted services, in relation to a financial year, if expenditure on those services in that year is an excepted item of expenditure.
- (6) After the end of each financial year the authority shall prepare a statement containing such information with respect to—
- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the scheme; and
  - (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) A statement prepared under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (8) The authority shall furnish the governing body of each school required to be covered by the scheme in any financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (9) The governing body of each such school shall secure that a copy of any such statement furnished to them under subsection (8) above is available for inspection (at all reasonable times and free of charge) at the school.

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

C5 S. 42 applied by S.I. 1989/1135, art. 6(2)(a)

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VALID FROM 01/01/1994

**[<sup>F6</sup>42A Certification of statements by Audit Commission. E+W**

- (1) This section applies where in the case of any local education authority the authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Any such 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 29(1)(d) of the Local Government Finance Act 1982 for certifying such statement or statements prepared by the authority under section 42 of this Act as may be specified in the directions; and any statement under that section shall be treated for the purposes of section 29(1)(d) of that Act as a return by the authority.
- (3) The arrangements made by the Audit Commission in pursuance of subsection (2) above shall include arrangements for sending a copy of any such statement or statements as so certified to the Secretary of State.
- (4) Directions given under subsection (2) above may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.]

**Textual Amendments**

**F6** S. 42A inserted (1.1.1994) by 1993 c. 35, s. 275(2); S.I. 1993/3106, art. 4, Sch.1 (as amended by S.I. 1994/436, art.2).

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

**C6** S. 42A modified (21.9.1994) by 1994 c. 30, s. 12(6)(a)(7); S.I. 1994/2204, art.2(1).

**43 Application of schemes to special schools. E+W**

- (1) The Secretary of State may by regulations provide for requiring or authorising schemes—
  - (a) to cover special schools maintained by local education authorities; and
  - (b) to include provision, in the case of any such school which by virtue of any regulations made under paragraph (a) above is required or authorised to be covered by a scheme, for the delegation by the authority concerned of the management of the school's budget share for any financial year to the governing body of the school.
- (2) Regulations under this section—
  - (a) may make in any provisions of this Chapter such amendments as appear to the Secretary of State to be required in consequence of any provision made in those regulations by virtue of subsection (1) above; and
  - (b) may provide that any scheme shall have effect with such modifications as appear to the Secretary of State to be appropriate in consequence of any provision so made.

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*Financial delegation: appointment and dismissal of staff*

**44 Staff employed by the local education authority. E+W**

- (1) This section applies to a county, controlled or special agreement school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) sections 34 and 35 of the 1986 Act (determination of staff complement for schools by local education authority and general provisions about appointment and dismissal of staff);
  - (b) any provision made by the articles of government in accordance with any of sections 36 to 41 of that Act (procedure for appointments, suspensions and dismissals); and
  - (c) any provision of section 40 of that Act (appointment and dismissal of clerk to the governing body) other than subsection (5).
- (3) Subject to the following provisions of this section—
  - (a) the appointment, suspension and dismissal of staff at a school to which this section for the time being applies and the determination of their duties, grading and remuneration; and
  - (b) the application in relation to such staff of—
    - (i) any disciplinary rules and procedures; and
    - (ii) any procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;shall be subject to Schedule 3 to this Act.
- (4) Within the period of five years beginning with the date on which the financial year begins in which any county, controlled or special agreement school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions made by the articles in accordance with any of sections 36 to 41 of the 1986 Act (specifying those provisions) are superseded by this section and Schedule 3 to this Act during any period when the school has a delegated budget.
- (5) This section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).

**45 Staff at aided schools. E+W**

- (1) This section applies to an aided school at any time when it has a delegated budget.
- (2) None of the following shall have effect in relation to a school to which this section for the time being applies—
  - (a) section 22(4) of the 1944 Act (power of local education authority to give directions to governors of aided school as to number and conditions of service of school maintenance staff); and
  - (b) any provision of the articles of government conferring any functions on a local education authority with respect to the number of teachers or other staff to be employed at the school or the appointment or dismissal of such teachers

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or other staff (including any such provision required by section 24(2) of that Act).

