



# Education Reform Act 1988

## 1988 CHAPTER 40

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

#### SCHOOLS

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

#### GRANT-MAINTAINED SCHOOLS

##### *Duty of Secretary of State to maintain certain schools*

#### **52 Duty of Secretary of State to maintain certain schools. **E+W****

- (1) Subject to the provisions of this Chapter, and the granting of approval to proposals submitted under section 62(2) below in accordance with the provisions of that section, it shall be the duty of the Secretary of State to maintain any school conducted by a governing body incorporated under this Chapter for the purpose of conducting the school.
- (2) For the purposes of this Chapter, the duty of the Secretary of State to maintain a school is a duty to make such payments in respect of the expenses of maintaining the school as are required by the following provisions of this Chapter.
- (3) A school to which the Secretary of State's duty under this section for the time being applies shall be known as a grant-maintained school.
- (4) This Chapter provides for the incorporation of a governing body constituted in accordance with this Chapter for the purpose of conducting any school if—
  - (a) proposals for that purpose (referred to below in this Chapter, in relation to a school, as proposals for acquisition of grant-maintained status) are published as required under this Chapter;
  - (b) the school is eligible for grant-maintained status on the date of publication of the proposals; and

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- (c) the proposals are approved by the Secretary of State.
- (5) Subject to the following provisions of this section, any county or voluntary school is for the purposes of this Chapter eligible for grant-maintained status.
- (6) ..... F1
- (8) A county or voluntary school is not eligible for grant-maintained status for the purposes of this Chapter if proposals by the local education authority to cease to maintain the school have been published under section 12(1)(c) of the 1980 Act and either—
  - (a) the proposals have been approved by the Secretary of State under that section; or
  - (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section.
- (9) A voluntary school is not eligible for grant-maintained status for the purposes of this Chapter if notice of the governors’ intention to discontinue the school has been served under section 14 of the 1944 Act and has not been withdrawn.

**Textual Amendments**  
 F1 S. 52(6)(7) repealed by S.I. 1990/2031, art. 3

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**Modifications etc. (not altering text)**  
 C1 S. 52(3): definition of "grant maintained" applied (14.10.1991) by Children Act (c. 41, SIF 20), s. 71(16), Sch. 9 para. 3(3) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

*Government, powers and conduct*

**53 Constitution of the governing body of a grant-maintained school. E+W**

- (1) For every grant-maintained school there shall be an instrument providing for the constitution of the governing body incorporated under this Chapter for the purpose of conducting the school (to be known as the instrument of government).
- (2) The instrument of government shall be made by order of the Secretary of State.
- (3) The instrument of government shall comply with any trust deed relating to the school.
- (4) The instrument of government for a grant-maintained school shall provide for the governing body to include—
  - (a) five parent governors;
  - (b) at least one but not more than two teacher governors;
  - (c) the person who is for the time being the head teacher (as a governor ex officio); and
  - (d) either—
    - (i) in the case of a school which was a county school immediately before it became a grant-maintained school, first governors; or

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- (ii) in the case of a school which was a voluntary school immediately before it became a grant-maintained school, foundation governors.
- (5) The instrument of government for a grant-maintained school shall provide—
- (a) for a number of first or (as the case may require) foundation governors which will secure that they outnumber the other governors; and
  - (b) for at least two of those governors to be (on the date or dates on which they respectively take office) parents of a registered pupil at the school.
- (6) The instrument of government for such a school shall provide—
- (a) for the Secretary of State to have power to appoint not more than two additional governors if it appears to him that the governing body of the school are not adequately carrying out their responsibilities with respect to the conduct or management of the school; and
  - (b) for the appropriate appointing authority to have power, during any period when any additional governors appointed by the Secretary of State by virtue of paragraph (a) above are in office, to appoint a number of additional first or foundation governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- In paragraph (b) above “the appropriate appointing authority” means, in relation to first governors, the governing body and, in relation to foundation governors, the person entitled to appoint the foundation governors on the governing body or, if more than one person is so entitled, the persons so entitled acting jointly.
- (7) The instrument of government for such a school which is required to have first governors shall provide for the Secretary of State to have power to make such provision as he thinks fit for filling vacancies for such governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (8) Subject to section 64 of this Act (which provides for the constitution of the governing body of such a school on initial incorporation of that body under this Chapter), in this Chapter—
- “first governor”, in relation to any such school, means a person of the kind mentioned in subsection (9) below who is appointed to be a member of the governing body of the school by the governing body;
  - “foundation governor”, in relation to any such school, means a person appointed otherwise than by a local education authority for the purpose of securing, so far as practicable, that the established character of the school at the time when it becomes a grant-maintained school is preserved and developed and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it;
  - “parent governor”, in relation to any such school, means (subject to section 54 of this Act) a person who is elected as a member of the governing body of the school by parents of registered pupils at the school and who is himself such a parent at the time when he is elected; and
  - “teacher governor”, in relation to any such school, means a person who is elected as a member of the governing body of the school by teachers at the school and who is himself such a teacher at the time when he is elected.
- (9) The kind of person who may be appointed as a first governor of a grant-maintained school is a person appearing to the persons appointing him to be a member of the

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local community who is committed to the good government and continuing viability of the school.

- (10) In the case of a school which is required to have first governors, the instrument of government shall provide for it to be the duty of the governing body, in appointing such governors, to secure that those governors include persons appearing to them to be members of the local business community.
- (11) The governing body of a grant-maintained school as first constituted in accordance with section 64 of this Act is referred to below in this Chapter, in relation to the school, as the initial governing body in any case where different provision is made in relation to the governing body as first so constituted from the provision made in relation to the governing body as constituted in accordance with this section.
- (12) Accordingly, except where reference is specifically made to the initial governing body or to the governing body as constituted in accordance with this section, references in this Chapter to the governing body of such a school are references to the governing body whether constituted in accordance with that section or this section.

#### 54 **Appointment of parent governors by the governing body.** E+W

- (1) The instrument of government for every grant-maintained school shall provide for the required number of parent governors to be made up by parent governors appointed by the other members of the governing body if—
  - (a) one or more vacancies for parent governors are required to be filled by election; and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies.
- (2) The instrument of government for every such school shall provide for it to be the duty of governors, in appointing any parent governor under any provision made by virtue of this section—
  - (a) to appoint a person who is the parent of a registered pupil at the school, where it is reasonably practicable to do so; and
  - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.

#### 55 **Proceedings of the governing body and allowances to members.** E+W

- (1) The proceedings of the governing body of a grant-maintained school shall not be invalidated by—
  - (a) any vacancy among their number; or
  - (b) any defect in the election or appointment of any governor.
- (2) Subject to the provisions of this Chapter and any instrument made under this Chapter, the governing body of a grant-maintained school may regulate their own procedure.
- (3) The instrument of government for any grant-maintained school may make provision as to the meetings and proceedings of the governing body.
- (4) The provision that may be made by virtue of subsection (3) above includes in particular provision—
  - (a) as to the election of a chairman and vice-chairman;

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- (b) as to the establishment, constitution, meetings and proceedings of committees;
- (c) for the delegation of functions of the governing body in such circumstances as may be specified in the instrument of government to committees established by that body or to any member of that body;
- (d) as to the procedure (including any quorum) when business is transacted by governors of a particular category; and
- (e) as to the procedure for the election of members of the governing body and for the determination of any questions arising in connection with, or matters relating to, any such elections;

and the provision mentioned in paragraph (b) above may provide for a committee to include persons who are not members of the governing body.

- (5) The governing body of a grant-maintained school shall have power to pay to their members such travelling, subsistence or other allowances as may be determined in accordance with a scheme made by the governing body and approved by the Secretary of State.
- (6) Any scheme made under subsection (5) above may be varied or revoked by a subsequent scheme so made.
- (7) The application of the seal of the governing body of a grant-maintained school shall be authenticated by the signature of the chairman of the governing body or of some other member authorised either generally or specially by the governing body to act for that purpose together with that of any other member.
- (8) Every document purporting to be an instrument made or issued by or on behalf of the governing body of any such school and to be duly executed under the seal of the governing body, or to be signed or executed by a person authorised by the governing body to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

## **56** **Governors' tenure of office.** **E+W**

- (1) The instrument of government for every grant-maintained school shall provide for each governor of an elected category to hold office for a term of four years.
- (2) Subject to subsection (3) below, the instrument of government for every such school which is required to have foundation governors—
  - (a) may provide for any foundation governorship to be held ex officio by the holder of an office named in the instrument; and
  - (b) shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (3) An additional foundation governor appointed by virtue of provision made in the instrument of government in accordance with section 53(6)(b) of this Act may not be appointed to hold office ex officio.
- (4) Subject to subsection (5) below, the instrument of government for every grant-maintained school shall provide for each first governor or (as the case may be) for each foundation governor other than one who is a governor ex officio to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument of government.

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- (5) The term of office of any additional first or foundation governor appointed by virtue of provision made in the instrument of government in accordance with section 53(6)(b) of this Act shall be such term (not being more than five years) as may be specified in the terms of that governor's appointment.
- (6) The preceding provisions of this section shall not be taken to prevent a governor from being elected or appointed for a further term, or from being disqualified, by virtue of subsection (8) below or any provision made by virtue of subsection (9) below, for continuing to hold office.
- (7) Any governor of a grant-maintained school may at any time resign his office.
- (8) A person who is a member of the teaching or other staff at a grant-maintained school which is required to have first governors shall be disqualified for holding office as such a governor on the governing body of that school.
- (9) The instrument of government for a grant-maintained school may make provision as to the circumstances in which persons are to be disqualified for holding office as governors of the school.
- (10) Any foundation governor of a grant-maintained school may be removed from office by the person or persons who appointed him.

