



# Education Act 2002

## 2002 CHAPTER 32

### PART 3

#### MAINTAINED SCHOOLS

#### CHAPTER 1

##### GOVERNMENT OF MAINTAINED SCHOOLS

### 19 Governing bodies

- (1) Each maintained school shall have a governing body, which shall be a body corporate constituted in accordance with regulations.
- (2) Regulations shall provide for a governing body to consist of—
  - (a) persons elected or appointed as parent governors,
  - (b) persons elected or appointed as staff governors,
  - (c) persons appointed as local education authority governors,
  - (d) except in the case of a voluntary aided school, persons appointed as community governors,
  - (e) in the case of a foundation school, a foundation special school or a voluntary school, persons appointed as foundation governors or partnership governors, and
  - (f) such other persons as may be prescribed.
- (3) Regulations may make provision as to—
  - (a) the number of governors, or of governors falling within any category,
  - (b) the person or persons by whom, and the manner in which, governors are to be elected or appointed,
  - (c) eligibility for election or appointment as governors of any category, or for voting in an election of such governors,
  - (d) the term of office of governors,

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- (e) resignation or removal from office of governors,
  - (f) the payment of allowances to governors,
  - (g) meetings and proceedings of governing bodies,
  - (h) the election by the governors of a chairman and vice chairman of the governing body,
  - (i) the establishment by a governing body of committees,
  - (j) the appointment of persons other than governors to serve on committees of governing bodies,
  - (k) the delegation of functions by governing bodies, and
  - (l) other matters relating to the constitution or procedure of governing bodies.
- (4) Regulations made by virtue of subsection (3)(a) must secure that the majority of the governors of a voluntary aided school are persons appointed as foundation governors.
- (5) Subsection (3)(k) has effect subject to the provisions of any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities' financial schemes) which relates to the school.
- (6) Schedule 1 (which contains general provisions relating to the governing body as a body corporate) shall have effect.
- (7) In discharging any function conferred by regulations under this section, a local education authority or the governing body of a maintained school shall have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the National Assembly for Wales.
- (8) Subsection (1) has effect subject to section 24; and regulations under this section may include provision with respect to the governing bodies of federations.

#### Commencement Information

- I1** S. 19(6) in force at 1.10.2002 for E. by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))
- I2** S. 19(1) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#) (with [Sch. para. 4](#))
- I3** S. 19(2)-(5)(7) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124](#), [art. 2](#)
- I4** S. 19(6) in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)
- I5** S. 19(8) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 4](#)
- I6** S. 19(8) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

## 20 Instruments of government

- (1) For every maintained school there shall be an instrument (known as the instrument of government) which determines the constitution of the governing body and other matters relating to the school.
- (2) Regulations shall make provision with respect to the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments.

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- (3) Regulations under subsection (2) may require any person responsible for the making, review or variation of an instrument of government to have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (4) Subsection (1) has effect subject to section 24; and regulations under subsection (2) may include provision with respect to instruments of government for federations.
- (5) The governing body of a maintained school shall not conduct the school under a name other than the one for the time being set out in the school's instrument of government.

#### Commencement Information

- I7** S. 20(1)(5) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I8** S. 20(2)(3) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)
- I9** S. 20(4) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124, art. 4](#)
- I10** S. 20(4) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667, art. 4](#)

## 21 General responsibility for conduct of school

- (1) Subject to any other statutory provision, the conduct of a maintained school shall be under the direction of the school's governing body.
- (2) The governing body shall conduct the school with a view to promoting high standards of educational achievement at the school.
- (3) Regulations may—
  - (a) set out terms of reference for governing bodies of maintained schools,
  - (b) define the respective roles and responsibilities in relation to the conduct of a maintained school (whether generally or with respect to particular matters) of—
    - (i) the local education authority,
    - (ii) the governing body, and
    - (iii) the head teacher, and
  - (c) confer functions on governing bodies and head teachers of such schools.
- (4) The governing body of a maintained school shall, in discharging their functions, comply with—
  - (a) the instrument of government, and
  - (b) (subject to any other statutory provision) any trust deed relating to the school.

#### Commencement Information

- I11** S. 21(1)(2)(4) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I12** S. 21(3) in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)

## 22 Training and support of governors

The local education authority shall—

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- (a) (to the extent that they are not otherwise required to secure the provision of such information) secure that every governor is provided, free of charge, with such information as they consider appropriate in connection with the discharge of his functions as governor, and
- (b) secure that there is made available to every governor, free of charge, such training as they consider necessary for the effective discharge of those functions.

**Commencement Information**

**I13** S. 22 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

**23 Clerk to the governing body**

Regulations may make provision—

- (a) requiring the appointment of a clerk to the governing body of a maintained school and authorising or requiring the appointment of clerks to committees of the governing body;
- (b) prescribing the body by whom any such appointment is to be made and any restrictions or other requirements relating to any such appointment;
- (c) as to the dismissal of any such clerk and the procedure to be followed in connection with his dismissal;
- (d) authorising the governing body or a committee of 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 the meeting.

**Commencement Information**

**I14** S. 23 in force at 1.3.2003 except in relation to W. by [S.I. 2003/124](#), [art. 2](#)

**24 Federations of schools**

- (1) In prescribed cases, the governing bodies—
  - (a) of two or more maintained schools,
  - (b) of an existing federation and of one or more maintained schools, or
  - (c) of two or more existing federations,
 may, after complying with prescribed conditions and in accordance with prescribed procedure, provide for their respective schools to be federated for the purposes of this Chapter.
- (2) In this Chapter “federation” means a group of schools that are federated by virtue of this section, and “federated school” means a school forming part of a federation.
- (3) Where any schools are federated by virtue of this section, they shall—
  - (a) have a single governing body constituted under a single instrument of government, and
  - (b) in prescribed cases, be treated as a single school for the purposes of such enactments as may be prescribed, other than any enactment contained in Chapter 2 of Part 2 of the School Standards and Framework Act 1998 (c. 31)

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(establishment, alteration or discontinuance of schools) or in Part 3 of that Act (school admissions).

