



# Education Act 1996

## 1996 CHAPTER 56

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

#### GENERAL

### CHAPTER I **E+W**

#### THE STATUTORY SYSTEM OF EDUCATION

##### *General*

#### **1 The stages of education. **E+W****

- (1) The statutory system of public education consists of three progressive stages: primary education, secondary education and further education.
- (2) This Part—
  - (a) confers functions on the Secretary of State and local education authorities with respect to primary, secondary and further education; and
  - (b) provides for functions with respect to primary and secondary education to be conferred on the funding authorities constituted under Chapter IV.
- (3) Part I of the <sup>M1</sup>Further and Higher Education Act 1992 confers functions with respect to further education on the further education funding councils established under section 1 of that Act.
- (4) Apart from section 10 (general duty of Secretary of State), nothing in this Act confers any functions with respect to higher education.

#### **Marginal Citations**

**M1** 1992 c. 13.

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**Status:** Point in time view as at 01/10/1998. This version of this Act contains provisions that are not valid for this point in time.

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## 2 Definition of primary, secondary and further education. **E+W**

- (1) In this Act “primary education” means —
- (a) full-time education suitable to the requirements of junior pupils who have not attained the age of 10 years and six months; and
  - (b) full-time education suitable to the requirements of junior pupils who have attained that age and whom it is expedient to educate together with junior pupils within paragraph (a).
- (2) In this Act “secondary education” means—
- (a) full-time education suitable to the requirements of pupils of compulsory school age who are either—
    - (i) senior pupils, or
    - (ii) junior pupils who have attained the age of 10 years and six months and whom it is expedient to educate together with senior pupils of compulsory school age; and
  - (b) (subject to subsection (5)) full-time education suitable to the requirements of pupils who are over compulsory school age but under the age of 19 which is provided at a school at which education within paragraph (a) is also provided.
- (3) Subject to subsection (5), in this Act “further education” means—
- (a) full-time and part-time education suitable to the requirements of persons who are over compulsory school age (including vocational, social, physical and recreational training), and
  - (b) organised leisure-time occupation provided in connection with the provision of such education,
- except that it does not include secondary education or (in accordance with subsection (7)) higher education.
- (4) Accordingly, unless it is education within subsection (2)(b), full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19 is further education for the purposes of this Act and not secondary education.
- (5) For the purposes of this Act education provided for persons who have attained the age of 19 is further education not secondary education; but where a person—
- (a) has begun a particular course of secondary education before attaining the age of 18, and
  - (b) continues to attend that course,
- the education does not cease to be secondary education by reason of his having attained the age of 19.
- (6) In subsection (3)(b) “organised leisure-time occupation” means leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose.
- (7) References in this section to education do not include references to higher education.

## 3 Definition of pupil etc. **E+W**

- (1) In this Act “pupil” means a person for whom education is being provided at a school, other than—

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- (a) a person who has attained the age of 19 for whom further education is being provided, or
- (b) a person for whom part-time education suitable to the requirements of persons of any age over compulsory school age is being provided.

[<sup>F1</sup>and references to pupils in the context of the admission of pupils to, or the exclusion of pupils from, a school are references to persons who following their admission will be, or (as the case may be) before their exclusion were, pupils as defined by this subsection.]

- (2) In this Act—
  - “junior pupil” means a child who has not attained the age of 12; and
  - “senior pupil” means a person who has attained the age of 12 but not the age of 19.
- (3) The definition of “pupil” in subsection (1) also applies (unless the context otherwise requires) for the purposes of any instrument made or having effect as if made under the Education Acts.

#### Textual Amendments

- F1** Words in s. 3(1) inserted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 9(2)**; S.I. 1997/1468, art. 2, **Sch. 1 Pt. II**

### *Educational institutions*

#### **4 Schools: general. E+W**

- [<sup>F2</sup>(1) In this Act “school” means an educational institution which is outside the further education sector and the higher education sector and is an institution for providing—
- (a) primary education,
  - (b) secondary education, or
  - (c) both primary and secondary education,
- whether or not the institution also provides part-time education suitable to the requirements of junior pupils or further education.]
- (2) [<sup>F3</sup>Nothing in subsection (1) shall be taken to preclude the making of arrangements under section 19(1) (exceptional educational provision) under which part-time education is to be provided at a school; and for] the purposes of this Act an educational institution that would fall within subsection (1) but for the fact that it provides part-time rather than full-time education shall nevertheless be treated as a school if that part-time education is provided under arrangements made under section 19(1) <sup>F4</sup>. . . .
  - (3) For the purposes of this Act an institution is outside the further education sector if it is not—
    - (a) an institution conducted by a further education corporation established under section 15 or 16 of the <sup>M2</sup>Further and Higher Education Act 1992, or
    - (b) a designated institution for the purposes of Part I of that Act (defined in section 28(4) of that Act);and references to institutions within that sector shall be construed accordingly.

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- (4) For the purposes of this Act an institution is outside the higher education sector if it is not—
- (a) a university receiving financial support under section 65 of that Act,
  - (b) an institution conducted by a higher education corporation within the meaning of that Act, or
  - (c) a designated institution for the purposes of Part II of that Act (defined in section 72(3) of that Act);
- and references to institutions within that sector shall be construed accordingly.

#### Textual Amendments

- F2** S. 4(1) substituted (1.9.1997) by 1997 c. 44, s. 51; S.I. 1997/1468, art. 2, **Sch. 1 Pt. II**
- F3** Words in s. 4(2) substituted (1.9.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 10(a)**; S.I. 1998/386, art. 2, **Sch. 1 Pt. IV**
- F4** Words in s. 4(2) repealed (1.9.1998) by 1997 c. 44, s. 57(1)(4), **Sch. 7 para. 10(b)**, **Sch. 8**; S.I. 1998/386, art. 2, **Sch. 1 Pt. IV**

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

- C1** S. 4(1) restricted (1.9.2000 (E.) and 1.4.2001 (W.)) by 2000 c. 21, s. 110(3) (with s. 150); S.I. 2000/2114, art. 2(3), **Sch. Pt. III**; S.I. 2001/1274, art. 2(1), **Sch. Pt. I**

#### Marginal Citations

- M2** 1992 c. 13.

## 5 Primary schools, secondary schools and middle schools. **E+W**

- (1) In this Act “primary school” means (subject to regulations under subsection (4)) a school for providing primary education, whether or not it also provides part-time education suitable to the requirements of junior pupils or further education.
- (2) In this Act “secondary school” means (subject to regulations under subsection (4)) a school for providing secondary education, whether or not it also provides further education.
- (3) In this Act “middle school” means a school in respect of which proposals authorised by section 49, 198(6) or 291 are implemented (that is, a school providing full-time education suitable to the requirements of pupils who have attained a specified age below 10 years and six months and are under a specified age above 12 years).
- (4) The Secretary of State shall make regulations for determining, or enabling him to determine, whether a middle school is to be treated for the purposes of this Act and the other enactments relating to education as a primary school or as a secondary school.
- (5) The powers conferred by sections 49, 198(6) and 291 and subsection (4) above are exercisable—
  - (a) notwithstanding anything in this Act (and in particular section 1); but
  - (b) without prejudice to the exercise of any other power conferred by this Act.

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## 6 Nursery schools and special schools. **E+W**

- (1) A primary school is a nursery school if it is used mainly for the purpose of providing education for children who have attained the age of two but are under [<sup>F5</sup>compulsory school age].
- (2) A school is a special school if it is specially organised, and for the time being approved, as mentioned in section 337(1).

### Textual Amendments

- F5** Words in s. 6(1) substituted (1.8.1998) by 1997 c. 44, s. 51(1), **Sch. 7 para.11**; S.I. 1998/386, art. 2, **Sch. 1 Pt. III**

### *Compulsory education*

## 7 Duty of parents to secure education of children of compulsory school age. **E+W**

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—

- (a) to his age, ability and aptitude, and
  - (b) to any special educational needs he may have,
- either by regular attendance at school or otherwise.

## 8 Compulsory school age. **E+W**

- (1) Subsections (2) and (3) apply to determine for the purposes of any enactment whether a person is of compulsory school age.

[<sup>F6</sup>(2) A person begins to be of compulsory school age—

- (a) when he attains the age of five, if he attains that age on a prescribed day, and
- (b) otherwise at the beginning of the prescribed day next following his attaining that age.]

- (3) A person ceases to be of compulsory school age at the end of the day which is the school leaving date for any calendar year—

- (a) if he attains the age of 16 after that day but before the beginning of the school year next following,
- (b) if he attains that age on that day, or
- (c) (unless paragraph (a) applies) if that day is the school leaving date next following his attaining that age.

[<sup>F7</sup>(4) The Secretary of State may by order—

- (a) provide that such days in the year as are specified in the order shall be, for each calendar year, prescribed days for the purposes of subsection (2);
- (b) determine the day in any calendar year which is to be the school leaving date for that year.]

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#### Textual Amendments

- F6** S. 8(2) substituted (1.8.1998) by 1997 c. 44, s. 52(2); S.I. 1998/386, art. 2, Sch. 1 Pt. III  
**F7** S. 8(4) substituted (1.8.1998) by 1997 c. 44, s. 52(3); S.I. 1998/386, art. 2, Sch. 1 Pt. III

### *Education in accordance with parental wishes*

#### 9 Pupils to be educated in accordance with parents' wishes. **E+W**

In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, local education authorities and the funding authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

## CHAPTER II **E+W**

### FUNCTIONS OF THE SECRETARY OF STATE

#### 10 General duty of Secretary of State. **E+W**

The Secretary of State shall promote the education of the people of England and Wales.

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

- C2** S. 10 amended (1.11.1996) by 1994 c. 30, s. 11A, as inserted by 1996 c. 56, ss. 582(1)(3), 583(2), Sch. 37 Pt. I para.126 (with ss. 1(4), 561, 562, Sch. 39)

#### 11 Duty in the case of primary, secondary and further education. **E+W**

- (1) The Secretary of State shall exercise his powers in respect of those bodies in receipt of public funds which—
- (a) carry responsibility for securing that the required provision for primary, secondary or further education is made—
    - (i) in schools, or
    - (ii) in institutions within the further education sector,
 in or in any area of England or Wales, or
  - (b) conduct schools or institutions within the further education sector in England and Wales,
- for the purpose of promoting primary, secondary and further education in England and Wales.
- (2) The Secretary of State shall, in the case of his powers to regulate the provision made in schools and institutions within the further education sector in England and Wales, exercise his powers with a view to (among other things) improving standards, encouraging diversity and increasing opportunities for choice.

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

- C3** S. 11 amended (1.11.1996) by 1994 c. 30, s. 11A, as inserted by 1996 c. 56, ss. 582(1)(3), 583(2), **Sch. 37 Pt. I para.126** (with ss. 1(4), 561, 562, Sch. 39)

**CHAPTER III E+W**

LOCAL EDUCATION AUTHORITIES

*The authorities*

**12 Local education authorities and their areas. E+W**

- (1) The local education authority for a county in England having a county council is the county council.
- (2) The local education authority for a district in England which is not in a county having a county council is the district council.
- (3) The local education authority for a London borough is the borough council.
- (4) The local education authority for the City of London (which for the purposes of this Act shall be treated as including the Inner Temple and the Middle Temple) is the Common Council of the City of London (in their capacity as a local authority).
- (5) As respects Wales—
  - (a) the local education authority for a county is the county council; and
  - (b) the local education authority for a county borough is the county borough council.
- (6) Any reference in this Act to the area of a local education authority shall be construed in accordance with the preceding provisions of this section.

*General functions*

**13 General responsibility for education. E+W**

- (1) A local education authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education, secondary education and further education are available to meet the needs of the population of their area.
- (2) The duty imposed by subsection (1) does not extend to matters in respect of which any duty is imposed on—
  - (a) the further education funding councils established under section 1 of the <sup>M3</sup>Further and Higher Education Act 1992, or
  - (b) the higher education funding councils established under section 62 of that Act.

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### Marginal Citations

M3 1992 c. 13.

VALID FROM 01/10/1999

### [<sup>F8</sup>13A Duty to promote high standards in primary and secondary education. E+W

- (1) A local education authority shall ensure that their functions relating to the provision of education to which this section applies are (so far as they are capable of being so exercised) exercised by the authority with a view to promoting high standards.
- (2) This section applies to education for—
  - (a) persons of compulsory school age (whether at school or otherwise); and
  - (b) persons of any age above or below that age who are registered as pupils at schools maintained by the authority;
 and in subsection (1) “functions” means functions of whatever nature.]

### Textual Amendments

F8 S. 13A inserted (1.10.1998) by 1998 c. 31, s. 5 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt. I.

### 14 Functions in respect of provision of primary and secondary schools. E+W

- (1) A local education authority shall secure that sufficient schools for providing—
  - (a) primary education, and
  - (b) education that is secondary education by virtue of section 2(2)(a),
 are available for their area.
- (2) The schools available for an area shall not be regarded as sufficient for the purposes of subsection (1) unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.
- (3) In subsection (2) “appropriate education” means education which offers such variety of instruction and training as may be desirable in view of—
  - (a) the pupils’ different ages, abilities and aptitudes, and
  - (b) the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their different needs.
- (4) A local education authority is not by virtue of subsection (1)(a) under any duty in respect of children under [<sup>F9</sup>compulsory school age].
- (5) A local education authority may secure the provision for their area of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, including provision for persons from other areas.
- (6) In exercising their functions under this section, a local education authority shall in particular have regard to—



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- (a) the need for securing that primary and secondary education are provided in separate schools;
  - (b) the need for securing that special educational provision is made for pupils who have special educational needs; and
  - (c) the expediency of securing the provision of boarding accommodation (in boarding schools or otherwise) for pupils for whom education as boarders is considered by their parents and the authority to be desirable.
- (7) The duty imposed by subsection (6)(a) does not apply in relation to middle schools or special schools.

#### Textual Amendments

- F9** Words in s. 14(4) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.12**; S.I. 1998/386, art. 2, **Sch. 1 Pt. III**

### 15 Functions in respect of provision of further education. **E+W**

- (1) A local education authority shall secure the provision for their area of adequate facilities for further education.
- (2) The duty imposed by subsection (1) does not apply in relation to—
- (a) education to which section 2(1) of the <sup>M4</sup>Further and Higher Education Act 1992 applies (that is, full-time education suitable to the requirements of persons who are over compulsory school age and under the age of 19); or
  - (b) education to which section 3(1) of that Act applies (that is—
    - (i) part-time education suitable to the requirements of persons of any age over compulsory school age, and
    - (ii) full-time education suitable to the requirements of persons who have attained the age of 19,where the education is provided by means of a course of a description mentioned in Schedule 2 to that Act).
- (3) However, in respect of further education falling within subsection (2)(b), a local education authority may secure the provision for their area of such facilities as appear to them to be appropriate for meeting the needs of the population of their area.
- (4) A local education authority may secure the provision of further education for persons from other areas.
- (5) In exercising their functions under this section a local education authority shall have regard to—
- (a) any educational facilities provided—
    - (i) by institutions within the higher education sector or the further education sector, and
    - (ii) by other bodies,which are provided for, or available for use by persons in, their area, and
  - (b) the requirements of persons over compulsory school age who have learning difficulties.

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- (6) Subject to subsection (7), a person has a “learning difficulty” for the purposes of subsection (5) if—
- (a) he has a significantly greater difficulty in learning than the majority of persons of his age, or
  - (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided in pursuance of the duty under subsection (1) for persons of his age.
- (7) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.
- (8) A local education authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section.

#### Marginal Citations

**M4** 1992 c. 13.

VALID FROM 01/09/1999

#### [<sup>F10</sup>15A Functions in respect of full-time education for 16 to 18 year olds. **E+W**

- (1) A local education authority may secure the provision for their area of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, including provision for persons from other areas.
- (2) Subsections (6) and (7) of section 14 shall apply in relation to functions under this section as they apply in relation to functions under that section.]

#### Textual Amendments

**F10** S. 15A inserted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.63** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1** (with savings in Sch. 7 paras. 2-4, 6, 7, 10, 12)

VALID FROM 28/07/2000

#### [<sup>F11</sup>15B Functions in respect of education for persons over 19. **E+W**

- (1) A local education authority may secure the provision for their area of full-time or part-time education suitable to the requirements of persons who have attained the age of 19, including provision for persons from other areas.
- (2) The power under subsection (1) to secure the provision of education includes power to secure the provision—
  - (a) of training, including vocational, social, physical and recreational training, and

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- (b) of organised leisure time occupation (within the meaning of section 2(6)) which is provided in connection with the provision of education or of training within paragraph (a).
- (3) In exercising their functions under this section a local education authority shall in particular have regard to the needs of persons with learning difficulties (within the meaning of section 13(5) and (6) of the Learning and Skills Act 2000).
- (4) A local education authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section.
- (5) This section does not apply to higher education.]

#### Textual Amendments

- F11** S. 15B inserted (28.7.2000 for certain purposes otherwise 1.4.2001) by 2000 c. 21, ss. 149, 154(5), **Sch. 9 para. 55** (with s. 150); S.I. 2001/654, art. 2(2), **Sch. Pt. II** (with art. 3); S.I. 2001/1274, art. 2(1), **Sch. Pt. I**

#### *Establishment etc. of schools*

### **16 Power to establish, maintain and assist primary and secondary schools. E+W**

- (1) For the purpose of fulfilling their functions under this Act, a local education authority may—
  - (a) establish primary schools and secondary schools;
  - (b) maintain primary and secondary schools, whether established by them or not; and
  - (c) assist any primary or secondary school which is not maintained by them.
- (2) A local education authority may under subsection (1) establish, maintain and assist schools outside as well as inside their area.
- (3) A local education authority may not under subsection (1) establish a school to provide—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19.

### **17 Powers in respect of nursery education. E+W**

- (1) A local education authority may—
  - (a) establish nursery schools;
  - (b) maintain nursery schools established by them or by an authority which was a local education authority within the meaning of any enactment repealed by the <sup>M5</sup>Education Act 1944 or an earlier Act; and
  - (c) assist any nursery school not so established.

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- (2) Section 14(4) does not affect a local education authority’s power under section 16(1) to establish, maintain and assist schools at which education is provided both for children under [<sup>F12</sup>compulsory school age] and for older pupils (including schools at which there are nursery classes for children under [<sup>F12</sup>compulsory school age]).

#### Textual Amendments

**F12** Words in s. 17(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.13**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

#### Marginal Citations

**M5** 1944 c. 31.

### *Other arrangements for provision of education*

#### **18 Power to arrange provision of education at non-maintained schools. E+W**

A local education authority may make arrangements for the provision of primary and secondary education for pupils at schools not maintained by them or another local education authority.

#### **19 Exceptional provision of education in pupil referral units or elsewhere. E+W**

(1) Each local education authority shall make arrangements for the provision of suitable <sup>F13</sup> . . . education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

(2) Any school established (whether before or after the commencement of this Act) and maintained by a local education authority which—

- (a) is specially organised to provide education for such children, and
- (b) is not a county school or a special school,

shall be known as a “pupil referral unit”.

(3) A local education authority may secure the provision of boarding accommodation at any pupil referral unit.

(4) A local education authority may make arrangements for the provision of suitable <sup>F13</sup> . . . education otherwise than at school for those young persons who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

[<sup>F14</sup>(4A) In determining what arrangements to make under subsection (1) or (4) in the case of any child or young person a local education authority shall have regard to any guidance given from time to time by the Secretary of State.]

(5) Any child for whom education is provided otherwise than at school in pursuance of this section, and any young person for whom full-time education is so provided in pursuance of this section, shall be treated for the purposes of this Act as a pupil.

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- (6) In this section “suitable education”, in relation to a child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.
- (7) Schedule 1 has effect in relation to pupil referral units.

**Textual Amendments**

- F13** Words in s. 19(1) and (4) repealed (1.9.1998) by 1997 c. 44, ss. 47(2)(3), 57(4), **Sch.8**; S.I. 1998/386, art. 2, **Sch. 1 Pt. IV**
- F14** S. 19(4A) inserted (1.9.1998) by 1997 c. 44, s. 47(4); S.I. 1998/386, art. 2, **Sch. 1 Pt. IV**

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

- C4** S. 19 excluded (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(5)(c)(10), 162 (with s. 159)

**CHAPTER IV** **E+W**

THE FUNDING AUTHORITIES

*The Authorities*

**20** **The Funding Agency for Schools.** **E+W**

- (1) The Funding Agency for Schools shall continue in existence as a body corporate exercising in relation to England the functions conferred on them.
- (2) The agency shall consist of not less than 10 nor more than 15 members appointed by the Secretary of State, one of whom shall be so appointed as chairman.
- (3) In appointing the members of the agency the Secretary of State shall have regard to the desirability of including—
- (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of primary or secondary education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of such education;
  - (b) persons who appear to him to have experience of, and to have shown capacity in, the provision of education in voluntary schools, or in grant-maintained schools having foundation governors;
  - (c) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession; and
  - (d) persons who appear to him to have experience of, and to have shown capacity in, providing for children with special educational needs.
- (4) Before appointing any member of the agency the Secretary of State shall consult—
- (a) a body appearing to him to be representative of the Church of England, and
  - (b) a body appearing to him to be representative of the Roman Catholic Church, in matters relating to the provision of education in voluntary schools, or in grant-maintained schools having foundation governors.

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(5) Schedule 2 has effect in relation to the agency.

## **21 The Schools Funding Council for Wales. E+W**

- (1) The Secretary of State may by order make provision for the establishment of a body corporate to be known as the Schools Funding Council for Wales to exercise in relation to Wales, as from such date as may be specified in the order, the functions conferred on them.
- (2) The council shall consist of not less than eight nor more than 12 members appointed by the Secretary of State, one of whom shall be so appointed as chairman.
- (3) In appointing the members of the council the Secretary of State shall have regard to the desirability of including—
  - (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of primary or secondary education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of such education;
  - (b) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession; and
  - (c) persons who appear to him to have experience of, and to have shown capacity in, providing for children with special educational needs.
- (4) Schedule 2 has effect in relation to the council.

### *Functions*

## **22 Functions of funding authorities. E+W**

- (1) The functions which are or may be exercisable by a funding authority include in particular those which are or may be so exercisable by virtue of—
  - (a) section 23 (value-for-money studies of grant-maintained schools);
  - (b) section 27 (responsibility for provision of school places to be held together with, or to the exclusion of, local education authority); and
  - (c) Chapter VI of Part III (funding of grant-maintained schools).
- (2) Schedule 3 enables the Secretary of State to transfer to a funding authority certain functions of his with respect to education.

## **23 Value-for-money studies of grant-maintained schools. E+W**

- (1) Each funding authority shall make arrangements for carrying out such value-for-money studies of grant-maintained schools in England or, as the case may be, Wales as in their opinion are required or as the Secretary of State may direct.
- (2) The authority shall, in particular—
  - (a) in forming an opinion as to whether any value-for-money study is required to be carried out in pursuance of this section, have regard to the desirability of value-for-money studies being carried out at regular intervals, and

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- (b) in determining the scope of any value-for-money study to be carried out in pursuance of this section otherwise than on the direction of the Secretary of State, have regard to the scope of any value-for-money study which is being or has recently been carried out.
- (3) In this section “value-for-money study”, in relation to any grant-maintained school, means—
- (a) any examination into the economy, efficiency and effectiveness with which the governing body of the school have, in discharging their functions, used grant made by the authority, and
  - (b) any study designed to improve economy, efficiency and effectiveness in the management or operations of the school.

## 24 Supervision of funding authorities by the Secretary of State. **E+W**

- (1) In exercising their functions each funding authority shall comply with any directions contained in an order made by the Secretary of State.
- (2) In respect of the exercise by the funding authority of functions in respect of any grant-maintained school, such directions may relate to grant-maintained schools generally or to any class or description of such schools.
- (3) Before making an order under this section, the Secretary of State shall consult the funding authority unless, for reasons of urgency, it is not in his opinion reasonably practicable for him to do so.
- (4) Sections 496 and 497 (powers of Secretary of State where local education authority etc. are acting unreasonably or are in default) shall apply in relation to a funding authority and the functions conferred on them by or under the Education Acts as they apply in relation to local education authorities and the functions conferred on them by or under this Act.
- (5) Subsection (4) does not prejudice the generality of subsection (1).

### Modifications etc. (not altering text)

C5 S. 24: power to modify conferred (1.4.1999) by 1998 c. 31, s. 132(4); S.I. 1999/1016, art. 2(1), Sch. 1

## Supplemental

## 25 Grants to funding authorities. **E+W**

The Secretary of State may make grants to a funding authority of such amounts and subject to such terms and conditions as he may determine.

## 26 Meaning of “funding authority”. **E+W**

- (1) Any reference in this Act to a funding authority—
  - (a) in relation to schools, or local education authority areas, in England is to the Funding Agency for Schools, and
  - (b) in relation to schools, or local education authority areas, in Wales is, subject to subsection (2), to the Schools Funding Council for Wales,

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and in any other context is to the agency or the council.

- (2) Before the Schools Funding Council for Wales begin to exercise their functions, any reference in this Act (other than this Part) to a funding authority in relation to schools, or local education authority areas, in Wales is to be read as a reference to the Secretary of State.

## CHAPTER V **E+W**

### ALLOCATION OF RESPONSIBILITY FOR EDUCATION AT SCHOOL BETWEEN LEA AND FUNDING AUTHORITY

#### 27 **Responsibility for providing sufficient school places.** **E+W**

- (1) In respect of the area of any local education authority, the Secretary of State may—
- (a) where he wishes responsibility for providing sufficient school places to be held by the funding authority as well as the local education authority, make an order under this paragraph, and
  - (b) where he wishes that responsibility to be held by the funding authority alone, make an order under this paragraph;

and such an order may relate to primary education, to secondary education or to both.

- (2) An order under subsection (1) shall state—
- (a) the local education authority area to which the order applies;
  - (b) whether the order is made under paragraph (a) or (b) of that subsection;
  - (c) the kind (that is primary or secondary) or kinds of education to which the order relates; and
  - (d) the date as from which the order is to have effect.
- (3) No order may be made in respect of any area under subsection (1) unless—
- (a) in the case of an order under subsection (1)(a) or (b), it appears to the Secretary of State that subsection (4) is, or has at any time been, satisfied, or
  - (b) in the case of an order under subsection (1)(b), the local education authority have at any time requested the Secretary of State to make the order and subsection (4) is, or has at any time been, satisfied,

in relation to the kind of education to which the order relates or, as the case may be, each of the kinds of education to which the order relates.

- (4) This subsection is satisfied—
- (a) for the purposes of—
    - (i) subsection (3)(a) in its application to an order under subsection (1)(a), or
    - (ii) subsection (3)(b),
 if not less than 10 per cent. of the pupils for whom education is provided in county, voluntary and grant-maintained schools in the area are registered pupils at grant-maintained schools;
  - (b) for the purposes of subsection (3)(a) in its application to an order under subsection (1)(b), if not less than 75 per cent. of the pupils for whom education is provided in county, voluntary and grant-maintained schools in the area are registered pupils at grant-maintained schools.



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- (5) For the purposes of subsection (3) the kind of education to which an order relates—
- (a) where an order is expressed to relate only to primary education, includes any secondary education provided in a primary school and excludes any primary education provided in a secondary school, and
  - (b) where an order is expressed to relate only to secondary education, includes any primary education provided in a secondary school and excludes any secondary education provided in a primary school.
- (6) The effect of an order under this section is set out in Schedule 4.
- (7) The kind or kinds of education to which an order under subsection (1)(a) or (b) relates are referred to in this Act, in relation to such an order, as “relevant education”.

## CHAPTER VI **E+W**

### SUPPLEMENTAL

#### *Allocation of functions*

#### **28 Resolution of disputes as to allocation of functions. **E+W****

Any dispute as to whether any functions are exercisable by a funding authority or a local education authority shall be determined by the Secretary of State.

#### *Provision of information*

#### **29 Provision of information by local education authorities. **E+W****

- (1) A local education authority shall—
- (a) make such reports and returns to the Secretary of State, and
  - (b) give to the Secretary of State such information,
- as he may require for the purpose of the exercise of his functions under this Act.
- (2) A local education authority shall—
- (a) make such reports and returns to the funding authority, and
  - (b) give to the funding authority such information,
- as the funding authority may require for the purpose of the exercise of their functions.
- (3) A local education authority shall—
- (a) compile such information, and
  - (b) make such provision for conducting, or assisting the conduct of, research,
- as may be required for the purpose of providing the Secretary of State and the funding authority, in such form and at such times as may be prescribed, with such information relating to the provision of primary or secondary education in the area of the local education authority as may be prescribed.
- (4) The Secretary of State shall exercise his powers under subsection (3) so as to secure, in particular, the provision of information relating to the provision of education for children with special educational needs.

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- (5) A local education authority shall, at such time or times and in such manner as may be required by regulations, publish such information as may be so required with respect to their policy and arrangements in respect of any matter relating to primary or secondary education.
- (6) Nothing in subsection (5) applies in relation to—
  - (a) nursery schools, or
  - (b) children who will be under [<sup>F15</sup>compulsory school age] at the time of their proposed admission.

#### Textual Amendments

**F15** Words in s. 29(6)(b) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.14**; S.I. 1998/386, **art. 2, Pt.III**

### 30 Provision of information by funding authorities. **E+W**

- (1) A funding authority—
  - (a) shall provide the Secretary of State with such information or advice in connection with any function of his relating to the provision of education as he may from time to time require; and
  - (b) may provide the Secretary of State with such information or advice relating to such provision as they think fit.
- (2) The information and advice provided under subsection (1) shall be provided in such manner as the Secretary of State may from time to time determine.
- (3) A funding authority shall—
  - (a) make such reports and returns to any local education authority, and
  - (b) give to any local education authority such information,
 as the local education authority may require for the purpose of the exercise of their functions.
- (4) A funding authority shall—
  - (a) compile such information, and
  - (b) make such provision for conducting, or assisting the conduct of, research,
 as may be required for the purpose of providing the Secretary of State and local education authorities, in such form and at such times as may be prescribed, with such information relating to the provision of education in any area to which an order under section 27 applies as may be prescribed.
- (5) The Secretary of State shall exercise his powers under subsection (4) so as to secure, in particular, the provision of information relating to the provision of education for children with special educational needs.

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## F16 PART II E+W

### SCHOOLS MAINTAINED BY LOCAL EDUCATION AUTHORITIES

#### Textual Amendments

**F16** Pt. II (ss. 31-182) repealed (1.10.1998, 10.3.1999, 1.4.1999 respectively in relation to specified provisions and otherwise 1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, Sch.31 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pts. I, IV; S.I. 1999/120, art. 2(2), Sch. 2; S.I. 1999/1016, art. 2(1), Sch. 1; S.I. 1999/2323, art. 2(1), Sch. 1 (with savings as specified in those S.I.s and subject to savings in S.I. 1999/704, S.I. 1999/711, S.I. 1999/2243 and S.I. 1999/2262)

## CHAPTER I E+W

### PRELIMINARY

#### 31 County schools and voluntary schools. E+W

- (1) A primary or secondary school which is maintained by a local education authority is a county school if—
  - (a) it was established by a local education authority, or
  - (b) it was not so established but—
    - (i) it has been maintained as a county school since before the commencement of this Act, or
    - (ii) it is maintained as a county school in pursuance of proposals under section 35(1)(b), or
    - (iii) it is maintained as a county school in pursuance of an order under section 50.
- (2) A primary or secondary school which is maintained by a local education authority is a voluntary school if it is not within paragraph (a) or (b) of subsection (1).
- (3) Nothing in this section applies to—
  - (a) a nursery school;
  - (b) a special school; or
  - (c) a pupil referral unit within the meaning of section 19.

#### 32 Categories of voluntary schools: controlled, aided and special agreement schools. E+W

- (1) There are three categories of voluntary school—
  - (a) controlled schools,
  - (b) aided schools, and
  - (c) special agreement schools.
- (2) A voluntary school is a controlled school if no order such as is mentioned in subsection (3) or (4) is in force in respect of it.
- (3) A voluntary school is an aided school if there is in force an order to that effect made under section 48, 51, 54 or 58 of this Act (or under section 15 of the <sup>M6</sup>Education Act

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1944, section 2 of the <sup>M7</sup>Education Act 1946 or section 54 of the <sup>M8</sup>Education (No. 2) Act 1986).

- (4) A voluntary school is a special agreement school if there is in force an order to that effect made under section 15 of the Education Act 1944 (which provided for the making of such an order where a special agreement had been made in respect of a school).
- (5) In this Act “special agreement” means an agreement made under Schedule 3 to the Education Act 1944 or deemed to have been so made by virtue of paragraph 11 of that Schedule (agreement providing for the making of a grant by a local education authority to persons specified in the agreement in consideration of their execution of proposals for the establishment of a school or the alteration of the premises of a school).
- (6) Schedule 5 to this Act (which reproduces certain of the provisions of Schedule 3 to that Act) has effect in relation to special agreements.

#### Marginal Citations

- M6** 1944 c. 31.  
**M7** 1946 c. 50.  
**M8** 1986 c. 61.

### 33 Maintained nursery schools and maintained special schools. **E+W**

- (1) In this Act—
  - “maintained nursery school” means a nursery school which is maintained by a local education authority; and
  - “maintained special school” means (in accordance with section 337(3)) a special school which is maintained by a local education authority.
- (2) Chapter II of Part IV (special educational needs) has effect in relation to the establishment and approval of schools as maintained special schools.

### 34 Meaning of “maintain” etc. **E+W**

- (1) In this Act—
  - (a) in relation to a school maintained (or proposed to be maintained) by a local education authority, “the local education authority” means that authority; and
  - (b) in relation to schools falling within subsections (2) to (5), “maintain” shall be read in accordance with those subsections.
- (2) In the case of a county school, a maintained nursery school or a maintained special school, the local education authority’s duty to maintain the school includes the duty of defraying all the expenses of maintaining it.
- (3) In the case of a controlled school, the local education authority’s duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty under section 60 of providing new premises for the school under and in accordance with that section.

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- (4) In the case of an aided or special agreement school, the local education authority's duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, except any expenses that by virtue of section 59 or a special agreement are payable by the governing body, and
  - (b) the duty under section 61 of providing new premises for the school under and in accordance with that section.
- (5) It is hereby declared that for the purposes of this Act the expenses of maintaining a voluntary school include the payment of rates.

## CHAPTER II **E+W**

### ESTABLISHMENT, ALTERATION ETC. OF COUNTY AND VOLUNTARY SCHOOLS

#### *County schools: establishment, alteration or change of site*

### **35 County school: proposals for establishment, alteration or new site. **E+W****

- (1) Where a local education authority intend—
  - (a) to establish a new county school,
  - (b) to maintain as a county school a school which is not for the time being a county school,
  - (c) to make any significant change in the character, or any significant enlargement of the premises, of a county school, or
  - (d) to transfer a county school to a new site in the area,then (subject to subsections (2) and (8)) they shall publish their proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.
- (2) The requirement to publish proposals under subsection (1)(d) does not apply in relation to the transfer of a county school to a new site if—
  - (a) the school is intended to return to its existing site within three years of the time of the transfer; or
  - (b) the local education authority are satisfied that it is expedient that the school should be transferred to the new site either—
    - (i) because it is not reasonably practicable to make to the existing premises of the school the alterations necessary for securing that they conform to the standards prescribed under section 542, or
    - (ii) in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relating to housing or to town and country planning; or
  - (c) the transfer is authorised by an order made under section 16(1) of the <sup>M9</sup>Education Act 1944 (transfer of county schools etc. to new sites).
- (3) Proposals published under this section shall include particulars—
  - (a) of the time or times at which it is intended to implement the proposals, and

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- (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented,
- and shall be accompanied by a statement of the effect of section 36.
- (4) For the purposes of subsection (3)(b) pupils intended to be admitted to the school for nursery education shall be disregarded, and pupils—
- (a) already admitted to the school for nursery education, and
  - (b) intended to be transferred to a reception class at the school,
- shall be treated as intended to be admitted to the school on their transfer.
- (5) Before publishing any proposals under this section a local education authority shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (6) Before publishing any proposals under subsection (1)(c) which (if implemented) would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the local education authority shall consult the appropriate further education funding council.
- (7) Before formulating any proposals under subsection (1)(c) or (d) in respect of a school which is (within the meaning of Part III) eligible for grant-maintained status, the local education authority shall consult the school's governing body.
- (8) No proposals shall be published under this section in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved under section 194.

#### Marginal Citations

M9 1944 c. 31.

### 36 Objections to proposals under section 35. **E+W**

- (1) Objections to any proposals published by a local education authority under section 35 may be submitted to the authority by any of the following—
- (a) any ten or more local government electors for the authority's area,
  - (b) the governing body of any school affected by the proposals,
  - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M10</sup>Further and Higher Education Act 1992 applies), and
  - (d) any other local education authority concerned.
- (2) Objections may be so submitted within the period of two months after the first publication of the proposals.
- (3) Where—
- (a) an order under section 27 (allocation of responsibility for providing sufficient school places) applies to the area of a local education authority, and
  - (b) the authority publish proposals under section 35 which affect the provision of relevant education in that area,

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the funding authority shall be included among the persons who may submit objections under subsection (1) to the proposals.

- (4) Within one month after the end of the period mentioned in subsection (2), the local education authority by whom the proposals were published shall transmit to the Secretary of State copies of all objections made (and not withdrawn in writing) within that period, together with the authority's observations on them.
- (5) For the purposes of this section proposals under section 35 shall be taken to have been first published—
  - (a) on the day on which the requirements of regulations with respect to the publication of the proposals are satisfied; or
  - (b) where different such requirements are satisfied on different days, on the last of those days.
- (6) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (5) be taken to be satisfied on the first day in respect of which it is satisfied.

**Marginal Citations**

M10 1992 c. 13.

**37 Approval or rejection by Secretary of State of proposals under section 35. E**

+W

- (1) Proposals published by a local education authority under section 35 require the approval of the Secretary of State if subsection (2), (3) or (4) applies.
- (2) This subsection applies if the proposals are for the maintenance as a county school of a school which is for the time being a voluntary school.
- (3) This subsection applies if either—
  - (a) the Secretary of State, within two months after the submission to him of the published proposals, gives notice to the local education authority that the proposals require his approval, or
  - (b) objections have been made under section 36 and any of them have not been withdrawn in writing within the period specified in subsection (2) of that section.
- (4) This subsection applies if either—
  - (a) the proposals are first published after proposals for acquisition of grant-maintained status for the school have been published under section 193 but before those proposals are determined or withdrawn, or
  - (b) after the proposals have first been published but before they are determined or withdrawn, proposals for acquisition of grant-maintained status for the school are published under section 193;and references in this subsection to proposals being first published shall be construed in accordance with section 36(5) and (6).
- (5) Where any proposals require the approval of the Secretary of State under this section, he may (subject to subsections (6) to (8))—

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- (a) reject them,
  - (b) approve them without modification, or
  - (c) after consultation with the local education authority, approve them with such modifications as he thinks desirable.
- (6) In a case where subsection (2) applies, the Secretary of State shall not approve the proposals unless he has, in accordance with Schedule 6, approved an agreement under that Schedule between the local education authority and the school's governing body for the transfer to the authority of all necessary interests in the school premises.
- (7) In a case where subsection (4) applies, the Secretary of State—
- (a) shall consider both sets of proposals together, but
  - (b) shall not determine the proposals published under section 35 until he has made his determination with respect to the proposals published under section 193.
- (8) If the Secretary of State approves the proposals published under section 193, he shall approve the proposals published under section 35 if—
- (a) they are proposals under subsection (1)(c) or (d) of that section, and
  - (b) the governing body incorporated under section 195 give their consent,
- but otherwise he shall reject the proposals published under section 35.
- (9) Any proposals under section 35(1)(c) or (d) which are approved under subsection (8) shall be treated for the purposes of Part III (grant-maintained schools) as if they had been—
- (a) published under section 259 (change of character etc. of grant-maintained school), and
  - (b) approved under section 261,
- and section 262 (approval of school premises) shall apply accordingly.

**38 Determination by LEA whether to implement proposals under section 35. E**  
+W

- (1) Where any proposals published by a local education authority under section 35 do not require the approval of the Secretary of State under section 37, the authority shall determine whether the proposals should be implemented.
- (2) The determination must be made not later than four months after the submission of the proposals to the Secretary of State under section 35.
- (3) A local education authority shall notify the Secretary of State of any determination made by them under this section.

**39 Approval of school premises. E+W**

- (1) Where a local education authority publish proposals under section 35, they shall submit to the Secretary of State for his approval such particulars with respect to the premises or proposed premises of the school as he may require.
- (2) The particulars shall be so submitted at such time, and in such form and manner, as the Secretary of State may direct.



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- (3) Schedule 6 has effect in relation to agreements for the transfer of premises in pursuance of proposals for a voluntary school to become a county school, and the approval of such agreements by the Secretary of State.

#### **40 Implementation of proposals under section 35, etc. E+W**

- (1) Subject to subsection (3), a local education authority shall implement any proposals of theirs—
- (a) which have been approved by the Secretary of State under section 37, or
  - (b) which they have determined under section 38 to implement.
- (2) Where any particulars have been submitted under section 39 in connection with the proposals, the proposals shall be implemented in accordance with the particulars as approved by the Secretary of State.
- (3) The Secretary of State may, at the request of a local education authority, modify any proposals which the authority are required to implement by virtue of this section.
- (4) Subject to subsection (5), neither a local education authority nor any other person shall do or undertake to do anything for which proposals are required to be published and submitted under section 35 until the requirements of that section and section 39 have been complied with and any approval necessary under section 37 or 39 has been given.
- (5) The Secretary of State may in any case allow such steps to be taken pending compliance with any such requirements and the giving of any such approval as he considers reasonable in the circumstances.

*Voluntary schools: establishment, alteration or change of site*

#### **41 Voluntary school: proposals for establishment, alteration or new site. E+W**

- (1) Where any persons propose—
- (a) that a school which they or persons whom they represent propose to establish should be maintained by a local education authority as a voluntary school, or
  - (b) that a school established by them or by persons whom they represent which is not a voluntary school should be so maintained as a voluntary school,
- then (subject to subsection (9)) they shall publish proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.
- (2) Where the governing body of a school which is maintained by a local education authority as a voluntary school intend—
- (a) to make a significant change in the character, or a significant enlargement of the premises, of the school, or
  - (b) to transfer the school to a new site,
- then (subject to subsections (3) and (9)) they shall publish proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.
- (3) The requirement to publish proposals under subsection (2)(b) does not apply in relation to the transfer of a voluntary school to a new site if—

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- (a) the transfer is authorised by an order made under section 47(1) of this Act (or under section 16(1) of the <sup>M11</sup>Education Act 1944); or
  - (b) the school is intended to return to its existing site within three years of the time of the transfer.
- (4) No proposals under subsection (1) shall be approved by the Secretary of State under section 43 if the school or proposed school is to provide—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19 years;
- and the reference in subsection (2)(a) to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with education falling within paragraph (a) or (b) above.
- (5) Proposals published under this section shall include particulars—
- (a) of the time or times at which it is intended to implement the proposals, and
  - (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented;
- and shall be accompanied by a statement of the effect of section 42.
- (6) For the purposes of subsection (5)(b) pupils intended to be admitted to the school for nursery education shall be disregarded, and pupils—
- (a) already admitted to the school for nursery education, and
  - (b) intended to be transferred to a reception class at the school,
- shall be treated as intended to be admitted to the school on their transfer.
- (7) Before publishing any proposals under this section, the persons concerned shall—
- (a) in the case of proposals under subsection (1), consult the local education authority, and
  - (b) in the case of proposals under either subsection (1) or subsection (2), consult such other persons as appear to them to be appropriate;
- and in discharging their duty under this subsection they shall have regard to any guidance given from time to time by the Secretary of State.
- (8) Before publishing any proposals under subsection (2)(a) which (if implemented) would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall consult the appropriate further education funding council.
- (9) No proposals shall be published under this section in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved under section 194.

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**Marginal Citations**

**M11** 1944 c. 31.

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## 42 **Objections to proposals under section 41.** **E+W**

- (1) Objections to any proposals published under section 41 may be submitted to the Secretary of State by any of the following—
  - (a) any ten or more local government electors for the area of the local education authority referred to in subsection (1) or (as the case may be) subsection (2) of that section,
  - (b) the governing body of any school affected by the proposals,
  - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M12</sup>Further and Higher Education Act 1992 applies), and
  - (d) any local education authority concerned.
- (2) Objections may be so submitted within the period of two months after the first publication of the proposals.
- (3) Where the proposals are to transfer a school to a site in a different area, objections under subsection (1) to the proposals may also be so submitted by any ten or more local government electors for that area.
- (4) Where—
  - (a) an order under section 27 applies to the area of a local education authority, and
  - (b) any persons publish proposals under section 41 which affect the provision of relevant education in the area,the funding authority shall be included among the persons who may submit objections under subsection (1) above to the proposals.
- (5) For the purposes of this section proposals under section 41 shall be taken to have been first published—
  - (a) on the day on which the requirements of regulations with respect to the publication of the proposals are satisfied; or
  - (b) where different such requirements are satisfied on different days, on the last of those days.
- (6) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (5) be taken to be satisfied on the first day in respect of which it is satisfied.

### Marginal Citations

M12 1992 c. 13.

## 43 **Approval or rejection by Secretary of State of proposals under section 41.** **E+W**

- (1) Proposals published under section 41 require the approval of the Secretary of State.
- (2) The Secretary of State may (subject to subsections (3) to (6))—
  - (a) reject such proposals,
  - (b) approve them without modification, or

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- (c) after consultation with the persons making the proposals and the local education authority by whom the school is, or is to be, maintained, approve them with such modifications as he thinks desirable.
- (3) This subsection applies if either—
- (a) the proposals are first published after proposals for acquisition of grant-maintained status for the school have been published under section 193 but before those proposals are determined or withdrawn, or
  - (b) after the proposals have first been published but before they are determined or withdrawn, proposals for acquisition of grant-maintained status for the school are published under section 193;
- and references in this subsection to proposals being first published shall be construed in accordance with section 42(5) and (6).
- (4) In a case where subsection (3) applies, the Secretary of State—
- (a) shall consider both sets of proposals together, but
  - (b) shall not determine the proposals published under section 41 until he has made his determination with respect to the proposals published under section 193.
- (5) If the Secretary of State approves the proposals published under section 193, he—
- (a) shall approve the proposals published under section 41 if they were made for the purpose of ensuring consistency in the provision of education made in the area of the local education authority, but
  - (b) shall otherwise reject the proposals published under that section.
- (6) Any proposals under section 41 which are approved under subsection (5) shall be treated for the purposes of Part III as if they had been—
- (a) published under section 259 (change of character etc. of grant-maintained school), and
  - (b) approved under section 261,
- and section 262 (approval of school premises) shall apply accordingly.
- (7) Where the proposals published under section 41 are to transfer the school to a site in a different area, subsection (2)(c) above requires consultation with the local education authority by whom the school is maintained as well as with the authority by whom it is to be maintained.

#### **44 Approval of school premises. E+W**

- (1) Where any proposals are published under section 41, the persons making the proposals shall submit to the Secretary of State for his approval such particulars in respect of the premises or proposed premises of the school as he may require.
- (2) The particulars shall be so submitted at such time, and in such form and manner, as the Secretary of State may direct.
- (3) Before submitting any particulars under this section, the persons making the proposals shall consult the local education authority by whom the school is, or is to be, maintained.
- (4) Where the proposals published under section 41 are to transfer the school to a site in a different area, subsection (3) requires consultation with the local education authority by whom the school is to be maintained.

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#### **45 Implementation of proposals under section 41, etc. E+W**

- (1) Subject to subsections (2) and (4), where any proposals are approved under section 43, they shall be implemented—
  - (a) in the case of proposals published under section 41(1), by the persons making them or the persons whom they represent (as the case may require) and by the local education authority referred to in that subsection, or
  - (b) in the case of proposals published under section 41(2), by the school's governing body.
- (2) Subject to subsection (4), it shall be the duty of the local education authority—
  - (a) in the case of any proposals so approved for the transfer of a controlled school to a new site, to implement the proposals (and any associated proposals for a change in the character of the school) so far as they involve the provision of premises or the removal or provision of equipment; and
  - (b) in any other case, to implement so much of any proposals so approved as relates to the provision of—
    - (i) playing fields, or
    - (ii) buildings which are to form part of the school premises but are not to be school buildings.
- (3) Where any particulars have been submitted under section 44 in connection with the proposals, the proposals shall be implemented in accordance with the particulars as approved by the Secretary of State.
- (4) The Secretary of State may modify any proposals required to be implemented by virtue of this section, but shall do so—
  - (a) in the case of proposals published under section 41(1), only at the request of the local education authority referred to in that subsection, and
  - (b) in the case of proposals published under section 41(2), only at the request of the governing body of the school.
- (5) Subject to subsection (6), no person shall do or undertake to do anything for which proposals are required to be published and submitted under section 41 until the requirements of that section and section 44 have been complied with and any approval necessary under section 43 or 44 has been given.
- (6) The Secretary of State may in any case allow such steps to be taken pending compliance with any such requirements and the giving of any such approval as he considers reasonable in the circumstances.
- (7) Where proposals for the transfer of a school to a site in a different area are approved under section 43, then—
  - (a) in the case of any voluntary school—
    - (i) the reference in subsection (2) above to the local education authority is to be read as referring to the authority for the new area, and
    - (ii) upon the transfer the duty to maintain the school shall transfer to that authority; and
  - (b) in the case of any controlled school, section 60 (together with section 62) shall apply as if the duty to maintain the school had been transferred to the local education authority for the new area.

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**46 Establishment of a new voluntary school in substitution for an old one. E+W**

- (1) This section applies where—
- (a) proposals for the establishment of any school or schools are submitted to the Secretary of State under section 41(1); and
  - (b) in connection with those proposals it is claimed that the school or schools should be maintained by the local education authority as a voluntary school or voluntary schools in substitution for any other voluntary school or schools (whether maintained by that or another local education authority) which is or are to be discontinued.
- (2) If the Secretary of State—
- (a) approves the proposals under section 43, and
  - (b) is satisfied that the new school or schools will be maintained as mentioned in subsection (1)(b) above,
- he may by order direct that the new school or schools shall be established in substitution for the school or schools which is or are to be discontinued.
- (3) Where an order is made under this section, section 173 shall not apply with respect to the discontinuance of that school or those schools.
- (4) Before making an order under this section, the Secretary of State shall consult—
- (a) any local education authority who in his opinion will be affected by the making of the order; and
  - (b) the governing body of any voluntary school which in his opinion will be so affected.
- (5) An order under this section may—
- (a) impose such conditions on any such local education authority or governing body, and
  - (b) contain such incidental and consequential provisions,
- as the Secretary of State thinks fit.

**47 Order authorising transfer of voluntary school to new site. E+W**

- (1) Where the Secretary of State is satisfied that the transfer of a voluntary school to a new site is expedient—
- (a) because it is not reasonably practicable to make to the existing premises of the school any alterations necessary to secure that they conform to the standards prescribed under section 542, or
  - (b) in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relating to housing or to town and country planning,
- he may by order authorise the transfer of the school to the new site.
- (2) The Secretary of State shall not, however, make any such order in the case of an aided or special agreement school unless he is satisfied that the school's governing body will be able and willing, with the assistance of any grant made under section 65, to defray the expenses mentioned in section 59(5).
- (3) Before making an order under this section the Secretary of State shall consult—

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- (a) any local education authority who in his opinion will be affected by the making of the order; and
  - (b) the governing body of any voluntary school which in his opinion will be so affected.
- (4) An order under this section may—
- (a) impose such conditions on any such local education authority or governing body, and
  - (b) contain such incidental and consequential provisions,
- as the Secretary of State thinks fit.

#### *Status of new voluntary school*

### **48 Order that school is to be controlled or aided school. E+W**

- (1) Where, at or before the time when any proposals are submitted to the Secretary of State under section 41(1), an application is duly made to the Secretary of State with respect to the school to which the proposals relate, he may (subject to the following provisions of this section) by order direct—
- (a) that the school shall be a controlled school; or
  - (b) that the school shall be an aided school.
- (2) Where on an application for an order under subsection (1)(b) the Secretary of State is satisfied that the governing body of the school will be able and willing, with the assistance of grants under section 65, to defray the expenses that would fall to be borne by them by virtue of section 59(2) and (3) as the governing body of an aided school, he shall make an order directing that the school shall be an aided school.
- (3) Where on an application for an order under subsection (1)(b)—
- (a) the Secretary of State is not satisfied that the governing body will be able to defray those expenses without the assistance of both—
    - (i) grants under section 65, and
    - (ii) a loan under section 67, and
  - (b) it appears to him that the area to be served by the school will not be also served by a county or controlled school,
- he shall comply with subsection (4) before determining the application.
- (4) The Secretary of State—
- (a) shall consult such persons or bodies of persons as appear to him to be representative of any religion or religious denomination which, in his opinion having regard to the circumstances of the area, is likely to be concerned, and
  - (b) unless he is satisfied after that consultation that the holding of a local inquiry is unnecessary, cause such an inquiry to be held.

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### *Proposals for a middle school*

#### **49 Proposals under section 35 or 41 for a middle school. E+W**

Proposals published under section 35 or 41 with respect to a school maintained or to be maintained by a local education authority may, if the authority or persons making them think fit—

- (a) specify an age below 10 years and six months and an age above 12 years, and
- (b) provide that the school is to be a school for providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.

### *Division of a single school into two or more schools*

#### **50 Division of a county school. E+W**

- (1) Where—
  - (a) a county school is organised in two or more departments, and
  - (b) the local education authority submit to the Secretary of State proposals that the school should be divided into two or more separate schools,
 the Secretary of State may by order direct that the school shall be divided into two or more separate county schools.
- (2) Any such order shall come into operation on such date as may be specified in the order; and as from that date the local education authority shall maintain as a county school each of the separate schools constituted in pursuance of the order.
- (3) An order under this section may contain such incidental, consequential and supplemental provisions as the Secretary of State thinks fit, and may, in particular, include provision for defining the premises of each of the separate schools to be constituted in pursuance of the order.
- (4) The constitution of a separate school in pursuance of an order under this section does not amount to the establishment of a new school for the purposes of section 35(1).
- (5) In this section “department”, in relation to a school, means a part of the school organised under a separate head teacher.

#### **51 Division of a voluntary school. E+W**

- (1) Where—
  - (a) a controlled or aided school is organised in two or more separate departments, and
  - (b) the governing body, after consulting the local education authority, submit to the Secretary of State proposals that the school should be divided into two or more separate schools,
 the Secretary of State may by order direct that the school shall be divided into two or more separate voluntary schools.
- (2) Where the school is a controlled school, the order shall direct that each of the schools into which it is to be divided shall be a controlled school.



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- (3) Where the school is an aided school, the order shall direct that each of the schools into which it is to be divided shall be an aided school; except that, if the governing body request the Secretary of State to direct that all or any of those schools shall be controlled schools, the order shall direct accordingly.
- (4) An order under this section shall come into operation on such date as may be specified in the order; and as from that date the local education authority shall maintain as a voluntary school each of the separate schools constituted in pursuance of the order.
- (5) An order under this section may contain such incidental, consequential and supplemental provisions as the Secretary of State thinks fit, and may, in particular, include provision for defining the premises of each of the separate schools to be constituted in pursuance of the order.
- (6) The constitution of a separate school in pursuance of an order under this section does not amount to the establishment of a new school for the purposes of section 41(1).
- (7) No order shall be made under this section for the division of a school in respect of which a special agreement is in force.
- (8) In this section “department”, in relation to a school, means a part of the school organised under a separate head teacher.

#### *Change of status from controlled school to aided school*

### **52 Proposals for changing a controlled school to an aided school. E+W**

- (1) Where the governing body of a controlled school propose to apply for an order under section 54 directing that the school should become an aided school, they shall, after consultation with the local education authority—
  - (a) publish their proposals in such manner as may be required by regulations, and
  - (b) submit a copy of the published proposals to the Secretary of State.
- (2) Proposals published under this section shall be accompanied by a statement which—
  - (a) explains the effect of section 53; and
  - (b) specifies the date on which the proposals are intended to be implemented.
- (3) A governing body who submit proposals to the Secretary of State under this section shall provide him with such information as he may reasonably require in order to be able to give proper consideration to them.

### **53 Objections to proposals. E+W**

- (1) Objections to any proposals published under section 52 may be submitted to the Secretary of State by any of the following—
  - (a) any ten or more local government electors for the area of the local education authority by whom the school is maintained;
  - (b) the governing body of any voluntary school affected by the proposals; and
  - (c) any local education authority concerned.
- (2) Objections may be so submitted within the period of two months beginning with the date on which the proposals are first published.

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- (3) For the purposes of this section proposals under section 52 shall be taken to have been first published—
  - (a) on the day on which the requirements of regulations under that section with respect to the publication of the proposals are satisfied; or
  - (b) where different such requirements are satisfied on different days, on the last of those days.
- (4) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (3) be taken to be satisfied on the first day in respect of which it is satisfied.

#### **54 Order by Secretary of State. E+W**

- (1) On an application duly made to him by the governing body of any controlled school the Secretary of State may by order direct that, as from such date as is specified in the order, the school shall be an aided school.
- (2) The Secretary of State shall not make an order under this section unless he is satisfied that the governing body will be able and willing—
  - (a) with the assistance of grants under section 65, to defray the expenses mentioned in section 59(2) and (3), and
  - (b) to pay to the local education authority any compensation payable by the governing body under section 56.
- (3) Where the Secretary of State proposes, in making an order under this section, to specify under subsection (1) a date which is different from that specified in pursuance of section 52(2)(b), he shall first consult the governing body and the local education authority as to the date which it would be appropriate to specify in the order.
- (4) Where, in consequence of an order made under this section, an amount will be payable by a governing body by way of compensation under section 56, the order—
  - (a) shall specify the amount of the compensation so payable and the date by which it must be paid; and
  - (b) may impose such conditions in relation to its payment as the Secretary of State thinks fit.
- (5) An order under this section may make such provision (including provision modifying any provision made by or under this Act) as the Secretary of State considers appropriate in connection with the transition of the school in question from controlled to aided status.
- (6) In particular, an order under this section may make provision—
  - (a) as to the circumstances in which, and purposes for which, the school is to be treated before the date specified under subsection (1) as if it were an aided school;
  - (b) as to the time by which the new instrument of government and articles of government (appropriate for an aided school) are to be made for the school, and the consent and consultation required before they are made;
  - (c) where the local education authority propose to pass a resolution under section 89 to group the school when it becomes an aided school, as to the consent required before that resolution is passed;
  - (d) as to the appointment and dismissal of staff for the school;

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- (e) as to the arrangements to be made in relation to the admission of pupils to the school; and
- (f) as to functions exercisable by, or in relation to, the governing body or the governors of any category specified in the order.

## **55 Variation of order under section 54. E+W**

- (1) Where the Secretary of State has made an order under section 54, he may, on the application of the local education authority or the foundation governors of the school, by order vary the order under that section so as to specify—
  - (a) a different date from that specified under subsection (1) of that section, or
  - (b) a different amount from that specified under subsection (4) of that section.
- (2) The foundation governors of a school shall consult the other governors before applying to the Secretary of State under this section.
- (3) Before making an order under this section the Secretary of State shall consult—
  - (a) the local education authority, where the application is by the foundation governors, and
  - (b) the foundation governors, where the application is by the local education authority.
- (4) Where foundation governors are consulted by the Secretary of State under subsection (3), they shall, before giving him their views, consult the other governors of the school.

## **56 Compensation payable by governing body to local education authority. E+W**

- (1) Where a controlled school becomes an aided school by virtue of an order under section 54, the governing body shall pay to the local education authority, in accordance with the order, an amount by way of compensation for relevant capital expenditure incurred in respect of the school by the authority or a predecessor of theirs.
- (2) In subsection (1) “relevant capital expenditure” means—
  - (a) expenditure incurred under section 60 (or under paragraph 1 of Schedule 1 to the <sup>M13</sup>Education Act 1946) in providing buildings which form part of the school premises;
  - (b) expenditure incurred under section 63 (or under section 2 of the <sup>M14</sup>Education (Miscellaneous Provisions) Act 1953) in defraying expenses of establishing the school; or
  - (c) expenditure incurred under section 64 (or under section 1 of the Education Act 1946) in defraying expenses of enlarging the school.
- (3) The amount payable by way of compensation under this section shall be—
  - (a) such as may be agreed by the governing body and the local education authority, or
  - (b) failing such agreement, such as the Secretary of State thinks fit, having regard to the current value of the property in question.
- (4) The Secretary of State may, for the purpose of assisting him in any determination which he is required to make under subsection (3), appoint such person as he thinks competent to advise him on the valuation of property.

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- (5) No contribution, grant or loan shall be paid, or other payment made, by the Secretary of State to the governing body of a controlled school in respect of any compensation payable by them under this section.

**Marginal Citations**

**M13** 1946 c. 50.

**M14** 1953 c. 33.

*Change of status from aided or special agreement school to controlled or aided school*

**57 Change to controlled school where governing body unable or unwilling to carry out financial obligations. E+W**

- (1) If at any time the governing body of an aided school are unable or unwilling to carry out all their obligations under section 59, they shall apply to the Secretary of State for an order revoking—
- (a) the order made under section 48, 54 or 58 (or under section 15 of the <sup>M15</sup>Education Act 1944 or section 54 of the <sup>M16</sup>Education (No. 2) Act 1986), or
  - (b) the direction in an order made under section 51 (or under section 2 of the <sup>M17</sup>Education Act 1946),
- by virtue of which the school is an aided school.
- (2) If at any time the governing body of a special agreement school are unable or unwilling to carry out all their obligations under section 59, they shall apply to the Secretary of State for an order revoking the order made under section 15 of the Education Act 1944 by virtue of which the school is a special agreement school.
- (3) For the purposes of this section the governing body of an aided school or a special agreement school shall not be regarded as unable to carry out any of their obligations under section 59 if they are able to carry them out with the benefit of assistance under section 68 of this Act.
- (4) Where an application is made to him under this section, the Secretary of State shall by order revoke the order or direction in question, and the school in question shall thereupon become a controlled school in accordance with section 32(2).

**Marginal Citations**

**M15** 1944 c. 31.

**M16** 1986 c. 61.

**M17** 1946 c. 50.

**58 Change to controlled or aided school on repayment of grant under special agreement. E+W**

- (1) Where the Secretary of State is satisfied that the grant made in respect of a school in pursuance of a special agreement has been repaid as mentioned in paragraph 5 of Schedule 5, he shall, on an application made for the purpose by the school's governing

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body, by order revoke the order under section 15 of the Education Act 1944 by virtue of which the school is a special agreement school.

- (2) Where the Secretary of State—
- (a) makes an order under this section, and
  - (b) is satisfied that the governing body of the school will be able and willing, with the assistance of grants under section 65, to defray the expenses that would fall to be borne by them by virtue of section 59(2) and (3) as the governing body of an aided school,
- he shall by order direct that the school shall be an aided school.
- (3) Where in any other case the Secretary of State makes an order under this section, the school in question shall thereupon become a controlled school in accordance with section 32(2).

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

#### FUNDING OF VOLUNTARY SCHOOLS

##### *Obligations of governing bodies*

#### **59 Obligations of governing bodies of voluntary schools. **E+W****

- (1) The governing body of a controlled school are (in accordance with section 34(3)) not responsible for any of the expenses of maintaining the school.
- (2) In the case of an aided or special agreement school, the expenses of discharging any liability incurred by or on behalf of—
- (a) the governing body of the school,
  - (b) any former governors of the school, or
  - (c) any trustees of the school,
- in connection with the provision of premises or equipment for the purposes of the school are payable by the governing body of the school.
- (3) In addition, any expenses incurred—
- (a) in making to the school buildings of an aided or special agreement school such alterations as may be required by the local education authority for the purpose of securing that the school premises conform to the standards prescribed under section 542, or
  - (b) in effecting repairs to the school buildings, other than repairs falling within subsection (4),
- are payable by the governing body of the school.
- (4) The governing body of an aided or special agreement school are not responsible—
- (a) for repairs to the interior of the school buildings, or
  - (b) for repairs to those buildings necessary in consequence of the use of the school premises, in pursuance of a direction or requirement of the local education authority, for purposes other than those of the school.

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- (5) Where an order is made under section 47 authorising the transfer of an aided or special agreement school to a new site, the expenses of providing any school buildings to be provided on the new site are payable by the governing body of the school.

*Obligations of LEAs as regards new sites and buildings*

**60** **Obligation of LEAs to provide new sites and buildings for controlled schools.** E  
+W

- (1) In the case of a controlled school, the local education authority shall provide—
- (a) any new site which is to be provided in addition to, or instead of, the school's existing site (or part of its existing site), and
  - (b) any buildings which are to form part of the school premises,
- other than any site or buildings that persons other than the authority are under a duty to provide by virtue of proposals required to be implemented under section 45 (or, where a special agreement is in force in respect of the school, under that agreement).
- (2) Where a new site is provided for a school under this section, the local education authority shall convey their interest in the site, and in any buildings on the site which are to form part of the school premises, to the trustees of the school to be held on trust for the purposes of the school.
- (3) If any doubt or dispute arises as to the persons to whom the authority are required to make the conveyance, it shall be made to such persons as the Secretary of State thinks proper.
- (4) Where—
- (a) an interest in premises which are to be used for the purposes of a school is conveyed under this section, and
  - (b) the conveyance is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,
- those persons or their successors shall pay to the local education authority so much of that sum as the Secretary of State may determine to be just having regard to the value of the interest conveyed.
- (5) In subsection (4)(b) the reference to proceeds of the sale of other premises includes a reference to consideration for the creation or disposition of any kind of interest in other premises.
- (6) Any sum paid under subsection (4) shall be treated for the purposes of section 14 of the <sup>M18</sup>Schools Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.
- (7) The Secretary of State shall not make a determination under subsection (4) in respect of any property subject to a trust which has arisen under section 1 of the <sup>M19</sup>Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) unless he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

**Marginal Citations**

**M18** 1841 c.38.

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M19 1987 c. 15.

## 61 **Obligation of LEAs to provide new sites for aided and special agreement schools.** **E+W**

- (1) In the case of an aided or special agreement school, the local education authority shall provide any new site—
  - (a) which is to be provided in addition to or instead of the school’s existing site (or part of its existing site), and
  - (b) which is not a site that persons other than the authority are under a duty to provide by virtue of proposals required to be implemented under section 45 or under a special agreement.
- (2) Where a new site is provided for a school under this section, the local education authority shall convey their interest in the site, and in any buildings on the site which are to form part of the school premises, to the trustees of the school to be held on trust for the purposes of the school.
- (3) If any doubt or dispute arises as to the persons to whom the authority are required to make the conveyance, it shall be made to such persons as the Secretary of State thinks proper.
- (4) Where—
  - (a) a new site is provided for a school under this section, and
  - (b) work is required to be done to the site for the purpose of clearing it or making it suitable for building purposes,the local education authority and the governing body of the school may make an agreement providing for the making of such payments, or of such other adjustments of their respective rights and liabilities, as will secure that the cost of the work is borne by the authority.
- (5) Where—
  - (a) a new site is provided for a school under this section, and
  - (b) there are buildings on the site which are of value for the purposes of the school,the local education authority and the governing body of the school may make an agreement providing for the making of such payments, or of such other adjustments of their respective rights and liabilities, as appear to be desirable having regard to the governing body’s duties under section 59 with respect to the school buildings.
- (6) Where it appears to the Secretary of State that provision for any payment or other adjustment ought to have been made under subsection (4) or (5) but has not been made, he may give directions providing for the making of such payment or other adjustment as he thinks proper.

## 62 **Provisions supplementary to sections 60 and 61.** **E+W**

- (1) In sections 60(1) and (2) and 61 “site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.
- (2) Where, after premises have been conveyed to the trustees of a school under section 60 or 61, a person acquires the premises or part of them from the trustees (whether compulsorily or otherwise), the Secretary of State may require the trustees or their

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successors to pay to the local education authority by whom the premises were conveyed so much of the compensation or purchase money paid in respect of the acquisition as he thinks just having regard—

- (a) to the value of the premises conveyed by the authority, and
  - (b) to any sums received by the authority in respect of the premises under section 60 or 61.
- (3) In subsection (2) “premises” includes any interest in premises.
- (4) Subsection (2) does not apply in the case of an institution which is, or has at any time been, within the further education sector.

#### *Financial assistance for controlled schools*

### **63 Payment by LEA of expenses of establishing controlled school. E+W**

- (1) Where—
- (a) proposals for the establishment of a school are submitted to the Secretary of State under section 41(1),
  - (b) no application is made under section 48 for an order directing that the school shall be an aided school, and
  - (c) the persons submitting the proposals and the local education authority satisfy the Secretary of State that subsection (3) below applies,
- the Secretary of State may by order direct that the whole or a specified part of the promoters’ expenses of establishment shall be defrayed by the local education authority.
- (2) In subsection (1) “the promoters’ expenses of establishment” means so much of the cost incurred in establishing the school as would, but for the order, fall to be defrayed by the persons who establish it.
- (3) This subsection applies if the establishment of the school is required for the purpose of providing accommodation for pupils for whom, or for a substantial proportion of whom, accommodation would have been provided in some other school—
- (a) which is or was a voluntary school, or
  - (b) which is or was a grant-maintained school, having been a voluntary school immediately before it became grant-maintained,
- if that other school had not been discontinued or had not otherwise ceased to be available for the purpose.

### **64 Payment by LEA of expenses of enlarging controlled school. E+W**

- (1) Where the Secretary of State—
- (a) is satisfied, on an application made to him by the governing body of a controlled school and the local education authority—
    - (i) that there should be a significant enlargement of the school premises, and
    - (ii) that subsection (2) or subsection (3) applies, and
  - (b) approves proposals for the enlargement under section 43,
- he may by order direct that the cost of implementing the proposals shall be defrayed by the local education authority.



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- (2) This subsection applies if the enlargement is wholly or mainly required for the purpose of providing accommodation for pupils for whom accommodation would have been provided in another voluntary school if that other school had not been discontinued or had not otherwise ceased to be available for the purpose.
- (3) This subsection applies if the enlargement is desirable for either or both of the following reasons—
  - (a) for the better provision of primary or secondary education at the premises to be enlarged;
  - (b) for securing that enough suitable primary or secondary schools are available for the area of the authority.

*Financial assistance by Secretary of State for aided and special agreement schools*

## **65 Grants in respect of expenditure on premises or equipment. E+W**

- (1) The Secretary of State may—
  - (a) in the case of any aided school or special agreement school, or
  - (b) where proposals have been approved under section 43 for a school or proposed school to be maintained as a voluntary school and the Secretary of State has made an order under section 48 directing that the school is to be an aided school,make grants to the governing body in respect of qualifying expenditure incurred by them.
- (2) In subsection (1) “qualifying expenditure” means expenditure in respect of the provision, alteration or repair of premises or equipment for the school or proposed school.
- (3) The amount of any grant paid under this section to the governing body in respect of any such expenditure—
  - (a) shall not exceed 85 per cent. of the expenditure, and
  - (b) in the case of any prescribed class or description of such expenditure, shall be such as may be determined in accordance with regulations.
- (4) The times at which, and the manner in which, payments are made in respect of grant under this section shall be such as may be determined from time to time by the Secretary of State.
- (5) Without prejudice to any other duty of his, the Secretary of State shall, in performing functions relating to the exercise of the power under this section to make grants in respect of expenditure on—
  - (a) such alterations to school buildings as are referred to in section 59(3)(a), or
  - (b) the repair of school buildings,give priority to paying grant in respect of expenditure which is necessary for the performance by governing bodies of their duties; and the amount of any grant paid in the exercise of that power in respect of such expenditure on the repair of school buildings shall be 85 per cent. of the expenditure.
- (6) A governing body to whom any payment is made in respect of grant under this section shall comply with such requirements determined by the Secretary of State as he may from time to time impose.

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- (7) Such requirements—
- (a) may be imposed on, or at any time after, the making of any payment by reference to which they are imposed, and
  - (b) may at any time be waived, removed or varied by the Secretary of State.
- (8) Such requirements may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the Secretary of State of the whole or any part of the following amount.
- (9) That amount is—
- (a) the amount of the payments made in respect of the grant under this section, or
  - (b) so much of the value of any premises or equipment in respect of which grant was paid under this section as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (10) No such requirement as is referred to in subsection (8) may be imposed where any payment is made in respect of grant under this section if—
- (a) the grant is made in respect of the provision, alteration or repair of premises for a school or proposed school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.
- (11) No grant may be paid under this section—
- (a) in respect of any expenses incurred in the provision of any premises which it is the duty of the local education authority to provide, or
  - (b) in the case of a special agreement school, in respect of expenses incurred in the execution of proposals to which the special agreement relates or of repairs or alterations for the execution of which provision is made by the agreement.
- (12) In relation to a proposed school, the references in this section to the governing body, in relation to any time before such a body are constituted, are to the persons who propose to establish the school; and where requirements are imposed in relation to grant paid under this section to such persons, the requirements shall be complied with by the governing body, when they are constituted, as well as by those persons.
- (13) In this section “repair” does not include repair falling within section 59(4).

## 66 Grants in respect of preliminary expenditure. **E+W**

- (1) The Secretary of State may pay grants to the governing body of an aided or special agreement school in respect of any preliminary expenditure incurred by them for the purposes of a scheme for the transfer of the school to a new site or the enlargement or alteration of the school premises.
- (2) Where any persons propose or are considering whether to propose—
  - (a) that a school established by them, or by persons whom they represent, should be maintained by a local education authority as an aided school, or
  - (b) that a school which may be so established should be so maintained,
 the Secretary of State may pay grants to them in respect of any preliminary expenditure incurred by them for the purposes of a scheme for the provision of a site for the school or of any buildings which would be school buildings.

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- (3) Grants under subsection (1) or (2) may be paid in respect of a scheme such as is mentioned in that subsection whether or not—
- (a) the details of such a scheme had been formulated at the time when the expenditure was incurred,
  - (b) where such details were not formulated at that time, they are subsequently formulated,
  - (c) the governing body or persons in question had determined to proceed with such a scheme at that time, or
  - (d) where they had not determined to proceed with such a scheme at that time, they subsequently determine to proceed with such a scheme.
- (4) Expenditure in respect of which such grants are payable includes, in particular, costs incurred in connection with—
- (a) the preparation of plans and specifications for any proposed construction, enlargement or alteration of buildings which are or would be school buildings, and
  - (b) estimating the sums which would be expended if any such works were carried out,
- but does not include any sums expended in carrying out any such works.
- (5) A grant under subsection (1) or (2) shall not exceed 85 per cent. of the expenditure in respect of which it is paid.
- (6) Where—
- (a) a grant is paid under subsection (1) in the case of any school, or
  - (b) a grant is paid under subsection (2) in the case of any school which becomes, or is established as, a voluntary school,
- the grant shall for the purposes of section 173 be treated as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the school premises.