## 57 Powers of the governing body. **E+W**

- (1) The governing body of a grant-maintained school shall have power to conduct a school of the same description, subject to any changes authorised under section 89 or 91 of this Act, as the school immediately before it became a grant-maintained school.
- (2) The school conducted by the governing body of a grant-maintained school shall be regarded for the purposes of subsection (1) above as remaining of the same description as the school immediately before it became a grant-maintained school if no changes are made in the character or premises of the school which require to be authorised under either of those sections.
- (3) Subject to subsection (4) below and to any provision made by the instrument or articles of government of the school, the governing body of such a school shall have power to do anything which appears to them to be necessary or expedient for the purpose of or in connection with the conduct of the school as for the time being constituted, including in particular power—
  - (a) to assume the conduct as from the incorporation date in relation to the school of the school as constituted immediately before that date, and for that purpose to receive any property, rights and liabilities transferred to the governing body under section 74 of this Act;
  - (b) to acquire and dispose of land and other property;
  - (c) to enter into contracts, including in particular contracts for the employment of teachers and other staff;
  - (d) to invest any sums not immediately required for the purposes of meeting the expenses of conducting the school or any liability transferred to the governing body under section 74 of this Act; and
  - (e) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for any such purposes.

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- (4) Subsection (3) above does not confer power to borrow money; and the power under paragraph (b) of that subsection to dispose of land—
- (a) does not include power to grant any mortgage, charge or other security in respect of any land; and
  - (b) may only be exercised with the written consent of the Secretary of State.
- (5) Without prejudice to subsection (3) above, but subject to any provision made by the instrument or articles of government of the school, the governing body of a grant-maintained school shall also have power to provide education at the school which is neither primary nor secondary education, provided that
- [<sup>F2</sup>(a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years; or
  - (b)]
- they do so as agents for a local education authority under arrangements made with the authority for the purpose.

#### Textual Amendments

- F2** S. 57(5)(a) and word inserted (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 13\(1\)](#); S.I. 1992/831, art. 2, [Sch.4](#).

## 58 Articles of government. **E+W**

- (1) For every grant-maintained school there shall be an instrument in accordance with which the school is to be conducted (to be known as the articles of government).
- (2) The articles of government shall be made by order of the Secretary of State.
- (3) The articles of government shall comply with any trust deed relating to the school.
- (4) The articles of government for a grant-maintained school may include provision as to the establishment by the governing body of committees or other bodies of persons for the purpose of or in connection with the performance in relation to the school of such functions as may be determined by or under the articles.
- (5) The articles of government for a grant-maintained school shall include in particular provision—
- (a) with respect to the functions to be exercised in relation to the school by—
    - (i) the Secretary of State;
    - (ii) the governing body;
    - (iii) any committee or other body established in accordance with any provision made by virtue of subsection (4) above; and
    - (iv) any other persons specified in or determined under the articles;and the delegation of such functions by those on whom by or under the articles they are imposed or conferred;
  - (b) with respect to arrangements for the admission of pupils to the school and the policy to be followed in deciding admissions;
  - (c) for securing the discharge by the governing body and the head teacher of duties imposed on them under Chapter I of this Part;



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- (d) with respect to arrangements for appeals, in such circumstances as may be provided by the articles, to an appeal committee constituted in accordance with the instrument of government against any decision or action taken by the governing body, or by any persons authorised under the articles to take any decision or action of the kind in question, in relation to—
  - (i) admissions of pupils to the school; or
  - (ii) the permanent exclusion of any pupil from the school;
 and for enabling the governing body to make joint arrangements for that purpose with the governing body of one or more other grant-maintained schools;
- (e) with respect to arrangements for the consideration and disposal of complaints relating to any matter concerning the curriculum followed within the school including, in particular, the discharge by the governing body of duties imposed on them under Chapter I of this Part;
- (f) requiring the governing body to publish, for each school year, particulars of—
  - (i) the arrangements for the admission of pupils to the school; and
  - (ii) the procedures applicable under the articles and any further arrangements made by them in respect of appeals by parents against any such decision or action as is mentioned in paragraph (d) above in relation to the admission of pupils to the school;
- (g) with respect to disciplinary rules and procedures applicable to members of the staff of the school and procedures for affording to them opportunities for seeking redress of any grievances relating to their employment;
- (h) with respect to arrangements—
  - (i) for affording to any member of the staff an opportunity of making representations with respect to any proposal to dismiss him by the governing body or any persons authorised under the articles to dismiss him, including (if he so wishes) oral representations to such person or persons as may be appointed for the purpose;
  - (ii) for requiring the governing body or any such persons to have regard to any representations made by him before taking any decision to dismiss him; and
  - (iii) for affording to any member of staff whom it has been decided to dismiss an opportunity of appealing against that decision before any action is taken to implement it;
- (i) requiring the governing body, when considering the content of the secular curriculum for the school, to have regard to any representations with regard to that curriculum—
  - (i) which are made to them by any persons connected with the community served by the school; or
  - (ii) which are made to them by the chief officer of police and are connected with his responsibilities;
- (j) requiring the governing body—
  - (i) to prepare, once in every school year, a report in such form, and containing such information, as may be required by the articles; and
  - (ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school and all persons employed at the school are given (free of charge) a copy of the report and that copies of the report are available for inspection (at all reasonable times and free of charge) at the school;



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- (k) requiring the governing body, subject to any exceptions provided for in the articles, to hold a meeting once in every school year which is open to—
  - (i) all parents of registered pupils at the school; and
  - (ii) such other persons as the governing body may invite; and
- (l) with respect to—
  - (i) the procedure to be followed and the matters to be considered at any such meeting and the determination of any questions arising in connection with any such meeting; and
  - (ii) the taking by the governing body or any other persons of such action as may be required by the articles for the purposes of or in connection with the meeting or any resolutions passed at the meeting.

**59 Instrument and articles of government: procedure. E+W**

- (1) The instrument and articles of government for a grant-maintained school may be varied or revoked by order of the Secretary of State.
- (2) Before making, varying or revoking any instrument or articles of government for such a school, the Secretary of State shall consult the governing body of the school.

*Procedure for acquisition of grant-maintained status*

**60 Initiation of procedure for acquisition of grant-maintained status. E+W**

- (1) Subject to subsection (5) below, in the case of any school which is eligible for grant-maintained status, a ballot of parents on the question of whether grant-maintained status should be sought for the school shall be held in accordance with section 61 of this Act if either—
  - (a) the governing body decide by a resolution passed at a meeting of that body (“the first resolution”) to hold such a ballot and confirm that decision, after the consultations required by subsection (3) below, by a resolution (“the second resolution”) passed at a subsequent meeting of the governing body held not less than twenty-eight days, nor more than forty-two days, after that at which the first resolution was passed; or
  - (b) they receive a written request to hold such a ballot which meets the requirements of subsection (2) below.
- (2) Those requirements are that the request must be signed (or otherwise endorsed in such manner as the governing body may require) by a number of parents of registered pupils at the school equal to at least twenty per cent. of the number of registered pupils at the school on the date on which the request is received.
- (3) Immediately following the passing of the first resolution the governing body shall consult—
  - (a) the local education authority by whom the school is maintained; and
  - (b) if the school is a voluntary school, the trustees of the school;with respect to their decision to hold a ballot.
- (4) Subject to subsection (5) below, on the passing of the second resolution required for the purposes of subsection (1)(a) above or (as the case may be) on receipt of any such

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request as is mentioned in subsection (1)(b) above, it shall be the duty of the governing body—

- (a) to secure that a ballot is held in accordance with section 61 of this Act—
    - (i) within the period of three months beginning with the date of the second resolution; or
    - (ii) within the period of two months beginning with the date immediately following the period of twenty-eight days beginning with the date on which the request was received; and
  - (b) to give notice in writing that such a ballot is to be held to the local education authority by whom the school is maintained and also, if the school is a voluntary school, to the trustees of the school.
- (5) Subsections (1) and (4) above shall not apply if in the case of the school in question a ballot has been held in accordance with section 61 of this Act within the period of twelve months ending with the date immediately preceding the date of the second resolution or (as the case may be) the date on which the request is received, unless the Secretary of State gives consent in writing for a new ballot to be held.
- (6) A request such as is mentioned in subsection (1)(b) above shall be taken as having been received by a governing body if given or sent to the chairman of the governing body or to the clerk to the governing body.
- (7) Subject to subsection (8) below, it shall be the duty of the governing body of any school which is eligible for grant-maintained status, at the request of any parent of a registered pupil at the school, to make available to the parent for inspection (at all reasonable times and free of charge) at the school, and to supply the parent with a copy of, a list containing the name and address of every person who is known to the governing body to be such a parent if the request is made—
- (a) in connection with any proposal that a ballot should be held in accordance with section 61 of this Act; or
  - (b) where the governing body are under a duty by virtue of this section or section 61(8) of this Act to secure that such a ballot is held, in connection with the holding of the ballot.
- (8) A governing body shall not disclose to a parent under subsection (7) above the name and address of any person who has requested the governing body in writing not to disclose that information under that subsection; and accordingly the name and address of that person shall be excluded from the list there mentioned.
- (9) A governing body who in pursuance of subsection (7) above supply copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.
- (10) For the purposes of this section, it shall be for the governing body to determine any question whether a person is a parent of a registered pupil at the school.

## 61 **Ballot of parents.** E+W

- (1) Where the governing body of any school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section, they shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed ("the prescribed body").
- (2) The arrangements shall provide for a secret postal ballot.