- (4) Regulations may make provision—
- (a) as to the dissolution of governing bodies on the formation of a federation,
  - (b) enabling the governing body of a federation to continue in existence as a body corporate when one or more schools join or leave the federation,
  - (c) as to the circumstances in which and manner in which a federation may be dissolved, or one or more schools may leave a federation,
  - (d) enabling the governing body of a federation that is dissolved to be replaced either by governing bodies for each of the constituent schools or by governing bodies which include the governing body of a new federation,
  - (e) as to the transition from one governing body to another,
  - (f) as to the transfer of property, rights and liabilities between governing bodies, or between local education authorities and governing bodies, and
  - (g) as to such other matters relating to federations, federated schools or the formation or dissolution of federations as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (5) Regulations made by virtue of subsection (4)(f) in relation to the transfer of property, rights and liabilities may—
- (a) provide for prescribed matters to be determined by the Secretary of State or the National Assembly for Wales,
  - (b) apply with modifications any provision of Schedule 10 to the Education Reform Act 1988 (c. 40) (supplementary provisions with respect to transfers under that Act), or
  - (c) make provision equivalent to that made by any provision of that Schedule.
- (6) In any enactment—
- (a) any reference to the governing body or governors of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation, and
  - (b) any reference to the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation.

#### Commencement Information

- I15** S. 24(1) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124, art. 4](#)
- I16** S. 24(1) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I17** S. 24(2)-(6) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

## 25 Federations: supplementary provisions

- (1) Regulations may make provision modifying any provision contained in—
- (a) Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (c. 31) (intervention in schools causing concern), or
  - (b) sections 49 to 51 of, and Schedule 15 to, that Act (financial delegation),
- in the application of the provision to federated schools or their governing bodies.

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- (2) The modifications that may be made by virtue of subsection (1) include, in particular, modifications—
- (a) enabling powers conferred by the provisions referred to in that subsection to be exercised in relation to all the schools in a federation even though the circumstances by reference to which the powers are exercisable exist only in relation to one or more of those schools, and
  - (b) requiring the apportionment of any costs or expenses incurred by the governing body of a federation.
- (3) If regulations made by virtue of section 24 allow the formation of a federation comprising schools within different categories, the regulations may make provision modifying any enactment which relates to schools within a particular category, or to the governing bodies of schools within a particular category, in the application of the enactment to schools forming part of such a federation or to the governing bodies of such federations.
- (4) In subsection (3) references to categories of maintained schools are references to the categories set out in section 20(1) of the School Standards and Framework Act 1998.

**Commencement Information**

**I18** S. 25 in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

**26 Collaboration between schools**

Regulations may—

- (a) enable the governing bodies of two or more maintained schools to arrange for any of their functions to be discharged jointly or by a joint committee of theirs,
- (b) provide for the appointment by two or more governing bodies of a joint committee of those governing bodies for the purposes of discharging any functions in pursuance of any such arrangements, and
- (c) provide that any enactment relating to those functions or the governing bodies by whom they are to be discharged is to have effect subject to all necessary modifications in its application in relation to those functions and the governing bodies by whom they are to be discharged.

**Commencement Information**

**I19** S. 26 in force at 1.3.2003 except in relation to W. by [S.I. 2003/124, art. 2](#)

**27 Power of governing body to provide community facilities etc.**

- (1) The governing body of a maintained school shall have power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of—
- (a) pupils at the school or their families, or
  - (b) people who live or work in the locality in which the school is situated.
- (2) The power under subsection (1) includes, in particular, power for a governing body to—
- (a) incur expenditure,

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- (b) enter into arrangements or agreements with any person,
  - (c) co-operate with, or facilitate or co-ordinate the activities of, any person, and
  - (d) provide staff, goods, services and accommodation to any person.
- (3) Subject to the provisions of Chapter 3 of Part 6 of the Education Act 1996 (c. 56) (charges in connection with education), a governing body may charge for any services or facilities provided under this section.
- (4) This section has effect subject to section 28.

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

- C1** S. 27 modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 3(1)**; s. 27 modified (E.) (temp. from 1.10.2002) by [S.I. 2002/2316](#), **reg. 3(1)**
- C2** S. 27 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), **regs. 1, 31**

**Commencement Information**

- I20** S. 27 partly in force; s. 27 not in force at Royal Assent, see s. 216; s. 27 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), **art. 4** (as amended by [S.I. 2002/2018](#), **arts. 2-4**)
- I21** S. 27 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), **art. 5**, **Sch. Pt. II**

**28 Limits on power to provide community facilities etc.**

- (1) Section 27(1) does not enable a governing body to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in—
- (a) the school’s instrument of government, or
  - (b) any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities’ financial schemes) which relates to the school.
- (2) Regulations may make provision preventing governing bodies from doing, by virtue of section 27(1), anything which is specified, or is of a description specified, in the regulations.
- (3) A governing body shall exercise the power conferred by section 27(1) only if and to the extent that they are satisfied that anything which they propose to do will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.
- (4) Before exercising the power under section 27(1) a governing body—
- (a) shall consult—
    - (i) the local education authority,
    - (ii) the staff of the school, and
    - (iii) the parents of registered pupils of the school,
  - (b) where the proposed exercise of the power would affect registered pupils of the school and the governing body consider it appropriate in view of their age and understanding to consult all or some of them, shall consult the registered pupils or such of them as the governing body consider it appropriate to consult, and



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- (c) shall consult such other persons as the governing body consider appropriate.
- (5) In exercising the power under section 27(1) or consulting under subsection (4), a governing body shall have regard—
- (a) to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales, and
  - (b) to any advice given to them from time to time by the local education authority.

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

- C3** S. 28 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), [regs. 1, 31](#)
- C4** S. 28(3) modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 3\(2\)](#)

**Commencement Information**

- I22** S. 28 partly in force; s. 28 not in force at Royal Assent, see s. 216; s. 28 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) (as amended by [S.I. 2002/2018](#), [arts. 2-4](#))
- I23** S. 28 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)

**29 Additional functions of governing body**

- (1) The governing body of a maintained school shall—
- (a) establish procedures for dealing with all complaints relating to the school or to the provision of facilities or services under section 27, other than complaints falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of a statutory provision other than this section, and
  - (b) publicise the procedures so established.
- (2) In establishing or publicising procedures under subsection (1), the governing body shall have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (3) The governing body of a maintained school may require pupils in attendance at the school to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school.
- (4) In subsection (3) “maintained school” does not include a maintained nursery school.
- (5) The governing body and head teacher of—
- (a) a community or voluntary controlled school,
  - (b) a community special school, or
  - (c) a maintained nursery school,
- shall comply with any direction given to them by the local education authority concerning the health and safety of persons on the school’s premises or taking part in any school activities elsewhere.

