



# Education Act 1996

## 1996 CHAPTER 56

### <sup>F1</sup>PART II

#### SCHOOLS MAINTAINED BY LOCAL EDUCATION AUTHORITIES

##### Textual Amendments

- F1** 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 II (ss. 31-182) repealed (1.10.1998, 10.3.1999, 1.4.1999 respectively in relation to specified provisions and otherwise 1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, Sch.31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

##### PRELIMINARY

### 31 County schools and voluntary schools.

- (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).

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- (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.**

- (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>M1</sup>Education Act 1944, section 2 of the <sup>M2</sup>Education Act 1946 or section 54 of the <sup>M3</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**

- M1** 1944 c. 31.  
**M2** 1946 c. 50.  
**M3** 1986 c. 61.

### **33 Maintained nursery schools and maintained special schools.**

- (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.

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### **34 Meaning of “maintain” etc.**

- (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.
- (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**

### **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.**

- (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—

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- (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>M4</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
  - (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**

M4 1944 c. 31.

**36 Objections to proposals under section 35.**

- (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—

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- (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>M5</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,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**

**M5** 1992 c. 13.

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

- (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

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- (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))—
- (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.**

- (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.

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- (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.**

- (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.
- (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.**

- (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.**

- (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,

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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—

- (a) the transfer is authorised by an order made under section 47(1) of this Act (or under section 16(1) of the <sup>M6</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.



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- (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.

#### Marginal Citations

M6 1944 c. 31.

## 42 Objections to proposals under section 41.

- (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>M7</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.

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### Marginal Citations

M7 1992 c. 13.

## 43 Approval or rejection by Secretary of State of proposals under section 41.

- (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
  - (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.

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#### **44 Approval of school premises.**

- (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.

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

- (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.

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- (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.

#### **46 Establishment of a new voluntary school in substitution for an old one.**

- (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.

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#### **47 Order authorising transfer of voluntary school to new site.**

- (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—
  - (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.**

- (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

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- (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.

*Proposals for a middle school*

**49 Proposals under section 35 or 41 for a middle school.**

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.**

- (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.

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## **51 Division of a voluntary school.**

- (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.
- (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.**

- (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.

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### **53 Objections to proposals.**

- (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.
- (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.**

- (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—



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- (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;
- <sup>F2</sup>(c) .....
- (d) as to the appointment and dismissal of staff for the school;
- (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.

**Textual Amendments**

**F2** S. 54(6)(c) repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch.21**

**55 Variation of order under section 54.**

- (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.**

- (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>M8</sup>Education Act 1946) in providing buildings which form part of the school premises;

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- (b) expenditure incurred under section 63 (or under section 2 of the <sup>M9</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.
- (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**

**M8** 1946 c. 50.

**M9** 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.**

- (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>M10</sup>Education Act 1944 or section 54 of the <sup>M11</sup>Education (No. 2) Act 1986), or
  - (b) the direction in an order made under section 51 (or under section 2 of the <sup>M12</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).

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#### **Marginal Citations**

**M10** 1944 c. 31.

**M11** 1986 c. 61.

**M12** 1946 c. 50.

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

- (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 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**

### **FUNDING OF VOLUNTARY SCHOOLS**

#### *Obligations of governing bodies*

### **59 Obligations of governing bodies of voluntary schools.**

- (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

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- 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.
- (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.**

- (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.

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- (6) Any sum paid under subsection (4) shall be treated for the purposes of section 14 of the <sup>M13</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>M14</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

**M13** 1841 c.38.

**M14** 1987 c. 15.

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

- (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,

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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.**

- (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 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.**

- (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.

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

- (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.
- (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.**

- (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.

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- (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.
- (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).



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## **66 Grants in respect of preliminary expenditure.**

- (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.
- (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.**

- (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—

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- (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;
  - (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.**

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.**

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.

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### *Miscellaneous and supplemental*

#### **70 Duty to convey interest in premises provided under section 68 or 69.**

- (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.
- (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.**

- (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.**

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.

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

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.**

- (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.

**75 Disapplication of restriction on local authority disposals.**

Subsection (2) of section 123 of the <sup>M15</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**

M15 1972 c. 70.

**CHAPTER IV**

GOVERNMENT OF COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

*Instruments of government*

**76 Instruments of government.**

- (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.