- (3) Subject to any provision of the articles of government of any such school other than any provision for the time being excluded by subsection (2) above from applying to the school, the governing body of the school shall have (if they would not otherwise do so apart from any provision of the articles so excluded) power to appoint, suspend and dismiss staff as they think fit.
- (4) Subsection (6) below applies if in the case of any such school—
  - (a) the governing body of the school agree with the local education authority to accord advisory rights to the chief education officer of the authority in relation to the appointment or dismissal of teachers at the school; or
  - (b) in default of such agreement the Secretary of State determines that it would be appropriate in the case of the school that such rights should be accorded to the chief education officer of the authority.
- (5) Advisory rights accorded by an agreement or determination under subsection (4) above in the case of any school may relate to the appointment or dismissal, or both to the appointment and the dismissal, either of head teachers and deputy head teachers alone or of all teachers at the school.
- (6) During any period while an agreement or determination under subsection (4) above is effective in the case of any school, the chief education officer of the authority, or an officer of the authority nominated by him, shall be entitled to attend all proceedings of the governing body relating to any action to which the advisory rights accorded to him extend (including interviews) for the purpose of giving advice to the governing body.
- (7) The agreement of a governing body for the purposes of subsection (4)(a) above shall be given in writing and may only be withdrawn by notice in writing to the local education authority.
- (8) A determination by the Secretary of State for the purposes of subsection (4)(b) above may be withdrawn at any time (without prejudice to a further determination for those purposes).
- (9) The governing body of a school to which this section for the time being applies shall, on dismissing any member of the staff of the school employed by them, notify the local education authority in writing of the reasons for the dismissal.
- (10) Where any member of the staff at any such school is employed by the local education authority, paragraphs 8 to 10 of Schedule 3 to this Act shall have effect in relation to his dismissal or withdrawal from the school as they have effect in relation to the dismissal or withdrawal from a school to which section 44 of this Act applies of a person employed to work at the school.
- (11) Within the period of five years beginning with the date on which the financial year begins in which any aided school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned to amend the articles of government of the school so as to include a statement indicating that provisions of the articles of a kind mentioned in subsection (2)(b) above (specifying those provisions) are superseded by this section during any period when the school has a delegated budget.

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**46 Staff: further provisions. E+W**

- <sup>F7</sup>(1) . . . . .
- (2) Subject to subsection (3) below, it shall be for the governing body of any such school to determine—
- (a) whether any payment should be made by the local education authority concerned 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.
- (3) Subsection (2) above does not apply in relation to any payment which the 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.
- (4) The local education authority concerned—
- (a) shall take such steps as may be required for giving effect to any determination of the governing body of any such school under subsection (2) above; and
  - (b) shall not make, or agree to make, any payment to which that subsection applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.
- (5) Costs incurred by the local education authority concerned in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of any such 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) above.

**Textual Amendments**

<sup>F7</sup> S. 46(1) repealed (6. 3. 1992) by [School Teachers' Pay and Conditions Act 1991 \(c. 49, SIF 41:1\)](#), s. 6(3), [Sch.2](#); S.I. 1992/532, [art.3](#).

**47 Community Schools. E+W**

- (1) This section applies to any school to which section 44 or 45 of this Act for the time being applies which is a community school.
- (2) For the purposes of this section, a school is a community 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 governing body of the school.
- (3) A scheme may provide for applying sections 44(3), 45(10) and 46 of and Schedule 3 to this Act in relation to persons employed to work—

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- (a) partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the premises of a school to which this section applies; or
  - (b) solely for the purposes of non-school activities so carried on;
- as if all activities so carried on were school activities.

*Miscellaneous and supplementary*

**48 New schools. E+W**

- (1) Schedule 4 to this Act has effect for the purpose of applying the provisions of this Chapter and Schedule 3 to this Act in relation to new schools which have temporary governing bodies.
- (2) In this section and in Schedule 4 to this Act—
  - “new school” and “relevant proposal” have the same meanings respectively as in Schedule 2 to the 1986 Act (where “new school” covers both a school proposed to be established which will on implementation of the relevant proposal be maintained by a local education authority and a school which will be so maintained on the implementation in relation to an existing school of the relevant proposal); and
  - “temporary governing body” means a temporary governing body constituted for a new school under an arrangement made under section 12 of that Act (excluding such a governing body who fall by virtue of paragraph 3(5) of that Schedule to be treated as if they were the governing body constituted under the provisions of that Act that apply following the implementation of the relevant proposal).