## **67 Loans in respect of initial expenses. E+W**

- (1) Where, on the application of the governing body of an aided or special agreement school and after consulting persons representing the governing body, the Secretary of State—
- (a) is satisfied that the governing body's share of any initial expenses required in connection with the school premises will involve capital expenditure, and
  - (b) having regard to all the circumstances of the case, considers that that expenditure ought properly to be met by borrowing,
- he may make a loan to the governing body for the purpose of helping them meet that expenditure.
- (2) The amount, rate of interest and other terms and conditions applicable to the loan shall be such as may be specified in an agreement made between the Secretary of State and the governing body with the consent of the Treasury.
- (3) For the purposes of this section “initial expenses” are expenses of any of the following categories—
- (a) expenses to be incurred in pursuance of a special agreement;

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- (b) expenses to be incurred in providing school buildings on a site to which the school is to be transferred pursuant to an order under section 47;
  - (c) expenses to be incurred in providing a site or school buildings on a significant enlargement of the school premises or on the transfer of the school to a new site, being expenses in respect of which grants may be paid under section 65;
  - (d) expenses to be incurred in providing a site or school buildings for a new school, being expenses in respect of which grants may be paid under section 65.
- (4) For the purposes of this section the governing body's share of any initial expenses shall be taken to be so much of the expenses as remains to be borne by the governing body after taking into account the amount of any grant under section 65 or under a special agreement that may be paid or payable in respect of them.

*Assistance by LEAs for governing bodies of aided and special agreement schools*

**68 Assistance in respect of maintenance and other obligations of governing body. E  
+W**

A local education authority may give to the governing body of an aided or special agreement school such assistance as the authority think fit in relation to the carrying out by the governing body of any obligation under—

- (a) section 45(1), or
- (b) section 59.

*Assistance by LEAs for promoters of new voluntary schools*

**69 Assistance for promoters of new voluntary school. E+W**

A local education authority may give to persons required under section 45(1) to implement proposals involving the establishment of a school such assistance as the authority think fit in relation to the carrying out by those persons of their obligations under that provision.

*Miscellaneous and supplemental*

**70 Duty to convey interest in premises provided under section 68 or 69. E+W**

- (1) Where assistance under section 68 or 69 consists of the provision of any premises for use for the purposes of a school, the local education authority shall convey their interest in the premises to the trustees of the school to be held on trust for the purposes of the school.
- (2) If any doubt or dispute arises as to the persons to whom the authority are required to make the conveyance, it shall be made to such persons as the Secretary of State thinks proper.
- (3) Where trustees make a disposal of an interest conveyed to them by a local education authority under subsection (1), they shall be liable to pay to that authority an amount equal to the net proceeds of the disposal.

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- (4) In subsection (3)—
- “disposal” includes part disposal; and
  - “net proceeds”, in relation to a disposal, means the amount accruing on the disposal less any expenditure reasonably incurred for the purposes of making it.

**71 Powers of Secretary of State where LEA make default in maintaining voluntary school. E+W**

- (1) Where it appears to the Secretary of State that a local education authority have made default in the discharge of their duties relating to the maintenance of a voluntary school, he may—
- (a) direct that any act done by or on behalf of the school’s governing body for the purpose of securing the proper maintenance of the school shall be taken to have been done by or on behalf of the authority, and
  - (b) reimburse to the governing body any sums which in his opinion they have properly expended for that purpose.
- (2) The amount of any sum reimbursed under subsection (1) shall be recoverable by the Secretary of State as a debt due to him from the authority; and without prejudice to any other method of recovery the whole or any part of any such sum may be deducted from any sums payable to the authority by the Secretary of State in pursuance of any regulations relating to the payment of grants.

**72 Endowments for maintenance of voluntary schools. E+W**

Where any sums accruing in respect of the income of an endowment are required by virtue of the provisions of a trust deed to be applied towards the maintenance of a voluntary school, those sums shall not be payable to the local education authority but shall be applied by the governing body of the school—

- (a) towards the discharge of their obligations, if any, under section 59, or
- (b) in such other manner, if any, as may be determined by a scheme for the administration of the endowment made after 1st April 1945.

**73 Sums paid for letting or hiring of premises of voluntary schools. E+W**

Any sum which is paid to the governing body or trustees of a voluntary school in respect of the letting or hiring of any part of the school premises other than school buildings shall be paid over to the local education authority.

**74 Execution by LEA of certain works in case of controlled schools. E+W**

- (1) Where a local education authority are liable to defray the cost of carrying out any building work, repair work or work of a similar character which is required for the purposes of a controlled school, the work shall, if the authority so determine, be carried out by employees of theirs.
- (2) If the authority make such a determination, the governing body and any trustees of the school shall provide the authority and the authority’s employees with all such facilities as they may reasonably require for the purpose of securing that the work is carried out properly.

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**75 Disapplication of restriction on local authority disposals. E+W**

Subsection (2) of section 123 of the <sup>M20</sup>Local Government Act 1972 (local authority prohibited from making disposal of land under that section below market value without consent of the Secretary of State) shall not apply in the case of a disposal—

- (a) to the governors of an aided or special agreement school, or
- (b) to persons proposing to establish a school which is proposed to be maintained by a local education authority as a voluntary school and to be an aided school.

**Marginal Citations**

**M20** 1972 c. 70.

**CHAPTER IV E+W**

GOVERNMENT OF COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

*Instruments of government*

**76 Instruments of government. E+W**

- (1) For every county, voluntary and maintained special school there shall be an instrument (known as the instrument of government) providing for the constitution of the school's governing body.
- (2) The instrument of government shall be made by order of the local education authority.
- (3) The instrument of government—
  - (a) shall contain such provisions as are required by this Chapter or by any other enactment; and
  - (b) shall not contain any provision which is inconsistent with any provision made by or under this Act or any other enactment.
- (4) The instrument of government shall comply with any trust deed relating to the school.
- (5) This section has effect subject to section 89 (grouping of two or more schools under a single governing body) and sections 96 and 97 (temporary governing body for new school pending constitution of its governing body).

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

**C6** S. 76 excluded (1.1.1999) by S.I. 1998/3097, reg.3

**77 Procedure for making and altering instruments of government. E+W**

- (1) Before making an order under section 76, a local education authority shall consult the governing body and the head teacher of the school concerned.
- (2) Before making an order under section 76 in respect of a voluntary school, a local education authority shall also—

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- (a) secure the agreement of the governing body to the terms of the proposed order;
  - (b) secure the agreement of the foundation governors to any provisions which are of particular concern to those governors; and
  - (c) have regard to the way in which the school has been conducted.
- (3) Where the governing body of a county, voluntary or maintained special school make a proposal to the local education authority for the alteration of the provision made by the instrument of government for the school, the authority shall consider their proposal.
- (4) Where—
  - (a) the foundation governors of a voluntary school make a proposal to the local education authority for the alteration of the provision made by the instrument of government for the school, and
  - (b) the proposal relates solely to one or more matters which are of particular concern to those governors,the authority shall consider their proposal.
- (5) Where a local education authority—
  - (a) propose to make an order under section 76 but cannot secure any agreement required by subsection (2), or
  - (b) refuse, in the case of a voluntary school, to make such an order in response to a proposal of a kind mentioned in subsection (3) or (4),the authority or (as the case may be) the governing body or foundation governors may refer the matter to the Secretary of State.
- (6) On a reference to him under subsection (5), the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the status of the school as a controlled, aided or (as the case may be) special agreement school.
- (7) Where it appears to the Secretary of State—
  - (a) that an order, or proposed order, under section 76 is in any respect inconsistent with the provisions of any trust deed relating to the school concerned, and
  - (b) that it is expedient in the interests of the school that the provisions of the trust deed should be modified for the purpose of removing the inconsistency,he may by order make such modifications in the trust deed as appear to him to be just and expedient for that purpose.
- (8) References in this section to an order, or proposed order, under section 76 are references to an order, or proposed order, under that section embodying or varying an instrument of government.

#### *Categories of governor*

### **78 Categories of governor. E+W**

- (1) In this Act “co-opted governor”, in relation to a county, voluntary or maintained special school, means a person appointed to be a member of the school’s governing body by being co-opted by those governors of the school who have not themselves been so appointed (and accordingly does not include a governor of the school appointed in accordance with any provision made by virtue of section 81 (appointment of parent governors by governing body as a whole)).

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- (2) In this Act “foundation governor”, in relation to a voluntary school, means a person appointed to be a member of the school’s governing body, otherwise than by a local education authority or a minor authority, for the purpose of securing (so far as is practicable)—
  - (a) that the character of the school as a voluntary school is preserved and developed, and
  - (b) in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it.
- (3) In this Act “parent governor”, in relation to a county, voluntary or maintained special school, means—
  - (a) a person who is elected as a member of the school’s governing body by parents of registered pupils at the school and is himself such a parent at the time when he is elected, or
  - (b) (in the case of a county, controlled or maintained special school) a person who is appointed as a member of the governing body in accordance with any provision made by virtue of section 81.
- (4) In this Act “teacher governor”, in relation to a county, voluntary or maintained special school, means a person who is elected as a member of the school’s governing body by teachers at the school and who is himself such a teacher at the time when he is elected.
- (5) In relation to any group of schools under section 89 for which the instrument of government makes by virtue of section 93 provision with respect to the election of parent or teacher governors, any reference in subsection (3) or (4) to a person being elected as there mentioned is a reference to his being so elected in accordance with any such provision made by virtue of section 93.

*Governing bodies of county, controlled and maintained special schools*

**79 Constitution of the governing body of a county, controlled or maintained special school. E+W**

- (1) Subject to section 80 (representative governors for certain schools), the instrument of government for a county or maintained special school shall provide for the governing body to consist of the following (and no others)—
  - (a) the head teacher, unless he chooses not to be a governor, and
  - (b) governors of each of the categories specified in the first column of the following table, in the numbers specified in whichever of the other columns relates to the size of the school.

Category of governor	School with less than 100 registered pupils	School with 100 or more but less than 300 registered pupils	School with 300 or more but less than 600 registered pupils	School with 600 or more registered pupils
Parent governors	2	3	4	5



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Governors appointed by the local education authority	2	3	4	5
Teacher governors	1	1	2	2
Co-opted governors	3	4	5	6

- (2) Subject to section 80, the instrument of government for a controlled school shall provide for the governing body to consist of the following (and no others)—
- the head teacher, unless he chooses not to be a governor, and
  - governors of each of the categories specified in the first column of the following table, in the numbers specified in whichever of the other columns relates to the size of the school.

Category of governor	School with less than 100 registered pupils	School with 100 or more but less than 300 registered pupils	School with 300 or more but less than 600 registered pupils	School with 600 or more registered pupils
Parent governors	2	3	4	5
Governors appointed by the local education authority	2	3	4	5
Teacher governors	1	1	2	2
Foundation governors	2	3	4	4
Co-opted governors	1	1	1	2

- (3) Where the instrument of government so provides, a county, controlled or maintained special school with 600 or more registered pupils shall be treated for the purposes of this section as one with 300 or more but less than 600 registered pupils.
- (4) Where the head teacher of a county, controlled or maintained special school is a governor he shall be treated for all purposes as being an ex officio governor.

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

C7 S. 79(1)(2) excluded (1.11.1996) by 1996 c. 57, ss. 27(4), 48(2).

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**80 Appointment of representative governors in place of co-opted governors. E+W**

- (1) The instrument of government for a primary school which is a county or controlled school serving an area for which there is a minor authority shall provide for one governor to be appointed by that authority.
- (2) The instrument of government for a maintained special school which is established in a hospital shall provide—
  - (a) (if the hospital is vested in the Secretary of State) for one governor to be appointed by the Health Authority; or
  - (b) (if the hospital is vested in a National Health Service trust) for one governor to be appointed by that trust.
- (3) The instrument of government for a maintained special school which is not established in a hospital shall, if the school has less than 100 registered pupils, provide for one governor to be appointed—
  - (a) by a voluntary organisation designated by the local education authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised; or
  - (b) jointly by two or more voluntary organisations so designated as appropriate voluntary organisations concerned with such matters;
 or, if the school has 100 or more registered pupils, shall provide for two governors to be appointed as mentioned in paragraph (a) or (b).
- (4) Where, by virtue of subsection (3) above, an instrument of government is required to provide for the appointment of two governors, it may make different provision in relation to the appointment of one governor from that made in relation to the appointment of the other.
- (5) Where a local education authority are satisfied, in relation to any special school, that there is no voluntary organisation which it would be appropriate to designate for the purposes of subsection (3), that subsection shall not apply to the instrument of government for the school.
- (6) An instrument of government which is required by this section to provide for the appointment of a governor shall name the person or persons by whom the governor is to be appointed.
- (7) Subject to subsection (8), an instrument of government which is required by this section to provide for the appointment of one or (as the case may be) two governors shall in consequence provide for the appointment of one or two fewer co-opted governors than would otherwise be provided for.
- (8) If that instrument of government is for a controlled school which—
  - (a) has less than 600 registered pupils, or
  - (b) is, by virtue of subsection (3) of section 79, to be treated for the purposes of that section as having less than 600 such pupils,
 the instrument shall not provide for the appointment of any co-opted governor.
- (9) In subsections (7) and (8) references to co-opted governors are references to governors required to be co-opted by virtue of section 79 but do not include co-opted foundation governors.

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## **81 Appointment of parent governors by governing bodies. E+W**

- (1) The instrument of government for a county or controlled school, or for a maintained special school which is not established in a hospital, may provide that if at the time when the instrument is made, or at any later time when there is a vacancy for a parent governor—
  - (a) at least 50 per cent. of the registered pupils at the school are boarders, and
  - (b) it would, in the opinion of the local education authority, be impracticable for there to be an election of parent governors,the parent governors, or (as the case may be) the parent governor required to fill that vacancy, shall be appointed by the other members of the governing body.
- (2) Where, in the opinion of the local education authority, it is likely to be impracticable for there to be elections of parent governors at a maintained special school which is established in a hospital, the instrument of government for the school may provide for the parent governors to be appointed by the other members of the governing body.
- (3) The instrument of government for a county, controlled or maintained special school at which parent governors are to be, or may be, elected shall provide for the required number of parent governors to be made up by parent governors appointed by the other members of the governing body if—
  - (a) one or more vacancies for parent governors are required to be filled by election; and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies.
- (4) The instrument of government for a county, controlled or maintained special school shall require governors, in appointing a parent governor under a provision made by virtue of this section—
  - (a) to appoint a person who is the parent of a registered pupil at the school, where it is reasonably practicable to do so, and
  - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.
- (5) Such an instrument shall also provide that governors shall not appoint as a parent governor under such a provision any person who is—
  - (a) an elected member of the local education authority, or
  - (b) an employee of the authority or of the governing body of any aided school maintained by the authority.

## **82 Review of the constitution of governing bodies. E+W**

- (1) The constitution of the governing body of a county, controlled or maintained special school shall be reviewed in accordance with this section on, or as soon as is reasonably practicable after, the occurrence of any event which is a relevant event in relation to the school.
- (2) For the purposes of this section any of the following is a “relevant event” in relation to a school—
  - (a) the implementation of any proposals falling within subsection (3);
  - (b) where no such proposals have been implemented in relation to the school before the fourth anniversary of the date on which the current instrument of government for the school was made, that anniversary; and

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- (c) where a relevant event has previously occurred in relation to the school, the fourth anniversary of the latest such event.
- (3) Proposals fall within this subsection if they provide for an increase in the number of registered pupils at the school and are—
- (a) proposals under section 35(1)(c) or (d) (alteration of character or premises of a county school or transfer to a new site) or proposals which would fall to be published under section 35(1)(d) but for section 35(2)(b);
  - (b) proposals under section 41(2)(a) or (b) (alteration of character or premises of a voluntary school or transfer to a new site);
  - (c) proposals that the Secretary of State should make an order under section 47 (transfer of voluntary school to a new site); or
  - (d) proposals under section 339(1)(b) (prescribed alteration to maintained special school).
- (4) Any review which is required by virtue of the implementation of proposals falling within subsection (3)(a) or (d) shall be carried out by the local education authority; and any other review which is required by this section shall be carried out by the governing body.
- (5) Whenever a local education authority or governing body are required to carry out a review under this section, they shall consider—
- (a) whether the governing body are properly constituted; and
  - (b) whether the provision made by the instrument of government for the school is in any respect different from that which a new instrument of government would be required to make.
- (6) Where a governing body have carried out a review under this section and have established that the provision made by the instrument of government is in one or more respects different from that which a new instrument of government would be required to make, they shall report the fact to the local education authority.
- (7) Where proposals falling within subsection (3)(a) or (d) have been implemented in relation to a school, the local education authority shall determine the date on which, for the purposes of this section, they are to be taken to have been implemented and shall notify the governing body accordingly.

### **83 Adjustment in number of governors. E+W**

- (1) Where—
- (a) a county, controlled or maintained special school has more governors of a particular category than are provided for by the instrument of government for the school, and
  - (b) the excess is not eliminated by the required number of governors of that category resigning,
- such number of governors of that category as is required to eliminate the excess shall cease to hold office.
- (2) The governors who are to cease to hold office shall be selected on the basis of seniority, the longest-serving governor being the first to be selected, and so on.
- (3) Where it is necessary for the purposes of subsection (2) to select one or more governors from a group of equal seniority, it shall be done by drawing lots.

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- (4) Subsections (2) and (3) do not apply in relation to foundation governors.
- (5) The instrument of government for a controlled school shall make provision for the procedure to be adopted whenever subsection (1) requires a foundation governor to cease to hold office.

#### *Governing bodies of aided and special agreement schools*

### **84 Constitution of the governing body of an aided or special agreement school. E**

+W

- (1) The instrument of government for an aided or special agreement school shall provide for the governing body to include—
  - (a) the head teacher, unless he chooses not to be a governor,
  - (b) at least one parent governor,
  - (c) at least one governor appointed by the local education authority,
  - (d) at least one teacher governor if the school has less than 300 registered pupils, and at least two teacher governors if it has 300 or more registered pupils, and
  - (e) foundation governors.
- (2) The instrument shall provide for such number of foundation governors as will lead to their outnumbering the other governors—
  - (a) by two, if the governing body will consist of not more than 18 governors; or
  - (b) by three, if it will consist of more than 18 governors,and shall provide for at least one of the foundation governors to be (at the time of his appointment) a parent of a registered pupil at the school.
- (3) If the school is a primary school serving an area for which there is a minor authority, the instrument shall provide for the governing body to include also at least one governor appointed by that authority.
- (4) Where the head teacher of an aided or special agreement school has chosen not to be a governor, he shall nevertheless be counted as one for the purposes of calculating the required number of foundation governors.
- (5) Subject to subsection (2), nothing in this section shall be taken to prevent the instrument of government for such a school from providing for the governing body to include governors in addition to those required by virtue of this section.
- (6) Where the head teacher of such a school is a governor he shall be treated for all purposes as being an ex officio governor.

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

**C8** [S. 84\(2\)](#) amended (1.11.1996) by [1996 c. 57, ss. 27\(8\), 48\(2\)](#)

### **85 Sponsor governors for aided secondary schools. E+W**

- (1) The instrument of government for any secondary school which is an aided school shall, if a direction given by the Secretary of State under this section so requires—
  - (a) name as a sponsor of the school a person specified in the direction, and

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- (b) provide for the governing body of the school to include such number of governors appointed by the sponsor, not exceeding four, as is so specified.
- (2) A direction under this section in respect of a school, other than one under subsection (4) or (5)—
- (a) may only be given at the request, or with the consent, of the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Chapter) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (3) A direction under this section varying or revoking a previous direction—
- (a) may only be made after consulting the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Chapter) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (4) Where proposals approved under section 43—
- (a) provide for a secondary school to be maintained by the local education authority as a voluntary school, and
  - (b) name a person as a sponsor of the school, and
  - (c) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,
- the Secretary of State shall, if he makes an order under section 48 directing that the school shall be an aided school, give a direction under this section for the purpose of implementing the proposals.
- (5) Where an order under section 54 directs that a secondary school shall be an aided school and the proposals published by the governing body under section 52—
- (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,
- the Secretary of State shall give a direction under this section for the purpose of implementing the proposals.
- (6) Where the instrument of government for any secondary school which is an aided school names two or more persons as sponsors of the school—
- (a) the number of governors appointed under the instrument by virtue of this section may not exceed four, and
  - (b) the instrument may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (7) Where in pursuance of this section the instrument of government for a school names a person as a sponsor of the school, section 84(2) shall have effect as if it required the instrument to provide for such number of foundation governors as will lead to their outnumbering the other governors by two.
- (8) In this section “direction” means a direction contained in an order made by the Secretary of State.

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### Governing bodies: general

#### 86 Instrument of government to reflect current circumstances of school. **E+W**

- (1) Subject to subsection (2) and paragraph 5(2) of Schedule 10 (which makes in relation to new schools provision similar to that made by subsection (2) in relation to existing schools), the instrument of government for a county, voluntary or maintained special school shall make such provision as is appropriate having regard to all the circumstances of the school as at the date on which the instrument is made.
- (2) Where proposals falling within section 82(3) have been implemented in relation to a school, then for the purposes of subsection (1) the number of registered pupils at the school shall, until the actual number of registered pupils at the school reaches the maximum number of pupils provided for by the proposals, be deemed to be that maximum number.
- (3) Where subsection (2) applies in relation to a school—
  - (a) the local education authority, or
  - (b) if the proposals fall within section 82(3)(b) [<sup>F17</sup>or (c)], the governing body, may determine that it shall cease to apply (but without prejudice to its operation in relation to the implementation of any further proposals).

#### Textual Amendments

**F17** Words in s. 86(3)(b) inserted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.15**; S.I. 1997/1468, art. 2, **Sch. 1 Pt. I**

#### 87 Effect of change in circumstances of school. **E+W**

- (1) Where the effect of any subsequent change in the circumstances of a county, voluntary or maintained special school is that the provision made by the instrument of government for the school differs in any respect from the provision which a new instrument of government would be required to make, the local education authority shall (subject to subsection (2))—
  - (a) vary the instrument of government in such manner as is necessary to remove any such difference, or
  - (b) make a new instrument of government.
- (2) For the purposes of subsection (1) any change in the number of registered pupils at a county, controlled or maintained special school occurring after the instrument of government for the school is made, or (as the case may be) varied, may be disregarded until a review under section 82 establishes that the provision made by the instrument differs in any respect from the provision which a new instrument of government for the school would be required to make.
- (3) Where section 86(2) has applied in relation to a school but the local education authority or (as the case may be) governing body have subsequently determined that it should cease to apply, subsections (1) and (2) above shall have effect as if a change in the number of registered pupils at the school had occurred at the time when that determination was made.

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- (4) The instrument of government for a county, voluntary or maintained special school may make provision which would be appropriate in the event of such a change in the circumstances of the school as is anticipated by that provision (including in particular a change in the number of registered pupils at the school).
- (5) No provision made by the instrument of government for a county, controlled or maintained special school in anticipation of a change in the number of registered pupils at the school shall have effect before it is established, by a review under section 82, that a new instrument of government would be required to make that provision.

## **88 Incorporation, membership and proceedings etc. of governing bodies. E+W**

- (1) Any governing body of a county, voluntary or maintained special school constituted in pursuance of this Chapter shall be constituted as a body corporate; and Schedule 7 has effect in relation to the incorporation of any such governing body.
- (2) Schedule 8 has effect in relation to the membership and proceedings of, and other matters relating to, any such governing body.

### *Grouping of schools under a single governing body*

## **89 Grouping of schools under a single governing body. E+W**

- (1) Subject to subsection (2), a local education authority may resolve that any two or more schools maintained by them shall be grouped for the purposes of this Chapter.
- (2) If the instrument of government of any of the schools names a person as a sponsor of the school, a local education authority may only pass a resolution under subsection (1) if all the schools are secondary schools.
- (3) Where any schools are grouped under this section, they shall—
  - (a) be treated for the purposes of this Chapter as a single school; and
  - (b) have a single governing body constituted under a single instrument of government.
- (4) A group shall be treated for the purposes of this Chapter—
  - (a) as an aided school, if it contains at least one aided school;
  - (b) as a special agreement school, if it contains at least one special agreement school and paragraph (a) does not apply;
  - (c) as a controlled school, if it contains at least one controlled school and neither paragraph (a) nor paragraph (b) applies;
  - (d) as a maintained special school, if it consists only of maintained special schools; and
  - (e) as a county school, if none of paragraphs (a) to (d) applies.
- (5) In this Part—
 

“group” means two or more schools grouped under this section; and

“grouped school” means a school which forms a part of a group.
- (6) Any reference in any enactment to the governing body or governors of a school shall be construed, in relation to any grouped school, as a reference to the governing body or governors of the group.



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

- C9** S. 89 restricted (1.11.1996) by 1996 c. 57, ss. 29(1), 48(2)  
S. 89 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)  
S. 89 applied (24.7.1998 for certain purposes only) by 1998 c. 31, ss. 36(2), 145(3)(5), Sch. 10 para. 1(7) (with ss. 138(9), 144(6)).

**90** **Consent of Secretary of State as to grouping.** **E+W**

- (1) Subject to subsection (2), a local education authority shall, before resolving to group any schools under section 89, obtain the consent of the Secretary of State to the proposed grouping.
- (2) The Secretary of State's consent is not required if—
  - (a) the group will consist only of two primary schools;
  - (b) both of the schools serve substantially the same area;
  - (c) neither of the schools is a special school; and
  - (d) where they are in Wales, there is no significant difference between them in their use of the Welsh language.
- (3) Where—
  - (a) two primary schools have been grouped in circumstances in which, by virtue of subsection (2), the Secretary of State's consent to the grouping was not required, and
  - (b) a change of circumstances occurs such that a proposal to group those schools made after that change would require his consent,the local education authority shall obtain his consent to their continuing to be grouped.
- (4) The Secretary of State may give his consent to any grouping (or continued grouping) of schools subject to such conditions as to the duration of the grouping as he sees fit to impose.
- (5) Where the Secretary of State's consent is required to the grouping or continued grouping of any schools, sections 79 to 81, 84 and 85 and paragraph 2(2) of Schedule 8 (representation of local business community on governing body) shall apply in relation to the group subject to such modifications (if any) as he may direct.
- (6) Any dispute as to whether, for the purposes of this section—
  - (a) two primary schools are to be regarded as serving substantially the same area, or
  - (b) there is any significant difference between two primary schools in their use of the Welsh language,shall be determined by the Secretary of State.

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

- C10** S. 90 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

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**91 Consent of, or consultation with, governing body as to grouping. E+W**

- (1) A local education authority shall not pass a resolution under section 89 applying to a voluntary school without first obtaining the consent of the school's governing body.
- (2) A local education authority shall not pass a resolution under section 89 applying to a county or maintained special school without first consulting the school's governing body.

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

C11 S. 91 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

**92 Procedure for making or altering the instrument of government for a group. E+W**

- (1) Before making an order under section 76 embodying the first instrument of government for a group, the local education authority shall consult the governing body and head teacher of each school within the group.
- (2) Before making such an order in respect of a group which contains one or more voluntary schools, the local education authority shall also—
  - (a) secure the agreement of the governing body of each of those schools to the terms of the proposed order,
  - (b) secure the agreement of the foundation governors of each of those schools to any provision which will be of particular concern to the foundation governors of the group, and
  - (c) have regard to the way in which those schools have been conducted.
- (3) Where an order such as is mentioned in subsection (1) has been made, section 77 shall apply in relation to any subsequent order embodying or varying the instrument of government for the group, or any proposal for the making of such an order, as if the group—
  - (a) (where it contains one or more voluntary schools) were a single voluntary school; or
  - (b) (in any other case) were a single county school.
- (4) Any agreement required by subsection (2) shall be treated for the purposes of section 77(5) as having been required by section 77(2).

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

C12 S. 92 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

**93 Election of parent and teacher governors for a group. E+W**

The instrument of government for a group—

- (a) may provide for the local education authority to have power to determine, in relation to every election of parent or teacher governors, the school or schools within the group—

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- (i) the parents of registered pupils at which are entitled to stand and vote at the election, or
- (ii) the teachers at which are entitled to stand and vote at the election, as the case may be; and
- (b) where it so provides, shall require the authority to ensure that the position after any such election will be that there is no school within the group which will not have had an opportunity to participate in accordance with paragraph (a) in the election of at least one of the parent or (as the case may be) teacher governors of the group.

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

**C13** S. 93 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

**94 Review of grouping. E+W**

- (1) Where subsection (2) applies in relation to a school which is grouped with one or more other schools under section 89, the local education authority shall review the grouping of those schools and consider whether or not it should be brought to an end.
- (2) This subsection applies in relation to a school if—
  - (a) proposals relating to it are made under—
    - (i) section 35 (establishment, alteration etc. of county schools),
    - (ii) section 41 (establishment, alteration etc. of voluntary schools),
    - (iii) section 52 (controlled schools becoming aided schools),
    - (iv) section 167 (discontinuance of county, voluntary and nursery schools), or
    - (v) section 339 (establishment etc. of special schools); or
  - (b) it is proposed that the Secretary of State should make an order relating to it under section 46 (establishment of new voluntary schools in substitution for old ones) or section 47 (transfer of voluntary schools to new sites); or
  - (c) the Secretary of State makes an order relating to it—
    - (i) under section 50 or section 51 (division of county or voluntary school), or
    - (ii) under section 57 or 58(1) (revocation of orders by virtue of which schools are aided or special agreement schools); or
  - (d) it is transferred to a new site in circumstances falling within section 35(2)(b).
- (3) Where on a review under this section a local education authority consider that any grouping of schools should be continued, and the Secretary of State's consent to the grouping, or to the continued grouping, of the schools was at any time required by section 90, the authority shall—
  - (a) report to the Secretary of State on the results of their review; and
  - (b) provide him with such information as he may reasonably require with a view to enabling him to consider whether or not the grouping should be brought to an end.

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

C14 S. 94 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

**95 Termination of grouping. E+W**

- (1) The Secretary of State may by order bring to an end any grouping under section 89 in respect of which his consent was at any time required by section 90.
- (2) Any grouping under section 89 may, if the group does not contain a voluntary school, be brought to an end by resolution of the local education authority.
- (3) Any such grouping may, if the group contains a voluntary school but not one whose instrument of government names any person as a sponsor of the school, be brought to an end—
  - (a) by resolution of the local education authority made with the agreement of the governing body, or
  - (b) by one year's notice given either by the authority to the governing body or by the governing body to the authority.
- (4) Any order under section 76 embodying an instrument of government for two or more schools which are grouped under section 89 shall be taken to have been revoked—
  - (a) in the case of a group which was established for a specified period, at the end of that period, or
  - (b) at the time when the grouping is brought to an end in accordance with subsection (1), (2) or (3).

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

C15 S. 95 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(a)

C16 S. 95(1) extended (1.11.1996) by 1996 c. 57, ss. 29(2), 48(2)

*Government of new schools*

**96 Temporary governing bodies for new county or maintained special schools. E**

**+W**

- (1) Where—
  - (a) the Secretary of State has approved under section 37 or section 340 proposals of a kind mentioned in subsection (2), or
  - (b) a local education authority have determined under section 38 to implement any proposals made by them under section 35,
 the local education authority shall (unless they have already exercised their power to do so under subsection (3)) make an arrangement for the constitution of a temporary governing body for the school in question pending the constitution of its governing body under an instrument of government.
- (2) The proposals referred to in subsection (1) are any proposals made by a local education authority—
  - (a) to establish a new county school;

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- (b) to maintain as a county school a school which is neither a county school nor a voluntary school; or
  - (c) to establish a new school which is specially organised to make special educational provision for pupils with special educational needs.
- (3) Where any such proposals have been duly published under section 35 or (as the case may be) notice of them has been duly served under section 339, the local education authority may make an arrangement such as is mentioned in subsection (1) in anticipation of the Secretary of State's approval of the proposals or (as the case may be) the determination by the authority that they should be implemented.
- (4) An arrangement made under subsection (3) shall come to an end if—
- (a) the proposals are withdrawn, or
  - (b) the Secretary of State rejects them under section 37 or (as the case may be) section 340, or
  - (c) (in the case of proposals made under section 35), the local education authority determine under section 38 not to implement them.
- (5) An arrangement made under this section shall, unless it has been brought to an end under subsection (4), come to an end when the requirement for there to be an instrument of government for the school takes effect under section 99.

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

**C17** S. 96(1)(3) modified (1.1.1999) (*temp.*) by S.I. 1998/3097, reg.4

**C18** S. 96(5) excluded (1.1.1999) by S.I. 1998/3097, reg. 8(b)

**97 Temporary governing bodies for new voluntary schools. E+W**

- (1) Where the Secretary of State has approved under section 43 any proposals that a school—
- (a) which was established by those making the proposals, or by the persons whom they represent, and is not a voluntary school, or
  - (b) which is proposed to be so established,
- should be maintained by a local education authority as a voluntary school, the local education authority shall (unless they have already exercised their power to do so under subsection (2)) make an arrangement for the constitution of a temporary governing body for the school pending the constitution of its governing body under an instrument of government.
- (2) Where any such proposals have been duly published under section 41, the local education authority may make an arrangement such as is mentioned in subsection (1) in anticipation of the Secretary of State's approval of the proposals.
- (3) If the proposals so published are for the school in question to be maintained as a controlled school, the authority shall consult the persons making the proposals—
- (a) as to whether the power given to the authority by subsection (2) should be exercised, and
  - (b) if the authority propose to exercise it, as to the date on which the arrangement should be made.

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- (4) If the proposals so published are for the school in question to be maintained as an aided school, the authority and the persons making the proposals shall consider—
  - (a) whether the power given to the authority by subsection (2) should be exercised, and
  - (b) where they agree that it should, on what date the arrangement should be made.
- (5) Where, in a case within subsection (4), the authority and the persons making the proposals fail to agree on the question mentioned in paragraph (a) or on that mentioned in paragraph (b), either of them may refer the matter to the Secretary of State.
- (6) On a reference under subsection (5), the Secretary of State shall give such direction as he thinks fit.
- (7) An arrangement made under subsection (2) shall come to an end if—
  - (a) the proposals are withdrawn, or
  - (b) the Secretary of State rejects them under section 43.
- (8) An arrangement made under this section, other than one which has been brought to an end under subsection (7), shall come to an end when the requirement for there to be an instrument of government for the school takes effect under section 99.

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

**C19** S. 97(1)(2) modified (1.1.1999) (*temp.*) by S.I. 1998/3097, **reg.4**

**C20** S. 97(8) excluded (1.1.1999) by S.I. 1998/3097, **reg. 8(c)**

**98 Constitution, membership and proceedings etc. of temporary governing bodies. E+W**

Schedule 9 has effect in relation to the constitution, membership and proceedings of, and other matters relating to, temporary governing bodies.

**99 Transition from temporary governing body to governing body constituted under an instrument of government. E+W**

- (1) The requirement for there to be an instrument of government for a school (imposed by section 76) shall take effect in relation to a new school from the date on which the relevant proposals are implemented.
- (2) Where a question arises as to which date is to be taken for the purposes of this section to be the date on which the relevant proposals are implemented, it shall be determined by the Secretary of State.
- (3) Schedule 10 has effect in relation to the transition from a temporary governing body to a governing body constituted under an instrument of government.

*Grouping of new schools*

**100 Grouping of new schools. E+W**

- (1) This section applies for the purposes of grouping a new school under section 89 with effect from the relevant time.

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- (2) Any provision of sections 89 to 91 which operates by reference to the existence or absence of any particular circumstances in the case of a school, or to the status of a school, shall be treated (so far as necessary for the purposes mentioned in subsection (1) above) as so operating by reference to the position as it will be at the relevant time.
- (3) In addition section 91 shall have effect for those purposes as if any reference to a school's governing body were a reference to its temporary governing body.
- (4) In this section “the relevant time”, in relation to a new school, means the time when the requirement for there to be an instrument of government for the school takes effect under section 99.

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

**C21** S. 100 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(d)

**CHAPTER V** **E+W**

FINANCIAL DELEGATION TO GOVERNING BODIES OF  
COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

**CHAPTER VI** **E+W**

CONDUCT AND STAFFING OF COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

*Articles of government*

**127** **Articles of government.** **E+W**

- (1) For every county, voluntary and maintained special school there shall be an instrument (known as the articles of government) in accordance with which the school is to be conducted.
- (2) The articles of government shall be made by order of the local education authority.
- (3) The articles of government—
  - (a) shall contain such provisions as are required by this Chapter or by any other enactment; and
  - (b) shall not contain any provision which is inconsistent with any provision made by or under this Act or any other enactment.
- (4) The articles of government shall comply with any trust deed relating to the school.

**128** **Procedure for making and altering articles of government.** **E+W**

- (1) Before making an order under section 127, a local education authority shall consult the governing body and the head teacher of the school concerned.

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- (2) Before making an order under section 127 in respect of a voluntary school, a local education authority shall also—
  - (a) secure the agreement of the governing body to the terms of the proposed order; and
  - (b) have regard to the way in which the school has been conducted.
- (3) Where the governing body of a county, voluntary or maintained special school make a proposal to the local education authority for the alteration of the provision made by the articles of government for the school, the authority shall consider their proposal.
- (4) Where a local education authority—
  - (a) propose to make an order under section 127 but cannot secure any agreement required by subsection (2), or
  - (b) refuse, in the case of a voluntary school, to make such an order in response to a proposal of a kind mentioned in subsection (3),
 the authority or (as the case may be) the governing body may refer the matter to the Secretary of State.
- (5) On a reference to him under subsection (4), the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the status of the school as a controlled, aided or (as the case may be) special agreement school.
- (6) Where it appears to the Secretary of State—
  - (a) that an order, or proposed order, under section 127 is in any respect inconsistent with the provisions of any trust deed relating to the school, and
  - (b) that it is expedient in the interests of the school that the provisions of the trust deed should be modified for the purpose of removing the inconsistency,
 he may by order make such modifications in the trust deed as appear to him to be just and expedient for that purpose.
- (7) References in this section to an order, or proposed order, under section 127 are references to an order, or proposed order, under that section embodying or varying the articles of government for a school.

**129    Overriding, and amendment, of articles where school has a delegated budget. E**  
+W

- (1) During any period when a school has a delegated budget under such a scheme as is mentioned in section 101(1), any provisions of the articles of government of the school which are inconsistent with the operation during that period of any provisions of Chapter V or of the scheme shall be of no effect to the extent of the inconsistency.
- (2) If a school's articles of government contain any provisions to which subsection (1) applies ("inconsistent provisions"), the local education authority shall amend the articles so as to include in relation to each inconsistent provision the statement required by subsection (3).
- (3) The statement shall specify—
  - (a) the inconsistent provision,
  - (b) the provision of Chapter V or of the scheme with the operation of which it is inconsistent (the "overriding provision"), 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, the inconsistent provision is superseded by the overriding provision to the extent of the inconsistency.

- (4) Any amendment required by subsection (2) shall be made within the period of five years beginning with the date on which begins the financial year in which the school first has a delegated budget under the scheme.
- (5) Any such amendment shall be made by order under section 127; but section 128 shall not apply in relation to an order made under section 127 by virtue of this subsection.

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

**C22** S. 129 amended (1.4.1999) by S.I. 1999/711, reg. 3

*Conduct of schools: general*

**130 Governing body to have general responsibility for conduct of school. E+W**

The articles of government for a county, voluntary or maintained special school shall provide for the conduct of the school to be under the direction of the governing body, but subject—

- (a) to any provision of the articles conferring specific functions on a person other than the governing body, and
- (b) to any provision (other than a provision of the articles) made by or under this Act or any other enactment.

**131 Consultation with governing body not required in urgent cases. E+W**

Regulations may make provision as to the circumstances in which, in any case where—

- (a) any provision made by or under Chapter IV or this Chapter requires the governing body of a county, voluntary or maintained special school to be consulted before a particular step is taken by the local education authority or the head teacher, and
- (b) the authority or head teacher require to take that step as a matter of urgency but are unable to contact the chairman or vice-chairman of the governing body,

the authority or (as the case may be) the head teacher may proceed without consulting the governing body.

**132 Separate departments of school to be treated as separate schools. E+W**

- (1) Where a county, voluntary or maintained special school is organised in two or more separate departments, each with a head teacher, any provision made by or under this Act which confers functions on or in relation to the head teacher of the school shall have effect as if each department were a separate school.
- (2) Subsection (1) does not apply where the school's articles of government provide otherwise.

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

- C23** S. 132 excluded (26.5.1999) by S.I. 1999/1287, reg. 3(1)  
 s. 132 modified (*temp.* 26.5.1999 to immediately before 1.9.1999) by S.I. 1999/1287, reg. 3(2)

*Staffing of schools without delegated budgets*

**F18** **133 Staffing of county, controlled, special agreement and maintained special schools without delegated budgets.** **E+W**

- (1) A county, controlled, special agreement or maintained special school shall have a complement of teaching and non-teaching posts determined by the local education authority.
- (2) The complement shall include—
  - (a) all full-time teaching posts, and
  - (b) all part-time teaching posts which are to be filled by persons whose only employment with the authority will be at the school.
- (3) The complement shall not include any staff employed by the authority solely in connection with either or both of the following—
  - (a) the provision of meals;
  - (b) the supervision of pupils at midday.
- (4) Schedule 13 has effect in relation to the staffing of county, controlled, special agreement and maintained special schools.
- (5) The appointment and dismissal of staff (including teachers) at a county, controlled, special agreement or maintained special school shall be under the control of the local education authority, subject to—
  - (a) any provision made by the articles of government for the school in accordance with Schedule 13,
  - (b) section 135 and any provision made by the articles of government in accordance with that section (appointment and dismissal of clerk to governing body),
  - (c) sections 143 and 144 (appointment and dismissal of teachers of religious education), and
  - (d) in the case of a school for which there is a temporary governing body, Schedule 19 (conduct and staffing of new schools).
- (6) This section is subject to section 136 (staffing of county, controlled and special agreement schools with delegated budgets).

**Textual Amendments**

- F18** Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

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### **F19 134 Staffing of aided schools without delegated budgets. E+W**

- (1) In the case of an aided school the functions of the local education authority and of the governing body with respect to—
  - (a) the appointment of teachers, and
  - (b) subject to section 145 (dismissal of teachers of religious education), the dismissal of teachers,
 shall be regulated by the articles of government.
- (2) The articles of government shall make provision—
  - (a) for the appointment of the teachers by the governing body, and
  - (b) for enabling the local education authority to determine the number of teachers to be employed.
- (3) The articles of government shall make provision for enabling the local education authority—
  - (a) to prohibit the dismissal of teachers without the authority's consent, except for reasons for which under section 145 the governing body may dismiss a teacher without the authority's consent; and
  - (b) to require the dismissal of any teacher.
- (4) The articles of government may make such provision as may be agreed between the local education authority and the governing body or, in default of such agreement, as may be determined by the Secretary of State, for enabling the authority—
  - (a) to prohibit the appointment, without the authority's consent, of teachers to be employed for giving secular education; and
  - (b) to give directions as to the educational qualifications of the teachers to be employed for giving secular education.
- (5) The local education authority may give directions to the governing body of an aided school as to the number and conditions of service of persons employed at the school for the purposes of the care and maintenance of the school premises.
- (6) Where the trust deed relating to the school provides for a person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement under section 151) the use of those premises is or would be under the control of any such person, the reference in subsection (5) to the governing body shall be read as a reference to that person.
- (7) This section is subject to section 137 (staffing of aided schools with delegated budgets).

#### **Textual Amendments**

**F19** Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

### **135 Appointment etc. of clerk to governing body of school other than aided school. E+W**

- (1) The articles of government for a county or maintained special school shall provide for the clerk to the governing body to be appointed by the local education authority in

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- accordance with arrangements determined by them in consultation with the governing body.
- (2) The clerk to the governing body of a controlled or special agreement school shall be appointed—
- (a) where the articles of government make provision in relation to his appointment, in accordance with that provision, or
  - (b) where paragraph (a) does not apply, by the local education authority in accordance with arrangements determined by them in consultation with the governing body.
- (3) Arrangements determined in respect of a school by virtue of subsection (1) or under subsection (2)(b) may be varied by the authority in consultation with the governing body.
- (4) The articles of government for a county or maintained special school shall require the local education authority not to dismiss the clerk except in accordance with arrangements determined by them in consultation with the governing body.
- (5) The clerk to the governing body of a controlled or special agreement school may not be dismissed except—
- (a) where the articles of government make provision in relation to his dismissal, in accordance with that provision, or
  - (b) where paragraph (a) does not apply, in accordance with arrangements determined by the local education authority in consultation with the governing body.
- (6) The articles of government for a county, controlled, special agreement or maintained special school shall require the local education authority to consider any representations made to them by the governing body as to the dismissal of their clerk.
- (7) Subsections (1) to (6) are subject to section 136 (staffing of county, controlled, and special agreement schools with delegated budgets).
- (8) The articles of government for a county, controlled, special agreement or maintained special school shall enable the governing body, where the clerk fails to attend a meeting of theirs, to appoint one of their number to act as clerk for the purposes of that meeting (but without prejudice to his position as a governor).

*Staffing of schools with delegated budgets*

**136 Staffing of county, controlled and special agreement schools with delegated budgets. 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 apply in relation to the school—
- (a) section 133 and Schedule 13,
  - (b) section 135(1) to (6), and
  - (c) any provision made by the articles of government for the school in accordance with Schedule 13 or section 135(1) to (6).

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- (3) Instead Schedule 14 has effect in relation to the staffing of the school, subject, however, to the provisions of sections 143 and 144 (appointment and dismissal of teachers of religious education).

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

- C24** Ss. 136-140 extended (1.4.1999) by S.I. 1999/711, reg. 4  
Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

**137 Staffing of aided schools with delegated budgets. 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 apply in relation to the school—
- any provision of the articles of government for the school conferring any functions on a local education authority with respect to the number, appointment or dismissal of teachers or other staff to be employed at the school (including any such provision which is required by section 134), and
  - section 134(5).
- (3) If, apart from any provision of the articles of government excluded by subsection (2)
- they would not otherwise have power to do so, the governing body may appoint, suspend and dismiss staff as they think fit.
- (4) Subsection (3) has effect subject to any provision of the articles of government (other than one excluded by subsection (2)(a)).
- (5) The governing body 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.
- (6) Paragraphs 23 to 28 of Schedule 14 apply in relation to the dismissal or withdrawal from the school of any member of the staff who is employed by the local education authority as they apply in relation to the dismissal or withdrawal from a county, controlled or special agreement school which has a delegated budget of a person employed to work at the school.

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

- C25** Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

**138 Staffing of aided schools with delegated budgets: advisory rights of chief education officer. E+W**

- (1) Subsection (2) applies if, in the case of an aided school which has a delegated budget—
- the governing body of the school have agreed with the local education authority to accord to the authority's chief education officer advisory rights in relation to the appointment or dismissal of teachers at the school, or
  - in default of such agreement, the Secretary of State has determined that it would be appropriate that such advisory rights should be accorded to the chief education officer.

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- (2) During any period when the agreement or determination under subsection (1) is effective, the chief education officer, or an officer of the authority nominated by him, shall be entitled to attend all relevant proceedings of the governing body for the purpose of giving advice to the governing body.

For this purpose “relevant proceedings” means proceedings (including interviews) relating to any action to which the advisory rights accorded to the chief education officer extend.

- (3) Advisory rights accorded by an agreement or determination under subsection (1) may relate to the appointment or dismissal, or both to the appointment and to the dismissal, either—
- (a) of head teachers and deputy head teachers alone, or
  - (b) of all teachers at the school.
- (4) The agreement of a governing body for the purposes of subsection (1)(a) must be given in writing and may only be withdrawn by notice in writing to the local education authority.
- (5) A determination by the Secretary of State for the purposes of subsection (1)(b) may be withdrawn at any time (without prejudice to a further determination for those purposes).

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

**C26** Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

**139 Staffing of schools with delegated budgets: payments in respect of dismissal, etc.** **E+W**

- (1) This section applies to a county or voluntary school at any time when it has a delegated budget.
- (2) It shall be for the governing body to determine—
- (a) whether any payment should be made by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and
  - (b) the amount of any such payment.
- (3) Subsection (2) does not, however, apply in relation to a 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—
- (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (2), and
  - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.

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(5) <sup>F20</sup>Subject to subsection (5A),]Costs incurred by the local education authority in respect of the dismissal or premature retirement, or for the purpose of securing the resignation, of any member of the staff of the 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.

<sup>F21</sup>(5A) Subsection (5) does not apply to costs incurred by the local education authority in respect of any premature retirement of a member of the staff of the school occurring on or after the date of the passing of the Education Act 1997; and such costs shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body (whether before or after the retirement occurs) that they shall not be so met.

(5B) The agreement of the local education authority for the purposes of subsection (5A) must be given in writing on or after the date of the passing of that Act.]

(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).

(7) In subsection (6) the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the <sup>M21</sup>Employment Rights Act 1996.

#### Textual Amendments

**F20** Words in s. 139(5) inserted (21.3.1997) by 1997 c. 44, s. 50(2)(4)

**F21** S. 139(5A)(5B) inserted (21.3.1997) by 1997 c. 44, s. 50(3)(4)

#### Marginal Citations

**M21** 1996 c. 18

### 140 Staffing for non-school activities in community schools. **E+W**

(1) This section applies to a county or voluntary school which has a delegated budget and 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 school's governing body.

(3) A scheme such as is mentioned in section 101(1) may provide for applying sections 136(2), 137(6) and 139 and Schedule 14 in relation to persons employed to work—

- (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.

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

- C27 Ss. 136, 140 extended (1.4.1999) by S.I. 1999/711, reg. 4  
 Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

**141 Amendment of articles of government relating to staffing. E+W**

- (1) Within the period of five years beginning with the date on which begins the financial year in which a county or voluntary school first has a delegated budget under a scheme, the local education authority shall amend the school's articles of government in accordance with this section.
- (2) If the school is a county, controlled or special agreement school, the articles of government shall be amended so as to include a statement—
  - (a) specifying the provisions made by the articles in accordance with Schedule 13 or section 135(1) to (6), and
  - (b) indicating that those provisions are superseded by section 136 and Schedule 14 during any period when the school has a delegated budget.
- (3) If the school is an aided school the articles of government shall be amended so as to include a statement—
  - (a) specifying the provisions of the articles which are within section 137(2)(a), and
  - (b) indicating that those provisions are superseded by sections 137 and 138 during any period when the school has a delegated budget.
- (4) An amendment under this section shall be made by order under section 127; but section 128 shall not apply in relation to an order made under section 127 by virtue of this section.

**142 Application of provisions to maintained special schools. E+W**

Section 120(4) confers power on the Secretary of State to make in any of the following, namely—

- (a) sections 136 to 141,
- (b) Schedule 14, and
- (c) paragraphs 2 and 18 to 24 of Schedule 19,

amendments appearing to him to be required in consequence of any provision made in regulations under section 120(1) (application of schemes to maintained special schools).

*Appointment and dismissal of teachers of religious education*

**143 Appointment etc. of reserved teachers in controlled schools. E+W**

- (1) Where the number of the teaching staff of a controlled school is more than two, the teaching staff shall include persons who—
  - (a) are selected for their fitness and competence to give such religious education as is required in accordance with arrangements under section 377(2) (arrangements for religious education in accordance with the school's trust



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- deed or with the practice observed before the school became a controlled school), and
- (b) are specifically appointed to do so.
- (2) In this Chapter “reserved teacher”, in relation to a controlled school, means a person employed at the school in pursuance of subsection (1).
- (3) The number of reserved teachers in a controlled school shall not exceed one-fifth of the number of the teaching staff, including the head teacher (and for this purpose, where the number of the teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five).
- (4) The head teacher of a controlled school shall not, while holding the post of head teacher of such a school, be a reserved teacher.
- (5) Where the local education authority propose to appoint a person to be a reserved teacher in a controlled school, the authority—
- (a) shall consult the foundation governors, and
- (b) shall not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (1)(a).
- (6) If the foundation governors of a controlled school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may require the local education authority to dismiss him from employment as a reserved teacher in the school.
- (7) In subsection (5) “foundation governor” includes a temporary foundation governor.

#### **144 Appointment etc. of reserved teachers in special agreement schools. E+W**

- (1) In this Chapter “reserved teacher”, in relation to a special agreement school, means a person who in pursuance of provision made in the special agreement is employed to give religious education—
- (a) in accordance with any provisions of the trust deed relating to the school, or
- (b) (where provision for that purpose is not made by any such deed) in accordance with the practice observed in the school before it became a voluntary school.
- (2) Where the special agreement made with respect to a special agreement school provides for the employment of reserved teachers and the local education authority propose to appoint a person to be a reserved teacher in the school, the authority—
- (a) shall consult the foundation governors, and
- (b) shall not appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (1).
- (3) If the foundation governors of a special agreement school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may require the local education authority to dismiss him from employment as a reserved teacher in the school.
- (4) In subsection (2) “foundation governor” includes a temporary foundation governor.

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**145 Dismissal of teachers of religious education in aided schools. E+W**

If a teacher appointed to give religious education in an aided school (other than education in accordance with an agreed syllabus) fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority.

*Religious opinions of staff etc.*

**146 Religious opinions of staff etc. E+W**

- (1) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—
  - (a) from being a teacher in a county school or from being a teacher (other than a reserved teacher) in a controlled or special agreement school, or
  - (b) from being employed (otherwise than as a teacher) for the purposes of a county or voluntary school.
- (2) No teacher in a county school, and no teacher (other than a reserved teacher) in a controlled or special agreement school, shall be required to give religious education.
- (3) No teacher in a county school, and no teacher (other than a reserved teacher) in a controlled or special agreement school, shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
  - (a) by reason of the fact that he does or does not give religious education, or
  - (b) by reason of his religious opinions or of his attending or omitting to attend religious worship.
- (4) No teacher in an aided school, and no reserved teacher in a controlled or special agreement school, shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
  - (a) by reason of the fact that he gives religious education, or
  - (b) by reason of his religious opinions or of his attending religious worship.

*School terms, holidays and sessions*

**147 Responsibility for determining dates of terms and holidays and times of sessions. E+W**

- (1) In the case of a county, controlled or maintained special school—
  - (a) the articles of government shall require the local education authority to determine the dates when the school terms and holidays are to begin and end; and
  - (b) the governing body shall determine the times of the school sessions.
- (2) In the case of an aided or a special agreement school the articles of government shall require the governing body to determine—
  - (a) the dates and times when the school terms and holidays are to begin and end, and
  - (b) the times of the school sessions.

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- (3) In this section and section 148 “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

#### **148 Procedure for changing times of sessions at a county, controlled or maintained special school. E+W**

- (1) Where the governing body of a county, controlled or maintained special school propose to make any change in the times of the school sessions, they shall—
- (a) before taking any of the actions mentioned in paragraphs (b) to (h), consult the local education authority and the head teacher;
  - (b) prepare a statement—
    - (i) indicating that they propose to make a change in those times,
    - (ii) specifying the proposed change and when they propose that it should take effect,
    - (iii) drawing attention to any comment on the proposal included as an annex to the statement by virtue of paragraph (c) and including such response to the comment as they may consider appropriate, and
    - (iv) giving details of the date, time and place of the meeting which they are required to hold by virtue of paragraph (f);
  - (c) if so required by the local education authority, include as an annex to that statement such written comment on the proposal as the authority may provide for that purpose;
  - (d) produce that statement and any annex in such language or languages (in addition to English), if any, as they consider appropriate or as the local education authority may direct;
  - (e) take such steps as are reasonably practicable to secure—
    - (i) that the parents of all registered pupils at the school are given (free of charge) a copy of the statement and any annex not less than two weeks before the meeting which the governing body are required to hold by virtue of paragraph (f), and
    - (ii) that copies of the statement and any annex are available for inspection (at all reasonable times and free of charge) at the school during the two-week period immediately preceding that meeting;
  - (f) provide an opportunity for discussion of the proposal at a meeting which is open to —
    - (i) all parents of registered pupils at the school,
    - (ii) the head teacher, and
    - (iii) such other persons as the governing body may invite;
  - (g) consider any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification; and
  - (h) not less than three months before any change in those times is to take effect—
    - (i) inform the local education authority of the change and of when it is to take effect, and
    - (ii) take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are so informed.

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- (2) No change in the times of a school session shall be made under this section so as to take effect otherwise than at the beginning of a school year.
- (3) The proceedings at any meeting required to be held by virtue of subsection (1)(f) shall be under the control of the governing body.
- (4) Any question whether any person is to be treated for the purposes of this section as the parent of a registered pupil at the school shall be determined by the local education authority.
- (5) Section 147(3) applies for the purposes of this section.

#### *Control of school premises*

### **149 County and maintained special schools: control of use of premises outside school hours. E+W**

- (1) The articles of government for every county and maintained special school shall provide—
  - (a) for the use of the school premises outside school hours to be under the control of the governing body except to the extent provided by any transfer of control agreement into which they may enter by virtue of paragraph (c);
  - (b) for the governing body in exercising control of the use of the school premises outside school hours—
    - (i) to comply with any directions given to them by the local education authority by virtue of this sub-paragraph; and
    - (ii) to have regard to the desirability of the premises being made available for community use;
  - (c) for the governing body to have power to enter into a transfer of control agreement if their purpose, or one of their purposes, in doing so is to promote community use of the school premises outside school hours; and
  - (d) for the governing body, where they enter into a transfer of control agreement, to secure so far as reasonably practicable that the controlling body exercises control in accordance with any directions given to the governing body by virtue of paragraph (b)(i).
- (2) A transfer of control agreement shall be taken to include the following terms, namely—
  - (a) that the governing body shall notify the controlling body of any directions given to the governing body by virtue of subsection (1)(b)(i);
  - (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
    - (i) shall do so in accordance with any directions from time to time notified to that body in pursuance of paragraph (a) above; and
    - (ii) shall have regard to the desirability of the premises being made available for community use outside school hours; and
  - (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—

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- (i) the use of the specified premises at those times shall be under the control of the governing body, and
  - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,  
even though their use at those times would, apart from this paragraph, be under the control of the controlling body.
- (3) Subsection (4) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.
- (4) In such a case paragraph (c) of subsection (2) shall not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (5) In this section—
- “community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;
  - “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;
  - “school hours” means any time during a school session or during a break between sessions on the same day, and “outside school hours” shall be construed accordingly;
  - “school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with sections 147 and 148; and
  - “transfer of control agreement” means an agreement which (subject to subsection (2) above) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times outside school hours as may be so specified, of such body or person as may be so specified.

## 150 Voluntary schools: control of use of premises. **E+W**

- (1) The occupation and use of the premises of a voluntary school shall be under the control of the governing body, subject to—
- (a) any directions given by the local education authority under subsection (2) (in the case of a controlled school) or section 152(3) (in the case of an aided or special agreement school);
  - (b) any transfer of control agreement entered into by the governing body under section 151; and
  - (c) any requirements of an enactment other than this Act or regulations made under it.
- (2) The local education authority may give such directions as to the occupation and use of the premises of a controlled school as they think fit, subject to section 152(1) and (2).

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- (3) Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under section 151) the use of those premises is or would be under the control of such a person—

- (a) this section, and
- (b) sections 151 and 152,

shall have effect in relation to the school with the substitution of references to that person for references to the governing body.

### **151 Voluntary schools: transfer of control agreements. E+W**

- (1) Subject to subsection (2), the governing body of any voluntary school shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises; and—

- (a) they may do so even though the trust deed for the school would, apart from this subsection, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
- (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would apply if control were being exercised by the governing body.

- (2) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the local education authority's consent to the agreement in so far as it makes such provision.

- (3) A transfer of control agreement shall be taken to include the following terms, namely—

- (a) that the governing body shall notify the controlling body of—
  - (i) any directions given to the governing body under section 150(2) (in the case of a controlled school) or section 152(3) (in the case of an aided or special agreement school); and
  - (ii) any determination made by the foundation governors under section 152(2) (in the case of a controlled school);
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
  - (i) shall do so in accordance with any directions or determinations from time to time notified to that body in pursuance of paragraph (a); and
  - (ii) shall have regard to the desirability of the premises being made available for community use; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—

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- (i) the use of the specified premises at those times shall be under the control of the governing body, and
  - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,  
even though their use at those times would, apart from this paragraph, be under the control of the controlling body.
- (4) Subsection (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.
- (5) In such a case paragraph (c) of subsection (3) shall not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (6) Where the governing body enter into a transfer of control agreement, they shall so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of subsection (3)(a).
- (7) In this section—
- “community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;
  - “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;
  - “school hours” means any time during a school session or during a break between sessions on the same day;
  - “school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with sections 147 and 148; and
  - “transfer of control agreement” means an agreement which (subject to subsection (3) above) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.
- (8) Section 150(3) applies for the purposes of this section.

## **152 Voluntary schools: use of premises outside school hours. E+W**

- (1) The governing body may determine the use to which the premises of a controlled school (or any part of them) are put on Saturdays when not required—
- (a) for the purposes of the school, or
  - (b) for any purpose connected with education or with the welfare of the young for which the local education authority desire to provide accommodation on the premises (or on the part in question).
- (2) The foundation governors may determine the use to which the premises of a controlled school (or any part of them) are put on Sundays.

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- (3) If the local education authority—
- (a) desire to provide accommodation for any purpose connected with education or with the welfare of the young, and
  - (b) are satisfied that there is no suitable alternative accommodation in their area for that purpose,
- they may direct the governing body of an aided or special agreement school to provide accommodation free of charge for that purpose on the school premises (or any part of them) on any weekday when not needed for the purposes of the school.
- (4) The local education authority shall not exercise their power under subsection (3) so as to direct the governing body to provide accommodation on more than three days in any week.
- (5) Section 150(3) applies for the purposes of this section.

*Instruction or training outside school premises*

**153 Instruction or training outside school premises. E+W**

The articles of government for a county, voluntary or maintained special school shall enable the governing body to require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.

*Discipline: general*

**[<sup>F22</sup>154 Responsibility of governing body and head teacher for discipline. E+W**

- (1) The governing body of a county, voluntary or maintained special school shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
- (a) shall make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under subsection (4); and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate;
 and in exercising their functions under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body shall consult (in such manner as appears to them to be appropriate)—
- (a) the head teacher; and
  - (b) parents of registered pupils at the school.



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- (4) The head teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—
  - (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils;
  - (c) securing that the standard of behaviour of pupils is acceptable; and
  - (d) otherwise regulating the conduct of pupils.
- (5) The head teacher shall, in determining such measures—
  - (a) act in accordance with the current statement made by the governing body under subsection (2)(a); and
  - (b) have regard to any notification or guidance given to him under subsection (2)(b).
- (6) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the head teacher, so far as it is not determined by the governing body.
- (7) The measures determined by the head teacher under subsection (4) shall be publicised by him in the form of a written document as follows—
  - (a) he shall make the measures generally known within the school and to parents of registered pupils at the school; and
  - (b) he shall in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons employed at the school.
- (8) The governing body and the head teacher shall, before any measures are determined under subsection (4), consult the local education authority on any matter arising from the proposed measures which can reasonably be expected—
  - (a) to lead to increased expenditure by the authority, or
  - (b) to affect the responsibilities of the authority as an employer.]

**Textual Amendments**

**F22** S. 154 substituted (1.4.1998) by 1997 c. 44, s.2 (with s. 57(3)); S.I. 1998/386, art. 2, Sch. 1 Pt. II

**155 LEA’s reserve power to prevent a breakdown of discipline. E+W**

<sup>F23</sup>(1) .....

(2) The governing body and the head teacher of an aided or a special agreement school shall, in the circumstances mentioned in subsection (3), consider any representations made to them by the local education authority.

(3) The circumstances are that—

- (a) in the opinion of the authority—
  - (i) the behaviour of registered pupils at the school, or
  - (ii) any action taken by such pupils or their parents,is such that the education of any registered pupils at the school is (or is likely in the immediate future to become) severely prejudiced; and
- (b) the governing body have been informed in writing of the authority’s opinion.

<sup>F23</sup>(4) .....

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#### Textual Amendments

**F23** S. 155(1)(4) repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

### 156 Power of head teacher to exclude pupils. **E+W**

- (1) The articles of government for a county, voluntary or maintained special school shall provide for the power to exclude a pupil from the school (whether by suspension, expulsion or otherwise) to be exercisable only by the head teacher.
- (2) The head teacher of any such school may not—
  - (a) so exercise the power to exclude a pupil from the school for one or more fixed periods that the pupil is so excluded for more than [<sup>F24</sup>45 school days in any one school year], or
  - (b) exclude a pupil from the school for an indefinite period;
 but this subsection is without prejudice to the power to exclude a pupil from the school permanently.
- [<sup>F25</sup>(3) Subsection (2) has effect despite anything in the articles of government for the school.]

#### Textual Amendments

**F24** Words in s. 156(2) substituted (1.9.1998) by 1997 c. 44, s. 6(1); S.I. 1998/386, art. 2, **Sch. 1 Pt.IV**

**F25** S. 156(3) substituted (1.9.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 16**; S.I. 1998/386, art. 2, **Sch. 1 Pt. IV**

### 157 Exclusion of pupils: duty to inform parents etc. **E+W**

- (1) The head teacher of a county, voluntary or maintained special school shall have the following duties in relation to the exclusion of pupils from the school.
- (2) Where the head teacher excludes any pupil, the head teacher shall (without delay) take reasonable steps to inform the relevant person—
  - (a) of the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded); and
  - (b) of the reasons for the exclusion; and
  - (c) that the relevant person may make representations about the exclusion to the governing body and the local education authority.
- (3) Where the head teacher excludes any pupil in circumstances in which the pupil would, as a result of the exclusion—
  - (a) be excluded from the school for a total of more than five school days in any one term, or
  - (b) lose an opportunity to take any public examination,
 the head teacher shall (without delay) inform the local education authority and the governing body of the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded) and of the reasons for it.

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- (4) Where the head teacher decides that any exclusion of a pupil for a fixed period should be made permanent, he shall (without delay)—
- (a) inform the local education authority and the governing body of his decision and of the reasons for it, and
  - (b) take reasonable steps to inform the relevant person—
    - (i) of his decision and of the reasons for it, and
    - (ii) that that person may make representations about the decision to the governing body and the local education authority.
- (5) In this section “the relevant person” means—
- (a) in relation to a pupil under the age of 18, a parent of his;
  - (b) in relation to a pupil who has attained that age, the pupil himself.

### 158 Reinstatement of excluded pupils. **E+W**

Schedule 15 has effect in relation to the reinstatement of pupils excluded from county, voluntary or maintained special schools.

### 159 Appeals against exclusion or reinstatement of pupils. **E+W**

- (1) A local education authority shall make arrangements—
- (a) for enabling the relevant person to appeal against any decision not to reinstate a registered pupil who has been permanently excluded from a county, controlled or special school maintained by the authority, and
  - (b) for enabling the governing body of the school to appeal against any direction for the reinstatement of any such pupil which has been given to the head teacher of the school by the authority.
- (2) The governing body of an aided or a special agreement school shall make arrangements for enabling the relevant person to appeal against any decision not to reinstate a registered pupil who has been permanently excluded from the school.
- (3) Joint arrangements may be made under subsection (2) by the governing bodies of two or more aided or special agreement schools maintained by the same local education authority.
- (4) Schedule 16 has effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (1) or (2); and in subsections (5) and (6) “appeal committee” means an appeal committee constituted in accordance with Part I of Schedule 33 (school admission appeals), as it applies in accordance with paragraph 4 of Schedule 16.
- (5) The decision of an appeal committee on an appeal pursuant to arrangements made under subsection (1) or (2) shall be binding on the persons concerned.
- (6) Where on such an appeal the appeal committee determines that the pupil in question should be reinstated, the committee shall either direct that he is to be reinstated immediately or direct that he is to be reinstated by a date specified in the direction.
- (7) In this section “the relevant person” means—
- (a) in relation to a pupil who is under the age of 18, a parent of his;
  - (b) in relation to a pupil who has attained that age, the pupil himself.

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## **160 Additional provision for appeals against exclusion of pupils. E+W**

- (1) Where the articles of government for a county, voluntary or maintained special school provide—
  - (a) for the parents of an excluded pupil to have the right to appeal against his exclusion to a person specified by the articles, and
  - (b) for the procedure to be followed on such an appeal,
 any decision on such an appeal that the pupil should be reinstated, or that he should be reinstated earlier than would otherwise be the case, shall be binding on the head teacher.
- (2) In subsection (1) “excluded pupil” means a pupil who is excluded from the school in circumstances in which no right of appeal is given by virtue of section 159.

### *Reports, meetings and information*

## **161 Governors’ annual reports. E+W**

- (1) The articles of government for a county, voluntary or maintained special school shall require the governing body to prepare once in every school year a report (referred to in this Chapter as “the governors’ report”) containing—
  - (a) a summary of the steps taken by the governing body in the discharge of their functions during the period since their last governors’ report, and
  - (b) such other information as the articles may require.
- (2) Schedule 17 has effect in relation to governors’ reports.
- (3) The articles of government shall—
  - (a) enable the governing body to produce the governors’ report in such language or languages (in addition to English) as they consider appropriate, and
  - (b) require them to produce it in such language or languages (in addition to English and any other language in which they propose to produce it) as the local education authority may direct.
- (4) The articles of government shall require the governing body to take such steps as are reasonably practicable to secure—
  - (a) that the parents of all registered pupils at the school and all persons employed at the school are given (free of charge) a copy of the governors’ report;
  - (b) that copies of the report are available for inspection (at all reasonable times and free of charge) at the school; and
  - (c) that, where (by virtue of section 162) there is an obligation on the governing body to hold an annual parents’ meeting, copies of the report to be considered at that meeting are given to parents not less than two weeks before that meeting.

## **162 Annual parents’ meetings. E+W**

- (1) Subject to section 163 (special schools in hospitals and boarding schools), the articles of government for a county, voluntary or maintained special school shall require the governing body to hold a meeting once in every school year (referred to in this Chapter as an “annual parents’ meeting”) which is open to—
  - (a) all parents of registered pupils at the school;

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- (b) the head teacher; and
  - (c) such other persons as the governing body may invite.
- (2) The purpose of the meeting shall be to provide an opportunity for discussion of—
- (a) the governors' report; and
  - (b) the discharge by the governing body, the head teacher and the local education authority of their functions in relation to the school.
- (3) Schedule 18 has effect in relation to annual parents' meetings.

**163 No annual parents' meeting required in case of certain special and boarding schools. E+W**

- (1) The articles of government for a maintained special school which is established in a hospital shall provide that, where the governing body are of the opinion that it would be impracticable to hold an annual parents' meeting in a particular school year, they may refrain from holding such a meeting in that year.
- (2) Where, in the case of a county, voluntary school or maintained special school (other than a special school established in a hospital), the proportion of registered pupils at the school who are boarders is, or is likely to be, at least 50 per cent., the articles of government for the school shall provide that, where—
- (a) the governing body are of the opinion that it would be impracticable to hold an annual parents' meeting in a particular school year, and
  - (b) at least 50 per cent. of the registered pupils at the school are boarders at the time when they form that opinion,
- they may refrain from holding such a meeting in that year.

**164 Governors' reports and annual parents' meetings for grouped schools. E+W**

- (1) This section applies where two or more schools are grouped under section 89.
- (2) In discharging their duty (by virtue of section 161) to prepare governors' reports, the governing body for the group shall prepare separate reports in relation to each of the schools within the group, except that if they decide to hold a joint annual parents' meeting under subsection (4) they may prepare a single report covering all the schools within the group.
- (3) If the governing body prepare a single report covering all the schools within the group, they shall secure that any matters which they propose to report on and which are likely to be mainly of interest to the parents of registered pupils at a particular school within the group are treated separately in the report.
- (4) In discharging their duty (by virtue of section 162) to hold an annual parents' meeting for any grouped school, the governing body may, if they think fit, hold a joint annual parents' meeting for all of the schools within the group.
- (5) Where—
- (a) a joint annual parents' meeting is held, and
  - (b) the governing body have prepared a separate governors' report in relation to each of the schools within the group,

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the governing body shall, when discharging the duty imposed on them by virtue of section 161(4), attach to the report prepared in relation to a particular school within the group copies of the reports prepared for each of the other schools within it.

- (6) Where at a joint annual parents' meeting the question is put on any proposed resolution which concerns one or more, but not all, of the schools within the group—
- (a) only parents of registered pupils at the school or schools which the proposed resolution concerns may vote on the question; and
  - (b) the registered pupils at the other schools shall be disregarded for the purposes of any provision made by virtue of paragraph 2 of Schedule 18 (resolution may be passed by simple majority where required number of parents of registered pupils present) as it applies in relation to the proposed resolution.
- (7) Where at a joint annual parents' meeting there is any disagreement as to which schools within the group a proposed resolution concerns, the matter shall be decided by the chairman of the governing body.

**165 Provision of information by governing body and head teacher. E+W**

- (1) The articles of government for a county, voluntary or maintained special school shall provide—
- (a) for the governing body to provide the local education authority with such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time); and
  - (b) for the head teacher to provide the governing body or (as the case may be) the local education authority with such reports in connection with the discharge of his functions as the governing body or the authority may so require.
- (2) The articles of government for an aided school shall provide—
- (a) for the local education authority to notify the governing body of any requirement of a kind mentioned in subsection (1)(b) which is imposed by them on the head teacher; and
  - (b) for the head teacher to provide the governing body with a copy of any report which he makes in complying with such a requirement.

*New schools*

**166 Conduct and staffing of new schools. E+W**

Schedule 19 has effect in relation to the conduct and staffing of new schools.