**Commencement Information**

- I24** S. 29 in force at 1.9.2003 for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)



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**I25** S. 29 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

### **30** **Governors' reports and other information**

- (1) Once in every school year the governing body of a maintained school shall prepare a report (a “governors’ report”) dealing with such matters, and otherwise complying with such requirements, as may be specified in regulations.
- (2) Regulations may—
  - (a) impose requirements on the governing body of a maintained school with respect to—
    - (i) the giving of copies of a governors’ report to such persons as may be prescribed, and
    - (ii) making such copies available for inspection at the school;
  - (b) make provision for—
    - (i) enabling the governing body to determine the language or languages in which a governors’ report is to be produced and the form or forms in which it is to be produced;
    - (ii) requiring them to comply with any direction given by the local education authority with respect to any additional language to be used or with respect to any additional form in which the report is to be produced;
  - (c) enable the governors’ report to be combined with any other document whose preparation by the governing body is required by or under any enactment.
- (3) The governing body of a maintained school shall provide the local education authority with such reports in connection with the discharge of the functions of the governing body as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of the authority’s functions.
- (4) The head teacher of a maintained school shall 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 require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (5) Where a requirement under subsection (4) is imposed on the head teacher by the authority—
  - (a) the authority shall notify the governing body of that requirement, and
  - (b) the head teacher shall give the governing body a copy of any report made by him in complying with it.

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

**C5** S. 30 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), [reg. 3\(1\)](#)

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#### **Commencement Information**

**I26** S. 30 partly in force; s. 30 not in force at Royal Assent, see s. 216; s. 30 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

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PROSPECTIVE

### 31 Control of school premises

Regulations may make provision relating to the control by the governing body of a maintained school of the occupation and use of school premises.

### 32 Responsibility for fixing dates of terms and holidays and times of sessions

- (1) In the case of a community, voluntary controlled or community special school or a maintained nursery school—
  - (a) the local education authority shall 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 a foundation, voluntary aided or foundation special school the governing body shall 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) Regulations may make provision—
  - (a) as to the procedure to be followed where the governing body of a school within subsection (1) propose to make any change in the time of the school sessions;
  - (b) as to the implementation of any such proposal;
  - (c) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school.
- (4) In this section “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.

#### Commencement Information

I27 S. 32 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

### 33 Annual parents’ meetings

- (1) Once in every school year the governing body of a maintained school shall hold a meeting (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 is to provide an opportunity for discussion of the manner in which the school has been, and is to be, conducted, and of any other matters relating to the school raised by parents of registered pupils.

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(3 Regulations may make provision as to circumstances in which a governing body are to be exempt from the obligation imposed by subsection (1).

**Commencement Information**

**I28** S. 33(1)(2) in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, **art. 4**

**I29** S. 33(3) in force at 1.3.2003 except in relation to W. by S.I. 2003/124, **art. 2**

### 34 Arrangements for government of new schools

- (1) Where proposals for the establishment of a maintained school fall to be implemented under any enactment, the local education authority shall make arrangements providing for the constitution of a temporary governing body for the school.
- (2) Once constituted in accordance with arrangements made under subsection (1), the temporary governing body shall continue in existence until such time as the governing body are constituted for the school under an instrument of government.
- (3) The local education authority shall secure that the governing body are so constituted before such date as may be determined in accordance with regulations.
- (4) The requirement for there to be an instrument of government for a school (imposed by section 20) shall take effect in relation to a school falling within subsection (1) above as from the date determined under subsection (3).
- (5) Regulations may make provision with respect to—
  - (a) the making and termination of arrangements for the constitution of temporary governing bodies, including such arrangements made in anticipation of proposals falling to be implemented as mentioned in subsection (1),
  - (b) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors, and the appointment of clerks to such bodies,
  - (c) the exercise by a temporary governing body before the school opening date of the powers conferred by section 27,
  - (d) the transition from a temporary governing body to a governing body constituted under an instrument of government, and
  - (e) such other matters relating to temporary governing bodies as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (6) Regulations under subsection (5) may, in connection with any matters falling within that subsection—
  - (a) modify any provision made under any of sections 19, 20 or 23 or by Schedule 1;
  - (b) apply any such provision with or without modifications;
  - (c) make provision corresponding or similar to any such provision.
- (7) Subject to subsection (8), the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period—
  - (a) beginning with the school opening date, and

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(b) ending with the time when the governing body are constituted for the school under an instrument of government;

and for the purposes of section 30(3) of this Act and sections 495 to 498 of the Education Act 1996 (c. 56) (general default powers of the Secretary of State) the temporary governing body of a school shall also be so treated at any time falling before the school opening date.

(8) Despite subsection (7), nothing in any of the following provisions, namely—

- (a) section 20(1),
- (b) (subject to any regulations made under subsection (5)) Schedule 1, or
- (c) (subject to any regulations made under subsection (5)) regulations made under section 19, 20 or 23,

applies to any temporary governing body.

(9) In this section “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.

#### Commencement Information

**I30** S. 34 in force at 1.4.2003 except in relation to W. by S.I. 2003/124, art. 4

### 35 Staffing of community, voluntary controlled, community special and maintained nursery schools

(1) This section applies to—

- (a) community schools,
- (b) voluntary controlled schools,
- (c) community special schools, and
- (d) maintained nursery schools.

(2) Any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the local education authority.

(3) The teaching staff of any school to which this section applies shall include—

- (a) a person appointed as head teacher, or
- (b) a person appointed to carry out the functions of the head teacher of the school—
  - (i) pending the appointment of a head teacher, or
  - (ii) in the absence of the head teacher.

(4) Regulations may make further provision with respect to the staffing of schools to which this section applies.