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- (3) It shall be the duty of the governing body to secure that the prescribed body take such steps as are reasonably practicable to secure that every person who is eligible to vote in the ballot is—
- (a) given such information about the procedure for and consequences of acquisition of grant-maintained status for a school as may reasonably be expected to enable him to form a proper judgment as to whether or not such status should be sought for the school, including, in particular, the information required by subsection (4) below;
  - (b) informed that he is entitled to vote in the ballot; and
  - (c) given an opportunity to do so.
- (4) The information referred to in subsection (3)(a) above is—
- (a) a general explanation of the provisions of this Chapter relating to—
    - (i) the procedure for acquisition of grant-maintained status for a school;
    - (ii) the constitution and powers of the governing body of such a school; and
    - (iii) the conduct and funding of such a school;
  - (b) the number of teacher and first or (as the case may be) foundation governors that will be specified in any proposals for acquisition of grant-maintained status for the school if the result of the ballot is in favour of seeking such status;
  - (c) the names and addresses of the persons, so far as ascertained, who would be required by section 66 of this Act to be named in any such proposals required to be published under section 62 of this Act in respect of the school as at a specified date by reference to which the information required for the purposes of this paragraph was compiled for the purposes of the ballot;
  - (d) an explanation of the requirements applicable under this Chapter in any case where the determination of an initial governor of any elected category is pending (within the meaning of section 62) on the date of publication of any such proposals;
  - (e) an explanation of—
    - (i) the circumstances in which a person named in any such proposals as a proposed initial governor may be replaced under section 68 of this Act; and
    - (ii) the procedure applicable under this Chapter in each case in which such a replacement is required; and
  - (f) the date that will be included in any such proposals made in respect of the school if the result of the ballot is in favour of seeking grant-maintained status as the proposed date of implementation of the proposals.
- (5) Where the governing body of any school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section they shall make available to every person employed to work at the school for inspection (at all reasonable times and free of charge) at the school a document containing the information required by subsections (3)(a) and (4) above to be given to persons eligible to vote in the ballot.
- (6) In determining the arrangements they require to be made by the prescribed body for the purposes of the ballot the governing body shall take into account any guidance given by the Secretary of State as to the arrangements he considers appropriate for ballots held in accordance with this section.

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- (7) The Secretary of State shall publish any guidance given by him for the purposes of this section in such manner as he thinks fit.
- (8) Where in the case of any ballot held in respect of a school in accordance with this section other than one held by virtue of this subsection (“the first ballot”) the total number of votes cast in the ballot by persons eligible to vote in the ballot is less than fifty per cent. of the number of persons so eligible, it shall be the duty of the governing body to secure that another ballot (“the second ballot”) is held before the end of the period of fourteen days beginning with the date immediately following that on which the result of the first ballot is determined.
- (9) In any case to which subsection (8) above applies—
- (a) the result of the first ballot shall be disregarded for the purposes of section 62(1) of this Act; and
  - (b) subject to subsection (10) below, the provisions of this section shall apply as they apply in a case where the governing body of a school are under a duty by virtue of section 60 of this Act to secure that a ballot is held in accordance with this section.
- (10) In any such case—
- (a) those provisions shall apply with the omission of subsections (3)(a) and (4); and
  - (b) subsection (5) above shall be read as if the information there referred to were the information given for the purposes of the first ballot.
- (11) If it appears to the Secretary of State—
- (a) that any requirements of this section have been contravened in the case of any ballot held in purported compliance with this section;
  - (b) that the arrangements for any ballot so held did not accord with any guidance given by him for the purposes of this section; or
  - (c) that the governing body of any school have acted unreasonably in the discharge of their duties under this section;
- he may by notice in writing given to the governing body declare the ballot void and require that a fresh ballot be held in accordance with this section before such date as he may specify in the notice.
- (12) Where a ballot is held in respect of a school in accordance with this section, the Secretary of State may pay, or reimburse the governing body of the school in respect of, the whole or any part of the expenses incurred by the governing body in respect of the ballot.
- (13) The making of any payments under subsection (12) above shall be subject to such conditions as the Secretary of State thinks fit.
- (14) For the purposes of this section, a person is eligible to vote in any ballot held in respect of a school in accordance with this section if he is—
- (a) known to the governing body to be a parent of a registered pupil at the school; and
  - (b) named as a parent of such a pupil in the register kept in accordance with the requirements of the 1944 Act in the case of the school, as that register has effect on the date immediately following the end of the period of fourteen days beginning with the date on which the relevant resolution or request was passed or received by the governing body.

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- (15) For the purposes of paragraph (a) of subsection (14) above, it shall be for the governing body to determine any question whether a person is a parent of a registered pupil at the school; and in paragraph (b) of that subsection the reference to the relevant resolution or request is a reference to the resolution or request (mentioned in section 60(4) of this Act) by reference to which the ballot is required to be held or, where the ballot is a second ballot under subsection (8) above, by reference to which the first ballot was required to be held.

## **62 Proposals for acquisition of grant-maintained status. E+W**

- (1) This section applies where in the case of any school which is eligible for grant-maintained status the result of a ballot held in accordance with section 61 of this Act shows a simple majority of votes cast in the ballot by persons eligible to vote in the ballot (within the meaning of that section) in favour of seeking grant-maintained status for the school.
- (2) It shall be the duty of the governing body of the school, before the end of the period of six months beginning with the date on which the result of the ballot is determined, to—
- publish proposals for acquisition of grant-maintained status for the school in accordance with section 63 of this Act or regulations made under that section and any notice with respect to the proposals for the time being required by that section or by such regulations; and
  - submit to the Secretary of State a copy of the published proposals.
- (3) Without prejudice to any specific duty imposed on them under any other provision of this Chapter, it shall be the duty of the governing body, within that period, to take such preparatory steps as may be reasonably required with a view to discharging their duty under subsection (2) above.
- (4) Proposals published under this section may not be withdrawn except with the consent of the Secretary of State and subject to such conditions as he may impose (which may, in particular, require further proposals to be published under this section within such period as the Secretary of State may specify).
- (5) There shall be annexed to the proposals a statement which shall—
- state the result of the ballot, giving the number of votes cast in favour of seeking grant-maintained status for the school and the number of votes cast against;
  - state whether the school is a county, controlled, aided or special agreement school;
  - briefly describe the existing character of the school;
  - state the number of pupils for whom accommodation can be provided at the school; and
  - give such other information as may be prescribed;
- and the statement so annexed shall be treated for the purposes of subsection (2) above as forming part of the proposals.
- (6) The published proposals shall be accompanied by a statement which shall—
- describe the requirements of this Chapter with respect to the membership of the governing body of a grant-maintained school;

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- (b) if the determination of an initial governor of any elected category is pending on the date of publication of the proposals, explain the requirements applicable under this Chapter in any such case;
  - (c) state that the head teacher will be a governor of the school ex officio if the school becomes a grant-maintained school;
  - (d) explain—
    - (i) the circumstances in which a person named in the proposals in accordance with section 66 of this Act as a proposed initial governor may be replaced under section 68 of this Act; and
    - (ii) the procedure applicable under this Chapter in each case in which such a replacement is required;
  - (e) explain the effect of subsection (10) below; and
  - (f) give such other information as may be prescribed.
- (7) The proposals shall—
- (a) specify the number of initial teacher and first or foundation governors proposed for the initial governing body in accordance with section 64 of this Act;
  - (b) give the relevant particulars with respect to the persons required by section 66 of this Act to be named in the proposals as proposed initial governors;
  - (c) if the determination of an initial governor of any elected category is pending on the date of publication of the proposals, state that fact and refer to the explanation given in the statement accompanying the proposals in accordance with subsection (6)(b) above;
  - (d) give the name of the person who is the head teacher of the school on the date of publication of the proposals;
  - (e) give the name under which it is proposed that the initial governing body should be incorporated under this section (referred to below in this section as the proposed corporate name);
  - (f) describe the arrangements it is proposed to adopt, if the school becomes a grant-maintained school, with respect to—
    - (i) the admission of pupils to the school;
    - (ii) the provision to be made at the school for pupils who have special educational needs; and
    - (iii) the induction of newly qualified teachers at the school and the in-service training and professional development of teachers at the school; and
  - (g) specify the proposed date of implementation of the proposals.
- (8) In giving the information required by subsection (7)(f)(i) above with respect to proposed admission arrangements, the proposals shall in particular specify the number of pupils intended to be admitted to the school in each relevant age group in the first school year beginning on or after the proposed date of implementation of the proposals.
- (9) For the purposes of subsection (8) above—
- (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.

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- (10) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the proposals to the Secretary of State—
- (a) any ten or more local government electors;
  - (b) the trustees (if any) of the school concerned;
  - (c) the governing body of any school affected by the proposals; and
  - (d) any local education authority concerned.
- (11) The Secretary of State—
- (a) may reject any proposals under this section; or
  - (b) where a school in respect of which such proposals are made is eligible for grant-maintained status on the date of publication of the proposals, may approve them without modification or, after consultation with the existing governing body, approve them with such modifications as he thinks desirable.
- (12) Where the Secretary of State rejects any proposals under this section in the case of a school which is eligible for grant-maintained status on the date of his determination, he may require the governing body of the school to publish further proposals under this section within such period as he may specify.
- (13) Where the Secretary of State imposes any requirement under subsection (4) or (12) above the provisions of this section (with the exception of subsection (1)) shall apply as they apply in the case mentioned in subsection (1), but subject to the following modifications, that is to say—
- (a) the reference in subsection (2) above to the period of six months beginning with the date on which the result of the ballot is determined shall be taken as a reference to the period specified by the Secretary of State for submission of the further proposals required; and
  - (b) the reference in subsection (5)(a) above to the ballot shall be read as referring to the last ballot held in accordance with section 61 of this Act in relation to the school before that requirement was imposed.
- (14) If proposals in respect of any school published under this section are approved by the Secretary of State, the initial governing body constituted in accordance with the proposals shall on the proposed date of implementation of the proposals become a body corporate under the proposed corporate name.
- (15) For the purposes of this section, the determination of an initial governor of an elected category is pending on the date of publication of any proposals under this section with respect to a school if—
- (a) an election required under section 66 of this Act for determining a governor of any such category for the initial governing body; or
  - (b) an election or appointment required for filling any outstanding vacancy for a governor of any such category on the existing governing body which falls under that section to be taken into account in determining whether an election such as is mentioned in paragraph (a) above is required;
- has not been held or made by that date.
- (16) In this Chapter, “the relevant particulars” means, in relation to any person named as a proposed initial governor in any proposals under this section—
- (a) his name and address;
  - (b) whether he is to be a parent, teacher, first or foundation governor;



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- (c) if he is to be a parent or teacher governor, the term of office that applies in his case under section 65 of this Act; and
- (d) if he is to be a first or foundation governor, the term of office proposed for him in accordance with subsection (4) of that section or, in the case of a foundation governor who is to hold office ex officio, the fact that he is to do so.

