

Status: Point in time view as at 31/01/2009.

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SCHEDULES

SCHEDULE 3

Section 22.

FUNDING OF FOUNDATION, VOLUNTARY AND FOUNDATION SPECIAL SCHOOLS

PART I

FOUNDATION, VOLUNTARY CONTROLLED AND FOUNDATION SPECIAL SCHOOLS

Obligations of governing bodies

- 1 (1) The governing body of a foundation, voluntary controlled or foundation special school are (in accordance with section 22(4)) not responsible for any of the expenses of maintaining the school.
- (2) Sub-paragraph (1) does not apply to the repayment of the principal of, or interest on, a loan made to the governing body.

Obligations of LEAs as regards provision of sites and buildings (otherwise than in connection with statutory proposals)

- 2 (1) In the case of a foundation, voluntary controlled or foundation special 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.
- (2) Sub-paragraph (1) does not—
 - [^{F1}(a) apply in relation to the provision of any site or buildings which—
 - (i) in the case of a school in England, the authority or the person by whom any proposals were made are required to provide by virtue of Part 3 of Schedule 2 to the Education and Inspections Act 2006 (provision of premises in connection with proposals for establishment of school) or by virtue of regulations under section 24 of that Act (implementation of proposals for alteration of school), or
 - (ii) in the case of a school in Wales, the authority or promoters are required to provide by virtue of Part 3 of Schedule 6 (provision of premises in connection with statutory proposals); or]
 - (b) require the local education authority to finance the acquisition by the governing body of any site or buildings provided otherwise than by the authority.
- (3) Where a site is provided for a school under this paragraph, the local education authority shall transfer their interest in the site, and in any buildings on the site which are to form part of the school premises—

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- (a) to the trustees of the school, to be held by them on trust for the purposes of the school, or
 - (b) if the school has no trustees, to the school’s foundation body or (in the absence of such a body) to the governing body, to be held by that body for the relevant purposes.
- (4) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it shall be made to such persons as the Secretary of State thinks proper.
- (5) The authority shall pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (6) Where—
- (a) a transfer is made under this paragraph, and
 - (b) the transfer 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 shall notify the local education authority that paragraph (b) applies to them and they or their successors shall pay to the local education authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the Secretary of State.
- (7) In sub-paragraph (6)(b) the reference to proceeds of the sale of other premises includes a reference to—
- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent; and
 - (b) interest which has accrued in respect of any such consideration;
- and for the purposes of any agreed determination under sub-paragraph (6) regard shall be had to any guidance given from time to time by the Secretary of State.
- (8) Any sum paid under sub-paragraph (6) shall be treated for the purposes of section 14 of the ^{M1}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.
- (9) A determination may be made under sub-paragraph (6) in respect of any property subject to a trust which has arisen under section 1 of the ^{M2}Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) if (and only if)—
- (a) the determination is made by the Secretary of State, and
 - (b) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.
- (10) Sub-paragraph (6) shall apply for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in sub-paragraph (6)(b) (if any) as remains after the application of paragraphs [^{F2}A1 to A16 or] 1 to 3 of Schedule 22 to that sum.
- (11) In this paragraph—
- “the relevant purposes” means—
- (a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, and

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- (b) in relation to a transfer to a school’s governing body, the purposes of the school;
“site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

Textual Amendments

- F1** Sch. 3 para. 2(2)(a) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 31\(2\)](#); S.I. 2007/935, art. 7(o)
F2 Words in Sch. 3 para. 2(10) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 4 para. 22](#); S.I. 2007/935, art. 7(p)

Marginal Citations

- M1** 1841 c. 38.
M2 1987 c. 15.

PART II

VOLUNTARY AIDED SCHOOLS

[^{F3} Interpretation of Part

Textual Amendments

- F3** Sch. 3 para. 2A and cross-heading inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 31\(3\)](#); S.I. 2007/935, art. 7(o)

- 2A In this Part of this Schedule “promoters”, in relation to a school in England, means persons who are for the purposes of Schedule 2 to the Education and Inspections Act 2006 the proposers in relation to proposals for the establishment of the school.]