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## CHAPTER VII **E+W**

### DISCONTINUANCE OF LOCAL EDUCATION AUTHORITY SCHOOLS

#### *Procedure for discontinuance of county, voluntary or maintained nursery school by local education authority*

#### **167 Proposals for discontinuance of a county, voluntary or nursery school. **E+W****

- (1) Where a local education authority intend to cease to maintain—
  - (a) a county school,
  - (b) a voluntary school (except in accordance with section 173(7)), or
  - (c) a nursery school,then (subject to subsection (6)) they shall publish proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.
- (2) Proposals published under this section—
  - (a) shall include particulars of the time or times at which it is intended to implement the proposals; and
  - (b) shall be accompanied by a statement of the effect of section 168.
- (3) Before formulating any such proposals in respect of a county or voluntary school, a local education authority shall consult the school's governing body.
- (4) Before publishing any proposals under this section the local education authority shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Before publishing any proposals under subsection (1)(a) or (b) which (if implemented) would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the local education authority shall consult the appropriate further education funding council.
- (6) No proposals shall be published under this section in respect of a school in respect of which proposals for acquisition of grant-maintained status have been approved under section 194.

#### **168 Objections to proposals. **E+W****

- (1) Objections to any proposals published by a local education authority under section 167 may be submitted to the authority by any of the following—
  - (a) any ten or more local government electors for the authority's area,
  - (b) the governing body of any school affected by the proposals,
  - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M22</sup>Further and Higher Education Act 1992 applies), and
  - (d) any other local education authority concerned.
- (2) Objections may be so submitted within the period of two months after the first publication of the proposals.

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- (3) Where—
- (a) an order under section 27 applies to the area of a local education authority, and
  - (b) the authority publish proposals under section 167 which affect the provision of relevant education in that area,
- the funding authority shall be included among the persons who may submit objections under subsection (1) to the proposals.
- (4) Within one month after the end of the period mentioned in subsection (2), the local education authority by whom the proposals were published shall transmit to the Secretary of State copies of all objections made (and not withdrawn in writing) in that period, together with the authority's observations on them.
- (5) For the purposes of this section proposals under section 167 shall be taken to have been first published—
- (a) on the day on which the requirements of regulations with respect to the publication of the proposals are satisfied; or
  - (b) where different such requirements are satisfied on different days, on the last of those days.
- (6) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (5) be taken to be satisfied on the first day in respect of which it is satisfied.

#### Marginal Citations

M22 1992 c. 13.

### 169 **Approval or rejection by Secretary of State of proposals under section 167.** **E** **+W**

- (1) Proposals published by a local education authority under section 167 require the approval of the Secretary of State if subsection (2), (3) or (4) applies.
- (2) This subsection applies if the proposals are for ceasing to maintain a voluntary school.
- (3) This subsection applies if either—
  - (a) the Secretary of State, within the period of two months after the submission to him of the published proposals, gives notice to the authority that the proposals require his approval, or
  - (b) objections have been made under section 168 and any of them have not been withdrawn in writing within the period specified in section 168(2).
- (4) This subsection applies if either—
  - (a) the proposals are first published after proposals for acquisition of grant-maintained status for the school have been published under section 193 but before those proposals are withdrawn or determined, or
  - (b) after the proposals have first been published but before they are withdrawn or determined, proposals for acquisition of grant-maintained status for the school are published under section 193;

and references in this subsection to proposals being first published shall be construed in accordance with section 168(5) and (6).



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- (5) Where any proposals require the approval of the Secretary of State under this section, he may (subject to subsection (6))—
- (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the local education authority, approve them with such modifications as he thinks desirable.
- (6) In a case where subsection (4) applies, the Secretary of State—
- (a) shall consider both sets of proposals together, but
  - (b) shall not determine the proposals published under section 167 until he has made his determination with respect to the proposals published under section 193,
- and, if he approves the proposals published under section 193, he shall reject the proposals published under section 167.

**170 Determination by local education authority whether to implement proposals. E**  
**+W**

- (1) Where any proposals published by a local education authority under section 167 do not require the approval of the Secretary of State under section 169, the authority shall determine whether they should be implemented.
- (2) The determination must be made not later than four months after the submission of the proposals to the Secretary of State under section 167.
- (3) A local education authority shall notify the Secretary of State of any determination made by them under this section.

**171 Duty to implement proposals. E+W**

- (1) Subject to subsection (2), a local education authority shall implement any proposals of theirs—
  - (a) which have been approved by the Secretary of State under section 169, or
  - (b) which they have determined under section 170 to implement.
- (2) The Secretary of State may, at the request of a local education authority, modify any proposals which the authority are required to implement by virtue of this section.

**172 Restriction on taking steps before sections 167 and 169 have been complied with. E+W**

- (1) Subject to subsection (2), a local education authority shall not—
  - (a) cease to maintain a county school, a voluntary school (except in accordance with section 173(7)) or a nursery school, or
  - (b) undertake to do anything towards that end,until the requirements of section 167 have been complied with and any approval necessary under section 169 has been given.
- (2) The Secretary of State may in any case allow such steps to be taken pending compliance with any such requirements and the giving of any such approval as he considers reasonable in the circumstances.

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### *Discontinuance of voluntary school by governing body*

#### **173 Discontinuance of a voluntary school by its governing body. E+W**

- (1) The governing body of a voluntary school shall not discontinue the school unless they have served on the Secretary of State and the local education authority at least two years' notice of their intention to do so.
- (2) If expenditure has been incurred on the school premises (otherwise than in connection with repairs)—
  - (a) by the Secretary of State,
  - (b) by any local education authority, or
  - (c) by an authority which was a local education authority within the meaning of any enactment repealed by the <sup>M23</sup>Education Act 1944 or an earlier Act,
 no notice may be served without leave of the Secretary of State.
- (3) If the Secretary of State gives such leave, he may impose any requirements that he thinks just—
  - (a) in respect of the repayment of all or part of any expenditure so incurred by him;
  - (b) in respect of the conveyance to the local education authority of any premises used for the purposes of the school which he is satisfied the authority will need for any purpose connected with education;
  - (c) (where any premises are to be so conveyed) in respect of the payment by the authority of so much of the value of those premises as is just having regard to the extent to which the premises were provided otherwise than at the expense of the authority or of an authority within subsection (2)(c);
  - (d) (where any premises used for the purposes of the school are not to be so conveyed) in respect of the payment by the governing body to the authority of so much of the value of those premises as is just having regard to the extent to which they were provided at the expense of the authority or of an authority within subsection (2)(c).
- (4) If discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall, before serving notice under this section, consult the appropriate further education funding council.
- (5) No notice may be served under this section in respect of any school in respect of which the procedure for acquisition of grant-maintained status is pending (within the meaning of Chapter III of Part III).
- (6) A notice served under this section may not be withdrawn without the consent of the local education authority.
- (7) Where a school is discontinued in accordance with this section, the duty of the local education authority to maintain it as a voluntary school shall cease.
- (8) This section and section 174 have effect subject to section 175(2).

#### **Marginal Citations**

**M23** 1944 c. 31.

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**174 Conduct by local education authority of a voluntary school which is subject to notice of discontinuance. E+W**

- (1) If, while a notice under section 173 is in force in respect of a voluntary school, the governing body inform the local education authority that they are unable or unwilling to carry on the school until the notice expires, the authority—
  - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a county school, and
  - (b) shall be entitled to use the school premises free of charge for that purpose.
- (2) While the school is being so conducted—
  - (a) the authority shall keep the school premises in good repair, and
  - (b) any interest in the premises which is held for the purposes of the school shall be deemed, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, to be vested in the authority.
- (3) Despite the provisions of subsection (2), the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if they had continued to carry on the school during the unexpired period of the notice.

**175 Discontinuance of voluntary school in consequence of proposal to establish a further education corporation. E+W**

- (1) This section applies where—
  - (a) the governing body of a voluntary school intend to discontinue the school; and
  - (b) the intention arises in connection with a proposal by—
    - (i) a further education funding council, or
    - (ii) the Secretary of State,for the establishment under section 16 of the <sup>M24</sup>Further and Higher Education Act 1992 of a further education corporation to conduct an educational institution in the same area.
- (2) Where this section applies—
  - (a) sections 173 and 174 shall not apply;
  - (b) sections 41, 42, 43 and 45(1) and (4) to (6) shall apply as they would if the intention of the governing body were to make a significant change in the character of the school; and
  - (c) if the school is discontinued the duty of the local education authority to maintain the school as a voluntary school shall cease.

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**Marginal Citations**

**M24** 1992 c. 13.

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## CHAPTER VIII **E+W**

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Further education*

#### **176 Provision of further education. **E+W****

- (1) The governing body of any county, voluntary or maintained special school shall be responsible for determining whether or not to provide—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19;
- but the governing body of a maintained special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.
- (2) It shall be the duty of the governing body of any such school which provides such education to secure that, except in such circumstances as may be prescribed, such education is not provided at any time in a room where pupils are at that time being taught.

#### *Teacher training*

#### **177 Provision of courses of initial teacher training. **E+W****

- (1) Section 12 of the <sup>M25</sup>Education Act 1994 confers power on the governing body of a county, voluntary or maintained special school—
- (a) to provide courses of initial training for school teachers, or
  - (b) to join in a partnership or association with other eligible institutions, or (whether alone or jointly with other eligible institutions) to establish a body, for the purpose of providing such courses.
- (2) In subsection (1) “eligible institution” has the meaning given by section 4(2) of that Act.

#### **Marginal Citations**

**M25** 1994 c. 30.

#### *Modification of employment law*

#### **178 Application of employment law during financial delegation. **E+W****

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment, and in particular in any enactment—
- (a) conferring powers or imposing duties on employers,
  - (b) conferring rights on employees, or

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- (c) otherwise regulating the relations between employers and employees, as he considers necessary or expedient in consequence of the operation of any of the following provisions, namely, sections 136(2) and (3), 137(6) and 139(2) to (4), Schedule 14 and paragraphs 19 to 24 of Schedule 19.
- (2) Before making any order under this section the Secretary of State shall consult—
- (a) such associations of local authorities,
  - (b) such bodies representing the interests of governors of voluntary schools, and
  - (c) such organisations representing staff in schools required to be covered by schemes under section 103 (local education authority schemes for financing schools),
- as appear to him to be concerned.

#### *Modification of trust deeds and other instruments*

### **179 Variation of trust deeds etc. by order. E+W**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to him to be requisite in consequence of—
- (a) any proposals falling to be implemented under section 40 or section 45 (establishment or alteration of a county or voluntary school);
  - (b) a transfer of the school to a new site in circumstances falling with section 35(2) or section 41(3);
  - (c) any order made by him under section 46 (establishment of a new voluntary school in substitution for an old one);
  - (d) any order made by him under section 47 (transfer of voluntary school to a new site); or
  - (e) any proposals falling to be implemented under section 171 (discontinuance of a county or voluntary school or maintained nursery school).
- (2) Any modification made by an order under this section may be made so as to have permanent effect or to have effect for such period as may be specified in the order.

### **180 Modification of provisions whereby governors of voluntary schools are ex officio trustees. E+W**

- (1) Where a trust deed or other instrument made before 1st July 1981 contains a provision whereby the persons who are for the time being governors of a voluntary school are by virtue of their office trustees of any property held for the purposes of or in connection with the school, that provision shall have effect as if the only governors of the school were the foundation governors and the governors appointed by the local education authority and any minor authority.
- (2) Subsection (1) is without prejudice to any power to amend any such provision as is mentioned in that subsection.

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### *Interpretation of Part II*

#### **181 Meaning of expressions relating to new schools. E+W**

- (1) In this Part “new school” (without more) means a school or proposed school—
- (a) which by virtue of section 96(1) or 97(1) is required to have a temporary governing body, or
  - (b) in respect of which the local education authority have power under section 96(3) or 97(2) to make an arrangement for the constitution of a temporary governing body.
- (2) In this Part “relevant proposals”—
- (a) in relation to a new school that will be a county or voluntary school, means the proposals falling within section 96(2) or 97(1) by reference to which it is a new school, and
  - (b) in relation to a new school that will be a maintained special school, means the proposals falling within section 96(2) by reference to which it is a new school.
- (3) In this Part—
- (a) “temporary governing body” means a temporary governing body constituted for a new school under an arrangement made under section 96 or 97, and
  - (b) “temporary governor” means a member of a temporary governing body (and references to a temporary governor of a particular category are to a member of a temporary governing body appointed to it as a member of that category).

#### **182 Meaning of “governing body” and “governor” in Chapters IV to VI. E+W**

In Chapters IV to VI, except where otherwise provided—

- “governing body” does not include a temporary governing body, and  
“governor” does not include a temporary governor.

### **<sup>F26</sup>PART III E+W**

#### GRANT-MAINTAINED SCHOOLS

##### **Textual Amendments**

**F26** Pt. III (ss. 183-311) repealed (1.10.1998, 1.4.1999 and otherwise 1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 70, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**; S.I. 1999/120, art. 2(2), **Sch. 2**; S.I. 1999/1016, art. 2(1), **Sch. 1**; S.I. 1999/2323, art. 2(1), **Sch. 1** (with savings as specified in those S.I.s and subject to savings in S.I. 1999/704)

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## CHAPTER I **E+W**

### PRELIMINARY

#### 183 “Grant-maintained schools”. **E+W**

- (1) A school conducted by a governing body incorporated under this Part, Part II of the <sup>M26</sup>Education Act 1993 or Chapter IV of Part I of the <sup>M27</sup>Education Reform Act 1988 for the purpose of conducting the school shall be known as a grant-maintained school.
- (2) A governing body may be incorporated under this Part—
  - (a) in pursuance of proposals for the purpose published under section 193 in relation to an existing school (referred to in this Part as “proposals for acquisition of grant-maintained status”),
  - (b) in pursuance of proposals for the purpose published under section 211 or 212 in connection with the establishment of a school (referred to in this Part as “proposals for the establishment of a new grant-maintained school”), or
  - (c) in pursuance of proposals for the purpose published under Chapter IX for two or more existing schools to be conducted as a group by a single governing body.
- (3) A grant-maintained school must be either a secondary school or a primary school.
- (4) Subject to the provisions of this Part, the funding authority shall pay to the governing body of each grant-maintained school such annual grants as may be required to be paid under Chapter VI.

#### Marginal Citations

**M26** 1993 c. 35.

**M27** 1988 c. 40.

## CHAPTER II **E+W**

### PROCEDURE FOR ACQUISITION OF GRANT-MAINTAINED STATUS

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

**C28** Pt. III Chapter II (ss. 184-200) modified (1.11.1996) by 1996 c. 57, ss. 37(3), 48(2)

#### *Eligibility*

<sup>F27</sup>184 ..... **E+W**

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**Textual Amendments**

**F27** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

**F28** **185** ..... **E+W**

**Textual Amendments**

**F28** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Initiation of procedure*

**F29** **186** ..... **E+W**

**Textual Amendments**

**F29** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

**F30** **187** ..... **E+W**

**Textual Amendments**

**F30** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Information*

**F31** **188** ..... **E+W**

**Textual Amendments**

**F31** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)



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### Ballot of parents

F32 **189** ..... **E+W**

#### Textual Amendments

**F32** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, **12**)

F33 **190** ..... **E+W**

#### Textual Amendments

**F33** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, **12**)

F34 **191** ..... **E+W**

#### Textual Amendments

**F34** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, **12**)

F35 **192** ..... **E+W**

#### Textual Amendments

**F35** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, **12**)

F36 **193** ..... **E+W**

#### Textual Amendments

**F36** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, **12**)

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### *Approval and implementation of proposals*

**F37** 194 ..... **E+W**

#### **Textual Amendments**

**F37** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

**F38** 195 ..... **E+W**

#### **Textual Amendments**

**F38** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

**F39** 196 ..... **E+W**

#### **Textual Amendments**

**F39** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

### *Expenses in connection with proposals*

VALID FROM 01/10/1999

**F40** 197 ..... **E+W**

#### **Textual Amendments**

**F40** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

### *Alteration of county school proposed for grant-maintained status*

**F41** 198 ..... **E+W**

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**Textual Amendments**

**F41** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

**F42** **199** ..... **E+W**

**Textual Amendments**

**F42** Ss. 184-199 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Supplementary*

**200 Chapter II: interpretation, etc. E+W**

- (1) This section applies in relation to proposals for acquisition of grant-maintained status and to the school to which they relate.
- (2) References to the date of implementation of the proposals—
  - (a) in relation to a school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 193, are to the date specified (in accordance with regulations under section 189(3)(a)) as the proposed date of implementation in the information given to persons eligible to vote in the originating ballot, and
  - (b) in any other case, are to the date specified in the proposals as the proposed date of implementation.
- (3) In subsection (2)(a) “the originating ballot”—
  - (a) where section 193(2) applies, means the ballot by reference to which it applies, and
  - (b) where the proposals are required to be published by virtue of a requirement imposed by the Secretary of State under section 194(1) or (3), means the last ballot held in accordance with section 189 in relation to the school before that requirement was imposed.

**F43** (4) .....

- (5) “The incorporation date” means the date on which the governing body are incorporated.

**Textual Amendments**

**F43** S. 200(4) repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 70, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**

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## CHAPTER III **E+W**

### PROPERTY, STAFF AND CONTRACTS

#### *Transfer of property and staff, etc.*

#### **201 Transfer of property etc. **E+W****

- (1) Subject to subsection (3), where in relation to any school proposals for acquisition of grant-maintained status are approved—
  - (a) the property, rights and liabilities mentioned in subsection (2) of any local authority, and
  - (b) any property, rights and liabilities of the existing governing body,
 shall on the date of implementation of the proposals be transferred to, and by virtue of this Act vest in, the governing body incorporated under Chapter II.
- (2) The property, rights and liabilities referred to in subsection (1)(a) are—
  - (a) all land or other property which, immediately before the date of implementation of the proposals, was property used or held by the authority for the purposes of the school, and
  - (b) all rights and liabilities subsisting immediately before the date of implementation of the proposals which were acquired or incurred by the authority for those purposes.
- (3) Subsection (1) shall not apply to rights and liabilities under any contract of employment; and subsection (1)(a) shall not apply to—
  - (a) any land or other property vested in a local authority as trustees,
  - (b) any property, rights or liabilities excluded under subsection (5) or (6),
  - (c) any liability of a local authority in respect of the principal of, or any interest on, any loan, or
  - (d) any liability of a local authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.
- (4) Any land or other property of a local authority excluded by virtue of subsection (3)
  - (a) from transfer to the governing body shall, on the date of implementation of the proposals, be transferred to, and by virtue of this Act vest in, the first governors of the school on the trusts applicable immediately before that date under any trust deed regulating the use of that land or other property for the purposes of the school.
- (5) If before the date of implementation of the proposals—
  - (a) the new governing body and the local authority have agreed in writing to exclude any property, and
  - (b) the Secretary of State has given his written approval of the agreement,
 the property, and any rights or liabilities relating to it, shall be excluded.
- (6) If in default of agreement under subsection (5)—
  - (a) the new governing body or the local authority have applied to the Secretary of State to exclude any property, and
  - (b) the Secretary of State has by order directed its exclusion,
 the property, and any rights or liabilities relating to it, shall be excluded.

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- (7) An agreement under subsection (5) may provide for the property to be used for the purposes of the school acquiring grant-maintained status on such terms as may be specified in or determined in accordance with the agreement; and directions under subsection (6)—
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
  - (b) shall have effect as if contained in such an agreement.
- (8) For the purposes of this section, any interest in a dwelling-house which, immediately before the date of implementation of the proposals, is used or held by a local authority for occupation by a person employed to work at the school shall be treated as an interest used or held for the purposes of the school.
- (9) References in this section to liabilities incurred by a local authority shall not be read as including liabilities of such an authority to make payments to or in respect of any person in pursuance of any duty imposed on the authority under any statutory provision.
- (10) This section is subject to section 198 of the <sup>M28</sup>Education Reform Act 1988 (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this subsection to the transfer date are to the date of implementation of the proposals.

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**Marginal Citations**

**M28** 1988 c. 40.

<sup>F44</sup>**202** ..... **E+W**

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**Textual Amendments**

**F44** S. 202 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Effect of pending procedure for acquisition of grant-maintained status on property disposals, etc.*

<sup>F45</sup>**203** ..... **E+W**

.....

**Textual Amendments**

**F45** S. 203 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

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## 204 Control of disposals of land. E+W

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not—
  - (a) dispose of any land used wholly or partly for the purposes of the school, or
  - (b) enter into a contract to dispose of any such land,
 except with the required consent.
- (2) Subsection (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for acquisition of grant-maintained status was initiated in relation to the school.
- (3) Where proposals for acquisition of grant-maintained status are approved, the procedure for acquisition of grant-maintained status is not to be treated as terminated for the purposes of this section and section 205 in relation to any land, where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the <sup>M29</sup>Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.
- (4) In the case of a disposal made or contract entered into after proposals for acquisition of grant-maintained status have been approved, “the required consent”—
  - (a) (if it is agreed between the local authority and the new governing body that the value of the land in question does not exceed £6,000) is the consent of the new governing body, and
  - (b) (if paragraph (a) does not apply) is the consent of both the new governing body and the Secretary of State.
- (5) In any other case “the required consent” for any proposed disposal (and for any contract to make it) is the consent of both the existing governing body and the Secretary of State.
- (6) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this section; and (subject to section 205) a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this section has been given.
- (7) This section has effect notwithstanding anything in section 123 of the <sup>M30</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (8) In this section and section 205—
  - (a) references to disposing of land include granting or disposing of any interest in land, and
  - (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.
- (9) Where a proposed disposal forms part of a proposed series of transactions, all disposals forming part of that series shall be treated as one disposal for the purposes of this section.
- (10) The Secretary of State may by order substitute for the sum specified in subsection (4) (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

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#### Marginal Citations

**M29** 1988 c. 40.

**M30** 1972 c. 70.

### 205 Wrongful disposals of land. **E+W**

- (1) This section applies where—
  - (a) proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - (b) a local authority have made a disposal, or have entered into a contract, in contravention of section 204(1).
- (2) In the case of a contract which consists of granting an option to acquire any land or interest in land, the [F46Education Transfer Council] may by notice in writing served on the option holder repudiate the option at any time before it is exercised.
- (3) In the case of a contract to dispose of any land or to grant or dispose of any interest in land, the [F46Education Transfer Council] may by notice in writing served on the other party to the contract, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed, repudiate the contract.
- (4) A repudiation under subsection (2) or (3) shall have effect—
  - (a) where it is made after the date of implementation of the proposals, as if the local authority (and not the governing body) were party to the contract, and
  - (b) as if the repudiation were made by the local authority.
- (5) In the case of a disposal which consists in granting or disposing of any interest in land (whether or not in pursuance of any earlier contract falling within subsection (2) or (3)) the [F46Education Transfer Council] may be authorised by the Secretary of State to purchase compulsorily the interest in land which was the subject of the disposal.
- (6) The M31Acquisition of Land Act 1981 shall apply in relation to the compulsory purchase of land under subsection (5) as if references in sections 12 and 13 of that Act to every owner of the land included references to the local authority concerned.
- (7) On completion of a compulsory purchase under that subsection of any interest in land, the [F46Education Transfer Council] shall convey that interest to the governing body incorporated under Chapter II.
- (8) Where the [F46Education Transfer Council] acquire any interest in land by a compulsory purchase under subsection (5) the Board shall be entitled to recover from the local authority concerned an amount equal to the aggregate of—
  - (a) the amount of compensation agreed or awarded in respect of that purchase, together with any interest payable by the Board in respect of that compensation in accordance with section 11 of the M32Compulsory Purchase Act 1965 or section 52A of the M33Land Compensation Act 1973, and
  - (b) the amount of the costs and expenses incurred by the Board in connection with the making of the compulsory purchase order.
- (9) Section 204(8) applies for the purposes of this section.

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#### Textual Amendments

**F46** Words in s. 205(2)(3)(5)(7)(8) substituted (1.10.1998) by 1998 c. 31, s. 136 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt. I

#### Marginal Citations

**M31** 1981 c. 67.

**M32** 1965 c. 56.

**M33** 1973 c. 26.

## 206 Control of contracts. **E+W**

- (1) Where the procedure for acquisition of grant-maintained status is pending in relation to any school, this section applies to any contract which, if the proposals for acquisition of grant-maintained status were implemented, would or might bind the governing body incorporated under Chapter II.
- (2) Except with the appropriate consent, a local authority shall not enter into a contract to which this section applies.
- (3) In the case of a contract entered into after the proposals have been approved by the Secretary of State, “the appropriate consent” is that of the new governing body.
- (4) In relation to any other contract, “the appropriate consent” is—
  - (a) the consent of the existing governing body, and
  - (b) if (on the assumption set out in subsection (1)) the contract will require the governing body incorporated under Chapter II to make payments amounting in aggregate to £15,000 or more, the consent of the Secretary of State.
- (5) Any consent for the purposes of this section may be given either in respect of a particular contract or in respect of contracts of any class or description and either unconditionally or subject to conditions.
- (6) A contract shall not be void by reason only that it has been entered into in contravention of this section and (subject to section 207) a person entering into a contract with a local authority or governing body shall not be concerned to enquire whether any consent required by this section has been given or any conditions of such a consent have been complied with.
- (7) Where there is an obligation under a contract to which this section applies to provide any benefit other than money, subsection (4)(b) shall apply as if the obligation were to pay a sum of money corresponding to the value of the benefit to the recipient.
- (8) This section does not apply to—
  - (a) a works contract (within the meaning of Part III of the <sup>M34</sup>Local Government, Planning and Land Act 1980) which is entered into in accordance with section 7 of that Act,
  - (b) a works contract (within the meaning of Part I of the <sup>M35</sup>Local Government Act 1988) which is entered into in accordance with section 4 of that Act,
  - (c) a contract to dispose of land (within the meaning of section 204) or to grant an option to acquire land or an interest in land, or
  - (d) a contract of employment.



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- (9) The Secretary of State may by order substitute for the sum specified in subsection (4) (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

#### Marginal Citations

M34 1980 c. 65.

M35 1988 c. 9.

### 207 Wrongful contracts. **E+W**

- (1) This section applies where—
- proposals for acquisition of grant-maintained status in respect of a school have been approved, and
  - a local authority have entered into a contract to which section 206 applies in contravention of that section.
- (2) The [<sup>F47</sup>Education Transfer Council] may by notice in writing served on the other party to the contract repudiate the contract at any time before it is performed.
- (3) A repudiation under subsection (2) shall have effect—
- where it is made after the date of implementation of the proposals, as if the local authority (and not the governing body) were party to the contract, and
  - as if the repudiation were made by the local authority.

#### Textual Amendments

F47 Words in s. 207(2) substituted (1.10.1998) by 1998 c. 31, s. 136 (with ss. 138(9), 144(6)); S.I. 1999/2212, art. 2, Sch. 1 Pt. I

### 208 Restriction on change of purpose for which property used or held. **E+W**

- (1) During any period when the procedure for acquisition of grant-maintained status is pending in relation to a school, a local authority shall not, in relation to any land or other property of the authority used or held for the purposes of the school, take without the required consent any action by which the land or other property ceases to any extent to be so used or held.
- (2) In the case of anything done after proposals for acquisition of grant-maintained status have been approved, “the required consent” is that of the new governing body.
- (3) In any other case “the required consent” is that of both the existing governing body and the Secretary of State.
- (4) If in the case of any school—
- proposals for acquisition of grant-maintained status are approved, and
  - a local authority have, in relation to any property, taken any action in contravention of subsection (1),
- the provisions relating to the transfer of property shall have effect as if, immediately before the date of implementation of the proposals in relation to the school, the

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property were used or held by the authority for the purposes for which it was used or held when the procedure for acquisition of grant-maintained status was initiated.

- (5) In this section—
- (a) “the provisions relating to the transfer of property” means section 201 above and section 198 of, and Schedule 10 to, the <sup>M36</sup>Education Reform Act 1988, and
  - (b) the references to taking action include appropriating property for any purpose.

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**Marginal Citations**  
**M36** 1988 c. 40.

<sup>F48</sup>**209** ..... **E+W**

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**Textual Amendments**  
**F48** S. 209 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Supplementary*

**210** **Supplementary provisions about transfers.** **E+W**

- (1) No duty of a local education authority under section 60(2) or (as the case may be) 61(2) to convey their interest in any site or buildings to the trustees of a voluntary school shall be affected by the school subsequently becoming a grant-maintained school.
- (2) Where such a duty is continued by virtue of subsection (1), then, in connection with the site in question, sections 60(2) to (7), 61(2) and (3) and 62 shall continue to apply after the school becomes a grant-maintained school as if it were a controlled school or, as the case may be, an aided or special agreement school.
- (3) Where any such duty as is referred to in subsection (1), or imposed by section 70(1), applies in relation to a school, then—
  - (a) if it applies immediately before the date of implementation of proposals for acquisition of grant-maintained status, section 201(1)(a) shall not apply to, or to any interest in, the site or buildings or, as the case may be, the premises to be conveyed, and
  - (b) if it applies at a time when the procedure for acquisition of grant-maintained status is pending, section 204 shall not apply to disposing, or entering into a contract to dispose, of the site or buildings or, as the case may be, the premises to be conveyed.
- (4) Where immediately before the date of implementation of proposals for acquisition of grant-maintained status there is an agreement relating to any site or buildings made under section 61(4) or (5), section 201(1)(a) shall not apply to any rights or liabilities of any local authority under the agreement; and any directions given before that date under section 61(6), so far as they relate to the governing body of the school, shall

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have effect on or after that date as if they related to the governing body incorporated under section 195.

## CHAPTER IV **E+W**

### ESTABLISHING NEW GRANT-MAINTAINED SCHOOLS

#### *Proposals for establishment of new grant-maintained school*

#### **211 Proposals by funding authority. **E+W****

- (1) This section has effect in respect of the area of a local education authority if an order under section 27(1) applies to the area.
- (2) The funding authority may establish grant-maintained schools for the purpose of providing relevant education.
- (3) Where the funding authority intend to establish a grant-maintained school, they shall—
  - (a) publish proposals for that purpose in such manner as may be prescribed, and
  - (b) submit a copy of the published proposals to the Secretary of State.
- (4) Before publishing any proposals under this section the funding authority shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.

#### <sup>F49</sup>**212** ..... **E+W**

##### **Textual Amendments**

**F49** S. 212 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (with Sch. 2 para. 4 and subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

#### **213 Provisions supplementary to sections 211 and 212. **E+W****

- (1) Part II of Schedule 20 has effect for the purpose of supplementing sections 211 and 212.
- <sup>F50</sup>(2) .....
- <sup>F50</sup>(3) .....
- (4) References in this Part to proposals published under section 211 or 212 are, in any case where the Secretary of State has modified such proposals in pursuance of this Part, references to the proposals as so modified.
- (5) No proposals may be published under section 211 or 212 for a school which may provide any education which is neither primary nor secondary education unless it is—

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- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of 19, or
- (b) part-time education suitable to the requirements of junior pupils.

#### Textual Amendments

**F50** S. 213(2)(3) repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 70, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**

### *Approval and implementation of proposals*

#### **214 Approval, adoption or rejection of proposals. E+W**

- (1) Proposals published under section 211 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,
  - (b) objections have been made under paragraph 10 of Schedule 20 within the period allowed under that paragraph (unless all objections so made have been withdrawn in writing within that period), or
  - (c) the proposals name a sponsor of the school.
- (2) Proposals published under section 212 require the approval of the Secretary of State.
- (3) Where under subsection (1) or (2) any proposals require the approval of the Secretary of State, he may—
  - (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the funding authority (and, in the case of proposals under section 212, the promoters) approve them with such modifications as he thinks desirable.
- (4) In relation to Wales, subsection (3) shall have effect before the Schools Funding Council for Wales begin to exercise their functions with the omission of the reference to consulting the funding authority.
- (5) In the case of proposals published under section 211, particulars in respect of the proposed premises of the school prepared under paragraph 12 of Schedule 20 must be adopted by the funding authority.
- (6) In the case of proposals published under section 212, particulars in respect of the proposed premises of the school submitted under paragraph 12 of Schedule 20 require the approval of the funding authority.
- (7) Where proposals published under section 211 do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (8) The funding authority shall—
  - (a) make any determination under subsection (7) not later than four months after the publication of the proposals, and

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- (b) give notice in writing to the Secretary of State of their determination.

## **215 Implementation of proposals. E+W**

- (1) Where any proposals are approved or adopted under section 214, the persons who are appointed in accordance with regulations to be the initial first or (as the case may be) foundation governors shall on the incorporation date be incorporated as the governing body of the school under the name given in pursuance of paragraph 7(1)(f) of Schedule 20.
- (2) Where any proposals published under section 211 are so approved or adopted, the funding authority shall implement the proposals or, in a case where, under this subsection, the Secretary of State modifies the proposals at their request, shall implement the proposals as so modified.
- (3) Where any proposals published under section 212 are so approved, the promoters shall implement the proposals or, in a case where, under this subsection, the Secretary of State modifies the proposals at their request, shall implement the proposals as modified.
- (4) Proposals required to be implemented under this section shall be implemented in accordance with any particulars adopted or approved under section 214(5) or (6).

## **216 Exercise of powers before proposed date of implementation, and payment of grant. E+W**

- (1) Where proposals have been approved or adopted under section 214, the powers conferred on the governing body by or under this Part shall, until the date of implementation of the proposals, be exercised only for the purpose of or in connection with the conduct of the school on or after that date.
- (2) In the case of proposals under section 212, the funding authority may at any time after the incorporation date make grants to the governing body in respect of the provision of premises for the school.
- (3) So far as the amount of any grant under subsection (2) relates to the provision of a site for the school or of school buildings, it shall not exceed 85 per cent. of the sums expended by the governing body in respect of the provision of the site and buildings in question.
- (4) Where proposals have been approved or adopted under section 214, then, in respect of the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—
  - (a) Chapter VI (funding of grant-maintained schools) shall not apply, but
  - (b) the funding authority may make grants to the governing body (other than grants in respect of the provision of premises for the school) in respect of expenditure incurred or to be incurred by that body.
- (5) The funding authority may impose on a governing body to whom a grant is made under subsection (2) or (4) such requirements as they may from time to time determine (whether before, at or after the time when the grant is made).
- (6) Such requirements may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the funding authority of the whole or any part of the following amount.

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- (7) That amount is—
- (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
- whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) may be imposed where any grant is made under subsection (2) in respect of the provision of premises for the school if any freehold interest in the premises in respect of which the grant is paid is, or is to be, held on trust for the purposes of the school.
- (9) In this section “site” does not include playing fields.

### *Supplementary*

## 217 Chapter IV: interpretation. **E+W**

In relation to proposals for the establishment of a new grant-maintained school or to a school established in pursuance of such proposals—

- (a) the date specified in the proposals as the proposed incorporation date is referred to in this Part as the “incorporation date”, and
- (b) the date specified in the proposals as the proposed date of implementation is referred to in this Part as the “date of implementation of the proposals”.

## CHAPTER V **E+W**

### GOVERNMENT, CONDUCT ETC. OF GRANT-MAINTAINED SCHOOLS

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

**C29** Pt. III Chapter V (ss. 218-243) modified (1.11.1996) by 1996 c. 57, ss. 37(3), 48(2)

### *The governing instruments*

## 218 Constitution of governing body and conduct of school. **E+W**

- (1) For every governing body of a grant-maintained school there shall be—
- (a) an instrument (known as the instrument of government) providing for the constitution of the governing body, and
  - (b) an instrument (known as the articles of government) in accordance with which the school is to be conducted.
- (2) The instrument and articles of government—
- (a) shall comply with any requirements imposed by or under this Chapter, and
  - (b) may make any provision authorised by or under this Chapter to be made and such other provision as may be necessary or desirable.

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- (3) Subject to any express provision of the instrument or articles of government, the school shall be conducted in accordance with any trust deed relating to it.
- (4) Schedule 22 (membership and proceedings etc. of governing bodies) shall have effect.
- (5) Schedule 23 (content of articles of government) shall also have effect.

## **219 Initial instruments and articles of government. E+W**

- (1) The initial instrument of government for the governing body of a grant-maintained school, and the initial articles of government for such a school, shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the incorporation date.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals but, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, such of the articles as may be prescribed shall have effect as from the incorporation date.
- (4) Before making any regulations under this section the Secretary of State shall consult—
  - (a) a body appearing to him to be representative of the Church of England,
  - (b) a body appearing to him to be representative of the Church in Wales, and
  - (c) a body appearing to him to be representative of the Roman Catholic Church,in matters relating to the provision of education in grant-maintained schools having foundation governors.

## **220 Subsequent instruments of government. E+W**

- (1) The Secretary of State may—
  - (a) if the governing body of a grant-maintained school submit a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
  - (b) if such a governing body submit draft modifications—
    - (i) of an instrument made under paragraph (a), or
    - (ii) of an instrument of government made under section 57(1)(a) of the <sup>M37</sup>Education Act 1993 or Chapter IV of Part I of the <sup>M38</sup>Education Reform Act 1988 which has effect (by virtue of Schedule 39 to this Act) as if made under paragraph (a),by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit;but he shall not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the governing body.
- (2) No order may be made under subsection (1) in respect of a school having foundation governors unless the governing body have consulted—
  - (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).

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- (3) The Secretary of State may by order modify the instrument of government for the governing body of any grant-maintained school.
- (4) An order under subsection (3)—
- (a) may relate to all grant-maintained schools, to any category of such schools specified in the order or to any such school so specified, but
  - (b) shall not be made unless the Secretary of State has consulted—
    - (i) the governing body of each grant-maintained school to which the order relates,
    - (ii) (if the order relates only to a school having foundation governors) the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
    - (iii) (if the order relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors) a body appearing to the Secretary of State to be representative of the church in question in matters relating to the provision of education in grant-maintained schools having foundation governors.
- (5) Where, by reason of the making of a new instrument, or the modification of an instrument, under this section the number of governors of any category will (unless the required number of governors of that category resign) exceed the number provided for in the instrument, the new instrument or, as the case may be, the instrument as modified shall provide—
- (a) for such number of governors of that category as is required to eliminate the excess to cease to hold office, and
  - (b) for the selection of those who are to cease to hold office.

#### Marginal Citations

**M37** 1993 c. 35.

**M38** 1988 c. 40.

## 221 Subsequent articles of government. **E+W**

- (1) The governing body of a grant-maintained school may, with the consent of the Secretary of State—
- (a) make new articles of government in place of the existing articles for the school, or
  - (b) modify any articles made under paragraph (a) or, where articles made under section 58(1)(a) of the <sup>M39</sup>Education Act 1993 or Chapter IV of Part I of the <sup>M40</sup>Education Reform Act 1988 have effect (by virtue of Schedule 39 to this Act) as if made in accordance with this Part, those articles.
- (2) Before exercising that power, the governing body of a school having foundation governors shall consult—
- (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).



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- (3) The Secretary of State may by a direction under this section require the governing bodies of grant-maintained schools or any class of such schools specified in the direction or the governing body of any particular grant-maintained school so specified to modify their articles of government in any manner so specified.
- (4) Before giving a direction under this section, the Secretary of State shall consult—
- (a) the governing body or (as the case may be) each governing body to which the direction applies,
  - (b) (if the direction relates only to a school having foundation governors) the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
  - (c) (if the direction relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors) a body appearing to the Secretary of State to be representative of the church in question in matters relating to the provision of education in grant-maintained schools having foundation governors.

#### Marginal Citations

M39 1993 c. 35.

M40 1988 c. 40.

### Governors

#### 222 Categories of governors. **E+W**

Schedule 24 (expressions used in connection with categories of governors) shall have effect.

#### 223 Parent governors. **E+W**

- (1) Subject to subsection (6), the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include parent governors.
- (2) Subject to subsection (7), the instrument shall provide for the number of parent governors to be—
- (a) in the case of a primary school, not less than three nor more than five, and
  - (b) in the case of a secondary school, five.
- (3) The instrument shall provide that if—
- (a) one or more vacancies for parent governors are required to be filled by election, and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies,

the required number of parent governors shall be made up by persons appointed by the other members of the governing body.

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- (4) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (3)—
  - (a) to appoint a person who is the registered parent of a registered pupil at the school, where it is reasonably practicable to do so, and
  - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.
- (5) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a parent governor to the new governing body—
  - (a) paragraph 7 of Schedule 8 (qualifications and arrangements for election of parent or teacher governors) shall apply as it applies in relation to the election of a parent governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements of any vacancy arising for a parent governor, and the instrument shall have effect accordingly.
- (6) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as parent governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (7) In the case of a primary school, the initial instrument shall provide for the number of parent governors to be such number (being not less than three nor more than five) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) Subsection (3) does not apply, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, to vacancies arising before the date of implementation of the proposals.

## 224 Teacher governors. **E+W**

- (1) Subject to subsection (4), the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include teacher governors.
- (2) Subject to subsection (5), the instrument shall provide for the number of teacher governors to be either one or two.
- (3) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a teacher governor to the new governing body—
  - (a) paragraph 7 of Schedule 8 shall apply as it applies in relation to the election of a teacher governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements of any vacancy arising for a teacher governor, and the instrument shall have effect accordingly.

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- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as teacher governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (5) The initial instrument shall provide for the number of teacher governors to be such number (being either one or two) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.

#### 225 Head teacher. **E+W**

- (1) Subject to subsection (3), the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include (as a governor ex officio) the person who is for the time being the head teacher.
- (2) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, the reference in subsection (1) to the head teacher is, in relation to any time before the date of implementation of the proposals, a reference to the existing head teacher.
- (3) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the initial instrument of government for the school shall provide, in relation to any time before the date of implementation of the proposals when a person has been appointed to be the head teacher, for the governing body to include (as a governor ex officio) that person.

#### 226 First governors. **E+W**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 211,shall provide for the governing body to include first governors.
- (2) The instrument shall provide for such number of first governors as will secure that they outnumber the other governors.
- (3) Subject to subsections (5) and (6), the instrument—
  - (a) shall require—
    - (i) at least two of the first governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school, and
    - (ii) at least two of the first governors to be (on the date or dates on which they respectively take office) members of the local community,but one person may satisfy both requirements, and
  - (b) shall require the governing body, in appointing first governors, to secure that those governors include persons appearing to them to be members of the local

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business community (and such persons may also satisfy one or both of the requirements of paragraph (a)(i) and (ii)).

- (4) The initial instrument shall provide for the number of first governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (5) In the case of a grant-maintained school which is a county school immediately before it becomes grant-maintained, the instrument shall, despite subsection (3), have effect in relation to the determination of initial first governors—
  - (a) as if—
    - (i) it required the first governors to include at least two persons who on the date of their selection or nomination are parents of registered pupils at the school, and
    - (ii) it required the first governors to include at least two persons who appear to those selecting or nominating them to be members of the local community,
 but provided that one person might satisfy both requirements, and
  - (b) as if it required the first governors to include persons who appear to those selecting or nominating them to be members of the local business community (and provided that such persons might also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (6) In the case of a grant-maintained school established in pursuance of proposals published under section 211—
  - (a) any provision of the instrument made by virtue of subsection (3)(a)(i) shall not apply in relation to the appointment before the date of implementation of the proposals of any first governor, and
  - (b) any provision of the instrument made by virtue of subsection (3)(b) shall apply as if references to the governing body were references to the funding authority.
- (7) References in this section to governors other than first governors do not include sponsor governors.

## **227 Power of the Secretary of State to replace first governors. E+W**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 211,
 shall provide for the Secretary of State to have power, where any of subsections (2) to (4) apply, to replace all or any of the first governors.
- (2) This subsection applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This subsection applies where—
  - (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,

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- (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Part I of the <sup>M41</sup>School Inspections Act 1996, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
  - (d) the Secretary of State has received a statement prepared under section 17 of that Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;
- and expressions used in this subsection and in that Act have the same meaning as in that Act.
- (4) This subsection applies where in the opinion of the Secretary of State any action taken or proposed by the governing body of the school, or any failure of the governing body to act, is prejudicial to the provision of education by the school.
  - (5) The instrument of government for a grant-maintained school which—
    - (a) is a county school immediately before it becomes grant-maintained, or
    - (b) is established in pursuance of proposals published under section 211,shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
  - (6) Any provision made by the instrument of government in pursuance of section 226(3) shall not apply for the purposes of the appointment by virtue of this section of any first governor.

**Marginal Citations**

M41 1996 c. 57.

**228 Foundation governors.** **E+W**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a voluntary school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 212,shall provide for the governing body to include foundation governors.
- (2) The instrument shall provide for such number of foundation governors as will secure that they outnumber the other governors.
- (3) Subject to subsection (5), the instrument may provide for any foundation governorship to be held ex officio.
- (4) Subject to subsection (7), the instrument—
  - (a) where it provides for a foundation governorship to be held ex officio, shall specify the office the holder of which is to be a foundation governor, and
  - (b) shall name the person or persons (if any) who are entitled to appoint any foundation governor.

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- (5) An additional foundation governor appointed by virtue of provision made in the instrument of government in pursuance of section 230(2) may not be appointed to hold office ex officio.
- (6) Subject to subsections (8) and (9), the instrument shall provide for at least two of the foundation governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school.
- (7) The initial instrument shall—
- (a) provide for the number of foundation governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified;
  - (b) (in the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained) provide for the person or persons who, immediately before the incorporation date, were named in the school's instrument of government as being entitled to appoint foundation governors (as defined by section 78(2)) to the existing governing body to be entitled to appoint the foundation governors for the governing body of the grant-maintained school;
  - (c) (in the case of a grant-maintained school established in pursuance of proposals under section 212) provide for the promoters to be entitled to appoint the foundation governors;
  - (d) (where the instrument provides for a foundation governorship to be held ex officio) provide for it to be held by the holder of a specified office;
- and in this subsection “specified” means specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) In the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, the instrument shall (despite anything in subsection (6)) have effect in relation to the determination of initial foundation governors as if it provided for the foundation governors to include at least two persons who on the date of their selection or appointment are parents of registered pupils at the school.
- (9) In the case of a grant-maintained school established in pursuance of proposals published under section 212, subsection (6) above shall not apply in relation to the appointment of any foundation governor before the date of implementation of the proposals.

## 229 Sponsor governors. **E+W**

- (1) The instrument of government for the governing body of a grant-maintained secondary school may—
- (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the instrument.
- (2) Where a governing body of a school are to be incorporated in pursuance of proposals for acquisition of grant-maintained status, or proposals for the establishment of a new grant-maintained school, which name a person as a sponsor of the school, and the school is to be a secondary school, the initial instrument of government shall provide—

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- (a) for the person so named to be a sponsor of the school, and
  - (b) for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the proposals.
- (3) Where the instrument of government provides for two or more persons named as sponsors of the school in such proposals, or (as the case may be) in the instrument, to appoint governors—
  - (a) it shall provide for each sponsor to appoint such number of governors as is specified in relation to him in the proposals or (as the case may be) instrument, and
  - (b) it may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school which name a person as a sponsor of the school, the instrument of government shall have effect as if it required the first appointments of sponsor governors to be made before the date of implementation of the proposals.

### **230 Additional governors.** **E+W**

- (1) The instrument of government for the governing body of a grant-maintained school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the appointing authority, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) are in office, to appoint a number of additional first or, as the case may be, foundation governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) In subsection (2) “the appointing authority” means the person entitled to appoint the first or, as the case may be, foundation governors on the governing body or, if more than one person is so entitled, the persons so entitled acting jointly.

### *Powers*

### **231 Powers of governing body.** **E+W**

- (1) The governing body of a grant-maintained school incorporated in pursuance of proposals for acquisition of grant-maintained status may conduct a school of the same description as the school immediately before the date of implementation of the proposals.
- (2) The governing body of a grant-maintained school incorporated in pursuance of proposals for the establishment of a new grant-maintained school may conduct a school of the description in the proposals.
- (3) The school conducted by the governing body of a grant-maintained school shall not, where changes have been made in the character or premises of the school since the date of implementation of the proposals, be regarded as of a different description to

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that immediately before that date or, as the case may be, to that in the proposals if the changes—

- (a) did not require authorisation under Chapter VII (alteration etc. of grant-maintained schools), or
  - (b) were authorised under that Chapter.
- (4) Subject to subsections (6) and (7) and to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the conduct of the school as for the time being constituted.
- (5) The power conferred by subsection (4) includes in particular power—
- (a) in the case of a grant-maintained school established in pursuance of proposals for acquisition of grant-maintained status, to assume the conduct, as from the date of implementation of the proposals, of the school as constituted immediately before that date;
  - (b) in the case of a grant-maintained school established in pursuance of proposals for the establishment of a new grant-maintained school, to conduct, as from the date of implementation of the proposals, a school of the description in the proposals;
  - (c) power to borrow such sums as the governing body think fit and, in connection with such borrowing, to grant any mortgage, charge or other security over any land or other property of the governing body;
  - (d) to acquire and dispose of land and other property;
  - (e) to enter into contracts, including, in particular, contracts for the employment of teachers and other staff;
  - (f) to invest any sums not immediately required for the purposes of meeting the expenses of conducting the school or any liability transferred to the governing body under section 201; and
  - (g) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for such purposes.
- (6) The power to borrow sums and grant security mentioned in subsection (5)(c) may only be exercised with the written consent of the Secretary of State (which may be given for particular borrowing or for borrowing of a particular class); but this subsection does not apply in relation to loans under section 255.
- (7) The power to dispose of land mentioned in subsection (5)(d) may only be exercised with the written consent of the Secretary of State.
- (8) Without prejudice to subsection (4), but subject to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may provide education at the school which is neither primary nor secondary education if—
- (a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of 19,
  - (b) it is part-time education suitable to the requirements of junior pupils who have not attained [<sup>F51</sup>compulsory school age] and the school provides full-time education for junior pupils of the same age, or
  - (c) they do so as agents for a local education authority under arrangements made with the authority for the purpose.



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**Textual Amendments**

**F51** Words in S. 231(8)(b) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.17** (which Sch. 7 para. 17 was repealed (*prosp.*) by 1998 c. 31, ss. 140(1)(3), 145(3), Sch. 30 para. 223, **Sch. 31** (with ss. 138(9), 144(6))); S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

<sup>F52</sup>**232** ..... **E+W**

**Textual Amendments**

**F52** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F53</sup>**233** ..... **E+W**

**Textual Amendments**

**F53** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

*Schools acquiring grant-maintained status: determination etc. of initial governors*

<sup>F54</sup>**234** ..... **E+W**

**Textual Amendments**

**F54** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F55</sup>**235** ..... **E+W**

**Textual Amendments**

**F55** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F56</sup>**236** ..... **E+W**

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**Textual Amendments**

**F56** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F57</sup> **237** ..... **E+W**

**Textual Amendments**

**F57** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F58</sup> **238** ..... **E+W**

**Textual Amendments**

**F58** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F59</sup> **239** ..... **E+W**

**Textual Amendments**

**F59** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

<sup>F60</sup> **240** ..... **E+W**

**Textual Amendments**

**F60** Ss. 232-240 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

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*New grant-maintained schools: determination etc. of initial governors*

**241 Initial governors for new grant-maintained schools. E+W**

- (1) This section applies in relation to any governing body to be incorporated under Chapter IV.
- (2) Regulations shall make provision for the appointment of the persons who are to be the initial governors and, in particular, shall require each appointing authority—
  - (a) to obtain the Secretary of State’s consent before making any appointment, and
  - (b) to notify the Secretary of State before the incorporation date of the appointments to all the initial governorships for which the authority is the appointing authority.
- (3) In subsection (2) the “appointing authority”, in relation to any appointment, means the person entitled to make the appointment.

*General and supplementary*

**242 Saving for defects in selection or nomination. E+W**

- (1) The proceedings of the governing body of a grant-maintained school shall not be invalidated by any defect in any procedure required under this Chapter in relation to the determination of any person to hold office as an initial governor.
- (2) This section is without prejudice to the generality of paragraph 11 of Schedule 22.

**243 Chapter V: interpretation. E+W**

- (1) This section applies for the purposes of this Chapter.
- (2) References to the authority responsible for election arrangements in relation to a school are references to the authority or body by whom all necessary arrangements for any election of parent governors or teacher governors to the governing body of the school fall to be made under paragraph 7(3) of Schedule 8 (such arrangements to be made by the local education authority or the school’s governing body depending on the type of school).
- (3) References, in relation to a vacancy for a governor of an elected category on the existing governing body of a school in respect of which proposals are required to be or have been published under section 193 and in sections 234(7) and 237(2), to the procedure applicable under Chapter IV of Part II are references—
  - (a) except where any provision made by virtue of section 81 (appointment of parent governors by governing body) applies, to the holding of an election under that Chapter, and
  - (b) where any such provision applies, to the making of an appointment in accordance with that provision.
- (4) A person named in proposals for acquisition of grant-maintained status in respect of a school as a proposed initial governor of any category shall be treated as becoming prospectively disqualified for holding office as such a governor on the proposed governing body if an event occurs in relation to him which, if—
  - (a) it had occurred on or after the incorporation date, and

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- (b) the instrument prescribed under section 219 for the governing bodies of schools of the kind in question had then been in force, would have caused him to become disqualified for holding such office.

## CHAPTER VI **E+W**

### FUNDING OF GRANT-MAINTAINED SCHOOLS

#### *Grants: general*

#### **244 Maintenance grants. **E+W****

- (1) Subject to the provisions of this Part, the funding authority shall make annual grants (known as maintenance grants) to the governing body of each grant-maintained school, each such grant being made in respect of expenditure for the purposes of the school incurred or to be incurred by the governing body in the financial year to which the grant relates.
- (2) The amount of the maintenance grant payable in respect of a school for a financial year shall be such as may be determined (and from time to time revised) in accordance with regulations (referred to in this Chapter as “grant regulations”); and grant regulations may provide for determinations (and revisions) to be made by reference to amounts determined or redetermined for the purposes of this section by the Secretary of State.
- (3) Subject to—
  - (a) any provision made by virtue of section 232(6),
  - (b) any requirements imposed by the funding authority under section 247(1), and
  - (c) any requirements as to the application of maintenance grant contained in the articles of government of the school,
 the governing body of a grant-maintained school shall apply any payments made to them in respect of maintenance grant solely for the purposes of the school.
- (4) In this Chapter “the purposes of the school” do not include purposes wholly referable to the provision of—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19.

#### **245 Special purpose grants. **E+W****

- (1) Grant regulations may provide for the payment by the funding authority to the governing bodies of grant-maintained schools of grants (known as special purpose grants) in respect of expenditure, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies—
  - (a) for or in connection with educational purposes of any class or description so specified,
  - (b) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the

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- funding authority to be required for meeting any special needs of the population of the area served by the schools in question, or
- (c) in respect of expenses of any class or description so specified, being expenses which it appears to the funding authority the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant.
- (2) Grant regulations may provide for special purpose grants to be payable—
- (a) on a regular basis in respect of expenditure of a recurrent kind, or
  - (b) by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.

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

**C30** S. 245 applied (with modifications) (1.3.1999) by S.I. 1999/274, reg. 2

**246 Capital grants. E+W**

- (1) Grant regulations may provide for the payment by the funding authority to the governing bodies of grant-maintained schools of grants (known as capital grants) in respect of expenditure of a capital nature, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies.
- (2) The descriptions of expenditure which are to be regarded for the purposes of capital grant as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (3) Where the governing body of a grant-maintained school include sponsor governors, the funding authority shall, if directed to do so by the Secretary of State, pay capital grant of such amount as may be specified in the directions in respect of such expenditure falling within subsection (1) as is incurred, or to be incurred, by the governing body for such purposes as may be specified in the directions.
- (4) Before giving a direction under subsection (3), the Secretary of State shall consult the funding authority.
- (5) A direction under subsection (3) may not be given after the end of the period of twelve months beginning—
  - (a) (in the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status which include sponsor governors on the incorporation date) with that date,
  - (b) (in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school which include sponsor governors on the date of implementation of the proposals) with that date, and
  - (c) (in any other case) with the date when the instrument of government naming a person as the sponsor of the school came into effect.

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

**C31** S. 246 modified (20.11.1998) by S.I. 1998/2670, reg. 7(1)

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## 247 Imposition of requirements on governing body in receipt of grant. **E+W**

- (1) A governing body to whom any payments in respect of maintenance grant, capital grant or special purpose grant are made shall comply with such requirements of a kind mentioned in subsection (2) as the funding authority may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) are—
  - (a) requirements specified in grant regulations as requirements which may be imposed by the funding authority on governing bodies to whom such payments are made, and
  - (b) requirements determined in accordance with grant regulations by the funding authority.
- (3) Requirements imposed under subsection (1)—
  - (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed, and
  - (b) subject to subsection (4), may at any time be varied by the funding authority.
- (4) The power of the funding authority to vary such a requirement—
  - (a) does not apply to a requirement of the kind mentioned in subsection (2)(a), or a requirement required to be imposed by the regulations (by virtue of subsection (9)) or by directions under section 24, unless the Secretary of State has consented to the variation, and
  - (b) is subject, in the case of a requirement of the kind mentioned in subsection (2)(b), to the provisions of the regulations relating to the determination of the requirements that may be imposed in the case of payments in respect of the grant in question.
- (5) Requirements imposed under subsection (1) may at any time be waived or removed by the funding authority with the consent of the Secretary of State.
- (6) The requirements which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grant or capital grant may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the funding authority of the whole or any part of the following amount.
- (7) That amount is—
  - (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,
 whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) may be imposed where any payment is made in respect of capital grant if—
  - (a) the grant is made in respect of the provision, alteration or repair of premises for a school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.
- (9) Grant regulations may require the funding authority to impose any such requirements as may be imposed under the preceding provisions of this section.

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

- C32** S. 247 modified (20.11.1998) by S.I. 1998/2670, reg. 7(2)  
S. 247 applied (with modifications) (1.3.1999) by S.I. 1999/274, regs. 3, 4

**248 Grants: further provisions. E+W**

- (1) The times at which, and the manner in which, payments are made in respect of—
- (a) maintenance grant for a grant-maintained school in respect of any financial year,
  - (b) special purpose grant, and
  - (c) capital grant,
- shall be such as may be determined from time to time by the funding authority.
- (2) Payments in respect of maintenance grant for a school in respect of any financial year may be made, before any amount has been determined in accordance with grant regulations as the amount of such grant payable for that year in respect of the school, by reference to an estimate of the amount which will be so payable made by the funding authority.
- (3) Where in respect of any financial year an over-payment of maintenance grant is made to the governing body of a school, a sum equal to the amount of that over-payment shall be recoverable from the governing body by the funding authority.
- (4) Where a sum is payable by the governing body of a school to the funding authority—
- (a) in respect of an over-payment of maintenance grant in respect of a financial year, or
  - (b) by way of repayment of special purpose grant or capital grant (whether by virtue of a requirement such as is mentioned in section 247(6) or otherwise),
- the funding authority may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by them to the governing body.
- (5) In this section references to an over-payment of maintenance grant in respect of a financial year are to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in question in respect of the year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.
- (6) The funding authority shall exercise any power conferred on them by this section, by any of sections 216 and 244 to 247, or by paragraph 6 of Schedule 21 in such manner (if any) as may be specified in or determined in accordance with grant regulations.

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

- C33** S. 248(1)-(4) modified (20.11.1998) by S.I. 1998/2670, reg. 7(3)  
**C34** S. 248(1)(4) applied (with modifications) (1.3.1999) by S.I. 1999/274, reg. 5

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*Grants: Wales (until establishment of the SFCW)*

**249 Application of sections 250 to 254. E+W**

Before the Schools Funding Council for Wales begin to exercise their functions, sections 250 to 254 shall have effect in relation to grant-maintained schools in Wales in place of sections 244(1) and (3), 245(1), 246(1), 247 and 248.

**250 Maintenance grants. E+W**

(1) Subject to the provisions of this Part, the Secretary of State shall make annual grants (known as maintenance grants) to the governing body of each grant-maintained school, each such grant being made in respect of expenditure for the purposes of the school incurred or to be incurred by the governing body in the financial year to which the grant relates.

(2) Subject to—

- (a) any provision made by virtue of section 232(6),
- (b) any requirements imposed by the Secretary of State under section 253(1) or (3), and
- (c) any requirements as to the application of maintenance grant contained in the articles of government of the school,

the governing body of a grant-maintained school shall apply any payments made to them in respect of maintenance grant solely for the purposes of the school.

**251 Special purpose grants. E+W**

Grant regulations may provide for the payment by the Secretary of State to the governing bodies of grant-maintained schools of grants (known as special purpose grants) in respect of expenditure incurred or to be incurred by them of any class or description specified in the regulations—

- (a) for or in connection with educational purposes of any class or description so specified,
- (b) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the Secretary of State to be required for meeting any special needs of the population of the area served by the school, or
- (c) in respect of expenses of any class or description so specified, being expenses which it appears to the Secretary of State the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant.

**252 Capital grants. E+W**

Grant regulations may provide for the payment by the Secretary of State to the governing bodies of grant-maintained schools of grants (known as capital grants) in respect of expenditure of a capital nature, of any class or description specified in the regulations, incurred or to be incurred by the governing bodies.



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## 253 Imposition of requirements on governing body in receipt of grant. **E+W**

- (1) A governing body to whom any payments in respect of maintenance grant or special purpose grants are made shall comply with such requirements of a kind mentioned in subsection (2) as the Secretary of State may from time to time impose.
- (2) The kinds of requirements which may be imposed under subsection (1) are—
  - (a) requirements specified in grant regulations as requirements which may be imposed by the Secretary of State on governing bodies to whom such payments are made, and
  - (b) requirements determined in accordance with grant regulations by the Secretary of State.
- (3) A governing body to whom any payments in respect of capital grant are made shall comply with such requirements determined by the Secretary of State as he may from time to time impose.
- (4) Requirements imposed under subsection (1) or (3)—
  - (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed, and
  - (b) may at any time be waived or removed or, subject to subsection (5), varied by the Secretary of State.
- (5) The power of the Secretary of State to vary such a requirement—
  - (a) does not apply to a requirement of the kind mentioned in subsection (2)(a), and
  - (b) is subject, in the case of a requirement of the kind mentioned in subsection (2)(b), to the provisions of the regulations relating to the determination of the requirements that may be imposed in the case of payments in respect of the grants in question.
- (6) The requirements—
  - (a) which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grant, or
  - (b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grant are made,may, in particular, if any conditions specified in the requirements are satisfied, require the payment to the Secretary of State of the whole or any part of the following amount.
- (7) That amount is—
  - (a) the amount of the payments made in respect of the grant, or
  - (b) so much of the value of any premises or equipment in respect of which the grant was paid as is determined in accordance with the requirements to be properly attributable to the payment of such grant,whichever is the greater.
- (8) No such requirement as is referred to in subsection (6) may be imposed where any payment is made in respect of capital grant if—
  - (a) the grant is made in respect of the provision, alteration or repair of premises for a school, and
  - (b) any freehold interest in the premises in respect of which the grant is made is, or is to be, held on trust for the purposes of the school.

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## **254 Grants: further provisions. E+W**

- (1) The times at which, and the manner in which, payments are made in respect of—
  - (a) maintenance grant for a grant-maintained school in respect of any financial year,
  - (b) special purpose grants, and
  - (c) capital grants,
 shall be such as may be determined from time to time by the Secretary of State.
- (2) Payments in respect of maintenance grant for a school in respect of any financial year may be made, before any amount has been determined in accordance with grant regulations as the amount of such grant payable for that year in respect of the school, by reference to an estimate of the amount which will be so payable made by the Secretary of State.
- (3) Where in respect of any financial year an over-payment of maintenance grant is made to the governing body of a school, a sum equal to the amount of that over-payment shall be recoverable from the governing body by the Secretary of State.
- (4) Where a sum is payable by the governing body of a school to the Secretary of State—
  - (a) in respect of an over-payment of maintenance grant in respect of a financial year, or
  - (b) by way of repayment of special purpose grant or capital grant (whether by virtue of a requirement such as is mentioned in section 253(6) or otherwise),
 the Secretary of State may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by him to the governing body.
- (5) In this section references to an over-payment of maintenance grant in respect of a financial year are to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in question in respect of the year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

### *Loans*

## **255 Loans to governing bodies. E+W**

- (1) The appropriate authority may make loans to the governing bodies of grant-maintained schools in respect of expenditure of any class or description specified in regulations (“loan regulations”) incurred or to be incurred by the governing bodies for or in connection with such purposes as may be so specified.
- (2) Any loan under this section shall be made on such terms as loan regulations may require, being terms specified in or determined in accordance with the regulations.
- (3) Where any sum is payable by the governing body of a grant-maintained school to the appropriate authority in respect of the principal of, or interest on, any loan under this section, the appropriate authority may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by them to the governing body.

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- (4) In this section “the appropriate authority”—
  - (a) in relation to Wales before the Schools Funding Council for Wales begin to exercise their functions, means the Secretary of State, and
  - (b) in any other case, means the funding authority.
- (5) The funding authority shall exercise any power conferred on them by this section in such manner (if any) as may be specified in or determined in accordance with loan regulations.

#### *Recovery from local funds*

### **256 Recovery from local funds of sums in respect of maintenance grant. E+W**

- (1) Where the Secretary of State so determines, this section applies to a local education authority in respect of any financial year for which the determination is made; and the determination may apply this section in respect of all grant-maintained schools in the area of the authority or in respect of such grant-maintained schools in that area as may be ascertained by or in accordance with the determination.
- (2) The Secretary of State shall, in respect of each financial year for which he makes a determination under subsection (1) in respect of a local education authority, give notice in writing to the authority of the terms of the determination.
- (3) The Secretary of State may, in the case of a local education authority to which this section applies in respect of any financial year, recover from the authority sums in respect of the maintenance grant payable for that year to the governing bodies of any grant-maintained schools in respect of which the determination applies.
- (4) Subject to subsection (5), sums recoverable by virtue of this section in respect of a school for any financial year—
  - (a) shall be of such amounts, and
  - (b) shall fall due on such date or dates,as may be determined by the Secretary of State.
- (5) The amount of any sum so recoverable shall be determined by reference to any amount—
  - (a) which has previously been determined under section 257 as the total amount recoverable in respect of the school and financial year in question, or
  - (b) (where no amount has previously been determined as mentioned in paragraph (a)) which is estimated by the Secretary of State as the amount which will initially be determined under section 257 as the total amount recoverable in respect of the school and financial year in question,and which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) The Secretary of State may recover sums due to him under this section in either or both of the following ways—
  - (a) by requiring the local education authority to pay the whole or any part of any such sum at such time or times as he thinks fit, and
  - (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whenever passed) or from any amount payable by him to the

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authority under Part III of Schedule 8 to the <sup>M42</sup>Local Government Finance Act 1988 (redistributed non-domestic rates).

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

C35 S. 256 restricted (1.4.1997) by S.I. 1997/599, reg. 24(1)

**Marginal Citations**

M42 1988 c. 41.

**257 Determination of total amount recoverable under section 256. E+W**

- (1) The total amount recoverable by virtue of section 256 in respect of a school for any financial year shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State (“recoupment regulations”).
- (2) Subject to any provision made by such regulations by virtue of subsection (3), recoupment regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the maintenance grant payable in respect of the school and the financial year in question (as from time to time revised).
- (3) Recoupment regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from any local education authority by virtue of section 256 for a financial year by reference to any excess amounts recovered under that section in respect of any previous financial year.
- (4) For the purposes of subsection (3) an excess amount is recovered under section 256 in respect of a financial year if the aggregate amount of the sums recovered under that section for that year from the local education authority—
  - (a) in respect of any school in respect of which sums are recoverable from the authority under that section, or
  - (b) (where there is more than one such school) in respect of both or all of those schools,
 exceeds the total amount recoverable in accordance with recoupment regulations in respect of that school or (as the case may be) in respect of both or all of those schools for that year.

**258 Provisions consequential on section 256. E+W**

- (1) For the purposes of sections 492 and 493 (recoupment for provision for education of pupils belonging to, or having connection with, area of another authority), the provision for education made in any financial year in respect of a registered pupil at a grant-maintained school which is not made by the local education authority shall, if sums are recoverable under section 256 in respect of the school and that year from the authority, be taken to have been made by them.
- (2) The reference in subsection (1) to provision for education includes a reference to provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education.

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- (3) The governing body of a grant-maintained school shall, if sums are recoverable under section 256 in respect of the school from a local education authority, provide the authority with such information relating to the registered pupils at the school as the authority may require for the purpose of claiming any amount in respect of such a pupil from another authority by virtue of regulations under section 492 or 493.

## CHAPTER VII **E+W**

### ALTERATION ETC. OF GRANT-MAINTAINED SCHOOLS

#### **259 Proposals for change of character etc. by governing body. **E+W****

- (1) Subject to subsection (2), where the governing body of a grant-maintained school intend to make a significant change in the character, or a significant enlargement of the premises, of the school or to transfer the school to a new site they shall—
- publish proposals for that purpose in such manner as may be prescribed, and
  - submit to the Secretary of State a copy of the published proposals.
- (2) No proposals shall be published under this section for the purpose of making a significant change in the religious character of a school unless the trustees under any trust deed relating to the school have given their consent in writing to the change in question; and the requirement to publish proposals under subsection (1) does not apply in relation to a transfer of a school to a new site if it is intended to return to the existing site within three years of the time of the transfer.
- (3) Before publishing any proposals under this section, 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.
- (4) Proposals published under this section shall include particulars—
- of the proposed time or times of implementation of the proposals, and
  - of the number of pupils proposed to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented,
- and, if pupils are proposed to be admitted for nursery education, shall give the prescribed information.
- (5) Proposals published under this section shall be accompanied by a statement which—
- describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
  - explains the effect of subsection (6).
- (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 Secretary of State by any of the following—
- any ten or more local government electors for the area,
  - the governing body of any school affected by the proposals,
  - the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M43</sup>Further and Higher Education Act 1992 applies), and

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- (d) any local education authority concerned.
- (7) Where the proposals are to transfer a school to a site in a different area, objections under subsection (6) to the proposals may also be submitted by any ten or more local government electors for that area.
- (8) No decision taken at a meeting of the governing body of a grant-maintained school that would result in the publication of proposals under this section shall have effect unless it is confirmed at a second meeting of the governing body held not less than 28 days after the first.

#### Marginal Citations

M43 1992 c. 13.

### 260 Proposals for change of character etc. by funding authority. **E+W**

- (1) This section has effect in respect of the area of a local education authority if an order under section 27(1) applies to the area.
- (2) Where the funding authority are of the opinion that—
- (a) a significant change should be made in the character of a grant-maintained school,
  - (b) a significant enlargement of the premises of such a school should be made, or
  - (c) such a school should be transferred to a new site in the area or in another area to which an order under section 27(1) applies,
- they may publish proposals for that purpose in such manner as may be prescribed and submit a copy of the published proposals to the Secretary of State.
- (3) No proposals shall be published under this section for the purpose of making a significant change in the religious character of a school; and subsection (2) does not apply in relation to a transfer of a school to a new site if it is intended to return to the existing site within three years of the time of the transfer.
- (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) the funding authority shall have regard to any guidance given to them from time to time by the Secretary of State.
- (5) Proposals published under this section shall include particulars—
- (a) of the proposed time or times of implementation of the proposals, and
  - (b) of the number of pupils proposed to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented,
- and, if pupils are proposed to be admitted for nursery education, shall give the prescribed information.
- (6) Proposals published under this section shall be accompanied by a statement which—

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- (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
  - (b) explains the effect of subsection (7).
- (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 funding authority by any of the following—
- (a) any ten or more local government electors for the area,
  - (b) the governing body of the school to which the proposals relate,
  - (c) the governing body of any other school affected by the proposals,
  - (d) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M44</sup>Further and Higher Education Act 1992 applies), and
  - (e) any local education authority concerned.
- (8) Where the proposals are to transfer a school to a site in a different area, objections under subsection (7) to the proposals may also be submitted by any ten or more local government electors for that area.
- (9) 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.

**Marginal Citations**

M44 1992 c. 13.

**261 Approval, adoption or rejection of proposals. E+W**

- (1) Proposals published under section 259 require the approval of the Secretary of State.
- (2) Proposals published under section 260 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 (7) 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) any proposals require the approval of the Secretary of State, he may—
  - (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the governing body (and, in the case of proposals published under section 260, the funding authority) approve them with such modifications as he thinks desirable.
- (4) Where proposals published under section 260 do not require the approval of the Secretary of State, the funding authority shall determine whether to adopt the proposals.
- (5) The funding authority shall—

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- (a) make any determination under subsection (4) 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.

## 262 Approval of school premises. **E+W**

- (1) Where the governing body of a grant-maintained school publish proposals under section 259, they shall, if the funding authority so direct, submit to the authority, at such time and in such form and manner as the authority may direct, the particulars mentioned in subsection (3); and particulars so submitted require the approval of the funding authority under this section.
- (2) Where the funding authority publish proposals under section 260, they shall, if in their opinion the circumstances so require, prepare the particulars mentioned in subsection (3); and particulars so prepared require adoption by the funding authority under this section.
- (3) The particulars are—
  - (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
  - (b) such other particulars in respect of the premises or proposed premises of the school as the funding authority may require or, in the case of proposals published under section 260, as may be required.
- (4) The particulars prepared or submitted under subsection (3)(a) shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
  - (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) (if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the <sup>M45</sup>Town and Country Planning Act 1990) that document.

### Modifications etc. (not altering text)

**C36** S. 262 modified (1.4.1999) by S.I. 1999/704, reg. 5

### Marginal Citations

**M45** 1990 c. 8.

## 263 Implementation of proposals, etc. **E+W**

- (1) Where any proposals are approved or adopted under section 261, it shall be the duty of the governing body of the school to which the proposals relate to implement them.
- (2) Proposals required to be implemented under this section shall be implemented in accordance with any particulars approved or adopted under section 262.
- (3) The Secretary of State may, at the request of a governing body, modify any proposals published under section 259 which the governing body are required to implement under this section.



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- (4) The Secretary of State may—
  - (a) at the request of a governing body, or
  - (b) at the request of the funding authority and after consulting the governing body, modify any proposals published under section 260 which the governing body are required to implement under this section.
- (5) Neither the governing body of a grant-maintained school nor any other person shall make any significant change in the character, or significant enlargement of the premises, of the school or transfer the school to a new site, or undertake to do any of those things, unless proposals have been published under section 259 or 260 and any requirements of section 261 have been complied with.
- (6) Subsection (5) does not—
  - (a) prevent the Secretary of State allowing such steps to be taken by the governing body of a grant-maintained school, pending compliance with those requirements and the giving or making of the approval or adoption, as the Secretary of State considers reasonable in the circumstances, or
  - (b) apply to any transfer of a school to a new site falling within section 259(2) or 260(3).

