



Education Act 1993

1993 CHAPTER 35

PART II

GRANT-MAINTAINED SCHOOLS

CHAPTER VIII

DISCONTINUANCE OF GRANT-MAINTAINED SCHOOLS

Proposals for discontinuance

104 Proposals by governing body for discontinuance

- (1) The governing body of a grant-maintained school may publish proposals under this section for the discontinuance of the school if they—
 - (a) decide by a resolution passed at a meeting of that body to publish such proposals, and
 - (b) confirm that decision by a resolution passed at a subsequent meeting of the governing body held not less than twenty-eight days after that at which the first resolution was passed.
- (2) Before passing such a resolution as is mentioned in subsection (1)(a) above, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the governing body shall have regard to any guidance given to them from time to time by the Secretary of State.
- (3) The governing body shall, as soon as practicable after the passing of the second resolution, give notice in writing of the second resolution to the local education authority.
- (4) The governing body may, within the period of six months beginning with the date of the second resolution, publish proposals for the discontinuance of the school in such

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manner as may be prescribed and, where they do so, shall submit to the Secretary of State a copy of the published proposals.

- (5) The published proposals shall specify the proposed date of discontinuance of the school.
- (6) The published proposals shall be accompanied by a statement—
 - (a) indicating whether or not there are any proposals for the premises of the school to be used by any new or existing school, and
 - (b) explaining the effect of subsection (7) below.
- (7) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the Secretary of State by any of the following—
 - (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,
 - (b) any ten or more local government electors,
 - (c) the governing body of any school affected by the proposals, and
 - (d) any local education authority concerned.

105 Proposals by funding authority for discontinuance

- (1) This section has effect in respect of the area of a local education authority if an order under section 12(1) of this Act applies to the area.
- (2) The funding authority may publish, in such manner as may be prescribed, proposals for the discontinuance of any grant-maintained school and, where they do so, shall submit to the Secretary of State a copy of the published proposals.
- (3) The published proposals shall specify the proposed date of discontinuance of the school.
- (4) Before publishing any proposals under this section the funding authority shall consult—
 - (a) such persons as appear to them to be appropriate, and
 - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school having any foundation governor who is appointed by the appropriate diocesan authority, that authority;
 and in discharging their duty under paragraph (a) above, the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.
- (5) The published proposals shall be accompanied by a statement—
 - (a) indicating whether or not there are any proposals for the premises of the school to be used by any new or existing school, and
 - (b) explaining the effect of subsection (6) below.
- (6) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the funding authority by any of the following—
 - (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council,

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- (b) any ten or more local government electors,
 - (c) the governing body of the school to which the proposals relate,
 - (d) the governing body of any school affected by the proposals, and
 - (e) any local education authority concerned.
- (7) Not later than one month after the end of that period, the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them.

106 Approval, adoption or rejection of proposals

- (1) Proposals published under section 104 of this Act require the approval of the Secretary of State.
- (2) Proposals published under section 105 of this Act require the approval of the Secretary of State if—
- (a) he gives notice to that effect to the funding authority within two months after the submission to him of the published proposals, or
 - (b) objections have been made under subsection (6) of that section within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (3) Where under subsection (1) or (2) above any proposals require the approval of the Secretary of State, he may reject them, approve them without modification or, after consulting the governing body and, in the case of proposals published under section 105 of this Act, the funding authority, approve them with the substitution of a different date for the date of discontinuance proposed.
- (4) Where the Secretary of State approves any such proposals he shall give notice in writing of that fact and of the discontinuance date to the governing body and (except where the school is in Wales and the Schools Funding Council for Wales have not begun to exercise their functions) the funding authority.
- (5) Where proposals published under section 105 of this Act do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (6) The funding authority shall—
- (a) make any determination under subsection (5) above not later than four months after the publication of the proposals, and
 - (b) give notice in writing to the Secretary of State and the governing body of their determination and, if they adopt the proposals, of the discontinuance date.

107 Implementation of proposals

- (1) Where any proposals are approved under section 106 of this Act, the governing body shall cease to conduct the school on the discontinuance date.
- (2) In this section, “the discontinuance date” means—
- (a) the date of discontinuance specified in the proposals as approved, or
 - (b) if—
 - (i) at the request of the governing body, or

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(ii) in the case of proposals published under section 105 of this Act, at the request of the funding authority and after consulting the governing body,

the Secretary of State subsequently fixes another date (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously fixed under this subsection), that date.