**49 Required financial delegation apart from schemes. E+W**

- (1) In respect of any period during which any county, voluntary or special school maintained by a local education authority does not have a delegated budget it shall be the duty of the authority to make available a sum of money which the governing body of the school are to be entitled to spend at their discretion during that period (but subject to subsection (2) below) on books, equipment, stationery and such other heads of expenditure (if any) as the authority may specify or as may be prescribed.
- (2) A governing body to whom any sum is made available under this section—
  - (a) shall comply in spending that sum with such reasonable conditions as the authority think fit to impose; and
  - (b) may delegate to the head teacher, to such extent as they may specify, their powers in relation to that sum.
- (3) Before making any regulations for the purposes of subsection (1) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned and any local authority with whom consultation appears to him to be desirable.



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## **50 Financial statements in respect of schools not covered by statements under section 42. E+W**

- (1) Every local education authority shall prepare a statement under subsection (5) below in respect of any financial year before the first financial year in respect of which the authority are required to prepare a statement under section 42 of this Act (including the financial year current at the time when this section comes into force).
- (2) Subject to subsection (3) below, every local education authority who maintain one or more special schools during the whole or any part of any financial year after the last financial year to which subsection (1) above applies shall prepare a statement under subsection (5) below in respect of that financial year.
- (3) Subsection (2) above shall not apply in relation to such an authority in respect of any financial year in respect of which the authority are required to prepare a statement under section 42 of this Act which, by virtue of any provision made by regulations under section 43 of this Act, is required to include information with respect to the special school or (as the case may be) with respect to each of the special schools concerned.
- (4) The schools required to be covered by a statement prepared by a local education authority under subsection (5) below in respect of any financial year are—
  - (a) in the case of a statement required by subsection (1) above, any county, voluntary or special school maintained by the authority during the whole or any part of that year; and
  - (b) in the case of a statement required by subsection (2) above, any special school so maintained other than one in respect of which, by virtue of any provision so made, any information is required to be included in a statement prepared by the authority in respect of that year under section 42 of this Act.
- (5) The statement shall give the following particulars with respect to the financial provision initially planned by the authority in respect of the financial year to which the statement relates for the schools required to be covered by the statement—
  - (a) the initial amount appropriated for meeting expenditure in that year in respect of all such schools;
  - (b) the amount remaining (referred to below in this section as the general expenditure amount) after deducting from the amount specified in the statement by virtue of paragraph (a) above the aggregate amount of the initial amounts so appropriated in respect of—
    - (i) expenditure of a capital nature;
    - (ii) expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure of a capital nature; and
    - (iii) expenditure of such other descriptions as may be prescribed;
  - (c) such particulars as may be prescribed of amounts so deducted;
  - (d) in the case of each such school, the share of—
    - (i) the general expenditure amount; and
    - (ii) such of the amounts so deducted by virtue of paragraph (b)(iii) above as may be prescribed;which is appropriated by the authority for meeting expenditure for the purposes of the school;

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- (e) in the case of each such school, the amount of any expenditure of a capital nature initially planned for the purposes of the school;
  - (f) such particulars of the basis on which the authority determine the share of each such school for the purposes of the information required to be included in the statement under paragraph (d) above as may be prescribed; and
  - (g) such further information with respect to the financial provision initially planned by the authority for the schools required to be covered by the statement as may be prescribed.
- (6) After the end of each financial year in respect of which a local education authority are required to prepare a statement under subsection (5) above the authority shall prepare a statement containing such information with respect to—
- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the statement under subsection (5); and
  - (b) expenditure so incurred which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school;
- as may be prescribed.
- (7) Each statement prepared under this section in respect of any financial year shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (8) The authority shall furnish the governing body of any school required to be covered by a statement prepared under subsection (5) above in respect of any financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (9) A governing body to whom a copy of any such statement is furnished under subsection (8) above shall secure that a copy of the statement is available for inspection (at all reasonable times and free of charge) at the school.
- (10) Where only one school is required to be covered by a statement prepared under subsection (5) above—
- (a) references in this section to all schools required to be so covered shall be read as references to the school in question;
  - (b) that subsection shall apply with the omission of paragraphs (d) to (f); and
  - (c) subsection (6) above shall apply with the omission of paragraph (b).