#### **264 Power to transfer functions under preceding provisions etc. E+W**

- (1) The Secretary of State may by order provide for this Part to have effect with the modifications in subsections (2) to (7) in relation to any proposals published by the governing body of a grant-maintained school under section 259 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 (6) 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 (6) 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) Sections 261(1) and 263(3) 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 (6) of section 259 within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (6) Where sections 261(1) and 263(3) do not apply to the proposals—
  - (a) the proposals shall require the approval of the funding authority,

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- (b) the funding authority may reject them, approve them without modification or, after consulting the governing body, approve them with such modifications as they think desirable, and
  - (c) where the governing body are required to implement the proposals under section 263, the funding authority may at their request modify the proposals.
- (7) Paragraph 20 of Schedule 4 shall not apply in relation to the proposals.
- (8) In this Part—
- (a) references to approval under, or the requirements of, section 261 include approval under, or the requirements of, this section, and
  - (b) references to the modification of proposals under section 263(3) include the modification of proposals under subsection (6)(c).
- (9) This section does not apply to proposals published under section 198 (to which this Chapter is applied by subsection (3) of that section); and section 263(3) is not disapplied by this section in the case of proposals treated for the purposes of this Part (by virtue of section 37(9) or 43(6)) as if they had been approved under section 261.

**265 Proposals for change of character approved before school becomes grant-maintained. E+W**

- (1) This section applies where—
- (a) proposals for a change in the character or an enlargement of the premises of a county or voluntary school, or for the transfer of a county or voluntary school to a new site, have been approved under section [F6137 or 43], and
  - (b) the school becomes a grant-maintained school before the proposals are implemented.
- (2) The proposals—
- (a) shall be treated for the purposes of this Part as if they had been published under section 260 and approved under section 261, and
  - (b) shall be implemented in accordance with any particulars approved under section 39 or (as the case may be) 44.
- (3) Subsection (2) is subject to section 210.

**Textual Amendments**

**F61** Words in s. 265(1)(a) substituted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.18**; S.I. 1997/1468, art. 2, **Sch. 1 Pt.I**

**266 Chapter VII: interpretation. E+W**

- (1) References in this Part to a change in the character of a school do not include any change resulting only from persons beginning or ceasing to be provided with—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age,
  - (b) part-time education suitable to the requirements of junior pupils who have not attained [F62compulsory school age] where the school provides full-time education for junior pupils of the same age, or

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- (c) full-time education suitable to the requirements of persons who have attained the age of 19.
- (2) Where proposals for a significant change in the character, or significant enlargement of the premises, of a school or for the transfer of a school to a new site have been approved or adopted under section 261, references in this Chapter to the proposals are references to the proposals as approved or adopted, subject to any modifications of the proposals under section 263(3) or (4).

#### Textual Amendments

**F62** Words in s. 266(1)(b) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.19**; s.I. 1998/386, art. 2, Sch. 1 Pt.III

## CHAPTER VIII **E+W**

### DISCONTINUANCE OF GRANT-MAINTAINED SCHOOLS

#### *Proposals for discontinuance*

#### **267 Proposals by governing body for discontinuance. **E+W****

- (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 28 days after that at which the first resolution was passed.
- (2) Before passing such a resolution as is mentioned in subsection (1)(a), 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 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).

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- (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) any ten or more local government electors,
  - (b) the governing body of any school affected by the proposals,
  - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M46</sup>Further and Higher Education Act 1992 applies), and
  - (d) any local education authority concerned.

#### Marginal Citations

M46 1992 c. 13.

### 268 Proposals by funding authority for discontinuance. E+W

- (1) This section has effect in respect of the area of a local education authority if an order under section 27(1) 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) 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).
- (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) any ten or more local government electors,
  - (b) the governing body of the school to which the proposals relate,
  - (c) the governing body of any school affected by the proposals,
  - (d) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
  - (e) any local education authority concerned.

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- (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.

## **269 Approval, adoption or rejection of proposals. E+W**

- (1) Proposals published under section 267 require the approval of the Secretary of State.
- (2) Proposals published under section 268 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) any proposals require the approval of the Secretary of State, he may—
- (a) reject them,
  - (b) approve them without modification, or
  - (c) after consulting the governing body (and, in the case of proposals published under section 268, 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 268 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) 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.

## **270 Implementation of proposals. E+W**

- (1) Where any proposals are approved under section 269, 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
    - (ii) in the case of proposals published under section 268, at the request of the funding authority and after consulting the governing body,

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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 267 or 268 and approved or adopted under section 269.

**271 Power to transfer functions under preceding provisions. E+W**

- (1) The Secretary of State may by order provide for this Part to have effect with the modifications in subsections (2) to (7) in relation to any proposals published by the governing body of a grant-maintained school under section 267 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 269(1) 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 267 within the period allowed under that subsection (unless all objections so made have been withdrawn in writing within that period).
- (6) Where section 269(1) 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 270(2)(b) to the Secretary of State shall be read as a reference to the funding authority.
- (7) Paragraph 21(b) of Schedule 4 shall not apply in relation to the proposals.
- (8) References in this Part to approval under section 269 include approval under this section.

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### Withdrawal of grant

#### 272 **Withdrawal of grant where school is unsuitable to continue as grant-maintained school.** **E+W**

- (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) 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) 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 the time so specified (or allowed), either—
  - (a) give notice in writing to the governing body extending the period 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 <sup>M47</sup>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) 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 273 shall have effect as if subsection (6)(a) above and section 273(4) and (5) were omitted.

#### Marginal Citations

M47 1992 c. 13.

### 273 Withdrawal or variation of notice under section 272. **E+W**

- (1) The Secretary of State may by giving notice in writing to the governing body—
- (a) withdraw a notice under section 272(2) or (5)(b),
  - (b) vary a notice under section 272(2) in relation to which section 272(3) applies or a notice under section 272(5)(b) 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 272(2), so far as relating to any measures specified in it by virtue of section 272(4)(b).
- (2) If by virtue of subsection (1)(c) 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 272(4)(c) a time which is not earlier than that time or, where the time so specified has been extended under section 272(5)(a), than that time as so extended.
- (3) Any variation under subsection (2) of the time specified in a notice is without prejudice to any further extension of that time under section 272(5)(a).
- (4) Where the Secretary of State withdraws a notice by virtue of subsection (1)(a), 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), he shall give a copy of the notice as varied to the funding authority.

#### *Winding up and disposal of property*

### 274 Power to provide by order for winding-up and disposal of property. **E+W**

- (1) Where—
- (a) proposals for the discontinuance of a grant-maintained school have been approved or adopted under section 269, or
  - (b) the Secretary of State has given notice to the governing body of a grant-maintained school under section 272 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) apply for the purposes of this section and sections 275 to 279.
- (3) “Governing body in liquidation” means a governing body in respect of which any order has been made under this section.



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- (4) “School property”, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, means—
- the premises used or formerly used for the purposes of the school,
  - 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
  - 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 279 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) 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 275(5).
- (7) “Section 67 loan liabilities”, in relation to a governing body in liquidation, means any liabilities in respect of any loans made under section 67 (or section 105 of the <sup>M48</sup>Education Act 1944) which were transferred to the governing body under section 201.

**Marginal Citations**

M48 1944 c. 31.

**275 Winding up. E+W**

- (1) An order under section 274 may set out a proposed timetable for the winding up of the governing body and, in particular, for—
- 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),
  - discharging any liabilities of the governing body,
  - making any provision mentioned in subsection (2), and
  - the preparation and audit of the governing body’s final accounts.
- (2) The provision referred to in subsection (1)(c) is provision authorised to be made—
- by section 277 (for or in connection with the transfer of the school property), or
  - by section 278 (in respect of the discharge of the liabilities of the governing body).
- (3) An order under section 274 may make provision as to the exercise of the governing body’s functions in relation to the school including, in particular—
- provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State,

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- (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 274—
- (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), an order under section 274 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 67 loan liabilities which fall to be transferred or terminated under section 278) have been discharged,
  - (b) all costs of the winding up have been met,
  - (c) any provision authorised by any of sections 277 to 279 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.

#### **276 Grants to governing body in liquidation. E+W**

- (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 67 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 274.
- (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).

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

C37 S. 276 amended (1.4.1999) by S.I. 1999/600, reg. 2

#### **277 Disposal of school property. E+W**

- (1) Subject to the provisions of any order under section 274, 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

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- (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—
- (a) vested under subsection (1) in any person other than the funding authority, or
  - (b) vested in pursuance of an order under section 274,
- such an order may require the person in whom any property is so vested to pay 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 consideration) as may be so specified.
- (4) Subsection (3) 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 274 vests in any person property so held otherwise than by the governing body, 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 274(4)(b)), 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); 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) 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) the Lands Tribunal determine a different amount from that determined by the Secretary of State,
- the Secretary of State 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—

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- (a) any school property has been vested in the funding authority, or a local education authority, under subsection (1) and, in the case of property vested in the local education authority, no order under section 274 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) or in any provision included in an order under section 274 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.

## 278 Disposal of school property: supplementary. E+W

- (1) Where by virtue of an order under section 274 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 277(3).

- (2) Subsection (1) 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 274 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 43 (approval of proposals for establishment or 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 67 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) apply, but

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(b) no direction that the proposed school shall be an aided school has been given before the dissolution date,  
any section 67 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), and
- (b) a new voluntary school is established on the school premises in pursuance of any proposals approved under section 43,

the amount of those liabilities shall be treated for the purposes of section 173 (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.

## 279 Surplus money and investments. **E+W**

(1) Subject to the following provisions of this section—

- (a) any money held by or for a governing body in liquidation (whether held 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), 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) 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, 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)—

- (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), any payment of money or transfer of investments under this section shall be free of

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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 <sup>M49</sup>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) 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.

#### Marginal Citations

**M49** 1986 c. 60.

## CHAPTER IX E+W

### GROUPS OF GRANT-MAINTAINED SCHOOLS

#### 280 Nature of group. E+W

- (1) Subject to the provisions of this Chapter, two or more grant-maintained schools may be conducted as a group by a single governing body.
- (2) In the case of such a group—
  - (a) there shall be an instrument (known as the instrument of government) providing for the constitution of the governing body, and
  - (b) for each school in the group there shall be an instrument (known as the articles of government) in accordance with which the school is to be conducted.
- (3) The instrument and articles of government—
  - (a) shall comply with any requirements imposed by or under this Chapter, and
  - (b) may make any provision authorised by or under this Chapter to be made and such other provision as may be necessary or desirable.
- (4) Subject to any express provision of the instrument or articles of government, each school in such a group shall be conducted in accordance with any trust deed relating to it.
- (5) The provisions of Schedules 22 and 23 (other than paragraph 14 of Schedule 22) shall have effect in relation to groups of grant-maintained schools with such modifications as may be prescribed.
- (6) Subject to any provision made by or under this Chapter, where there is a group of grant-maintained schools any provision of an enactment which applies to such schools shall apply separately in relation to each of the schools.

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- (7) References in this Chapter to a group are to a group of grant-maintained schools conducted, or to be conducted, by a single governing body.

## **281 Instruments and articles of government for group. E+W**

- (1) The initial instrument of government for the governing body of a group and the initial articles of government for each school in the group shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the date on which the governing body are incorporated.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals in pursuance of which the school became a member of the group.
- (4) Section 220 shall apply in relation to the governing body of a group as it applies in relation to the governing body of a grant-maintained school.
- (5) Section 221 shall apply in relation to a school in a group as it applies in relation to other grant-maintained schools.

## **282 Parent governors. E+W**

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include parent governors.
- (2) The number of parent governors shall not be—
- (a) less than three, or
  - (b) (subject to paragraph (a)) more than the number of schools in the group.
- (3) Subject to subsection (6), the parent governors shall be elected by persons who are registered parents of registered pupils at schools in the group; but, if any of the schools in the group is established in a hospital, the instrument may provide for any of the parent governors to be appointed by the other members of the governing body.
- (4) To qualify for such election a person must when he is elected be a registered parent of a registered pupil at one of the schools in the group and, to qualify for such appointment, a person must when he is appointed be such a parent or, if that is not reasonably practicable, a parent of one or more children of compulsory school age.
- (5) The instrument shall provide for each parent governor to hold office for a term of four years.
- (6) The instrument shall provide that if—
- (a) one or more vacancies for parent governors are required to be filled by election, and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies,
- the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (7) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (6)—
- (a) to appoint a person who is the registered parent of a registered pupil at one of the schools in the group, where it is reasonably practicable to do so, and

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- (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.

**283 Teacher governors.** E+W

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include either one or two teacher governors.
- (2) Each teacher governor shall be elected by persons who are teachers at schools in the group.
- (3) To qualify for such election, a person must when he is elected be a teacher at one of the schools in the group.
- (4) The instrument shall provide for each teacher governor to hold office for a term of four years.

**284 Head teacher governors.** E+W

The instrument of government for the governing body of a group shall provide for the head teacher of each school in the group to be an ex officio governor, unless he chooses not to be.

**285 Core governors.** E+W

- (1) The instrument of government for the governing body of a group shall provide for the governing body to include core governors.
- (2) Schedule 25 (which makes provision in relation to core governors for groups) shall have effect.
- (3) The instrument shall provide for core governors to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument.

**286 Power of the Secretary of State to replace core governors.** E+W

- (1) The instrument of government for the governing body of a group shall provide for the Secretary of State to have power, where any of subsections (2) to (4) apply, to replace all or any of the core governors, other than any externally appointed core governor appointed in respect of a particular school.
- (2) This subsection applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This subsection applies where—
  - (a) there is a report of an inspection of any of the schools in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Part I of the <sup>M50</sup>School Inspections



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Act 1996, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and

- (d) the Secretary of State has received a statement prepared under section 17 of that Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;

and expressions used in this subsection and in that Act have the same meaning as in that Act.

- (4) This subsection applies where in the opinion of the Secretary of State any action taken or proposed by the governing body, or any failure of the governing body to act, is prejudicial to the provision of education by any of the schools.
- (5) The instrument of government shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for core governors other than externally appointed governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of Schedule 25 shall not apply for the purposes of the appointment by virtue of this section of any core governor.

#### Marginal Citations

M50 1996 c. 57.

#### 287 Additional governors. **E+W**

- (1) The instrument of government for the governing body of a group shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of any of the schools in the group.
- (2) The instrument shall enable the governing body, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) are in office, to appoint a number of additional core governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) Section 285(3) and Schedule 25 do not apply to additional core governors.

#### 288 Powers. **E+W**

In the case of a group of grant-maintained schools conducted by a single governing body, that body shall have in relation to each of the schools the powers conferred by section 231 on the governing body of a grant-maintained school.

#### 289 Application of maintenance grants in the case of groups. **E+W**

- (1) For each financial year the governing body of a group shall apply for the purposes of each school in the group the share of maintenance grant which is attributable to that school.
- (2) For the purposes of subsection (1), in each financial year the share of maintenance grant which is attributable to each school in a group is the amount which in the case

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of that school is the prescribed percentage of the maintenance grant payable in respect of the school.

- (3) The governing body of a group shall not apply otherwise than for the purposes of schools in the group any payments made to them in respect of maintenance grant.
- (4) This section is subject to—
- (a) any requirements imposed under section 247(1) or, as the case may be, 253(1), and
  - (b) any requirements as to the application of maintenance grant contained in the articles of government for any of the schools.
- (5) In relation to groups of grant-maintained schools, this section has effect in place of section 244(3) or, as the case may be, 250(2).

<sup>F63</sup> 290 ..... **E+W**

#### Textual Amendments

**F63** S. 290 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30, para. 70, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch. 1**, Pt. I (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2, 5, 6, 10, 12)

## CHAPTER X **E+W**

### GENERAL AND MISCELLANEOUS

#### *Middle schools*

#### 291 **Grant-maintained middle schools.** **E+W**

Proposals published under section 211, 212, 259 or 260 may, if the authority, persons or body making them think fit—

- (a) specify an age below 10 years and six months and an age above 12 years, and
- (b) provide that the school to which the proposals relate is to be a school for providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.

#### *Nursery education*

#### 292 **Nursery education in grant-maintained schools.** **E+W**

- (1) No proposals may be published—
- (a) under section 211 or 212 for the establishment of any nursery school, or
  - (b) under section 259 or 260 for a school to become a nursery school;
- and nothing in Chapter II applies to a nursery school.

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- (2) Subject to subsection (1) above, proposals under section 211, 212, 259 or 260 may, in particular, be made for the purpose of securing the provision of education for junior pupils who have not attained [<sup>F64</sup>compulsory school age].

#### Textual Amendments

**F64** Words in s. 292(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.21**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

#### Further education

### 293 Provision of further education in grant-maintained schools. **E+W**

It shall be the duty of the governing body of any grant-maintained school which provides—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
- (b) full-time education suitable to the requirements of persons who have attained the age of 19,

to secure that, except in such circumstances as may be prescribed, it is not provided at any time in a room where pupils are at that time being taught.

#### Teacher training

### 294 Provision of courses of initial teacher training. **E+W**

- (1) Section 12 of the <sup>M51</sup>Education Act 1994 confers power on the governing body of a grant-maintained school—
- (a) to provide courses of initial training for school teachers, or
  - (b) to join in a partnership or association with other eligible institutions, or (whether alone or jointly with other eligible institutions) to establish a body, for the purpose of providing such courses.
- (2) In subsection (1) “eligible institution” has the meaning given by section 4(2) of that Act.

#### Marginal Citations

**M51** 1994 c. 30.

#### Provision of benefits and services by local education authority

### 295 Provision of benefits and services for pupils etc. by local education authority. **E+W**

- (1) Where—
- (a) a local education authority are under a duty, or have power, to provide any benefits or services for pupils, and

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- (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools maintained by a local education authority and in relation to pupils at grant-maintained schools,

the authority shall in performing the duty, or exercising the power, treat pupils at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at schools maintained by a local education authority.

(2) Where—

- (a) a local education authority are under a duty, or have power, to provide any benefits or services for persons, other than pupils, receiving education at a school, and

- (b) the duty is to be performed, or the power may be exercised, both in relation to such persons at schools maintained by a local education authority and in relation to such persons at grant-maintained schools,

the authority shall in performing the duty, or in exercising the power, treat such persons at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than such persons at schools maintained by a local education authority.

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

**C38** S. 295 restricted (24.1.1999) by S.I. 1999/101, reg. 24

*Transfer and disposal of premises*

**296 Transfer of premises to trustees. E+W**

- (1) Where grant under section 216(2) or capital grant is paid to the governing body of a grant-maintained school established in pursuance of proposals published under section 212 in respect of the provision of a site for the school or of school buildings, a requirement shall be imposed under section 216 or, as the case may be, Chapter VI for the purpose of securing that the site or buildings in question are held on trust by trustees of the school.

- (2) Where buildings are to be provided for any grant-maintained school which are—

- (a) to form part of the school premises, and  
 (b) to be constructed partly on land held by the governing body and partly on land held on trust for the purposes of the school by persons other than the governing body,

the governing body shall transfer to those persons the land held by the governing body on which the buildings are to be constructed; and section 231(7) does not apply to a transfer required by this subsection.

- (3) In this section “site” does not include playing fields.

**297 Disposal of premises on transfer of school to new site. E+W**

- (1) Where—

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- (a) the funding authority pay capital grant in respect of a transfer of a grant-maintained school to a new site authorised under Chapter VII, and
  - (b) the governing body or any trustees of the school possess, or are or may become entitled to, a sum representing the proceeds of disposal of other premises which have been used for the purposes of the school,

the governing body or (as the case may be) the trustees or their successors shall pay to the Secretary of State the whole of that sum, if it is equal to or less than the amount of the capital grant, and otherwise so much of it as is required to repay that amount.
- (2) Any sum paid under subsection (1) shall, in a case where any interest in the new site has vested in any trustees of the school, be treated for the purposes of section 14 of the <sup>M52</sup>Schools Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.
- (3) Where trustees of a grant-maintained school are required to pay any sum to the Secretary of State under subsection (1) in a case where any interest in the new site is or is to be held by the governing body, then—
  - (a) if the interest or, as the case may be, all the interests held by any persons for the purposes of the school in the previous site were freehold interests held by the trustees, the governing body shall transfer their interest in the new site to the trustees, and
  - (b) if in any other case the trustees held any interest in the previous site, the governing body shall, if directed to do so by the Secretary of State, transfer to the trustees their interest in the whole of the new site or such part of it as may be specified in the direction.
- (4) Where trustees of a grant-maintained school are required to pay any sum to the Secretary of State under subsection (1) in a case in which they may also be required to pay any sum to a local education authority under section 62(2) in respect of the disposal of the same premises, section 62(2) shall have effect as if—
  - (a) in relation to that disposal, the reference to the purchase money paid in respect of the acquisition of the premises were a reference to so much of the amount of that purchase money as remains after deducting the amount of the payment under subsection (1) above, and
  - (b) any premises transferred to the trustees in pursuance of subsection (3) above were premises conveyed by the authority as mentioned in section 62(2).
- (5) In subsection (3)(a) “site” does not include playing fields.

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**Marginal Citations**

**M52** 1841 c. 38.

**298 Disposal of premises transferred under section 201. E+W**

- (1) This section applies where the governing body of a grant-maintained school apply to the Secretary of State for his consent to the disposal of—
  - (a) any premises transferred to the governing body under section 201(1)(a), or
  - (b) any premises acquired wholly or partly with the proceeds of the disposal of any premises so transferred or of any premises so acquired.
- (2) Subject to subsection (3), the Secretary of State may—

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- (a) require the premises or any part of the premises to be transferred to such local authority as the Secretary of State may specify, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate, or
  - (b) where he does not impose a requirement under paragraph (a), require the governing body, when the premises are disposed of, to pay to such local authority as the Secretary of State may specify the whole or any part of the proceeds of disposal.
- (3) Where the occasion of the disposal is a transfer of the school to a new site in respect of which the funding authority have paid capital grant—
- (a) no requirement shall be imposed under subsection (2)(a), and
  - (b) the reference in subsection (2)(b) to the proceeds of disposal shall be read as a reference to such part (if any) of those proceeds as remains after repayment of the amount of that capital grant in accordance with section 297.

### **299 Disposal of premises held by trustees. E+W**

- (1) This section applies where any premises—
- (a) transferred to the governing body of a grant-maintained school under section 201(1)(a), or
  - (b) acquired by such a governing body wholly or partly with the proceeds of the disposal of any premises so transferred or of any premises so acquired,
- have been transferred by them to be held on trust by the trustees of the school.
- (2) If at any time the trustees dispose of the premises the Secretary of State may require them to pay to such local authority as he may specify the whole or any part of the proceeds of the disposal.

### **300 Disposal of premises provided, etc. by the funding authority. E+W**

- (1) Where the governing body of a grant-maintained school apply to the Secretary of State for his consent to the disposal of—
- (a) any premises provided by the funding authority, or
  - (b) any premises acquired wholly or partly with the proceeds of the disposal of any premises so provided or of any premises so acquired,
- the Secretary of State may require the governing body, when the premises are disposed of, to pay to him or to the funding authority the whole or any part of the proceeds of disposal.
- (2) Where—
- (a) any premises falling within subsection (1)(a) or (b) are transferred by the governing body to be held on trust by the trustees of the school, or
  - (b) any premises in respect of which capital grant was paid are transferred by the governing body (otherwise than in pursuance of a requirement imposed in accordance with section 296 or in pursuance of section 297(3)) to be held on trust by the trustees of the school,
- then, if at any time the trustees dispose of the premises, the Secretary of State may require them to pay to him or to the funding authority the whole or any part of the proceeds of the disposal.

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### 301 Interpretation of sections 296 to 300. **E+W**

- (1) For the purposes of sections 297 and 298, the funding authority are to be regarded as paying capital grant in respect of the transfer of a school to a new site if they pay capital grant in respect of the acquisition of the new site or the provision on that site of the school buildings or of any other buildings forming part of the new school premises.
- (2) In sections 296 to 300 “trustees of the school” means any person (other than the governing body) holding property on trust for the purposes of the school.
- (3) For the purposes of sections 297 to 300—
  - (a) a governing body or trustees are to be regarded as disposing of any premises if those premises are acquired from them, whether compulsorily or otherwise, and
  - (b) “proceeds of disposal”, in relation to a disposal of premises by a governing body or trustees, means the compensation or purchase money paid in respect of the acquisition from them of those premises.
- (4) In subsection (3)—
  - (a) references to the acquisition of premises from a governing body or trustees include, in the case of any premises held under a tenancy to which Part II of the <sup>M53</sup>Landlord and Tenant Act 1954 (“the 1954 Act”) applies, the termination of that tenancy under that Part of that Act, and
  - (b) the reference to the purchase money paid in respect of such an acquisition includes any compensation paid by the landlord on the quitting of any such premises by the governing body or trustees (whether or not the compensation is required to be paid by section 37 of that Act (compensation where order for new tenancy precluded on certain grounds)).
- (5) In subsection (4) expressions to which a meaning is given for the purposes of the 1954 Act have the same meaning as in that Act.

#### Marginal Citations

M53 1954 c. 56.

### *Modification of instruments*

### 302 Variation of trust deeds etc. by order. **E+W**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body of the school and the trustees (if any), appear to him to be requisite—
  - (a) in consequence of the approval of proposals for acquisition of grant-maintained status for the school,
  - (b) for removing any inconsistency between the provisions of that trust deed or other instrument and any provisions included or proposed to be included in any instrument or articles of government made for the school under Chapter V, or in any scheme under section 232, which it appears to him to be expedient to remove in the interests of the school, or

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- (c) in consequence of any proposals as to a change in the character or an enlargement of the premises of the school or a transfer of the school to a new site which fall to be implemented under section 263.
- (2) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to an independent school where proposals have been approved for the establishment of a grant-maintained school in its place as, after consultation with the promoters and the trustees (if any), appear to him to be requisite—
- (a) in consequence of the approval of the proposals, or
  - (b) for removing any inconsistency between the provisions of that trust deed or other instrument and any provisions included or proposed to be included in any instrument or articles of government made for the grant-maintained school under Chapter V which it appears to him to be expedient to remove in the interests of the school.
- (3) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.

**303 Modification of instruments relating to land held for purposes of voluntary schools. E+W**

Any provision of an instrument relating to any land held for the purposes of a voluntary school which—

- (a) confers on any person an option to acquire an interest in that land, or
- (b) provides (in whatever terms) for the determination or forfeiture of any such interest,

in the event of the school's ceasing to be a voluntary school or (as the case may be) ceasing to be maintained by a specified local education authority shall, if the school becomes a grant-maintained school, have effect as if the event referred to were the school's ceasing to be a school which is either a grant-maintained school or a voluntary school.

*Religious opinions etc. of staff*

**304 Former county schools and certain schools established as grant-maintained schools. E+W**

- (1) Subject to section 306, subsections (2) to (4) apply in relation to a grant-maintained school if—
- (a) it was a county school immediately before it became grant-maintained,
  - (b) it was established in pursuance of proposals published under section 211, or
  - (c) it was established in pursuance of proposals published under section 212 and neither any trust deed relating to the school nor the statement required by paragraph 8 of Schedule 20 makes provision as to the religious education for pupils at the school.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—
- (a) for being a teacher at the school, or
  - (b) for being employed (otherwise than as a teacher) for the purposes of the school.



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- (3) No teacher at the school shall be required to give religious education.
- (4) No teacher at the school shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
  - (a) by reason of the fact that he does or does not give religious education, or
  - (b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

**305 Former voluntary schools and certain schools established as grant-maintained schools. E+W**

- (1) Subject to section 306, subsections (2) and (3) apply in relation to a grant-maintained school if—
  - (a) it was a voluntary school immediately before it became grant-maintained, or
  - (b) it was established in pursuance of proposals published under section 212 and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 20 makes provision as to the religious education for pupils at the school.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, for being employed (otherwise than as a teacher) for the purposes of the school.
- (3) No teacher at the school shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage—
  - (a) by reason of the fact that he gives religious education, or
  - (b) by reason of his religious opinions or of his attending religious worship.
- (4) Without prejudice to subsections (2) and (3), in the case of a school which was a voluntary school immediately before it became grant-maintained, any of the provisions of section 146 (saving as to position of teachers) which, immediately before the school became grant-maintained, applied in relation to a teacher in the school shall continue to apply in relation to him until he ceases to be employed as a teacher in the school.

**306 Changes in religious character of schools. E+W**

- (1) Where, in the case of a school in relation to which section 304(2) to (4) for the time being applies, proposals that the required provision for religious education should be provision for religious education in accordance with the tenets of a particular religion or religious denomination are approved under section 261—
  - (a) section 305(2) and (3) shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) subject to subsection (2), section 304(2) to (4) shall cease to apply in relation to the school from that time.
- (2) Without prejudice to section 305(2) and (3), section 304(2) to (4) shall continue to apply in relation to any teacher who was employed at the school immediately before the proposals referred to in subsection (1) above fell to be implemented until he ceases to be employed as a teacher at the school.

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- (3) Where, in the case of any grant-maintained school, proposals that the required provision for religious education should be provision for religious education otherwise than in accordance with the tenets of a particular religion or religious denomination are approved under section 261—
- (a) section 304(2) to (4) shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) section 305(2) and (3) shall cease to apply in relation to the school from that time.
- (4) In this section “the required provision for religious education”, in relation to a school, means the provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school’s basic curriculum.

*[<sup>F65</sup>Discipline]*

**Textual Amendments**

**F65** S. 306A (and the heading immediately preceding it) inserted (1.4.1998) by 1997 c. 44, s. 3(1) (with s. 57(3)); S.I. 1998/386, art. 2, Sch. 1 Pt.II

**[306A** <sup>F66</sup>**Responsibility of governing body and head teacher for discipline.** **E+W**

- (1) The governing body of a grant-maintained school shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
- (a) shall make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under subsection (4); and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate;
 and in exercising their functions under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body shall consult (in such manner as appears to them to be appropriate)—
- (a) the head teacher; and
  - (b) parents of registered pupils at the school.
- (4) The head teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—
- (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils;
  - (c) securing that the standard of behaviour of pupils is acceptable; and
  - (d) otherwise regulating the conduct of pupils.

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- (5) The head teacher shall, in determining such measures—
- (a) act in accordance with the current statement made by the governing body under subsection (2)(a); and
  - (b) have regard to any notification or guidance given to him under subsection (2)(b).
- (6) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the head teacher, so far as it is not determined by the governing body.
- (7) The measures determined by the head teacher under subsection (4) shall be publicised by him in the form of a written document as follows—
- (a) he shall make the measures generally known within the school and to parents of registered pupils at the school; and
  - (b) he shall in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons employed at the school.]

#### Textual Amendments

**F66** S. 306A (and the heading immediately preceding it) inserted (1.4.1998) by 1997 c. 44, s. 3(1) (with s. 57(3)); S.I. 1998/386, art. 2, Sch. 1 Pt.II

### *Exclusion of pupils*

#### **307 Restrictions on power to exclude pupils. E+W**

- (1) The head teacher of any grant-maintained school may not—
- (a) so exercise the power to exclude a pupil from the school for one or more fixed periods that the pupil is so excluded for more than [<sup>F67</sup>45 school days in any one school year], or
  - (b) exclude a pupil from the school for an indefinite period;
- but this subsection is without prejudice to the power to exclude a pupil from the school permanently.

[<sup>F68</sup>(2) Subsection (1) has effect despite anything in the articles of government for the school.]

#### Textual Amendments

**F67** Words in s. 307(1)(a) substituted (1.9.1998) by 1997 c. 44, s. 6(2) (with s. 57(3)); S.I. 1998/386, art. 2, Sch. 1 Pt.IV

**F68** S. 307(2) substituted (1.9.1998) by 1997 c. 44, s. 57(1), Sch. 7 para.22; S.I. 1998/386, art. 2, Sch. 1 Pt.IV

#### **[307A <sup>F69</sup>Exclusion appeals. E+W**

- Schedule 25A to this Act has effect in relation to the procedure on any appeal which—
- (a) is made in pursuance of arrangements made by the governing body of a grant-maintained school by virtue of paragraph 6(1) and (2) of Schedule 23 (content of articles of government), and

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- (b) relates to a decision not to reinstate a pupil who has been permanently excluded from the school.]

#### Textual Amendments

**F69** S. 307A inserted (1.9.1998) by 1997 c. 44, s. 8(1) (with s. 57(3)); S.I. 1998/386, art. 2, Sch. 1 Pt.IV

### *Appeal committees*

#### **308 Duties of governing body in relation to appeal committees. E+W**

- (1) This section applies to any governing body of a grant-maintained school who are required by the articles of government for the school to make arrangements for appeals to such an appeal committee as is mentioned in paragraph 6(1) of Schedule 23 (appeals against decisions on admissions or exclusions).
- (2) The Secretary of State may by regulations require any governing body to which this section applies—
  - (a) to advertise, in such manner and at such times as may be prescribed, for persons eligible to be lay members of any appeal committee required to be constituted for the purposes of arrangements made by that body to apply to the body for appointment as such members; and
  - (b) in appointing persons as such members, to consider any persons eligible to be so appointed who have applied to the body in response to an advertisement placed in pursuance of paragraph (a).
- (3) A governing body to which this section applies shall indemnify the members of any appeal committee required to be constituted for the purposes of arrangements made by that body against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that committee.

### *Supplementary*

#### **309 Manner of giving notification to governing body. E+W**

Any notification to the governing body of a school for the purposes of any provision of this Part may be given, and withdrawn, in such manner as the governing body may require.

#### **310 Inspection of accounts and reports to Parliament. E+W**

- (1) The accounts of the governing body of any grant-maintained school shall be open to the inspection of the Comptroller and Auditor General.
- (2) The Comptroller and Auditor General shall, in each session of Parliament, report to the House of Commons—
  - (a) whether he has carried out under section 6 of the <sup>M54</sup>National Audit Act 1983 any examinations in respect of grant-maintained schools, and
  - (b) if he has, the results of such examinations.

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- (3) Each report under subsection (2) shall cover a period beginning at the end of the period covered by the preceding report under that subsection.
- (4) In determining whether to carry out any examination under that section in respect of grant-maintained schools and, if he determines to do so, the nature of the examination, the Comptroller and Auditor General shall have regard to any relevant published report of any study promoted or undertaken by the Audit Commission for Local Authorities and the National Health Service in England and Wales under [<sup>F70</sup>section 36 of the Audit Commission Act 1998].

#### Textual Amendments

**F70** Words in s. 310(4) substituted (11.9.1998) by 1998 c. 18, ss. 54(1), 55(2), **Sch. 3 para. 32(3)**

#### Marginal Citations

**M54** 1983 c. 44.

### Interpretation

#### 311 Interpretation of Part III. **E+W**

- (1) In this Part—

“Church in Wales school” means a school in the Province of Wales in which the religious education provided is provided in accordance with the faith and practice of the Church in Wales and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Finance for the diocese of the Church in Wales in which the school is situated or such other person as the Secretary of State may by order designate in respect of that diocese;

“Church of England school” means a school in the Province of Canterbury or York in which the religious education provided is provided in accordance with the faith and practice of the Church of England and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Education for the diocese of the Church of England in which the school is situated;

“premises” includes any interest in or easement, right or charge in, to or over premises;

“Roman Catholic Church school” means a school in which the religious education provided is provided in accordance with the faith and practice of the Roman Catholic Church and “appropriate diocesan authority”, in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated.

- (2) Before making an order in respect of any diocese in Wales in exercise of the power conferred by the definition of “appropriate diocesan authority” the Secretary of State shall consult the bishop for the diocese.
- (3) The following provisions apply for the purposes of this Part.
- (4) References to the character of a school are to the kind of school it is, determined by any matter relating to—
  - (a) the provision of education at the school, or

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- (b) the arrangements for admission of pupils to the school, the alteration of which would amount to a change in the character of the school.
- (5) The transfer to a reception class of pupils who have been admitted to a school for nursery education shall be treated as admission to the school.
- (6) References, in relation to proposals under this Part, to the date of publication of the proposals are—
  - (a) to the date on which the requirements of this Part, or of regulations made by virtue of this Part, with respect to the publication of the proposals (or of any notice relating to the proposals) are satisfied, or
  - (b) where different requirements are satisfied on different dates, to the last of those dates,
 and references to the time at which such proposals are published shall be construed accordingly.
- (7) In this Part references to “local government electors for the area” are references to such electors for the local education authority area in which the school in question is, or is to be, situated.
- (8) Nothing in this Part, or in any order made under it, relating to the trusts subject to which any land or other property or rights transferred under this Part are to be held by the transferee shall be taken as prejudicing any modification of those trusts after that transfer under any provision of this Part or otherwise.

## PART IV E+W

### SPECIAL EDUCATIONAL NEEDS

## CHAPTER I E+W

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Introductory*

### 312 **Meaning of “special educational needs” and “special educational provision” etc.** E+W

- (1) A child has “special educational needs” for the purposes of this Act if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) Subject to subsection (3) (and except for the purposes of section 15(5)) a child has a “learning difficulty” for the purposes of this Act if—
  - (a) he has a significantly greater difficulty in learning than the majority of children of his age,
  - (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority, or

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- (c) he is under [<sup>F71</sup>compulsory school age] and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when of <sup>F72</sup> . . . that age.
- (3) A child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.
- (4) In this Act “special educational provision” means—
- (a) in relation to a child who has attained the age of two, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority (other than special schools) or grant-maintained schools in their area, and
- (b) in relation to a child under that age, educational provision of any kind.
- (5) In this Part—
- “child” includes any person who has not attained the age of 19 and is a registered pupil at a school;
- “maintained school” means any county or voluntary school or any maintained special school not established in a hospital.

#### Textual Amendments

- F71** Words in s. 312(2)(c) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 23(a)**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**
- F72** Words in s. 312(2)(c) repealed (1.8.1998) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 23(b), **Sch.8**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

### Code of Practice

#### 313 Code of Practice. **E+W**

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice giving practical guidance in respect of the discharge by local education authorities and the governing bodies of maintained or grant-maintained schools, or grant-maintained special schools, of their functions under this Part.
- (2) It shall be the duty of—
- (a) local education authorities, and such governing bodies, exercising functions under this Part, and
- (b) any other person exercising any function for the purpose of the discharge by local education authorities, and such governing bodies, of functions under this Part,
- to have regard to the provisions of the code.
- (3) On any appeal under this Part to the Tribunal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.
- (4) The Secretary of State shall publish the code as for the time being in force.

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(5) In this Part “the Tribunal” means the Special Educational Needs Tribunal.

**314 Making and approval of code. E+W**

- (1) Where the Secretary of State proposes to issue or revise a code of practice, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay it before both Houses of Parliament.
- (4) If the draft is approved by resolution of each House, the Secretary of State shall issue the code in the form of the draft, and the code shall come into effect on such day as the Secretary of State may by order appoint.

*Special educational provision: general*

**315 Review of arrangements. E+W**

- (1) A local education authority shall keep under review the arrangements made by them for special educational provision.
- (2) In doing so the authority shall, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult the funding authority and the governing bodies of county, voluntary, maintained special and grant-maintained schools in their area.

**316 Children with special educational needs normally to be educated in mainstream schools. E+W**

- (1) Any person exercising any functions under this Part in respect of a child with special educational needs who should be educated in a school shall secure that, if the conditions mentioned in subsection (2) are satisfied, the child is educated in a school which is not a special school unless that is incompatible with the wishes of his parent.
- (2) The conditions are that educating the child in a school which is not a special school is compatible with—
  - (a) his receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources.

VALID FROM 15/06/2001

**[<sup>F73</sup>316A Education otherwise than in mainstream schools. E+W**

- (1) Section 316 does not prevent a child from being educated in—
  - (a) an independent school which is not a mainstream school, or



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- (b) a school approved under section 342,  
if the cost is met otherwise than by a local education authority.
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
- (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
    - (iii) his parent, and
    - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;
  - (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;
  - (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
    - (iii) his parent;
  - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
- (a) section 348, or
  - (b) paragraph 3 of Schedule 27.
- (4) If a local education authority decide—
- (a) to make a statement for a child under section 324, but
  - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,
- they shall, in making the statement, comply with section 316(3).
- (5) A local education authority may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.
- (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
- (8) An authority must have regard to guidance about section 316 and this section issued—
- (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.

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- (9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).
- (10) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.
- (11) “Authority”—
- (a) in relation to a maintained school, means each of the following—
    - (i) the local education authority,
    - (ii) the school’s governing body, and]

#### Textual Amendments

**F73** Ss. 316, 316A substituted (15.6.2001 for certain purposes and otherwise 1.1.2002 for E., 21.1.2002 for certain purposes and otherwise 1.4.2002 for W.) for s. 316 by 2001 c. 10, s. 1 (with s. 43(13)); S.I. 2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, arts. 4, 5, Sch. Pts. I, II

### 317 Duties of governing body or LEA in relation to pupils with special educational needs. **E+W**

- (1) The governing body, in the case of a county, voluntary or grant-maintained school, and the local education authority, in the case of a maintained nursery school, shall—
- (a) use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which his learning difficulty calls for is made,
  - (b) secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
  - (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.
- (2) In subsection (1)(b) “the responsible person” means—
- (a) in the case of a county, voluntary or grant-maintained school, the head teacher or the appropriate governor (that is, the chairman of the governing body or, where the governing body have designated another governor for the purposes of this paragraph, that other governor), and
  - (b) in the case of a nursery school, the head teacher.
- (3) To the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs—
- (a) the governing bodies of county, voluntary and grant-maintained schools shall, in exercising functions relating to the provision for such children, consult the local education authority, the funding authority and the governing bodies of other such schools, and
  - (b) in relation to maintained nursery schools, the local education authority shall, in exercising those functions, consult the funding authority and the governing bodies of county, voluntary and grant-maintained schools.

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- (4) Where a child who has special educational needs is being educated in a county, voluntary or grant-maintained school or a maintained nursery school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—
- (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources,
- that the child engages in the activities of the school together with children who do not have special educational needs.
- (5) The annual report for each county, voluntary, maintained special or grant-maintained school shall include a report containing such information as may be prescribed about the implementation of the governing body’s policy for pupils with special educational needs.
- (6) The annual report for each county, voluntary or grant-maintained school shall also include a report containing information as to—
- (a) the arrangements for the admission of disabled pupils;
  - (b) the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and
  - (c) the facilities provided to assist access to the school by disabled pupils;
- and for this purpose “disabled pupils” means pupils who are disabled persons for the purposes of the <sup>M55</sup>Disability Discrimination Act 1995.
- (7) In this section “annual report” means the report prepared under the articles of government for the school in accordance with section 161 or, as the case may be, paragraph 7 of Schedule 23.

**Commencement Information**

**II** S. 317 wholly in force; s. 317(1)-(5)(7) in force at 1.11.1996 see s. 583(3)(5); s. 317(6) in force at 1.1.1997 by S.I. 1996/2904, art. 2

**Marginal Citations**

**M55** 1995 c. 50.

VALID FROM 01/01/2002

**[<sup>F74</sup>317A] Duty to inform parent where special educational provision made** **E+W**

- (1) This section applies if—
- (a) a child for whom no statement is maintained under section 324 is a registered pupil at—
    - (i) a community, foundation or voluntary school, or
    - (ii) a pupil referral unit,
  - (b) special educational provision is made for him at the school because it is considered that he has special educational needs, and

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- (c) his parent has not previously been informed under this section of special educational provision made for him at the school.
- (2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.
- (3) In any other case, the governing body must inform the child's parent that special educational provision is being made for him there because it is considered that he has special educational needs.]

#### Textual Amendments

**F74** S. 317A inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 7(1) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

### 318 **Provision of goods and services in connection with special educational needs.** **E** **+W**

- (1) A local education authority may, for the purpose only of assisting—
- (a) the governing bodies of county, voluntary or grant-maintained schools (in their or any other area) in the performance of the governing bodies' duties under section 317(1)(a), or
  - (b) the governing bodies of maintained or grant-maintained special schools (in their or any other area) in the performance of the governing bodies' duties, supply goods or services to those bodies.
- (2) The terms on which goods or services are supplied by local education authorities under this section—
- (a) to the governing bodies of grant-maintained schools or grant-maintained special schools, or
  - (b) to the governing bodies of county, voluntary or maintained special schools, in any other area may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed.
- [<sup>F75</sup>(3) A local education authority may supply goods and services to any authority or other person (other than a governing body within subsection (1)) for the purpose only of assisting them in making for any child to whom subsection (3A) applies any special educational provision which any learning difficulty of the child calls for.
- (3A) This subsection applies to any child—
- (a) who is receiving relevant nursery education within the meaning of section 123 of the School Standards and Framework Act 1998, or
  - (b) in respect of whose education grants are (or are to be) made under section 1 of the <sup>M56</sup>Nursery Education and Grant-Maintained Schools Act 1996.]
- (4) This section is without prejudice to the generality of any other power of local education authorities to supply goods or services.

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#### Textual Amendments

**F75** S. 318(3)(3A) substituted (1.10.1998) for s. 318(3) by 1998 c. 31, s. 140(1), Sch. 30 para. 75(4) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt.I

#### Marginal Citations

**M56** 1996 c. 50.

### 319 Special educational provision otherwise than in schools. **E+W**

- (1) Where a local education authority are satisfied that it would be inappropriate for—
  - (a) the special educational provision which a learning difficulty of a child in their area calls for, or
  - (b) any part of any such provision,to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.
- (2) Before making an arrangement under this section, a local education authority shall consult the child's parent.

### 320 Provision outside England and Wales for certain children. **E+W**

- (1) A local education authority may make such arrangements as they think fit to enable a child for whom they maintain a statement under section 324 to attend an institution outside England and Wales which specialises in providing for children with special needs.
- (2) In subsection (1) “children with special needs” means children who have particular needs which would be special educational needs if those children were in England and Wales.
- (3) Where a local education authority make arrangements under this section in respect of a child, those arrangements may in particular include contributing to or paying—
  - (a) fees charged by the institution,
  - (b) expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it,
  - (c) his travelling expenses, and
  - (d) expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.
- (4) This section is without prejudice to any other powers of a local education authority.

*Identification and assessment of children with special educational needs*

### 321 General duty of local education authority towards children for whom they are responsible. **E+W**

- (1) A local education authority shall exercise their powers with a view to securing that, of the children for whom they are responsible, they identify those to whom subsection (2) below applies.

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- (2) This subsection applies to a child if—
- (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part a local education authority are responsible for a child if he is in their area and—
- (a) he is a registered pupil at a maintained, grant-maintained or grant-maintained special school,
  - (b) education is provided for him at a school which is not a maintained, grant-maintained or grant-maintained special school but is so provided at the expense of the authority or the funding authority,
  - (c) he does not come within paragraph (a) or (b) above but is a registered pupil at a school and has been brought to the authority’s attention as having (or probably having) special educational needs, or
  - (d) he is not a registered pupil at a school but is not under the age of two or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

**322 Duty of Health Authority or local authority to help local education authority. E**  
+W

- (1) Where it appears to a local education authority that any Health Authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of the authority, specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request unless—
- (a) they consider that the help requested is not necessary for the purpose of the exercise by the local education authority of those functions, or
  - (b) subsection (3) applies.
- (3) This subsection applies—
- (a) in the case of a Health Authority, if that authority consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the <sup>M57</sup>National Health Service Act 1977, it is not reasonable for them to comply with the request, or
  - (b) in the case of a local authority, if that authority consider that the request is not compatible with their own statutory or other duties and obligations or unduly prejudices the discharge of any of their functions.
- (4) Regulations may provide that, where an authority are under a duty by virtue of subsection (2) to comply with a request to help a local education authority in the making of an assessment under section 323 or a statement under section 324 of this Act, they must, subject to prescribed exceptions, comply with the request within the prescribed period.
- (5) In this section “local authority” means a county council, a county borough council, a district council (other than one for an area for which there is a county council), a London borough council or the Common Council of the City of London.

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#### Marginal Citations

M57 1977 c. 49.

### 323 Assessment of educational needs. **E+W**

- (1) Where a local education authority are of the opinion that a child for whom they are responsible falls, or probably falls, within subsection (2), they shall serve a notice on the child's parent informing him—
  - (a) that they propose to make an assessment of the child's educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the authority from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to the authority within such period (which must not be less than 29 days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
  - (a) a local education authority have served a notice under subsection (1) and the period specified in the notice in accordance with subsection (1)(d) has expired, and
  - (b) the authority remain of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (2),they shall make an assessment of his educational needs.
- (4) Where a local education authority decide to make an assessment under this section, they shall give notice in writing to the child's parent of that decision and of their reasons for making it.
- (5) Schedule 26 has effect in relation to the making of assessments under this section.
- (6) Where, at any time after serving a notice under subsection (1), a local education authority decide not to assess the educational needs of the child concerned they shall give notice in writing to the child's parent of their decision.

### 324 Statement of special educational needs. **E+W**

- (1) If, in the light of an assessment under section 323 of any child's educational needs and of any representations made by the child's parent in pursuance of Schedule 27, it is necessary for the local education authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs.
- (2) The statement shall be in such form and contain such information as may be prescribed.

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- (3) In particular, the statement shall—
- (a) give details of the authority’s assessment of the child’s special educational needs, and
  - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by subsection (4).
- (4) The statement shall—
- (a) specify the type of school or other institution which the local education authority consider would be appropriate for the child,
  - (b) if they are not required under Schedule 27 to specify the name of any school in the statement, specify the name of any school or institution (whether in the United Kingdom or elsewhere) which they consider would be appropriate for the child and should be specified in the statement, and
  - (c) specify any provision for the child for which they make arrangements under section 319 and which they consider should be specified in the statement.
- (5) Where a local education authority maintain a statement under this section, then—
- (a) unless the child’s parent has made suitable arrangements, the authority—
    - (i) shall arrange that the special educational provision specified in the statement is made for the child, and
    - (ii) may arrange that any non-educational provision specified in the statement is made for him in such manner as they consider appropriate, and
  - (b) if the name of a maintained, grant-maintained or grant-maintained special school is specified in the statement, the governing body of the school shall admit the child to the school.
- [<sup>F76</sup>(5A) Subsection (5)(b) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998.]
- (6) Subsection (5)(b) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) Schedule 27 has effect in relation to the making and maintenance of statements under this section.

#### Textual Amendments

**F76** S. 324(5A) inserted (1.10.1998) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 77(b)** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

### 325 Appeal against decision not to make statement. **E+W**

- (1) If, after making an assessment under section 323 of the educational needs of any child for whom no statement is maintained under section 324, the local education authority do not propose to make such a statement, they shall give notice in writing of their decision, and of the effect of subsection (2) below, to the child’s parent.
- (2) In such a case, the child’s parent may appeal to the Tribunal against the decision.
- (3) On an appeal under this section, the Tribunal may—
  - (a) dismiss the appeal,



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- (b) order the local education authority to make and maintain such a statement, or
- (c) remit the case to the authority for them to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to determine the special educational provision which any learning difficulty the child may have calls for.

### **326 Appeal against contents of statement. E+W**

- (1) The parent of a child for whom a local education authority maintain a statement under section 324 may—
  - (a) when the statement is first made,
  - (b) where the description in the statement of the authority's assessment of the child's special educational needs, or the special educational provision specified in the statement, is amended, or
  - (c) where, after conducting an assessment of the educational needs of the child under section 323, the local education authority determine not to amend the statement,appeal to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.
- (2) Subsection (1)(b) does not apply where the amendment is made in pursuance of—
  - (a) paragraph 8 (change of named school) or 11(3)(b) (amendment ordered by Tribunal) of Schedule 27, or
  - (b) directions under section 442 (revocation of school attendance order);and subsection (1)(c) does not apply to a determination made following the service of notice under paragraph 10 (amendment by LEA) of Schedule 27 of a proposal to amend the statement.
- (3) On an appeal under this section, the Tribunal may—
  - (a) dismiss the appeal,
  - (b) order the authority to amend the statement, so far as it describes the authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
  - (c) order the authority to cease to maintain the statement.
- (4) On an appeal under this section the Tribunal shall not order the local education authority to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—
  - (a) the parent has expressed a preference for the school in pursuance of arrangements under paragraph 3 (choice of school) of Schedule 27, or
  - (b) in the proceedings the parent, the local education authority, or both have proposed the school.
- (5) Before determining any appeal under this section the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

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VALID FROM 11/05/2001

**[<sup>F77</sup>326A Unopposed appeals E+W]**

- (1) This section applies if—
  - (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
  - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must—
  - (a) in the case of an appeal under section 325, make a statement under section 324 of the child's educational needs,
  - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child's educational needs,
  - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent's request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- (6) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.]

**Textual Amendments**

**F77** S. 326A inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 5, 43(4)(b) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II

**327 Access for local education authority to certain schools. E+W**

- (1) This section applies where—
  - (a) a local education authority maintain a statement for a child under section 324, and
  - (b) in pursuance of the statement education is provided for the child at—
    - (i) a school maintained by another local education authority,
    - (ii) a grant-maintained school, or
    - (iii) a grant-maintained special school.
- (2) Any person authorised by the local education authority shall be entitled to have access at any reasonable time to the premises of any such school for the purpose of monitoring

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the special educational provision made in pursuance of the statement for the child at the school.

### **328**    **Reviews of educational needs.** **E+W**

- (1) Regulations may prescribe the frequency with which assessments under section 323 are to be repeated in respect of children for whom statements are maintained under section 324.
- (2) Where—
  - (a) the parent of a child for whom a statement is maintained under section 324 asks the local education authority to arrange for an assessment to be made in respect of the child under section 323,
  - (b) no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make a further assessment under section 323, the authority shall comply with the request.
- (3) If in any case where subsection (2)(a) and (b) applies the authority determine not to comply with the request—
  - (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- (4) On an appeal under subsection (3) the Tribunal may—
  - (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (5) A statement under section 324 shall be reviewed by the local education authority—
  - (a) on the making of an assessment in respect of the child concerned under section 323, and
  - (b) in any event, within the period of 12 months beginning with the making of the statement or, as the case may be, with the previous review.
- (6) Regulations may make provision—
  - (a) as to the manner in which reviews of such statements are to be conducted,
  - (b) as to the participation in such reviews of such persons as may be prescribed, and
  - (c) in connection with such other matters relating to such reviews as the Secretary of State considers appropriate.

### **329**    **Assessment of educational needs at request of child's parent.** **E+W**

- (1) Where—
  - (a) the parent of a child for whom a local education authority are responsible but for whom no statement is maintained under section 324 asks the authority to arrange for an assessment to be made in respect of the child under section 323,
  - (b) no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make an assessment under that section,

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the authority shall comply with the request.

- (2) If in any case where subsection (1)(a) and (b) applies the authority determine not to comply with the request—
  - (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child’s parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- (3) On an appeal under subsection (2) the Tribunal may—
  - (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.

VALID FROM 15/06/2001

**[<sup>F78</sup>329A Review or assessment of educational needs at request of responsible body E**  
+W

- (1) This section applies if—
  - (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
  - (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
  - (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child’s parent a notice informing him—
  - (a) that they are considering whether to make an assessment of the child’s educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of their officer from whom further information may be obtained, and
  - (d) of the parent’s right to make representations, and submit written evidence, to them before the end of the period specified in the notice (“the specified period”).
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child’s parent and to the

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- responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—
- (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
  - (b) the parent may appeal to the Tribunal against the decision.
- (9) A notice given under subsection (8)(a) to the child’s parent must—
- (a) inform the parent of his right to appeal, and
  - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may—
- (a) dismiss it, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means—
- (a) a maintained school,
  - (b) a maintained nursery school,
  - (c) a pupil referral unit,
  - (d) an independent school,
  - (e) a school approved under section 342.
- (13) “The responsible body” means—
- (a) in relation to a maintained nursery school or a pupil referral unit, the head teacher,
  - (b) in relation to any other relevant school, the proprietor or head teacher, and
  - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.]

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#### Textual Amendments

**F78** S. 329A inserted (15.6.2001 for certain purposes and 1.1.2002 otherwise for E., 21.1.2002 for certain purposes and 1.4.2002 otherwise for W.) by 2001 c. 10, s. 8 (with s. 43(13)); S.I. 2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, arts. 4, 5, Sch. Pts. I, II

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

**C39** S. 329A modified (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(9)(b), 162 (with s. 159)

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**330 Assessment of educational needs at request of governing body of grant-maintained school. E+W**

- (1) Where in the case of a child for whom a local education authority are responsible but for whom no statement is maintained under section 324—
- (a) a grant-maintained school is specified in a direction in respect of the child under section 431 (direction to admit child to specified school),
  - (b) the governing body of the school ask the authority to arrange for an assessment to be made in respect of the child under section 323, and
  - (c) no such assessment has been made within the period of six months ending with the date on which the request is made,
- the local education authority shall serve a notice under subsection (2) on the child's parent.
- (2) The notice shall inform the child's parent—
- (a) that the local education authority propose to make an assessment of the child's educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the authority from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to the authority within such period (which must not be less than 29 days beginning with the date on which the notice is served) as may be specified in the notice.
- (3) Where—
- (a) a local education authority have served a notice under subsection (2) and the period specified in the notice in accordance with subsection (2)(d) has expired, and
  - (b) the authority are of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (4),
- they shall make an assessment of his educational needs under section 323.
- (4) A child falls within this subsection if—
- (a) he has special educational needs, and
  - (b) it is necessary to determine the special educational provision which any learning difficulty he may have calls for.
- (5) Where a local education authority decide in pursuance of this section to make an assessment under section 323, they shall give notice in writing to the child's parent, and to the governing body of the grant-maintained school, of that decision and of their reasons for making it.
- (6) Where, at any time after serving a notice under subsection (2), a local education authority decide not to assess the educational needs of the child concerned, they shall give notice in writing to the child's parent and to the governing body of the grant-maintained school of their decision.

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**331 Assessment of educational needs of children under two. E+W**

- (1) Where a local education authority are of the opinion that a child in their area who is under the age of two falls, or probably falls, within subsection (2)—
  - (a) they may, with the consent of his parent, make an assessment of the child's educational needs, and
  - (b) they shall make such an assessment if requested to do so by his parent.
- (2) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) An assessment under this section shall be made in such manner as the authority consider appropriate.
- (4) After making an assessment under this section, the authority—
  - (a) may make a statement of the child's special educational needs, and
  - (b) may maintain that statement,in such manner as they consider appropriate.

**332 Duty of Health Authority or National Health Service trust to notify parent etc. E+W**

- (1) This section applies where a Health Authority or a National Health Service trust, in the course of exercising any of their functions in relation to a child who is under [<sup>F79</sup>compulsory school age], form the opinion that he has (or probably has) special educational needs.
- (2) The Authority or trust—
  - (a) shall inform the child's parent of their opinion and of their duty under paragraph (b), and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the Authority or trust, shall bring it to the attention of the appropriate local education authority.
- (3) If the Authority or trust are of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, they shall inform the parent accordingly.

**Textual Amendments**

**F79** Words in s. 332(1) substituted (1.8.1998) by 1997 c. 44, s. 57(1), Sch. 7 para.24; S.I. 1998/386, art. 2, Sch. 1 Pt.III

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VALID FROM 01/01/2002

### <sup>F80</sup> General duties of local education authorities

#### Textual Amendments

**F80** S. 332A and preceding cross-heading inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 2 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

#### **332A Advice and information for parents** E+W

- (1) A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs.
- (2) In making the arrangements, the authority must have regard to any guidance given—
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (3) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.

#### <sup>F81</sup> **Resolution of disputes** E+W

**332B**

- (1) A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other) about the exercise by authorities of functions under this Part.
- (2) A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.
- (3) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given—
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (5) The authority must take such steps as they consider appropriate for making the arrangements made under subsections (1) and (2) known to—
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.



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- (6) The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal.
- (7) In this section—
- “authorities” means the governing bodies of maintained schools and the local education authority,
  - “relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.
- (8) For the purposes of this section a school is a relevant school in relation to a child if it is—
- (a) a maintained school or a maintained nursery school,
  - (b) a pupil referral unit,
  - (c) a city technology college, a city college for the technology of the arts or a city academy,
  - (d) an independent school named in the statement maintained for the child under section 324, or
  - (e) a school approved under section 342.]]

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**Textual Amendments**

**F81** S. 332B inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 3 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

*Special Educational Needs Tribunal*

**333 Constitution of Tribunal. E+W**

- (1) There shall continue to be a tribunal known as the Special Educational Needs Tribunal which shall exercise the jurisdiction conferred on it by this Part.
- (2) There shall be appointed—
- (a) a President of the Tribunal (referred to in this Part as “the President”),
  - (b) a panel of persons (referred to in this Part as “the chairmen’s panel”) who may serve as chairman of the Tribunal, and
  - (c) a panel of persons (referred to in this Part as “the lay panel”) who may serve as the other two members of the Tribunal apart from the chairman.
- (3) The President and the members of the chairmen’s panel shall each be appointed by the Lord Chancellor.
- (4) The members of the lay panel shall each be appointed by the Secretary of State.
- (5) Regulations may—
- (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as may be determined from time to time by the President, and
  - (b) make such other provision in connection with the establishment and continuation of the Tribunal as the Secretary of State considers necessary or desirable.

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- (6) The Secretary of State may, with the consent of the Treasury, provide such staff and accommodation as the Tribunal may require.

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

**C40** S. 333(5) and (6) applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

**334 The President and members of the panels. E+W**

- (1) No person may be appointed President or member of the chairmen’s panel unless he has a seven year general qualification (within the meaning of section 71 of the <sup>M58</sup>Courts and Legal Services Act 1990).
- (2) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed.
- (3) If, in the opinion of the Lord Chancellor, the President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.
- (4) Each member of the chairmen’s panel or lay panel shall hold and vacate office under the terms of the instrument under which he is appointed.
- (5) The President or a member of the chairmen’s panel or lay panel—
- (a) may resign office by notice in writing to the Lord Chancellor or (as the case may be) the Secretary of State, and
  - (b) is eligible for re-appointment if he ceases to hold office.

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

**C41** S. 334(2) applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

**Marginal Citations**

**M58** 1990 c. 41.

**335 Remuneration and expenses. E+W**

- (1) The Secretary of State may pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and allowances as the Secretary of State may, with the consent of the Treasury, determine.
- (2) The Secretary of State may defray the expenses of the Tribunal to such amount as he may, with the consent of the Treasury, determine.

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

**C42** S. 335 applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

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### 336 Tribunal procedure. **E+W**

- (1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part and the initiation of such an appeal.
- (2) The regulations may, in particular, include provision—
  - (a) as to the period within which, and the manner in which, appeals are to be instituted,
  - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any appeal is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another,
  - (c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,
  - (d) for the holding of hearings in private in prescribed circumstances,
  - (e) for hearings to be conducted in the absence of any member other than the chairman,
  - (f) as to the persons who may appear on behalf of the parties,
  - (g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
  - (h) requiring persons to attend to give evidence and produce documents,
  - (i) for authorising the administration of oaths to witnesses,
  - (j) for the determination of appeals without a hearing in prescribed circumstances,
  - (k) as to the withdrawal of appeals,
  - (l) for the award of costs or expenses,
  - (m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),
  - (n) for the registration and proof of decisions and orders, and
  - (o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.
- (3) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may, with the consent of the Treasury, determine.
- (4) Part I of the <sup>M59</sup>Arbitration Act 1996 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Act.
- (5) Any person who without reasonable excuse fails to comply with—
  - (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of subsection (2)(g), or
  - (b) any requirement imposed by the regulations by virtue of subsection (2)(h),is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**C43** S. 336 applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

**Marginal Citations**

**M59** 1996 c. 23.

VALID FROM 31/03/2003

**[<sup>F82</sup>336ZA Special Educational Needs Tribunal for Wales E+W**

- (1) There shall be a tribunal to be known as Tribiwnlys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales.
- (2) Sections 333 to 336 shall apply in relation to that tribunal as they apply in relation to the Special Educational Needs and Disability Tribunal, but as if—
  - (a) functions of the Secretary of State were functions of the National Assembly for Wales,
  - (b) references to the Secretary of State were references to the National Assembly for Wales,
  - (c) requirements for the Treasury's consent were omitted.
- (3) The powers of the National Assembly for Wales under sections 333(4) and (5) and 334(2) are exercisable only with the agreement of the Secretary of State.]

**Textual Amendments**

**F82** S. 336ZA inserted (31.3.2003) by Education Act 2002 (c. 32), ss. 195, 216(3), Sch. 18 para. 5 (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 5, Sch. Pt. II

VALID FROM 11/05/2001

**[<sup>F83</sup>336A Compliance with orders E+W**

- (1) If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.
- (2) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.]

**Textual Amendments**

**F83** S. 336A inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 4, 43(4)(a) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II

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## CHAPTER II **E+W**

### SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

#### *Special schools*

#### **337 Special schools. **E+W****

- (1) A school which is specially organised to make special educational provision for pupils with special educational needs and is for the time being approved by the Secretary of State under section 342 shall be known as a special school.
- (2) There are three categories of special school—
  - (a) maintained special schools;
  - (b) grant-maintained special schools; and
  - (c) special schools which are neither maintained nor grant-maintained schools.
- (3) A special school is a maintained special school if it is maintained by a local education authority.
- (4) A special school is a grant-maintained special school if it is conducted by a governing body incorporated in pursuance of proposals for the purpose—
  - (a) made by the funding authority under section 339 of this Act (or section 183 of the <sup>M60</sup>Education Act 1993), or
  - (b) made under section 345 of this Act (or section 186 of that Act).

#### **Marginal Citations**

**M60** 1993 c. 35.

#### *Establishment etc. of special schools*

#### **338 Power of funding authority to establish grant-maintained special school. **E+W****

- (1) The funding authority may establish in the area of any local education authority a school which is specially organised to make special educational provision for pupils with special educational needs if—
  - (a) an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area, and
  - (b) the school is intended to provide relevant education for pupils in the area, whether or not it also provides other education or education for pupils from outside the area.
- (2) Subsection (1) has effect subject to section 339(4).

#### **339 Establishment, etc. of maintained or grant-maintained special schools. **E+W****

- (1) Where a local education authority intend—
  - (a) to establish a school which is specially organised to make special educational provision for pupils with special educational needs, or

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- (b) to make any prescribed alteration to a maintained special school, or
  - (c) to discontinue such a school,

they shall serve under subsection (5) notice of their proposals.
- (2) Where the funding authority—
  - (a) intend to establish a school which is specially organised to make special educational provision for pupils with special educational needs, or
  - (b) are of the opinion that any prescribed alteration should be made to a grant-maintained special school, or
  - (c) are of the opinion that such a school should be discontinued,

and an order under section 27(1) applies to the area concerned, they shall serve under subsection (5) notice of their proposals.
- (3) Where the governing body of a grant-maintained special school intend—
  - (a) to make any prescribed alteration to the school, or
  - (b) to discontinue the school,

they shall serve under subsection (5) notice of their proposals.
- (4) Except in pursuance of proposals under this section approved under section 340—
  - (a) a local education authority or the funding authority may not establish a school which is specially organised to make special educational provision for pupils with special educational needs,
  - (b) no prescribed alteration may be made to a maintained or grant-maintained special school, and
  - (c) a maintained or grant-maintained special school may not be discontinued.
- (5) Notice for the purposes of subsections (1) to (3) above shall be served on—
  - (a) the Secretary of State, and
  - (b) such other persons as may be prescribed,

and shall give such information as may be prescribed.
- (6) If the proposals are approved under section 340—
  - (a) the body which served the notice, or
  - (b) in the case of proposals under subsection (2)(b) or (c) above, the governing body of the school,

shall implement them.
- (7) If proposals under subsection (2)(a) above are so approved, a governing body of the school shall be incorporated on such date as may be specified in the proposals (referred to in this Part as the “incorporation date”).
- (8) In relation to the establishment of a school in pursuance of proposals under subsection (2)(a) above, regulations may apply any provision of Chapter IV or V of Part III of this Act with or without modification.
- (9) In this Part—
  - (a) references to the discontinuance of a maintained special school are to the local education authority ceasing to maintain it, and
  - (b) references to an alteration to a school include the transfer of the school to a new site.

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### **340 Procedure for dealing with proposals. E+W**

- (1) Before a body serve notice of any proposals under section 339 they shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the body shall have regard to any guidance given from time to time by the Secretary of State.
- (2) Within such period as may be specified in the notice under that section (which must not be less than two months beginning with the date on which the notice is served), any person may submit objections to the proposals to the body which served the notice.
- (3) Within one month after the end of the period for making objections specified in the last notice to be served under that section, the body which served the notice shall transmit to the Secretary of State copies of all objections which have been duly made (and not withdrawn in writing), together with their observations on them.
- (4) The Secretary of State may, after considering the proposals, any objections to the proposals and any observations on the objections—
  - (a) reject the proposals,
  - (b) approve them without modification, or
  - (c) after consulting the body which served notice of them (and, in the case of proposals under section 339(2)(b) or (c), the governing body) approve them with such modifications as he thinks desirable.
- (5) The Secretary of State may modify any proposals required under section 339 to be implemented—
  - (a) in the case of proposals under section 339(2)(b) or (c)—
    - (i) at the request of the governing body, or
    - (ii) at the request of the funding authority and after consulting the governing body, or
  - (b) in any other case, at the request of the body which served notice of the proposals.
- (6) References in this Part to proposals under section 339, in any case where the Secretary of State has modified such proposals in pursuance of this section, are to the proposals as so modified.
- (7) Service of a notice under that section which is sent by post in accordance with section 572 (service of notices) shall be taken to have been effected on the second day after the day on which the notice is posted.

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

**C44** S. 340 modified (1.4.1999) by S.I. 1999/704, reg. 7(2)

### **341 Approval of premises of maintained or grant-maintained special schools. E+W**

- (1) Where a body serve under section 339(5) notice of proposals for the establishment of a school which is specially organised to make special educational provision for pupils with special educational needs, they shall submit to the Secretary of State the particulars in respect of the proposed premises of the school mentioned in subsection (3).

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- (2) Where a body serve under section 339(5) notice of proposals for making a prescribed alteration to a special school, they shall, if the Secretary of State so directs, submit to him the particulars in respect of the premises or proposed premises of the school mentioned in subsection (3).
- (3) The particulars are—
  - (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
  - (b) such other particulars in respect of the premises or proposed premises of the school as the Secretary of State may require,
 and they shall be submitted at such time and in such form and manner as the Secretary of State may direct.
- (4) The particulars submitted under subsection (3)(a) shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
  - (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) (if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the <sup>M61</sup>Town and Country Planning Act 1990) that document.
- (5) Particulars submitted under this section in respect of the premises or proposed premises of the school require the approval of the Secretary of State.
- (6) Where any proposals falling within subsection (1) or (2) are required to be implemented, they shall be implemented in accordance with any particulars approved under this section.

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

**C45** S. 341 applied (with modifications) and continued by S.I. 1999/704, regs. 8(2)(c), 14(g),

**Marginal Citations**

**M61** 1990 c. 8.

**<sup>X1</sup>342 Approval of special schools. E+W**

- (1) The Secretary of State may approve under this section any school which is specially organised to make special educational provision for pupils with special educational needs (and which is not a maintained or grant-maintained school), and may give his approval before or after the school is established.
- (2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.
- (3) Any school which—
  - (a) is established in pursuance of proposals approved under section 340 (or section 184 of the <sup>M62</sup>Education Act 1993), or
  - (b) was a special school immediately before 1st April 1994 (the date when section 184 of that Act came into force),
 shall be treated, subject to subsection (4) below, as approved under this section.



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- (4) Regulations may make provision as to—
- (a) the requirements which are to be complied with by a school while approved under this section, and
  - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3)) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4), the requirements which may be imposed by the regulations include requirements—
- (a) which call for arrangements to be approved by the Secretary of State, or
  - (b) as to the organisation of any special school as a primary school or as a secondary school.
- (6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a special school—
- (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.
- (7) Where approval is withdrawn from a maintained special school or grant-maintained special school, the local education authority or, as the case may be, the governing body shall serve under section 339 notice of their proposals to discontinue the school.
- (8) For the purposes of proposals made under subsection (7)—
- (a) section 339 shall have effect as if the school had not ceased to be a special school on the withdrawal of the approval, and
  - (b) section 340 shall have effect as if subsections (1) to (3), and the reference in subsection (4) to the rejection of proposals, were omitted.

#### Editorial Information

**X1** **S. 342:** With effect from 1.9.1999 s. 342 became subsumed by new cross-heading "Approval of non-maintained special schools". Versions of this provision as it stood at any time on or after that date cannot be accessed directly by navigation from this version. To view those versions, it is recommended that users either conduct a search on the current date or navigate via the Chapter II heading.

#### Marginal Citations

**M62** 1993 c. 35.

### <sup>x2</sup>343 Nursery education in grant-maintained special schools. **E+W**

- (1) No notice of proposals for a school to become a nursery school may be given under section 339(2) or (3).
- (2) Subject to subsection (1) above, proposals under section 339(2) or (3) may, in particular, be made for the purpose of securing the provision of education for junior pupils who have not attained [<sup>f84</sup>compulsory school age].

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#### Editorial Information

- X2** **S. 343:** With effect from 1.9.1999 s. 343 became subsumed by new cross-heading "Approval of non-maintained special schools". Versions of this provision as it stood at any time on or after that date cannot be accessed directly by navigation from this version. To view those versions, it is recommended that users either conduct a search on the current date or navigate via the Chapter II heading.

#### Textual Amendments

- F84** Words in s. 343(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.25**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

### *Government etc. of special schools*

#### **344 Government etc. of special schools. E+W**

- (1) Chapters IV and VI of Part II have effect in relation to the government and conduct of maintained special schools and other matters relating to such schools; and section 120 provides for schemes under Chapter V of that Part (financial delegation) to apply to such schools.
- (2) Schedule 28 has effect in relation to the government and conduct of grant-maintained special schools and other matters relating to such schools.

### *Maintained special school becoming grant-maintained*

#### **345 Maintained special school becoming grant-maintained special school. E+W**

- (1) Regulations may make provision for maintained special schools, or any class or description of such schools, to cease to be maintained by the local education authority and become grant-maintained special schools.
- (2) Regulations shall require, before a maintained special school becomes a grant-maintained special school in pursuance of the regulations—
  - (a) the submission to the Secretary of State of proposals for the purpose by the governing body of the school, and
  - (b) the approval of such proposals, as originally submitted or as modified by the Secretary of State (whether before or after they are approved).
- (3) If the proposals are so approved, a governing body of the school shall be incorporated in accordance with Schedule 28 on the date of approval (referred to in this Part as the “incorporation date”).
- (4) Regulations made for the purposes of this section may apply any provision of—
  - (a) Chapter II (apart from section 198) or Chapter III or V of Part III,
  - (b) section 340, or
  - (c) section 35(7) or (8), section 37(1), (4), (7), (8) or (9), section 167(3) or (6) or section 169(1), (4) or (6),
 with or without modification.