(5) Regulations under subsection (4) may, in particular—

- (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
- (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
- (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—

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- (i) the provision of facilities and services under section 27, or
  - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body, and
- (d) confer functions on local education authorities, governing bodies and head teachers.
- (6) In relation to teachers at a voluntary controlled school who are reserved teachers within the meaning of section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character), regulations under subsection (4) shall have effect subject to the provisions of that section.
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998—
  - (a) regulations under subsection (4) shall not apply, and
  - (b) the provisions of Part 1 of Schedule 2 shall apply instead.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the National Assembly for Wales.

#### Commencement Information

- I31** S. 35(1)-(3)(6)-(8) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)  
**I32** S. 35(4)(5) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124](#), [art. 4](#)

### 36 Staffing of foundation, voluntary aided and foundation special schools

- (1) This section applies to—
  - (a) foundation schools,
  - (b) voluntary aided schools, and
  - (c) foundation special schools.
- (2) Except as provided by regulations under subsection (4), any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the governing body of the school.
- (3) The teaching staff of any school to which this section applies shall include—
  - (a) a person appointed as head teacher, or
  - (b) a person appointed to carry out the functions of the head teacher of the school—
    - (i) pending the appointment of a head teacher, or
    - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—

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- (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
  - (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
  - (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—
    - (i) the provision of facilities and services under section 27, or
    - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body,
  - (d) enable teachers and other staff to be employed by the local education authority in prescribed cases, and
  - (e) confer functions on local education authorities, governing bodies and head teachers.
- (6) Regulations under subsection (4) shall have effect subject to section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character).
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998, regulations under subsection (4) shall have effect subject to the provisions of Part 2 of Schedule 2.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the National Assembly for Wales.

#### Commencement Information

- I33** S. 36(1)-(3)(6)-(8) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I34** S. 36(4)(5) in force at 1.4.2003 except in relation to W. by [S.I. 2003/124, art. 4](#)

### 37 Payments in respect of dismissal, etc.

- (1) It shall be for the governing body of a maintained school to determine—
- (a) whether any payment should be made by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and
  - (b) the amount of any such payment.
- (2) Subsection (1) does not, however, apply in relation to a payment which the local education authority are required to make—
- (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or
  - (b) under any statutory provision.
- (3) The local education authority—

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- (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and
  - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (4) Subject to subsection (7), costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school 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 in writing (whether before or after the retirement occurs) that they shall not be so met.
- (5) Subject to subsection (7), costs incurred 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 a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).
- (7) Where a local education authority incur costs—
  - (a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or
  - (b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes,they shall recover those costs from the governing body except in so far as the authority agree with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.
- (8) Any amount payable by virtue of subsection (7) by the governing body of a maintained school to the local education authority shall not be met by the governing body out of the school's budget share for any financial year.
- (9) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.
- (10) Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of subsection (7).
- (11) Subsections (1) to (6) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998 (c. 31).
- (12) In this section “community purposes” means the purposes of the provision of facilities or services under section 27.



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

- C6** S. 37 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 3(1)**

**Commencement Information**

- I35** S. 37 in force at 1.10.2002 for E. by [S.I. 2002/2439](#), **art. 3** (with transitional provisions and savings in [art. 4, Sch.](#))

**38 Communication with schools**

- (1) In considering whether to issue any guidance or other circular to the governing bodies or head teachers of maintained schools in the exercise of functions relating to education, the Secretary of State and the National Assembly for Wales shall have regard to—
- (a) the desirability of providing information about good educational practice, while recognising the professional expertise of teachers,
  - (b) the benefits that are expected to result from the issue of the guidance or other circular, and
  - (c) the desirability of avoiding—
    - (i) the sending of excessive material to governing bodies or head teachers, and
    - (ii) the imposition of excessive administrative burdens on governing bodies or head teachers.
- (2) In pursuance of the duty in subsection (1) the Secretary of State shall in respect of each academic year—
- (a) prepare a report listing—
    - (i) documents sent by him during the year to all governing bodies of maintained schools in England or to all head teachers of such schools, and
    - (ii) documents (not falling within sub-paragraph (i)) sent by him during the year to all governing bodies of maintained schools in England of a particular kind or to all head teachers of such schools of a particular kind, and
  - (b) lay a copy of the report before each House of Parliament, and include within it comparative statistics in respect of each of the two preceding academic years on documents falling within this subsection sent out by him.
- (3) In pursuance of the duty in subsection (1) the National Assembly for Wales shall in respect of each academic year prepare and publish a report listing—
- (a) documents sent by the Assembly during the year to all governing bodies of maintained schools in Wales or to all head teachers of such schools, and
  - (b) documents (not falling within paragraph (a)) sent by the Assembly during the year to all governing bodies of maintained schools in Wales of a particular kind or to all head teachers of such schools of a particular kind.
- (4) The documents referred to in subsections (2) and (3) do not include any document sent by the Secretary of State or the National Assembly for Wales—
- (a) otherwise than in the exercise of functions relating to education, or

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- (b) at the request of the person to whom it is sent.
- (5) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall list within it previous relevant documents issued by the Secretary of State or the National Assembly for Wales and shall state clearly those documents which are superseded by the current document.
- (6) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall state clearly the persons for whom any advice and guidance is intended.
- (7) In this section “academic year” means a period beginning with 1st August and ending with the next 31st July.

#### Commencement Information

**I36** S. 38(1)(2)(4)-(7) in force at 1.10.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 5](#) (with [Sch. para. 1](#), [Sch. para. 1A](#)) (which transitional provisions in [Sch. para. 1](#) are revoked (1.4.2004) by [S.I. 2004/571](#), [art. 3](#), [Sch.](#); and in [Sch. para. 1A](#) are inserted (10.9.2005) by [S.I. 2005/2570](#), [art. 2\(a\)](#))

## 39 Interpretation of Chapter 1

- (1) In this Chapter—
- “budget share” has the same meaning as in Part 2 of the School Standards and Framework Act 1998 (c. 31);
  - “federation” and “federated school” have the meaning given by section 24;
  - “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;
  - “maintained nursery school” means a nursery school which is maintained by a local education authority and is not a special school;
  - “statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).
- (2) In this Chapter—
- (a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school’s budget share, and
  - (b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.