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

**C2** S. 62(5) amended (1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2, SIF 41:1\)](#), s. 5; [Archbishops' Instrument 1991 No. 1](#) (made 26.7.1991)

**63 Publication of proposals and notice with respect to proposals. E+W**

- (1) Where section 62 of this Act applies in the case of any school, the proposals for acquisition of grant-maintained status for the school shall for the purposes of subsection (2) of that section be published—
  - (a) by being posted at or near any main entrance to the school;
  - (b) by being posted in at least one conspicuous place within the area served by the school; and
  - (c) by being made available for inspection at all reasonable times at the school or at any other place within that area to which members of the public may conveniently have access.
- (2) There shall be published in at least one newspaper circulating in that area a notice with respect to the proposals containing such summary of the proposals as the governing body may think appropriate including, in particular, the information required by subsection (3) below.
- (3) A notice under subsection (2) above shall—
  - (a) state that proposals for acquisition of grant-maintained status have been published and submitted to the Secretary of State for approval;
  - (b) specify the proposed date of implementation of the proposals;
  - (c) state that, if the proposals are so approved, the school will on that date—
    - (i) cease to be maintained by the local education authority; and
    - (ii) be conducted by a newly constituted governing body and maintained by grants paid by the Secretary of State;
  - (d) give the information required to be specified in the proposals by section 62(7)(f)(i) of this Act;
  - (e) state where the proposals may be inspected; and
  - (f) explain the effect of section 62(10) of this Act.
- (4) The Secretary of State may by regulations make such provision (whether by way of modification of, or substitution for, the provisions of subsections (1) to (3) above) as he considers appropriate with respect to—
  - (a) the publication of proposals for the acquisition of grant-maintained status; and
  - (b) the publication of such notice (if any) with respect to such proposals as may be prescribed.
- (5) References in this section to proposals for acquisition of grant-maintained status include references to the statement required by section 62(5) of this Act to be annexed to the proposals.

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## **64 Constitution of the initial governing body of a grant-maintained school. E+W**

- (1) The initial governing body of a grant-maintained school shall consist of—
  - (a) five parent governors;
  - (b) such number (not being less than one nor more than two) of teacher governors as may be specified in the proposals for acquisition of grant-maintained status for the school;
  - (c) the person who is for the time being the head teacher, as a governor ex officio; and
  - (d) either—
    - (i) in the case of a school which was a county school immediately before it became a grant-maintained school, such number of first governors as may be so specified; or
    - (ii) in the case of a school which was a voluntary school immediately before it became a grant-maintained school, such number of foundation governors as may be so specified.
- (2) The number of first governors or foundation governors specified in the proposals for acquisition of grant-maintained status for a school shall be a number which secures that those governors outnumber the other governors.
- (3) In the case of the initial governing body of a grant-maintained school, the first governors or (as the case may be) the foundation governors shall include at least two persons who on the date of publication of the proposals for acquisition of grant-maintained status are parents of a registered pupil at the school in respect of which the proposals are made.
- (4) Where the initial governing body of such a school is required to include first governors, those governors shall include persons who appear to those selecting them under section 66 of this Act to be members of the local business community.
- (5) In any provision of this Chapter relating to the initial governing body of a grant-maintained school—
  - “first governor” means a person selected under section 66 or nominated under section 68 of this Act who would qualify in accordance with section 53 of this Act for appointment as a first governor to the governing body as constituted in accordance with that section;
  - “foundation governor” means a person so selected or nominated for the purpose for which a foundation governor would be required in accordance with that section to be appointed to the governing body as so constituted;
  - “parent governor” means—
    - (a) a person who, immediately before the incorporation date in relation to the grant-maintained school, is a parent governor (within the meaning of the 1986 Act) in relation to the school in respect of which the proposals for acquisition of grant-maintained status are made; or
    - (b) a person elected under section 66 or elected or nominated under section 68 of this Act to hold office as a parent governor on the initial governing body; and
  - “teacher governor” means—
    - (a) a person who, immediately before the incorporation date in relation to the grant-maintained school, is a teacher governor (within the meaning

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of the 1986 Act) in relation to the school in respect of which the proposals for acquisition of grant-maintained status are made; or

- (b) a person elected under section 66 or elected or nominated under section 68 of this Act to hold office as a teacher governor on the initial governing body.

**65 Terms of office of initial governors. E+W**

- (1) A governor of an elected category on the initial governing body of a grant-maintained school who was a governor of that category on the governing body of the school immediately before the incorporation date in relation to the grant-maintained school shall hold office for the remainder of his term of office on the former governing body.
- (2) A governor of an elected category on the initial governing body of any such school who was elected under section 66 or elected or nominated under section 68 of this Act to hold office as such shall hold office for a term of four years.
- (3) A person may hold office as a foundation governor on the initial governing body of any such school ex officio; but a foundation governor who is a governor ex officio by virtue of this subsection shall cease to be a governor on the coming into force of an instrument of government for the school unless the office by virtue of which he is such a governor is named in the instrument by virtue of section 56(2)(a) of this Act.
- (4) A first governor or foundation governor on the initial governing body of any such school, other than a foundation governor who is a governor ex officio, shall hold office for such term (not being less than five nor more than seven years) as may be specified as his proposed term of office in the proposals for acquisition of grant-maintained status for the school.

**66 Determination of the initial governors. E+W**

- (1) This section applies to any school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 62 of this Act.
- (2) Where in the case of any such school the number of eligible governors of an elected category is the same as the number of governors of that category proposed for the initial governing body of the school, the eligible governors of that category shall be named in the proposals as the proposed initial governors of that category.
- (3) Where in the case of any such school the number of eligible governors of an elected category is greater than the number of governors of that category so proposed, such of the eligible governors of that category as may be determined by agreement between them or, in default of agreement, by drawing lots, shall be named in the proposals as the proposed initial governors of that category.
- (4) It shall be the duty of the existing governing body of any such school to secure that the persons required to be named in the proposals in accordance with subsection (3) above are determined before the date of publication of the proposals.
- (5) Where in the case of any such school the number (if any) of eligible governors of an elected category, together with the number (if any) of outstanding vacancies for governors of that category on the existing governing body, is less than the number of governors of that category proposed for the initial governing body of the school, it shall be the duty of the authority responsible for election arrangements under the

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1986 Act in relation to the school to secure that such number of persons are elected to hold office on the initial governing body as governors of the category concerned as is required to make up the number of governors of that category so proposed.

- (6) In any case to which subsection (5) above applies, the persons to be named in the proposals as the proposed initial governors of the category concerned shall be—
  - (a) any eligible governor of that category; and
  - (b) any person elected under this section to hold office as a governor of that category on the initial governing body before the date of publication of the proposals.
- (7) In the case of any such school which is required to have first governors, the existing governing body shall before the date of publication of the proposals select the persons who are to be the first governors on the initial governing body; and the persons so selected shall be named in the proposals as the proposed initial first governors.
- (8) In the case of any such school which is required to have foundation governors, the persons who are to be the foundation governors on the initial governing body shall be selected before that date by the person or persons named in the instrument of government relating to the existing governing body as being entitled to appoint foundation governors (within the meaning of the 1944 Act) to that governing body; and the persons so selected shall be named in the proposals as the proposed initial foundation governors.
- (9) It shall be the duty of the existing governing body to secure that any selection required by subsection (8) above is carried out in accordance with that subsection.

## 67 Provisions supplementary to section 66. **E+W**

- (1) Subject to subsection (2) below, where in the case of any school to which section 66 of this Act applies the members of the existing governing body include any person—
  - (a) who holds office as a governor of an elected category; and
  - (b) whose term of office is due to come to an end before the proposed date of implementation or at any time within the period of six months beginning with that date;the governing body may by notice in writing to that person terminate his term of office on a date specified in the notice.
- (2) The governing body may only terminate a person's term of office under this section if—
  - (a) his term of office is due to come to an end after the proposed date of publication of the proposals; or
  - (b) it would not in their view be reasonably practicable to fill the vacancy arising from the termination of his term of office by the procedure applicable under the 1986 Act in the time available between the date on which it is due to come to an end and the proposed date of publication of the proposals.
- (3) Without prejudice to section 8(2) of the 1986 Act (instrument of government for county, controlled or maintained special school to provide for four year term of office for governors other than ex officio governors), the term of office of a person elected or appointed in accordance with the requirements of the 1986 Act and any requirements of the instrument of government of the school to fill a vacancy arising by virtue of subsection (1) above shall be four years.

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- (4) It shall be the duty of the authority responsible for election arrangements under the 1986 Act in relation to any school to which section 66 of this Act applies to secure that—
- (a) any election or appointment required for filling any vacancy on the existing governing body occurring before the date of publication of the proposals (including any vacancy arising by virtue of subsection (1) above); and
  - (b) any election required by that section;
- is held or made if possible before that date, and otherwise as soon as possible after that date.
- (5) Where the selection of any person to be a foundation governor on the initial governing body of any such school falls in accordance with section 66(8) of this Act to be made by two or more persons, it shall be made by those persons acting jointly; and if those persons fail to agree on the selection, it shall be made by the Secretary of State or in accordance with any direction given by him.
- (6) Before selecting, or giving any direction as to the selection of, a person to be a foundation governor on the initial governing body of any such school where religious education in accordance with the tenets of a particular religious denomination is given to any pupils in pursuance of section 27 or 28 of the 1944 Act (religious education at voluntary schools), the Secretary of State shall consult the persons appearing to him to be the appropriate authority of the denomination concerned.