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

- C46 S. 345 restricted (1.11.1996) by 1996 c. 57, ss. 30(2), 48(2)
- C47 S. 345 applied (with modifications) (1.11.1996) by 1996 c. 57, ss. 41(5)(a), 48(2)

*Grouping of grant-maintained special schools*

<sup>F85</sup> 346 ..... **E+W**

**Textual Amendments**

- F85 S. 346 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 83, Sch.31 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt.I

*Independent schools providing special education*

**347 Approval of independent schools. **E+W****

- (1) The Secretary of State may approve an independent school as suitable for the admission of children for whom statements are maintained under section 324.
- (2) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school as a condition of its approval under this section,
  - (b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and
  - (c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as the Secretary of State sees fit to impose.
- (4) In any case where there is a failure to comply with such a condition imposed under subsection (3), the Secretary of State may withdraw his approval.
- (5) No person shall so exercise his functions under this Part that a child with special educational needs is educated in an independent school unless—
  - (a) the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements are maintained under section 324, or
  - (b) the Secretary of State consents to the child being educated there.

**348 Provision of special education at non-maintained schools. **E+W****

- (1) This section applies where—
  - (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school, and

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- (b) either the name of the school is specified in a statement in respect of the child under section 324 or the local education authority are satisfied—
  - (i) that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school, and
  - (ii) that it is appropriate for the child to be provided with education at the particular school.
- (2) Where this section applies, the local education authority shall pay the whole of the fees payable in respect of the education provided for the child at the school, and if—
  - (a) board and lodging are provided for him at the school, and
  - (b) the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided,
 the authority shall pay the whole of the fees payable in respect of the board and lodging.
- (3) In this section “maintained school” means—
  - (a) a school maintained by a local education authority,
  - (b) a grant-maintained school, and
  - (c) a grant-maintained special school.

#### *Variation of deeds*

### **349 Variation of trust deeds etc. by order. E+W**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 342 or 347.
- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.

## **PART V E+W**

### THE CURRICULUM

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

**C48** Pt. V (ss. 350-410) modified (1.9.1999) by S.I. 1999/2262, reg. 57

## **CHAPTER I E+W**

### PRELIMINARY

### **350 Meaning of “maintained school” etc. in Part V. E+W**

- (1) In this Part “maintained school” means—
  - (a) any county or voluntary school,

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- (b) except where otherwise stated, any maintained special school which is not established in a hospital, and
  - (c) except so far as that expression has effect in relation to a local education authority, any grant-maintained school.
- (2) In this Part “assess” includes examine and test, and related expressions shall be construed accordingly.

**351 General duties in respect of the curriculum. E+W**

- (1) The curriculum for a school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and
  - (b) prepares pupils at the school for the opportunities, responsibilities and experiences of adult life.
- (2) The Secretary of State shall exercise his functions with a view to securing that the curriculum for every maintained school satisfies the requirements of this section.
- (3) Every local education authority shall exercise their functions with a view to securing that the curriculum for every maintained school which they maintain satisfies the requirements of this section.
- (4) The governing body and head teacher of every maintained school shall exercise their functions with a view to securing that the curriculum for the school satisfies the requirements of this section.
- (5) The functions referred to in subsections (2) to (4) include in particular functions conferred by this Part in relation to religious education, religious worship and the National Curriculum.

**352 Basic curriculum for every maintained school. E+W**

- (1) The curriculum for every maintained school shall comprise a basic curriculum which includes—
- (a) provision for religious education for all registered pupils at the school (in accordance with such of the provisions of sections 376 to 381 as apply in relation to the school),
  - (b) a curriculum for all registered pupils at the school of compulsory school age (known as “the National Curriculum”) which meets the requirements of section 353,
  - (c) in the case of a secondary school, provision for sex education for all registered pupils at the school, and
  - (d) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education.
- (2) Subsection (1)(a) does not apply in the case of a maintained special school (provision as to religious education in special schools being made by regulations under section 342(6)).
- (3) In this Act “sex education” includes education about—

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- (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus, and
- (b) any other sexually transmitted disease.

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

- C49** S. 352(1)(a) explained (1.10.1998) by 1998 c. 31, s. 69(2) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**
- C50** S. 352(1)(a) modified (*prosp.*) by 1998 c. 31, ss. 69, 145(3), Sch. 19 paras. 2(2)(4), 3(2)(4), 4(2) (with ss. 138(9), 144(6))
- S. 352(1)(a) modified (1.10.1998 for certain purposes and otherwise *prosp.*) by 1998 c. 31, ss. 69, 145(3), Sch. 19 paras. 2(4), 3(4) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

## CHAPTER II **E+W**

### SECULAR EDUCATION

#### *The National Curriculum: general*

#### **353 The National Curriculum. **E+W****

The National Curriculum shall comprise the core and other foundation subjects and specify in relation to each of them—

- (a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (referred to in this Part as “attainment targets”),
- (b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during each key stage (referred to in this Part as “programmes of study”), and
- (c) the arrangements for assessing pupils in respect of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage (referred to in this Part as “assessment arrangements”).

#### **354 The core subjects and other foundation subjects. **E+W****

- (1) The core subjects are—
  - (a) mathematics, English and science, and
  - (b) in relation to schools in Wales which are Welsh-speaking schools, Welsh.
- (2) The other foundation subjects are—
  - (a) technology and physical education,
  - (b) in relation to the first, second and third key stages, history, geography, art and music,
  - (c) in relation to the third and fourth key stages, a modern foreign language specified in an order of the Secretary of State, and
  - (d) in relation to schools in Wales which are not Welsh-speaking schools, Welsh.
- (3) In relation to schools in England—

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- (a) a modern foreign language is not a foundation subject in relation to the fourth key stage until the relevant date; and
  - (b) technology is a foundation subject in relation to pupils who entered the first year of the fourth key stage in 1993 but otherwise is not a foundation subject in relation to that key stage until the relevant date.
- (4) In subsection (3) “the relevant date” means—
- (a) 1st August 1996, in the case of pupils entering the first year of the fourth key stage in 1996; and
  - (b) 1st August 1997, in the case of all other pupils.
- (5) In relation to schools in Wales—
- (a) a modern foreign language is not a foundation subject in relation to the fourth key stage; and
  - (b) technology is a foundation subject in relation to pupils who entered the first year of the fourth key stage in 1993 but otherwise is not a foundation subject in relation to that key stage.
- (6) The Secretary of State may by order amend subsections (1) to (5).
- (7) In this section “school” includes part of a school.
- (8) For the purposes of this section a school is Welsh-speaking if more than one half of the following subjects are taught (wholly or partly) in Welsh—
- (a) religious education, and
  - (b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school.

### 355 The key stages. **E+W**

- (1) The key stages in relation to a pupil are—
- (a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven (“the first key stage”),
  - (b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of 11 (“the second key stage”),
  - (c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 12 and ending at the same time as the school year in which the majority of pupils in his class attain the age of 14 (“the third key stage”), and
  - (d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 15 and ending with the expiry of the school year in which the majority of pupils in his class cease to be of compulsory school age (“the fourth key stage”).
- (2) The Secretary of State may by order—
- (a) amend subsection (1), or
  - (b) provide that, in relation to any subject specified in the order, subsection (1) shall have effect as if for the ages of seven and eight there mentioned there

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were substituted such other ages (less than 11 and 12 respectively) as may be specified in the order.

- (3) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (1) shall have effect as if any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age.
- (4) If at any time, in the case of a pupil of compulsory school age, subsection (1) does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—
  - (a) in the case of paragraphs (a) to (c), any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age, and
  - (b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attains the age of 15 and ending when he ceases to be of compulsory school age.
- (5) In this section—
 

“class”, in relation to a particular pupil and a particular subject, means—

  - (a) the teaching group in which he is regularly taught that subject, or
  - (b) where there are two or more such groups, such one of them as may be designated by the head teacher of the school; <sup>F86</sup> . . .

F86 . . .

#### Textual Amendments

**F86** S. 355(5); definition of "school year" and the word immediately preceding it repealed (14.6.1997) by 1997 c. 44, s. 57(4), **Sch.8**; S.I. 1997/1468, art. 2, **Sch. 1 Pt.I**

### 356 Establishment of the National Curriculum by order. **E+W**

- (1) The Secretary of State shall so exercise the powers conferred by subsection (2) as to—
  - (a) establish a complete National Curriculum as soon as is reasonably practicable (taking first the core subjects and then the other foundation subjects), and
  - (b) revise the National Curriculum whenever he considers it necessary or expedient to do so.
- (2) The Secretary of State may by order specify in relation to each of the foundation subjects—
  - (a) such attainment targets,
  - (b) such programmes of study, and
  - (c) such assessment arrangements,
 as he considers appropriate for that subject.
- (3) An order made under subsection (2) may not require—
  - (a) the allocation of any particular period or periods of time during any key stage to the teaching of any programme of study or any matter, skill or process forming part of it, or
  - (b) the making in school timetables of provision of any particular kind for the periods to be allocated to such teaching during any such stage.



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- (4) An order under subsection (2) may, instead of containing the provisions to be made, refer to provisions in a document published [<sup>F87</sup>as specified in the order] and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order.
- (5) An order under subsection (2)(c)—
- (a) may confer or impose such functions on—
    - (i) the governing body and the head teacher, and
    - (ii) (except in the case of grant-maintained schools) on the local education authority,as appear to the Secretary of State to be required, and
  - (b) may specify any such assessment arrangements as may for the time being be made by a person specified in the order.
- (6) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.
- (7) The duties that may be imposed by virtue of subsection (5)(a) include, in relation to persons exercising any power in pursuance of provision made by virtue of subsection (6), the duty to permit them—
- (a) to enter the premises of the school,
  - (b) to observe the implementation of the arrangements, and
  - (c) to inspect, and take copies of, documents and other articles.
- (8) An order under subsection (2)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (5)(a)) as appear to the Secretary of State to be expedient; and any provisions made under such an order shall, on being published [<sup>F87</sup>as specified in the order], have effect for the purposes of this Part as if made by the order.
- (9) The Secretary of State shall, in exercising his power under subsection (2), ensure that the subject of science does not include—
- (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus,
  - (b) any other sexually transmitted disease, or
  - (c) aspects of human sexual behaviour, other than biological aspects.

#### Textual Amendments

**F87** Words in s. 356(4)(8) substituted (1.10.1998) by 1998 c. 31, s. 140(1), **Sch. 30 para. 87(a)** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**

### 357 Implementation of the National Curriculum in schools. **E+W**

- (1) In relation to any maintained school and any school year—
- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and

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(b) the head teacher shall secure,  
that the National Curriculum as subsisting at the beginning of that year is implemented.

F88(2) .....

**Textual Amendments**  
F88 S. 357(2) repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 88, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

*The School Curriculum and Assessment Authority*

F89 358 ..... **E+W**

**Textual Amendments**  
F89 S. 358 repealed (1.3.1998) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 26, **Sch. 8**; S.I. 1998/386, art. 2(1), **Sch. 1 Pt. I**

F90 359 ..... **E+W**

**Textual Amendments**  
F90 S. 359 repealed (1.3.1998) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 26, **Sch. 8**; S.I. 1998/386, art. 2(1), **Sch. 1 Pt. I**

*The Curriculum and Assessment Authority for Wales*

F91 360 ..... **E+W**

**Textual Amendments**  
F91 S. 360 repealed (1.10.1997) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 26, **Sch. 8**; S.I. 1997/1468, art. 2, **Sch. 1 Pt. I**

F92 361 ..... **E+W**

**Textual Amendments**  
F92 S. 361 repealed (1.10.1997) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 26, **Sch. 8**; S.I. 1997/1468, art. 2, **Sch. 1 Pt. I**

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### *The National Curriculum: special cases*

#### **362 Development work and experiments. E+W**

- (1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct in respect of a particular maintained school that, for such period as may be specified in the direction, the National Curriculum—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) A direction under subsection (1) may apply either generally or in such cases as may be specified in the direction.
- (3) In the case of a county, controlled or maintained special school, a direction shall not be given under subsection (1) except on an application—
  - (a) by the governing body with the agreement of the local education authority,
  - (b) by the local education authority with the agreement of the governing body, or
  - (c) by the appropriate curriculum authority with the agreement of both the local education authority and the governing body.
- (4) In the case of a grant-maintained, aided or special agreement school, a direction shall not be given under subsection (1) except on an application by the governing body or by the appropriate curriculum authority with the agreement of the governing body.
- (5) The Secretary of State may make it a condition of a direction under subsection (1) that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.
- (6) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1).
- (7) In this section “the appropriate curriculum authority” means—
  - (a) in relation to England, [<sup>F93</sup>the Qualifications and Curriculum Authority], and
  - (b) in relation to Wales, [<sup>F93</sup>the Qualifications, Curriculum and Assessment Authority for Wales].

#### **Textual Amendments**

**F93** Words in s. 362(7)(a)(b) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 27(a)(b)**; S.I. 1997/1468, art. 2, **Sch. 1 Pt.III** (subject to savings in art. 4, Sch. 2 Pt. 1 para. 6)

#### **363 Exceptions by regulations. E+W**

- Regulations may provide that the National Curriculum, or such of the provisions of the National Curriculum as may be specified in the regulations—
- (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the regulations, in such cases or circumstances as may be specified in the regulations.

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**364 Pupils with statements of special educational needs. E+W**

The special educational provision for any pupil specified in a statement under section 324 of his special educational needs may include provision—

- (a) excluding the application of the National Curriculum, or
- (b) applying the National Curriculum with such modifications as may be specified in the statement.

**365 Temporary exceptions for individual pupils. E+W**

- (1) Regulations may enable the head teacher of a maintained school, in such cases or circumstances and subject to such conditions as may be prescribed, to direct in respect of a registered pupil at the school that, for such period as may be specified in the direction (the “operative period” of the direction), the National Curriculum—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) The conditions prescribed by the regulations shall, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations.
- (3) Any maximum period specified (whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations) shall be either—
  - (a) a fixed period not exceeding six months, or
  - (b) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning.
- (4) Any maximum period so specified may, without prejudice to the generality of section 569(4) (which provides that regulations under this Act may make different provision for different cases or circumstances etc.), differ according to whether or not the direction in question is given in respect of a period beginning—
  - (a) immediately after the end of the operative period of a previous direction, or
  - (b) within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (5) The regulations may enable the head teacher of a maintained school, in such cases or circumstances and subject to such conditions as may be prescribed—
  - (a) to revoke any direction given by him under the regulations, and
  - (b) to vary such a direction, except so as to extend its operative period.
- (6) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

**366 Information concerning directions under section 365. E+W**

- (1) Where a head teacher gives or varies a direction under regulations made under section 365, he shall, in such manner as may be prescribed, give the information mentioned in subsection (2)—
  - (a) to the governing body, and
  - (b) where the school is a county, voluntary or maintained special school, to the local education authority by whom the school is maintained,

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and shall take such steps as may be prescribed to give that information also to a parent of the pupil concerned.

- (2) That information is—
- (a) the fact that he has taken the action in question, its effect and his reasons for taking it;
  - (b) the provision that is being or is to be made for the pupil's education during the operative period of the direction; and
  - (c) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum in relation to the pupil after the end of that period, or an indication that he has the opinion mentioned in subsection (3).
- (3) That opinion is that the pupil has or probably has special educational needs by virtue of which the responsible authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs which the authority are for the time being required under section 324 to maintain).
- (4) Where—
- (a) the head teacher of a county, voluntary or maintained special school includes an indication of any such opinion in information given under subsection (1), and
  - (b) the local education authority by whom the school is maintained are not the responsible authority in relation to pupil in question,
- the head teacher shall also give that information, in such manner as may be prescribed, to the responsible authority.
- (5) Where the head teacher of a grant-maintained school includes an indication of any such opinion in information given to the governing body under subsection (1), he shall also give that information, in such manner as may be prescribed, to the responsible authority.
- (6) Where the responsible authority receive information given to them under subsection (1), (4) or (5) which includes an indication that the head teacher has the opinion mentioned in subsection (3), they shall consider whether any action on their part is required in the case of the pupil concerned under section 323 (assessment of special educational needs).
- (7) In this section “the responsible authority”, in relation to a pupil, means the local education authority responsible for him for the purposes of Part IV.

### 367 Appeals against directions under section 365 etc. **E+W**

- (1) Where a head teacher—
- (a) gives, revokes or varies a direction under regulations made under section 365,
  - (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school, or
  - (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request,
- the parent of the pupil concerned may appeal to the governing body.

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- (2) On such an appeal, the governing body may—
  - (a) confirm the head teacher’s action, or
  - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances.
- (3) The head teacher shall comply with any directions of the governing body given under subsection (2)(b).
- (4) The governing body shall notify the appellant and the head teacher in writing of their decision on such an appeal.

*The National Curriculum: supplementary provisions*

**368 Procedure for making certain orders and regulations. E+W**

- (1) Subject to subsection (9), this section applies where the Secretary of State proposes to make—
  - (a) an order under section 354(6), 355(2) or 356(2)(a) or (b), or
  - (b) regulations under section 363.
- (2) The Secretary of State shall refer the proposal to the appropriate curriculum authority and shall give them directions as to the time within which they are to report to him.
- (3) The authority shall give notice of the proposal—
  - (a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to the authority to be concerned, and
  - (b) to any other persons with whom consultation appears to the authority to be desirable,
 and shall give them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (4) The report of the authority to the Secretary of State shall contain—
  - (a) a summary of the views expressed during the consultations,
  - (b) the authority’s recommendations as to the proposal, and
  - (c) such other advice relating to the proposal as the authority think fit.
- (5) The authority shall, after submitting their report to the Secretary of State, arrange for the report to be published.
- (6) Where the authority have reported to the Secretary of State, he shall publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
  - (a) a draft of the proposed order or regulations and any associated document, and
  - (b) a statement explaining his reasons for any failure to give effect to the recommendations of the authority,
 and shall send copies of the documents mentioned in paragraphs (a) and (b) to the authority and to each of the persons consulted by the authority.
- (7) The Secretary of State shall allow a period of not less than one month for the submission of evidence and representations as to the issues arising.

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- (8) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.
- (9) This section does not apply where—
- (a) the Secretary of State proposes to make such an order as is, or such regulations as are, referred to in subsection (1), and
  - (b) arrangements for consultation about the proposed order or regulations were made before 1st September 1996 under section 242 of the <sup>M63</sup>Education Act 1993,
- (and accordingly, the arrangements for consultation applicable in the case of the proposed order or regulations shall be those mentioned in paragraph (b) above).
- (10) In subsection (2) “the appropriate curriculum authority” means—
- (a) in relation to an order or regulations relating to maintained schools in England or pupils at such schools, [<sup>F94</sup>the Qualifications and Curriculum Authority], and
  - (b) in relation to an order or regulations relating to maintained schools in Wales or pupils at such schools, [the Qualifications, Curriculum and Assessment Authority for Wales].

**Textual Amendments**

**F94** Words in s. 368(10)(a)(b) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 28(a)(b)**; S.I. 1997/1468, art. 2, **Sch. 1 Pt.III** (subject to savings in art. 4, Sch. 2 Pt. 1 para. 6)

**Marginal Citations**

**M63** 1993 c. 35.

**369 Programmes of research etc. in relation to Wales. E+W**

The Secretary of State may incur expenses in connection with the commissioning by him of such work, including programmes of research, development and dissemination, as he may require to be carried out for the purpose of facilitating the discharge, in relation to Wales, of any of his functions under sections 354 to 356.

*General functions of LEA, governing body and head teacher in relation to curriculum*

**<sup>F95</sup>370** ..... E+W

**Textual Amendments**

**F95** S. 370 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 91, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

**<sup>F96</sup>371** ..... E+W

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**Textual Amendments**

**F96** S. 371 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 91, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

<sup>F97</sup>**372** ..... **E+W**

**Textual Amendments**

**F97** S. 372 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 91, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

<sup>F98</sup>**373** ..... **E+W**

**Textual Amendments**

**F98** S. 373 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 91, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

**374** **Functions of governing body and head teacher: grant-maintained schools.** **E+W**

Paragraph 4 of Schedule 23 has effect for securing the discharge by the governing body and the head teacher of a grant-maintained school of duties imposed on them under the provisions of this Part mentioned in paragraph 4(1).

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

RELIGIOUS EDUCATION AND WORSHIP

*Agreed syllabuses*

**375** **Agreed syllabuses of religious education.** **E+W**

- (1) Subject to the provisions of Schedule 31, any agreed syllabus in force immediately before the commencement of this Act shall continue to have effect.
- (2) In this Act “agreed syllabus” means a syllabus of religious education—
  - (a) prepared before the commencement of this Act in accordance with Schedule 5 to the <sup>M64</sup>Education Act 1944 or after commencement in accordance with Schedule 31, and
  - (b) adopted by a local education authority under that Schedule,
 whether it is for use in all the schools maintained by them or for use in particular such schools or in relation to any particular class or description of pupils in such schools.



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- (3) Every agreed syllabus shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.
- (4) Any reference in this Act to an agreed syllabus adopted by a local education authority includes a reference to an agreed syllabus deemed to be adopted by such an authority by virtue of paragraph 11 of Schedule 5 to the <sup>M65</sup>Education Act 1944 or paragraph 14 of Schedule 31; and accordingly, in relation to an agreed syllabus deemed to be so adopted, any reference to the date on which an agreed syllabus was adopted is a reference to the date of deemed adoption specified by the Secretary of State in a direction under that paragraph.
- (5) Subsection (3) does not apply to any agreed syllabus adopted before 29th September 1988.

**Marginal Citations**

**M64** 1944 c. 31.

**M65** 1944 c. 31.

*Required provision for religious education*

**376 Religious education: county schools. E+W**

- (1) In the case of a county school, the provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum is provision for religious education in accordance with an agreed syllabus adopted for the school or for those pupils.
- (2) No agreed syllabus shall provide for religious education to be given to pupils at a county school by means of any catechism or formulary which is distinctive of a particular religious denomination (but this is not to be taken as prohibiting provision in such a syllabus for the study of such catechisms or formularies).
- (3) If, in the case of a county secondary school so situated that arrangements cannot conveniently be made for the withdrawal of pupils from it in accordance with section 389 to receive religious education elsewhere, the local education authority are satisfied—
  - (a) that the parents of any pupils at the school desire them to receive religious education in the school in accordance with the tenets of a particular religion or religious denomination, and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school, and for securing that the cost of providing such education to those pupils in the school will not fall upon the authority,the authority shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) provide facilities for the carrying out of those arrangements.

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### 377 **Religious education: controlled schools.** E+W

- (1) In the case of a controlled school, the provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum shall be provision for religious education—
  - (a) in accordance with any arrangements made under subsection (2), or
  - (b) subject to any such arrangements, in accordance with an agreed syllabus adopted for the school or for those pupils.
- (2) Where the parents of any pupils at a controlled school request that they may receive religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school, or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a controlled school,
 the foundation governors shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for securing that such religious education is given to those pupils in the school during not more than two periods in each week.

### 378 **Religious education: aided and special agreement schools.** E+W

- (1) In the case of an aided or special agreement school, the provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum is provision for religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school, or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school, or
  - (c) in accordance with any arrangements made under subsection (2).
- (2) Where the parents of any pupils at an aided or special agreement school—
  - (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority, and
  - (b) cannot with reasonable convenience cause those pupils to attend a school at which that syllabus is in use,
 arrangements shall be made (unless the authority are satisfied that because of any special circumstances it would be unreasonable to do so) for religious education in accordance with that syllabus to be given to those pupils in the school.
- (3) Religious education under any such arrangements shall be given during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum by virtue of section 352(1)(a).
- (4) Any arrangements under subsection (2) shall be made by the governing body, unless the local education authority are satisfied that the governing body are unwilling to make them, in which case they shall be made by the authority.
- (5) Subject to subsection (4), the religious education given to pupils at an aided or special agreement school shall be under the control of the governing body.

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**379 Religious education: grant-maintained schools (former county schools and certain new schools).** **E+W**

- (1) Subject to section 383, this section applies in relation to a grant-maintained school if—
  - (a) it was a county school immediately before it became grant-maintained,
  - (b) it was established in pursuance of proposals published under section 211, or
  - (c) it was established in pursuance of proposals published under section 212 and neither any trust deed relating to the school nor the statement required by paragraph 8 of Schedule 20 makes provision as to the religious education for pupils at the school.
- (2) The provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum is provision for religious education in accordance with the appropriate agreed syllabus.
- (3) That syllabus shall not provide for religious education to be given to pupils at the school by means of any catechism or formulary which is distinctive of a particular religious denomination (but this is not to be taken as prohibiting provision in the syllabus for the study of such catechisms or formularies).
- (4) If, in the case of a secondary school so situated that arrangements cannot conveniently be made for the withdrawal of pupils from it in accordance with section 389 to receive religious education elsewhere, the governing body are satisfied—
  - (a) that the parents of any pupils at the school desire them to receive religious education in the school in accordance with the tenets of a particular religion or religious denomination, and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school, and for securing that the cost of providing such education to those pupils in the school will not fall upon the governing body,the governing body shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) provide facilities for the carrying out of those arrangements.

**380 Religious education: grant-maintained schools (former controlled schools).** **E+W**

- (1) Subject to section 383, this section applies in relation to a grant-maintained school which was a controlled school immediately before it became grant-maintained.
- (2) The provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum is provision for religious education—
  - (a) in accordance with any arrangements made under subsection (3), or
  - (b) subject to any such arrangements, in accordance with the appropriate agreed syllabus.
- (3) Where the parents of any pupils at the school have requested (whether before or after the school became grant-maintained) that the pupils may receive religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school, or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a grant-maintained school,

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the foundation governors shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for securing that such religious education is given to those pupils in the school during not more than two periods in each week.

**381 Religious education: grant-maintained schools (former aided or special agreement schools and certain new schools). E+W**

- (1) Subject to section 383, this section applies in relation to a grant-maintained school if—
  - (a) it was an aided or special agreement school immediately before it became grant-maintained, or
  - (b) it was established in pursuance of proposals published under section 212 and either any trust deed relating to the school or the statement required by paragraph 8 of Schedule 20 makes provision as to the religious education for pupils at the school.
- (2) The provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school's basic curriculum is provision for religious education—
  - (a) in accordance with any provisions of any trust deed relating to the school, or
  - (b) where provision for that purpose is not made by such a deed, in accordance with—
    - (i) the practice observed in the school before it became a grant-maintained school, if it is a former aided or special agreement school, or
    - (ii) the statement required by paragraph 8 of Schedule 20, if it is a school established in pursuance of proposals published under section 212, or
  - (c) in accordance with any arrangements made under subsection (3).
- (3) Where the parents of any pupils at the school—
  - (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority for the area in which the school is situated for use in schools maintained by the authority, and
  - (b) cannot with reasonable convenience cause those pupils to attend a school at which that syllabus is in use,

the governing body shall (unless they are satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school.
- (4) Religious education under any such arrangements shall be given during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum by virtue of section 352(1)(a).
- (5) The head teacher of a school to which this section applies shall give notice in writing of any agreed syllabus which is in use at the school in accordance with subsection (3) to the standing advisory council on religious education constituted by the local education authority in whose area the school is situated.

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### **382 Meaning of “the appropriate agreed syllabus” in sections 379 and 380. E+W**

- (1) For the purposes of sections 379(2) and 380(2) “the appropriate agreed syllabus”, in relation to a grant-maintained school or to any pupils at it, is—
  - (a) the agreed syllabus adopted for the time being by the local education authority for the area in which the school is situated for use in the schools maintained by the authority;
  - (b) if there is more than one such syllabus, such one of them as the governing body shall determine; or
  - (c) if the governing body select for the school or those pupils an agreed syllabus which—
    - (i) was adopted on or after 29th September 1988 by a local education authority other than the authority in whose area the school is situated, and
    - (ii) has not been replaced by a new agreed syllabus, that syllabus.
- (2) In relation to a school in Wales, in subsection (1)(c) “local education authority” means a local education authority in Wales.

### **383 Changes in religious education and worship. E+W**

- (1) Subsection (2) applies where, in the case of a grant-maintained school in relation to which section 379 or 380 for the time being applies, proposals that the required provision for religious education should be provision for religious education in accordance with the tenets of a particular religion or religious denomination are approved under section 261.
- (2) From the time at which the proposals fall to be implemented—
  - (a) the required provision for religious education shall (subject to subsection (3)) be provision for religious education either in accordance with the tenets of that religion or religious denomination or in accordance with any arrangements made under section 381(3) (as applied by paragraph (b)),
  - (b) section 381(3) to (5) shall apply in relation to the school, and
  - (c) any provisions of section 379, 380, 385(4), 386 or 387 which apply in relation to the school shall cease to apply in relation to it.
- (3) Where, in the case of any grant-maintained school, proposals that the required provision for religious education should be provision for religious education otherwise than in accordance with the tenets of a particular religion or religious denomination are approved under section 261—
  - (a) sections 379 and 386 shall apply in relation to the school from the time at which the proposals fall to be implemented, and
  - (b) any provisions of section 380 or 381 which apply in relation to the school shall cease to apply in relation to it from that time.
- (4) In this section “the required provision for religious education”, in relation to a school, means the provision for religious education for pupils at the school which is required by section 352(1)(a) to be included in the school’s basic curriculum.

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**384 Duty to secure religious education is given in accordance with required provision in curriculum. E+W**

Subject to section 389, in relation to any maintained school (other than a maintained special school)—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 352(1)(a).

*Religious worship*

**385 Collective worship. E+W**

- (1) Subject to section 389, all pupils in attendance at a maintained school other than a maintained special school shall on each school day take part in an act of collective worship.
- (2) The arrangements for the collective worship in a school required by this section may, in respect of each school day, provide for a single act of worship for all pupils or for separate acts of worship for pupils in different age groups or in different school groups.
- (3) For the purposes of subsection (2) a “school group” is any group in which pupils are taught or take part in other school activities.
- (4) Subject to subsection (6), the arrangements for the collective worship required by this section shall be made—
  - (a) in the case of a county school or a grant-maintained school in relation to which section 379 applies, by the head teacher after consultation with the governing body; and
  - (b) in the case of a voluntary school or a grant-maintained school other than one in relation to which section 379 applies, by the governing body after consultation with the head teacher.
- (5) Subject to subsection (6), the collective worship in a school required by this section shall take place on the school premises.
- (6) If the governing body of an aided, special agreement or grant-maintained school are of the opinion that it is desirable that any act of collective worship in the school required by this section should, on a special occasion, take place elsewhere than on the school premises, they may, after consultation with the head teacher, make such arrangements for that purpose as they think appropriate.
- (7) The powers of a governing body under subsection (6) shall not be exercised so as to derogate from the rule that the collective worship in the school required by this section must normally take place on the school premises.

**386 Collective worship in county schools and certain grant-maintained schools to be broadly Christian. E+W**

- (1) Subsections (2) to (6) apply—
  - (a) (subject to section 387) in relation to a county school, and

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- (b) (subject to sections 383 and 387) in relation to a grant-maintained school in relation to which section 379 applies,
- (2) The collective worship required in the school by section 385 shall be wholly or mainly of a broadly Christian character.
- (3) For the purposes of subsection (2), collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (4) Not every act of collective worship in the school required by section 385 need comply with subsection (2) provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (5) Subject to subsections (2) and (4)—
- (a) the extent to which (if at all) any acts of collective worship required by section 385 which do not comply with subsection (2) take place in the school,
  - (b) the extent to which any act of collective worship in the school which complies with subsection (2) reflects the broad traditions of Christian belief, and
  - (c) the ways in which those traditions are reflected in any such act of collective worship,
- shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (6).
- (6) Those considerations are—
- (a) any circumstances relating to the family backgrounds of the pupils which are relevant for determining the character of the collective worship which is appropriate in their case, and
  - (b) their ages and aptitudes.
- (7) In subsections (2) to (6) as they apply in relation to a grant-maintained school, references to acts of collective worship in the school include such acts which by virtue of section 385(6) take place otherwise than on the school premises.

**387 Disapplication of requirement for Christian collective worship. E+W**

- (1) Subsection (2) applies where—
- (a) a standing advisory council on religious education determine (under section 394) that it is not appropriate for the requirement imposed by section 386(2) to apply in the case of a school or in the case of any class or description of pupils at a school, or
  - (b) such a council had so determined in the case of a grant-maintained school, or pupils at such a school, before the school became grant-maintained.
- (2) While the determination has effect—
- (a) section 386 shall not apply in relation to the school or (as the case may be) pupils in question, and
  - (b) the collective worship required by section 385 in the case of the school or pupils shall not be distinctive of any particular Christian or other religious denomination;
- but paragraph (b) shall not be taken as preventing that worship from being distinctive of any particular faith.

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- (3) In this section references to a school are references to a county school or to a grant-maintained school in relation to which section 379 applies.

**388 Duty to secure participation in collective worship. E+W**

Subject to section 389, in relation to any maintained school (other than a maintained special school)—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that all pupils in attendance at the school take part in the daily collective worship required by section 385.

*Exceptions and special arrangements*

**389 Exceptions and special arrangements. E+W**

- (1) If the parent of a pupil at a maintained school requests that he may be wholly or partly excused—

- (a) from receiving religious education given in the school in accordance with the school's basic curriculum,
- (b) from attendance at religious worship in the school, or
- (c) both from receiving such education and from such attendance,

the pupil shall be so excused until the request is withdrawn.

- (2) In subsection (1)—

- (a) the reference to religious education given in accordance with the school's basic curriculum is to such education given in accordance with the provision included in the school's basic curriculum by virtue of section 352(1)(a), and
- (b) the reference to religious worship in the school includes religious worship which by virtue of section 385(6) takes place otherwise than on the school premises.

- (3) Where in accordance with subsection (1) a pupil has been wholly or partly excused from receiving religious education or from attendance at religious worship and the responsible authority are satisfied—

- (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused,
- (b) that the pupil cannot with reasonable convenience be sent to another maintained school where religious education of the kind desired by the parent is provided, and
- (c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere,

the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.

- (4) A pupil may not be withdrawn from school under subsection (3) unless the responsible authority are satisfied that the arrangements there mentioned are such as will not



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interfere with the attendance of the pupil at school on any day except at the beginning or end of a school session (or, if there is only one, the school session) on that day.

(5) Where the parent of a pupil who is a boarder at a maintained school requests that the pupil be permitted—

- (a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or
- (b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs,

the governing body shall make arrangements for giving the pupil reasonable opportunities for doing so.

(6) Arrangements under subsection (5) may provide for making facilities for such education or worship available on the school premises, but the arrangements shall not entail expenditure by the responsible authority.

(7) In this section—

“maintained school” does not include a maintained special school, and  
“the responsible authority”, in relation to a county or voluntary school, means the local education authority, and, in relation to a grant-maintained school, means the governing body.

#### *Constitution of standing advisory councils on religious education*

### **390 Constitution of advisory councils. E+W**

(1) A local education authority shall constitute a standing advisory council on religious education for the purposes mentioned in section 391(1).

(2) The council shall consist of—

- (a) such groups of persons appointed by the authority as representative members (“representative groups”) as are required by subsection (4), and
- (b) a person appointed as a member by the governing bodies of the grant-maintained schools within the area of the authority in relation to which section 379 or 380 applies.

(3) The council may also include co-opted members (that is, persons co-opted as members of the council by members of the council who have not themselves been so co-opted).

(4) The representative groups required by this subsection are—

- (a) a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
- (b) except in the case of an area in Wales, a group of persons to represent the Church of England;
- (c) a group of persons to represent such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area; and
- (d) a group of persons to represent the authority.

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- (5) Where a representative group is required by subsection (4)(b), the representative group required by subsection (4)(a) shall not include persons appointed to represent the Church of England.
- (6) The number of representative members appointed to any representative group under subsection (4)(a) to represent each denomination or religion required to be represented shall, so far as consistent with the efficient discharge of the group's functions, reflect broadly the proportionate strength of that denomination or religion in the area.
- (7) On any question to be decided by the council only the representative groups on the council shall be entitled to vote, and each representative group shall have a single vote.

### **391 Functions of advisory councils. E+W**

- (1) The purposes referred to in section 390(1) are—
  - (a) to advise the local education authority upon such matters connected with religious worship in county schools and the religious education to be given in accordance with an agreed syllabus as the authority may refer to the council or as the council may see fit, and
  - (b) to carry out the functions conferred on them by section 394.
- (2) The matters referred to in subsection (1)(a) include, in particular, methods of teaching, the choice of materials and the provision of training for teachers.
- (3) The representative groups on the council required by section 390(4), other than the group consisting of persons appointed to represent the authority, may at any time require a review of any agreed syllabus for the time being adopted by the authority.
- (4) Each representative group concerned shall have a single vote on the question of whether to require such a review.
- (5) Paragraph 3 of Schedule 31 has effect to require the authority, on receiving written notification of any such requirement, to cause a conference constituted in accordance with that Schedule to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates.
- (6) The council shall in each year publish a report as to the exercise of their functions and any action taken by representative groups on the council under subsection (3) during the last preceding year.
- (7) The council's report shall in particular—
  - (a) specify any matters in respect of which the council have given advice to the authority,
  - (b) broadly describe the nature of the advice given, and
  - (c) where any such matter was not referred to the council by the authority, give the council's reasons for offering advice on that matter.
- (8) The council shall send to the head teacher of any grant-maintained school to which section 379 applies and which is in the area of the authority a copy of advice which they give to the authority upon matters connected with religious worship.
- (9) The council shall send a copy of advice which they give to the authority on the religious education to be given in accordance with an agreed syllabus to the head teacher of any grant-maintained school which is in the area of the authority and which—

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- (a) is required, by virtue of section 379 or 381, to provide religious education in accordance with an agreed syllabus, or
  - (b) was a controlled school immediately before it became grant-maintained.
- (10) The council shall send a copy of each report published by them under subsection (6)—
- (a) in the case of a council for an area in England, to [<sup>F99</sup>the Qualifications and Curriculum Authority], and
  - (b) in the case of a council for an area in Wales, to [<sup>F100</sup>the Qualifications, Curriculum and Assessment Authority for Wales].

#### Textual Amendments

**F99** Words in s. 391(10) substituted (1.10.1997) by 1997 c. 44, s. 57(1), Sch. 7 para. 29(a); S.I. 1997/1468, art. 2, Sch. 1 Pt.III

**F100** Words in s. 391(10) substituted (1.10.1997) by 1997 c. 44, s. 57(1), Sch. 7 para. 29(b); S.I. 1997/1468, art. 2, Sch. 1 Pt.III

### 392 Advisory councils: supplementary provisions. **E+W**

- (1) In this section “the council” means the standing advisory council on religious education constituted by a local education authority under section 390.
- (2) Before appointing a person to represent any religion, denomination or associations as a member of the council, the authority shall take all reasonable steps to assure themselves that he is representative of the religion, denomination or associations in question.
- (3) A member of the council who was appointed by the authority may be removed from membership by the authority if, in their opinion, he ceases to be representative of the religion, denomination or associations which he was appointed to represent or (as the case may be) he ceases to be representative of the authority.
- (4) A member of the council required by section 390(2)(b) may at any time be removed from membership by the governing body or (as the case may be) by the governing bodies of the grant-maintained school or schools concerned.
- (5) A person co-opted as a member of the council shall hold office on such terms as may be determined by the members co-opting him.
- (6) A member of the council may at any time resign his office.
- (7) Subject to section 390(7), the council and, in relation to any question falling to be decided by members of the council of any particular category, the members of that category, may regulate their own proceedings.
- (8) The validity of proceedings of the council or of the members of the council of any particular category shall not be affected—
  - (a) by a vacancy in the office of any member of the council required by section 390(2), or
  - (b) on the ground that a member of the council appointed to represent any religion, denomination or associations does not at the time of the proceedings represent the religion, denomination or associations in question.

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### **393 Duty to constitute new standing advisory council. E+W**

- (1) This section has effect in respect of the area of a local education authority if an order under section 27(1)(b) (allocation to funding authority of responsibility for providing school places) applies to the area.
- (2) Within six months of the date of the first such order the local education authority shall constitute a new standing advisory council on religious education under section 390.
- (3) For the purposes of the constitution required by subsection (2) (and of any subsequent constitution)—
  - (a) section 390 shall have effect as if—
    - (i) subsection (2)(b) were omitted, and
    - (ii) subsection (4) required the appointment of a representative group, in addition to those listed in paragraphs (a) to (d) of that subsection, comprising persons representing relevant grant-maintained schools, and
  - (b) section 391 shall have effect as if, in subsection (3), for “the group consisting of persons appointed to represent the authority” there were substituted “the groups consisting of persons appointed to represent the authority or relevant grant-maintained schools”.
- (4) For this purpose “relevant grant-maintained schools” means the grant-maintained schools within the area of the local education authority in relation to which section 379 or 380 applies.
- (5) Before appointing a person to represent relevant grant-maintained schools in accordance with subsection (3) the local education authority shall take all reasonable steps to assure themselves that he is acceptable as such to the governing bodies of the majority of such schools; but the validity of the council’s proceedings shall not be affected because the person was not so acceptable unless it is shown that the local education authority failed to take such steps.
- (6) A person appointed to represent relevant grant-maintained schools in accordance with subsection (3) may be removed from membership of the council if in the opinion of the local education authority he ceases to be acceptable as such to the governing bodies of the majority of such schools.

#### *Determinations by standing advisory councils*

### **394 Determination of cases in which requirement for Christian collective worship is not to apply. E+W**

- (1) The council constituted by a local education authority under section 390 shall, on an application made by the head teacher of—
  - (a) any county school maintained by the authority, or
  - (b) any grant-maintained school which is in the authority’s area and in relation to which section 379 applies,
 consider whether it is appropriate for the requirement imposed by section 386(2) to apply in the case of the school or in the case of any class or description of pupils at the school.

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- (2) In determining whether it is appropriate for that requirement to apply as mentioned in subsection (1), the council shall have regard to any circumstances relating to the family backgrounds of the pupils at the school, or of the pupils of the particular class or description in question, which are relevant for determining the character of the collective worship appropriate in their case.
- (3) The council shall give the head teacher written notification of their decision on the application.
- (4) Where the council determine that it is not appropriate for the requirement to apply as mentioned in subsection (1), the determination shall take effect for the purposes of section 387 on such date as may be specified in the notification of the council's decision under subsection (3).
- (5) Before making an application under subsection (1), the head teacher of a school shall consult the governing body.
- (6) On being consulted by the head teacher, the governing body may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.
- (7) An application under subsection (1) shall be made in such manner and form as the council may require.
- (8) Where an application is made under subsection (1)(a) in respect of a school which becomes a grant-maintained school before the application is determined, it shall, unless withdrawn by the head teacher, continue as if made under subsection (1)(b).

**395 Review of determinations under section 394. E+W**

- (1) Any determination by a council under section 394 by virtue of which the requirement imposed by section 386(2) does not for the time being apply in the case of a school or a class or description of pupils at a school shall be reviewed by the council—
  - (a) at any time on an application made by the head teacher, and
  - (b) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or (where it has since been reviewed under this section) with the effective date of the decision on the last review.
- (2) On any review under subsection (1)(b) the council shall give the head teacher an opportunity of making representations as to the determination under review.
- (3) On a review under this section, the council may—
  - (a) confirm the determination, with or without variation, or
  - (b) revoke it (without prejudice to any further determination under section 394).
- (4) The council shall give the head teacher written notification of their decision, specifying the effective date of that decision for the purposes of subsection (1)(b).
- (5) Any determination which is required to be reviewed under subsection (1)(b) shall cease to have effect, if not confirmed on such a review, at the end of the period there mentioned.
- (6) The head teacher of a school shall consult the governing body before making an application under subsection (1)(a) or any representations under subsection (2).

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- (7) On being consulted by the head teacher, the governing body may if they think fit take such steps as they consider appropriate for consulting all persons appearing to them to be parents of registered pupils at the school.
- (8) An application under subsection (1)(a) shall be made in such manner and form as the council may require.

**396 Power of Secretary of State to direct advisory council to revoke determination or discharge duty. E+W**

- (1) Where the Secretary of State is satisfied, either on complaint by any person or otherwise, that any standing advisory council on religious education constituted by a local education authority under section 390—
  - (a) have acted, or are proposing to act, unreasonably in determining for the purposes of section 394 or 395 whether it is appropriate for the requirement imposed by section 386(2) to apply in the case of any school or any class or description of pupils at a school, or
  - (b) have failed to discharge any duty imposed under section 394 or 395,
 he may give the council such directions as to the revocation of the determination, or the withdrawal of the proposed determination or (as the case may be) the discharge of the duty as appear to him to be expedient; and the council shall comply with the directions.
- (2) Directions under subsection (1) may provide for the making by the council of a new determination to take effect in place of the determination or proposed determination to be revoked or withdrawn by them.

*Access to meetings and documents*

**397 Religious education: access to meetings and documents. E+W**

- (1) This section applies to—
  - (a) any conference convened under any of paragraphs 1 to 3 of Schedule 31, and
  - (b) any standing advisory council on religious education constituted under section 390.
- (2) Regulations may make provision—
  - (a) for meetings of conferences or councils to be, subject to prescribed exceptions, open to members of the public,
  - (b) requiring conferences or councils to give notice, in such manner as may be prescribed, of the time and place of such meetings, and
  - (c) requiring conferences or councils, at such time or times as may be prescribed—
    - (i) to make available for inspection, or
    - (ii) to provide on payment of such fee as they think fit (not exceeding the cost of supply),
 copies of the agendas and reports for such meetings to members of the public.
- (3) Regulations made under subsection (2) may apply to—

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- (a) committees appointed by local education authorities under paragraph 4 of Schedule 31,
  - (b) sub-committees appointed by conferences under that Schedule, and
  - (c) representative groups on councils appointed under section 390(4),
- as they apply to conferences and councils.

### *Miscellaneous*

#### **398 No requirement of attendance at Sunday school etc. E+W**

It shall not be required, as a condition of—

- (a) a pupil attending a maintained school, or
- (b) a person attending such a school to receive further education or teacher training,

that he must attend or abstain from attending a Sunday school or a place of religious worship.

#### **399 Determination of question whether religious education in accordance with trust deed. E+W**

Where any trust deed relating to a voluntary or grant-maintained school makes provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious education given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question shall be determined in accordance with the provisions of the trust deed.

## **CHAPTER IV E+W**

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Courses leading to external qualifications*

#### **400 Courses leading to external qualifications. E+W**

- (1) No course of study leading to a qualification authenticated by an outside person shall be provided for pupils of compulsory school age by or on behalf of a maintained school unless—
- (a) the qualification is for the time being approved by the Secretary of State or by a designated body, and
  - (b) subsection (2) is satisfied.
- (2) This subsection is satisfied if either—
- (a) a syllabus provided by the outside person for the purposes of the course is for the time being approved by a designated body, or
  - (b) criteria provided by the outside person for determining a syllabus for the purposes of the course are for the time being so approved.

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- (3) An approval under this section may be given either generally or in relation to particular cases.
- (4) In relation to any maintained school—
  - (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
  - (b) the head teacher shall secure,
 that subsection (1) is not contravened.
- (5) In this section—
  - “designated” means designated by the Secretary of State, and
  - “outside person”, in relation to a school, means a person other than a member of staff of the school.

**401 Power to extend section 400 to senior pupils and FE students. E+W**

- (1) The Secretary of State may by order direct that the provisions of section 400 shall have effect as if—
  - (a) any reference to pupils of compulsory school age included a reference to—
    - (i) senior pupils who are of or over that age, and
    - (ii) persons in full-time further education who are of or over that age but have not attained the age of 19 (referred to in this section as “FE students”);
  - (b) any reference to a maintained school (except in relation to a local education authority) included a reference to—
    - (i) any institution (other than a university or an institution within the higher education sector) which provides further education and is a grant-aided institution, and
    - (ii) any institution within the further education sector; and
  - (c) any reference to the head teacher of such a school included a reference to the principal or other head of such an institution.
- (2) An order under this section may make such consequential modifications of section 359(1) as appear to the Secretary of State to be necessary or expedient.
- (3) In relation to FE students in relation to whom section 400 has effect by virtue of an order under this section, section 408 shall have effect—
  - (a) with the modifications mentioned in subsection (1)(b) and (c) above;
  - (b) as if the information referred to in subsection (1)(a) of that section were information with respect to the following matters—
    - (i) the qualifications authenticated by outside persons (within the meaning of section 400) for which courses of study are to be provided by or on behalf of the institution concerned for such students;
    - (ii) the courses of study leading to such qualifications which are to be so provided;
    - (iii) the syllabuses which have been provided or determined for the purposes of those courses, and
    - (iv) the results of the assessments of such students for the purposes of those qualifications;
  - (c) as if in subsection (6)—



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- (i) the reference to the results of an individual pupil's assessment (whether under this Part or otherwise) included a reference to the results of an individual student's assessment for the purposes of any such qualification, and
  - (ii) any reference to the pupil concerned included a reference to the student concerned; and
- (d) with the omission of subsections (1)(b), (2) and (3).
- (4) Before making an order under this section the Secretary of State shall consult any persons with whom consultation appears to him to be desirable.
- (5) For the purposes of this section an institution is at any time a grant-aided institution if it is maintained by persons who have received any grants under regulations made under section 485 in respect of expenditure incurred or to be incurred for the academic year of the institution current at that time.

#### *Obligation to enter pupils for public examinations*

### **402 Obligation to enter pupils for public examinations. E+W**

- (1) Subject to subsections (2) and (3), the governing body of a maintained school shall secure that each registered pupil at the school is entered, at such time as they consider appropriate, for each prescribed public examination for which he is being prepared at the school at the time in question in each syllabus for that examination for which he is being so prepared.
- (2) The governing body are not required to secure that a pupil is entered for any examination, or for an examination in any syllabus for that examination, if either—
- (a) they consider that there are educational reasons in the case of that particular pupil for not entering him for that examination or (as the case may be) for not entering him for that examination in that syllabus, or
  - (b) the parent of the pupil requests in writing that the pupil should not be entered for that examination or (as the case may be) for that examination in that syllabus;
- but this subsection does not apply to an examination which is part of the assessment arrangements for the fourth key stage and applies in the case of that pupil.
- (3) The governing body are not required to secure that a pupil is entered for any examination in any syllabus for that examination if they have secured his entry for another prescribed public examination in a corresponding syllabus.
- (4) For the purposes of subsection (3) a syllabus for a prescribed public examination shall be regarded as corresponding to a syllabus for another prescribed public examination if the same course of study is provided at the school in preparation for both syllabuses.
- (5) As soon as practicable after determining whether or not to secure the entry of any pupil for a prescribed public examination in any syllabus for which he is being prepared at the school, the governing body shall notify the pupil's parent in writing of their determination in relation to each such syllabus.
- (6) In this section—
- (a) “maintained school” includes a maintained special school established in a hospital; and

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- (b) references to a prescribed public examination shall be construed in accordance with section 462.

### *Sex education*

#### **403 Sex education: manner of provision. E+W**

- (1) The local education authority, governing body and head teacher shall take such steps as are reasonably practicable to secure that where sex education is given to any registered pupils at a maintained school, it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life.
- (2) In subsection (1) “maintained school” includes a maintained special school established in a hospital.

#### **404 Sex education: statements of policy. E+W**

- (1) The governing body of a maintained school shall—
- (a) make, and keep up to date, a separate written statement of their policy with regard to the provision of sex education, and
  - (b) make copies of the statement available for inspection (at all reasonable times) by parents of registered pupils at the school and provide a copy of the statement free of charge to any such parent who asks for one.
- (2) In subsection (1) “maintained school” includes, in relation to pupils who are provided with secondary education, a maintained special school established in a hospital.

<sup>F101</sup>(3) .....

#### **Textual Amendments**

**F101** S. 404(3) repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 103(b), Sch.31 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt.I

#### **405 Exemption from sex education. E+W**

If the parent of any pupil in attendance at a maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn.

### *Politics*

#### **406 Political indoctrination. E+W**

- (1) The local education authority, governing body and head teacher shall forbid—
- (a) the pursuit of partisan political activities by any of those registered pupils at a maintained school who are junior pupils, and
  - (b) the promotion of partisan political views in the teaching of any subject in the school.

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- (2) In the case of activities which take place otherwise than on the school premises, subsection (1)(a) applies only where arrangements for junior pupils to take part in the activities are made by—
  - (a) any member of the school’s staff (in his capacity as such), or
  - (b) anyone acting on behalf of the school or of a member of the school’s staff (in his capacity as such).
- (3) In this section “maintained school” includes a maintained special school established in a hospital.

**407 Duty to secure balanced treatment of political issues. E+W**

- (1) The local education authority, governing body and head teacher shall take such steps as are reasonably practicable to secure that where political issues are brought to the attention of pupils while they are—
  - (a) in attendance at a maintained school, or
  - (b) taking part in extra-curricular activities which are provided or organised for registered pupils at the school by or on behalf of the school,they are offered a balanced presentation of opposing views.
- (2) In this section “maintained school” includes a maintained special school established in a hospital.

*Information*

**408 Provision of information. E+W**

- (1) Regulations may require, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—
  - (a) such information (including information as to the matters mentioned in subsection (2)) relevant for the purposes of any of the relevant provisions of this Part [<sup>F102</sup>or Part V of the Education Act 1997], and
  - (b) such copies of the documents mentioned in subsection (3), as may be prescribed.
- (2) The matters referred to in subsection (1)(a) are—
  - (a) the curriculum for maintained schools,
  - (b) the educational provision made by the school for pupils at the school and any syllabuses to be followed by those pupils,
  - (c) the educational achievements of pupils at the school (including the results of any assessments of those pupils, whether under this Part or otherwise, for the purpose of ascertaining those achievements), and
  - (d) the educational achievements of [<sup>F103</sup>such classes or descriptions of pupils] as may be prescribed (including results of the kind mentioned in paragraph (c)).
- (3) The documents referred to in subsection (1)(b) are—
  - (a) any written statement made by the local education authority under section 370,

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- (b) any written statement made by the governing body in pursuance of provision made under section 371,
  - (c) any written statement made by the governing body of their policy as to the curriculum for the school, and
  - (d) any report prepared by the governing body under section 161 or paragraph 7 of Schedule 23 (governors' annual reports).
- (4) For the purposes of subsection (1) the relevant provisions of this Part are—
- (a) sections 350 to 368;
  - (b) sections 375(3) and 384;
  - (c) sections 385 and 388 and, so far as relating to county schools, sections 386 and 387;
  - (d) sections 389 to 392;
  - (e) sections 394 to 396;
  - (f) sections 398, 400, 401 and 405; and
  - (g) section 409.
- (5) Before making any regulations under this section, the Secretary of State shall consult any persons with whom consultation appears to him to be desirable.
- (6) Regulations under this section shall not require information as to the results of an individual pupil's assessment (whether under this Part or otherwise) to be made available to any persons other than—
- (a) the parents of the pupil concerned,
  - (b) the pupil concerned,
  - (c) in the case of a pupil who has transferred to a different school, the head teacher of that school,
  - (d) the governing body of the school, or
  - (e) the local education authority;
- and shall not require such information to be made available to the governing body, the head teacher or the local education authority except where relevant for the purposes of the performance of any of their functions.
- (7) Regulations under this section may authorise local education authorities, governing bodies and head teachers to make a charge (not exceeding the cost of supply) for any documents supplied by them in pursuance of the regulations.
- (8) In relation to any maintained school, the local education authority and the governing body shall exercise their functions with a view to securing that the head teacher complies with any regulations made under this section.

#### Textual Amendments

**F102** Words in s. 408(1)(a) inserted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 30(a)**; S.I. 1997/1468, art. 2, **Sch. 1 Pt. III**

**F103** Words in s. 408(2)(d) substituted (1.10.1998) by 1998 c. 31, s. 140(1), **Sch. 30 para. 106(b)** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**

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### *Complaints and enforcement*

#### **409 Complaints and enforcement: county, voluntary and maintained special schools. E+W**

- (1) A local education authority shall, with the approval of the Secretary of State and after consultation with governing bodies of aided schools and of special agreement schools, make arrangements for the consideration and disposal of any complaint to which subsection (2) applies.
- (2) This subsection applies to any complaint which is to the effect that the authority, or the governing body of any county or voluntary school maintained by the authority or of any special school so maintained which is not established in a hospital—
  - (a) have acted or are proposing to act unreasonably in relation to the exercise of a power conferred on them by or under a relevant enactment, or
  - (b) have acted or are proposing to act unreasonably in relation to the performance of, or have failed to discharge, a duty imposed on them by or under a relevant enactment.
- (3) In subsection (2) “relevant enactment” means—
  - (a) any provision which by virtue of section 408(4) is a relevant provision of this Part for the purposes of section 408(1), and
  - (b) any other enactment (whether contained in this Part or otherwise) so far as relating to the curriculum for, or religious worship in, maintained schools other than grant-maintained schools.
- (4) The Secretary of State shall not entertain under section 496 (power to prevent unreasonable exercise of functions) or 497 (powers where a local education authority or governing body fail to discharge their duties) any complaint to which subsection (2) applies, unless a complaint concerning the same matter has been made and disposed of in accordance with arrangements made under subsection (1).

### *Nursery education*

#### **410 Application of Part V in relation to nursery education. E+W**

Nothing in this Part applies in relation to a nursery school or in relation to a nursery class in a primary school.

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## PART VI E+W

### SCHOOL ADMISSIONS, ATTENDANCE AND CHARGES

#### CHAPTER I E+W

##### SCHOOL ADMISSIONS

##### *Parental preferences*

#### 411 **Parental preferences.** E+W

- (1) A local education authority shall make arrangements for enabling the parent of a child in the area of the authority—
  - (a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and
  - (b) to give reasons for his preference.
- (2) Subject to subsection (3) [<sup>F104</sup>, section 411A (pupils excluded from two or more schools)], [section 413B(3) (home-school partnership documents)] and section 430(2) (co-ordinated admission arrangements), a local education authority and the governing body of a county or voluntary school shall comply with any preference expressed in accordance with arrangements made under subsection (1).
- (3) The duty imposed by subsection (2) does not apply—
  - (a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;
  - (b) if the preferred school is an aided or a special agreement school and compliance with the preference would be incompatible with any arrangements between the governing body and the local education authority made under section 413; or
  - [<sup>F105</sup>(c) if the arrangements for admission to the preferred school—
    - (i) are wholly based on selection by reference to ability or aptitude, and
    - (ii) are so based with a view to admitting only pupils with high ability or with aptitude,
 and compliance with the preference would be incompatible with selection under those arrangements.]
- [<sup>F106</sup>(3A) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.]
- (4) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application shall be regarded for the purposes of subsection (2) as having expressed a preference for that school in accordance with arrangements made under subsection (1).
- (5) The duty imposed by subsection (2) in relation to a preference expressed in accordance with arrangements made under subsection (1) shall apply also in relation to—
  - (a) any application for the admission to a school maintained by a local education authority of a child who is not in the area of the authority, and

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- (b) any application made by a parent as mentioned in section 438(4) or 440(2) (application for a particular school to be specified in a school attendance order);
- and references in subsection (3) to a preference and a preferred school shall be construed accordingly.
- (6) No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a county or voluntary school in a school year of a number of pupils in a relevant age group which does not exceed—
- (a) the relevant standard number, or
- (b) the admission number fixed in accordance with section 416,
- whichever is the greater.
- (7) In this Chapter “the relevant standard number”, in relation to a county or voluntary school, a relevant age group and a school year, means the standard number applying under sections 417 to 420 to the school in relation to that age group and year.
- (8) In [<sup>F107</sup>this Chapter (apart from sections 431 to 433)]“child” includes a person who has not attained the age of 19.
- [<sup>F108</sup>(9) Where the arrangements for the admission of pupils to a school provide for all pupils admitted to the school to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of this Chapter to be wholly based on selection by reference to ability or aptitude, whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.]
- [<sup>F109</sup>(10) In this Chapter “qualifying measures”, in relation to the admission of a child to a school, means measures required to be taken (whether in the school year in which the admission would take place or in any subsequent school year) in order to ensure compliance with the duty imposed by section 1(6) of the School Standards and Framework Act 1998 (duty of local education authority and governing body to comply with limit on class sizes).]

#### Textual Amendments

- F104** Words in s. 411(2) inserted (1.9.1997 in respect of the words ",section 411A" to schools)," otherwise prosp.) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(2)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F105** S. 411(3)(c) substituted (1.9.1997) by 1997 c. 44, s. 10; S.I. 1997/1468, art. 292), Sch. 1 Pt. II
- F106** S. 411(3A) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 1(2)(4)**
- F107** Words in s. 411(8) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(3)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F108** S. 411(9) inserted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(4)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F109** S. 411(10) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 1(3)(4)**

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

- C51** S. 411 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, **Sch. para. 1**
- C52** Power to restrict s. 411(6) conferred (24.7.1998) by 1998 c. 31, s. 144, **Sch. 32 Pt. II para. 6(1)(a)** (with ss. 138(9), 144(6))

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**[411A** <sup>F110</sup> **No requirement to admit children permanently excluded from two or more schools.** **E+W**

- (1) The duty imposed by section 411(2) does not apply in the case of a child to whom subsection (2) applies.
- (2) Where a child has been permanently excluded from two or more schools, this subsection applies to him during the period of two years beginning with the date on which the latest of those exclusions took effect.
- (3) Subsection (2) applies to a child whatever the length of the period or periods elapsing between those exclusions and regardless of whether it has applied to him on a previous occasion.
- (4) However, a child shall not be regarded as permanently excluded from a school for the purposes of this section if—
  - (a) although so excluded he was reinstated as a pupil at the school following the giving of a direction to that effect to the head teacher of the school; or
  - (b) he was so excluded at a time when he had not attained compulsory school age.
- (5) In this section “school” means—
  - (a) a school maintained by a local education authority; or
  - (b) a grant-maintained or grant-maintained special school.
- (6) This section does not apply in relation to a child unless at least one of the two or more exclusions mentioned in subsection (2) took effect on or after the date of the coming into force of section 11 of the Education Act 1997.
- (7) For the purposes of this section the permanent exclusion of a child from a school shall be regarded as having taken effect on the school day as from which the head teacher decided that he should be permanently excluded.]

**Textual Amendments**

**F110** S. 411A inserted (1.9.1997) by 1997 c. 44, s.11 (with s. 57(3)); S.I. 1997/1468, art. 2(2), Sch. 1 Pt.II

*Admission arrangements for county and voluntary schools*

**412 Consultation as to admission arrangements.** **E+W**

- (1) Where the governing body of a county or voluntary school are responsible for determining the arrangements for the admission of pupils to the school, they shall—
  - (a) consult the local education authority before determining, or varying, any of those arrangements, and
  - (b) at least once in every school year, consult the local education authority as to whether those arrangements are satisfactory.
- (2) Where the local education authority are responsible for determining the arrangements for the admission of pupils to a county or voluntary school, they shall—
  - (a) consult the governing body before determining, or varying, any of those arrangements, and
  - (b) at least once in every school year, consult the governing body as to whether those arrangements are satisfactory.



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#### **413 Admission arrangements to preserve character of aided or special agreement school. E+W**

- (1) If the governing body of an aided or special agreement school so request, the local education authority shall make with the governing body arrangements in respect of the admission of pupils to the school for preserving the character of the school; and, in default of agreement between the authority and the governing body, the terms of any such arrangements shall be determined by the Secretary of State.
- (2) If one of the parties to arrangements under subsection (1) proposes that the arrangements should be modified or replaced by substitute arrangements but the other party does not agree, the party making the proposal may refer the matter to the Secretary of State.
- (3) On a reference under subsection (2), the Secretary of State may direct—
  - (a) that the arrangements shall remain as they are;
  - (b) that they shall be modified or replaced as proposed; or
  - (c) that they shall be modified in such other manner, or replaced by such other substitute arrangements, as may be specified in the direction.
- (4) Where the Secretary of State directs as mentioned in subsection (3)(b) or (c), the modification or, as the case may be, the substitute arrangements shall have effect, from such date as may be specified in the direction, as if agreed between the parties.

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

**C53** S. 413 continued to have effect (31.8.1999) by S.I. 1999/1016, art. 6, Sch. 4 para. 12 (as added by S.I. 1999/2484, art. 2(4))

#### **[<sup>F111</sup>413A Admission arrangements may provide for home-school partnership documents. E+W**

- (1) The admission arrangements for a county or voluntary school may include provisions—
  - (a) setting out the terms of a partnership document for the school and the parental declaration to be used in connection with the document;
  - (b) making it a condition of the admission of every child to the school that his parent gives the admission authority a signed parental declaration either—
    - (i) at the time of applying for a place at the school for the child, or
    - (ii) if the child is allocated a conditional place, within such period as is specified in the arrangements; and
  - (c) authorising the admission authority to dispense with that condition to any extent in the case of a particular child where they are satisfied that there are special reasons for doing so.
- (2) For the purposes of this section and section 413B a “partnership document” is a statement specifying—
  - (a) the school’s aims and values;
  - (b) the responsibilities which the school intends to discharge in connection with the education of children admitted to the school; and

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- (c) the parental responsibilities, that is the responsibilities which the parents of such children are expected to discharge in connection with the education of their children while they are registered pupils at the school;
- and “parental declaration” means a declaration to be signed by a parent seeking the admission of his child to the school by which he acknowledges and accepts the parental responsibilities specified in the partnership document.
- (3) In determining the provisions to be included in the admission arrangements for a school in pursuance of subsection (1), the admission authority shall have regard to any guidance given from time to time by the Secretary of State.
- (4) The Secretary of State may by order provide that any form of words specified in the order, or having such effect as is so specified, is not to be used in a partnership document or (as the case may be) in a parental declaration.
- (5) An order under subsection (4) may apply to any school or description of school specified in the order.
- (6) Where a local education authority consult the governing body of a county or voluntary school under section 412(2)(a) or (b), the authority shall have particular regard to any representations by the governing body—
- (a) that the admission arrangements for the school should include the provisions authorised by subsection (1), or
  - (b) as to the terms of the partnership document or parental declaration to be included in the arrangements, or
  - (c) as to any variation of those terms as for the time being so included, as the case may be.
- (7) In this section and section 413B—
- “admission arrangements”, in relation to a school, means the arrangements for the admission of pupils to the school; and
- “conditional place”, in relation to a child, means a place which is conditional on the child’s parent giving the admission authority a signed parental declaration.]

#### Textual Amendments

**F111** S. 413A inserted (*prosp.*) by 1997 c. 44, ss.13, 58(3) (with s. 57(3)).

#### [<sup>F112</sup>413BEffect of home-school partnership document. **E+W**

- (1) This section applies where the admission arrangements for a county or voluntary school include the provisions authorised by section 413A(1).
- (2) The admission authority for the school shall, in the case of each child on behalf of whom an application for admission is made, notify his parent of the following matters, namely—
  - (a) the terms of the partnership document and the parental declaration, and
  - (b) the effect of the provisions of the admission arrangements authorised by section 413A(1)(b) and (c).
- (3) Where subsection (2) has been complied with in relation to a child’s parent but—

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- (a) the parent has failed to comply with the condition referred to in section 413A(1)(b), and
  - (b) the admission authority are not satisfied that there are special reasons for dispensing with that condition to the required extent in the case of that child,
- section 411(2) shall not require the admission of the child to the school; and, if he has been allocated a conditional place, the allocation of that place may be cancelled.
- (4) In subsection (3) the reference to dispensing with the condition mentioned in that subsection “to the required extent”—
- (a) is, where the parent gives the admission authority a signed parental declaration in relation to some but not the remainder of the parental responsibilities, a reference to dispensing with that condition so far as the remainder of those responsibilities are concerned; but
  - (b) is otherwise a reference to wholly dispensing with that condition.
- (5) In performing any function under this section the admission authority shall have regard to any guidance given from time to time by the Secretary of State.
- (6) A partnership document shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.]

#### Textual Amendments

**F112** S. 413B inserted (*prosp.*) by 1997 c. 44, ss.13, 58(3)(4) (with s. 57(3))

#### 414 Information as to schools and admission arrangements. **E+W**

- (1) A local education authority shall, for each school year, publish particulars of—
- (a) the arrangements for the admission of pupils to schools maintained by the authority other than aided or special agreement schools,
  - (b) the authority’s arrangements for the provision of education at schools maintained by another local education authority or not maintained by a local education authority, and
  - (c) the arrangements made by the authority under sections 411(1) and 423(1) (admission appeals).
- (2) The governing body of an aided or a special agreement school shall, for each school year, publish particulars of—
- (a) the arrangements for the admission of pupils to the school, and
  - (b) the arrangements made by them under section 423(2) (admission appeals).
- (3) The particulars to be published under subsections (1)(a) and (2)(a) shall include particulars of—
- (a) in the case of each school to which the arrangements relate, the admission number applicable in each school year in relation to the age group in which pupils are normally admitted (or, if there is more than one such group, the admission number so applicable in relation to each such group),
  - (b) the respective admission functions of the local education authority and the governing body,
  - (c) the policy followed in deciding admissions, and

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- (d) the arrangements made in respect of pupils not belonging to the area of the local education authority.
- (4) In subsection (3)(a) references to the admission number applicable in a school year in relation to an age group are to—
- (a) the standard number applying under sections 417 to 420 to the school in question in relation to that age group and year, or
  - (b) the admission number fixed in relation to the school in accordance with section 416 for that age group and year,
- whichever is the greater.
- (5) The particulars to be published under subsection (1)(b) shall include particulars of—
- (a) the criteria for offering places at schools not maintained by a local education authority, and
  - (b) the names of, and number of places at, any such schools in respect of which the authority have standing arrangements.
- (6) The governing body of a school maintained by a local education authority—
- (a) shall publish such information as respects that school as may be required by regulations; and
  - (b) may publish such other information with respect to the school as they think fit.
- (7) For the purposes of this section information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (8) A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the particulars or information referred to in subsection (2) or (6) above.
- (9) References in this section to publication are references to publication at such time or times and in such manner as may be required by regulations.

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

**C54** S. 414 continued to have effect (31.8.1999) by S.I. 1999/1016, art. 6, Sch. 4, para. 12 (as inserted 31.8.1999) by S.I. 1999/2484, art. 2(4))

*Admission numbers for county and voluntary schools*

**415 Meaning of “the admission authority”. E+W**

In this Chapter “the admission authority”, in relation to a county or voluntary school, means—

- (a) the local education authority, where they are responsible for determining the arrangements for the admission of pupils to the school, or
- (b) the governing body, where they are responsible for determining those arrangements.

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#### **416 Fixing admission numbers. E+W**

- (1) The admission authority for a county or voluntary school shall not fix as the admission number for any relevant age group and any school year a number which is less than the relevant standard number.
- (2) Despite any provision of the articles of government of the school (but subject to section 412), the admission authority may fix as the admission number for any relevant age group and any school year a number which exceeds the relevant standard number.
- (3) A proposal may be made to the admission authority in accordance with subsections (4) and (5) for fixing as the admission number for any relevant age group and any school year a number which exceeds both—
  - (a) the relevant standard number, and
  - (b) any admission number fixed, or proposed to be fixed, for that age group and year by the admission authority.
- (4) The proposal may be made—
  - (a) where the local education authority are the admission authority, by the governing body, or
  - (b) where the governing body are the admission authority, by the local education authority.
- (5) Any such proposal—
  - (a) shall be made in writing,
  - (b) may relate to one or more relevant age groups, and
  - (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (6) If the admission authority do not give the authority making the proposal notice in writing rejecting the proposal within the period of two months beginning with the day after that on which the proposal was received by the admission authority, the admission authority shall give effect to the proposal.
- (7) Where the admission authority give such notice within that period, the authority making the proposal may, within 28 days of receiving the notice, make an application to the Secretary of State for an order under section 420(2) increasing the relevant standard number.
- (8) In this section references, in relation to a school, to the “admission number” for any relevant age group and any school year are references to the number of pupils in that age group it is intended to admit to the school in that school year.

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

**C55** Power to restrict s. 416(1) conferred (24.7.1998) by 1998 c. 31, s. 144, **Sch. 32 Pt. II para. 6(1)(a)** (with **ss. 138(9), 144(6)**).

#### **417 Standard numbers for admissions to secondary schools. E+W**

- (1) Subject to subsection (2), if pupils in any age group were admitted to a county or voluntary secondary school in the school year beginning in 1989, the standard number applying to the school for that age group in any subsequent school year shall be—

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- (a) the standard number applying to the school under section 15 of the <sup>M66</sup>Education Act 1980 (“the 1980 Act”) for that age group in the school year beginning in 1989, or
  - (b) the number of pupils in that age group admitted in the school year beginning in 1989,
- whichever is the greater.
- (2) If proposals under section 35 or 41 above or section 12 or 13 of the 1980 Act (proposals for the establishment or alteration of a school) have fallen to be implemented in relation to a county or voluntary secondary school, the number stated in the proposals for any school year and age group shall constitute the standard number applying to the school for that age group—
- (a) in any school year beginning after 1989 in relation to which the proposals have been wholly implemented, and
  - (b) subject to any variation made by the Secretary of State, in any school year beginning after 1989 in relation to which they have been partly implemented.
- (3) In subsection (2) “the number stated in the proposals” means the number so stated in accordance with section 35(3)(b) or 41(5)(b) above (or, as the case may be, section 12(2) of the 1980 Act or section 12(2) as applied by section 13(2) of that Act).
- (4) Any standard number applying under subsection (2) is without prejudice to the application under that subsection of a new standard number if further proposals under section 35 or 41 above fall to be implemented.
- (5) References in this section to proposals under section 35 or 41 above or section 12 or 13 of the 1980 Act are to the proposals with any modifications made by the Secretary of State under section 37, 40, 43 or 45 above or, as the case may be, under section 12 or 13 of the 1980 Act.

#### Marginal Citations

**M66** 1980 c. 20.

### 418 Standard numbers for admissions to primary schools. **E+W**

- (1) Subject to subsection (2), if pupils in any age group were admitted to a county or voluntary primary school in the school year beginning in 1991, the standard number applying to the school for that age group in any subsequent year shall be—
- (a) the number applicable in relation to the school and in relation to that age group in accordance with section 419, or
  - (b) the number of pupils in that age group admitted in the school year beginning in 1991,
- whichever is the greater.
- (2) If proposals published under section 35 or 41 above or section 12 or 13 of the <sup>M67</sup>Education Act 1980 (proposals for the establishment or alteration of a school) have fallen to be implemented in relation to a county or voluntary primary school, the number stated in the proposals for any school year and age group shall constitute the standard number applying to the school for that age group—
- (a) in any school year beginning after 1991 in relation to which the proposals have been wholly implemented, and

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- (b) subject to any variation made by the Secretary of State, in any school year beginning after 1991 in relation to which they have been partly implemented.
- (3) Section 417(3) to (5) shall apply for the purposes of subsection (2) of this section as they apply for the purposes of section 417(2).