(3) The governing body of a grant-maintained school shall not discontinue the school except in pursuance of proposals published under section 104 or 105 of this Act and approved or adopted under section 106 of this Act.

108 Power to transfer functions under preceding provisions

(1) The Secretary of State may by order provide for this Part of this Act to have effect with the modifications in subsections (2) to (7) below in relation to any proposals published by the governing body of a grant-maintained school under section 104 of this Act after the coming into force of the order.

(2) The governing body shall submit a copy of the proposals to the funding authority as well as to the Secretary of State.

(3) Any objections under subsection (7) of that section to the proposals shall be submitted to the funding authority instead of to the Secretary of State.

(4) If any objection is made under subsection (7) of that section within the period allowed under that subsection and not withdrawn in writing within that period, then, not later than one month after the end of that period—

(a) the funding authority shall send to the Secretary of State copies of all such objections made (and not withdrawn in writing) together with their observations on them, and

(b) may themselves submit to the Secretary of State an objection to the proposals.

(5) Section 106(1) of this Act shall not apply to the proposals unless—

(a) the Secretary of State gives notice to the funding authority within two months after the submission to him of the published proposals that the proposals require his approval, or

(b) objections have been made under subsection (7) of section 104 of this Act within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).

(6) Where section 106(1) of this Act does not apply to the proposals—

(a) the proposals shall require the approval of the funding authority,

(b) the funding authority may reject them, approve them without modification or, after consulting the governing body, approve them with the substitution of a different date for the date of discontinuance proposed,

(c) where the funding authority approve them, they shall give notice in writing of that fact and of the discontinuance date to the governing body, and

(d) the reference in section 107(2)(b) of this Act to the Secretary of State shall be read as a reference to the funding authority.

(7) Paragraph 21(b) of Schedule 2 to this Act shall not apply in relation to the proposals.

(8) References in this Part of this Act to approval under section 106 of this Act include approval under this section.

Withdrawal of grant

109 Withdrawal of grant where school is unsuitable to continue as grant-maintained school

- (1) This section applies where the Secretary of State is satisfied that a grant-maintained school as currently constituted or conducted is unsuitable to continue as a grant-maintained school on either or both of the following grounds—
 - (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost, and
 - (b) that the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under this Act or any other enactment.
- (2) The Secretary of State may give to the governing body a notice in writing stating the grounds on which he considers that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school together with full particulars of the matters relevant to each such ground.
- (3) Where any of those matters are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall also state that the funding authority's duty to maintain the school will cease on a date specified in the notice.
- (4) Where subsection (3) above does not apply, the notice shall—
 - (a) state that the funding authority's duty to maintain the school will cease unless the matters of which particulars are given in the notice are remedied,
 - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters, and
 - (c) specify the time, not being less than six months after the date on which the notice is given to the governing body, within which the governing body are required to take those measures.
- (5) Where the governing body fail to take the measures required under subsection (4)(b) above by the notice within the time specified in the notice (or allowed by any previous notice under this subsection), the Secretary of State shall, within the period of two months beginning with the date next following the end of that time, either—
 - (a) give notice in writing to the governing body extending the time within which those measures are required to be taken, or
 - (b) after consulting the local education authority and, if the school provides education to which section 2(1) of the Further and Higher Education Act 1992 applies, the appropriate further education funding council, give notice in writing to the governing body that the funding authority's duty to maintain the school will cease on a specified date.
- (6) Where the Secretary of State gives a notice under subsection (2) or (5) above which states that the funding authority's duty to maintain the school will cease on a specified date—
 - (a) he shall give a copy of the notice to the funding authority, and
 - (b) the funding authority shall cease to be under a duty to make maintenance grants to the governing body of the school in respect of any period beginning on or after that date and shall cease on that date to have the power to pay capital or special purpose grant to the governing body.

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- (7) In relation to a school in Wales before the Schools Funding Council for Wales have begun to exercise their functions, this section and section 110 of this Act shall have effect as if subsection (6)(a) above and section 110(4) and (5) were omitted.