**68 Modification of proposed membership of initial governing body before incorporation. E+W**

- (1) This section applies where proposals for acquisition of grant-maintained status are pending in respect of any school.
- (2) For the purposes of this Chapter, such proposals shall be regarded as pending in respect of any school at any time on or after the date of publication under section 62 of this Act of proposals for acquisition of grant-maintained status for the school—
- (a) until either the proposals are withdrawn or the Secretary of State makes his determination with respect to the proposals; and
  - (b) where he approves the proposals, until the proposed date of implementation.
- (3) Where a person named in the proposals as a proposed first or foundation governor—
- (a) dies;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;
- the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body, where the former proposed governor was a proposed first governor, and by the foundation governors (within the meaning of the 1944 Act) on the existing governing body, where he was a proposed foundation governor.
- (4) Where a person named in the proposals as a proposed governor of an elected category who was elected under section 66 of this Act or this section—
- (a) dies;

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- (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
- (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

it shall be the duty of the authority responsible for election arrangements under the 1986 Act in relation to the school to secure that a person is elected to hold office on the initial governing body in place of the former proposed governor if it is reasonably practicable to do so in the time available before the proposed date of implementation.

- (5) If in any case to which subsection (4) above applies the Secretary of State is satisfied that it would not be reasonably practicable to hold an election in accordance with that subsection in the time available, he shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.
- (6) Where at any time a person named in the proposals as a proposed governor of an elected category who was so named by virtue of being an eligible governor of that category in relation to the school—
  - (a) ceases to hold office on the existing governing body;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to any person nominated by the existing governing body who is at that time an eligible governor of that category who is neither named in the proposals nor prospectively disqualified as mentioned in paragraph (b) above.

- (7) Where in any case to which subsection (6)(a) above applies—
  - (a) there is no such eligible governor at the time in question; and
  - (b) the Secretary of State is satisfied that it would not be reasonably practicable to fill the vacancy on the existing governing body by the procedure applicable under the 1986 Act in the time available before the proposed date of implementation;

the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.

- (8) Where in any case to which subsection (6)(b) or (c) above applies there is no such eligible governor at the time in question, subsection (4) above shall apply as if the former proposed governor had been elected under section 66 of this Act.
- (9) Where a person named in the proposals as a proposed governor of an elected category who was nominated by the existing governing body under this section—
  - (a) dies;
  - (b) becomes prospectively disqualified for holding office as such a governor on the initial governing body; or
  - (c) notifies the existing governing body that he is no longer willing to serve on the initial governing body;



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the Secretary of State shall substitute for the particulars in the proposals relating to the former proposed governor the relevant particulars with respect to a person nominated by the existing governing body.

**69 Provisions supplementary to section 68. E+W**

- (1) A nomination required to be made for the purposes of subsection (3) of section 68 of this Act by the foundation governors (within the meaning of the 1944 Act) on the existing governing body may be made by a simple majority of those governors present and voting at a meeting held for the purpose (with the chairman of the meeting having a second or casting vote in the event of an equality of votes).
- (2) For the purposes of that section, a person named in the proposals as a proposed initial governor of any category shall be treated as becoming prospectively disqualified for holding office as such a governor on the initial governing body by virtue of the occurrence in relation to him of any event by virtue of which he would have become disqualified for holding such office by virtue of—
  - (a) section 56(8) of this Act; or
  - (b) any provision made by an instrument of government for the school made before the proposed date of implementation;
 if the event had occurred on or after the proposed date of implementation.
- (3) A person nominated by the existing governing body under subsection (5), (7) or (9) of section 68 of this Act—
  - (a) must at the time of his nomination be a parent of a registered pupil at the school, if the former proposed governor was a proposed parent governor; and
  - (b) must at the time of his nomination be a teacher at the school, if the former proposed governor was a proposed teacher governor.
- (4) It shall be the duty of the existing governing body—
  - (a) to give the Secretary of State written notification of the occurrence of any event within subsection (3), (4), (6) or (9) of that section;
  - (b) to make any nomination required for the purposes of that section; and
  - (c) to give to the Secretary of State written notification of the relevant particulars with respect to the person nominated.

**70 Elections required for determining initial governors: supplementary provisions. E+W**

- (1) Where a person is required by section 66 or 68 of this Act to be elected to hold office as a parent governor on the initial governing body of a grant-maintained school, he shall be elected by parents of registered pupils at the school and must himself be such a parent at the time when he is elected.
- (2) Where a person is required by either of those sections to be elected to hold office as a teacher governor on the initial governing body of such a school, he shall be elected by teachers at the school and must himself be such a teacher at the time when he is elected.
- (3) Section 15(2) to (6) of the 1986 Act (qualifications and arrangements for election of parent governors or teacher governors) shall apply in relation to the election of a person under either of those sections to hold office as a parent governor or a teacher



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governor on the initial governing body of such a school as they apply in relation to the election of a parent governor or teacher governor to the existing governing body.

- (4) Where the authority responsible for election arrangements under the 1986 Act in relation to any school to which section 66 of this Act applies is not the existing governing body, it shall be the duty of the existing governing body to notify that authority in writing of the proposed date of publication of the proposals for acquisition of grant-maintained status for the school.
- (5) Where the authority so responsible in relation to any school to which section 66 or 68 of this Act applies is not the existing governing body, it shall be the duty of the existing governing body to notify that authority in writing of—
  - (a) any election which appears to them to be required under either of those sections in relation to the initial governing body of the proposed grant-maintained school; and
  - (b) any vacancy on the existing governing body for a governor of any category where the number of eligible governors of that category on the existing governing body is for the time being less than the number of governors of that category proposed for the initial governing body.
- (6) Where any election or appointment required for determining a proposed initial governor of any category for a grant-maintained school is held or made at any time when any proposals for acquisition of grant-maintained status are pending in respect of the school, it shall be the duty of the existing governing body to give the Secretary of State written notification of the relevant particulars with respect to the person elected or appointed.
- (7) The Secretary of State shall modify the proposals by including in them any particulars notified to him under this section (in substitution, where appropriate, for any particulars they supersede).
- (8) For the purposes of this section, an election or appointment is required for determining a proposed initial governor of any category for any grant-maintained school if—
  - (a) in the case of an election, it is required under section 66 or 68 of this Act in relation to the initial governing body of that school; or
  - (b) in the case of an election or appointment, it is required for filling a vacancy on the existing governing body of that school for a governor of that category and the number of eligible governors of that category on the existing governing body is for the time being less than the number of governors of that category proposed for the initial governing body.

## 71 Eligible governors for the purposes of Chapter IV. **E+W**

In relation to any proposals for acquisition of grant-maintained status in respect of any school, a person who is a governor of an elected category in relation to the school is an eligible governor of that category for the purposes of this Chapter if—

- (a) his term of office as such a governor is due to end after the proposed date of implementation of the proposals; and
- (b) he has notified the existing governing body that he is willing to serve on the initial governing body to be constituted in accordance with the proposals and has not withdrawn that notification.

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## 72 Initial government and conduct: further provisions **E+W**

- (1) The first instrument and articles of government for a grant-maintained school required by sections 53 and 58 of this Act shall be made not later than the end of the period of six months beginning with the incorporation date in relation to the school and may be made before the beginning of that period to come into force on that date.
- (2) In relation to any time on or after that date and before the end of that period when no instrument or articles of government are in force in respect of any such school, the Secretary of State may by direction make with respect to the school any provision he considers appropriate for dealing with any matters relating to the government or conduct of the school that could be dealt with by an instrument or articles of government made under this Chapter.
- (3) Any direction under subsection (2) above in relation to any school—
  - (a) shall be given in writing; and
  - (b) may be given at any time on or after the date on which the proposals for acquisition of grant-maintained status for the school are approved.
- (4) At any time when any such direction is in force in relation to any school, the school shall be governed and conducted in accordance with the provisions of that direction.
- (5) In this Chapter—
  - (a) the reference in section 57(3) to any provision made by the instrument or articles of government of a grant-maintained school shall include a reference to any provision made by a direction under subsection (2) above in relation to such a school; and
  - (b) the reference in section 69(2)(b) to any provision made by an instrument of government for such a school made before the proposed date of implementation shall include a reference to any provision made by such a direction given before that date.
- (6) Schedule 5 to this Act has effect with respect to the transition to grant-maintained status of a school in respect of which proposals for acquisition of such status have been approved and the initial government and conduct of a grant-maintained school.

*Proposals under section 12 or 13 of the 1980 Act in respect of schools eligible for grant-maintained status*

## 73 Proposals for alteration, etc., of schools eligible for grant-maintained status. **E+W**

- (1) Before formulating in respect of any school which is eligible for grant-maintained status any proposals for a purpose mentioned in section 12(1)(c) or (d) of the 1980 Act (proposals to cease to maintain certain schools or to make significant changes in the character, or enlargements of the premises of, a county school), the local education authority shall consult the governing body of the school.
- (2) No proposals shall be published under section 12 or 13 of that Act in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved.
- (3) Subsection (4) below applies in any case where either—

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- (a) after proposals for acquisition of grant-maintained status have been published in respect of any school which is eligible for grant-maintained status but before those proposals are withdrawn or determined proposals under section 12 or 13 of that Act in respect of the school are first published for the purposes of that section; or
  - (b) after proposals under section 12 or 13 of that Act in respect of any such school have first been published for the purposes of that section but before those proposals are withdrawn or determined the governing body of the school publish proposals for acquisition of grant-maintained status for the school.
- (4) In any case to which this subsection applies—
  - (a) the proposals under section 12 or 13 of that Act shall require the approval of the Secretary of State where they would not do so apart from this provision; and
  - (b) the Secretary of State shall consider both sets of proposals together but shall not determine the proposals under section 12 or 13 of that Act until he has made his determination with respect to the proposals for acquisition of grant-maintained status.
- (5) If in any such case the Secretary of State approves the proposals for acquisition of grant-maintained status, he shall reject the proposals under section 12 or 13 of that Act in respect of the school.
- (6) Where proposals under section 12 or 13 of that Act in respect of any school which is eligible for grant-maintained status have first been published for the purposes of that section and have not been withdrawn or determined, the Secretary of State—
  - (a) may determine a period of suspension in relation to the proposals; and
  - (b) may from time to time by a further determination extend any period of suspension previously determined under this subsection.
- (7) A determination under subsection (6) above may be made in relation to all cases to which that subsection applies or in relation to any particular case; and a determination under that subsection which extends the period of suspension previously so determined may be made before or after the expiry of that period.
- (8) Where it is for the local education authority to determine proposals to which a period of suspension determined under subsection (6) above applies, the proposals shall not be determined until the end of that period; and in such a case section 12(7) of the 1980 Act (which requires the authority to make such a determination within four months after the submission of proposals to the Secretary of State) shall have effect as if for the reference to the submission of the proposals to the Secretary of State there were substituted a reference to the end of that period.
- (9) Where proposals to which a period of suspension determined under that subsection applies require the approval of the Secretary of State, he may suspend his consideration of the proposals—
  - (a) where proposals for acquisition of grant-maintained status for the school are published before the end of the period of suspension, until the end of the period of two months beginning with the date of publication of those proposals; or
  - (b) in any other case, until the end of the period of suspension.
- (10) Where the Secretary of State makes a determination under subsection (6) above in relation to proposals under section 12 or 13 of the 1980 Act made in respect of any school, he shall give written notification of the determination—