#### Commencement Information

**I37** S. 39 partly in force; s. 39 not in force at Royal Assent, see s. 216; s. 39(2) and the definition of “budget share” in s. 39(1) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

**I38** S. 39(1) in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 4](#)

**I39** S. 39(1) in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

**Status:** Point in time view as at 18/11/2003. This version of this part contains provisions that are not valid for this point in time.

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## 40 Amendments of Part 2 of School Standards and Framework Act 1998

Schedule 3 (which contains amendments of Part 2 of the School Standards and Framework Act 1998 relating to the power conferred by section 27 and to the engagement of staff otherwise than as employees) shall have effect.

### Commencement Information

- I40** S. 40 partly in force; s. 40 not in force at Royal Assent, see s. 216; s. 40 in force for certain purposes for E. at 2.9.2002 by [S.I. 2002/2002, art. 4](#)
- I41** S. 40 in force at 1.9.2003 so far as not already in force except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I42** S. 40 in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718, art. 5, Sch. Pt. II](#)

## CHAPTER 2

### FINANCING OF MAINTAINED SCHOOLS

#### *Determination of budgets*

## 41 Determination of specified budgets of LEA

(1) After section 45 of the School Standards and Framework Act 1998 there is inserted—

### “45A Determination of specified budgets of LEA

- (1) For the purposes of this Part, a local education authority’s “LEA budget” for a financial year is the amount appropriated by the authority for meeting all expenditure by the authority in that year of a class or description prescribed for the purposes of this subsection.
- (2) For the purposes of this Part, a local education authority’s “schools budget” for a financial year is the amount appropriated by the authority for meeting all expenditure by the authority in that year of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools).
- (3) For the purposes of this Part, a local education authority’s “individual schools budget” for a financial year is the amount remaining after deducting from the authority’s schools budget for that year such planned expenditure by the authority in respect of that year as they may determine should be so deducted in accordance with regulations.
- (4) Regulations under subsection (3) may—
  - (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority’s schools budget;
  - (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely—
    - (i) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations, and

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- (ii) such other conditions as may be so specified or determined.
- (5) Before the [<sup>F1</sup>end of January][<sup>F1</sup>schools budget deadline] in any financial year, a local education authority shall—
- (a) determine the proposed amount of their schools budget for the following financial year, and
  - (b) give notice of their determination to the Secretary of State and to the governing body of every school maintained by the authority.
- [<sup>F2</sup>(6) For the purposes of this section and section 45B “the schools budget deadline” is—
- (a) the end of December in the case of an authority in England, and
  - (b) the end of January in the case of an authority in Wales.”]

(2) In section 45 of that Act (maintained schools to have budget shares), in subsection (1) for “46” there is substituted “ 45A ”.

(3) Section 46 of that Act (determination of LEA’s local schools budget and individual schools budget) shall cease to have effect.

#### Textual Amendments

- F1** Words in s. 41 substituted (18.11.2003 for E.) by [Local Government Act 2003 \(c. 26\), s. 128\(6\), Sch. 7 para. 66\(3\)](#); S.I. 2003/2938, art. 3(a) (with art. 8, Sch.)
- F2** Words in s. 41 inserted (18.11.2003 for E.) by [Local Government Act 2003 \(c. 26\), s. 128\(6\), Sch. 7 para. 66\(4\)](#); S.I. 2003/2938, art. 3(a) (with art. 8, Sch.)

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

- C7** S. 41(2) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\), reg. 4](#)

#### Commencement Information

- I43** S. 41 partly in force; s. 41 not in force at Royal Assent, see s. 216; s. 41(1)(3) in force for E. at 1.10.2002 by [S.I. 2002/2439, art. 3](#) (with transitional provisions and savings in [art. 4, Sch.](#))

## 42 Power of Secretary of State to set minimum schools budget

After section 45A of the School Standards and Framework Act 1998 (c. 31) there is inserted—

### “45B Power of Secretary of State to set minimum schools budget for LEA

- (1) If it appears to the Secretary of State that, in all the circumstances, the amount proposed in a notice under section 45A(5) as a local education authority’s schools budget for a financial year is inadequate, the Secretary of State may, within the period of fourteen days beginning with the [<sup>F3</sup>day on which the notice was given][<sup>F3</sup>schools budget deadline in the financial year preceding that financial year], give the authority a notice under subsection (4) or (5).
- (2) If at the [<sup>F4</sup>end of January][<sup>F4</sup>schools budget deadline] in any financial year a local education authority have failed to give the Secretary of State a notice under section 45A(5) in relation to their schools budget for the following

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financial year, the Secretary of State may, at any time after [<sup>F5</sup>the end of that January][<sup>F5</sup>that deadline], give the authority a notice under subsection (4) or (5).

- (3) In this section and section 45C “the year under consideration” means the financial year to which the notice under section 45A(5) relates or, in a case falling within subsection (2), the financial year in relation to which such a notice ought to have been given.
- (4) A notice under this subsection is a notice determining the minimum amount of the authority’s schools budget for the year under consideration.
- (5) A notice under this subsection is a notice which—
  - (a) specifies the amount which the Secretary of State would have determined as the minimum amount of the authority’s schools budget for the year under consideration if he had acted under subsection (4), and
  - (b) states the Secretary of State’s intention to determine the minimum amount of the authority’s schools budget for the following financial year.
- (6) A notice under subsection (4) or (5) must include a statement of the Secretary of State’s reasons for giving the notice.
- (7) The Secretary of State may act under different subsections in relation to different authorities.

#### **45C Effect of notice under section 45B(4)**

- (1) The local education authority may, within the period of fourteen days beginning with the date of a notice under section 45B(4), give the Secretary of State notice of their objection to his determination, giving reasons for their objection.
- (2) Where the local education authority have given notice of their objection under subsection (1), the notice under section 45B(4) shall cease to have effect, but the Secretary of State may by order prescribe the minimum amount of the authority’s schools budget for the year under consideration.
- (3) The amount prescribed under subsection (2) must not be greater than the amount specified in the notice under section 45B(4).
- (4) An order under subsection (2) may relate to two or more authorities.
- (5) No order under subsection (2) may be made in relation to one or more authorities in England unless a draft of the order has been laid before and approved by a resolution of the House of Commons.
- (6) Where—
  - (a) a notice under section 45B(4) has been given to a local education authority and no notice of objection has been given during the period specified in subsection (1), or
  - (b) an order has been made under subsection (2),
 the local education authority shall determine a schools budget for the year under consideration which is not less than the amount specified in relation to the authority in the notice or order.”