**Marginal Citations**

M67 1980 c. 20.

**419 Special provisions supplementary to section 418. E+W**

- (1) In this section “the 1980 standard number”, in relation to any school and age group, means the standard number applying to the school under section 15 of the Education Act 1980 (“the 1980 Act”) in relation to that age group in the school year beginning in 1991.
- (2) In the case of a primary school to which section 418(1) applies, the number applicable in relation to the school and in relation to any age group there mentioned is—
  - (a) if the 1980 standard number for that age group is a number determined under section 15(5) of the 1980 Act by reference to the number of pupils in that age group admitted to the school in the school year beginning in 1979, the recalculated 1979 admission number;
  - (b) if the 1980 standard number for that age group is a number determined under section 15(6) of that Act by reference to the number of pupils in that age group admitted to the school in any school year beginning after 1979 (and not varied by the Secretary of State under that provision), the recalculated post-1979 admission number; and
  - (c) if the 1980 standard number for that age group is a number applicable by virtue of section 15(7) of that Act which has not been varied by the Secretary of State, the aggregate of the number so applicable and the additional admission number.
- (3) In subsection (2)(a) “the recalculated 1979 admission number”, in relation to any school and age group, means the number of pupils admitted to the school in that age group in the school year beginning in 1979 (as determined in accordance with section 436, which relates to children admitted for nursery education).
- (4) In subsection (2)(b) “the recalculated post-1979 admission number”, in relation to any school and age group, means the number of pupils admitted to the school in that age group in the school year by reference to which the 1980 standard number for that school and age group was determined (as determined in accordance with section 436).
- (5) In subsection (2)(c) “the additional admission number”, in relation to any school and age group, means the aggregate of—
  - (a) the number of pupils admitted to the school in that age group in the first school year in relation to which the proposals in question had been wholly implemented who were admitted otherwise than for nursery education and were under the age of four years and six months on the date of their admission, and
  - (b) the number of pupils already admitted to the school for nursery education transferred in that year to a reception class at the school.

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#### **420 Variation of standard numbers. E+W**

- (1) The Secretary of State may by order applying to county or voluntary schools of any class or description vary any standard number that would otherwise apply by virtue of section 417 or 418.
- (2) Subject to subsections (3) to (5), the Secretary of State may by order vary any standard number that would otherwise apply to an individual school by virtue of section 417 or 418 or by virtue of any order made under subsection (1).
- (3) An order under subsection (2) reducing a standard number may only be made on the application of the admission authority for the school, and is subject to the procedure provided for in Schedule 32.
- (4) An order under subsection (2) increasing a standard number may be made on the application of the admission authority for the school or on an application made by the governing body or local education authority in accordance with section 416(7).
- (5) On an application for an order under subsection (2) increasing a standard number, the Secretary of State may—
  - (a) make an order under subsection (2) increasing the standard number to the number proposed,
  - (b) after consultation with both the local education authority and the governing body of the school, make an order under subsection (2) increasing the standard number to such number (less than the number proposed) as he thinks desirable, or
  - (c) refuse to make an order increasing the standard number.

#### **421 Review of standard numbers. E+W**

- (1) The admission authority for a county or voluntary school shall keep under review any standard numbers applying to the school under sections 417 to 420, having regard to any change in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year in which those standard numbers first applied (whether by virtue of section 15 of the <sup>M68</sup>Education Act 1980, section 27 of the <sup>M69</sup>Education Reform Act 1988 or sections 417 to 420 above).
- (2) For the purposes of this section a school's capacity to accommodate pupils is changed if—
  - (a) as a result of changes in the availability or use of accommodation at the school, there is any change in the amount of accommodation available for use by pupils at the school; or
  - (b) as a result of changes in the requirements applicable to the school under regulations made under section 542 there is any change in the number of pupils for whom accommodation may lawfully be provided at the school;
 and a school's capacity to accommodate pupils is reduced if the result of the changes is, in a case within paragraph (a), less accommodation or, in a case within paragraph (b), a reduction in the number there mentioned.

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

**C56** S. 421 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, Sch. para.2.



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#### Marginal Citations

**M68** 1980 c. 20.

**M69** 1988 c. 40.

#### [<sup>F113</sup>421A **E+W**

- (1) The admission authority for a county or voluntary school containing any infant class shall keep under review any standard number applicable to admissions to an infant class, having regard to—
  - (a) the school’s capacity to accommodate pupils, and
  - (b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the relevant standard number would not cause prejudice of the kind referred to in section 411(3)(a) by reason of any qualifying measures.
- (2) The admission authority for any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.
- (3) Where, as a result of a review under subsection (1), the authority consider that any standard number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall make an application for an order under section 420(2) varying the standard number.
- (4) For the purposes of subsection (1) a school’s capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State.
- (5) In this Chapter, “infant class” has the meaning given in section 4 of the School Standards and Framework Act 1998.]

#### Textual Amendments

**F113** S. 421A inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 2(1)(2)

#### *New county and voluntary schools*

#### **422 Admission of pupils to new schools. **E+W****

- (1) The initial arrangements for the admission of pupils to a new school shall be made—
  - (a) where the school will be a county or controlled school, by the local education authority; or
  - (b) where it will be an aided school, by the temporary governing body or by the promoters if—
    - (i) that body have not been constituted, and
    - (ii) the promoters consider that it is expedient for the arrangements to be determined without delay.

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- (2) Any body or persons making any initial arrangements under this section shall have regard to the arrangements in force for the admission of pupils to comparable schools in the area of the local education authority.
- (3) Before making any such initial arrangements for a new school which will be a county school, the authority shall consult the temporary governing body unless—
  - (a) that body have not been constituted, and
  - (b) the authority consider that it is expedient for the initial arrangements to be determined without delay.
- (4) Before making any such arrangements for a new school which will be a controlled school the authority shall consult—
  - (a) the temporary governing body; or
  - (b) where that body have not been constituted, the promoters.
- (5) Before making any such initial arrangements for a new school which will be an aided school the temporary governing body or (as the case may be) the promoters shall consult the authority.
- (6) Sections [F114 411, 411A, 413 to 414, 423 and 423A] shall have effect in relation to a new school as if the references to the governing body included references to the person responsible for the admission of pupils under the initial arrangements for the school.
- (7) In this section “new school” and “temporary governing body” have the meaning given by section 181(1) and (3) respectively; and “the promoters” means the persons making the relevant proposals (as defined by section 181(2)).

#### **Textual Amendments**

**F114** Words in s. 422(6) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.32**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II** .

### *Admissions appeals relating to county and voluntary schools*

#### **423 Appeal arrangements. E+W**

- (1) A local education authority shall make arrangements for enabling the parent of a child to appeal against—
  - (a) any decision made by or on behalf of the authority as to the school at which education is to be provided for the child in the exercise of the authority’s functions, other than a decision leading to or embodied in a direction under section 431 (directions for admission), and
  - (b) any decision made by or on behalf of the governing body of a county or controlled school maintained by the authority refusing the child admission to the school.
- (2) The governing body of an aided or a special agreement school shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school.

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- (3) Joint arrangements may be made under subsection (2) by the governing bodies of two or more aided or special agreement schools maintained by the same local education authority.
- (4) Schedule 33 has effect in relation to the making and hearing of appeals pursuant to arrangements made under this section.
- (5) The decision of an appeal committee on such an appeal shall be binding—
  - (a) on the local education authority or governing body by or on whose behalf the decision under appeal was made, and
  - (b) in the case of a decision made by or on behalf of a local education authority, on the governing body of any county or controlled school at which the appeal committee determines that a place should be offered to the child in question.

<sup>F115</sup>(6) .....

**Textual Amendments**

**F115** S. 423(6) repealed (1.9.1997) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 33, **Sch.8**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II**.

**[423A** <sup>F116</sup> **Appeals relating to children to whom section 411A(2) applies.** **E+W**

- (1) Nothing in section 423(1) or (2) requires any arrangements to be made for enabling the parent of a child to appeal against a decision—
  - (a) made by or on behalf of the admission authority for a county or voluntary school, and
  - (b) refusing the child admission to the school,in a case where, at the time when the decision is made, section 411A(2) applies to the child.
- (2) Where a local education authority are the admission authority for a county or controlled school, the authority shall make arrangements for enabling the governing body of the school to appeal against any decision made by or on behalf of the authority to admit to the school a child to whom, at the time when the decision is made, section 411A(2) applies.
- (3) Schedule 33A shall have effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (2).
- (4) The decision of an appeal committee on an appeal made pursuant to arrangements under subsection (2) shall be binding—
  - (a) on the local education authority by or on whose behalf the decision under appeal was made, and
  - (b) on the governing body of any county or controlled school at which the appeal committee determines that a place should be offered to the child in question.]

**Textual Amendments**

**F116** S. 423A inserted (1.9.1997) by 1997 c. 44, s. 12(1) (with s. 57(3)); S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II**.

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*Nursery and special schools, etc.*

**424 Admission of pupils to nursery schools and special schools, etc.** E+W

- (1) Subject to subsection (2), nothing in section [<sup>F117</sup>411, 411A, 413, 414, 423 or 423A] applies in relation to—
  - (a) nursery schools, or
  - (b) children who will be under [<sup>F118</sup>compulsory school age] at the time of their proposed admission.
- (2) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for the admission to the school of children who will be under [<sup>F119</sup>compulsory school age] at the time of their proposed admission, those sections shall apply in relation to the admission of such pupils to the school otherwise than for nursery education.
- (3) None of the provisions of sections [<sup>F120</sup>411, 411A, 413 to 414, 423 and 423A], apart from section 414(6) to (9), apply in relation to—
  - (a) special schools, or
  - (b) children for whom statements of special educational needs are maintained under section 324.

**Textual Amendments**

- F117** Words in s. 424(1) substituted (1.9.1997 in respect of words "411, 411A, 414, 423 or 423A" otherwise prosp.) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(a)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**.
- F118** Words in s. 424(1)(b) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(b)**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.
- F119** Words in s. 424(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(c)**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.
- F120** Words in s. 424(3) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(d)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**.

*Admission arrangements for grant-maintained schools*

**425 Admission arrangements and information about them.** E+W

Paragraph 5 of Schedule 23 has effect—

- (a) for making the governing body of a grant-maintained school responsible for determining the arrangements for admitting pupils to the school; and
- (b) for requiring the governing body of such a school to publish particulars of such arrangements and of the procedures applicable in relation to the admission of pupils to the school.

**[425A** <sup>F121</sup>**Restrictions on admissions to grant-maintained schools.** E+W

Schedule 33B to this Act, which provides for restrictions on admissions to grant-maintained schools in connection with—

- (a) home-school partnership documents,
- (b) partially-selective schools, and

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- (c) persons permanently excluded from two or more schools, shall have effect.]

**Textual Amendments**

**F121** S. 425A inserted (*prosp.*) by 1997 c. 44, **ss. 14(1), 58(3)** (with **ss. 57(3)**).

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

**C57** S. 425A modified (1.9.1998)(*temp.*) by S.I. 1998/1948, **reg. 3, Sch. para.3**.

[<sup>F122</sup>**425B** **E+W**

- (1) An application for the admission of a child to a grant-maintained school may be refused on the grounds that his admission would prejudice the provision of efficient education or the efficient use of resources at the school.
- (2) For the purposes of subsection (1) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.
- (3) No prejudice shall, however, be taken to arise from the admission of a child to the school if, were he to be admitted to the school, the number of pupils within the relevant age group to which he would be admitted in the school year in which he would be admitted would not exceed the number of pupils intended to be admitted to the school in that age group in that year.]

**Textual Amendments**

**F122** S. 425B inserted (1.9.1998) by S.I. 1998/1948, **reg. 3, Sch. para. 3**

*Admission numbers for grant-maintained schools*

**426** **Minimum number for admission.** **E+W**

- (1) The governing body of a grant-maintained school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the approved admission number for that age group.
- (2) Subject to subsections (3) and (4) and sections 427 and 428, the approved admission number for any relevant age group is the number specified in the relevant proposals as the number of pupils intended to be admitted to the school in that age group in the first school year beginning on or after the date of implementation of the proposals.

For this purpose “the relevant proposals” means the proposals published under section 193, 211 or 212 above (or, as the case may be, under section 32, 48 or 49 of the <sup>M70</sup>Education Act 1993 or section 62 of the <sup>M71</sup>Education Reform Act 1988).

- (3) Where proposals for a significant change in the character, or significant enlargement of the premises, of a grant-maintained school or for the transfer of such a school to a new site have been approved or adopted under section 261 above (or, as the case may be, under section 98 of the <sup>M72</sup>Education Act 1993 or section 89 of the Education

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Reform Act 1988), the approved admission number for any relevant age group for any school year for which the proposals have been wholly or partly implemented is—

- (a) the number specified in the proposals as the number of pupils proposed to be admitted to the school in that age group in the first school year in relation to which the proposals have been wholly implemented, or
  - (b) if for any school year in relation to which the proposals have been partly implemented the Secretary of State directs the substitution of a different number, that number.
- (4) The approved admission number in relation to any relevant age group may be varied in the case of any such school with the approval of the Secretary of State.

[<sup>F123</sup>(5) Where

- (a) the governing body are seeking approval for a reduction of any approved admission number applicable to admissions to an infant class, and
- (b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures,

the Secretary of State shall approve a reduction in that approved admission number by the smallest number which he considers sufficient to avoid such prejudice arising.

[<sup>F124</sup>(6) . . . . .]

#### Textual Amendments

**F123** S. 426(5)(6) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 4(1)

**F124** S. 426 repealed (1.4.1999 to the extent of the repeal of s. 426(6) otherwise (*prosp.*)) by 1998 c. 31, ss. 140(1)(3), 145(3), Sch. 30 para. 109, Sch. 31 (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), Sch. 1

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

**C58** S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para. 4.

S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para. 5.

**C59** Power to restrict s. 426(1) conferred (24.7.1998) by 1998 c. 31, s. 144, Sch. 32 Pt. II para. 6(1)(a) (with ss. 138(9), 144(6)).

#### Marginal Citations

**M70** 1993 c. 35.

**M71** 1988 c. 40.

**M72** 1993 c. 35.

## 426 Minimum number for admission. **E+W**

- (1) The governing body of a grant-maintained school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the approved admission number for that age group.
- (2) Subject to subsections (3) and (4) and sections 427 and 428, the approved admission number for any relevant age group is the number specified in the relevant proposals as the number of pupils intended to be admitted to the school in that age group in the first school year beginning on or after the date of implementation of the proposals.

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For this purpose “the relevant proposals” means the proposals published under section 193, 211 or 212 above (or, as the case may be, under section 32, 48 or 49 of the <sup>M150</sup>Education Act 1993 or section 62 of the <sup>M151</sup>Education Reform Act 1988).

- (3) Where proposals for a significant change in the character, or significant enlargement of the premises, of a grant-maintained school or for the transfer of such a school to a new site have been approved or adopted under section 261 above (or, as the case may be, under section 98 of the <sup>M152</sup>Education Act 1993 or section 89 of the Education Reform Act 1988), the approved admission number for any relevant age group for any school year for which the proposals have been wholly or partly implemented is—
- (a) the number specified in the proposals as the number of pupils proposed to be admitted to the school in that age group in the first school year in relation to which the proposals have been wholly implemented, or
  - (b) if for any school year in relation to which the proposals have been partly implemented the Secretary of State directs the substitution of a different number, that number.
- (4) The approved admission number in relation to any relevant age group may be varied in the case of any such school with the approval of the Secretary of State.

[<sup>F169</sup>(5) Where

- (a) the governing body are seeking approval for a reduction of any approved admission number applicable to admissions to an infant class, and
- (b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures,

the Secretary of State shall approve a reduction in that approved admission number by the smallest number which he considers sufficient to avoid such prejudice arising.

- (6) Where an order under section 27(1) relating to primary education applies to the area of the local education authority in which the school is situated, subsection (5) shall have effect as if the references to the Secretary of State were to the funding authority.]

#### Textual Amendments

**F169** S. 426(5)(6) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 4(1)

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

**C90** S. 426 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, Sch. para. 4.

S. 426 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, Sch. para. 5.

**C91** Power to restrict s. 426(1) conferred (24.7.1998) by 1998 c. 31, s. 144, Sch. 32 Pt. II para. 6(1)(a) (with ss. 138(9), 144(6)).

#### Marginal Citations

**M150** 1993 c. 35.

**M151** 1988 c. 40.

**M152** 1993 c. 35.

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**[<sup>F125</sup>426A E+W**

- (1) The governing body of a grant-maintained school containing any infant class shall keep under review any approved admission number applicable to admissions to an infant class, having regard to
  - (a) the school's capacity to accommodate pupils, and
  - (b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would not result in prejudice to the provision of efficient education or the efficient use of resources by reason of qualifying measures.
- (2) The governing body of any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.
- (3) Where, as a result of a review under subsection (1), the governing body consider that any approved admission number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall seek approval to the variation of that number in accordance with section 426(4).
- (4) For the purposes of subsection (1) a school's capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State.]

**Textual Amendments**

**F125** S. 426A inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 5(1)(2)

**427 Alteration of minimum number by Secretary of State. E+W**

- (1) This section applies in relation to any grant-maintained school unless the funding authority have the function under section 428 in relation to that school.
- (2) The Secretary of State may by order increase the approved admission number for any relevant age group to such number as may be specified in the order for any school year specified in the order beginning after the date of the order.
- (3) No order may be made under subsection (2) which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would—
  - (a) constitute a significant change in the character of the school, or
  - (b) involve any alteration of the premises of the school.

Section 311(4) shall apply for the purposes of this subsection.

**428 Alteration of minimum number by funding authority. E+W**

- (1) If an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area of a local education authority, the funding authority may give a direction under subsection (2) to the governing body of a grant-maintained school in the area.
- (2) A direction under this subsection—



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- (a) may increase the approved admission number for any relevant age group to such number as may be specified in the direction for any school year specified in the direction beginning after the date of the direction, and
  - (b) if any alteration would be required to the premises of the school in consequence of any increase in any approved admission number made by the direction, shall give particulars of the alteration.
- (3) No direction may be given under subsection (2) which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would—
- (a) constitute a significant change in the character of the school, or
  - (b) involve a significant enlargement of the premises of the school.
- Section 311(4) shall apply for the purposes of this subsection.
- (4) Before deciding to give a direction under subsection (2) the funding authority shall consult the governing body about the proposed content of the direction.
- (5) Before giving a direction under subsection (2) the funding authority shall serve a draft of the proposed direction on the governing body.
- (6) A governing body on which a draft is served under subsection (5) may, within the period of 15 days beginning with the day on which it was served, refer the matter to the Secretary of State and, if they do so, shall inform the funding authority.
- (7) On a reference under subsection (6) the Secretary of State may—
- (a) require the funding authority not to give any direction in the terms of the draft, or
  - (b) authorise the funding authority to give a direction in those terms, or in those terms as required to be modified by the Secretary of State;
- and any direction given by the funding authority shall be in the terms authorised under paragraph (b).
- (8) Where the funding authority give a direction under this section, then—
- (a) if any particulars are specified in pursuance of subsection (2)(b), the governing body shall secure the alteration of the school premises in accordance with the particulars, and
  - (b) the funding authority shall make to them a grant of an amount equal to the reasonable expenses incurred or to be incurred in doing so.

*Admissions appeals relating to grant-maintained schools*

**429 Appeal arrangements. E+W**

Paragraph 6 of Schedule 23 has effect for requiring the governing body of a grant-maintained school—

- (a) to make arrangements for appeals to an appeal committee against decisions or action taken in relation to admissions of pupils to the school; and
- (b) to publish particulars of such arrangements.

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*Co-ordinated arrangements for admissions*

**430 Co-ordinated arrangements for admissions. E+W**

- (1) In this section “co-ordinated arrangements for admissions”, in relation to any two or more maintained or grant-maintained schools, means arrangements under an agreement to which this section applies for the purpose of co-ordinating arrangements for admitting pupils to the schools concerned.
- (2) Co-ordinated arrangements for admissions, if—
  - (a) contained in an agreement approved by the Secretary of State under this section, or
  - (b) made in pursuance of a scheme under this section,and any provision contained in any other arrangements for admitting pupils to any maintained or grant-maintained school in pursuance of a scheme under this section, shall have effect in the case of any school to which they relate despite anything in section 411(2) or in the instrument or articles of government for the school.
- (3) This section applies to an agreement made in relation to any two or more maintained or grant-maintained schools to which each authority responsible for determining the arrangements for admitting pupils to any of the schools is a party, whether or not any local education authority for any area in which any of the schools is situated is also a party.
- (4) The Secretary of State may make a scheme under this section for the purpose of co-ordinating arrangements, or assisting in the co-ordination of arrangements, for admitting pupils to any maintained or grant-maintained schools to which the scheme applies.
- (5) A scheme under this section may in particular require each authority responsible for determining the arrangements for admitting pupils to any of the schools to which the scheme applies—
  - (a) to include in their arrangements for admitting pupils such provisions as may be required by the scheme;
  - (b) to secure the making in accordance with the scheme of an agreement for the purpose of co-ordinating arrangements for admitting pupils to the schools to which the scheme applies; or
  - (c) to secure the modification in accordance with the scheme of any such agreement to which they are a party.
- (6) Before making a scheme under this section the Secretary of State shall, in respect of each school which appears to him to be a school to which the scheme will apply, consult—
  - (a) the governing body, and
  - (b) in the case of a maintained school, the local education authority.
- (7) A scheme under this section may apply—
  - (a) to all schools which for the time being are maintained or grant-maintained schools;
  - (b) to all schools which for the time being are maintained or grant-maintained schools falling within any category of such schools specified in the scheme; or
  - (c) to any maintained or grant-maintained school so specified.

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- (8) Section 570 (revocation and variation) applies to a scheme under this section as it applies to an order made by the Secretary of State.
- (9) In this section “maintained school” means a county or voluntary school or a maintained special school which is not established in a hospital.

*Power to direct admission of child to school*

**431 Direction to admit child to specified school. E+W**

- (1) The appropriate authority may give a direction under this section if, in the case of any child in the area of a local education authority, either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—
  - (a) he has been refused admission to the school, or
  - (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
  - (a) which is a reasonable distance from the child’s home, and
  - (b) from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of the Secretary of State under section 432(4) or by the funding authority, specify a school in the area referred to in subsection (1).
- (4) Where a school is specified in a direction under this section, the governing body (and, if the school is a county or voluntary school and the local education authority are not the appropriate authority, the local education authority) shall admit the child to the school.
- (5) Subsection (4) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (6) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.
- (7) In this section and section 432—
  - (a) references to the appropriate authority are (subject to subsection (8)) references to the local education authority; and
  - (b) references to schools are references to county, voluntary and grant-maintained schools.
- (8) Where the education which is suitable education for the child is also education of a kind to which there relates an order made under section 27(1)(b) in respect of the area referred to in subsection (1) above, references in this section and section 432 to the appropriate authority are to be read in relation to—
  - (a) that child, and
  - (b) any county, voluntary or grant-maintained school in that area, and any such school in any other area to which an order under section 27(1)(b) applies which provides education which is relevant education in relation to that order, as references to the funding authority.

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

C60 S. 431 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, Sch. para.6.

**432 Procedure for giving direction under section 431. E+W**

- (1) Before deciding to give a direction under section 431, the appropriate authority shall consult—
  - (a) the parent of the child,
  - (b) the governing body of the school they propose to specify in the direction, and
  - (c) (if different) the authority which have a duty to maintain the school or to pay maintenance grant to the governing body (“the maintaining authority”).
- (2) Where the appropriate authority decide to give such a direction specifying any school they shall, before doing so, serve a notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) (if subsection (1)(c) applies) the maintaining authority,
 and shall not give the direction until the period for referring the matter to the Secretary of State under subsection (3) has expired and, if it is so referred, the Secretary of State has made his determination.
- (3) Any body or authority on whom a notice is served under subsection (2) may, within the period of 15 days beginning with the day on which the notice was served, refer the matter to the Secretary of State and, if they do so, shall inform the appropriate authority.
- (4) On a reference under subsection (3) the Secretary of State may determine which school is to be required to admit the child and, if he does so, that school shall be specified in the direction.
- (5) Where the appropriate authority give such a direction specifying a school, they shall give notice in writing of that fact to—
  - (a) the governing body and head teacher of the school, and
  - (b) (if subsection (1)(c) applies) the maintaining authority.

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

C61 S. 432 modified (1.9.1998)(temp.) by S.I. 1998/1948, reg. 3, Sch. para.7.

*Time for admission of pupils*

**433 Time for admission of pupils. E+W**

- (1) Section 14 (which requires a local education authority to secure that sufficient schools for providing primary and secondary education are available for their area) shall not be construed as imposing any obligation on the proprietor of a school to admit children as pupils otherwise than at the beginning of a school term.
- (2) Where, however, a child was prevented from entering a school at the beginning of a term—

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- (a) by his being ill or by other circumstances beyond his parent's control, or
  - (b) by his parent's having been then resident at a place from which the school was not accessible with reasonable facility,
- the school's proprietor is not entitled by virtue of subsection (1) to refuse to admit him as a pupil during the currency of the term.
- (3) In cases where subsection (2) does not apply, the governing body of a school maintained by a local education authority shall comply with any general directions given by the authority as to the time of admission of children as pupils.
- <sup>F126</sup>(4) .....
- (5) Despite section 7 (duty of parent of child of compulsory school age to cause him to receive full-time education), a parent is not under a duty to cause a child to receive full-time education during any period during which, having regard to subsections (1) and (2), it is not practicable for the parent to arrange for him to be admitted as a pupil at a school.

**Textual Amendments**

**F126** S. 433(4) repealed (1.10.1998) by 1998 c. 31, s. 140(1), Sch. 30 para. 110, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), **Sch.1 Pt. I**.

*Registration of pupils*

**434 Registration of pupils. E+W**

- (1) The proprietor of a school shall cause to be kept, in accordance with regulations, a register containing the prescribed particulars in respect of all persons who are pupils at the school.
- (2) Without prejudice to the generality of subsection (1), the prescribed particulars shall include particulars of the name and address of every person known to the proprietor to be a parent of a pupil at the school.
- (3) The regulations shall prescribe the grounds on which names are to be deleted from a register kept under this section; and the name of a person entered in such a register as a pupil at a school—
  - (a) shall, when any of the prescribed grounds is applicable, be deleted from the register on that ground; and
  - (b) shall not be deleted from the register otherwise than on any such ground.
- (4) The regulations may make provision—
  - (a) for enabling registers kept under this section to be inspected;
  - (b) for enabling extracts from such registers to be taken for the purposes of this Act by persons authorised to do so under the regulations; and
  - (c) for requiring the person by whom any such register is required to be kept to make to—
    - (i) the Secretary of State,
    - (ii) the funding authorities, and
    - (iii) local education authorities,

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such periodical or other returns as to the contents of the register as may be prescribed.

(5) In this Act—

“registered pupil”, in relation to a school, means a person registered as a pupil at the school in the register kept under this section; and

“registered”, in relation to the parents of pupils at a school or in relation to the names or addresses of such parents or pupils, means shown in that register.

(6) A person who contravenes or fails to comply with any requirement imposed on him by regulations under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

*Withdrawal of pupils from primary school for secondary education*

**435 Withdrawal of pupils from a primary school for secondary education. E+W**

A local education authority may make arrangements in respect of a primary school maintained by them (other than one that is for the time being organised for the provision of both primary and secondary education) under which any registered pupils who are under the age of 12 but have attained the age of 10 years and six months may be required to be withdrawn from the school for the purpose of receiving secondary education.

*Supplementary*

**436 Effect of admission for nursery education. E+W**

(1) Children admitted to a school for nursery education and subsequently transferred to a reception class at the school shall be regarded for the purposes of this Chapter as admitted to the school (otherwise than for nursery education) on being so transferred.

(2) The admission of children to a school for nursery education shall be disregarded for the purpose of—

- (a) applying in relation to a primary school any provision of sections 416 to 421 (apart from section 419) which refers to the number of pupils admitted or intended to be admitted to a school in any school year, or
- (b) applying section 419(3) or (4) in relation to a primary school, or
- (c) determining for the purposes of any provision of sections 416 to 421 what is a relevant age group in relation to a primary school,

and for the purposes of sections 426 to 428.

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## CHAPTER II **E+W**

### SCHOOL ATTENDANCE

#### *School attendance orders*

#### **437 School attendance orders. **E+W****

- (1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.
- (2) That period shall not be less than 15 days beginning with the day on which the notice is served.
- (3) If—
  - (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and
  - (b) in the opinion of the authority it is expedient that the child should attend school,the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.
- (4) A school attendance order shall (subject to any amendment made by the local education authority) continue in force for so long as the child is of compulsory school age, unless—
  - (a) it is revoked by the authority, or
  - (b) a direction is made in respect of it under section 443(2) or 447(5).
- (5) Where a maintained or grant-maintained school is named in a school attendance order, the local education authority shall inform the governing body and the head teacher.
- (6) Where a maintained or grant-maintained school is named in a school attendance order, the governing body (and, in the case of a maintained school, the local education authority) shall admit the child to the school.
- (7) Subsection (6) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (8) In this Chapter—

“maintained school” means any county or voluntary school or any maintained special school which is not established in a hospital; and

“suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

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**438 Choice of school: child without statement of special educational needs. E+W**

- (1) This section applies where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child, other than a child for whom they maintain a statement under section 324.
- (2) Before serving the order, the authority shall serve on the parent a notice in writing—
  - (a) informing him of their intention to serve the order,
  - (b) specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and
  - (c) stating the effect of subsections (3) to (6).
- (3) If the notice specifies one or more alternative schools and the parent selects one of them within the period of 15 days beginning with the day on which the notice is served, the school selected by him shall be named in the order.
- (4) If—
  - (a) within the period mentioned in subsection (3)—
    - (i) the parent applies for the child to be admitted to a school maintained by a local education authority and, where that authority are not the authority by whom the notice was served, notifies the latter authority of the application, or
    - (ii) the parent applies for the child to be admitted to a grant-maintained school and notifies the authority by whom the notice was served of the application, and
  - (b) the child is offered a place at the school as a result of the application, that school shall be named in the order.
- (5) If—
  - (a) within the period mentioned in subsection (3), the parent applies to the local education authority by whom the notice was served for education to be provided for the child at a school which is not maintained by a local education authority and is not a grant-maintained school, and
  - (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517, that school shall be named in the order.
- (6) If, within the period mentioned in subsection (3)—
  - (a) the parent—
    - (i) applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, and in respect of which no application is made under subsection (5), and
    - (ii) notifies the local education authority by whom the notice was served of the application,
  - (b) the child is offered a place at the school as a result of the application, and
  - (c) the school is suitable to his age, ability and aptitude and to any special educational needs he may have, that school shall be named in the order.



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### 439 Specification of schools in notices under section 438(2). **E+W**

- (1) Subject to subsection (3), a local education authority shall not, if it appears to them that subsection (2) applies in relation to any school, specify the school in a notice under section 438(2) unless they are responsible for determining the arrangements for the admission of pupils to the school.
- (2) This subsection applies where, if the child concerned were admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child's age group would exceed the number fixed—
  - (a) in the case of a maintained school, in accordance with section 416, or
  - (b) in the case of a grant-maintained school, in accordance with sections 426 to 428,as the number of pupils in that age group which it is intended to admit to the school in the school year in which he would be admitted.
- (3) Subsection (1) does not prevent a local education authority specifying in a notice under section 438(2) any maintained or grant-maintained school if—
  - (a) there is no maintained or grant-maintained school in their area which—
    - (i) the authority are not (apart from this subsection) prevented by subsection (1) from specifying, and
    - (ii) is, in the opinion of the authority, a reasonable distance from the home of the child concerned, and
  - (b) in the opinion of the authority, the school in question is a reasonable distance from the home of the child concerned.
- (4) A local education authority shall not specify in a notice under section 438(2) a school from which the child concerned is permanently excluded.
- (5) Before deciding to specify a particular maintained or grant-maintained school in a notice under section 438(2) a local education authority shall consult—
  - (a) the governing body, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (6) Where a local education authority decide to specify a particular maintained or grant-maintained school in a notice under section 438(2) they shall, before serving the notice, serve notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (7) A governing body or local education authority on whom notice is served under subsection (6) may, within the period of 15 days beginning with the day on which the notice was received, apply to the Secretary of State for a direction under this section and, if they do so, shall inform the local education authority which served the notice.
- (8) Where the Secretary of State gives a direction under this section, the school or schools to be specified in the notice under section 438(2) shall be determined in accordance with the direction.

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

**C62** S. 439 modified (1.9.1998) (temp.) by S.I. 1998/1948, reg. 3, Sch. para.8.

**440 Amendment of order at request of parent: child without statement of special educational needs. E+W**

- (1) This section applies where a school attendance order is in force in respect of a child, other than a child for whom the local education authority maintain a statement under section 324.
- (2) If at any time—
  - (a) the parent applies for the child to be admitted to a school maintained by a local education authority or grant-maintained school which is different from the school named in the order,
  - (b) the child is offered a place at the school as a result of the application, and
  - (c) the parent requests the local education authority by whom the order was served to amend it by substituting that school for the one currently named,
 the authority shall comply with the request.
- (3) If at any time—
  - (a) the parent applies to the authority for education to be provided for the child at a school which is not maintained by a local education authority or a grant-maintained school and which is different from the school named in the order,
  - (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517, and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,
 the authority shall comply with the request.
- (4) If at any time—
  - (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, which is different from the school named in the order and in respect of which no application is made under subsection (3),
  - (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and to any special educational needs he may have, and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,
 the authority shall comply with the request.

**441 Choice of school: child with statement of special educational needs. E+W**

- (1) Subsections (2) and (3) apply where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child for whom they maintain a statement under section 324.

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- (2) Where the statement specifies the name of a school, that school shall be named in the order.
- (3) Where the statement does not specify the name of a school—
  - (a) the authority shall, in accordance with paragraph 10 of Schedule 27, amend the statement so that it specifies the name of a school, and
  - (b) that school shall then be named in the order.
- (4) Where—
  - (a) a school attendance order is in force in respect of a child for whom the local education authority maintain a statement under section 324, and
  - (b) the name of the school specified in the statement is changed,  
the local education authority shall amend the order accordingly.

**442 Revocation of order at request of parent. E+W**

- (1) This section applies where a school attendance order is in force in respect of a child.
- (2) If at any time the parent applies to the local education authority requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request, unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.
- (3) If a parent is aggrieved by a refusal of the local education authority to comply with a request under subsection (2), he may refer the question to the Secretary of State.
- (4) Where a question is referred to the Secretary of State under subsection (3), he shall give such direction determining the question as he thinks fit.
- (5) Where the child in question is one for whom the authority maintain a statement under section 324—
  - (a) subsections (2) to (4) do not apply if the name of a school or other institution is specified in the statement, and
  - (b) in any other case a direction under subsection (4) may require the authority to make such amendments in the statement as the Secretary of State considers necessary or expedient in consequence of his determination.

*School attendance: offences and education supervision orders*

**443 Offence: failure to comply with school attendance order. E+W**

- (1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.
- (2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.
- (3) A direction under subsection (2) does not affect the duty of the local education authority to take further action under section 437 if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so.

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- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**444 Offence: failure to secure regular attendance at school of registered pupil. E**  
+W

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- (2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.
- (3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—
- (a) with leave,
  - (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
  - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- (4) The child shall not be taken to have failed to attend regularly at the school if the parent proves—
- (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
  - (b) that no suitable arrangements have been made by the local education authority or the funding authority for any of the following—
    - (i) his transport to and from the school,
    - (ii) boarding accommodation for him at or near the school, or
    - (iii) enabling him to become a registered pupil at a school nearer to his home.
- (5) In subsection (4) “walking distance”—
- (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
  - (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),
- in each case measured by the nearest available route.
- (6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves—
- (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
  - (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
  - (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.
- (7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part

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of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.

- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) In this section “leave”, in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

#### **445 Presumption of age. E+W**

- (1) This section applies for the purposes of any proceedings for an offence under section 443 or 444.
- (2) In so far as it is material, the child in question shall be presumed to have been of compulsory school age at any time unless the parent proves the contrary.
- (3) Where a court is obliged by virtue of subsection (2) to presume a child to have been of compulsory school age, section 565(1) (provisions as to evidence) does not apply.

#### **446 Institution of proceedings. E+W**

Proceedings for an offence under section 443 or 444 shall not be instituted except by a local education authority.

#### **447 Education supervision orders. E+W**

- (1) Before instituting proceedings for an offence under section 443 or 444, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.
- (2) The court—
  - (a) by which a person is convicted of an offence under section 443, or
  - (b) before which a person is charged with an offence under section 444,may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.
- (3) Where, following such a direction, a local education authority decide not to apply for an education supervision order, they shall inform the court of the reasons for their decision.
- (4) Unless the court has directed otherwise, the information required under subsection (3) shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.
- (5) Where—
  - (a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order, and
  - (b) the court decides that section 36(3) of the <sup>M73</sup>Children Act 1989 (education supervision orders) prevents it from making the order,the court may direct that the school attendance order shall cease to be in force.

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(6) In this section—

“the appropriate local authority” has the same meaning as in section 36(9) of the <sup>M74</sup>Children Act 1989, and

“education supervision order” means an education supervision order under that Act.

#### Marginal Citations

M73 1989 c. 41.

M74 1989 c. 41.

### *Exemption*

#### 448 Exemption where child becomes five during term. **E+W**

Where—

- (a) a child attains [<sup>F127</sup>compulsory school age] during the school term of a grant-maintained school, and
- (b) arrangements have been made for the admission of the child to that school at the start of the next school term,

then, during the period beginning with his attaining that age and ending with the start of that next school term, section 7 (duty of parents to secure the education of their children) and section 437 shall not apply to the child.

#### Textual Amendments

F127 Words in s. 448 substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.35**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.

## CHAPTER III **E+W**

### CHARGES IN CONNECTION WITH EDUCATION AT LEA OR GRANT-MAINTAINED SCHOOLS

#### *Preliminary*

#### 449 Meaning of “maintained school” in Chapter III. **E+W**

In this Chapter “maintained school” means—

- (a) any school maintained by a local education authority, and
- (b) any grant-maintained school.

#### *Prohibition of charges*

#### 450 Prohibition of charges for admission. **E+W**

- (1) No charge shall be made in respect of admission to a maintained school.

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- (2) Subsection (1) does not apply to the admission of any person to any maintained school for the purpose of—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age;
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19; or
  - (c) teacher training.

**451 Prohibition of charges for provision of education. E+W**

- (1) Subject to subsection (5), this section applies in relation to education provided at any maintained school for a registered pupil at the school.
- (2) Where the education is provided for the pupil during school hours no charge shall be made in respect of it.
- (3) Subsection (2) does not apply in relation to tuition in playing a musical instrument where the tuition is provided either individually or to a group of not more than four pupils, unless the tuition is—
- (a) required as part of a syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school, or
  - (b) provided in pursuance of a duty imposed by section 357(1) or 384 (implementation of National Curriculum or of provision for religious education in school's basic curriculum).
- (4) Where the education is provided for the pupil outside school hours no charge shall be made in respect of it if it is—
- (a) required as part of a syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school, or
  - (b) provided in pursuance of a duty imposed by section 357(1) or 384.
- (5) Nothing in this section applies in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 231(8).

**452 Application of section 451 where education is provided partly during and partly outside school hours etc. E+W**

- (1) Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours, then—
- (a) if 50 per cent. or more of the time occupied by that period together with any connected school travelling time falls during school hours, so much of the education provided during that period as is provided outside school hours shall be treated for the purposes of section 451 as provided during school hours, and
  - (b) in any other case, so much of the education provided during that period as is provided during school hours shall be treated for those purposes as provided outside school hours.
- (2) In subsection (1) “connected school travelling time” means time spent during school hours by the pupils taking part in the educational activity concerned in getting to or from the place where the activity takes place.

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- (3) Where any education provided at a maintained school is provided on a residential trip, then—
- (a) if the number of school sessions taken up by the trip is equal to or greater than 50 per cent. of the number of half days spent on the trip, any education provided on the trip which is provided outside school hours shall be treated for the purposes of section 451 as provided during school hours, and
  - (b) in any other case, any education provided on the trip which is provided during school hours shall be treated for those purposes as provided outside school hours.
- (4) In this section “half day” means any period of 12 hours ending with noon or midnight on any day.
- (5) For the purposes of subsection (3)—
- (a) where 50 per cent. or more of a half day is spent on a residential trip, the whole of that half day shall be treated as spent on the trip, and
  - (b) a school session on any day on which such a session takes place at the school concerned shall be treated as taken up by a residential trip if the time spent on the trip occupies 50 per cent. or more of the time allowed for that session at the school.
- (6) Nothing in section 451 shall be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at a maintained school on a residential trip.

**453 Examinations: prohibition of charges and recovery of wasted fees. E+W**

- (1) No charge shall be made in respect of the entry of a registered pupil at a maintained school for a prescribed public examination in any syllabus for that examination for which the pupil has been prepared at the school.
- (2) Despite subsection (1), where—
- (a) the governing body of a maintained school or the local education authority have paid or are liable to pay a fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination, and
  - (b) the pupil fails without good reason to meet any examination requirement for that syllabus,
- that body or authority may recover the amount of the fee from the pupil’s parent.
- (3) It shall be for the body or authority who have paid or are liable to pay the fee in question to determine for the purposes of this section any question whether a pupil who has failed to meet an examination requirement had good reason for the failure.

**454 Prohibition of incidental charges. E+W**

- (1) Neither the parent of a registered pupil at a maintained school nor the pupil himself shall be required to pay for or supply any materials, books, instruments or other equipment for use for the purposes of or in connection with—
- (a) education provided for the pupil at the school in respect of which, by virtue of section 451, no charge may be made, or
  - (b) a syllabus for a prescribed public examination which is a syllabus for which the pupil has been prepared at the school.



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- (2) Nothing in subsection (1) shall prevent the parent of a pupil from being required to pay for or supply any materials for use for the purposes of the production, in the course of the provision of education for the pupil at the school, of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil.
- (3) No charge shall be made in respect of transport provided for a registered pupil at a maintained school where the transport is either—
  - (a) incidental to education provided for the pupil at the school in respect of which, by virtue of section 451, no charge may be made, or
  - (b) provided for the purpose of enabling him to meet any examination requirement for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school.
- (4) For the purposes of subsection (3)(a) transport is incidental to education provided for registered pupils at a school if it is provided for the purpose of carrying such pupils—
  - (a) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises, or
  - (b) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place.

#### *Permitted charges*

#### **455 Permitted charges. E+W**

- (1) Subject to subsection (2), a charge may be made in respect of—
  - (a) education provided for a registered pupil at a maintained school other than education in respect of which, by virtue of section 451, no charge may be made,
  - (b) the entry of a registered pupil at a maintained school for a public examination in any syllabus for that examination otherwise than in circumstances in which, by virtue of section 453(1), no charge may be made,
  - (c) transport provided for a registered pupil at a maintained school other than transport in respect of which, by virtue of section 454(3) or 509(2), no charge may be made, and
  - (d) board and lodging provided for a registered pupil at a maintained school on a residential trip.
- (2) A charge may not be made—
  - (a) by virtue of subsection (1)(a) in respect of the provision for a pupil of education,
  - (b) by virtue of subsection (1)(b) in respect of the entry of a pupil for an examination in any syllabus for that examination, or
  - (c) by virtue of subsection (1)(c) in respect of the provision for a pupil of transport,

unless the education is provided, the pupil is entered for the examination in that syllabus, or the transport is provided, by agreement with the pupil's parent.

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- (3) Any education, examination entry or transport in respect of which a charge may be made by virtue of subsection (1) is referred to in this Chapter as an “optional extra”.

#### **456 Regulation of permitted charges. E+W**

- (1) This section applies in relation to any charge permitted under section 455, other than a charge in respect of education provided at a grant-maintained school in pursuance of arrangements made under section 231(8); and a charge to which this section applies is referred to in this section as a “regulated charge”.
- (2) The amount of any regulated charge shall be payable by the parent of the pupil concerned.
- (3) A regulated charge shall not exceed the cost of the provision of the optional extra or the board and lodging in question.
- (4) Without prejudice to the generality of subsection (3), the cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs—
- (a) incurred in respect of the provision of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra, or
  - (b) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra, or
  - (c) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it.
- (5) Subject to subsection (6), the cost of the provision of an optional extra shall not be taken to include any costs attributable to the provision of teaching staff other than staff engaged as mentioned in subsection (4)(c).
- (6) Where the optional extra in question consists of tuition in playing a musical instrument, the cost of its provision shall include costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition.
- (7) Where charging is permitted under section 455 and the charge would be a regulated charge, the question whether any charge should be made, and the amount of any charge to be made, shall be determined—
- (a) in a case where the cost of the provision of the optional extra or board and lodging in question is met by or from funds at the disposal of the governing body, by the governing body, and
  - (b) in any other case, by the local education authority.
- (8) The whole or any part of the amount of any charge which the local education authority determine under subsection (7)(b) to make—
- (a) shall, if the governing body so determine, be met by or from funds at the disposal of the governing body, and
  - (b) to the extent that it is so met, shall not be payable by the parent of the pupil concerned.

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#### 457 Charges and remissions policies. **E+W**

- (1) Every governing body of a maintained school and every local education authority shall determine and keep under review a policy with respect to—
- (a) the provision of, and
  - (b) the classes or descriptions of case in which they propose to make charges for, any optional extra or board and lodging in respect of which charges are permitted by section 455.

This subsection does not apply in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 231(8).

- (2) No such body or authority shall make such a charge unless they have both—
- (a) determined a policy under subsection (1)(b) (their “charging policy”), and
  - (b) determined a policy (their “remissions policy”) setting out any circumstances in which they propose to remit (in whole or in part) any charge which would otherwise be payable to them in accordance with their charging policy.
- (3) A remissions policy determined by the governing body of a school other than a grant-maintained school shall set out any circumstances in which the governing body propose to meet (in whole or in part) any charge payable to the local education authority, in accordance with the authority’s charging policy, for an optional extra or board and lodging provided for a registered pupil at the school.
- (4) A remissions policy shall provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip if—
- (a) the education provided on the trip is education in respect of which, by virtue of section 451, no charge may be made, and
  - (b) the pupil’s parents are in receipt of—
    - (i) income support,
    - (ii) family credit,
    - (iii) an income-based jobseeker’s allowance (payable under the <sup>M75</sup>Jobseekers Act 1995), or
    - (iv) disability working allowance,in respect of any period wholly or partly comprised in the time spent on the trip.
- (5) A remissions policy shall be kept under review by the governing body or local education authority by whom it was determined.

#### Marginal Citations

M75 1995 c. 18.

#### 458 Charges for board and lodging at boarding schools. **E+W**

- (1) Subject to subsections (2) to (5), where a registered pupil at a maintained school is provided at the school with board and lodging, there shall be payable in respect of the board and lodging by the parent of the pupil concerned—
- (a) to the local education authority, in the case of a school maintained by such an authority, or

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(b) to the governing body, in the case of a grant-maintained school, charges not exceeding the cost to the authority or governing body of providing the board and lodging.

(2) Where—

(a) the board and lodging are provided for the pupil at a school maintained by a local education authority, and

(b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,

then, where the school is maintained by the local education authority for his area, that authority shall remit the whole of the charges payable under this section and, in any other case, that authority shall pay the whole of the charges payable under this section to the authority which maintain the school.

(3) Where—

(a) the board and lodging are provided for the pupil at a grant-maintained school, and

(b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,

the whole of the charges payable under this section shall be payable by the authority instead of by the pupil's parent.

(4) Where the local education authority for the pupil's area are satisfied that payment of the full charges payable under this section would involve financial hardship to the parent of the pupil concerned, the authority—

(a) in the case of charges payable to the authority, shall remit so much of those charges as falls in accordance with subsection (5) to be so remitted, and

(b) in the case of charges payable to another local education authority or to the governing body of a grant-maintained school in respect of board and lodging, shall pay so much of those charges as falls in accordance with subsection (5) to be so paid.

(5) The amount that falls to be remitted or paid by a local education authority by virtue of subsection (4)(a) or (b) is—

(a) such part of the charges in question as the authority consider ought not to be paid by the pupil's parent in order to avoid such hardship as is mentioned in subsection (4), or

(b) the whole of those charges if, in their opinion, such hardship cannot otherwise be avoided.

### *Supplementary*

#### **459 Provision of information. E+W**

Regulations may require, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—

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- (a) such information relevant for the purposes of this Chapter as to the school hours at the school, and
  - (b) such information as to the policies determined under section 457 which apply in relation to the school,
- as may be prescribed.

#### **460 Contributions and charges unaffected by Chapter III. E+W**

- (1) Nothing in this Chapter shall be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of a maintained school or a local education authority for voluntary contributions for the benefit of the school or any school activities.
- (2) Any request or invitation made by or on behalf of such a body or authority for contributions for the benefit of a school or school activities shall not be regarded for the purposes of subsection (1) as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made—
  - (a) that there is no obligation to make any contribution, and
  - (b) that registered pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.
- (3) Nothing in this Chapter relating to charges in respect of a registered pupil at a maintained school shall be read as relating to—
  - (a) charges made by persons other than the governing body or the local education authority, or
  - (b) charges to be paid by persons other than the parent of the pupil or the pupil himself.

#### **461 Recovery of sums as civil debt. E+W**

Any sum payable under section 453(2), 455 or 458 by the parent of a registered pupil at a maintained school shall be recoverable summarily as a civil debt.

#### **462 Interpretation of Chapter III. E+W**

- (1) In this Chapter—
  - “equipment” does not include clothing;
  - “examination requirement”, in relation to a syllabus for an examination, means a requirement which a pupil must meet in order to qualify for assessment for the purposes of determining his achievements in that examination in that syllabus.
- (2) In this Chapter “residential trip” means any trip—
  - (a) which is arranged for registered pupils at a maintained school by or on behalf of the governing body or the local education authority, and
  - (b) which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation.
- (3) For the purposes of this Chapter, a pupil shall be regarded as having been prepared at a school for a syllabus for a prescribed public examination if any part of the education

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provided with a view to preparing him for that examination in that syllabus has been provided for him at that school.

- (4) In this Chapter references to a public examination (or a prescribed public examination) are references to such an examination as it applies in relation to persons who are entered for a syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment takes place.
- (5) For the purposes of subsection (4)—
- (a) “an assessment” means an assessment for the purposes of determining the achievements of persons entered for the examination in question; and
  - (b) such an assessment is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for any syllabus in that examination who has met the examination requirements for that syllabus—
    - (i) whether he has passed or failed, and
    - (ii) if grades are assigned for the purposes of the examination, the grade to be assigned in his case.

## PART VII E+W

### INDEPENDENT SCHOOLS

#### CHAPTER I E+W

##### PRELIMINARY

#### 463 **Meaning of “independent school”.** E+W

In this Act “independent school” means any school at which full-time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided at it for pupils under or over that age) and which is not—

- (a) a school maintained by a local education authority,
- (b) a special school not so maintained, or
- (c) a grant-maintained school.

#### CHAPTER II E+W

### REGISTRATION OF INDEPENDENT SCHOOLS

#### *Registration*

#### 464 **Separate registration for England and for Wales.** E+W

- (1) A register of all independent schools in England shall be kept by an officer of the Secretary of State who is appointed by the Secretary of State to be Registrar of Independent Schools for England.

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- (2) A register of all independent schools in Wales shall be kept by an officer of the Secretary of State who is appointed by the Secretary of State to be Registrar of Independent Schools for Wales.
- (3) Each register shall be open to public inspection at all reasonable times.
- (4) In this Part “the Registrar of Independent Schools” (or “the Registrar”) means—
  - (a) in relation to a school in England, the Registrar of Independent Schools for England, and
  - (b) in relation to a school in Wales, the Registrar of Independent Schools for Wales,and references, in relation to a school, to the register or to registration are to the register kept by the relevant Registrar or to registration in that register.

#### 465 Provisional and final registration of a school. **E+W**

- (1) Subject to subsection (2), the Registrar of Independent Schools shall enter in the register the name of any independent school whose proprietor—
  - (a) makes an application for registration in such manner as may be prescribed, and
  - (b) provides such particulars as may be prescribed.
- (2) A school shall not be registered if—
  - (a) by virtue of an order made under section 470 or 471, the proprietor is disqualified from being the proprietor of an independent school or the school premises are disqualified from being used as a school, or
  - (b) the school premises are used or proposed to be used for any purpose for which they are disqualified by virtue of such an order.
- (3) The registration of a school shall initially be provisional only, and shall remain so until such time as the Secretary of State, after the school has been inspected on his behalf under Part I of the <sup>M76</sup>School Inspections Act 1996, gives notice to the proprietor that the registration is final.
- (4) In this Part—

“provisionally registered school” means an independent school whose registration is provisional only, and

“registered school” means an independent school whose registration is final.
- (5) In this section “proprietor”, in relation to a school, includes any person or body of persons proposing to be the proprietor.

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#### Marginal Citations

M76 1996 c. 57.

#### 466 Enforcement of registration: offences. **E+W**

- (1) Subject to subsection (2), a person is guilty of an offence if he conducts an independent school which is not a registered school or a provisionally registered school.

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- (2) A person is not guilty of an offence under subsection (1) by reason of conducting a school at any time within the period of one month from the date on which it was first conducted (whether by that person or another) if an application for the registration of the school has been duly made under section 465 within that period.
- (3) The proprietor of an independent school is guilty of an offence if, while it is a provisionally registered school, he does any act calculated to lead to the belief that it is a registered school.

**467 Provision of information about registered and provisionally registered schools. E+W**

- (1) Regulations may make provision for requiring the proprietor of a registered or provisionally registered school to provide the Registrar of Independent Schools from time to time with such particulars relating to the school as may be prescribed.
- (2) Regulations made under this section may in particular require the proprietor of a school to furnish the Registrar with such information as is required by the local authority for the purpose of determining whether the school is a children's home (within the meaning of the <sup>M77</sup>Children Act 1989).
- (3) Regulations may make provision for enabling the Secretary of State to order the deletion from the register of the name of any school in respect of which any requirement imposed by or under regulations made under this section is not complied with.
- (4) Subsection (9) of section 537 (general power of Secretary of State to require information from governing bodies etc.) confers power on the Secretary of State to make similar provision in relation to non-compliance with any requirement imposed by or under regulations under that section.

**Marginal Citations**

M77 1989 c. 41.

**468 School may be struck off for contravention of regulations about employment of teachers. E+W**

Where the Secretary of State is satisfied that a person whose employment is prohibited or restricted by virtue of regulations under section 218(6) of the <sup>M78</sup>Education Reform Act 1988 (employment prohibited or restricted on medical grounds or for misconduct etc.)—

- (a) is employed in a registered or provisionally registered school in contravention of those regulations, or
- (b) is the proprietor of such a school,

he may order that the school be struck off the register or (as the case may be) that the Registrar is not to register the school.

**Marginal Citations**

M78 1988 c. 40.



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### *Complaints about registered and provisionally registered schools*

#### **469 Notice of complaint by Secretary of State. E+W**

- (1) This section applies where the Secretary of State is satisfied that one or more of the following grounds of complaint apply in relation to a registered or provisionally registered school—
  - (a) the school premises or any parts of them are unsuitable for a school;
  - (b) the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages, and sex of the pupils attending the school;
  - (c) efficient and suitable instruction is not being provided at the school having regard to the ages and sex of the pupils attending it;
  - (d) the proprietor of the school or any teacher or other employee employed in the school is not a proper person to be the proprietor of an independent school or (as the case may be) to be a teacher or other employee in any school;
  - (e) there has been a failure, in relation to a child provided with accommodation by the school, to comply with the duty imposed by section 87 of the <sup>M79</sup>Children Act 1989 (welfare of children accommodated in independent schools).
- (2) The Secretary of State shall serve on the proprietor of the school a notice of complaint stating the grounds of complaint which apply together with full particulars of the matters complained of.
- (3) Unless any of those matters are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall specify—
  - (a) the measures necessary in the opinion of the Secretary of State to remedy those matters, and
  - (b) the time, not being less than six months after the service of the notice, within which those measures are required to be taken.
- (4) If it is alleged by the notice that a person employed as a teacher or other employee at the school is not a proper person to be a teacher or other employee in any school—
  - (a) that person shall be named in the notice,
  - (b) the particulars given in the notice shall specify the grounds of the allegation, and
  - (c) a copy of the notice shall be served on him.
- (5) Any notice of complaint, or copy of a notice of complaint, served under this section shall limit the time, not being less than one month after the service of the notice or copy, within which the complaint may be referred to an Independent Schools Tribunal under section 470.
- (6) In this section and sections 470 to 473 “employee” means a person employed in work which brings him regularly into contact with persons who have not attained the age of 19.

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#### **Marginal Citations**

**M79** 1989 c. 41.

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**470 Determination of complaint by an Independent Schools Tribunal. E+W**

- (1) Any person on whom a notice of complaint or copy of a notice of complaint is served under section 469 may, within the time limited by the notice or copy, appeal against the notice by referring the complaint to an Independent Schools Tribunal.
- (2) On the complaint being so referred, the tribunal, after giving all parties concerned an opportunity of being heard and after considering such evidence as may be tendered by them or on their behalf, may—
  - (a) order that the complaint be annulled;
  - (b) order that the school to which the complaint relates be struck off the register;
  - (c) order that the school be so struck off unless the requirements of the notice (subject to such modifications, if any, as may be specified in the order) are complied with to the satisfaction of the Secretary of State before the expiry of such time as may be specified in the order;
  - (d) if satisfied—
    - (i) that any premises alleged by the notice to be unsuitable for use as a school are in fact unsuitable for such use, or
    - (ii) that any part of such premises is in fact unsuitable for such use,
 by order disqualify the premises, or that part, from being so used;
  - (e) if satisfied that the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages and sex of the pupils attending the school, by order disqualify the premises from being used as a school for pupils exceeding such number or of such age or sex as may be specified in the order;
  - (f) if satisfied that any person alleged by the notice of complaint to be a person who is not proper to be the proprietor of an independent school or to be a teacher or other employee in any school is in fact such a person, by order disqualify that person from being the proprietor of any independent school or (as the case may be) from being a teacher or other employee in any school.

**471 Determination of complaint by Secretary of State. E+W**

- (1) Where—
  - (a) a notice of complaint has been served on the proprietor of a school under section 469, and
  - (b) the complaint is not referred by him to an Independent Schools Tribunal under section 470 within the time limited by the notice,
 the Secretary of State may (subject to subsection (2)) make any order which such a tribunal would have had power to make if the complaint had been so referred.
- (2) If—
  - (a) it is alleged by the notice that a person employed as a teacher or other employee at the school is not a proper person to be a teacher or other employee in any school, and
  - (b) that person has, within the time limited by the copy of the notice served on him, referred the complaint to an Independent Schools Tribunal under section 470,
 the Secretary of State may not make an order disqualifying him from being a teacher or other employee in any school.

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**472 Effect of personal disqualification. E+W**

Where, by virtue of an order made—

- (a) by an Independent Schools Tribunal under section 470, or
- (b) by the Secretary of State under section 471,

a person is disqualified either from being the proprietor of an independent school or from being a teacher or other employee in any school, then (unless the order otherwise directs) he shall by virtue of the order be disqualified both from being the proprietor of an independent school and from being a teacher or other employee in any school.

**473 Enforcement of disqualification. E+W**

- (1) A person is guilty of an offence if he uses any premises for purposes for which they are disqualified by virtue of an order made under section 470 or 471.
- (2) A person is guilty of an offence if he—
  - (a) acts as the proprietor of an independent school, or
  - (b) accepts or endeavours to obtain employment as a teacher or other employee in any school,while he is disqualified from so acting or from being so employed by virtue of an order made under section 470 or 471.

VALID FROM 11/01/2001

**[<sup>F128</sup>473A Removal of disqualification: persons no longer unsuitable to work with children. E+W**

- (1) Subject to section 473B, a person to whom this section applies may make an application under this section to the Tribunal.
- (2) This section applies to any person who is disqualified, by an order made under section 470 or 471 on the grounds that he is unsuitable to work with children—
  - (a) from being the proprietor of any independent school; or
  - (b) from being a teacher or other employee in any school.
- (3) On an application under this section the Tribunal shall determine whether or not the individual shall continue to be subject to the order.
- (4) If the Tribunal is satisfied that the individual is no longer unsuitable to work with children, it shall direct that the order shall cease to have effect; otherwise it shall dismiss the application.
- (5) In this section and section 473B, “the Tribunal” means the tribunal established by section 9 of the <sup>M80</sup>Protection of Children Act 1999.]

**Textual Amendments**

**F128** Ss. 473A, 473B inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 129**; S.I. 2000/3302, **art. 2(b)**

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### Marginal Citations

**M80** 1999 c. 14.

VALID FROM 11/01/2001

### <sup>F129</sup>**473B** Conditions for application under section 473A. **E+W**

- (1) A person may only make an application under section 473A with the leave of the Tribunal.
- (2) An application for leave under this section may not be made unless the appropriate conditions are satisfied in the person's case.
- (3) In the case of a person who was a child when the order was made, the appropriate conditions are satisfied if—
  - (a) at least five years have elapsed since the order was made; and
  - (b) in the period of five years ending with the time when he makes the application under this section, he has made no other such application.
- (4) In the case of any other person, the appropriate conditions are satisfied if—
  - (a) at least ten years have elapsed since the order was made; and
  - (b) in the period of ten years ending with the time when he makes the application under this section, he has made no other such application.
- (5) The Tribunal shall not grant an application under this section unless it considers—
  - (a) that the person's circumstances have changed since the order was made, or, as the case may be, since he last made an application under this section; and
  - (b) that the change is such that leave should be granted.

### Textual Amendments

**F129** Ss. 473A, 473B inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 129**; S.I. 2000/3302. art. 2(b)

### **474** Removal of disqualification. **E+W**

- (1) If on the application of any person the Secretary of State is satisfied that any disqualification imposed by an order made under section 470 or 471 is, by reason of any change of circumstances, no longer necessary, he may by order remove the disqualification.
- (2) Any person who is aggrieved by the refusal of the Secretary of State to remove any such disqualification may appeal to an Independent Schools Tribunal within such time after the refusal has been communicated to him as may be limited by rules made under section 476.

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**475 Duty of Registrar to comply with order for the deletion of a school from the register. E+W**

Where an order directing that a school be struck off the register is made—

- (a) by the Secretary of State under section 468 or 471, or
- (b) by an Independent Schools Tribunal under section 470,

the Registrar of Independent Schools shall strike the school off the register as from the date on which the direction takes effect.

*Independent Schools Tribunals*

**476 Constitution and proceedings of Independent Schools Tribunals. E+W**

- (1) Schedule 34 has effect in relation to the constitution of Independent Schools Tribunals and the remuneration of their members.
- (2) The Lord Chancellor may, with the concurrence of the Lord President of the Council, make rules as to—
  - (a) the practice and procedure to be followed with respect to the constitution of Independent Schools Tribunals;
  - (b) the manner of making appeals to such tribunals; and
  - (c) proceedings before such tribunals and matters incidental to or consequential on such proceedings.
- (3) The rules may, in particular, make provision—
  - (a) requiring such a tribunal to sit at such places as may be directed in accordance with the rules; and
  - (b) as to appearance before such tribunals by counsel or a solicitor.
- (4) Part I of the <sup>M81</sup>Arbitration Act 1996 shall not apply to any proceedings before an Independent Schools Tribunal, except so far as any provisions of that Act may be applied, with or without modifications, to such proceedings by the rules.
- (5) Every order of an Independent Schools Tribunal shall be registered by the Registrar of Independent Schools and shall be open to public inspection at all reasonable times.

**Marginal Citations**

**M81** 1996 c. 23.

*Supplementary*

**477 Disqualification in Scotland. E+W**

For the purposes of this Part, except section 474, a person who is disqualified by an order made (or having effect as if made) under section 100 of the <sup>M82</sup>Education (Scotland) Act 1980—

- (a) from being the proprietor of an independent school within the meaning of that Act, or
- (b) from being a teacher in any school,

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shall be taken to be disqualified from being the proprietor of an independent school within the meaning of this Act, or (as the case may be) from being a teacher in any school, by virtue of an order made under section 470 or 471.

**Marginal Citations**  
M82 1980 c. 44.

**478 Offences: institution of proceedings and punishment. E+W**

- (1) No proceedings shall be instituted for an offence under section 466 or 473 except by or on behalf of the Secretary of State.
- (2) A person guilty of an offence under section 466 or 473 is liable on summary conviction—
  - (a) to a fine not exceeding level 4 on the standard scale, or
  - (b) to imprisonment for a term not exceeding three months, or both.

**CHAPTER III E+W**

ASSISTED PLACES AT INDEPENDENT SCHOOLS

<sup>F130</sup>**479** ..... **E+W**

**Textual Amendments**  
F130 S. 479 repealed (1.9.1997) by 1997 c. 59, ss. 1(1)(a)(b)(3), 6(3), 7(3)(a), Sch., Pt.I.

<sup>F131</sup>**480** ..... **E+W**

**Textual Amendments**  
F131 S. 480 repealed (1.9.1997) by 1997 c. 59, ss. 1(1)(a)(b)(3), 6(3), 7(3), Sch. Pt.I.

<sup>F132</sup>**481** ..... **E+W**

**Textual Amendments**  
F132 S. 481 repealed (1.9.1997) by 1997 c. 59, ss. 1(1)(a)(b)(3), 6(3), 7(3), Sch. Pt.I.

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## CHAPTER IV **E+W**

### CITY COLLEGES

#### **482 City technology colleges and city colleges for the technology of the arts. **E+W****

- (1) The Secretary of State may enter into an agreement with any person under which—
  - (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school with such characteristics as are specified in the agreement and in subsection (2), and
  - (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.
- (2) The characteristics mentioned above are that the school—
  - (a) is situated in an urban area,
  - (b) provides education for pupils of different abilities who have attained the age of 11 and who are wholly or mainly drawn from the area in which the school is situated, and
  - (c) has a broad curriculum with an emphasis either on science and technology or on technology in its application to the performing and creative arts.
- (3) A school to which an agreement under this section relates shall be known—
  - (a) as a city technology college, if the emphasis of its curriculum is on science and technology, or
  - (b) as a city college for the technology of the arts, if the emphasis of its curriculum is on technology in its application to the performing and creative arts.
- (4) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—
  - (a) conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school, and
  - (b) such other conditions and requirements in relation to the school as are specified in the agreement.
- (5) Any requirements having effect in relation to the school by virtue of section 218(2B) of the <sup>M83</sup>Education Reform Act 1988 (requirements as to the training and teaching experience of teachers at city colleges who seek to become qualified teachers) shall have effect for the purposes of this section and section 483 as requirements falling within subsection (4).

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#### **Marginal Citations**

**M83** 1988 c. 40.

#### **483 City colleges: financial provisions. **E+W****

- (1) Payments under an agreement under section 482 may be in respect of capital or current expenditure.

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- (2) In so far as such payments relate to current expenditure, the agreement shall provide for their continuance (subject to the fulfilment of the conditions and requirements falling within section 482(4))—
  - (a) for a period of not less than seven years, or
  - (b) for an indefinite period terminable by the Secretary of State by not less than seven years' written notice.
- (3) Where such payments relate to capital expenditure, the agreement shall provide for the repayment to the Secretary of State, in the event of the school at any time discontinuing or ceasing to have the characteristics specified in the agreement and in section 482(2), of sums determined by reference to—
  - (a) the value at that time of the school premises and other assets held for the purposes of the school, and
  - (b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement.
- (4) Without prejudice to subsection (1), an agreement under section 482 may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure—
  - (a) incurred by that person in carrying out the undertakings mentioned in section 482(1), or
  - (b) incurred by that person (otherwise than by virtue of subsection (3)) in consequence of the termination of the agreement.

VALID FROM 01/10/2000

**[<sup>F133</sup> 483A City colleges and academies: special educational needs. E+W**

- (1) This section applies in relation to any child falling within subsection (2) if the condition in subsection (3) is satisfied.
- (2) A child falls within this subsection if—
  - (a) he is a child for whom a statement is maintained under section 324, and
  - (b) he attends (or proposes to attend) a school which is a city technology college, a city college for the technology of the arts or a city academy.
- (3) The condition in this subsection is satisfied if—
  - (a) the school is approved by the Secretary of State under section 347(1), or
  - (b) the Secretary of State consents to the child being educated at the school.
- (4) The Secretary of State may by regulations make provision for securing that arrangements are made—
  - (a) for making the special educational provision specified in the statement;
  - (b) for making any non-educational provision specified in the statement.
- (5) Regulations under subsection (4) may require or authorise a local education authority—
  - (a) to make payments to the school in respect of the child, or
  - (b) to provide any other assistance to the school in respect of the child.



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- (6) No condition or requirement imposed by virtue of section 482(4)(a) is to prevent a local education authority making payments or providing assistance by virtue of subsection (5).
- (7) This section does not apply to schools in Wales.]

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**Textual Amendments**

**F133** S. 483A inserted (1.10.2000) by 2000 c. 21, s. 133 (with s. 150); S.I. 2000/2559, art. 2(1), **Sch. Pt. I**

**PART VIII** **E+W+S**

GRANTS AND OTHER FINANCIAL MATTERS

*Grants*

**484** **Grants for education support and training.** **E+W**

- (1) The Secretary of State may pay grants, known as grants for education support and training, to local education authorities in respect of eligible expenditure incurred or to be incurred by them.
- (2) In this section “eligible expenditure” means expenditure of any class or description for the time being specified in regulations, being expenditure for or in connection with educational purposes which it appears to the Secretary of State that local education authorities should be encouraged to incur in the interests of education in England and Wales.
- (3) The regulations shall provide that any grant for education support and training payable in pursuance of the regulations—
- shall only be payable in respect of eligible expenditure incurred or to be incurred by a local education authority in a financial year to the extent to which that expenditure is approved for that year by the Secretary of State for the purposes of the regulations, and
  - shall be payable at such rate as may be specified in the regulations.
- (4) The regulations may provide for the time and manner of payment of any grant for education support and training.
- (5) The regulations may provide for expenditure incurred or to be incurred by any local education authority in making payments, whether by way of maintenance, assistance or otherwise, to any body or persons who incur expenditure for or in connection with educational purposes (including another local education authority) to be treated, in such circumstances as may be specified in the regulations, as eligible expenditure.
- (6) The Secretary of State may exercise his power under subsection (1) separately and differently in relation to local education authorities in England and local education authorities in Wales, and “education in England and Wales” in subsection (2) shall be construed accordingly.

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- (7) Nothing in section 29(1) or 507 applies in relation to any function of the Secretary of State under this section or under section 489 so far as it relates to regulations under this section; and nothing in sections 495 to 497 applies in relation to any function arising by virtue of section 489 so far as it relates to such regulations.

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

**C63** Power to extend s. 484 conferred (1.10.1998) by 1998 c. 30, s. 19(8) (with s. 42(8)); S.I. 1998/2215, art.2.

**C64** S. 484 amended (1.10.1998) by 1998 c. 31, s. 7(10); S.I. 1998/2212, art. 2(1), Sch.1 Pt. I.

**485 Grants in aid of educational services or research. E+W**

Regulations shall make provision for the payment by the Secretary of State to persons other than local education authorities of grants in respect of expenditure incurred or to be incurred by them—

- (a) for the purposes of, or in connection with, the provision (or proposed provision) of educational services, or
- (b) for the purposes of educational research.

**486 Grants to bodies whose objects are promotion of learning or research. E+W**

Regulations may provide for the payment of grants to bodies other than local education authorities whose object or main object is, in the opinion of the Secretary of State, the promotion of learning or research.

**487 Grants for education in Welsh. E+W**

Regulations shall make provision for the payment by the Secretary of State to local education authorities and other persons of grants in respect of expenditure incurred or to be incurred in, or in connection with, the teaching of the Welsh language or the teaching in that language of other subjects.

**488 Grants for education of travellers and displaced persons. E+W**

- (1) Regulations may make provision for the payment to local education authorities of grants in respect of expenditure incurred or to be incurred by them in making provision the purpose (or main purpose) of which is to promote and facilitate the education of persons to whom this section applies.
- (2) This section applies to a person if—
  - (a) by reason of his way of life (or, in the case of a child, his parent's way of life) he either has no fixed abode or leaves his main abode to live elsewhere for significant periods in each year;
  - (b) he fell within paragraph (a) within a prescribed period immediately preceding the making of the provision in question; or
  - (c) he is for the time being resident in a camp or other accommodation or establishment provided for refugees or for displaced or similar persons.
- (3) The regulations may—

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- (a) prescribe classes or descriptions of expenditure in respect of which grants are payable under the regulations, and
- (b) provide for the determination of the amount of any grant so payable.

**489 Conditions as to payment of grants under sections 484 to 488. E+W**

- (1) Regulations made under any of sections 484 to 488 may provide—
  - (a) for the payment of grant under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and
  - (b) for requiring persons to whom payments have been made under the regulations to comply with such requirements as may be so determined.
- (2) Conditions and requirements determined under subsection (1)(a) and (b) by or in accordance with regulations made under section 484 may include conditions and requirements obliging the local education authority in question to delegate decisions about the spending of—
  - (a) grant for education support and training, and
  - (b) amounts allocated by the authority to meet eligible expenditure (within the meaning of that section) which is approved by the Secretary of State,to such persons as may be determined by or in accordance with the regulations.
- (3) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to or regulating any institution that—
  - (a) provides or is concerned in the provision of educational services, or
  - (b) is concerned in educational research,as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations under section 485.
- (4) Any modification made by an order under subsection (3) may be made to have permanent effect or to have effect for such period as may be specified in the order.

**490 Grants in respect of special provision for ethnic minorities. E+W**

- (1) Where subsection (2) applies, the power conferred by section 11 of the <sup>M84</sup>Local Government Act 1966 (grants in respect of ethnic minority population) shall apply in relation to the payment of grants by the Secretary of State to—
  - (a) the governing body of a grant-maintained school, or
  - (b) a person who in pursuance of undertakings under an agreement under section 482 maintains and carries on, or provides for the carrying on of, a city technology college or a city college for the technology of the arts,as it applies in relation to the payment of grants to a local authority who in his opinion are required to make special provision in exercise of any of their functions in consequence of the presence within their area of such persons as are referred to in section 11 of that Act.
- (2) This subsection applies if, in the Secretary of State's opinion, special provision is made by the governing body or person in question in consequence of the presence within the locality of the school or college of such persons as are referred to in section 11 of that Act.