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- (a) to the governing body of the school; and
  - (b) in the case of proposals under section 12 of that Act, to the local education authority.
- (11) The power of the Secretary of State under subsection (6) above shall not apply in relation to proposals under section 12 or 13 of that Act published on or after such date as may be appointed for the purposes of this section by order made by the Secretary of State.
- (12) Where—
- (a) proposals under section 12 or 13 of that Act with respect to a change in the character or an enlargement of the premises of any school have been approved; and
  - (b) the school becomes a grant-maintained school before those proposals have been implemented;
- those proposals shall be treated for the purposes of this Chapter as if they had been published and approved under section 89 of this Act.

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

**C3** S. 73(2)(12) modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

*Transfer of property and staff, etc.*

- 74** **Transfer of property, etc., to governing body of grant-maintained school.** **E+W**
- (1) Subject to the following provisions of this section and section 198 of this Act, on the incorporation date in relation to a grant-maintained school—
- (a) the property, rights and liabilities of the former maintaining authority mentioned in subsection (2) below; and
  - (b) any property, rights and liabilities of the former governing body of the school; shall be transferred to, and by virtue of this Act vest in, the governing body of the grant-maintained school.
- (2) The property, rights and liabilities referred to in subsection (1)(a) above are—
- (a) all land or other property which, immediately before the incorporation date, was property used or held by the former maintaining authority for the purposes of the school; and
  - (b) all rights and liabilities subsisting immediately before the incorporation date which were acquired or incurred by that authority for those purposes.
- (3) Subsection (1) above shall not apply to rights and liabilities under any contract of employment; and paragraph (a) of that subsection shall not apply to—
- (a) any land or other property vested in the former maintaining authority as trustees;
  - (b) any liability of that authority in respect of the principal of, or any interest on, any loan; or
  - (c) any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them or by any governing body of the school.

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- (4) Subject to section 198 of this Act, any land or other property of the former maintaining authority excluded by virtue of subsection (3)(a) above from transfer to the governing body of a grant-maintained school shall, on the incorporation date in relation to the school, be transferred to, and by virtue of this Act vest in, the first governors of the school on the trusts applicable immediately before that date under any trust deed regulating the use of that land or other property for the purposes of the school.
- (5) On the incorporation date in relation to a grant-maintained school—
  - (a) the duty of the former maintaining authority to maintain the school as a county or voluntary school shall be extinguished; and
  - (b) any special agreement relating to the school shall cease to have effect.
- (6) For the purposes of this section any interest in a dwelling-house which, immediately before the incorporation date in relation to such a school, is used or held by the former maintaining authority for occupation by a person employed to work at the school shall be treated as an interest used or held for the purposes of the school.
- (7) In this section “the former governing body” means, in relation to such a school, the governing body of the school immediately before the incorporation date in relation to the school.
- (8) In this Chapter, “the former maintaining authority” means, in relation to such a school, the local education authority by whom the school was maintained immediately before the incorporation date in relation to the school.
- (9) In this Act, “transfer date” means, in relation to such a school, the incorporation date in relation to the school.

## **75 Transfer of staff to grant-maintained school. E+W**

- (1) Subject to subsection (3) below, this section applies to any person who—
  - (a) immediately before the transfer date in relation to a grant-maintained school which is then an aided school is employed by the governing body of the school; or
  - (b) immediately before the transfer date in relation to a grant-maintained school—
    - (i) is employed by the local education authority by whom the school is maintained to work solely at the school; or
    - (ii) is employed by that authority to work at the school and is designated for the purposes of this section by an order made by the Secretary of State.
- (2) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (1)(b) above as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.
- (3) This section does not apply to—
  - (a) any person employed as mentioned in subsection (1)(a) or (b) above whose contract of employment terminates on the day immediately preceding the transfer date;
  - (b) any person employed as mentioned in subsection (1)(b) above who before that date has been—

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- (i) appointed or assigned by the local education authority concerned to work solely at another school as from that date; or
  - (ii) withdrawn from work at the school with effect as from that date.
- (4) A person who before the transfer date has been appointed or assigned by the local education authority by whom the school is maintained to work at the school as from that date shall be treated for the purposes of this section as if he had been employed by that authority immediately before that date to do such work at the school as he would have been required to do on or after that date under his contract of employment with that authority.
- (5) References below in this section to the former employer are references—
- (a) in relation to a person to whom this section applies by virtue of subsection (1) (a) above, to the governing body of the school immediately before the transfer date; and
  - (b) in relation to a person to whom this section applies by virtue of subsection (1) (b) above, to the local education authority by whom the school is maintained immediately before that date.
- (6) The contract of employment between a person to whom this section applies and the former employer shall have effect from the transfer date as if originally made between him and the governing body of the grant-maintained school.
- (7) Without prejudice to subsection (6) above—
- (a) all the former employer's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the governing body of the grant-maintained school on the transfer date; and
  - (b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to that governing body.
- (8) Subsections (6) and (7) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (9) An order under this section may designate a person either individually or as a member of a class or description of employees.

## 76 **Effect of pending procedure for acquisition of grant-maintained status on property disposals.** E+W

- (1) This section applies to a school during any period when the procedure under this Chapter for acquisition of grant-maintained status is pending in relation to the school.
- (2) For the purposes of this section that procedure is pending in relation to a school when it has been initiated in relation to the school on any occasion and not terminated (as initiated on that occasion).
- (3) For those purposes that procedure is to be regarded as initiated in relation to any school on any occasion—
  - (a) where the governing body of the school have decided to hold a ballot in accordance with section 61 of this Act by a first resolution passed as

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- mentioned in subsection (1)(a) of section 60 of this Act, when the local education authority by whom the school is maintained are first consulted under subsection (3) of that section; or
- (b) where such a request as is mentioned in subsection (1)(b) of that section has been received by the governing body, on receipt by that authority of notice under subsection (4)(b) of that section that such a ballot is to be held.
- (4) For those purposes that procedure, as initiated on any occasion, is to be regarded as terminated—
- (a) in the case of procedure initiated as mentioned in subsection (3)(a) above, if the period of forty-two days after that on which the first resolution was passed has expired and the decision to hold a ballot has not been confirmed by a second resolution passed in accordance with section 60(1)(a) of this Act; or
- (b) in the case of procedure initiated as mentioned in subsection (3)(a) or (b) above, if either—
- (i) the result of the ballot to which that consultation or notice relates does not show a majority in favour of seeking grant-maintained status for the school; or
- (ii) proposals for acquisition of such status for the school which are required to be published by reference to the result of that ballot, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn.
- Where section 61(8) of this Act applies in the case of any such ballot, the references in sub-paragraphs (i) and (ii) of paragraph (b) above to the result of that ballot shall be read as references to the result of the second ballot required by that subsection.
- (5) The reference in subsection (4) above to proposals required in substitution for any proposals for acquisition of grant-maintained status for any school which are required to be published by reference to the result of a ballot held in accordance with section 61 of this Act (“the original proposals”) is a reference to any proposals required to be published under subsection (4) or (12) of section 62 of this Act on withdrawal or (as the case may be) rejection of—
- (a) the original proposals; or
- (b) any further proposals required to be published under either of those subsections with respect to the school without a further ballot;
- and proposals under that section with respect to a school shall not be treated for the purposes of subsection (4) above as rejected in any case where the Secretary of State imposes a requirement under subsection (12) of that section or as withdrawn in any case where he imposes a requirement under subsection (4) of that section.
- (6) Except with the required consent, a local education authority shall not—
- (a) dispose of any property used wholly or partly for the purposes of a school to which this section for the time being applies; or
- (b) enter into a contract to dispose of any such property.
- (7) Subsection (6) above does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure mentioned in subsection (1) above was initiated in relation to the school.
- (8) Where in relation to any proposed disposal it is agreed between the local education authority concerned and the governing body of the school that the value of the property



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- in question does not exceed £6,000 the required consent for that disposal (and for any contract to make it) is the consent of the governing body of the school.
- (9) In any case other than one within subsection (8) above, the required consent for any proposed disposal (and for any contract to make it) is the consent of both the governing body of the school and the Secretary of State.
- (10) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this section and (subject to section 77 of this Act) a person acquiring property, or entering into a contract to acquire property, from a local education authority shall not be concerned to enquire whether any consent required by this section has been given.
- (11) This section has effect notwithstanding anything in section 123 of the <sup>M1</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to any consent required by subsection (2) of that section or by any other enactment.
- (12) In this section and in section 77 of this Act—
- (a) references to disposing of property include, in the case of land, references to granting or disposing of any interest in land; and
  - (b) references to entering into a contract to dispose of property include, in the case of land, references to granting an option to acquire land or any such interest.
- (13) Where a proposed disposal forms part of a proposed series of transactions, all disposals forming part of that series shall be treated as one disposal for the purposes of this section.
- (14) The Secretary of State may by order substitute for the sum specified in subsection (8) above (whether as originally enacted or as previously amended by an order under this subsection) such sum as may be specified in the order.