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#### Textual Amendments

- F3** Words in s. 42 substituted (18.11.2003 for E.) by [Local Government Act 2003 \(c. 26\), s. 128\(6\), Sch. 7 para. 66\(5\)](#); [S.I. 2003/2938, art. 3\(a\)](#) (with [art. 8, Sch.](#))
- F4** Words in s. 42 substituted (18.11.2003 for E.) by [Local Government Act 2003 \(c. 26\), s. 128\(6\), Sch. 7 para. 66\(6\)\(a\)](#); [S.I. 2003/2938, art. 3\(a\)](#) (with [art. 8, Sch.](#))
- F5** Words in s. 42 substituted (18.11.2003 for E.) by [Local Government Act 2003 \(c. 26\), s. 128\(6\), Sch. 7 para. 66\(6\)\(b\)](#); [S.I. 2003/2938, art. 3\(a\)](#) (with [art. 8, Sch.](#))

#### Commencement Information

- I44** S. 42 partly in force; s. 42 not in force at Royal Assent, see s. 216; s. 42 in force for E. at 1.10.2002 by [S.I. 2002/2439, art. 3](#) (with transitional provisions and savings in [art. 4, Sch.](#))

### 43 Schools forums

After section 47 of the School Standards and Framework Act 1998 (c. 31) there is inserted—

#### *“Schools forums*

##### **47A Schools forums**

- (1) Every local education authority shall in accordance with regulations establish for their area before such date as may be prescribed a body, to be known as a schools forum, representing the governing bodies and head teachers of schools maintained by the authority and, if the authority so determine, also representing such bodies as the authority may from time to time in accordance with regulations determine.
- (2) Subsection (1) does not apply in relation to the Common Council of the City of London or the Council of the Isles of Scilly.
- (3) The purpose of a schools forum is to advise the relevant authority on such matters relating to the authority’s schools budget as may be prescribed by regulations under section 45A(3) or by regulations under this subsection.
- (4) Regulations under section 45A(3) or under subsection (3) may include provision requiring a relevant authority to have regard to advice given by their schools forum, or requiring a relevant authority to consult their schools forum in relation to prescribed matters or before taking prescribed decisions.
- (5) Regulations may make provision as to the constitution, meetings and proceedings of a schools forum.
- (6) Regulations made by virtue of subsection (5) may include provision enabling the Secretary of State in prescribed circumstances to remove from membership of a schools forum any non-schools member.
- (7) Regulations may make provision with respect to expenses of a schools forum.
- (8) Except as provided by regulations, the expenses of a schools forum shall be defrayed by the relevant authority.

**Status:** Point in time view as at 18/11/2003. This version of this part contains provisions that are not valid for this point in time.

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(9) In this section—

“non-schools member”, in relation to a schools forum, means a member other than a schools member;

“relevant authority”, in relation to a schools forum, means the local education authority by whom the forum is established;

“schools member”, in relation to a schools forum, means a member elected to represent governing bodies or head teachers of schools maintained by the relevant authority.”

#### Commencement Information

**I45** S. 43 partly in force; s. 43 not in force at Royal Assent, see s. 216; s. 43 in force for E. at 2.9.2002 by S.I. 2002/2002, art. 4

**I46** S. 43 in force at 1.11.2003 for W. by S.I. 2003/1718, art. 6, Sch. Pt. III

### *Accounts and financial statements*

#### **44 Accounts of maintained schools**

- (1) Regulations may require the governing body of a maintained school—
  - (a) to keep prescribed accounts and prescribed records in relation to the accounts,
  - (b) to prepare prescribed financial statements or reports,
  - (c) to comply with prescribed conditions with respect to audit, and
  - (d) to send copies of the accounts, together with such financial statements or reports as may be prescribed, to the local education authority.
- (2) The regulations may—
  - (a) impose on the governing body requirements relating to—
    - (i) resources held by the governing body, and
    - (ii) other resources whose application is controlled by the governing body, and
  - (b) provide that for the purposes of the regulations any resources which, although not held by the governing body, appear to the local education authority to be available for the purposes of the school or for the purposes of the maintenance of any part of the school premises are to be taken to fall within paragraph (a) (ii) unless the governing body satisfy the local education authority that the governing body do not control the application of those resources.
- (3) For the purposes of subsection (2), any powers exercisable by the head teacher are to be taken to be exercisable by the governing body.
- (4) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may require a local education authority to give him or it copies of accounts or other documents received by the authority from a governing body in accordance with regulations under this section.
- (5) The regulations may prescribe the form or manner in which, the period by reference to which, and the time within which, anything required by the regulations must be done.



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- (6) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may—
- (a) publish information provided in accordance with regulations under this section in such form and manner as he or it considers appropriate,
  - (b) make arrangements for such information to be published in such form and manner, and by such persons, as he or it may specify for the purposes of this section, and
  - (c) make regulations requiring local education authorities to publish prescribed categories of such information, together with such supplementary information as may be prescribed, in such form and manner as may be prescribed.
- (7) In this section “maintained school” has the same meaning as in Chapter 1.

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**Commencement Information**

**I47** S. 44(1)-(6) in force at 1.4.2003 except in relation to W. by S.I. 2003/124, art. 4

**I48** S. 44(7) in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

#### **45 Financial statements**

- (1) Section 52 of the School Standards and Framework Act 1998 (c. 31) (financial statements by local education authority) is amended as follows.
- (2) In subsection (2), the word “and” at the end of paragraph (b) is omitted and after paragraph (c) there is inserted “and
- (d) accountable resources held, received or expended in the year by any person in relation to a school maintained by the authority.”
- (3) After subsection (2) there is inserted—
- “(2A) In subsection (2)(d), “accountable resources”, in relation to a maintained school, means any resources which are not provided by the local education authority but in respect of which an obligation is imposed on the governing body of the school by virtue of regulations under section 44 of the Education Act 2002 (accounts of maintained schools).”