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- (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)**

**C1** S. 76 excluded (1.1.1999) by S.I. 1998/3097, reg.3

**77 Procedure for making and altering instruments of government.**

- (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—
  - (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,

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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.**

- (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)).
- (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.

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

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

- (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.

<b>Category of governor</b>	<b>School with less than 100 registered pupils</b>	<b>School with 100 or more but less than 300 registered pupils</b>	<b>School with 300 or more but less than 600 registered pupils</b>	<b>School with 600 or more registered pupils</b>
Parent governors	2	3	4	5
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)—
- (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.

<b>Category of governor</b>	<b>School with less than 100 registered pupils</b>	<b>School with 100 or more but less than 300 registered pupils</b>	<b>School with 300 or more but less than 600 registered pupils</b>	<b>School with 600 or more registered pupils</b>
Parent governors	2	3	4	5
Governors appointed by the local	2	3	4	5

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education authority				
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)**

**C2** S. 79(1)(2) excluded (1.11.1996) by 1996 c. 57, ss. 27(4), 48(2).

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

- (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



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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.

## **81 Appointment of parent governors by governing bodies.**

- (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

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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.
- (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.**

- (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
  - (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.

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- (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.**

- (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.
- (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.**

- (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.

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- (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.

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

C3 S. 84(2) amended (1.11.1996) by 1996 c. 57, ss. 27(8), 48(2)

**85 Sponsor governors for aided secondary schools.**

- (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
  - (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—

*Status: Point in time view as at 10/03/1999.*

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- (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.

#### *Governing bodies: general*

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

- (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>F3</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**

**F3** 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**

*Status: Point in time view as at 10/03/1999.*

*Changes to legislation: Education Act 1996, Part II is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**87 Effect of change in circumstances of school.**

- (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.
- (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.**

- (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.**

<sup>F4</sup>(1) .....

<sup>F4</sup>(2) .....

- (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

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- (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.

**Textual Amendments**

**F4** S. 89(1)(2) repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2**

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

**C4** 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)).

**F5**<sup>90</sup> .....

**Textual Amendments**

**F5** S. 90 repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2** (with art. 5(1)(3) and subject to savings in S.I. 1999/2323, Sch. 7 paras. 2-4, 6, 7, 10, **12**)

**F6**<sup>91</sup> .....

**Textual Amendments**

**F6** S. 91 repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2** (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2-4, 6, 7, 10, **12**)

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

<sup>F7</sup>(1) .....

<sup>F7</sup>(2) .....

(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).

**Textual Amendments**

**F7** S. 92(1)(2) repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2** (with art. 5(2))

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

**C5** S. 92 excluded (1.1.1999) by S.I. 1998/3097, **reg. 8(a)**

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

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—

(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)**

**C6** S. 93 excluded (1.1.1999) by S.I. 1998/3097, **reg. 8(a)**

<sup>F8</sup>94 .....



*Status: Point in time view as at 10/03/1999.*

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**Textual Amendments**

- F8** S. 94 repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2** (subject to savings in S.I. 1999/2323, Sch. 7 paras. 2-4, 6, 7, 10, 12)

**F9**95 .....

**Textual Amendments**

- F9** S. 95 repealed (10.3.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 69, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(2), **Sch. 2** (with art. 5(3) and subject to savings in S.I. 1999/2323, Sch. 7 paras. 2-4, 6, 7, 10, 12 )

*Government of new schools*

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

- (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;
  - (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.

*Status: Point in time view as at 10/03/1999.*

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- (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)**

- C7** S. 96(1)(3) modified (1.1.1999) (*temp.*) by S.I. 1998/3097, reg.4  
**C8** S. 96(5) excluded (1.1.1999) by S.I. 1998/3097, reg. 8(b)

**97 Temporary governing bodies for new voluntary schools.**

- (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.
- (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.

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- (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)**

- C9** S. 97(1)(2) modified (1.1.1999) (*temp.*) by S.I. 1998/3097, reg.4  
**C10** 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.**

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.**

- (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.**

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

- C11** S. 100 excluded (1.1.1999) by S.I. 1998/3097, reg. 8(d)

*Status: Point in time view as at 10/03/1999.*

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## CHAPTER V

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

## CHAPTER VI

### CONDUCT AND STAFFING OF COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

#### *Articles of government*

#### **127 Articles of government.**

- (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.**

- (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.
- (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.

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*Status: Point in time view as at 10/03/1999.*

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- (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.**

- (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,
- 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.