110 Withdrawal or variation of notice under section 109

- (1) The Secretary of State may by giving notice in writing to the governing body—
- (a) withdraw a notice under section 109(2) or (5)(b) of this Act,
 - (b) vary a notice under section 109(2) of this Act in relation to which section 109(3) of this Act applies or a notice under section 109(5)(b) of this Act by substituting another date for the date for the time being specified in the notice as the date on which the funding authority’s duty to maintain the school will cease, or
 - (c) vary a notice under section 109(2) of this Act, so far as relates to any measures specified in it by virtue of section 109(4)(b) of this Act.
- (2) If by virtue of subsection (1)(c) above the Secretary of State varies a notice so as to require different measures to be taken, he shall also substitute for the time specified in the notice by virtue of section 109(4)(c) of this Act a time which is not earlier than that time or, where the time so specified has been extended under section 109(5)(a) of this Act, than that time as so extended.
- (3) Any variation under subsection (2) above of the time specified in a notice is without prejudice to any further extension of that time under section 109(5)(a) of this Act.
- (4) Where the Secretary of State withdraws a notice by virtue of subsection (1)(a) above, he shall give notice in writing of that fact to the funding authority.
- (5) Where the Secretary of State varies a notice by virtue of subsection (1)(b) above, he shall give a copy of the notice as varied to the funding authority.

Winding up and disposal of property

111 Power to provide by order for winding-up and disposal of property

- (1) Where—
- (a) proposals for the discontinuance of a grant-maintained school have been approved or adopted under section 106 of this Act, or
 - (b) the Secretary of State has given notice to the governing body of a grant-maintained school under section 109 of this Act specifying a date on which the funding authority’s duty to maintain the school will cease,
- the Secretary of State may by order make provision for the winding up of the governing body and the disposal of the school property.
- (2) Subsections (3) to (7) below apply for the purposes of this section and sections 112 to 116 of this Act.
- (3) “Governing body in liquidation” means a governing body in respect of which any order has been made under this section.
- (4) “School property”, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, means—

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- (a) the premises used or formerly used for the purposes of the school,
 - (b) any interest belonging to the governing body, or held by any trustees on trust for the purposes of the school, in a dwelling house used or held or formerly used or held for occupation by a person employed to work at the school, and
 - (c) all other equipment and property used or held or formerly used or held for the purposes of the school (including any right to such property), except money and any investments to which section 116 of this Act applies.
- (5) References to a grant-maintained school formerly conducted by a governing body in liquidation apply in circumstances where the school has been discontinued before the dissolution date and refer to the school as conducted immediately before discontinuance (and “formerly” in subsection (4)(a) to (c) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).
- (6) “Dissolution date”, in relation to a governing body in liquidation or the grant-maintained school conducted or formerly conducted by such a body, means the date appointed in relation to that body by virtue of section 112(5) of this Act.
- (7) “Section 105 loan liabilities”, in relation to a governing body in liquidation, means any liabilities in respect of any loans made under section 105 of the Education Act 1944 (loans by Secretary of State towards initial capital expenditure of aided and special agreement schools) which were transferred to the governing body under section 38 of this Act.

112 Winding up

- (1) An order under section 111 of this Act may set out a proposed timetable for the winding up of the governing body and, in particular, for—
- (a) securing that all property belonging to the governing body or held by any trustees on trust for the purposes of the school is brought into the custody or control of that body or those trustees (as the case may require),
 - (b) discharging any liabilities of the governing body,
 - (c) making any provision mentioned in subsection (2) below, and
 - (d) the preparation and audit of the governing body’s final accounts.
- (2) The provision referred to in subsection (1)(c) above is provision authorised to be made—
- (a) by section 114 of this Act (for or in connection with the transfer of the school property), or
 - (b) by section 115 of this Act (in respect of the discharge of the liabilities of the governing body).
- (3) An order under section 111 of this Act may make provision as to the exercise of the governing body’s functions in relation to the school including, in particular—
- (a) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State,
 - (b) provision authorising any of those functions to be exercised by a member of the governing body specified in the order, and
 - (c) provision for the application of the seal of the governing body to be authenticated by the signature of a person specified in the order.
- (4) An order under section 111 of this Act—