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#### Marginal Citations

M84 1966 c. 42.

### *Payment of fees etc.*

#### 491 **Payment of school fees and expenses.** E+W

- (1) Regulations shall make provision for the payment by the Secretary of State, for the purpose of enabling pupils to take advantage without hardship to themselves or their parents of any educational facilities available to them, of the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable.
- (2) Regulations under this section may provide—
  - (a) for the making of payments under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and
  - (b) for requiring persons to whom payments have been made under the regulations to comply with such requirements as may be so determined.

### *Recoupment*

#### 492 **Recoupment: adjustment between local education authorities.** E+W

- (1) Regulations may provide, in relation to cases where any provision for education to which this section applies is made by a local education authority in respect of a person who belongs to the area of another local education authority, for requiring or authorising the other authority to pay to the providing authority—
  - (a) such amount as the authorities may agree, or
  - (b) failing agreement, such amount as may be determined by or under the regulations.
- (2) This section applies to primary education, secondary education and further education and to part-time education for those who have not attained [<sup>F134</sup>compulsory school age].
- (3) The regulations may provide for the amounts payable by one authority to another—
  - (a) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas); and
  - (b) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State considers appropriate.
- (4) The regulations may provide for the amounts so payable, in such cases as may be specified in or determined in accordance with the regulations, to be such amounts as may be determined by the Secretary of State.

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- (5) Any dispute between local education authorities as to whether one of them is entitled to be paid any amount by another under the regulations shall be determined by the Secretary of State.
- (6) In this section—
- (a) references to provision for education include provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education; and
  - (b) “further education” does not include further education of a kind such that expenditure on its provision would fall within paragraph 6 of Schedule 10 to the <sup>M85</sup>Local Government, Planning and Land Act 1980.

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**Textual Amendments**

**F134** Words in s. 492(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.36**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.

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

**C65** Ss. 492-495: power to exercise functions modified (1.7.1999) by S.I. 1999/672, art. 5, **Sch. 2**

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**Marginal Citations**

**M85** 1980 c. 65.

**493 Recoupment: cross-border provisions. E+W+S**

- (1) Regulations may make provision requiring or authorising payments of amounts determined by or under the regulations to be made by one authority to another where—
- (a) the authority receiving the payment makes, in such cases or circumstances as may be specified in the regulations, provision for education in respect of a person having such connection with the area of the paying authority as may be so specified, and
  - (b) one of the authorities is a local education authority and the other an education authority in Scotland.
- (2) Subsections (3) and (4) of section 492 shall apply for the purposes of this section as they apply for the purposes of that section.
- (3) Any question concerning the connection of any person with the area of a particular local education authority or education authority shall be decided in accordance with the regulations.
- (4) In subsection (1) “provision for education” includes provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education.

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

**C66** Ss. 492-495: power to exercise functions modified (1.7.1999) by S.I. 1999/120, art. 5, **Sch. 2**

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#### 494 **Recoupment: excluded pupils.** **E+W**

- (1) Subsection (2) applies where a pupil is permanently excluded from any school maintained by a local education authority or any grant-maintained school and, in the financial year in which the exclusion first takes effect—
  - (a) he is subsequently provided with—
    - (i) education at a school maintained by a local education authority,
    - (ii) education provided by such an authority otherwise than at school, or
    - (iii) education at a grant-maintained school, and
  - (b) the person accountable for that education (“the new provider”) is not the same as the person accountable for the education provided for him immediately before his exclusion (“the former provider”).
- (2) The former provider shall pay to the new provider an amount determined in accordance with regulations as the appropriate amount of funding to be transferred to the new provider in respect of that pupil for that financial year.
- (3) Every local education authority shall, where any scheme made (or treated as made) by them as mentioned in section 101(1) does not make the provision required by subsection (4) below, exercise their powers to revise the scheme so that it makes such provision.
- (4) The provision required by this subsection, in relation to a local education authority, is—
  - (a) provision requiring the authority, where a pupil is permanently excluded from a school and the exclusion first takes effect in a financial year in which the school is required to be covered by the scheme, to reduce the school’s budget share for that year by an amount determined in accordance with regulations as the appropriate amount of funding in respect of that pupil for that year to be subtracted from the school’s budget share; and
  - (b) provision requiring the authority, where a pupil admitted to a school in a financial year in which the school is required to be covered by the scheme has been permanently excluded—
    - (i) from a school maintained by them or any other local education authority, or
    - (ii) from any grant-maintained school,
 and the exclusion (as well as the admission) first took effect in that year, to allocate for the purposes of the school in that year an amount determined in accordance with regulations as the appropriate amount of funding in respect of that pupil for that year to be allocated for those purposes.
- (5) Expressions used in subsection (4) and in Chapter V of Part II have the same meaning as in that Chapter.
- (6) Subject to subsection (7), for the purposes of this section—
  - (a) the local education authority are accountable for education provided at any school maintained by them or education provided by them otherwise than at school; and
  - (b) the governing body are accountable for education provided at a grant-maintained school.

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- (7) Where a pupil is permanently excluded from any school maintained by a local education authority or from any grant-maintained school and, in the financial year in which the exclusion first takes effect, the following events subsequently occur—
- (a) he is first provided with education for which a different local education authority or, in the case of exclusion from a grant-maintained school, any local education authority are accountable (“the first new provider”) and which is provided in a pupil referral unit or otherwise than at school, and
  - (b) at any time afterwards he is provided with education at a grant-maintained school or with education for which a local education authority other than the first new provider are accountable,
- then, in relation to the education mentioned in paragraph (b), the first new provider is to be treated as accountable for the education provided for the pupil immediately before the exclusion first took effect.
- (8) Any dispute as to whether any local education authority or governing body of a grant-maintained school are entitled to be paid any amount under this section by any other such authority or body shall be determined by the Secretary of State.
- (9) For the purposes of this section the permanent exclusion of a pupil does not take effect until—
- (a) any review under the articles of government of the decision to exclude him has been completed, and
  - (b) either any time for appealing under section 159 or those articles has expired without such an appeal being made or such an appeal has been finally concluded.
- (10) In this section “grant-maintained school” includes a grant-maintained special school.

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

C67 S. 494 modified (20.11.1998) by [S.I. 1998/2670](#), [art.8](#).

**PART IX** **E+W**

ANCILLARY FUNCTIONS

**CHAPTER I** **E+W**

ANCILLARY FUNCTIONS OF SECRETARY OF STATE

*General functions*

**495** **Determination of disputes.** **E+W**

- (1) Except where this Act expressly provides otherwise, any dispute between a local education authority and the governing body of a school as to the exercise of any power conferred or the performance of any duty imposed by or under this Act may be referred to the Secretary of State (despite any enactment which makes the exercise of the power

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or the performance of the duty contingent upon the opinion of the authority or of the governing body).

- (2) The Secretary of State shall determine any dispute referred to him under subsection (1).
- (3) Any dispute between two or more local education authorities as to which of them is responsible for the provision of education for any pupil shall be determined by the Secretary of State.

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

- C68** S. 495 modified (1.9.1999) by 1998 c. 31, s. 44(7) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1
- C69** S. 495(1) extended (1.11.1996) by 1988 c. 40, s. 219(2) (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.77 (with ss. 1(4), 561, 562, Sch. 39))

**496 Power to prevent unreasonable exercise of functions. E+W**

- (1) If the Secretary of State is satisfied (either on a complaint by any person or otherwise) that a body to which this section applies have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient (and may do so despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the body).
- (2) The bodies to which this section applies are—
  - (a) any local education authority,
  - (b) the governing body of any county, voluntary or maintained special school, and
  - (c) the governing body of any grant-maintained school.

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

- C70** S. 496 modified (1.9.1998) by 1997 c. 44, s. 43(4); S.I. 1998/386, art. 2(4), Sch. 1 Pt.IV.
- C71** S. 496 modified (1.11.1996) by 1988 c. 40, s. 219(3) (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.77 (with ss. 1(4), 561, 562, Sch. 39))
- S. 496 extended (1.11.1996) by 1992 c. 13, s. 57(6)(a) (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.113 (with ss. 1(4), 561, 562, Sch. 39))
- S. 496 extended (1.11.1996) by 1992 c. 13, s. 56(3) (as added (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para. 112 (with ss. 1(4), 561, 562, Sch. 39))
- C72** S. 496 modified (1.9.1999) by 1998 c. 31, s. 44(7) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1
- C73** S. 496 extended (1.9.1999) by 1998 c. 31, ss. 24, 145(3), Sch. 4 para.10 (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1.
- C74** Power to apply s. 496 conferred (1.10.1998) by 1998 c. 31, s. 105(7) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch.1 Pt. I.



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#### **497 General default powers. E+W**

- (1) If the Secretary of State is satisfied (either on a complaint by any person interested or otherwise) that a body to which this section applies have failed to discharge any duty imposed on them by or for the purposes of this Act, he may make an order—
  - (a) declaring the body to be in default in respect of that duty, and
  - (b) giving such directions for the purpose of enforcing the performance of the duty as appear to him to be expedient.
- (2) The bodies to which this section applies are—
  - (a) any local education authority,
  - (b) the governing body of any county, voluntary or maintained special school, and
  - (c) the governing body of any grant-maintained school.
- (3) Any directions given under subsection (1)(b) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.

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

- C75** S. 497 modified (1.9.1998) by 1997 c. 44, s. 43(4); S.I. 1998/386, art. 2(4), Sch. 1 Pt. IV.
- C76** S. 497 modified (1.11.1996) by 1988 c. 40, s. 219(3) (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. 1 para. 77 (with ss. 1(4), 561, 562, Sch. 39))
- C77** S. 497 modified (1.9.1999) by 1998 c. 31, s. 44(7) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1.
- C78** S. 497 extended (1.9.1999) by 1998 c. 31, s. 24, Sch. 4 para. 10 (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1.
- C79** Power to apply s. 497 conferred (1.10.1998) by 1998 c. 31, s. 105(7) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch. 1 Pt. I.
- C80** S. 497 applied (3.12.1998) by S.I. 1998/2876, reg. 21.

#### **[<sup>F135</sup>497] Power to secure proper performance of LEA's functions. E+W**

- (1) This section applies to a local education authority's functions (of whatever nature) which relate to the provision of education—
  - (a) for persons of compulsory school age (whether at school or otherwise), or
  - (b) for persons of any age above or below that age who are registered as pupils at schools maintained by the authority.
- (2) If the Secretary of State is satisfied (either on a complaint by any person interested or otherwise) that a local education authority are failing in any respect to perform any function to which this section applies to an adequate standard (or at all), he may exercise his powers under subsection (3) or (4).
- (3) The Secretary of State may under this subsection direct an officer of the authority to secure that that function is performed in such a way as to achieve such objectives as are specified in the direction.
- (4) The Secretary of State may under this subsection give an officer of the authority such directions as the Secretary of State thinks expedient for the purpose of securing that the function—
  - (a) is performed, on behalf of the authority and at their expense, by such person as is specified in the direction, and

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- (b) is so performed in such a way as to achieve such objectives as are so specified; and such directions may require that any contract or other arrangement made by the authority with that person contains such terms and conditions as may be so specified.
- (5) Where the Secretary of State considers it expedient that the person specified in directions under subsection (4) should perform other functions to which this section applies in addition to the function to which subsection (2) applies, the directions under subsection (4) may relate to the performance of those other functions as well; and in considering whether it is expedient that that person should perform any such additional functions, the Secretary of State may have regard to financial considerations.
- (6) Any direction under this section may either—
- (a) have effect for an indefinite period until revoked by the Secretary of State, or
  - (b) have effect until any objectives specified in the direction have been achieved (as determined in accordance with the direction).
- (7) Any direction given under subsection (3) or (4) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.]

#### Textual Amendments

**F135** S. 497A inserted (1.10.1998) by 1998 c. 31, s. 8 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch.1 Pt. I.

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

**C81** S. 497A modified (1.9.1999) by 1998 c. 31, s. 44(7) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1

**C82** S. 497A(1)(b) modified (12.1.1999) by S.I. 1998/3217, reg.2(b).

VALID FROM 26/07/2002

#### <sup>F136</sup> **S. 497AA Power to secure proper performance: duty of authority where directions contemplated** **E+W**

Where, in relation to any function to which section 497A applies, the Secretary of State—

- (a) is satisfied as mentioned in subsection (2) or (2A)(b) of that section, and
- (b) has notified the local education authority that he is so satisfied and that he is contemplating the giving of directions under subsection (4) or (4A) of that section,

the authority shall give the Secretary of State, and any person authorised by him for the purposes of this section, all such assistance, in connection with the proposed exercise of the function by the Secretary of State or another person in pursuance of directions, as they are reasonably able to give.]

#### Textual Amendments

**F136** S. 497AA inserted (26.7.2002 for E., 1.8.2003 for W.) by Education Act 2002 (c. 32), ss. 61, 216(4) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 3; S.I. 2003/1718, art. 4, Sch. Pt. I

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[<sup>F137</sup>**497B** **Power to secure proper performance: further provisions.** **E+W**]

- (1) Where the Secretary of State gives directions under section 497A(4) to an officer of a local education authority, the person specified in those directions shall, in the performance of the function or functions specified in the directions, be entitled to exercise the powers conferred by this section.
- (2) The specified person shall have at all reasonable times—
  - (a) a right of entry to the premises of the authority, and
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the performance of the specified function or functions.
- (3) In exercising the right to inspect records or other documents under subsection (2), the specified person—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used, or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,  
to afford him such assistance as he may reasonably require (including, in particular, the making of information available for inspection or copying in a legible form).
- (4) Without prejudice to subsection (2), the authority shall give the specified person all assistance in connection with the performance of the specified function or functions which they are reasonably able to give.
- (5) Subsection (2) shall apply in relation to any school maintained by the authority as it applies in relation to the authority; and without prejudice to that subsection (as it so applies)—
  - (a) the governing body of any such school shall give the specified person all assistance in connection with the exercise of his functions which they are reasonably able to give; and
  - (b) the governing body of any such school and the authority shall secure that all such assistance is also given by persons who work at the school.
- (6) Any reference in this section to the specified person includes a reference to any person assisting him in the performance of the specified function or functions.
- (7) In this section “document” and “records” each include information recorded in any form.]

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**Textual Amendments**

**F137** S. 497B inserted (1.10.1998) by 1998 c. 31, s. 8 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1), Sch. 1 Pt. 1

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

- C83** S. 497B modified (12.1.1999) by S.I. 1998/3217, **reg.2(b)**  
 S. 497B modified (1.9.1999) by 1998 c. 31, **s. 44(7)**, 145(3) (with ss. 138(9), 144(6))

*Appointment of governors, etc.*

**498 Powers where no properly constituted governing body. E+W**

- (1) Where it appears to the Secretary of State that, by reason of the default of any person, there is no properly constituted governing body of a school to which this section applies, the Secretary of State—
- (a) may make such appointments and give such directions as he thinks desirable for the purpose of securing that there is a properly constituted governing body of that school, and
  - (b) may give directions rendering valid any acts or proceedings which in his opinion are invalid or otherwise defective by reason of the default.
- (2) This section applies to—
- (a) any county, voluntary or maintained special school, and
  - (b) any grant-maintained school.

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

- C84** S. 498 extended (1.11.1996) by 1988 c. 40, **s. 219(4)** (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para. 77 (with ss. 1(4), 561, 562, **Sch. 39**))  
**C85** S. 498 modified (1.9.1999) by 1998 c. 31, **s. 44(7)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1.**

*Membership of education committees*

**499 Power to direct appointment of members of education committees. E+W**

- (1) Subsection (2) applies to any local authorities which in accordance with section 102(1) of the <sup>M86</sup>Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education which are conferred on them in their capacity as local education authorities.
- (2) The Secretary of State may by directions to any local authorities to which this subsection applies require—
- (a) every such committee, or
  - (b) any such committee of a description specified in the direction,
- to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts.
- (3) Subsection (4) applies to any two or more local authorities which in accordance with section 102(1) of the <sup>M87</sup>Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education which are conferred on them in their capacity as local education authorities.

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- (4) The Secretary of State may by directions to any local authorities to which this subsection applies require—
- (a) every such committee, or
  - (b) any such committee of a description specified in the direction,
- to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts or in such area as may be specified in the direction.
- (5) The power of the Secretary of State to give directions under subsection (2) or (4) shall be exercisable in relation to any sub-committees which—
- (a) are appointed by the authorities concerned or any such committee as is mentioned in that subsection, and
  - (b) are so appointed wholly or partly for the purpose of discharging the authorities' functions as mentioned in subsection (1) or (3) or the committee's functions with respect to education,
- as it is exercisable in relation to the committees themselves.
- [<sup>F138</sup>(6) Regulations may require—
- (a) any such committee as is mentioned in subsection (1) or (3), and
  - (b) any sub-committee appointed by any authorities within subsection (1) or (3), or by any committee within paragraph (a) of this subsection, for the purpose mentioned in subsection (5)(b),
- to include one or more persons elected, in accordance with the regulations, as representatives of parent governors at maintained schools in relation to which the committee or sub-committee acts.
- (7) Regulations may make provision for—
- (a) the number of persons who are to be elected for the purposes of subsection (6) in the case of any local education authority;
  - (b) the procedure to be followed in connection with the election of such persons and the persons who are entitled to vote at such an election;
  - (c) the circumstances in which persons are qualified or disqualified for being so elected or for holding office once elected;
  - (d) the term of office of persons so elected and their voting rights;
  - (e) the application to any such committee or sub-committee, with or without any modification, of any provision made by or under any other enactment and relating to committees or (as the case may be) sub-committees of a local authority;
  - (f) such other matters connected with such elections or persons so elected as the Secretary of State considers appropriate.
- (8) Regulations may also make provision—
- (a) enabling the Secretary of State to determine, where he considers it expedient to do so in view of the small number of maintained schools in relation to which a committee or sub-committee acts, that the requirement imposed on the committee or sub-committee by virtue of subsection (6) is to have effect as if it referred to representatives of parents of registered pupils (rather than representatives of parent governors) at those schools;

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- (b) for any regulations under subsection (7) to have effect, where the Secretary of State makes any such determination, with such modifications as may be prescribed.
- (9) In subsections (6) and (8) “maintained school” and “parent governor” have the same meaning as in the School Standards and Framework Act 1998.]

#### Textual Amendments

**F138** S. 499(6)-(9) added (1.10.1998) by 1998 c. 31, s.9 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, Sch. 1 Pt.I

#### Marginal Citations

**M86** 1972 c. 70.

**M87** 1972 c. 70.

### *Rationalisation of school places*

#### **500 Directions to bring forward proposals to remedy excessive provision. E+W**

- (1) Where the Secretary of State is of the opinion that the provision for primary or secondary education in maintained schools in the area of any local education authority is excessive, then, for the purpose of remedying the excess—
- (a) he may by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any voluntary school in the area, he may by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school.
- (2) Where—
- (a) the Secretary of State is of the opinion that the provision for primary or secondary education in grant-maintained schools in the area of any local education authority is excessive, and
  - (b) an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area,
- he may by an order under this subsection direct the funding authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools for the purpose of remedying the excess.
- (3) An order under subsection (1) or (2) shall—
- (a) require the proposals to be published, or (as the case may be) notice of the proposals to be served, not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (1)(a) or (2) may not require the proposals to relate to any named school.

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**501 Directions to bring forward proposals for additional provision in maintained schools. E+W**

- (1) The powers conferred by subsection (2) are exercisable where—
  - (a) an order under section 27(1)(b) applies to the area of a local education authority, and
  - (b) the Secretary of State is of the opinion that the schools providing relevant education which are available for the area are not sufficient for the purposes of section 14 and that additional provision for relevant education should be made in maintained schools in the area.
- (2) The Secretary of State may—
  - (a) by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any voluntary school in the area, by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school,with a view (in each case) to securing that provision is made for such additional number of pupils in the area as may be specified in the order.
- (3) An order under subsection (2) shall—
  - (a) require the proposals to be published, or (as the case may be) notice of the proposals to be served, not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (2)(a) may not require the proposals to relate to any named school.
- (5) Paragraph 7 of Schedule 4 does not apply in relation to the implementation of any proposals under section 35 where the Secretary of State has made an order under subsection (2) above.

**502 Publication of proposals by Secretary of State. E+W**

- (1) Where—
  - (a) the Secretary of State has, in relation to the area of any local education authority, made an order under section 500(1) or (2) directing the local education authority, the funding authority or the governing body of a voluntary school to make proposals for the establishment, alteration or discontinuance of schools or (as the case may be) for the alteration of their school, and
  - (b) the time allowed under the order, and under any other order under that section relating to that area, for the publication of the proposals or (as the case may be) the service of notice of the proposals has expired,he may make in such manner as may be prescribed any such proposals as might have been made in accordance with the order or orders relating to that area by the person or persons to whom the directions were given.
- (2) Proposals made under this section shall—
  - (a) include particulars of the proposed time or times of implementation of the proposals, and

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- (b) except where they are proposals to cease to maintain or discontinue any school or relate to a special school—
  - (i) include particulars of the number of pupils proposed to be admitted to the school to which the proposals relate in each relevant age group in the first school year in relation to which the proposals have been wholly implemented, and
  - (ii) if, in the case of a grant-maintained school, pupils are proposed to be admitted for nursery education, give the prescribed information.
- (3) For the purposes of subsection (2)(b)—
  - (a) admission to a maintained school for nursery education shall be disregarded; and
  - (b) the transfer to a reception class of pupils admitted to a school for nursery education shall be treated as admission to the school.
- (4) Proposals made under this section shall be accompanied by a statement which—
  - (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
  - (b) explains the effect of subsection (5).
- (5) Within the period of one month beginning with the date on which the proposals are made, objections to the proposals may be made by any of the following—
  - (a) any ten or more local government electors for the area,
  - (b) the governing body of any school affected by the proposals and, in the case of a voluntary school, the person or persons who are named in the school's instrument of government as being entitled to appoint foundation governors,
  - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the <sup>M88</sup>Further and Higher Education Act 1992 applies), and
  - (d) any local education authority concerned.
- (6) Where—
  - (a) an order under section 27 applies to the area of a local education authority, and
  - (b) the Secretary of State makes proposals under this section which affect the provision of relevant education in the area,
 the funding authority shall be included among the persons who may submit objections to the proposals.
- (7) The reference in subsection (5) to the date on which the proposals are made is to the date on which the prescribed requirements in respect of the proposals are satisfied.

#### Marginal Citations

M88 1992 c. 13.

### 503 Public inquiry into proposals. **E+W**

- (1) This section applies where in relation to the area of any local education authority the Secretary of State has made proposals under section 502 (otherwise than in pursuance of section 504(1)) which he has not withdrawn.



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- (2) If objections have been made under section 502(5) within the period allowed under that subsection, then, unless all objections so made have been withdrawn in writing within that period, the Secretary of State shall cause a local inquiry to be held to consider his proposals, any proposals he refers to the inquiry and any objections.
- (3) Any proposals referred to a local inquiry under this section require the approval of the Secretary of State (if they would not require such approval apart from this subsection).
- (4) Where the Secretary of State has a duty to cause a local inquiry to be held under this section, he shall refer to the inquiry—
  - (a) any proposals made by him in relation to the area of the local education authority (and not withdrawn) but in respect of which he is not required under this section to cause a local inquiry to be held,
  - (b) any proposals made by the local education authority, or made in relation to the area by the funding authority, in the exercise of their powers to make proposals for the establishment, alteration or discontinuance of schools (and not withdrawn), and
  - (c) any proposals made by the governing body of any voluntary school in the area in exercise of their powers to make proposals for the alteration of their school (and not withdrawn),where those proposals are not determined before he causes the inquiry to be held and appear to him to be related to the proposals made under section 502 in respect of which he is required under this section to cause the inquiry to be held.
- (5) If, before the Secretary of State causes the inquiry to be held, he forms the opinion that any proposals ought to be implemented, subsection (4) does not require him to refer those proposals to the inquiry unless—
  - (a) before the proceedings on the inquiry are concluded, or
  - (b) (if earlier) the proposals are determined,he subsequently forms a different opinion.
- (6) It shall not be open to the inquiry to question the principles specified in the order under section 500 or 501.
- (7) References in this section to the determination of any proposals are to any determination whether or not to approve, adopt or implement the proposals under section 37, 38, 43, 169 or 170, under Part III or under section 340.

#### **504 Adoption of proposals and approval of related proposals. E+W**

- (1) Where the Secretary of State has made proposals under section 502 in respect of which he is required to cause a local inquiry to be held, he may when he has considered the report of the person appointed to hold the inquiry do one or more of the following—
  - (a) adopt, with or without modifications, or determine not to adopt the proposals or any other proposals made by him under that section which he referred to the inquiry;
  - (b) approve, with or without modifications, or reject any other proposals which he referred to the inquiry; and
  - (c) make any such further proposals under section 502 as might have been made in accordance with the order or orders relating to the area of the local education authority concerned by the person or persons to whom the directions were given.

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- (2) Where the Secretary of State has made proposals under section 502 in respect of which he is not required to cause a local inquiry to be held and which he is not required to refer to such an inquiry, he may, after considering any objections made under subsection (5) of that section (and not withdrawn) within the period allowed under that subsection—
- (a) adopt the proposals with or without modifications; or
  - (b) determine not to adopt the proposals.
- (3) Proposals adopted by the Secretary of State under this section shall have effect—
- (a) if they relate to a maintained school, as if they—
    - (i) had been made by the local education authority under their powers to make proposals for the establishment, alteration or discontinuance of schools, or
    - (ii) in the case of a voluntary school, had been made by the governing body under their powers to make proposals for the alteration of their school,
 and had been approved by the Secretary of State under section 37, 43 or 169 or, as the case may be, section 340; and
  - (b) if they relate to a grant-maintained school, as if they had been made by the funding authority under those powers and approved by the Secretary of State under Part III or, as the case may be, section 340;
- and the provisions of section 39 or 44 or Part III or, as the case may be, section 341 as to the approval of particulars of premises or proposed premises of schools shall have effect accordingly.

### 505 Supplementary provisions. E+W

- (1) An order under section 500 or 501 may not require any significant change to be made in the religious character of a voluntary school.
- (2) Where the governing body of a voluntary school make any proposals in pursuance of an order under section 500 or 501—
  - (a) the person or persons who are named in the school's instrument of government as being entitled to appoint foundation governors shall be included among the persons who may submit objections to the proposals, and
  - (b) the local education authority shall reimburse any expenditure reasonably incurred by the governing body in making the proposals.
- (3) Proposals made in pursuance of an order under section 500 may not be withdrawn without the consent of the Secretary of State and such consent may be given on such conditions (if any) as the Secretary of State considers appropriate.
- (4) Where—
  - (a) proposals made by the governing body of a voluntary school in pursuance of an order under section 500 or 501 are approved, or
  - (b) proposals adopted by the Secretary of State under section 504 have effect as mentioned in subsection (3)(a)(ii) of that section,
 then, despite anything in section 45(1), the local education authority shall defray the cost of implementing the proposals.
- (5) Despite anything in section 184, a county or voluntary school is not eligible for grant-maintained status—

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- (a) if the local education authority have made any proposals in pursuance of an order under section 500 to cease to maintain the school which have not been withdrawn and no determination whether or not to approve or implement the proposals has been made under section 169 or 170 or section 504, or
  - (b) if the Secretary of State has made any proposals under section 502 for the local education authority to cease to maintain the school which have not been withdrawn and no determination whether or not to adopt the proposals has been made under section 504.
- (6) Section 37(4), (7) and (8) or, as the case may be, section 43(3), (4) and (5) do not apply in relation to any proposals under section 35(1)(c) or (d) or 41(2) made in pursuance of an order under section 500.
- (7) In sections 500 to 504 “powers to make proposals for the alteration of their school”, in relation to the governing body of a voluntary school, means their powers to publish proposals under section 41(2).
- (8) In sections 500 to 504—
- (a) “powers to make proposals for the establishment, alteration or discontinuance of schools” means—
    - (i) in relation to the local education authority, all or any of the powers to publish proposals under section 35 or 167,
    - (ii) in relation to the funding authority, all or any of the powers to publish proposals under sections 211, 260 or 268, and
    - (iii) in relation to either authority, the power to serve notice of proposals under section 339;
  - (b) references to maintained schools are references to county, voluntary and maintained special schools; and
  - (c) references to grant-maintained schools include grant-maintained special schools.

#### *Medical examinations*

### **506 Power to require medical examination of pupils. E+W**

- (1) Where—
- (a) a question is referred to the Secretary of State under section 442(3) or 495, and
  - (b) in his opinion the examination of any pupil by a registered medical practitioner appointed by him for the purpose would assist in determining the question,
- he may serve a notice on the parent of that pupil requiring the parent to present the pupil for examination by such a practitioner.
- (2) Any parent who without reasonable excuse fails to comply with any requirements of a notice served on him under subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

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### *Local inquiries*

#### **507 Power to direct local inquiries. E+W**

- (1) The Secretary of State may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this Act.
- (2) Subsections (2) to (5) of section 250 of the <sup>M89</sup>Local Government Act 1972 (giving evidence at and defraying costs of local inquiries) shall have effect with respect to any such inquiry as they have effect with respect to an inquiry held under that section.

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

- C86** S. 507 extended (1.11.1996) by 1992 c. 13, s. 57(6)(b) (as substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para.113 (with ss. 1(4), 561, 562, Sch. 39)
- C87** S. 507 applied (28.7.2000 for certain purposes otherwise 1.1.2001 (W.) 1.4.2001 (E.)) by 2000 c. 21, ss. 149, 154, Sch. 9 para. 34 (with s. 150)); S.I. 2000/3230, art. 2, Sch.; S.I. 2001/654, art. 2(2), Sch. Pt. II (with art. 3)

#### **Marginal Citations**

- M89** 1972 c. 70.

## **CHAPTER II E+W**

### ANCILLARY FUNCTIONS OF LOCAL EDUCATION AUTHORITIES

#### *Provision of services*

#### **508 Functions in respect of facilities for recreation and social and physical training. E+W**

- (1) A local education authority shall secure that the facilities for primary, secondary and further education provided for their area include adequate facilities for recreation and social and physical training.
- (2) For that purpose a local education authority—
  - (a) may establish, maintain and manage, or assist the establishment, maintenance and management of,—
    - (i) camps, holiday classes, playing fields, play centres, and
    - (ii) other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school or other educational institution, at which facilities for recreation and social and physical training are available for persons receiving primary, secondary or further education;
  - (b) may organise games, expeditions and other activities for such persons; and
  - (c) may defray, or contribute towards, the expenses of such games, expeditions and other activities.
- (3) When making arrangements for the provision of facilities or the organisation of activities in the exercise of their powers under subsection (2), a local education authority shall, in particular, have regard to the expediency of co-operating with any

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voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character.

## 509 Provision of transport etc. **E+W**

- (1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of persons receiving education—
  - (a) at schools,
  - (b) at any institution maintained or assisted by the authority which provides further education or higher education (or both),
  - (c) at any institution within the further education sector, or
  - (d) at any institution outside both the further and the higher education sectors, where a further education funding council has secured provision for those persons at the institution under section 4(3) or (5) of the <sup>M90</sup>Further and Higher Education Act 1992.
- (2) Any transport provided in pursuance of arrangements under subsection (1) shall be provided free of charge.
- (3) A local education authority may pay the whole or any part, as they think fit, of the reasonable travelling expenses of any person receiving education—
  - (a) at a school, or
  - (b) at any such institution as is mentioned in subsection (1),for whose transport no arrangements are made under that subsection.
- (4) In considering whether or not they are required by subsection (1) to make arrangements in relation to a particular person, a local education authority shall have regard (amongst other things)—
  - (a) to the age of the person and the nature of the route, or alternative routes, which he could reasonably be expected to take; and
  - (b) to any wish of his parent for him to be provided with education at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres.
- (5) Arrangements made by a local education authority under subsection (1) shall—
  - (a) make provision for pupils at grant-maintained schools which is no less favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority;
  - (b) make provision for persons receiving full-time education at any institution within the further education sector which is no less favourable than the provision made in pursuance of the arrangements for pupils of the same age at schools maintained by a local education authority; and
  - (c) make provision for persons receiving full-time education at institutions mentioned in subsection (1)(d) which is no less favourable than—
    - (i) the provision made in pursuance of the arrangements for persons of the same age with learning difficulties (within the meaning of section 15(5)) at schools maintained by a local education authority, or
    - (ii) where there are no such arrangements, the provision made in pursuance of the arrangements for such persons for whom the authority secures the provision of education at any other institution.

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- (6) Regulations under section 414(6) may require publication (within the meaning of that section) by every local education authority of such information as may be required by the regulations with respect to the authority's policy and arrangements for provision under this section for persons attending institutions mentioned in subsection (1)(c) or (d) who are over compulsory school age and who have not attained the age of 19.

#### Marginal Citations

M90 1992 c. 13.

VALID FROM 20/01/2003

#### <sup>F139</sup> 509AB Provision of transport etc. for persons of sixth form age E+W

- (1) A local education authority shall prepare for each academic year a transport policy statement complying with the requirements of this section.
- (2) The statement shall specify the arrangements for the provision of transport or otherwise that the authority consider it necessary to make for facilitating the attendance of persons of sixth form age receiving education or training—
  - (a) at schools,
  - (b) at any institution maintained or assisted by the authority which provides further education or higher education (or both),
  - (c) at any institution within the further education sector, or
  - (d) at any establishment (not falling within paragraph (b) or (c)) which is supported by the Learning and Skills Council for England or the National Council for Education and Training for Wales.
- (3) The statement shall specify the arrangements that the authority consider it necessary to make for the provision of financial assistance in respect of the reasonable travelling expenses of persons of sixth form age receiving education or training at any establishment such as is mentioned in subsection (2).
- (4) The statement shall specify the arrangements proposed to be made by the governing bodies of—
  - (a) schools maintained by the authority at which education suitable to the requirements of persons over compulsory school age is provided, and
  - (b) institutions within the further education sector in the authority's area,
 for the provision of transport for facilitating the attendance of persons of sixth form age receiving education or training at the schools and institutions and for the provision of financial assistance in respect of the travelling expenses of such persons.
- (5) Those governing bodies shall co-operate in giving the local education authority any information and other assistance that is reasonably required by the authority for the performance of their functions under this section and section 509AB.
- (6) The statement shall specify any travel concessions (within the meaning of Part 5 of the Transport Act 1985 (c. 67)) which are to be provided under any scheme established under section 93 of that Act to persons of sixth form age receiving

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education at any establishment such as is mentioned in subsection (2) above in the authority's area.

- (7) The authority shall—
- (a) publish the statement, in a manner which they consider appropriate, on or before 31st May in the year in which the academic year in question begins, and
  - (b) make, and secure that effect is given to, any arrangements specified under subsections (2) and (3).
- (8) Nothing in this section prevents a local education authority from making, at any time in an academic year, arrangements—
- (a) which are not specified in the transport policy statement published by the authority for that year, but
  - (b) which they have come to consider necessary for the purposes mentioned in subsections (2) and (3).
- (9) The Secretary of State may, if he considers it expedient to do so, direct a local education authority to make for any academic year—
- (a) arrangements for the provision of transport or otherwise for facilitating the attendance of persons of sixth form age receiving education or training at establishments such as are mentioned in subsection (2), or
  - (b) arrangements for providing financial assistance in respect of the reasonable travelling expenses of such persons,
- which have not been specified in the transport policy statement published by the authority for that academic year.
- (10) The Secretary of State may by order amend subsection (7)(a) by substituting a different date for 31st May.]

#### Textual Amendments

**F139** S. 509AA inserted (20.1.2003 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 19 para. 3](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/2952, art. 2](#); [S.I. 2003/1718, art. 5, Sch. Pt. II](#)

VALID FROM 20/01/2003

#### [<sup>F140</sup>509A] Further provision about transport policy statements **E+W**

- (1) A statement prepared under section 509AA shall state to what extent arrangements specified in accordance with subsection (2) of that section include arrangements for facilitating the attendance at establishments such as are mentioned in that subsection of disabled persons and persons with learning difficulties.
- (2) A statement prepared under that section shall—
- (a) specify arrangements for persons receiving full-time education or training at establishments other than schools maintained by the local education authority which are no less favourable than the arrangements specified for pupils of the same age attending such schools, and

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- (b) specify arrangements for persons with learning difficulties receiving education or training at establishments other than schools maintained by the authority which are no less favourable than the arrangements specified for pupils of the same age with learning difficulties attending such schools.
- (3) In considering what arrangements it is necessary to make for the purposes mentioned in subsections (2) and (3) of section 509AA the local education authority shall have regard (amongst other things) to—
- (a) the needs of those for whom it would not be reasonably practicable to attend a particular establishment to receive education or training if no arrangements were made,
  - (b) the need to secure that persons in their area have reasonable opportunities to choose between different establishments at which education or training is provided,
  - (c) the distance from the homes of persons of sixth form age in their area of establishments such as are mentioned in section 509AA(2) at which education or training suitable to their needs is provided, and
  - (d) the cost of transport to the establishments in question and of any alternative means of facilitating the attendance of persons receiving education or training there.
- (4) In considering whether or not it is necessary to make arrangements for those purposes in relation to a particular person, a local education authority shall have regard (amongst other things)—
- (a) to the nature of the route, or alternative routes, which he could reasonably be expected to take; and
  - (b) to any wish of his parent for him to be provided with education or training at a school, institution or other establishment in which the religious education provided is that of the religion or denomination to which his parent adheres.
- (5) In preparing a statement under section 509AA a local education authority shall have regard to any guidance issued by the Secretary of State under this section.
- (6) In preparing a statement under that section a local education authority shall consult—
- (a) any other local education authority that they consider it appropriate to consult,
  - (b) the governing bodies mentioned in subsection (4) of that section,
  - (c) the Learning and Skills Council for England (in the case of a local education authority in England) or the National Council for Education and Training for Wales (in the case of a local education authority in Wales), and
  - (d) any other person specified by the Secretary of State for the purposes of this section.
- (7) In preparing a statement under that section a local education authority shall also consult—
- (a) where they are the local education authority for a district in a metropolitan county, the Passenger Transport Authority for that county, and
  - (b) where they are the local education authority for a London borough or the City of London, Transport for London.]



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### Textual Amendments

**F140** S. 509AB inserted (20.1.2003 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 19 para. 4](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/1718, art. 5, Sch. Pt. II

VALID FROM 20/01/2003

### [<sup>F141</sup>509AC Interpretation of sections 509AA and 509AB **E+W**

- (1) For the purposes of sections 509AA and 509AB a person receiving education or training at an establishment is of sixth form age if he is over compulsory school age but—
  - (a) is under the age of 19, or
  - (b) has begun a particular course of education or training at the establishment before attaining the age of 19 and continues to attend that course.
- (2) References in section 509AA to an establishment supported by the Learning and Skills Council for England are to any establishment at which education or training is provided by a person to whom that Council secures the provision of financial resources in any of the ways mentioned in section 5(2) of the Learning and Skills Act 2000.
- (3) References in section 509AA to an establishment supported by the National Council for Education and Training for Wales are to any establishment at which education or training is provided by a person to whom that Council secures the provision of financial resources in any of the ways mentioned in section 34(2) of the Learning and Skills Act 2000.
- (4) References in section 509AB to persons with learning difficulties are to be construed in accordance with section 13(5) and (6) of the Learning and Skills Act 2000.
- (5) In sections 509AA and 509AB and this section—
  - “academic year” means any period commencing with 1st August and ending with the next 31st July;
  - “disabled person” has the same meaning as in the Disability Discrimination Act 1995;
  - “establishment” means an establishment of any kind, including a school or institution;
  - “governing body”, in relation to an institution within the further education sector, has the same meaning as in the Further and Higher Education Act 1992.
- (6) The Secretary of State may by order amend the definition of “academic year” in subsection (5).]

### Textual Amendments

**F141** S. 509AC inserted (20.1.2003 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 19 para. 5](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/1718, art. 5, Sch. Pt. II

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VALID FROM 01/04/1999

**[<sup>F142</sup>509A] Travel arrangements for children receiving nursery education otherwise than at school. **E+W****

- (1) A local education authority may provide a child with assistance under this section if they are satisfied that, without such assistance, he would be prevented from attending at any premises—
  - (a) which are not a school or part of a school, but
  - (b) at which relevant nursery education is provided,
 for the purpose of receiving such education there.
- (2) The assistance which may be provided for a child under this section consists of either—
  - (a) making arrangements (whether for the provision of transport or otherwise) for the purpose of facilitating the child’s attendance at the premises concerned, or
  - (b) paying the whole or any part of his reasonable travel expenses.
- (3) When considering whether to provide a child with assistance under this section in connection with his attendance at any premises, a local education authority may have regard (among other things) to whether it would be reasonable to expect alternative arrangements to be made for him to receive relevant nursery education at any other premises (whether nearer to his home or otherwise).
- (4) Where the assistance to be provided for a child under this section consists of making arrangements for the provision of transport, the authority may, if they consider it appropriate to do so, determine that the assistance shall not be so provided unless—
  - (a) the child’s parent, or
  - (b) the person providing the relevant nursery education concerned,
 agrees to make to the authority such payments in respect of the provision of the transport (not exceeding the cost to the authority of its provision) as they may determine.
- (5) In this section “relevant nursery education” means nursery education which is provided—
  - (a) by a local education authority, or
  - (b) by any other person—
    - (i) who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
    - (ii) who is in receipt of grants under section 1 of the <sup>M91</sup>Nursery Education and Grant-Maintained Schools Act 1996.]

**Textual Amendments**

**F142** S. 509A inserted (1.4.1999) by 1998 c. 31, s. 124 (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(4), Sch. 1 Pt. IV

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### Marginal Citations

M91 1996 c. 50.

## 510 Provision of clothing. **E+W**

- (1) A local education authority may provide clothing for—
  - (a) any pupil who is a boarder at an educational institution maintained by the authority or at a grant-maintained school,
  - (b) any pupil at a nursery school maintained by the authority, and
  - (c) any pupil in a nursery class at a school maintained by the authority or at a grant-maintained school.
- (2) A local education authority may also provide clothing for any pupil—
  - (a) for whom they are providing board and lodging elsewhere than at an educational institution maintained by them, and
  - (b) for whom special educational provision is made in pursuance of arrangements made by them.
- (3) Where it appears to a local education authority, in a case where neither subsection (1) nor subsection (2) applies, that a pupil at—
  - (a) a school maintained by them or a grant-maintained school, or
  - (b) a special school (whether maintained by them or not),is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided at the school, the authority may provide him with such clothing as in their opinion is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school.
- (4) A local education authority may provide—
  - (a) for pupils at a school maintained by them, at a grant-maintained school or at an institution maintained by them which provides further education or higher education (or both),
  - (b) for persons who have not attained the age of 19 and who are receiving education at an institution within the further education sector, and
  - (c) for persons who make use of facilities for physical training made available for them by the authority under section 508(2),such articles of clothing as the authority may determine suitable for the physical training provided at that school or institution or under those facilities.
- (5) A local education authority may—
  - (a) with the consent of the proprietor of a school not maintained by the authority, other than a grant-maintained school or special school, and
  - (b) on such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor,make arrangements, in the case of any pupil at the school who is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided at the school, for securing for the pupil the provision of such clothing as is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school.

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- (6) Any arrangements made under subsection (5) shall be such as to secure, so far as is practicable, that the expense incurred by the authority in connection with the provision of any article under the arrangements does not exceed the expense which would have been incurred by them in the provision of it if the pupil had been a pupil at a school maintained by them.

**511 Provisions supplementary to section 510. E+W**

- (1) Provision of clothing under section 510 may be made in such way as to confer either a right of property in the clothing or a right of user only (at the option of the providing authority), except in any circumstances for which the adoption of one or other of those ways of making such provision is prescribed.
- (2) Where a local education authority have provided a person with clothing under section 510, then, in such circumstances respectively as may be prescribed—
- (a) the authority shall require his parent to pay to them in respect of its provision such sum (if any) as in their opinion he is able to pay without financial hardship, not exceeding the cost to the authority of its provision;
  - (b) the authority may require his parent to pay to them in respect of its provision such sum as is mentioned in paragraph (a) or any lesser sum; or
  - (c) his parent shall not be required to pay any sum in respect of its provision.
- (3) Any sum which a parent is duly required to pay by virtue of subsection (2)(a) or (b) may be recovered summarily as a civil debt.
- (4) Where a person who has attained the age of 18 (other than a registered pupil at a school) is provided with clothing under section 510, any reference in subsection (2) or (3) to his parent shall be read as a reference to him.

**512 Provision of meals etc. at schools maintained by local education authorities. E+W**

- (1) A local education authority may provide registered pupils at any school maintained by them with milk, meals and other refreshment, either on the school premises or at any place other than the school premises where education is being provided.
- (2) Subject to subsection (3), a local education authority shall—
- (a) charge for anything provided by them under subsection (1), and
  - (b) charge every pupil the same price for the same quantity of the same item.
- (3) In relation to a pupil whose parents are in receipt of income support or of an income-based jobseeker's allowance (payable under the <sup>M92</sup>Jobseekers Act 1995) or who is himself in receipt of that benefit, a local education authority—
- (a) shall so exercise their power under subsection (1) as to ensure that such provision is made for him in the middle of the day as appears to them to be requisite, and
  - (b) shall make that provision for him free of charge.
- (4) A local education authority shall provide at any school maintained by them such facilities as they consider appropriate for the consumption of any meals or other refreshment brought to the school by registered pupils.
- (5) Subsections (1) and (4) shall apply in relation to—

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- (a) persons, other than pupils, who receive education at a school maintained by a local education authority, and
  - (b) the authority maintaining the school,
- as they apply in relation to pupils at any such school and the authority maintaining the school; and a local education authority shall charge for anything provided under subsection (1) as it so applies, and shall charge every such person the same price for the same quantity of the same item.

#### Marginal Citations

M92 1995 c. 18.

### 512ZA Duty to charge for meals etc. **E+W**

- (1) A local education authority shall charge for anything provided by them under subsection (1) or (3) of section 512.
- (2) A local education authority shall charge every person the same price for the same quantity of the same item.
- (3) This section is subject to section 512ZB.

### 512ZB Provision of free school lunches and milk **E+W**

- (1) Where the local education authority provide a school lunch in accordance with section 512(3) to a person who is eligible for free lunches, the authority shall provide the meal free of charge.
- (2) For this purpose a person is eligible for free lunches if—
  - (a) he is within subsection (4), and
  - (b) a request that the school lunches be provided free of charge has been made by him or on his behalf to the authority.
- (3) Where a local education authority exercise their power under subsection (1) of section 512 to provide a person within paragraph (a) or (c) of that subsection with milk, the authority shall provide the milk free of charge if—
  - (a) the person is within subsection (4), and
  - (b) a request that the milk be provided free of charge has been made by him or on his behalf to the authority.
- (4) A person is within this subsection if—
  - (a) his parent is—
    - (i) in receipt of income support,
    - (ii) in receipt of an income-based jobseeker's allowance (payable under the Jobseekers Act 1995 (c. 18)),
    - (iii) in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999 (c. 33), or
    - (iv) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed, or

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- (b) he, himself, is—
- (i) in receipt of income support,
  - (ii) in receipt of an income-based jobseeker’s allowance, or
  - (iii) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed.
- (5) In this section “prescribed” and “school lunch” have the same meaning as in section 512.

VALID FROM 01/02/1999

**[<sup>F144</sup>512A] Transfer of functions under section 512 to governing bodies. E+W**

- (1) The Secretary of State may by order make provision for imposing on the governing body of any school to which the order applies a duty or duties corresponding to one or more of the duties of the local education authority which are mentioned in subsection (2).
- (2) Those duties are—
  - (a) the duty to provide school lunches in accordance with section 512(1A) and (1B);
  - (b) the duty to provide school lunches free of charge in accordance with section 512(3)(a); and
  - (c) the duty to provide milk free of charge in accordance with section 512(3)(b).
- (3) An order under this section may (subject to subsection (6)) apply to—
  - (a) all maintained schools; or
  - (b) any specified class of such schools; or
  - (c) all such schools, or any specified class of such schools, maintained by specified local education authorities.
- (4) Where any duty falls to be performed by the governing body of a school by virtue of an order under this section—
  - (a) the corresponding duty mentioned in subsection (2) shall no longer fall to be performed by the local education authority in relation to the school; and
  - (b) if the duty corresponds to the one mentioned in subsection (2)(b) or (c), section 533(3) shall not apply to any school lunches or milk provided by the governing body in pursuance of the order.
- (5) An order under this section may provide for section 513(2) not to apply—
  - (a) to local education authorities generally, or
  - (b) to any specified local education authority,
 either in relation to all pupils for whom provision is made by the authority under section 513 or in relation to all such pupils who are of such ages as may be specified.
- (6) An order under this section shall not operate to—
  - (a) impose any duty on the governing body of a school, or
  - (b) relieve a local education authority of any duty in relation to a school,

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at any time when the school does not have a delegated budget; and such an order may provide for section 512(2)(b) above to have effect, in relation to any provision made at any such time by the local education authority for pupils at the school, with such modifications as may be specified.

(7) In this section—

“delegated budget” and “maintained school” have the same meaning as in the School Standards and Framework Act 1998;

“school lunch” has the same meaning as in section 512 above;

“specified” means specified in an order under this section.]

#### Textual Amendments

**F144** S. 512A inserted (1.2.1999) by 1998 c. 31, s. 116 (with ss. 138(9), 144(6)); S.I. 1998/3198, art. 2(2), Sch.

### 513 Provision of meals etc. at schools not maintained by local education authorities. **E+W**

- (1) A local education authority may, with the consent of the proprietor of a school in their area which is not maintained by them, make arrangements for securing the provision of milk, meals and other refreshment for pupils in attendance at the school.
- (2) Any arrangements under this section—
  - (a) shall be on such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school; and
  - (b) shall be such as to secure, so far as is practicable, that the expense incurred by the authority in connection with the provision of any service or item under the arrangements shall not exceed the expense which would have been incurred by them in providing it if the pupil had been a pupil at a school maintained by them.

### 514 Provision of board and lodging otherwise than at school. **E+W**

- (1) Where a local education authority are satisfied with respect to any pupil—
  - (a) that primary or secondary education suitable to his age, ability and aptitude and to any special educational needs he may have can best be provided for him at a particular county, voluntary, grant-maintained or special school, but
  - (b) that such education cannot be so provided unless boarding accommodation is provided for him otherwise than at the school,they may provide such board and lodging for him under such arrangements as they think fit.
- (2) Where a local education authority are satisfied with respect to a pupil with special educational needs that provision of board and lodging for him is necessary for enabling him to receive the required special educational provision, they may provide such board and lodging for him under such arrangements as they think fit.
- (3) In making any arrangements under this section, a local education authority shall, so far as practicable, give effect to the wishes of the pupil’s parent as to the religion or religious denomination of the person with whom the pupil will reside.

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- (4) Subject to subsection (5), where a local education authority have provided a pupil with board and lodging under arrangements under this section, they shall require the pupil's parent to pay them such sums, if any, in respect of the board and lodging as in their opinion he is able to pay without financial hardship.
- (5) No sum is recoverable under subsection (4) if the arrangements were made by the authority on the ground that in their opinion education suitable to the pupil's age, ability and aptitude or special educational needs could not otherwise be provided for him.
- (6) The sums recoverable under subsection (4) shall not exceed the cost to the authority of providing the board and lodging.
- (7) Any sum payable under subsection (4) may be recovered summarily as a civil debt.

### 515 Provision of teaching services for day nurseries. **E+W**

- (1) Subject to subsection (2), a local education authority may, in accordance with arrangements made by them for that purpose, make available to a day nursery the services of any teacher who—
  - (a) is employed by them in a nursery school or in a primary school having one or more nursery classes, and
  - (b) has agreed to provide his services for the purposes of the arrangements.
- (2) Arrangements under subsection (1) in respect of a teacher in a voluntary school require the concurrence of the governing body of the school.
- (3) Arrangements under this section may make provision—
  - (a) for the supply of equipment for use in connection with the teaching services made available under the arrangements;
  - (b) for regulating the respective functions of any teacher whose services are made available under the arrangements, the head teacher of his school and the person in charge of the day nursery; and
  - (c) for any supplementary or incidental matters connected with the arrangements, including, where the teacher's school and the day nursery are in the areas of different local education authorities, financial adjustments between those authorities.
- (4) In this section “day nursery” means a day nursery provided under section 18 of the <sup>M93</sup>Children Act 1989 (provision by local authorities of day care for pre-school and other children).
- (5) A teacher shall not be regarded as ceasing to be a member of the teaching staff of his school and subject to the general directions of his head teacher by reason only of his services being made available in pursuance of arrangements under this section.

#### Marginal Citations

**M93** 1989 c. 41.



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**516 Supply by LEA of goods and services to grant-maintained and grant-maintained special schools. E+W**

- (1) Where the Secretary of State by order provides for this section to apply to a local education authority, the functions of the authority shall include the supply by the authority of such goods or services as may be specified in the order to the governing bodies of grant-maintained schools or grant-maintained special schools in such area as may be so specified.
- (2) The area specified in the order may not extend beyond the area which comprises—
  - (a) the area of the authority, and
  - (b) the area of any other local education authority which shares any boundary with the authority.
- (3) The terms on which goods and services are supplied by a local education authority in the exercise of a function exercisable by virtue of this section shall be such as can reasonably be expected to secure that the full cost of exercising the function is recovered by the authority.
- (4) This section shall not apply to a local education authority after the end of the period of two years beginning with the time when it first applies to the authority.
- (5) This section is without prejudice to the generality of any other enactment conferring functions on local education authorities.

*Payment of fees*

**517 Payment of fees at schools not maintained by a local education authority. E+W**

- (1) Where, in pursuance of arrangements made under section 18 or Part IV (special educational needs), primary or secondary education is provided for a pupil at a school not maintained by them or another local education authority, the local education authority by whom the arrangements are made shall—
  - (a) if subsection (2), (3) or (4) applies, pay the whole of the fees payable in respect of the education provided in pursuance of the arrangements; and
  - (b) if board and lodging are provided for the pupil at the school and subsection (5) applies, pay the whole of the fees payable in respect of the board and lodging.
- (2) This subsection applies where—
  - (a) the pupil fills a place in the school which the proprietor of the school has put at the disposal of the authority; and
  - (b) the school is one in respect of which grants are made by the Secretary of State under section 485.
- (3) This subsection applies where the authority are satisfied that, by reason of a shortage of places in every school maintained by them or another local education authority to which the pupil could be sent with reasonable convenience, education suitable—
  - (a) to his age, ability and aptitude, and
  - (b) to any special educational needs he may have,cannot be provided by them for him except at a school not maintained by them or another local education authority.

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- (4) This subsection applies where (in a case in which neither subsection (2) nor subsection (3) applies) the authority are satisfied—
- (a) that the pupil has special educational needs, and
  - (b) that it is expedient in his interests that the required special educational provision should be made for him at a school not maintained by them or another local education authority.
- (5) This subsection applies where the authority are satisfied that education suitable—
- (a) to the pupil’s age, ability and aptitude, and
  - (b) to any special educational needs he may have,
- cannot be provided by them for him at any school unless board and lodging are also provided for him (either at school or elsewhere)
- (6) As from such day as the Secretary of State may by order appoint this section shall have effect with the following modifications—
- (a) in subsections (1) and (3), for “not maintained by them or another local education authority” substitute “which is neither a maintained nor a grant-maintained school”;
  - (b) in subsection (3), for “every school maintained by them or another local education authority” substitute “every maintained or grant-maintained school”;
  - (c) in subsections (3) and (5), for “provided by them” substitute “provided”;
  - (d) omit subsection (4) and the reference to it in subsection (1); and
  - (e) at the end add—
- “(7) In this section “grant-maintained school” includes a grant-maintained special school, and subsection (5) does not apply where section 348(2) applies.”
- (7) An order under subsection (6) may appoint different days for different provisions and for different purposes.

#### Subordinate Legislation Made

**P1** S. 517(6) power fully exercised (30.6.1997): 1.9.1997 appointed day by [S.I. 1997/1623](#).

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

**C88** S. 517 modified (1.9.1999) (the modification as mentioned in s. 517(6) has effect from 1.9.1997 as mentioned in [S.I. 1997/1623](#)) by [S.I. 1999/2260](#), [reg. 2\(1\)](#)

## 518 Payment of school fees and expenses; grant of scholarships etc. E+W

Regulations shall empower local education authorities, for the purpose of enabling persons to take advantage without hardship to themselves or their parents of any educational facilities available to them—

- (a) to defray such expenses of children attending county, voluntary, grant-maintained or special schools as may be necessary to enable them to take part in any school activities, and
- (b) to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable, and

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- (c) to grant scholarships, exhibitions, bursaries and other allowances in respect of persons over compulsory school age.

#### *Allowances for governors*

### **519 Travelling and subsistence allowances for governors of schools and further or higher education institutions. E+W**

- (1) A local education authority may, in accordance with the provisions of a scheme made by them for the purposes of this section, pay travelling and subsistence allowances to governors of—
  - (a) any county, voluntary or maintained special school which does not have a delegated budget (construed in accordance with section 115); and
  - (b) any institution providing higher education or further education (or both) which is maintained by a local education authority.
- (2) Such a scheme may make different provision in relation to schools or other institutions of different categories (including provision for allowances not to be paid in respect of certain categories) but shall not make different provision in relation to different categories of governor of the same school or institution.
- (3) Subject to subsections (4) and (5), a local education authority may pay travelling and subsistence allowances to any person appointed to represent them on the governing body of—
  - (a) any institution providing higher education or further education (or both) which is not maintained by them; or
  - (b) any independent school or special school which is not maintained by them.
- (4) A local education authority shall not pay any allowance under subsection (3) for expenses in respect of which the person incurring them is entitled to reimbursement by any person other than the authority.
- (5) A local education authority shall not pay any allowance under subsection (3) if they have not made any scheme under subsection (1) or if the arrangements under which the allowance would otherwise be payable—
  - (a) provide for allowances which are to any extent more generous than the most generous payable by the authority under any such scheme; or
  - (b) contain any provision which the authority would not have power to include in any such scheme.
- (6) No allowance may be paid to any governor of a school or institution of a kind mentioned in subsection (1), in respect of the discharge of his functions as such a governor, otherwise than under this section.

#### *Medical arrangements*

### **520 Medical inspection and treatment of pupils. E+W**

- (1) A local education authority shall make arrangements for encouraging and assisting pupils to take advantage of the provision for medical and dental inspection and treatment made for them in pursuance of section 5(1) or (1A) of the <sup>M94</sup>National Health Service Act 1977 or paragraph 1(a)(i) of Schedule 1 to that Act.

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- (2) If the parent of a pupil gives notice to the authority that he objects to the pupil availing himself of any of the provision so made, the pupil shall not be encouraged or assisted to do so.
- (3) A local education authority's duty under subsection (1) does not apply in relation to pupils at a grant-maintained school (in relation to whom the school's governing body have a similar duty under section 536(1)).

#### Marginal Citations

**M94** 1977 c. 49.

### *Cleanliness of pupils*

#### **521 Examination of pupils for cleanliness. E+W**

- (1) A local education authority may by directions in writing authorise a medical officer of theirs to have the persons and clothing of pupils in attendance at relevant schools examined whenever in his opinion such examinations are necessary in the interests of cleanliness.
- (2) Directions under subsection (1) may be given with respect to—
  - (a) all relevant schools, or
  - (b) any relevant schools named in the directions.
- (3) An examination under this section shall be made by a person authorised by the authority to make such examinations; and, if the examination is of a girl, it shall not be made by a man unless he is a registered medical practitioner.
- (4) For the purposes of this section “relevant schools” are—
  - (a) schools maintained by the authority; and
  - (b) grant-maintained schools within the authority's area.

#### **522 Compulsory cleansing of a pupil. E+W**

- (1) If, on an examination under section 521, the person or clothing of a pupil is found to be infested with vermin or in a foul condition, any officer of the local education authority may serve a notice on the pupil's parent requiring him to cause the pupil's person and clothing to be cleansed.
- (2) The notice shall inform the parent that, unless within the period specified in the notice the pupil's person and clothing are cleansed to the satisfaction of such person as is specified in the notice, the cleansing will be carried out under arrangements made by the authority.
- (3) The period so specified shall not be less than 24 hours from the service of the notice.
- (4) If, on a report being made to him by the specified person at the end of the specified period, a medical officer of the authority is not satisfied that the pupil's person and clothing have been properly cleansed, he may by order direct that they shall be cleansed under arrangements made by the authority under section 523.

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- (5) An order made under subsection (4) shall be sufficient to authorise any officer of the authority—
- (a) to cause the pupil's person and clothing to be cleansed in accordance with arrangements made by the authority under section 523, and
  - (b) for that purpose to convey the pupil to, and detain him at, any premises provided in accordance with such arrangements.

**523 Arrangements for cleansing of pupils. E+W**

- (1) A local education authority shall make arrangements for securing that the person or clothing of any pupil required to be cleansed under section 522 may be cleansed (whether at the request of a parent or in pursuance of an order under section 522(4)) at suitable premises, by suitable persons and with suitable appliances.
- (2) Where the council of a district in the area of the authority are entitled to the use of any premises or appliances for cleansing the person or clothing of persons infested with vermin, the authority may require the council to permit the authority to use those premises or appliances for such purposes upon such terms as may be determined—
- (a) by agreement between the authority and the council, or
  - (b) in default of such agreement, by the Secretary of State.
- (3) Subsection (2) does not apply in relation to Wales.
- (4) A girl may be cleansed under arrangements under this section only by a registered medical practitioner or by a woman authorised for the purpose by the authority.

**524 Exclusion of a pupil pending examination or cleansing. E+W**

- (1) Where—
- (a) a medical officer of a local education authority suspects that the person or clothing of a pupil in attendance at a relevant school is infested with vermin or in a foul condition, but
  - (b) action for the examination or cleansing of the pupil's person and clothing cannot be taken immediately,
- the medical officer may direct that the pupil is to be excluded from the school until such action has been taken, if he considers it necessary to do so in the interests either of the pupil or of other pupils in attendance at the school.
- (2) A direction under subsection (1) is a defence to any proceedings under Chapter II of Part VI in respect of the failure of the pupil to attend school on any day on which he is excluded in pursuance of the direction, unless it is proved that the giving of the direction was necessitated by the wilful default of the pupil or his parent.
- (3) For the purposes of this section a “relevant school” is—
- (a) a school maintained by the local education authority, or
  - (b) a grant-maintained school within the authority's area.

**525 Offence of neglecting the cleanliness of a pupil. E+W**

- (1) If, after the person or clothing of a pupil has been cleansed under section 522—
- (a) his person or clothing is again infested with vermin, or in a foul condition, at any time while he is in attendance at a relevant school, and

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- (b) the condition of his person or clothing is due to neglect on the part of his parent,  
the parent is guilty of an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (3) For the purposes of this section a “relevant school” is a school maintained by a local education authority or a grant-maintained school.

### *Educational research and conferences*

#### **526 Powers as to educational research. E+W**

A local education authority may make such provision for conducting, or assisting the conduct of, research as appears to them to be desirable for the purpose of improving the educational facilities provided for their area.

#### **527 Powers as to educational conferences. E+W**

A local education authority may—

- (a) organise, or participate in the organisation of, conferences for the discussion of questions relating to education, and
- (b) expend such sums as may be reasonable in paying, or contributing towards, any expenditure incurred in connection with conferences for the discussion of such questions, including the expenses of any person authorised by them to attend such a conference.

*[<sup>F145</sup>Plans relating to children with behavioural difficulties]*

#### **Textual Amendments**

**F145** S. 527A and cross-heading inserted (1.4.1998) by 1997 c. 44, s.9 (with s. 57(3)); S.I. 1998/386, art. 2(2), **Sch. 1 Pt. II**

#### **[527A <sup>F146</sup>Duty of LEA to prepare plan relating to children with behavioural difficulties. E+W**

- (1) Every local education authority shall prepare, and from time to time review, a statement setting out the arrangements made or proposed to be made by the authority in connection with the education of children with behavioural difficulties.
- (2) The arrangements to be covered by the statement include in particular—
- (a) the arrangements made or to be made by the authority for the provision of advice and resources to relevant schools, and other arrangements made or to be made by them, with a view to—
- (i) meeting requests by such schools for support and assistance in connection with the promotion of good behaviour and discipline on the part of their pupils, and

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- (ii) assisting such schools to deal with general behavioural problems and the behavioural difficulties of individual pupils;
  - (b) the arrangements made or to be made by the authority in pursuance of section 19(1) (exceptional provision of education for children not receiving education by reason of being excluded or otherwise); and
  - (c) any other arrangements made or to be made by them for assisting children with behavioural difficulties to find places at suitable schools.
- (3) The statement shall also deal with the interaction between the arrangements referred to in subsection (2) and those made by the authority in relation to pupils with behavioural difficulties who have special educational needs.
- (4) In the course of preparing the statement required by this section or any revision of it the authority shall carry out such consultation as may be prescribed.
- (5) The authority shall—
- (a) publish the statement in such manner and by such date, and
  - (b) publish revised statements in such manner and at such intervals,
- as may be prescribed, and shall provide such persons as may be prescribed with copies of the statement or any revised statement.
- (6) In discharging their functions under this section a local education authority shall have regard to any guidance given from time to time by the Secretary of State.
- (7) In this section “relevant school”, in relation to a local education authority, means—
- (a) a school maintained by the authority (whether situated in their area or not), or
  - (b) a grant-maintained or grant-maintained special school situated in their area.]

#### Textual Amendments

**F146** S. 527A inserted (1.4.1998) by 1997 c. 44, s.9 (with s. 57(3)); S.I. 1998/386, art. 2(2), Sch. 1 Pt.II.

#### *Disability statements relating to further education*

### 528 **Duty of LEA to publish disability statements relating to further education.** **E** **+W**

- (1) Every local education authority shall publish disability statements at such intervals as may be prescribed.
- (2) In subsection (1) “disability statement” means a statement containing information of a prescribed description about the provision of facilities for further education made by the local education authority in respect of persons who are disabled persons for the purposes of the <sup>M95</sup>Disability Discrimination Act 1995.

#### Commencement Information

**I2** S. 528 wholly in force at 30.10.1997; s. 528 not in force at Royal Assent see s. 583(3); s. 528 in force at 1.8.1997 in its application to England by S.I. 1997/1623, art. 2(1) and at 30.10.1997 in its application to Wales by S.I. 1997/2352, art. 2.

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### Marginal Citations

M95 1995 c. 50.

## *Acquisition and holding of property*

### **529 Power to accept gifts on trust for educational purposes. E+W**

- (1) A local education authority may accept, hold and administer any property on trust for purposes connected with education.
- (2) Any intention on the part of a local education authority that a school (other than a nursery school or a special school) should be vested in the authority as trustees shall be treated for the purposes of section 35(1) as an intention to maintain the school as a county school (so that proposals for that purpose shall be published and submitted as required by that subsection); and the other provisions of section 35 and sections 36 to 40 shall apply accordingly.
- (3) Any school which in accordance with subsection (2) is vested in a local education authority as trustees shall be a county school.

### **530 Compulsory purchase of land. E+W**

- (1) The Secretary of State may authorise a local education authority to purchase compulsorily any land (whether within or outside their area) which—
  - (a) is required for the purposes of any school or institution which is, or is to be, maintained by them or which they have power to assist, or
  - (b) is otherwise required for the purposes of their functions under this Act.
- (2) The Secretary of State shall not authorise the compulsory purchase of any land required for the purposes of a voluntary school unless he is satisfied that the arrangements made—
  - (a) as to the vesting of the land to be purchased, and
  - (b) as to the appropriation of that land for the purposes of the school,
 are such as to secure that the expenditure ultimately borne by the local education authority will not include any expenditure which, if the land had been purchased by the governing body of the school, would have fallen to be borne by the governing body.
- (3) Subsection (2) shall not, however, apply where the local education authority propose that expenditure to be incurred in connection with the purchase should ultimately be borne by them under section 68 (power to give assistance).
- (4) In this section “land” includes buildings and other structures and land covered with water.

### **531 Acquisition of land by agreement. E+W**

- (1) For the removal of doubt, it is declared that making land available for the purposes of a school or institution—
  - (a) which is, or is to be, maintained by a local education authority, or
  - (b) which such an authority have power to assist,



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is a function of the authority within the meaning of section 120 of the <sup>M96</sup>Local Government Act 1972 (which relates to the acquisition by a local authority by agreement of land for the purpose of any of their functions), even though the land will not be held by the authority.

- (2) A local education authority shall not acquire by agreement any land required for the purposes of a voluntary school unless they are satisfied that the arrangements made—
- (a) as to the vesting of the land to be acquired, and
  - (b) as to the appropriation of that land for the purposes of the school,
- are such as to secure that the expenditure ultimately borne by them will not include any expenditure which, if the land had been acquired by the governing body of the school, would have fallen to be borne by the governing body.

**Marginal Citations**  
M96 1972 c. 70.

*Appointment of chief education officer*

**532 Appointment of chief education officer. E+W**

A local education authority's duties under the Local Government Act 1972 with respect to the appointment of officers shall (without prejudice to the generality of the provisions of that Act) include the duty of appointing a fit person to be the chief education officer of the authority.

**CHAPTER III E+W**

ANCILLARY FUNCTIONS OF GOVERNING BODIES

*Provision of services*

**533 Duties of governing bodies of maintained schools with respect to provision of school meals etc. E+W**

- (1) The governing body of any school maintained by a local education authority shall—
- (a) afford the authority such facilities as they require to enable them to perform their functions under section 512, and
  - (b) allow the authority to make such use of the premises and equipment of the school, and such alterations to the school buildings, as the authority consider necessary for that purpose.
- (2) Nothing in subsection (1) shall require the governing body of a voluntary school to incur any expenditure.
- (3) Where the governing body of a school which has a delegated budget (within the meaning of Part II) provide pupils or other persons who receive education at the school with milk, meals or other refreshment, they shall—
- (a) charge for everything so provided,

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- (b) charge every such pupil the same price for the same quantity of the same item, and
- (c) charge every person other than a pupil the same price for the same quantity of the same item.

**534 Duties of governing bodies of grant-maintained schools with respect to provision of school meals etc.** E+W

- (1) The governing body of a grant-maintained school may provide registered pupils at the school with milk, meals and other refreshment, either on the school premises or at any place other than the school premises where education is being provided.
- (2) Subject to subsection (3), a governing body shall—
  - (a) charge for anything provided by them under subsection (1), and
  - (b) charge every pupil the same price for the same quantity of the same item.
- (3) In relation to a pupil whose parents are in receipt of income support or of an income-based jobseeker's allowance (payable under the <sup>M97</sup>Jobseekers Act 1995) or who is himself in receipt of that benefit, a governing body—
  - (a) shall so exercise their power under subsection (1) as to ensure that such provision is made for him in the middle of the day as appears to them to be requisite, and
  - (b) shall make that provision for him free of charge.
- (4) A governing body of a grant-maintained school shall provide at the school such facilities as they consider appropriate for the consumption of any meals or other refreshment brought to the school by registered pupils.
- (5) Subsections (1) and (4) shall apply in relation to—
  - (a) persons, other than pupils, who receive education at a grant-maintained school, and
  - (b) the governing body of the school,
 as they apply in relation to pupils at any such school and its governing body; and a governing body shall charge for anything provided under subsection (1) as it so applies, and shall charge every such person the same price for the same quantity of the same item.

**Marginal Citations**

**M97** 1995 c. 18.

**535 Provision of teaching services for day nurseries.** E+W

- (1) Subject to subsection (2), the governing body of a county or voluntary primary school having one or more nursery classes may, in accordance with arrangements made by them for that purpose, make available to a day nursery the services of any teacher who is employed by them in the school and has agreed to provide his services for the purposes of the arrangements.
- (2) No arrangements shall be made under subsection (1) except at the request of the local education authority and on terms approved by them.

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- (3) Arrangements under this section may make provision—
- (a) for the supply of equipment for use in connection with the teaching services made available under the arrangements,
  - (b) for regulating the respective functions of any teacher whose services are made available under the arrangements, the head teacher of his school and the person in charge of the day nursery, and
  - (c) for any supplementary or incidental matters connected with the arrangements, including, where the teacher’s school and the day nursery are in the areas of different local education authorities, financial adjustments between those authorities.
- (4) In this section “day nursery” means a day nursery provided under section 18 of the <sup>M98</sup>Children Act 1989 (provision by local authorities of day care for pre-school and other children).
- (5) A teacher shall not be regarded as ceasing to be a member of the teaching staff of his school and subject to the general directions of his head teacher by reason only of his services being made available in pursuance of arrangements under this section.

**Marginal Citations**  
M98 1989 c. 41.

#### *Medical arrangements*

### **536 Medical inspection and treatment of pupils at grant-maintained schools. E+W**

- (1) The governing body of a grant-maintained school shall make arrangements for encouraging and assisting pupils at the school to take advantage of the provision for medical and dental inspection and treatment made for them in pursuance of section 5(1) or (1A) of the <sup>M99</sup>National Health Service Act 1977 or paragraph 1(a)(i) of Schedule 1 to that Act.
- (2) If the parent of a pupil gives notice to the governing body that he objects to the pupil availing himself of any of the provision so made, the pupil shall not be encouraged or assisted to do so.