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**Commencement Information**

**I49** S. 45 in force at 1.4.2003 except in relation to W. by S.I. 2003/124, art. 4

### **CHAPTER 3**

#### **ADMISSIONS, EXCLUSIONS AND ATTENDANCE**

##### *Admission arrangements*

#### **46 Admission forums**

After section 85 of the School Standards and Framework Act 1998 there is inserted—

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## *“Admission forums*

### **85A Admission forums**

- (1) A local education authority shall in accordance with regulations establish for their area a body, to be known as an admission forum, for the purpose of—
  - (a) advising the authority on such matters connected with the exercise of the authority’s functions under this Chapter as may be prescribed, and
  - (b) advising the admission authorities for maintained schools in the area for which the forum is established on—
    - (i) such matters connected with the determination of admission arrangements, and
    - (ii) such other matters connected with the admission of pupils, as may be prescribed.
- (2) The authority may establish sub-committees of the forum.
- (3) Regulations may make provision—
  - (a) as to the constitution, meetings and proceedings of an admission forum and of any such sub-committee,
  - (b) as to the manner in which advice is to be given by a forum, and
  - (c) as to the establishment by local education authorities of joint admission forums.
- (4) The bodies mentioned in paragraphs (a) and (b) of subsection (1) shall have regard, in carrying out their functions, to any relevant advice given to them by an admission forum under that subsection.
- (5) The local education authority shall make arrangements for the forum (and any sub-committee established under subsection (2)) to be provided with accommodation and with such services as the authority consider appropriate.”

#### **Commencement Information**

**I50** S. 46 partly in force; s. 46 not in force at Royal Assent, see s. 216; s. 46 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

**I51** S. 46 in force at 20.1.2003 except in relation to W. by S.I. 2002/2952, art. 2

## **47 Admission numbers**

- (1) For section 86(5) of the School Standards and Framework Act 1998 (c. 31) (no prejudice for the purposes of subsection (3)(a) to be taken to arise from the admission of a number of pupils not exceeding the relevant standard number or the admission number, whichever is greater) there is substituted—
  - “(5) No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit

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to the school in that year; but this subsection does not apply if the conditions set out in subsection (5A) are met in relation to the school and the school year.

(5A) Those conditions are—

- (a) that the school is one at which boarding accommodation is provided for pupils; and
- (b) that the determination under section 89 by the admission authority of the admission arrangements which are to apply for that year includes the determinations mentioned in paragraphs (a) and (b) of section 89A(2).

(5B) Where the conditions set out in subsection (5A) are met in relation to a maintained school and a school year, no prejudice shall be taken to arise for the purposes of subsection (3)(a) from either of the following—

- (a) the admission to the school in that year as boarders of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year as boarders;
- (b) the admission to the school in that year otherwise than as boarders of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year otherwise than as boarders.”

(2) After section 89 of that Act there is inserted—

**“89A Determination of admission numbers**

- (1) A determination under section 89 by the admission authority for a maintained school of the admission arrangements which are to apply for a school year shall include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.
- (2) Such a determination under section 89 may also, if the school is one at which boarding accommodation is provided for pupils, include—
  - (a) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders, and
  - (b) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders.
- (3) Regulations may make provision about the making of any determination required by subsection (1), and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to—
  - (a) any prescribed method of calculation, and
  - (b) any other prescribed matter.
- (4) References in this section to the determination of any number include references to the determination of zero as that number.”

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### Commencement Information

**I52** S. 47 partly in force; s. 47 not in force at Royal Assent, see s. 216; s. 47 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

## 48 Co-ordination of admission arrangements

After section 89A of the School Standards and Framework Act 1998 (c. 31) there is inserted—

### “89B Co-ordination of admission arrangements

- (1) Regulations may require a local education authority—
  - (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and
  - (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area.
- (2) Subject to subsection (3), the Secretary of State may make, in relation to the area of a local education authority and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area.
- (3) A scheme may not be made under subsection (2) in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences—
  - (a) a scheme formulated by the local education authority in accordance with subsection (1) is adopted in the prescribed manner by the persons mentioned in paragraph (b) of that subsection, and
  - (b) the authority provide the Secretary of State with a copy of the scheme and inform him that the scheme has been so adopted.
- (4) The Secretary of State may by regulations require local education authorities to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under this Chapter.
- (5) Regulations may provide—
  - (a) that each local education authority shall secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in their area to offer or refuse a child admission to the school shall be communicated to the parent of the child except on a single day, designated by the local education authority, in each year, or
  - (b) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school to offer or refuse a child admission to the school shall not be communicated to the parent of the child except on a prescribed day.

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(6) In this section—

“academic year” means a period commencing with 1st August and ending with the next 31st July;

“qualifying scheme” means a scheme that meets prescribed requirements.

### **89C Further provision about schemes adopted or made by virtue of section 89B**

- (1) Regulations may make provision about the contents of schemes under section 89B(2), including provision about the duties that may be imposed by such schemes on—
  - (a) local education authorities, and
  - (b) the admission authorities for maintained schools.
- (2) Regulations may provide that where a local education authority or the governing body of a maintained school have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 89B(1)(a), sections 496 and 497 of the Education Act 1996 shall apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.
- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school falls to be made in prescribed circumstances, the decision shall, if a scheme adopted or made by virtue of this section so provides, be made by the local education authority regardless of whether they are the admission authority for the school.
- (4) Before proposing a scheme for adoption under section 89B(1) a local education authority shall comply with such requirements as to consultation as may be prescribed.
- (5) Regulations under subsection (4) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.
- (6) Before making a scheme under section 89B(2) in relation to the area of any local education authority, the Secretary of State shall consult—
  - (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (7) A scheme made under section 89B(2) may be varied or revoked by the Secretary of State.”

#### **Commencement Information**

**I53** S. 48 partly in force; s. 48 not in force at Royal Assent, see s. 216; s. 48 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

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#### 49 **Repeal of power to make certain special arrangements for preserving religious character**

Section 91 of the School Standards and Framework Act 1998 (c. 31) (special arrangements to preserve religious character of foundation or voluntary aided school) shall cease to have effect.