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- (a) may make provision for conferring or imposing functions on the governing body in relation to the winding up and the management and disposal of the school property, and
 - (b) may require the governing body to give to persons employed by them notice terminating their contracts of employment as from a date specified in the order.
- (5) Subject to subsection (6) below, an order under section 111 of this Act may appoint a date on which the governing body are to be dissolved.
- (6) The Secretary of State shall not appoint a dissolution date unless he is satisfied that—
- (a) all liabilities of the governing body (other than any section 105 loan liabilities which fall to be transferred or terminated under section 115 of this Act) have been discharged,
 - (b) all costs of the winding up have been met,
 - (c) any provision authorised by any of sections 114 to 116 of this Act which is possible and expedient in the circumstances of the case has been made, and
 - (d) anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.

113 Grants to governing body in liquidation

- (1) The funding authority may make grants to a governing body in liquidation for the purpose of—
- (a) discharging any liabilities of that governing body (other than section 105 loan liabilities), and
 - (b) meeting any costs incurred by that governing body for the purposes of the winding up in pursuance of an order under section 111 of this Act.
- (2) The funding authority may impose on a governing body to whom such a payment is made such requirements as they may from time to time determine (whether before, at or after the time when the payment in question is made).

114 Disposal of school property

- (1) Subject to the provisions of any order under section 111 of this Act, any school property held by the governing body in liquidation immediately before the dissolution date, other than property held by them on trust for the purposes of the school, shall—
- (a) in the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, vest on that date in the local education authority, and
 - (b) in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, vest on that date in the funding authority.
- (2) Such an order may on such date as may be specified in the order as the transfer date vest the school property or any part of it in any person specified in the order and, where the order does so, it may provide for any property so vested to be held beneficially or on such trusts as may be specified in the order.
- (3) Where any school property is vested in any person other than the funding authority under subsection (1) above or is vested in pursuance of an order under section 111 of this Act, such an order may require the person in whom any property is so vested to pay

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in respect of the property to the Secretary of State or to such other person as may be so specified such consideration (not exceeding the maximum) as may be so specified.

- (4) Subsection (3) above does not apply to property held on trust for the purposes of the school otherwise than by the governing body; but where an order under section 111 of this Act vests property so held otherwise than by the governing body in any person the order shall require that person to pay to the trustees the maximum consideration in respect of the property.
- (5) The maximum consideration that may be specified in such an order in respect of any school property is—
- (a) so far as the property consists of premises (including any interest in a dwelling-house such as is mentioned in section 111(4)(b) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at, or as at a date no earlier than six months before, the dissolution date or, as the case may be, the transfer date, and
 - (b) so far as it consists of other property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.
- (6) Where such an order requires any person in whom any premises are vested to pay any consideration in respect of the premises, the order shall specify the amount determined by the Secretary of State under subsection (5)(a) above; and any dispute as to that amount may be referred to the Lands Tribunal by—
- (a) the person in whom the premises are vested,
 - (b) the person from whom they are transferred, or
 - (c) the person to whom the consideration is to be paid,
- and shall then be determined by the Tribunal.
- (7) Where—
- (a) by virtue of subsection (3) or (4) above such an order requires any person in whom any premises are vested to pay any consideration in respect of the premises, and
 - (b) on a reference under subsection (6) above the Lands Tribunal determine a different amount from that determined by the Secretary of State,
- he shall consider whether the amount of the consideration specified in the order requires alteration in the light of the determination of the Tribunal and, if it does, he shall vary the order accordingly.
- (8) Where—
- (a) any school property has been vested in the funding authority, or a local education authority, under subsection (1) above and, in the case of property vested in the local education authority, no order under section 111 of this Act required them to pay any consideration in respect of the property, and
 - (b) the funding authority or local education authority subsequently dispose of the property so vested, or any part of it,
- the Secretary of State may require the authority concerned to pay to him or to such person as he may specify the whole or any part of the proceeds of the disposal.
- (9) Nothing in subsection (1) above or in any provision included in an order under section 111 of this Act by virtue of this section shall affect any interest or right of a person in, to or over any school property, being an interest or right which is held by that person otherwise than for the purposes of the school.