**Marginal Citations**  
M99 1977 c. 49.

## **CHAPTER IV E+W**

### PROVISION OF INFORMATION BY GOVERNING BODIES ETC.

### **537 Power of Secretary of State to require information from governing bodies etc. E+W**

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

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- (a) the governing body of every school which is—
    - (i) maintained by a local education authority, or
    - (ii) a grant-maintained school, or
    - (iii) a special school which is not maintained by a local education authority, and
  - (b) the proprietor of each independent school,
- to provide such information about the school as may be prescribed.
- (2) For the purposes of this section information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (3) Where the Secretary of State exercises his power to make regulations under this section he shall do so with a view to making available information which is likely to—
- (a) assist parents in choosing schools for their children;
  - (b) increase public awareness of the quality of the education provided by the schools concerned and of the educational standards achieved in those schools; or
  - (c) assist in assessing the degree of efficiency with which the financial resources of those schools are managed.
- (4) Information which is required by virtue of regulations under this section shall be provided—
- (a) in such form and manner,
  - (b) on such occasions, and
  - (c) to such person or persons, in addition to or in place of the Secretary of State, as may be prescribed <sup>F147</sup>; and regulations under this section may provide that, in such circumstances as may be prescribed, the provision of information to a person other than the Secretary of State is to be treated, for the purposes of any provision of such regulations or this section, as compliance with any requirement of such regulations relating to the provision of information to the Secretary of State.]
- (5) No information provided in accordance with regulations under this section shall name any pupil to whom it relates.
- (6) The Secretary of State may—
- (a) publish information provided in accordance with regulations under this section in such form and manner as he considers appropriate;
  - (b) make arrangements for such information to be published in such form and manner, and by such persons, as he may specify for the purposes of this section;
  - (c) make regulations requiring local education authorities to publish prescribed categories of such information, together with such supplementary information as may be prescribed, in such form and manner as may be prescribed.
- (7) The Secretary of State may make regulations requiring—
- (a) the governing body of any school which is maintained by a local education authority or which is a grant-maintained school,
  - (b) the proprietor of any city technology college or city college for the technology of the arts, or
  - (c) any local education authority,

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- to provide prescribed persons with prescribed categories of information published under subsection (6).
- (8) Information provided under subsection (7) shall be provided in such form and manner as may be prescribed.
- (9) Regulations under this section may make provision enabling the Secretary of State, in such circumstances as may be prescribed, to order the deletion from the register of independent schools of the name of any independent school the proprietor of which fails to comply with any requirement imposed by or under the regulations.
- (10) In subsection (9) “the register of independent schools” means—
- (a) in relation to any school in England, the register of independent schools kept under section 464 by the Registrar of Independent Schools for England; and
  - (b) in relation to any school in Wales, the equivalent register kept by the Registrar of Independent Schools for Wales.
- (11) Without prejudice to the generality of section 569(4), regulations under this section may make provision for the designation by the Secretary of State, in accordance with the regulations, of particular schools or classes of schools for the purposes of the application of particular provisions of the regulations in relation to such schools.
- (12) This section is not to be taken as restricting, or otherwise affecting, any other powers that the Secretary of State may have to make regulations with respect to, or otherwise to require, the provision of information by any person.
- (13) This section does not apply to nursery schools.

#### Textual Amendments

**F147** Words in s. 537(4) added (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.37**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt.I**.

#### **[537A** <sup>F148</sup>**Provision of information about individual pupils’ performance.** **E+W**

- (1) The Secretary of State may by regulations make provision requiring—
- (a) the governing body of every school which is—
    - (i) maintained by a local education authority, or
    - (ii) a grant-maintained school, or
    - (iii) a special school which is not maintained by a local education authority, and
  - (b) the proprietor of each independent school,
- to provide to the Secretary of State such individual performance information relating to pupils or former pupils at the school as may be prescribed.
- (2) In this section “individual performance information” means information about the performance of individual pupils (identified in the prescribed manner)—
- (a) in any assessment made for the purposes of the National Curriculum or in accordance with a baseline assessment scheme (within the meaning of Chapter I of Part IV of the Education Act 1997);
  - (b) in any prescribed public examination;
  - (c) in connection with the attainment of any vocational qualification; or

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- (d) in any such other assessment or examination, or in connection with the attainment of any such other qualification, as may be prescribed.
- (3) The Secretary of State may provide any information received by him by virtue of subsection (1)—
  - (a) to any prescribed body or person, or
  - (b) to any body or person falling within a prescribed category.
- (4) Any body or person holding any individual performance information may provide that information to any body to which this subsection applies; and any body to which this subsection applies—
  - (a) may provide any information received by it under this subsection—
    - (i) to the Secretary of State, or
    - (ii) to the governing body or proprietor of the school attended by the pupil or pupils to whom the information relates; and
  - (b) may, at such times as the Secretary of State may determine, provide to any prescribed body such information received by it under this subsection as may be prescribed.
- (5) Subsection (4) applies to any body which, for the purposes of or in connection with the functions of the Secretary of State relating to education, is responsible for collating or checking information relating to the performance of pupils—
  - (a) in any assessment or examination falling within subsection (2)(a), (b) or (d), or
  - (b) in connection with the attainment of any qualification falling within subsection (2)(c) or (d).
- (6) No individual performance information received under or by virtue of this section shall be published in any form which includes the name of the pupil or pupils to whom it relates.
- (7) References in this section to the attainment of a qualification of any description include references to the completion of any module or part of a course leading to any such qualification.]

#### Textual Amendments

**F148** S. 537A inserted (14.6.1997) by 1997 c. 44, s.20; S.I. 1997/1468, art. 2(1), Sch. 1 Pt.1.

#### **538 Provision of information to Secretary of State by governing bodies of maintained schools. E+W**

The governing body or temporary governing body of a county, voluntary or maintained special school shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purpose of the exercise of his functions in relation to education.

#### **539 Provision of information by governing body of grant-maintained schools. E+W**

- (1) The governing body of a grant-maintained school shall publish, at such times and in such manner as may be required by regulations made by the Secretary of State, such information in respect of the school as may be so required.

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- (2) The governing body shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purpose of his functions in relation to education.
- (3) The governing body shall make such reports and returns, and give such information, to the funding authority as they may require for the purpose of the exercise of their functions.
- (4) The governing body shall make such reports and returns, and give such information, to any local education authority by whom any functions are exercisable—
  - (a) in relation to the school, or
  - (b) in relation to registered pupils at the school,as the authority may require for the purpose of the exercise of those functions.
- (5) The governing body shall make such reports and returns, and give such information, in relation to registered pupils at the school aged five or under as any local education authority may require for the purpose of exercising their functions under section 19(1) (a) of the <sup>M100</sup>Children Act 1989 (review of provision for day care).

**Marginal Citations**  
M100 1989 c. 41.

**540 Distribution of information about schools providing secondary education. E**  
+W

- (1) Where the governing body of any school providing primary education receive a request which—
  - (a) is made by the governing body of any school providing secondary education, and
  - (b) relates to the distribution of information about the school providing secondary education to parents of pupils at the school providing primary education without charge to those parents,the governing body of that school shall secure that the request is treated no less favourably (whether as to services provided or as to the terms on which they are provided) than any such request made by the governing body of any other school providing secondary education.
- (2) In this section “school” means—
  - (a) any county or voluntary school or any maintained special school which is not established in a hospital, or
  - (b) any grant-maintained school or any grant-maintained special school.

**541 Distribution of information about further education institutions. E+W**

- (1) The Secretary of State may by regulations require—
  - (a) the governing body of any school providing secondary education, and
  - (b) the proprietor of any city technology college or city college for the technology of the arts,

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to provide such persons as may be prescribed with such categories of information falling within subsection (2) as may be prescribed.

- (2) Information falls within this subsection if it is—
- (a) published under section 50 of the <sup>M101</sup>Further and Higher Education Act 1992 (information with respect to institutions within the further education sector), and
  - (b) made available to governing bodies and proprietors for distribution.
- (3) Information provided under subsection (1) shall be provided in such form and manner as may be prescribed.
- (4) In this section “school” means—
- (a) any county or voluntary school or any maintained special school which is not established in a hospital, or
  - (b) any grant-maintained school or any grant-maintained special school.

**Marginal Citations**

M101 1992 c. 13.

**PART X U.K.**

MISCELLANEOUS AND GENERAL

**CHAPTER I E+W**

EDUCATIONAL PREMISES

*Required standards for educational premises*

**542 Prescribed standards for school premises. E+W**

- (1) Regulations shall prescribe the standards to which the premises of schools maintained by local education authorities and of grant-maintained schools are to conform; and without prejudice to the generality of section 569(4) different standards may be prescribed for such descriptions of schools as are specified in the regulations.
- (2) Where a school is maintained by a local education authority, the authority shall secure that the school premises conform to the prescribed standards.
- (3) Where a school is a grant-maintained school, the governing body shall secure that the school premises conform to the prescribed standards.
- (4) Subsections (2) and (3) have effect subject to section 543.

**543 Relaxation of prescribed standards in special cases. E+W**

- (1) Where subsection (2), (3) or (4) applies in relation to a school, the Secretary of State may direct that, despite the fact that the prescribed requirement referred to in that



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subsection is not satisfied, the school premises shall be taken, as respects the matters specified in the direction, to conform to the standards prescribed under section 542 so long as—

- (a) the direction remains in force, and
- (b) any conditions specified in the direction as respects those matters are observed.

(2) This subsection applies if the Secretary of State is satisfied, having regard—

- (a) to the nature of the school’s existing site,
- (b) to any existing buildings on the site, or
- (c) to other special circumstances affecting the school premises,

that it would be unreasonable to require conformity with any prescribed requirement as to any matter.

(3) This subsection applies if—

- (a) the school is to have an additional or new site, and
- (b) the Secretary of State is satisfied, having regard to the shortage of suitable sites, that it would be unreasonable to require conformity with any prescribed requirement relating to sites.

(4) This subsection applies if—

- (a) the school is to have additional buildings, or is to be transferred to a new site,
- (b) existing buildings not previously part of the school premises, or temporary buildings, are to be used for that purpose, and
- (c) the Secretary of State is satisfied, having regard to the need to control public expenditure in the interests of the national economy, that it would be unreasonable to require conformity with any prescribed requirement relating to buildings.

(5) In this section “prescribed requirement” means a requirement of regulations under section 542.

#### **544 Approval etc. of school premises and boarding hostels. E+W**

(1) Regulations may make provision requiring the Secretary of State’s approval (or, in such cases as may be prescribed, the approval of the funding authority) to be obtained for the provision of new premises for, or the alteration of the premises of—

- (a) any school to which this section applies, or
- (b) any boarding hostel provided by a local education authority for persons receiving education at any such school.

(2) Regulations may make provision for the inspection of any such hostel.

(3) The schools to which this section applies are—

- (a) any school maintained by a local education authority,
- (b) any grant-maintained school, and
- (c) any special school not maintained by a local education authority.

#### **545 Exemption from building byelaws of approved buildings. E+W**

(1) Where plans for, or particulars in respect of, a building required for the purposes of any school or other educational institution are approved by the Secretary of State, he

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may by order direct that any provision of a local Act or of a byelaw made under such an Act—

- (a) shall not apply in relation to the building, or
  - (b) shall apply in relation to it with such modifications as may be specified in the order.
- (2) The reference in subsection (1) to plans or particulars approved by the Secretary of State includes a reference to—
- (a) particulars submitted to and approved by him under regulations under section 544 or section 218(7) of the <sup>M102</sup>Education Reform Act 1988, or
  - (b) particulars given in pursuance of section 428(2)(b).

**Marginal Citations**

M102 1988 c. 40.

*Control of potentially harmful materials and apparatus*

**546 Control of potentially harmful materials and apparatus in schools. E+W**

- (1) Regulations may make provision for requiring the Secretary of State's approval to be obtained for the use in schools to which this section applies of such materials or apparatus as may be specified in the regulations, being materials or apparatus which could or might involve a serious risk to health.
- (2) The schools to which this section applies are—
- (a) any school maintained by a local education authority,
  - (b) any grant-maintained school, and
  - (c) any special school not maintained by a local education authority.

*Nuisance or disturbance on school premises*

**547 Nuisance or disturbance on school premises. E+W**

- (1) Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises (whether or not any such persons are present at the time) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) This section applies to premises, including playgrounds, playing fields and other premises for outdoor recreation, of—
- (a) any school maintained by a local education authority, or
  - (b) any grant-maintained school.
- (3) If—
- (a) a police constable, or
  - (b) (subject to subsection (5)) a person whom a local education authority have authorised to exercise the power conferred by this subsection,

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has reasonable cause to suspect that any person is committing or has committed an offence under this section, he may remove him from the premises in question.

- (4) The power conferred by subsection (3) may also be exercised, in relation to premises of an aided, special agreement or grant-maintained school, by a person whom the governing body have authorised to exercise it.
- (5) A local education authority may not authorise a person to exercise the power conferred by subsection (3) in relation to premises of a voluntary or grant-maintained school without first obtaining the consent of the governing body.
- (6) Subject to subsection (7), no proceedings for an offence under this section shall be brought by any person other than—
  - (a) a police constable, or
  - (b) a local education authority.
- (7) Proceedings for an offence under this section committed on premises of an aided, special agreement or grant-maintained school may be brought by a person whom the governing body have authorised to bring such proceedings.
- (8) A local education authority may not bring proceedings for an offence under this section committed on premises of a voluntary or grant-maintained school without first obtaining the consent of the governing body.

## CHAPTER II **E+W**

### [<sup>F149</sup> PUNISHMENT AND RESTRAINT OF PUPILS]

#### Textual Amendments

**F149** Pt. X Ch. II: Chapter heading and cross-heading substituted for Chapter heading (1.9.1998) by virtue of 1997 c. 44, s. 57(1), **Sch. 7 para. 38**; S.I. 1998/386, art. 2(4), **Sch. 1 Pt. IV**

### [<sup>F150</sup> Corporal punishment]

#### Textual Amendments

**F150** Pt. X Ch. II: Chapter heading and cross-heading substituted for Chapter heading (1.9.1998) by virtue of 1997 c. 44, s. 57(1), **Sch. 7 para. 38**; S.I. 1998/386, art. 2(4), **Sch. 1 Pt. IV**

## 548 No right to give corporal punishment. **E+W**

- (1) Where, in any proceedings, it is shown that corporal punishment has been given to any pupil to whom this subsection applies by or on the authority of a member of the staff, giving the punishment cannot be justified on the ground that it was done in pursuance of a right exercisable by the member of the staff by virtue of his position as such.
- (2) Where, in any proceedings, it is shown that corporal punishment has been given to any pupil by or on the authority of a member of the staff, giving the punishment cannot be justified if it was inhuman or degrading.

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- (3) Subsection (1) applies to—
- (a) any pupil for whom education is provided—
    - (i) at a school maintained by a local education authority,
    - (ii) at a special school not so maintained, or
    - (iii) at a grant-maintained school;
  - (b) any pupil for whom education is provided at an independent school—
    - (i) which is maintained or assisted by a Minister of the Crown (including a school of which a government department is a proprietor) or is assisted by a local education authority, and
    - (ii) which falls within a prescribed class;
  - (c) any pupil for whom education is provided by a local education authority otherwise than at a school; and
  - (d) any pupil who is an assisted person for the purposes of this paragraph and for whom education is provided at an independent school not falling within paragraph (b) above.
- (4) A pupil is an assisted person for the purposes of subsection (3)(d) if—
- (a) he holds an assisted place under the scheme operated by the Secretary of State [F151 provided under section 2(1) of the Education (Schools) Act 1997];
  - (b) any of the fees or expenses payable in respect of his attendance at school are paid by—
    - (i) the Secretary of State under section 491, or
    - (ii) a local education authority under section 517, or
    - (iii) the funding authority or a local education authority under paragraph 9 or 10 of Schedule 4;
  - (c) any of the fees payable in respect of his attendance at school are paid by a local education authority under section 518; or
  - (d) he falls within a prescribed category of persons.
- (5) The Secretary of State may prescribe, for the purposes of subsection (4)(d), one or more categories of persons who appear to him to be persons in respect of whom any fees are paid out of public funds.
- (6) A person does not commit an offence by reason of any conduct relating to a pupil which would, apart from this section, be justified on the ground that it is done in pursuance of a right exercisable by a member of the staff by virtue of his position as such.

#### Textual Amendments

**F151** Words in s. 548(4)(a) substituted (1.9.1997) by 1997 c. 59, ss. 6(1), 7(3) (with s. 1(3))

#### 549 Interpretation of section 548. **E+W**

- (1) Subject to subsection (2), references in section 548 to giving corporal punishment are to doing anything for the purpose of punishing the pupil concerned (whether or not there are also other reasons for doing it) which, apart from any justification, would constitute battery.

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- (2) A person is not to be taken for the purposes of section 548 as giving corporal punishment by virtue of anything done for reasons that include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).
- (3) In determining for the purposes of section 548(2) whether punishment is inhuman or degrading regard shall be had to all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects.
- (4) In section 548 “member of the staff” means—
  - (a) in relation to a person who is a pupil by reason of the provision of education for him at a school, any teacher who works at the school and any other person who has lawful control or charge of the pupil and works there; and
  - (b) in relation to a person who is a pupil by reason of the provision of education for him by a local education authority at a place other than a school, any teacher employed by the authority who works at that place and any other person employed by the authority who has lawful control or charge of the pupil and works there.
- (5) In section 548 and this section “pupil” does not include any person who has attained the age of 18.

**550 No avoidance of section 548 by refusing admission to school etc. E+W**

A person shall not be debarred from receiving education (whether by refusing him admission to a school, suspending his attendance or otherwise) by reason of the fact that any provision of section 548 applies in relation to him or, if he were admitted, might so apply.

*[<sup>F152</sup> Power to restrain pupils]*

**Textual Amendments**

**F152** S. 550A and cross-heading inserted (1.9.1998) by 1997 c. 44, s. 4 (with s. 57(3)); S.I. 1998/386, art. 2(4), Sch. 1 Pt. IV

**[<sup>F153</sup> 550A Power of members of staff to restrain pupils. E+W**

- (1) A member of the staff of a school may use, in relation to any pupil at the school, such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing (or continuing to do) any of the following, namely—
  - (a) committing any offence,
  - (b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or
  - (c) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise.
- (2) Subsection (1) applies where a member of the staff of a school is—

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- (a) on the premises of the school, or
- (b) elsewhere at a time when, as a member of its staff, he has lawful control or charge of the pupil concerned;

but it does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548.

- (3) Subsection (1) shall not be taken to prevent any person from relying on any defence available to him otherwise than by virtue of this section.

- (4) In this section—

“member of the staff”, in relation to a school, means any teacher who works at the school and any other person who, with the authority of the head teacher, has lawful control or charge of pupils at the school;

“offence” includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.]

#### Textual Amendments

**F153** S. 550A and cross-heading inserted (1.9.1998) by 1997 c. 44, s. 4 (with s. 57(3)); S.I. 1998/386, art. 2(4), Sch. 1 Pt. IV

[<sup>F154</sup> Detention]

#### Textual Amendments

**F154** S. 550B and cross-heading inserted (1.9.1998) by 1997 c. 44, s. 5 (with s. 57(3)); S.I. 1998/386, art. 2(4), Sch. 1 Pt. IV

### [<sup>F155</sup> **550B** Detention outside school hours lawful despite absence of parental consent. **E** **+W**]

- (1) Where a pupil to whom this section applies is required on disciplinary grounds to spend a period of time in detention at his school after the end of any school session, his detention shall not be rendered unlawful by virtue of the absence of his parent’s consent to it if the conditions set out in subsection (3) are satisfied.
- (2) This section applies to any pupil who has not attained the age of 18 and is attending—
- (a) a school maintained by a local education authority;
  - (b) a grant-maintained or grant-maintained special school; or
  - (c) a city technology college or city college for the technology of the arts.
- (3) The conditions referred to in subsection (1) are as follows—
- (a) the head teacher of the school must have previously determined, and have—
    - (i) made generally known within the school, and
    - (ii) taken steps to bring to the attention of the parent of every person who is for the time being a registered pupil there,
 that the detention of pupils after the end of a school session is one of the measures that may be taken with a view to regulating the conduct of pupils;

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- (b) the detention must be imposed by the head teacher or by another teacher at the school specifically or generally authorised by him for the purpose;
  - (c) the detention must be reasonable in all the circumstances; and
  - (d) the pupil's parent must have been given at least 24 hours' notice in writing that the detention was due to take place.
- (4) In determining for the purposes of subsection (3)(c) whether a pupil's detention is reasonable, the following matters in particular shall be taken into account—
- (a) whether the detention constitutes a proportionate punishment in the circumstances of the case; and
  - (b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—
    - (i) the pupil's age,
    - (ii) any special educational needs he may have,
    - (iii) any religious requirements affecting him, and
    - (iv) where arrangements have to be made for him to travel from the school to his home, whether suitable alternative arrangements can reasonably be made by his parent.
- (5) Section 572, which provides for the methods by which notices may be served under this Act, does not preclude a notice from being given to a pupil's parent under this section by any other effective method.]

#### Textual Amendments

**F155** S. 550B and cross-heading inserted (1.9.1998) by 1997 c. 44, s. 5 (with s. 57(3)); S.I. 1998/386, art. 2(4), Sch. 1 Pt. IV

## CHAPTER III **E+W**

### OTHER PROVISIONS ABOUT SCHOOLS

#### *Duration of school day etc.*

#### **551 Regulations as to duration of school day etc. **E+W****

- (1) Regulations may make provision with respect to the duration of the school day and school year at, and the granting of leave of absence from, any schools to which this section applies.

[<sup>F156</sup>(1A) In subsection (1) the reference to the duration of the school year at any such schools is a reference to the number of school sessions that must be held during any such year.]

- (2) The schools to which this section applies are—
- (a) any school maintained by a local education authority;
  - (b) any grant-maintained school; and
  - (c) any special school not maintained by a local education authority.

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### Textual Amendments

**F156** S. 551(1A) inserted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.39**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt.I**

### *Single-sex schools*

## 552 **Transitional exemption orders for purposes of Sex Discrimination Act 1975.** **E** **+W**

(1) Where—

- (a) by reason of section 37(7)(b), 43(4)(b), 169(6)(b) or 199(2) any proposals for a school to cease to be an establishment which admits pupils of one sex only may not be determined until the Secretary of State has made his determination with respect to any proposals for acquisition of grant-maintained status, and
- (b) the proposals for acquisition of grant-maintained status and the proposals for the school to cease to be such an establishment are approved (with or without modification),

paragraph 1 of Schedule 2 to the 1975 Act shall not apply but the new governing body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and he may make such an order accordingly.

(2) Where the governing body of a grant-maintained school publish under section 259 proposals for the school to cease to be an establishment which admits pupils of one sex only and (by virtue of section 264(1)) Part III of this Act has effect with the modifications in section 264(2) to (7) in relation to the proposals, then—

- (a) paragraph 1 of Schedule 2 to the 1975 Act shall not apply unless the proposals require the approval of the Secretary of State, and
- (b) in any other case, the governing body shall be treated as having applied for the making by the funding authority of a transitional exemption order, and the funding authority may make such an order accordingly.

(3) Where under section 260 the funding authority submit to the Secretary of State a copy of proposals for a school to cease to be an establishment which admits pupils of one sex only, then—

- (a) if the proposals require the approval of the Secretary of State, the governing body shall be treated as having applied for the making by him of a transitional exemption order, and
- (b) in any other case, the governing body shall be treated as having applied for the making by the funding authority of such an order,

and the Secretary of State or, as the case may be, the funding authority may make such an order accordingly.

(4) Where in pursuance of section 339(1)(b) a local education authority serve notice of proposals for a maintained special school to cease to be an establishment which admits pupils of one sex only, the responsible body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and the Secretary of State may make such an order accordingly.

(5) Where proposals made by the Secretary of State under section 502—



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- (a) are for a school to cease to be an establishment which admits pupils of one sex only, and
- (b) have effect as mentioned in section 504(3),

the responsible body shall be treated as having applied for the making by the Secretary of State of a transitional exemption order, and the Secretary of State may make such an order accordingly.

(6) In this section—

“the 1975 Act” means the <sup>M103</sup>Sex Discrimination Act 1975,

“responsible body” has the same meaning as in section 22 of the 1975 Act, and

“transitional exemption order” has the same meaning as in section 27 of the 1975 Act,

and references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school’s admissions arrangements as is mentioned in section 27(1) of the 1975 Act (single-sex establishments becoming co-educational).

**Marginal Citations**

M103 1975 c. 65.

*Educational trusts*

**553 Schemes under the Endowed Schools Acts. E+W**

- (1) Where under any provision (however expressed) of a scheme made under the Endowed Schools Acts 1869 to 1948 the power of the trustees under the scheme to apply any property to which the scheme relates for purposes authorised by the scheme is subject to the approval or order of any other person, the scheme shall have effect as if no such approval or order was required.
- (2) The Secretary of State may, on the application of any person whose approval or order would apart from this section be required under such a scheme, direct that the requirement shall continue to have effect despite subsection (1); but no liability shall be taken to have been incurred in respect of any failure before the making of such a direction to obtain any such approval or order.

*Religious educational trusts*

**554 Power to make new provision as to use of endowments. E+W**

- (1) This section applies where—
  - (a) the premises of a voluntary or grant-maintained school have ceased to be used for a voluntary or (as the case may be) grant-maintained school; or
  - (b) in the opinion of the Secretary of State it is likely such premises will cease to be so used.
- (2) In such a case the Secretary of State may (subject to sections 555 and 556(1) and (2)) by order make new provision as to the use of any endowment if it is shown either—

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- (a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religion or religious denomination; or
  - (b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that (subject to subsection (4)) the requirements of subsection (3) are fulfilled.
- (3) The requirements of this subsection are—
- (a) that the school was or has been maintained as a voluntary school since 1st April 1945 (the date when Part II of the <sup>M104</sup>Education Act 1944 came into force) or, in the case of a grant-maintained school, was so maintained from that date until immediately before it became a grant-maintained school; and
  - (b) that religious education in accordance with the tenets of the religion or denomination concerned—
    - (i) is, and has been from that date, provided at the school, or
    - (ii) where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used,
 in pursuance of section 377 or 378 or section 380 or 381 (or any corresponding earlier enactment).
- (4) For the purposes of this section—
- (a) where in the case of any school falling within subsection (3)(a) it is shown—
    - (i) that religious education in accordance with the tenets of a particular religion or denomination is provided at the school, or
    - (ii) if the premises have ceased to be used for the purposes of the school, such religious education was so provided immediately before the premises ceased to be so used,
 such religious education shall be taken to have been provided at the school from 1st April 1945, unless the contrary is shown; and
  - (b) where religious education in accordance with such tenets is shown to have been given to any pupils at a controlled school or a grant-maintained school which was a controlled school immediately before it became a grant-maintained school, the religious education shall be taken to have been given to them at the request of their parents, unless the contrary is shown.
- (5) For the purposes of this section—
- “endowment” includes property not subject to any restriction on the expenditure of capital; and
  - “shown” means shown to the satisfaction of the Secretary of State.
- (6) This section applies where the premises of a non-provided public elementary school ceased before 1st April 1945 to be used for such a school as it applies where the premises of a voluntary school have ceased to be used for such a school.

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**Marginal Citations**

M104 1944 c. 31.

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**555 Procedure applicable to orders under section 554. E+W**

- (1) No order shall be made under section 554 except on the application of the persons appearing to the Secretary of State to be the appropriate authority of the religion or denomination concerned.
- (2) The Secretary of State shall, not less than one month before making an order under section 554, give notice of the proposed order and of the right of persons interested to make representations on it.
- (3) Such notice shall be given—
  - (a) by giving to any persons appearing to the Secretary of State to be trustees of an endowment affected by the proposed order a notice of the proposal to make it, together with a draft or summary of the provisions proposed to be included; and
  - (b) by publishing, in such manner as the Secretary of State thinks sufficient for informing any other persons interested, a notice of the proposal to make the order and of the place where any person interested may (during a period of not less than a month) inspect such a draft or summary, and by keeping a draft or summary available for inspection in accordance with the notice.
- (4) The Secretary of State shall take into account any representations made to him by any person interested before the order is made.
- (5) In this section “endowment” has the same meaning as in section 554.

**556 Content of orders under section 554. E+W**

- (1) An order under section 554—
  - (a) may require or authorise the disposal by sale or otherwise of any land or other property forming part of an endowment affected by the order, including the premises of the school and any teacher’s dwelling-house; and
  - (b) may consolidate any endowments to be dealt with by the scheme.
- (2) Subject to subsection (1), and to any provision affecting the endowments which is a provision of a public general Act of Parliament, an order under section 554 shall establish and give effect, with a view to enabling the religion or denomination concerned to participate more effectively in the administration of the statutory system of public education, to a scheme or schemes for the endowments dealt with by the order to be used for appropriate educational purposes either—
  - (a) in connection with schools which are voluntary schools or grant-maintained schools; or
  - (b) partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the voluntary or grant-maintained school at the premises that have gone or are to go out of use for such a school.
- (3) In subsection (2) “use for appropriate educational purposes” means use for educational purposes in connection with the provision of religious education in accordance with the tenets of the religion or denomination concerned (including in particular, but without prejudice to the generality of the foregoing, use for any purpose specified in Schedule 36).
- (4) A scheme given effect under section 554—

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- (a) may provide for the retention of the capital of any endowment and application of the accruing income; or
  - (b) may authorise the application or expenditure of capital to such extent and subject to such conditions as may be determined by or in accordance with the scheme;
- and any such scheme may provide for the endowments dealt with by the scheme or any part of them to be added to any existing endowment applicable for any such purpose as is authorised for the scheme by subsection (2).
- (5) Where a scheme given effect under section 554 provides for the endowments dealt with by the order or any part of them to be used for the purposes specified in Schedule 36, any such scheme may provide for the endowments thereby dealt with or any part of them to be added to any existing endowment applicable for those purposes (whether it is so applicable by virtue of a scheme given effect to under that section or otherwise).
- (6) Section 568(5) does not apply to an order under section 554, but such an order may include such incidental or supplementary provisions as appear to the Secretary of State to be necessary or expedient either for the bringing into force or for the operation of any scheme established by it, including in particular provisions—
- (a) for the appointment and powers of trustees of the property comprised in the scheme or, if the property is not all applicable for the same purposes, of any part of that property; and
  - (b) for the property or any part of it to vest by virtue of the scheme in the first trustees under the scheme or trustees of any endowment to which it is to be added or, if not so vested, to be transferred to them.
- (7) Any order under section 554 shall have effect despite any Act of Parliament (other than a public general Act), letters patent or other instrument relating to, or trust affecting, the endowments dealt with by the order.
- (8) In this section “endowment” has the same meaning as in section 554.

## **557 Adoption of statutory trusts. E+W**

- (1) This section applies to endowments which are—
- (a) regulated by a qualifying scheme under the Endowed Schools Acts 1869 to 1948 as applied by section 86(1) of the <sup>M105</sup>Education Act 1944 or by an order under section 554 of this Act or section 2 of the <sup>M106</sup>Education Act 1973; and
  - (b) held under any such scheme or order on trusts which provide for capital or income or both to be applicable for or in connection with—
    - (i) the provision of religious education at relevant schools, or relevant schools of any description (but not only at a particular school or schools) in a diocese or other geographical area; or
    - (ii) the provision of premises for relevant schools, or relevant schools of any description (but not only at a particular school or schools) at which religious education is or is to be provided in a diocese or other geographical area;

but this section does not apply to an endowment if or in so far as it constitutes a religious education fund.

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- (2) The trustees of any endowments to which this section applies may, by resolution complying with subsection (6), adopt the uniform statutory trusts as the trusts on which those endowments are to be held.
- (3) The uniform statutory trusts are those set out in Schedule 36.
- (4) On the adoption by trustees of the uniform statutory trusts in respect of any endowments the scheme or order which regulates the endowments shall have effect as if the uniform statutory trusts are incorporated in the scheme or order to the exclusion of the corresponding provisions of the scheme or order.
- (5) The trustees of two or more endowments which are held on the uniform statutory trusts may, by resolution complying with subsection (6), consolidate all or any of those endowments and, where they do so, the endowments shall be treated, for all purposes, as held for the purposes of a single charity.
- (6) For a resolution to comply with this subsection—
  - (a) it must be passed by a simple majority of the trustees or, if the trustees are a body corporate or a company, by a simple majority of the members of the body corporate or an ordinary resolution of the company; and
  - (b) it must be recorded in the records of the decisions of the trustees affecting the endowments of the trust.
- (7) Where trustees pass a resolution under subsection (2), it shall be their duty to send a copy of the resolution to the Secretary of State.
- (8) The uniform statutory trusts applicable to endowments to which this section applies shall not affect—
  - (a) the rights of any person under the third proviso to section 2 of the <sup>M107</sup>School Sites Act 1841, under section 86(3) of the <sup>M108</sup>Education Act 1944 or under section 1 of the <sup>M109</sup>Reverter of Sites Act 1987 (rights replacing certain reversionary interests in land), or
  - (b) the rights of any local education authority which have arisen under paragraph 7 or 8 of the First Schedule to the <sup>M110</sup>Education Act 1946 (rights in relation to school sites provided by such authorities) or which may arise under section 60(4) or 62(2),except in so far as any right falling within paragraph (a) above is or has been extinguished by an order under section 554 of this Act or section 2 of the <sup>M111</sup>Education Act 1973 made by virtue of section 5 of the Reverter of Sites Act 1987.
- (9) In this section—
  - “company” means a company formed under the Companies Acts;
  - “the Companies Acts” means the <sup>M112</sup>Companies Act 1985, the <sup>M113</sup>Companies Act 1948 or any Act repealed by that Act of 1948;
  - “endowment” has the same meaning as in section 554;
  - “provision”, in relation to premises, means provision by the purchase of a site, the erection of premises or the maintenance, improvement or enlargement of premises;
  - “qualifying scheme” means a scheme in force on 1st January 1994 (the date when section 287 of the <sup>M114</sup>Education Act 1993 came into force);
  - “relevant school” means a voluntary school or a grant-maintained school;

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“religious education” means religious education in accordance with the tenets of a particular religion or religious denomination; and

“religious education fund” includes a Sunday school fund.

(10) In Schedule 36 as incorporated in any scheme or order—

“the area” means the diocese or other geographical area within which the trust assets may be applied under the scheme or order, as the case may be;

“relevant school” means a relevant school at which the religious education provided for in the scheme or order, as the case may be, is or is to be provided; and

“the relevant trust assets” means the endowments in respect of which the trustees have adopted the uniform statutory trusts, including the income derived therefrom.

#### Marginal Citations

M105 1944 c. 31.

M106 1973 c. 16.

M107 1841 c. 38.

M108 1944 c. 31.

M109 1987 c. 15.

M110 1946 c. 50.

M111 1973 c. 16.

M112 1985 c. 6.

M113 1948 c. 38.

M114 1993 c. 35.

## CHAPTER IV E+W

### EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

#### 558 Meaning of “child” for purposes of enactments relating to employment of children or young persons. E+W

For the purposes of any enactment relating to the prohibition or regulation of the employment of children or young persons, any person who is not over compulsory school age shall be deemed to be a child within the meaning of that enactment.

#### 559 Power of local education authorities to prohibit or restrict employment of children. E+W

(1) If it appears to a local education authority that a child who is a registered pupil at a county, voluntary or special school is being employed in such a manner as to be prejudicial to his health, or otherwise to render him unfit to obtain the full benefit of the education provided for him, the authority may serve a notice in writing on the employer—

- (a) prohibiting him from employing the child, or
- (b) imposing such restrictions upon his employment of the child as appear to them to be expedient in the interests of the child.

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- (2) A local education authority may serve a notice in writing on the parent or employer of a child who is a registered pupil at a county, voluntary or special school requiring the parent or employer to provide the authority, within such period as may be specified in the notice, with such information as appears to the authority to be necessary for the purpose of enabling them to ascertain whether the child is being employed in such a manner as to render him unfit to obtain the full benefit of the education provided for him.
- (3) A person who—
  - (a) employs a child in contravention of any prohibition or restriction imposed under subsection (1), or
  - (b) fails to comply with the requirements of a notice served under subsection (2),shall be guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable on summary conviction—
  - (a) to a fine not exceeding level 1 on the standard scale, or
  - (b) to imprisonment for a term not exceeding one month,or both.
- (5) Section 28(1) and (3) of the <sup>M115</sup>Children and Young Persons Act 1933 (powers of entry for the enforcement of the provisions of Part II of that Act as to the employment of children) shall apply with respect to the provisions of any notice served under this section as they apply with respect to the provisions of Part II of that Act.
- (6) This section shall cease to have effect on the coming into force of section 2 of the <sup>M116</sup>Employment of Children Act 1973.

**Marginal Citations**

**M115** 1933 c. 12.

**M116** 1973 c. 24.

**560 Work experience in last year of compulsory schooling. E+W**

- [<sup>F157</sup>(1) The enactments relating to the prohibition or regulation of the employment of children shall not apply to the employment of a child in his last two years of compulsory schooling if the employment is in pursuance of arrangements made—
- (a) by a local education authority, or
  - (b) by the governing body of a school on behalf of such an authority,
- with a view to providing him with work experience as a part of his education.
- (2) For the purposes of subsection (1) a child shall be taken to be in his last two years of compulsory schooling as from the beginning of the last two school years at his school during the whole or part of which he is of compulsory school age.]
- (3) Subsection (1) shall not be taken to permit the employment of a person in any way contrary to—
- (a) an enactment which in terms applies to persons of less than, or not over, a specified age expressed as a number of years, or

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- (b) section 1(2) of the <sup>M117</sup>Employment of Women, Young Persons and Children Act 1920 or section 55(1) of the <sup>M118</sup>Merchant Shipping Act 1995 (which prohibit the employment of children in ships).
- (4) No arrangements shall be made under subsection (1) for a child to be employed in any way which would be contrary to an enactment prohibiting or regulating the employment of young persons if he were a young person (within the meaning of the enactment) and not a child.
- (5) Where a child is employed in pursuance of arrangements made under subsection (1), so much of any enactment as—
- (a) regulates the employment of young persons (whether by excluding them from any description of work, prescribing the conditions under which they may be permitted to do it or in any other way), and
  - (b) would apply in relation to him if he were of an age to be treated as a young person for the purposes of that enactment,
- shall apply in relation to him, in and in respect of the employment arranged for him, in all respects as if he were of an age to be so treated.
- (6) Nothing in section 495 or 496 applies in relation to any power conferred on a local education authority or the governing body of a grant-maintained school by subsection (1).
- (7) In this section “enactment” includes any byelaw, regulation or other provision having effect under an enactment.

#### Textual Amendments

**F157** S. 560(1)(2) substituted (1.10.1998) by 1998 c. 31, s. 112(2) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2(1) Sch. 1 Pt.1

#### Marginal Citations

**M117** 1920 c. 65.

**M118** 1995 c. 21.

## CHAPTER V E+W

### PERSONS NOT COVERED BY ACT

#### 561 Act not to apply to persons in service of the Crown. E+W

No power or duty conferred or imposed by this Act on—

- (a) the Secretary of State,
- (b) local education authorities, or
- (c) parents,

shall be construed as relating to any person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State certifies that, by reason of the arrangements made for the education of children and young persons so employed, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary.



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**562 Act not to apply to persons detained under order of a court. E+W**

(1) No power or duty conferred or imposed by or under this Act on—

- (a) the Secretary of State,
- (b) local education authorities, or
- (c) parents,

shall be construed as relating to any person who is detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State, but a local education authority may make arrangements for a person who is detained in pursuance of such an order to receive the benefit of educational facilities provided by the authority.

(2) A child or young person who is being educated as a boarder at a school shall not be regarded for the purposes of subsection (1) as detained in pursuance of an order made by a court by reason of the fact that he is required to be at the school—

- (a) by virtue of an order made by a court under the <sup>M119</sup>Children and Young Persons Act 1933 or by virtue of anything done under such an order; or
- (b) by virtue of a requirement of a probation order or by virtue of anything done under such a requirement.

**Marginal Citations**

M119 1933 c. 12.

**CHAPTER VI U.K.**

GENERAL

*Documents and evidence*

**563 Educational records. E+W**

(1) Regulations may make provision as to—

- (a) the keeping, disclosure and transfer of educational records about persons receiving education at schools to which this section applies; and
- (b) the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations.

(2) The regulations may authorise persons who supply copies of such records in pursuance of the regulations to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

(3) The schools to which this section applies are—

- (a) any school maintained by a local education authority;
- (b) any grant-maintained school; and
- (c) any special school not maintained by a local education authority.

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## 564 Certificates of birth and registrars' returns. E+W

- (1) Where the age of any person is required to be proved for the purposes of this Act or of any enactment relating to the employment of children or young persons, the registrar having the custody of the register of birth and deaths containing the entry relating to the birth of that person shall—
  - (a) on being presented by any person (“the applicant”) with a written requisition in such form and containing such particulars as may be determined by regulations, and
  - (b) on payment of a fee of [<sup>F158</sup>£3.50] ,
 supply the applicant with a copy of the entry certified under his hand.
- (2) A registrar shall, on being requested so to do, supply free of charge a form of requisition for the purposes of subsection (1).
- (3) A registrar shall supply to a local education authority such particulars of the entries contained in any register of births and deaths in his custody, and in such form, as (subject to regulations) the authority may from time to time require.
- (4) In this section—
 

“register of births and deaths” means a register of births and deaths kept under the <sup>M120</sup>Births and Deaths Registration Act 1953, and

“registrar” includes a registrar of births and deaths and a superintendent registrar.

### Textual Amendments

**F158** Fee in s. 564(1)(b) substituted (1.4.1998) by [S.I. 1997/2939, art. 2, Sch.](#) (which S.I. was revoked (1.4.1999) by [S.I. 1998/3171, art. 3](#))

### Marginal Citations

**M120** 1953 c. 20.

## 565 Evidence: presumption as to age. E+W

- (1) Where in any proceedings under this Act the person by whom the proceedings are brought—
  - (a) alleges that any person whose age is material to the proceedings is under, of, or over, any age, and
  - (b) satisfies the court that, having used all reasonable diligence to obtain evidence as to the age of that person, he has been unable to do so,
 the court may, unless the contrary is proved, presume that person to be under, of, or (as the case may be) over, the age alleged.
- (2) This section has effect subject to section 445(3).

## 566 Evidence: documents. E+W

- (1) In any legal proceedings, any of the following documents, namely—
  - (a) a document purporting to be a document issued by a local education authority, and to be signed by the clerk of that authority or by the chief education officer of that authority or by any other officer of the authority authorised to sign it,

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- (b) a document purporting to be an extract from the minutes of the proceedings of the governing body of a county or voluntary school, and to be signed by the chairman of the governing body or by their clerk,
  - (c) a document purporting to be a certificate giving particulars of the attendance of a child or young person at a school, and to be signed by the head teacher of the school, and
  - (d) a document purporting to be a certificate issued by a medical officer of a local education authority, and to be signed by such an officer,
- shall be received in evidence and shall be treated, without further proof, as the document which it purports to be and as having been signed by the person by whom it purports to have been signed, unless the contrary is proved.
- (2) In any legal proceedings, any such extract or certificate as is mentioned in subsection (1)(b), (c) or (d) shall be evidence of the matters stated in it.

### *Stamp duty*

#### **567 Stamp duty. E+W**

- (1) Subject to subsection (5), stamp duty shall not be chargeable in respect of any transfer effected under—
- (a) section 201 (taken with section 198 of, and Schedule 10 to, the <sup>M121</sup>Education Reform Act 1988), or
  - (b) section 279(3) or (4).
- (2) Subject to subsection (5), stamp duty shall not be chargeable in respect of any transfer to a funding authority under section 277.
- (3) Subject to subsection (5), stamp duty shall not be chargeable in respect of any transfer to a local education authority—
- (a) under or by virtue of section 277(1)(a) or 298(2) of property which immediately after the transfer is held by the authority for the purposes of a county or voluntary school or a maintained special school not established in a hospital, or
  - (b) by virtue of section 277(2) of property which immediately after the transfer is held by the authority for the purposes of a new county school.
- (4) Subject to subsection (5), stamp duty shall not be chargeable in respect of any transfer to the governing body of a grant-maintained school—
- (a) by virtue of section 277(2), or
  - (b) in the case of a school established under section 211(2) or 212, from the funding authority.
- (5) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsections (1) to (4) above shall be treated as duly stamped unless it is stamped with the duty to which it would, but for this section (and, if applicable, section 129 of the <sup>M122</sup>Finance Act 1982), be liable or it has, in accordance with the provisions of section 12 of the <sup>M123</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.

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#### Marginal Citations

M121 1988 c. 40.

M122 1982 c. 39.

M123 1891 c. 39.

### *Orders, regulations and directions*

#### 568 Orders. E+W

- (1) Any power of the Secretary of State to make orders under this Act (other than an order under any of the excepted provisions) shall be exercised by statutory instrument.
- (2) For the purposes of subsection (1) “the excepted provisions” are—
  - sections 24 and 27;
  - sections 46 to 48, 50, 51, 54, 55, 57, 58, 63, 64, 77(7), 85, 95(1), 104(1), 110(4), 112(4), 128(6) and 179;
  - sections 202, 220, 233, 274 and 302 and the definition of “Church in Wales school” in section 311(1);
  - section 349;
  - sections 420(2) and 427;
  - sections 468, 471(1) and 474;
  - section 489(3),
  - sections 497, 500, 501 and 516;
  - section 545; and

paragraph 5 of Schedule 21 and paragraph 3 of Schedule 28.
- (3) A statutory instrument containing any order made by the Secretary of State under this Act, other than an order under—
  - section 354(6), 355(2)(a), 356(2)(c) or 401,
  - section 517(6),
  - section 554,
  - section 583(3) or (4), or
  - Schedule 40,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) No order shall be made under section 354(6), 355(2)(a) or 401 unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Any order made—
  - (a) by the Secretary of State under this Act by statutory instrument, or
  - (b) by the funding authority under section 220, 233 or 302 or paragraph 5 of Schedule 21,

may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

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- (6) Without prejudice to the generality of subsection (5), an order made by the Secretary of State under this Act by statutory instrument may make in relation to Wales provision different from that made in relation to England.

#### 569 Regulations. **E+W+S**

- (1) Any power of the Secretary of State to make regulations under this Act shall be exercised by statutory instrument.
- (2) A statutory instrument containing regulations under this Act, other than regulations under section 480 or 492 or paragraph 1(4) of Schedule 20, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) No regulations shall be made under section 480 or 492 or paragraph 1(4) of Schedule 20 unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.
- (5) Without prejudice to the generality of subsection (4), regulations under this Act may make in relation to Wales provision different from that made in relation to England.
- (6) Subsection (5) does not apply to regulations under section 579(4).

#### Extent Information

**E1** [S. 569](#) extends to Scotland so far as relating to regulations under s. 493 see [s. 583\(7\)](#).

#### 570 Revocation and variation of certain orders and directions. **E+W**

- (1) This section applies to any order or directions made or given under this Act by—
- (a) the Secretary of State,
  - (b) the funding authority, or
  - (c) a local education authority,
- other than an order to which section 568(1) applies.
- (2) Subject to subsection (3), any such order or directions may be varied or revoked by a further order or directions made or given by the Secretary of State, the funding authority or the local education authority, as the case may be.
- (3) Where the power to make or give any such order or directions is only exercisable—
- (a) on the application or with the consent of any person or body of persons, or
  - (b) after consultation with any person or body of persons, or
  - (c) subject to any other conditions,
- no order or directions made or given under that power may be varied or revoked under subsection (2) unless the same conditions are complied with.

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### *Guidance*

#### **571 Publication of guidance. E+W**

(1) The Secretary of State shall publish any guidance given by him for the purposes of any [<sup>F159</sup>provision of this Act] in such manner as he thinks fit.

<sup>F160</sup>(2) .....

#### **Textual Amendments**

**F159** Words in s. 571(1) substituted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 41(a)**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt.I**

**F160** S. 571(2) repealed (14.6.1997) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 41(b), **Sch.8**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt.I**

### *Service of documents*

#### **572 Service of notices and other documents. E+W**

Any order, notice or other document required or authorised by this Act to be served on any person may be served—

- (a) by delivering it to that person, or
- (b) by leaving it at his usual or last known place of residence, or
- (c) by sending it in a prepaid letter addressed to him at that place.

### *Construction*

#### **573 Meaning of expressions relating to alteration etc. of premises or character of schools. E+W**

- (1) The following provisions apply for the purposes of this Act except where the context otherwise requires.
- (2) References to the alteration of school premises include making improvements, extensions or additions to the premises; and “alterations”, in relation to any school premises, shall be construed similarly except that it does not include a significant enlargement of the premises.
- (3) References to the enlargement of any school premises include any modification of the school’s existing premises which has the effect of increasing the number of pupils for whom accommodation can be provided.
- (4) Subject to section 41(4) and section 266(1), references to a change in the character of a school include, in particular, changes in character resulting from—
  - (a) education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls or for girls as well as boys, or
  - (b) the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude.

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- (5) In relation to a change in the character of a school or an enlargement of school premises, “significant” implies that there is a substantial change in the function or size of the school.
- (6) If a question arises whether a change in the character of a county, voluntary or grant-maintained school or an enlargement of its premises would be a significant change or enlargement, that question shall be determined by the Secretary of State.

**574 Changes to school not amounting to discontinuance etc. E+W**

- (1) For the purposes of this Act and any other enactment relating to the duties of a local education authority neither—
  - (a) references in whatever terms to discontinuing a school (including those to a local authority ceasing to maintain a school), nor
  - (b) references in whatever terms to establishing a new school,shall be read as applying by reason only of a change such as is mentioned in subsection (2) being made to an existing school (so that, where such a change is made to an existing school, the school shall be regarded as continuing despite the change and as being the same school before and after it, unless for other reasons it is to be regarded as discontinued).
- (2) The changes are—
  - (a) education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls or for girls as well as boys;
  - (b) an enlargement or alteration of the school premises; and
  - (c) the transfer of the school to a new site.

**575 Meaning, for certain purposes, of expressions relating to employment. E+W**

- (1) In the provisions to which this section applies—
  - (a) “contract of employment”, “employee” and “employer” have the same meaning as in the <sup>M124</sup>Employment Rights Act 1996, and
  - (b) “employed” means employed under a contract of employment.
- (2) This section applies to—
  - (a) the provisions of Chapter VI of Part II relating to schools with delegated budgets;
  - (b) Parts III and V; and
  - (c) Schedule 7.
- (3) For the purposes of the provisions to which this section applies—
  - (a) a person employed by a local education authority is to be regarded as employed to work at a school if his employment with the authority for the time being involves work at that school, and
  - (b) a person employed by a local education authority is to be regarded as employed to work solely at a school if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school.
- (4) Subsection (1) also applies for construing references to “employed” in subsection (3).

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- (5) Nothing in this section affects the construction of any of the expressions defined by this section where they occur in provisions of this Act other than those to which this section applies.

**Marginal Citations**

M124 1996 c. 18.

**576 Meaning of “parent”. E+W**

- (1) In this Act, unless the context otherwise requires, “parent”, in relation to a child or young person, includes any person—
- (a) who is not a parent of his but who has parental responsibility for him, or
  - (b) who has care of him,
- except that in the provisions mentioned in subsection (2) it only includes such a person if he is an individual.
- (2) Those provisions are—
- (a) sections 78(3), 81(4), 162, 186 to 188, 190, 200, 223, 226 and 228; and
  - (b) paragraph 7(2) and (7) of Schedule 8, paragraph 7(1) of Schedule 9, Schedule 18, paragraph 8 of Schedule 23 and Schedule 24.
- (3) In subsection (1) “parental responsibility” has the same meaning as in the <sup>M125</sup>Children Act 1989.
- (4) In determining for the purposes of subsection (1) whether an individual has care of a child or young person, any absence of the child or young person at a hospital or boarding school and any other temporary absence shall be disregarded.

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

C89 S. 576(1) applied (with modifications) (24.7.1998) by 1998 c. 31, ss. 142(10), 145(4) (with ss. 138(9), 144(6))

**Marginal Citations**

M125 1989 c. 41.

**577 Minor authorities. E+W**

- (1) For the purposes of this Act a school maintained by a local education authority serves an area for which there is a minor authority if the area served by the school is—
- (a) a parish or community;
  - (b) an area in England which is not within a parish and is not situated in—
    - (i) a county for which there is no council, or
    - (ii) a county in which there are no district councils; or
  - (c) an area comprising two or more areas each of which falls within paragraph (a) or (b).
- (2) Where the area served by the school is a parish, the minor authority in relation to the school is—



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- (a) the parish council (if there is one), or
  - (b) the parish meeting (if there is no parish council).
- (3) Where the area served by the school is a community, the minor authority in relation to the school is the community council.
- (4) Where the area served by the school is an area falling within subsection (1)(b), the minor authority in relation to the school is the district council for the area.
- (5) Where the area served by the school is an area falling within subsection (1)(c), the relevant authorities acting jointly are the minor authority in relation to the school.
- (6) In subsection (5) “the relevant authorities” means the bodies which, if the two or more constituent areas referred to in subsection (1)(c) were taken separately, would be the minor authorities for those areas.
- (7) References in this section to the area served by a school are references to the area appearing to the local education authority to be served by the school.

#### 578 Meaning of “the Education Acts”. **E+W**

In this Act “the Education Acts” means this Act together with the following Acts—

- the <sup>M126</sup>Education Act 1962;
- the <sup>M127</sup>Education Act 1967;
- the <sup>M128</sup>Education Act 1973;
- the <sup>M129</sup>Education Act 1980;
- the <sup>M130</sup>Education (Fees and Awards) Act 1983;
- the <sup>M131</sup>Further Education Act 1985 (except sections 4 and 5);
- the <sup>M132</sup>Education Act 1986;
- the <sup>M133</sup>Education (No. 2) Act 1986;
- the <sup>M134</sup>Education Reform Act 1988;
- the <sup>M135</sup>Education (Student Loans) Act 1990;
- the <sup>M136</sup>School Teachers’ Pay and Conditions Act 1991;
- the <sup>M137</sup>Further and Higher Education Act 1992;
- the <sup>M138</sup>Education Act 1994;
- the <sup>M139</sup>Education (Student Loans) Act 1996;
- the <sup>M140</sup>Nursery Education and Grant-Maintained Schools Act 1996;
- the <sup>M141</sup>School Inspections Act 1996.

[<sup>F161</sup>the <sup>M142</sup>Education Act 1997.]

[<sup>F162</sup>the <sup>M143</sup> Education (Schools) Act 1997]

[<sup>F163</sup>the <sup>M144</sup>Education (Student Loans) Act 1998]

[<sup>F164</sup>the <sup>M145</sup>Teaching and Higher Education Act 1998]

#### Textual Amendments

**F161** Entry in s. 578 added (14.6.1997) by virtue of 1997 c. 44, ss. 57(1), 58(2), **Sch. 7 para. 42**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt. I**

**F162** Entry in s. 578 inserted (31.7.1997) by 1997 c. 59, ss. 6(2), 7(2)(3)

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**F163** Entry in s. 578 inserted (27.1.1998) by 1998 c. 1, **ss. 6(1), 7(2)** (which insertion falls (13.8.1998) by reason of the repeal of 1998 c. 1 by 1998 c. 30, s. 44(2), **Sch. 4** (with s. 42(8)); S.I. 1998/2004, **art. 2** (with art. 3))

**F164** Entry in s. 578 inserted (1.10.1998) by 1998 c. 30, ss. 44(1), 46(2), **Sch. 3 para.15** (with s. 42(8)); S.I. 1998/2215, **art.2**

#### Marginal Citations

**M126** 1962 c. 12.  
**M127** 1967 c. 3.  
**M128** 1973 c. 16.  
**M129** 1980 c. 20.  
**M130** 1983 c. 40.  
**M131** 1985 c. 47.  
**M132** 1986 c. 40.  
**M133** 1986 c. 61.  
**M134** 1988 c. 40.  
**M135** 1990 c. 6.  
**M136** 1991 c. 49.  
**M137** 1992 c. 13.  
**M138** 1994 c. 30.  
**M139** 1996 c. 9.  
**M140** 1996 c. 50.  
**M141** 1996 c. 57.  
**M142** 1997 c. 44.  
**M143** 1997 c. 59.  
**M144** 1998 c. 1.  
**M145** 1998 c. 30.

#### 579 General interpretation. **E+W**

(1) In this Act, unless the context otherwise requires—

“the appropriate further education funding council” has the meaning given by section 1(6) of the Further and Higher Education Act 1992;

“boarder” includes a pupil who boards during the week but not at weekends;

“child” means a person who is not over compulsory school age;

“clothing” includes footwear;

“exclude”, in relation to the exclusion of a pupil from a school (otherwise than under section 524), means exclude on disciplinary grounds (and “exclusion” shall be construed accordingly);

“financial year” means a period of twelve months ending with 31st March;

“functions” includes powers and duties;

“governing body” or “governors” (without more), in relation to a voluntary school and any function conferred or imposed by this Act exclusively on the foundation governors of such a school, means the foundation governors of the school;

“head teacher” includes acting head teacher;

“higher education” means education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988;

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“land” includes buildings and other structures, land covered with water, and any interest in land;

“liability” includes obligation;

“local authority” means a county council, a county borough council, a district council, a London borough council or the Common Council of the City of London;

“the local education authority”—

(a) in relation to a school maintained (or proposed to be maintained) by a local authority, means (in accordance with section 34(1)) that authority; and

(b) in relation to a grant-maintained school, means the local education authority for the area in which the school is situated;

“local government elector” has the meaning given by section 270(1) of the <sup>M146</sup>Local Government Act 1972;

“medical officer”, in relation to a local education authority, means a registered medical practitioner who is employed or engaged (whether regularly or for the purposes of any particular case) by the authority or whose services are made available to the authority by the Secretary of State;

“modifications” includes additions, alterations and omissions and “modify” shall be construed accordingly;

“premises”, in relation to a school, includes any detached playing fields but, except where otherwise expressly provided, does not include a teacher’s dwelling-house;

“prescribed” means prescribed by regulations;

“proprietor”, in relation to a school, means the person or body of persons responsible for the management of the school (so that, in relation to a county, voluntary or grant-maintained school, it means the governing body);

“reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age;

“regulations” means regulations made by the Secretary of State;

“relevant age group”, in relation to a school, means an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school;

“school buildings”, in relation to a school, means any building or part of a building forming part of the school premises, other than a building or part required only—

(a) as a caretaker’s dwelling,

(b) for use in connection with playing fields,

(c) to afford facilities for enabling the Secretary of State facilities to carry out his functions under section 5(1) or (1A) of, and Schedule 1 to, the <sup>M147</sup>National Health Service Act 1977 (which relate to the provision of medical and dental services for pupils), or

(d) to afford facilities for providing milk, meals or other refreshment for pupils in attendance at the school;

“school day”, in relation to a school, means any day on which at that school there is a school session;

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[<sup>F165</sup>“school year”, in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July;]

“trust deed”, in relation to a voluntary school, includes any instrument (other than an instrument of government or articles of government made under this Act) regulating the constitution of the school’s governing body or the maintenance, management or conduct of the school;

“young person” means a person over compulsory school age but under the age of 18.

- (2) References in this Act to an interest in land include any easement, right or charge in, to or over land.
- (3) For the purposes of this Act children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class.
- (4) For the purposes of this Act a person shall be treated as belonging, or as not belonging, to the area of a particular local education authority in accordance with regulations; and any question under the regulations shall, in the case of a dispute, be determined by the Secretary of State.
- (5) For the purposes of this Act a school shall be regarded as “assisted” by a local education authority who do not maintain it if the authority make to its proprietor any grant in respect of the school or any payment in consideration of the provision of educational facilities there.
- (6) Subject to subsection (7), an institution other than a school shall be regarded for the purposes of this Act as “assisted” by a local education authority if the authority make to the persons responsible for its maintenance any grant in respect of the institution or any payment in consideration of the provision of educational facilities there.
- (7) Neither—
  - (a) a university, nor
  - (b) any institution within the further education sector or within the higher education sector other than a university,

shall be regarded for the purposes of this Act as “assisted” by a local education authority by virtue of the making by the authority to the persons responsible for the maintenance of the university or institution of any grant or payment such as is mentioned in subsection (6).

#### Textual Amendments

**F165** Definition in s. 579(1) inserted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.43**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt. I**

#### Marginal Citations

**M146** 1972 c. 70.

**M147** 1977 c. 49.

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## 580 Index. **E+W**

The expressions listed in the left-hand column below are defined by, or (as the case may be) are to be interpreted in accordance with, the provisions of this Act listed in the right-hand column in relation to those expressions.

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<i>Expression</i>	<i>Relevant provision</i>
admission authority (in Chapter I of Part VI)	section 415
admitted to a school for nursery education	section 579(3)
aggregated budget (in Part II)	sections 101(3) and 105
agreed syllabus	section 375(2) and (4)
aided school	section 32(1) and (3)
allocation formula (in Part II)	section 106(2)
alteration (of school premises) and alterations (in relation to such premises)	section 573(2)
annual parents' meeting (in Chapter VI of Part II)	section 162(1)
appropriate diocesan authority (in Part III in relation to a Church of England, Church in Wales or Roman Catholic Church school)	section 311(1)
appropriate further education funding council	section 579(1)
area (of a local education authority)	section 12(6)
articles of government	
(in relation to a county, voluntary or maintained special school)	section 127(1)
(in relation to a grant-maintained school)	section 218(1)
(in relation to a grant-maintained special school)	paragraph 1 of Schedule 28
(in relation to a group of grant-maintained schools)	section 280(2)
assess (in Part V)	section 350(2)
assessment arrangements (in Part V)	section 353
assisted (in relation to a school or other institution)	section 579(5) to (7)
F166	...
...	
attainment targets (in Part V)	section 353

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authority responsible for election arrangements (in Chapter V of Part III)	section 243(2)
belonging to the area of a local education authority (in relation to a person)	section 579(4)
boarder	section 579(1)
budget share (in Part II)	section 101(3) and (6)
capital grant (in relation to grant-maintained schools)	section 246(1) (or section 252)
cease to maintain (in relation to a school)	section 574
the chairmen's panel (in Part IV)	section 333(2)
change in character (in relation to a school)	section 573(4)
character (of a school) (in Part III)	section 311(4)
child	
(generally)	section 579(1)
(in Part IV)	section 312(5)
[ <sup>F167</sup> (in Chapter I of Part VI except sections 431 to 433)]	section 411(8)]
child for whom a local education authority are responsible (in Part IV)	section 321(3)
Church in Wales school	section 311(1)
Church of England school	section 311(1)
city college for the technology of the arts	section 482(3)
city technology college	section 482(3)
clothing	section 579(1)
commencement of this Act	section 583(2)
compulsory school age	section 8 (or paragraph 1 of Schedule 40)
contract of employment (in relation to provisions specified in section 575(2))	section 575(1)
controlled school	section 32(1) and (2)
co-opted governor (in relation to a county, voluntary or maintained special school)	section 78(1)
core governor	section 285 and Schedule 25
county school	section 31(1)
date of implementation	
(in Part III in relation to proposals for acquisition of grant-maintained status)	section 200(2)

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(in Part III in relation to a new grant-maintained school)	section 217
date of publication of proposals (in Part III in relation to proposals under that Part)	section 311(6)
delegation requirement (in Part II)	section 107(2)
discontinue (in relation to a school)	section 574
disposal of premises (in sections 297 to 300)	section 301(3)
dissolution date (in sections 274 to 279)	section 274(6)
the Education Acts	section 578
eligible for grant-maintained status (in Part III)	section 184
eligible governor (in Part III)	paragraph 4 of Schedule 24
eligible to vote in a ballot held in accordance with section 189 (in Chapter II of Part III)	section 190(1)
employed, employee, employer (in relation to provisions specified in section 575(2))	section 575(1)
employed to work, or to work solely, at a school (in relation to provisions specified in section 575(2))	section 575(3)
employee (in sections 469 to 473)	section 469(6)
enlargement (in relation to school premises)	section 573(3)
establish (in relation to a new school)	section 574
examination requirement (in Chapter III of Part VI)	section 462(1)
exclude, exclusion (except in section 524)	section 579(1)
financial year	section 579(1)
first governor (in relation to a grant-maintained school)	paragraphs 7 and 12 of Schedule 24
foundation governor	
(in relation to a voluntary school)	section 78(2)
(in relation to a grant-maintained school)	paragraphs 8 and 13 of Schedule 24
foundation subjects	section 354(1) and (2)
functions	section 579(1)
funding authority	section 26

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further education	section 2(3) to (5)
general schools budget (in Part II)	section 101(3)
governing body, governor	
(in Chapters IV to VI of Part II)	section 182
(in relation to a school grouped for purposes of Chapter IV of Part II)	section 89(6)
(in relation to a voluntary school and functions of foundation governors)	section 579(1)
governing body in liquidation (in sections 274 to 279)	section 274(3)
governor of an elected category (in Part III)	paragraph 3 of Schedule 24
governors' report (in Chapter VI of Part II)	section 161(1)
grant-maintained school	
(generally)	section 183(1)
(in sections 500 to 504)	section 505(8)
grant-maintained school formerly conducted by a governing body in liquidation (in sections 274 to 279)	section 274(5)
grant-maintained special school	sections 337(4) and 346(3)
grant regulations (in Chapter VI of Part III)	section 244(2)
grants for education support and training group (of schools)	section 484(1)
(in Part II)	section 89(5)
(in Chapter IX of Part III)	section 280(7)
head teacher	
(generally)	section 579(1)
(in relation to a county, voluntary or maintained special school organised into separate departments)	section 132
higher education	section 579(1)
incorporation date	
(in Chapter II of Part III)	section 200(5)
(in Chapter IV of Part III)	section 217
(in Part IV)	section 345(3)
independent school	section 463



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initial governor (in Part III)	paragraph 2 of Schedule 24
institution outside (or within) the further education sector	section 4(3)
institution outside (or within) the higher education sector	section 4(4)
instrument of government	
(in relation to a county, voluntary or maintained special school)	section 76(1)
(in relation to a grant-maintained school)	section 218(1)
(in relation to a grant-maintained special school)	paragraph 1 of Schedule 28
(in relation to a group of grant-maintained schools)	section 280(2)
interest in land	section 579(2)
junior pupil	section 3(2)
key stage	section 355(1)
land	section 579(1)
the lay panel (in Part IV)	section 333(2)
learning difficulty	section 312(2) and (3)
liability	section 579(1)
local authority	section 579(1)
local education authority	section 12(1) to (5)
the local education authority	
(generally)	section 579(1)
(in relation to a scheme under Part II)	section 101(2)
local government elector	
(generally)	section 579(1)
(in Part III in relation to an area)	section 311(7)
maintain (in relation to a school maintained by a local education authority)	section 34
maintained school	
(in Part IV)	section 312(5)
(in Part V)	section 350(1)
(in Chapter II of Part VI)	section 437(8)
(in Chapter III of Part VI)	section 449
(in sections 500 to 504)	section 505(8)

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maintained nursery school	sections 6(1) and 33(1)
maintained special school	sections 6(2), 33(1) and 337(3)
maintenance grant (in relation to grant-maintained schools)	section 244(1) (or section 250(1))
medical officer (in relation to a local education authority)	section 579(1)
minor authority	section 577
middle school	section 5(3)
modifications, modify	section 579(1)
the National Curriculum	sections 352(1) and 353
new governing body (in Part III)	section 195(2)
new school (in Part II)	section 181(1)
nursery school	section 6(1)
optional extra (in Chapter III of Part VI)	section 455(3)
parent	section 576
parent governor	
(in relation to a county, voluntary or maintained special school)	section 78(3)
(in relation to a grant-maintained school)	paragraphs 5 and 10 of Schedule 24
F166	...
...	
F166	...
...	
pending	
(in Part III in relation to proposals published under section 193)	section 193(4)
(in Chapter III of Part III in relation to the procedure for acquisition of grant-maintained status)	section 203(1)
powers to make proposals for the alteration of their school (in sections 500 to 504 in relation to the governing body of a voluntary school)	section 505(7)
powers to make proposals for the establishment, alteration or discontinuance of schools (in sections 500 to 504)	section 505(8)
premises	
(in relation to a school)	section 579(1)
(in Part III)	section 311(1)

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prescribed	section 579(1)
the President (in Part IV)	section 333(2)
primary education	section 2(1)
primary school	section 5(1)
programmes of study (in Part V)	section 353
proceeds of disposal (in sections 297 to 300)	section 301(3)
procedure applicable under Chapter IV of Part II (in Chapter V of Part III)	section 243(3)
promoters (in Part III)	section 212(1)
proposals (in Chapter VII of Part III)	section 266(2)
proposals for acquisition of grant-maintained status (in Part III)	section 183(2)
proposals for the establishment of a new grant-maintained school (in Part III)	section 183(2)
proprietor (in relation to a school)	section 579(1)
prospectively disqualified (in Chapter V of Part III)	section 243(4)
provisionally registered school (in Part VII)	section 465(4)
pupil	sections 3(1) and 19(5)
reception class	section 579(1)
register, registration (in Part VII in relation to independent schools)	section 464(4)
registered (in relation to parents or pupils)	section 434(5)
registered school (in Part VII)	section 465(4)
Registrar of Independent Schools (or the Registrar in Part VII)	section 464(4)
regulations	section 579(1)
relevant age group	section 579(1)
relevant education (in relation to an order under section 27(1))	section 27(7)
relevant particulars (in relation to a proposed initial governor of a grant-maintained school)	section 200(4)
relevant proposals (in Part II)	section 181(2)
relevant standard number (in Chapter I of Part VI)	section 411(7)

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required to be covered by a scheme (in Part II in relation to a school)	section 102
reserved teacher (in Chapter VI of Part II in relation to a controlled school)	section 143(2)
reserved teacher (in Chapter VI of Part II in relation to a special agreement school)	section 144(1)
residential trip (in Chapter III of Part VI)	section 462(2)
responsible for a child (in Part IV in relation to a local education authority)	section 321(3)
right to a delegated budget (in Part II)	section 115(a)
Roman Catholic Church school	section 311(1)
scheme (in Part II)	section 101(1)
school	section 4(1) and (2)
school in respect of which financial delegation is required (in Part II)	section 115
school which has a delegated budget (in Part II)	section 115
school attendance order	section 437(3)
school buildings	section 579(1)
school day	section 579(1)
school property (in sections 274 to 279)	section 274(4)
[ <sup>F168</sup> school year	section 579(1)]
secondary education	section 2(2) and (5)
secondary school	section 5(2)
section 67 loan liabilities (in sections 274 to 279)	section 274(7)
senior pupil	section 3(2)
sex education	section 352(3)
significant (in relation to a change in character or enlargement of premises of a school)	section 573(5)
special agreement	section 32(5)
special agreement school	section 32(1) and (4)
special educational needs	section 312(1)
special educational provision	section 312(4)
special purpose grant (in relation to grant-maintained schools)	section 245(1) (or section 251)
special school	sections 6(2) and 337

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sponsor governor (in Part III)	paragraphs 9 and 14 of Schedule 24
suitable education (in Chapter II of Part VI)	section 437(8)
teacher governor (in relation to a county, voluntary or maintained special school)	section 78(4)
(in relation to a grant-maintained school)	paragraphs 6 and 11 of Schedule 24
temporary governing body, temporary governor (in Part II)	section 181(3)
time of publication of proposals (in Part III in relation to proposals under that Part)	section 311(6)
the Tribunal (in Part IV)	section 313(5)
trust deed (in relation to a voluntary school)	section 579(1)
trustees of the school (in sections 296 to 300)	section 301(2)
voluntary school	sections 31(2) and 32
[ <sup>F167</sup> wholly based on selection by reference to ability or aptitude (in Chapter I of Part VI)]	section 411(9)]
young person	section 579(1)

#### Textual Amendments

- F166** Entries in s. 580 repealed (1.9.1997) by 1997 c. 59, ss. 6(3), 7(3)(a), **Sch. Pt. I**
- F167** S. 580: entries inserted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.44**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F168** S. 580: entry inserted (14.6.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 44**; S.I. 1997/1468, art. 2(1), **Sch. 1 Pt. I**

#### Final provisions

#### 581 Application to Isles of Scilly. **E+W**

This Act shall apply to the Isles of Scilly—

- (a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were accordingly a county council), and
- (b) subject to such other modifications as are specified in an order made by the Secretary of State.

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**582 Consequential amendments, repeals, transitional provisions etc. U.K.**

- (1) The enactments specified in Schedule 37 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments and instruments specified in Schedule 38 are repealed or revoked to the extent specified.
- (3) The transitional and saving provisions contained in Schedule 39 shall have effect.
- (4) The transitory provisions contained in Schedule 40 shall have effect.

**Commencement Information**

**I3** S. 582 wholly in force at 1.9.1997; s. 582(1) in force at 1.11.1996 so far as relating to Sch. 37 Pt. I; s. 582(2) in force at 1.11.1996 so far as relating to Sch. 38 Pts. I, III; s. 582(3)(4) in force at 1.11.1996 see s. 583(2); S. 582(1) in force at 1.9.1997 so far as relating to Sch. 37 Pt. II and s. 583(2) in force at 1.9.1997 so far as relating to Sch. 38 Pt. II by S.I. 1997/1623, art. 2(2)

**583 Short title, commencement and extent. U.K.**

- (1) This Act may be cited as the Education Act 1996.
- (2) Subject to subsection (3), this Act shall come into force on 1st November 1996 (and references to the commencement of this Act are to its coming into force on that date).
- (3) The following provisions—
  - section 8,
  - section 317(6),
  - section 348,
  - section 528,
  - Part II of Schedule 37 and section 582(1) so far as relating thereto, and
  - Part II of Schedule 38 and section 582(2) so far as relating thereto,
 shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions and for different purposes.
- (4) The Secretary of State may by order make such incidental, supplemental, saving or transitional provision as he thinks fit in connection with the coming into force in accordance with subsection (2) of any provision of this Act reproducing the effect of a provision of the <sup>M148</sup>Education Act 1993 which has not previously been brought into force by an order under section 308(3) of that Act (commencement).
- (5) Where an order under subsection (3) brings into force any provision of section 317(6) or 528, then in relation to the coming into force of that provision—
  - (a) section 568(5) and (6) shall not apply to the order, but
  - (b) the order may make such provision as is authorised to be made, by virtue of section 67(2) and (3) of the <sup>M149</sup>Disability Discrimination Act 1995 (regulations and orders), by an order under section 70(3) of that Act (commencement).
- (6) Subject to subsections (7) and (8), this Act extends to England and Wales only.

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- (7) This section, section 493 and section 569 so far as relating to regulations under section 493 extend also to Scotland; and this section extends also to Northern Ireland.
- (8) Section 582 and Schedules 37 to 40 have the same extent as the enactments to which they relate.

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#### **Subordinate Legislation Made**

- P2** S. 583(3) power partly exercised (19.11.1996); 1.1.1997 appointed for specified provisions by [S.I. 1996/2904, art. 2](#)
- S. 583(3) power partly exercised (30.6.1997); 1.9.1997 appointed for specified provisions by [S.I. 1997/1623, arts. 2, 3](#)
- S. 583(3) power partly exercised (20.10.1997); 30.9.1997 appointed for specified provisions by [S.I. 1997/2352, art. 2](#)
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#### **Marginal Citations**

- M148** 1993 c. 35.
- M149** 1995 c. 50.

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