#### Marginal Citations

**M1** 1972 c. 70.

## 77 Wrongful disposals and contracts. **E+W**

- (1) This section applies where in the case of a school to which section 76 of this Act applies—
- (a) proposals for acquisition of grant-maintained status are approved by the Secretary of State; and
  - (b) the local education authority have made any disposal, or have entered into any contract, in contravention of subsection (6) of that section (referred to below in this section as a wrongful disposal or, as the case may be, a wrongful contract).
- (2) In the case of any wrongful disposal, the governing body of the school shall be entitled to recover from the local education authority concerned the value of the property disposed of.
- (3) In the case of a wrongful contract which consists in granting an option to acquire any land or interest in land, the governing body of the school may by notice in writing served on the option holder repudiate the option at any time before it is exercised.

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- (4) In the case of any other wrongful contract, the governing body of the school may by notice in writing served on the other party to the contract repudiate the contract—
  - (a) in the case of a contract to dispose of any land or to grant or dispose of any interest in land, at any time before the conveyance or grant of the land or any interest in land to which it relates is completed or executed;
  - (b) in any other case, at any time before the contract is performed.
- (5) A repudiation under subsection (3) or (4) above shall have effect as if made by the local education authority concerned.
- (6) Without prejudice to any provision made under paragraph 2(d) of Schedule 5 to this Act, the powers conferred by this section may only be exercised on or after the incorporation date in relation to the school.

## **78 Effect of pending procedure for acquisition of grant-maintained status on appointment, etc., of staff. E+W**

- (1) During any period when section 76 of this Act applies to a school, the local education authority shall not take any action to which this section applies without the consent of the governing body of the school.
- (2) This section applies to the following actions—
  - (a) the appointment of any person to fill a vacancy in a post which is part of the complement of the school or to work solely at the school in any other post;
  - (b) the dismissal (otherwise than under section 27(5) or 28(4) of the 1944 Act, which allow foundation governors, within the meaning of that Act, to dismiss a reserved teacher) of any person to whom subsection (3) below applies; and
  - (c) the withdrawal of any such person from work at the school (otherwise than by dismissing him).
- (3) This subsection applies to any person who is employed—
  - (a) in a post which is part of the complement of the school; or
  - (b) to work solely at the school in any other post.
- (4) The reference in subsection (2)(a) above to the complement of the school is a reference to the complement of teaching and non-teaching posts determined by the local education authority for the school under section 34 of the 1986 Act.

### *Finance*

## **79 Maintenance grants, special purpose grants and capital grants. E+W**

- (1) The payments the Secretary of State is required to make in pursuance of his duty to maintain a grant-maintained school are annual grants to the governing body of the school in respect of expenditure for the purposes of the school incurred or to be incurred by the governing body in the financial year to which any such grant relates (to be known as maintenance grants).
- (2) The amount of the maintenance grant payable in respect of such a school for any financial year shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this Chapter as grant regulations).

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- (3) Grant regulations may also provide for the payment to the governing bodies of such schools—
- (a) of grants (to be known as special purpose grants) in respect of expenditure incurred or to be incurred by them of any class or description specified in the regulations—
    - (i) for or in connection with educational purposes of any class or description so specified;
    - (ii) in making any provision (whether of educational services or facilities or otherwise) of any class or description so specified which appears to the Secretary of State to be required for meeting any special needs of the population of the area served by the school; or
    - (iii) in respect of expenses of any class or description so specified, being expenses which it appears to the Secretary of State the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant; and
  - (b) of grants (to be known as capital grants) in respect of expenditure of a capital nature incurred or to be incurred by them of any class or description so specified.
- (4) Grant regulations may provide for special purpose grants to be payable on a regular basis in respect of expenditure of a recurrent kind or by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.
- (5) The amount of any capital grant shall be equal to 100 per cent. of the expenditure in respect of which it is made.
- (6) The descriptions of expenditure which are to be regarded for the purposes of subsection (3)(b) above as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (7) A governing body to whom any payments in respect of maintenance grant or special purpose grants are made shall comply with such requirements as the Secretary of State may from time to time impose, being requirements—
- (a) specified in grant regulations as requirements which may be imposed by the Secretary of State on governing bodies to whom such payments are made; or
  - (b) determined in accordance with such regulations by the Secretary of State.
- (8) A governing body to whom any payments in respect of capital grant are made shall comply with such requirements determined by the Secretary of State as he may from time to time impose.
- (9) Requirements imposed under subsection (7) or (8) above—
- (a) may be imposed on or at any time after the making of any payment by reference to which they are imposed; and
  - (b) may at any time be waived or removed or, subject to subsection (10) below, varied by the Secretary of State.
- (10) The power of the Secretary of State to vary such a requirement—
- (a) does not apply to a requirement imposed under subsection (7)(a) above; and
  - (b) is subject, in the case of a requirement imposed under subsection (7)(b) above, to the provisions of the regulations with respect to the determination of the requirements that may be so imposed in the case of payments in respect of the grants in question.

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(11) The requirements—

- (a) which may be specified in or authorised by grant regulations as requirements which may be imposed on governing bodies to whom payments are made in respect of special purpose grants; or
- (b) which may be imposed by the Secretary of State on a governing body to whom payments in respect of capital grants are made;

include in particular requirements with respect to the repayment, in whole or in part, of payments made in respect of those grants if any other requirement imposed under subsection (7) or (8) above by reference to payments of such grants (whether imposed before, at or after the time when the payments subject to the repayment requirement are made) is not complied with.

(12) Subject to—

- (a) any requirements imposed by the Secretary of State under subsection (7) above; and
- (b) any requirements with respect to the application of maintenance grant contained in the articles of government of the school;

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

[<sup>F3</sup>(13) In this section “the purposes of the school” do not include purposes wholly referable to the provision of—

- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- (b) full-time education suitable to the requirements of persons who have attained the age of nineteen years]

**Textual Amendments**

**F3** S. 79(13) added (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 13\(2\)](#); S.I. 1992/831, art. 2, [Sch.4](#).

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

**C4** Power to transfer functions conferred on s. 79 (*prosp.*) by [1993 c. 35, ss. 307\(2\), 308\(3\)](#), [Sch. 20 para.2](#)  
[Ss. 79-91](#) modified (1.1.1994) by [1993/3103, reg. 3, Sch.2](#)

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

(1) The times at which, and the manner in which, payments are made in respect of—

- (a) maintenance grant for any grant-maintained school in respect of any financial year;
- (b) special purpose grants; and
- (c) capital grants;

shall be such as may be determined from time to time by the Secretary of State.

(2) Payments in respect of maintenance grant for any such school in respect of any financial year may be made, before any amount has been determined in accordance with grant regulations as the amount of such grant payable for that year in respect of

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that school, by reference to an estimate of the amount which will be so payable made by the Secretary of State.

- (3) Where in respect of any financial year any over-payment of maintenance grant is made to the governing body of such a school a sum equal to the amount of that over-payment shall be recoverable from the governing body by the Secretary of State.
- (4) Where any sum is payable by the governing body of such a school to the Secretary of State—
  - (a) in respect of any over-payment of maintenance grant in respect of any financial year; or
  - (b) by way of repayment of special purpose grant or capital grant (whether by virtue of any such requirement as is mentioned in section 79(11) of this Act or otherwise);

the Secretary of State may (without prejudice to any other mode of recovery) recover the whole or any part of that sum by deducting it from any grant payable by him to the governing body.

- (5) References in this section, in relation to any such school, to an overpayment of maintenance grant in respect of any financial year are references to any amount by which the aggregate amount of any payments in respect of maintenance grant made to the governing body of the school in respect of that year exceeds the amount finally determined in accordance with grant regulations as the amount of maintenance grant payable for that year in respect of the school.

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

- C5** Power to transfer functions conferred on s. 80 (*prosp.*) by 1993 c. 35, ss. 307(2), 308(3), **Sch. 20 para.2**  
 Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3, **Sch.2**

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

- (1) The Secretary of State may in respect of any financial year recover from the former maintaining authority sums in respect of the maintenance grant payable for that year to the governing body of a grant-maintained school.
- (2) Subject to subsection (5) below, sums recoverable by virtue of subsection (1) above in respect of any school for any financial year—
  - (a) shall be of such amounts; and
  - (b) shall fall due on such date or dates;
 as may be determined by the Secretary of State.
- (3) The total amount so recoverable shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to below in this section as recoupment regulations).
- (4) Subject to any provision made by such regulations by virtue of subsection (6) below, recoupment regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the maintenance grant payable in respect of the school and the financial year in question (as from time to time revised).

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- (5) The amount of any sum so recoverable shall be determined—
- (a) where before the determination of the amount of that sum any amount has been determined under recoupment regulations as the total amount recoverable by virtue of subsection (1) above in respect of the school and financial year in question, by reference to any amount so determined as the total amount so recoverable; and
  - (b) in any other case, by reference to any amount estimated by the Secretary of State as the amount which will initially be so determined as the total amount so recoverable;
- which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) Recoupment regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from any authority by virtue of subsection (1) above in respect of any school for any financial year by reference to any excess amounts recovered under this section in respect of any previous financial year.
- (7) For the purposes of subsection (6) above an excess amount is recovered under this section in respect of any financial year if the aggregate amount of the sums recovered under this section for that year from the former maintaining authority for any grant-maintained school—
- (a) in respect of any school in respect of which sums are recoverable from the authority under this section; or
  - (b) where there is more than one such school, in respect of both or all of those schools;
- exceeds the total amount recoverable under this section in accordance with recoupment regulations in respect of that school or (as the case may be) in respect of both or all of those schools for that year.
- (8) The Secretary of State may recover sums due to him under this section from such an authority in either or both of the following ways—
- (a) by requiring the authority to pay the whole or any part of any such sum at such time or times as he thinks fit; and
  - (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whether passed before or after this Act) [<sup>F4</sup>or from any amount payable by him to the authority under Part III of Schedule 8 to the Local Government Finance Act 1988 (which makes provision in respect of redistributed non-domestic rates).].
- (9) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

#### Textual Amendments

**F4** Words in s. 81(8)(b) added (1. 4. 1993) by [Local Government Finance Act 1992 \(c. 14\), s. 117\(1\), Sch. 13 para. 58\(1\)](#) (with s. 118(1)(2)(4)); S.I. 1992/2454, [art.3](#).