Obligations of governing bodies

- [^{F4}3 (1) In the case of a voluntary aided school, the governing body of the school are responsible for meeting all capital expenditure in relation to the school premises subject to sub-paragraph (2) below.
(2) The duty in sub-paragraph (1) does not extend—
(a) to capital expenditure in relation to playing fields or any building or other structure erected thereon in connection with the use of playing fields, but does extend to capital expenditure in relation to boundary walls and fences;
(b) to capital expenditure 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;
(c) to capital expenditure on the provision of any new site which the local education authority is to provide by virtue of paragraph 4 of this Schedule.

^{F5}(3)]

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*Obligations of LEAs as regards provision of sites
 (otherwise than in connection with statutory proposals)*

- 4 (1) In the case of a voluntary aided school, the local education authority shall provide 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).
- (2) Sub-paragraph (1) does not—
- (a) apply in relation to the provision of any site which persons other than the authority are required to provide by virtue of [^{F6}any enactment]; or
 - (b) require the local education authority to finance the acquisition by the governing body of any site or buildings provided otherwise than by the authority.
- (3) Where a site is provided for a school under this paragraph, the local education authority shall transfer their interest in the site, and in any buildings on the site which are to form part of the school premises—
- (a) to the trustees of the school, to be held by them on trust for the purposes of the school, or
 - (b) if the school has no trustees, to the school's foundation body to be held by that body for the relevant purposes.
- (4) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it shall be made to such persons as the Secretary of State thinks proper.
- (5) The authority shall pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (6) Where—
- (a) a site is provided for a school under this paragraph, 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.
- (7) Where—
- (a) a site is provided for a school under this paragraph, 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 paragraph 3 with respect to the [^{F7}school premises] .
- (8) Where it appears to the Secretary of State that provision for any payment or other adjustment ought to have been made under sub-paragraph (6) or (7) but has not been made, he may give directions providing for the making of such payment or other adjustment as he thinks proper.
- (9) In this paragraph—

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“the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts;

“site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

Grants by Secretary of State in respect of expenditure on premises or equipment

- 5 (1) The Secretary of State may make grants—
- (a) to the governing body of a voluntary aided school in respect of [^{F8}capital expenditure incurred or to be incurred] by them; or
 - (b) to a relevant body in the case of such a school, in respect of [^{F9}capital expenditure incurred or to be incurred] by that body on behalf of the governing body.
- (2) ^{F10}
- (3) The amount of any grant paid under this paragraph in respect of any such expenditure—
- [^{F11}(a) shall not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, shall not exceed 100 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 a grant under this paragraph shall be such as may be determined from time to time by the Secretary of State.
- [^{F12}(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 paragraph to make grants in respect of expenditure on school premises, give priority to paying grants in respect of expenditure which is necessary to make such alterations as may be required by the local education authority for the purpose of securing that the school premises conform to the standards prescribed under section 542 of the Education Act 1996 ^{M3} or as may be required for the purpose of securing that the school premises conform to standards specified by or under any other enactment relating to health and safety; and the amount of any grant paid in the exercise of that power in respect of such expenditure on school premises shall be at least 90 per cent of the expenditure.]
- (6) Any body to whom any payment is made in respect of a grant under this paragraph 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;
- but such requirements may be imposed after the making of any such payment only if the Secretary of State is satisfied that in all the circumstances it is reasonable for them to be so imposed.

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(8) Such requirements may, in particular, if any conditions specified in the requirements are satisfied—

- (a) require the application for purposes connected with the provision of education in appropriate schools of—
 - (i) any premises or equipment in respect of which the grant has been paid under this paragraph, or
 - (ii) an amount equal to so much of the value of any such premises or equipment as is determined in accordance with the requirements to be properly attributable to the payment of the grant; and
- (b) in the event that that requirement is not complied with, 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 paragraph, or
 - (b) the amount mentioned in sub-paragraph (8)(a)(ii),
- whichever the Secretary of State determines to be just.