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

C7 S. 50(1) modified by S.I. 1989/1135, art. 6(2)(b)

**51 Interpretation of Chapter III and supplementary and consequential provisions. E+W**

- (1) In this Chapter—

“expenditure of a capital nature” means, in relation to a local education authority, expenditure treated by that authority as expenditure of a capital nature; and

“governors’ report” means, in relation to the governing body of any school to which section 30 of the 1986 Act applies, the report they are required to prepare by virtue of that section.

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(2) In this Chapter—

- (a) references to a scheme are references—
  - (i) to a scheme made by a local education authority under section 33 of this Act; and
  - (ii) in a context referring to a particular local education authority, to a scheme so made by that authority;
- (b) references to a school's budget share for any financial year—
  - (i) shall be read in accordance with subsection (2)(a) of that section; and
  - (ii) include references to that share as from time to time revised in accordance with the scheme under which it is determined;
- (c) references to the general schools budget of a local education authority shall be read in accordance with subsection (4)(a) of that section;
- (d) references to the aggregated budget of a local education authority shall be read in accordance with subsection (4)(b) of that section;
- (e) references to excepted heads or items of expenditure shall be read in accordance with subsection (4)(b)(i) of that section;
- (f) references to a school in respect of which financial delegation is required for any financial year shall be read in accordance with subsection (6)(a) of that section;
- (g) references to a school which has a delegated budget shall be read in accordance with subsection (6)(b) of that section;
- (h) references, in relation to a scheme, to excluded expenditure under the scheme shall be read in accordance with subsection (6)(c) of that section; and
- (i) references to the delegation requirement under a scheme shall be read in accordance with section 39(4).

- (3) During any period when a school has a delegated budget under any scheme any provisions of the articles of government of the school which are inconsistent with the operation during that period of any provisions of this Chapter or of the scheme shall be of no effect to the extent of that inconsistency.

This subsection does not apply to any provision of the articles of government such as is referred to in section 44(2)(b) or 45(2)(b) of this Act (in relation to which provision corresponding to that made by subsections (4) and (5) below is made by sections 44(4) and 45(11) respectively).

- (4) Within the period of five years beginning with the date on which the financial year begins in which any school first has a delegated budget under a scheme, it shall be the duty of the local education authority concerned, if the articles of government of the school contain any provision to which subsection (3) above applies, to amend the articles so as to include in relation to that provision or (as the case may be) in relation to each such provision contained in the articles the statement required by subsection (5) below.

(5) The statement shall specify—

- (a) the provision or provisions of the articles in question;
- (b) the provision of this Chapter or of the scheme (the “overriding provision”) with the operation of which any provision of the articles specified under paragraph (a) above is inconsistent; and
- (c) the extent of the inconsistency;

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and shall indicate that, during any period when the school has a delegated budget, any provision of the articles so specified is superseded by the overriding provision to the extent that it is inconsistent with it.

- (6) Any amendment of the articles of government of a school required by section 44(4) or 45(11) of this Act or by subsection (4) above shall be made by order under section 1 of the 1986 Act; but section 2 of that Act shall not apply in relation to any order made under section 1 by virtue of this subsection.
- [<sup>F8</sup>(7) It shall be for the Secretary of State to determine any question arising under a scheme as to whether a primary school required to be covered by the scheme is within the delegation requirement under the scheme.]
- (8) Section 29 of the 1986 Act (which requires provisions to be contained in articles of government of schools with respect to financial statements and financial delegation and is superseded by the provisions of this Chapter), and any provision included in the articles of government of any school by virtue of that section, shall cease to have effect.
- (9) In section 30(2)(h) of that Act (financial statement to be included in governors' annual report to parents), for sub-paragraphs (i) and (ii) there shall be substituted the following sub-paragraphs—
- “(i) reproducing or summarising any financial statement of which a copy has been furnished to the governing body by the authority under section 42 or 50 of the Education Reform Act 1988 since the last governors' report was prepared;
  - (ii) indicating, in general terms, how any sum made available to the governing body by the authority in respect of the school's budget share within the meaning of Chapter III of Part I of that Act or under section 49 of that Act in the period covered by the report was used;”.

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**Textual Amendments**

**F8** S. 51(7) omitted (E.) (30.9.1991) by virtue of S.I. 1991/1890, reg. 2(2)(c)

**Status:**

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