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115 Disposal of school property: supplementary

(1) Where by virtue of an order under section 111 of this Act the premises used or formerly used for the purposes of the school, or any part of those premises, are vested in persons proposing to establish a new independent school on the premises—

- (a) such an order may require those persons to discharge any liabilities of the governing body in liquidation in respect of redundancy payments, and
- (b) where the order does so, those liabilities shall be taken into account in determining the amount of consideration (if any) which those persons are required to pay by virtue of section 114(3) of this Act.

(2) Subsection (1) above does not apply to any property held on trust for the purposes of the school otherwise than by the governing body.

(3) Where the premises used or formerly used for the purposes of the school, or any part of those premises, are to be used for the purposes of a new or existing grant-maintained school, an order under section 111 of this Act may provide for the transfer to the governing body of the new or existing school of such rights or liabilities of the governing body in liquidation as were acquired or incurred in connection with the premises which are to be so used.

(4) If—

- (a) the school was an aided or special agreement school immediately before it became grant-maintained,
- (b) proposals have been approved under section 13 of the Education Act 1980 (establishment and alteration of voluntary schools) for the maintenance as a voluntary school of a school which is proposed to be established on the school premises, and
- (c) the Secretary of State has directed that the proposed school shall be an aided school,

any section 105 loan liabilities of the governing body in liquidation shall on the dissolution date be transferred to and become liabilities of the temporary governing body of the new school (subject to any variation of the terms applicable in relation to the loans in question immediately before that date that may be agreed between the Secretary of State and that governing body).

(5) If—

- (a) subsection (4)(a) and (b) above apply, but
- (b) no direction that the proposed school shall be an aided school has been given before the dissolution date,

any section 105 loan liabilities of the governing body shall be terminated on that date.

(6) If—

- (a) any liabilities of the governing body have been terminated by virtue of subsection (5) above, and
- (b) a new voluntary school is established in pursuance of any proposals approved under section 13 of the Education Act 1980 on the school premises,

the amount of those liabilities shall be treated for the purposes of section 14 of the Education Act 1944 (restrictions on discontinuance of voluntary schools by governors) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.

116 Surplus money and investments

- (1) Subject to the following provisions of this section—
 - (a) any money held by or for a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution), and
 - (b) any investments to which this section applies held by or for such a governing body,shall, after discharge of the liabilities and costs mentioned in subsection (2) below, be paid or (as the case may be) transferred by the governing body to the Secretary of State.
- (2) The liabilities and costs referred to in subsection (1) above are—
 - (a) all the liabilities of the governing body in liquidation (other than any not required to be discharged before the dissolution date is appointed), and
 - (b) all costs of the winding up.
- (3) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
 - (a) that the money or that part of it was derived or (as the case may be) those investments were acquired otherwise than from grants paid by him or the funding authority under this Part of this Act, and
 - (b) that it ought to be paid, or the investments ought to be transferred, to a local education authority or to some other person,he may require the governing body to pay the money or (as the case may be) an amount equal to the part in question, or to transfer those investments, to such local education authority or other person as he may specify, either beneficially or to be held on trust for such purposes as he may specify.
- (4) Where the premises of the school are to be used for the purposes of a new or existing grant-maintained school, the Secretary of State may require the governing body in liquidation, after discharge of the liabilities mentioned in subsection (2) above—
 - (a) to pay any money held by or for them, and
 - (b) to transfer any investments to which this section applies held by or for them, to the governing body of the new or existing grant-maintained school, either beneficially or to be held on trust for such purposes as he may specify.
- (5) Without prejudice to the powers of the Secretary of State under subsections (3) and (4) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (6) This section applies to any investment within the meaning of the Financial Services Act 1986 which falls within—
 - (a) any of paragraphs 1 to 6 of Schedule 1 to that Act (investments and investment business), or
 - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any of paragraphs 1 to 6.
- (7) References in subsection (6) above to any paragraphs of Schedule 1 to the Financial Services Act 1986 include references to those paragraphs as amended by any order under section 2 of that Act (power to extend or restrict scope of Act) which amends those paragraphs for the purposes of all the provisions of that Act.