(10) When deciding whether to make any grant to a body under this paragraph in circumstances where he considers that it would be appropriate to impose requirements falling within sub-paragraph (8), the Secretary of State may have regard to whether, if such requirements were imposed, that body would have an enforceable right against some other person to be given by that person such financial assistance as would be necessary to enable them to pay to the Secretary of State the amount mentioned in sub-paragraph (9).

(11) No grant may be paid under this paragraph in respect of any expenses incurred in the provision of any premises which it is the duty of the local education authority to provide.

(12) In this paragraph—

“appropriate schools”—

- (a) in relation to a voluntary aided school having a religious character, means schools which are either foundation or voluntary schools and whose specified religion or religious denomination under section 69(4) is the same as that school’s, and
- (b) in relation to any other voluntary aided school, means maintained schools;

“relevant body”, in relation to a voluntary aided school, means the appropriate diocesan authority or the school’s trustees;

^{F13}
.....

Grants by Secretary of State in respect of preliminary expenditure

6 (1) The Secretary of State may pay grants—

- (a) to the governing body of a voluntary aided school in respect of preliminary expenditure incurred [^{F14}or to be incurred] by them for the purposes of any scheme for the transfer of the school to a new site or the enlargement or alteration of the school premises, or

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- (b) to a relevant body in the case of such a school, in respect of any preliminary expenditure incurred [^{F14}or to be incurred] by them, on behalf of the governing body, for the purposes of any such scheme.
- (2) Where any persons propose or are considering whether to propose the establishment of a voluntary aided school, the Secretary of State may pay grants to them in respect of any preliminary expenditure incurred [^{F15}or to be 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 [^{F16}used for the purposes of the school] .
- (3) Grants under sub-paragraph (1) or (2) may be paid in respect of a scheme such as is mentioned in that sub-paragraph 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 [^{F17}used for the purposes of the school] , 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.
- [^{F18}(5) A grant under sub-paragraph (1) or (2) shall not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, shall not exceed 100 per cent of the expenditure, in respect of which it is paid.]
- (6) Where—
- (a) a grant is paid under sub-paragraph (1) in the case of any voluntary aided school, or
 - (b) a grant is paid under sub-paragraph (2) in the case of any school which is established as a voluntary aided school,
- the grant shall for the purposes of section 30(2) be treated as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the school premises.
- (7) In this paragraph “relevant body”, in relation to a voluntary aided school, means the appropriate diocesan authority or the school’s trustees.

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Loans by Secretary of State in respect of initial [^{F19}expenses][^{F19}expenditure]

Textual Amendments

F19 Cross-heading preceding Sch. 3 para. 7: "expenditure" substituted for "expenses" (E.) (1.4.2002) by [The Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002 \(S.I. 2002/906\)](#), [art. 9](#)

- 7 (1) Where, on the application of the governing body of a voluntary aided school and after consulting persons representing the governing body, the Secretary of State—
- (a) is satisfied that the governing body's share of any [^{F20}initial expenditure] 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 [^{F21}capital 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 paragraph [^{F22}“initial expenditure” is expenditure] to be incurred in providing—
- (a) a site or ^{F23} . . . buildings for a voluntary aided school in connection with—
 - (i) the implementation of any proposals for a prescribed alteration to the school published under section 28, or
 - (ii) the transfer of the school to a new site, or
 - (b) a site or ^{F24} . . . buildings for a new voluntary aided school,
- being [^{F25}expenditure] in respect of which grants may be paid under paragraph 5.
- (4) For the purposes of this paragraph the governing body's share of any [^{F26}initial expenditure] shall be taken to be so much of the [^{F27}expenditure] as remains to be borne by the governing body after taking into account the amount of any grant under paragraph 5 that may be paid or payable in respect of them.
- (5) The preceding provisions of this paragraph shall apply for the purpose of enabling loans to be made to a relevant body (within the meaning of paragraph 5) in respect of [^{F28}expenditure] incurred by that body on behalf of the governing body as it applies to [^{F28}expenditure] incurred by the governing body; and in those provisions, as they apply in relation to a new voluntary aided school, references to the governing body are to the promoters.
- (6) Paragraph 3(3) of Schedule 10 (consent to borrowing) does not apply to any borrowing by a governing body under this paragraph.