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

**C12** S. 129 amended (1.4.1999) by S.I. 1999/711, reg. 3

*Status: Point in time view as at 10/03/1999.*

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### *Conduct of schools: general*

#### **130 Governing body to have general responsibility for conduct of school.**

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.**

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.**

- (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.

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

- C13** 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*

#### **<sup>F10</sup>133 Staffing of county, controlled, special agreement and maintained special schools without delegated budgets.**

- (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

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- (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

**F10** Ss. 133, 134, 136-140 amended (1.4.1999) by S.I. 1999/711, reg. 2, Sch. 1

#### <sup>F11</sup>134 Staffing of aided schools without delegated budgets.

- (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.

*Status: Point in time view as at 10/03/1999.*

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- (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**

**F11** 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.**

- (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 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



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- (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.**

- (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).
- (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)**

- C14** 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.**

- (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—
  - (a) 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
  - (b) section 134(5).

*Status: Point in time view as at 10/03/1999.*

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- (3) If, apart from any provision of the articles of government excluded by subsection (2) (a) 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)**

**C15** 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.**

- (1) Subsection (2) applies if, in the case of an aided school which has a delegated budget—
  - (a) 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
  - (b) 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.
- (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.

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- (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)**

**C16** 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.**

- (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—
- 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
  - 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—
- by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or
  - under any statutory provision.
- (4) The local education authority—
- shall take such steps as may be required for giving effect to any determination of the governing body under subsection (2), and
  - shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (5) <sup>F12</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>F13</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>M16</sup>Employment Rights Act 1996.

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#### Textual Amendments

- F12** Words in s. 139(5) inserted (21.3.1997) by 1997 c. 44, s. 50(2)(4)  
**F13** S. 139(5A)(5B) inserted (21.3.1997) by 1997 c. 44, s. 50(3)(4)

#### Marginal Citations

- M16** 1996 c. 18

### 140 Staffing for non-school activities in community schools.

- (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.

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

- C17** 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.

- (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

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- (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.**

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.**

- (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 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

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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.**

(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.

#### **145 Dismissal of teachers of religious education in aided schools.**

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.**

(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—

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- (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.**

- (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.
- (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.**

- (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;

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- (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.
- (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.**

- (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—



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- (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—
    - (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;

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“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.**

- (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).
- (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.**

- (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

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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—
    - (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;

*Status: Point in time view as at 10/03/1999.*

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“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.**

(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.

(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.**

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.

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*Discipline: general*

**[<sup>F14</sup>154 Responsibility of governing body and head teacher for discipline.**

- (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.
- (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.

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- (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

**F14** 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.

<sup>F15</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>F15</sup>(4) . . . . .

#### Textual Amendments

**F15** 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.

- (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>F16</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>F17</sup>(3) Subsection (2) has effect despite anything in the articles of government for the school.]

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### Textual Amendments

- F16** 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  
**F17** 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.

- (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.
- (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.

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.

- (1) A local education authority shall make arrangements—

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- (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.

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

- (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.**

- (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—



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- (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.**

- (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;
  - (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.**

- (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

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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.**

- (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,
 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.**

- (1) The articles of government for a county, voluntary or maintained special school shall provide—

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- (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.**

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

## **CHAPTER VII**

### **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.**

- (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.

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- (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.**

- (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>M17</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 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**

**M17** 1992 c. 13.

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

- (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).
- (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.**

- (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.

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**171 Duty to implement proposals.**

- (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.**

- (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.

*Discontinuance of voluntary school by governing body*

**173 Discontinuance of a voluntary school by its governing body.**

- (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>M18</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);

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- (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

M18 1944 c. 31.

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

- (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.**

- (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—

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- (i) a further education funding council, or
  - (ii) the Secretary of State,
- for the establishment under section 16 of the <sup>M19</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.

**Marginal Citations**

**M19** 1992 c. 13.

## CHAPTER VIII

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Further education*

**176 Provision of further education.**

- (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.**

- (1) Section 12 of the <sup>M20</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



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- (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**

**M20** 1994 c. 30.

### *Modification of employment law*

#### **178 Application of employment law during financial delegation.**

- (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
  - (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.**

- (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).

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- (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.**

- (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.

*Interpretation of Part II*

**181 Meaning of expressions relating to new schools.**

- (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.**

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.

**Status:**

Point in time view as at 10/03/1999.

**Changes to legislation:**

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