##### **Commencement Information**

**I54** S. 49 wholly in force at 19.12.2002; s. 49 not in force at Royal Assent, see s. 216; s. 49 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I (with transitional provisions and savings in art. 7)

#### 50 **Admission appeals**

In section 94 of the School Standards and Framework Act 1998 (appeal arrangements: general) for subsection (5) there is substituted—

“(5) An appeal pursuant to any arrangements made under this section shall be to an appeal panel constituted in accordance with regulations.

(5A) Regulations may make provision about the making of appeals pursuant to such arrangements, including provision—

- (a) as to the procedure on such appeals,
- (b) for the payment by the local education authority of allowances to members of an appeal panel, and
- (c) as to the grounds on which an appeal panel may, in the case of an appeal to which subsection (5B) applies, determine that a place is to be offered to the child concerned.

(5B) This subsection applies to any appeal against a decision made on the ground that prejudice of the kind referred to in section 86(3)(a) would arise as mentioned in subsection (4) of that section.

(5C) Regulations made by virtue of subsection (5A)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an appeal panel.”

##### **Commencement Information**

**I55** S. 50 partly in force; s. 50 not in force at Royal Assent, see s. 216; s. 50 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch. para. 3)

**I56** S. 50 in force at 20.1.2003 except in relation to W. by S.I. 2002/2952, art. 2 (with Sch. para. 3)

#### 51 **Further amendments relating to admission arrangements**

Schedule 4 (which contains further amendments relating to admission arrangements) shall have effect.

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### Commencement Information

- I57** S. 51 partly in force; s. 51 not in force at Royal Assent, see s. 216; s. 51 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in Sch.) and in force for E. insofar as not already in force at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)
- I58** S. 51 in force at 20.1.2003 so far as not already in force except in relation to W. by S.I. 2002/2952, art. 2

## Exclusion of pupils

### 52 Exclusion of pupils

- (1) The head teacher of a maintained school may exclude a pupil from the school for a fixed period or permanently.
- (2) The teacher in charge of a pupil referral unit may exclude a pupil from the unit for a fixed period or permanently.
- (3) Regulations shall make provision—
- requiring prescribed persons to be given prescribed information relating to any exclusion under subsection (1) or (2),
  - requiring the responsible body, in prescribed cases, to consider whether the pupil should be reinstated,
  - requiring the local education authority to make arrangements for enabling a prescribed person to appeal, in any prescribed case, to a panel constituted in accordance with the regulations against any decision of the responsible body not to reinstate a pupil, and
  - as to the procedure on appeals.
- (4) Regulations under this section may also make provision—
- for the payment by the local education authority of allowances to members of a panel constituted in accordance with the regulations,
  - requiring a person or body exercising functions under subsection (1) or (2) or under the regulations to have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales,
  - requiring local education authorities to give prescribed information to the Secretary of State or the Assembly, as the case may be, and
  - in relation to any other matter relating to the exercise of the powers conferred by subsections (1) and (2).
- (5) In subsection (3), “the responsible body” means—
- in relation to exclusion from a maintained school, the governing body of the school, and
  - in relation to exclusion from a pupil referral unit, such person as may be prescribed;

and, in relation to any time when no responsible body is prescribed in relation to permanent exclusion from a pupil referral unit, subsection (3) shall have effect in relation to such an exclusion with the omission of paragraph (b) and as if the decision



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referred to in paragraph (c) were the decision of the teacher in charge of the unit permanently to exclude the pupil.

- (6) Regulations made by virtue of subsection (4)(a) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70) (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of a panel constituted in accordance with regulations under this section.
- (7) Regulations shall make provision enabling a prescribed person, in any prescribed case, to appeal to a panel constituted in accordance with the regulations against any decision made after 31st August 1994 under paragraph 7 of Schedule 1 to the Education Act 1996 (c. 56), or any enactment repealed by that Act, in relation to the permanent exclusion of a pupil from a pupil referral unit; and the provision that may be made by regulations made by virtue of this subsection in relation to any such decision includes any provision that could after the commencement of subsections (2) to (4) be made in relation to a decision falling within subsection (3)(c).
- (8) Regulations under this section which—
- (a) relate to exclusions from pupil referral units (whether before or after the passing of this Act), and
  - (b) are made before the repeal by this Act of the existing enactments is fully in force,
- may provide for any provision made by or under the existing enactments to have effect in relation to exclusions from pupil referral units with such modifications as may be prescribed.
- (9) In subsection (8) “the existing enactments” means sections 64(2) and (3) and 65 to 67 of, and Schedule 18 to, the School Standards and Framework Act 1998 (c. 31).
- (10) In this section “exclude”, in relation to the exclusion of a child from a school or pupil referral unit, means exclude on disciplinary grounds (and “exclusion” shall be construed accordingly).
- (11) In this section “maintained school” has the same meaning as in Chapter 1.

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

- C8** S. 52 modified (E.) (temp. from 20.1.2003) by [The Education Act 2002 \(Modification of Provisions\) \(No. 2\) \(England\) Regulations 2002 \(S.I. 2002/2953\)](#), [reg. 5](#)

**Commencement Information**

- I59** S. 52 partly in force; s. 52(7)-(11) in force at Royal Assent, see s. 216(1); s. 52(1)-(6) in force for E. at 20.1.2003 by [S.I. 2002/2952](#), [art. 2](#) (with savings and transitional provisions in [art. 3](#), [Sch. para. 4](#))
- I60** S. 52(1)-(6) in force at 20.1.2003 except in relation to W. by [S.I. 2002/2952](#), [art. 2](#) (with [Sch. para. 4](#))
- I61** S. 52(11) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

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VALID FROM 01/06/2004

### *Attendance targets*

#### **53 Attendance targets**

- (1) Section 63 of the School Standards and Framework Act 1998 (power to make regulations for targets relating to unauthorised absences) is amended as follows.
- (2) In subsections (1) and (3), the word “unauthorised” is omitted.
- (3) After subsection (3) there is inserted—
  - “(3A) Provision made by regulations under this section may relate to—
    - (a) absences which are authorised pursuant to regulations under section 434 of the Education Act 1996, or
    - (b) absences which are not so authorised, or
    - (c) both.”
- (4) In subsection (4), the definition of “unauthorised absence” is omitted.

**Status:**

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**Changes to legislation:**

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