Assistance by LEAs in respect of maintenance and other obligations of governing bodies

- 8 A local education authority may give to the governing body of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by the governing body of any obligation under paragraph 3.

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Duty to transfer interest in premises provided under paragraph 8

- 9 (1) Where assistance under paragraph 8 consists of the provision of any premises for use for the purposes of a school, the local education authority shall transfer their interest in the premises—
- (a) to the trustees of the school, to be held by them on trust for the purposes of the school, or
 - (b) if the school has no trustees, to the school’s foundation body, to be held by that body for the relevant purposes.
- (2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it shall be made to such persons as the Secretary of State thinks proper.
- (3) The authority shall pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (4) In this paragraph “the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts.

[^{F29}Meaning of “capital expenditure”

Textual Amendments

F29 Sch. 3 para. 9A 9B and cross-heading inserted (1.4.2007 for the insertion of Sch. 3 para. 9A(3), 25.5.2007 in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 35(3)**, 188(3); [S.I. 2007/935](#), arts. 5(i), 7(j)

- 9A (1) This paragraph applies for the purposes of this Schedule as it applies in relation to England.
- (2) Subject to sub-paragraphs (3) and (4), references in this Schedule to capital expenditure, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, are references to—
- (a) expenditure of the body or, as the case may be, the promoters which falls to be capitalised in accordance with proper accounting practices, or
 - (b) expenditure which would fall to be so capitalised were it to be incurred by the body or, as the case may be, the promoters.
- (3) The Secretary of State may by regulations prescribe classes or descriptions of expenditure which are to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to—
- (a) any appropriate body, or any prescribed class or description of appropriate body;
 - (b) any promoters, or any prescribed class or description of promoters.
- (4) The Secretary of State may by direction provide that, in the case of a particular voluntary aided school—
- (a) expenditure of a particular appropriate body which is expenditure of a particular class or description;
 - (b) expenditure of particular promoters which is expenditure of a particular class or description,

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is to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to that body, or as the case may be, those promoters.

- (5) Directions under sub-paragraph (4) may be expressed to have effect in specified circumstances or subject to specified conditions.
- (6) In this paragraph an “appropriate body”, in the case of a voluntary aided school, means—
- (a) the governing body of the school, or
 - (b) a relevant body in relation to the school (within the meaning of paragraph 5).
- 9B (1) For the purposes of paragraph 9A, “proper accounting practices”, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, means those accounting practices—
- (a) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the appropriate body, or as the case may be, the promoters, or
 - (b) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the local education authority.
- (2) In the event of conflict between the accounting practices falling within paragraph (a) of sub-paragraph (1) and those falling within paragraph (b) of that sub-paragraph, only those falling within paragraph (a) are to be regarded as proper accounting practices.
- (3) In this paragraph an “appropriate body”, in the case of a voluntary aided school, has the same meaning as in paragraph 9A.]

PART III

FOUNDATION, VOLUNTARY AND FOUNDATION SPECIAL SCHOOLS: COMMON PROVISIONS

Default powers of Secretary of State

- 10 (1) Where it appears to the Secretary of State that a local education authority have defaulted in the discharge of their duties relating to the maintenance of a foundation, voluntary or foundation special 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 sub-paragraph (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.

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Endowments

- 11 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 foundation, voluntary or foundation special school, those sums shall not be payable to the local education authority but shall be applied by the governing body of the school—
- (a) (in the case of a voluntary aided school) towards the discharge of their obligations under paragraph 3, or
 - (b) (in the case of any school) in such manner, if any, as may be determined by a scheme for the administration of the endowment made after 1st April 1945.

Disapplication of restriction on local authority disposals

- 12 Subsection (2) of section 123 of the ^{M4}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 governing body of a foundation, voluntary or foundation special school, or
 - (b) to persons proposing to establish such a school.

Marginal Citations

M4 1972 c. 70.

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