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

**C6** [Ss. 79-91](#) modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

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## 82 Provisions consequential on section 81. **E+W**

- (1) For the purposes of determining the grant related expenditure of a local authority in accordance with Part VI of the <sup>M2</sup>Local Government, Planning and Land Act 1980—
  - (a) the provision of education for registered pupils at any grant-maintained school in respect of which sums are recoverable from the authority under section 81 of this Act shall be regarded as a function of the authority; but
  - (b) no account shall be taken of the authority’s actual expenditure in any year under that section in determining so much of the authority’s notional total expenditure for that year as is referable to the notional exercise of that function.
- (2) Subsection (1)(b) above applies notwithstanding that the whole or any part of the actual expenditure there mentioned falls in accordance with section 3 of the <sup>M3</sup>Local Government Finance Act 1987 to be taken into account in determining the authority’s total expenditure in relation to the year in question for the purposes of Part VI.
- (3) In subsections (1) and (2) above—
 

“local authority” means a body which is a local authority for the purposes of Part VI; and

“year” has the same meaning as in that Part;

and the reference in subsection (1)(a) above to the provision of education includes a reference to the provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (4) For the purposes of sections 51 and 52 of the 1986 Act (recoupment for provision for education of pupils belonging to, or having connection with, area of another authority) the provision for education made in any financial year in respect of a registered pupil at a grant-maintained school shall be taken to have been made by the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school and that year.
- (5) The reference in subsection (4) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (6) The governing body of a grant-maintained school shall provide the local education authority from whom sums are recoverable under section 81 of this Act in respect of the school with such information relating to the registered pupils at the school as the authority may require for the purposes of claiming any amount in respect of any such pupil from another authority under section 51 of the 1986 Act or by virtue of regulations under section 52 of that Act.

### Modifications etc. (not altering text)

**C7** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

### Marginal Citations

**M2** 1980 c. 65.

**M3** 1987 c. 6.



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### *Admissions*

#### **83 Admissions. E+W**

- (1) The governing body of a grant-maintained school shall not fix as the number of pupils in any relevant age group it is intended to admit to the school in any school year a number which is less than the approved admission number for that age group.
- (2) Subject to subsection (3) below, for the purposes of subsection (1) above, as it applies in relation to any such school—
  - (a) the approved admission number in relation to any relevant age group is the number specified in the proposals for acquisition of grant-maintained status for the school in accordance with section 62(8) of this Act;
  - (b) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (c) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (3) The approved admission number in relation to any relevant age group may be varied in the case of any such school with the approval of the Secretary of State.

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

**C8** Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, reg. 3 Sch.2

### *Religious education*

#### **84 Religious education in former county schools. E+W**

- (1) This section applies to a grant-maintained school which was a county school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) Subject to the following provisions of this section, in the case of a school to which this section applies the collective worship required in the school by section 6 of this Act shall be wholly or mainly of a broadly Christian character.
- (3) For the purposes of subsection (2) above, collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination.
- (4) Every act of collective worship required by section 6 of this Act in the case of a school to which this section applies need not comply with subsection (2) above provided that, taking any school term as a whole, most such acts which take place in the school do comply with that subsection.
- (5) Subject to subsections (2) and (4) above—
  - (a) the extent to which (if at all) any acts of collective worship required by section 6 of this Act which do not comply with subsection (2) above take place in such a school;

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- (b) the extent to which any act of collective worship in such a school which complies with subsection (2) above reflects the broad traditions of Christian belief; and
- (c) the ways in which those traditions are reflected in any such act of collective worship;

shall be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account in accordance with subsection (6) below.

- (6) Those considerations are—
  - (a) any circumstances relating to the family backgrounds of the pupils concerned which are relevant for determining the character of the collective worship which is appropriate in their case; and
  - (b) their ages and aptitudes.
- (7) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education in accordance with the appropriate agreed syllabus.
- (8) That syllabus shall not provide for religious education to be given to pupils at such a school by means of any catechism or formulary which is distinctive of any particular religious denomination; but this provision is not to be taken as prohibiting provision in that syllabus for the study of such catechisms or formularies.
- (9) Subject to section 88(3) of this Act, for the purposes of subsection (7) above "the appropriate agreed syllabus" is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.
- (10) The arrangements for the collective worship in a school to which this section applies required by section 6 of this Act shall be made by the head teacher after consultation with the governing body.
- (11) Subsection (12) below applies where a secondary school to which this section applies is so situated that arrangements cannot conveniently be made for the withdrawal of pupils from the school in accordance with section 9 of this Act to receive religious education elsewhere.
- (12) If in any such case the governing body are satisfied—
  - (a) that the parents of pupils in attendance at the school desire them to receive religious education in the school in accordance with the tenets of a particular religious denomination; and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school and for securing that the cost of providing such education to those pupils in the school will not fall upon the governing body;

the governing body shall, unless they are satisfied that owing to any special circumstances it would be unreasonable to do so, provide facilities for the carrying out of those arrangements.

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- (13) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in, or from being otherwise employed for the purposes of, a school to which this section applies.
- (14) No teacher in a school to which this section applies shall be required to give religious education or receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious education or by reason of his religious opinions or of his attending or omitting to attend religious worship.
- (15) References in this section to acts of collective worship in a school to which this section applies include references to any such act which under section 6 of this Act takes place otherwise than on the school premises.

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

C9 Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**85 Religious education in former controlled schools. E+W**

- (1) This section applies to a grant-maintained school which was a controlled school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) Where the parents of any pupils in attendance at a school to which this section applies have requested (whether before or after the school became a grant-maintained school) that they may receive religious education—
  - (a) in accordance with any provisions of the trust deed relating to the school; or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a controlled school;the foundation governors shall, unless they are satisfied that owing to special circumstances it would be unreasonable so to do, make arrangements for securing that such religious education is given to those pupils at the school during not more than two periods in each week.
- (3) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
  - (a) in accordance with any arrangements made under subsection (2) above; or
  - (b) subject to any such arrangements, in accordance with the appropriate agreed syllabus.
- (4) Subject to section 88(3) of this Act, for the purposes of subsection (3) above "the appropriate agreed syllabus" is, in relation to a school to which this section applies or to any pupils at the school, the agreed syllabus which immediately before the school became a grant-maintained school was adopted under Schedule 5 to the 1944 Act for use in the school or for those pupils.
- (5) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.

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- (6) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

**C10** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**86 Religious education in former aided or special agreement schools. E+W**

- (1) This section applies to a grant-maintained school which was an aided or special agreement school immediately before it became a grant-maintained school; but the provisions of this section are subject to section 87 of this Act.
- (2) In the case of a school to which this section applies the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school's basic curriculum shall be provision for religious education—
- (a) in accordance with any provisions of the trust deed relating to the school or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school; or
  - (b) in accordance with any arrangements made under this section.
- (3) Where the parents of pupils in attendance at such a school—
- (a) desire them to receive religious education in accordance with any agreed syllabus adopted by the local education authority for the area in which the school is situated for use in schools maintained by the authority; and
  - (b) cannot with reasonable convenience cause those pupils to attend any school at which that syllabus is in use;
- then, unless the governing body are satisfied that owing to any special circumstances it would be unreasonable to do so, they shall make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum by virtue of section 2(1)(a) of this Act.
- (4) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed (otherwise than as a teacher) for the purposes of a school to which this section applies.
- (5) No teacher in a school to which this section applies shall receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious education or by reason of his religious opinions or of his attending religious worship.

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

**C11** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

*Status: Point in time view as at 01/08/1993.*

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## 87 Changes in religious education. **E+W**

- (1) Where, in the case of a grant-maintained school to which section 84(2) to (8) or 85(3) of this Act for the time being applies, proposals that the required provision for religious education should be provision for religious education in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—
  - (a) the required provision for religious education shall (subject to subsection (2) below) be provision for religious education either in accordance with the tenets of that religious denomination or in accordance with any arrangements made under section 86(3) of this Act (as applied by paragraph (b) below);
  - (b) section 86(3) to (5) of this Act shall apply in relation to the school; and
  - (c) subject to section 88(5) of this Act, any provisions of section 84 or 85 of this Act which apply in relation to the school shall cease to apply in relation to it.
- (2) Where, in the case of any grant-maintained school, proposals that the required provision for religious education should be provision for religious education otherwise than in accordance with the tenets of a particular religious denomination are approved under section 89 of this Act, then, from the time at which the proposals fall to be implemented—
  - (a) section 84(2) to (8) and (10) to (15) of this Act shall apply in relation to the school; and
  - (b) any provisions of section 85 or 86 of this Act which apply in relation to the school shall cease to apply in relation to it.
- (3) Subject to section 88(3) of this Act, for the purposes of section 84(7) of this Act in its application to a school by virtue of subsection (2) above “the appropriate agreed syllabus” in relation to a school or to any pupils at the school is—
  - (a) the agreed syllabus adopted, or deemed to be adopted, under Schedule 5 to the 1944 Act by the local education authority for the area in which the school is situated for use in the schools maintained by the authority at the time at which the proposals referred to in that subsection fall to be implemented; or
  - (b) where at that time that authority have adopted, or are deemed to have adopted, under that Schedule for use in those schools more than one agreed syllabus, whichever of them the governing body shall determine.
- (4) In this section “the required provision for religious education”, in relation to a school, means the provision for religious education for pupils at the school which is required by section 2(1)(a) of this Act to be included in the school’s basic curriculum.

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

**C12** *Ss. 79-91* modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

## 88 Religious education: supplementary. **E+W**

- (1) Subsections (2) and (3) below shall have effect where any agreed syllabus for the time being adopted by a local education authority which is in use at a grant-maintained school (or for any pupils at the school) falls to be reconsidered under Schedule 5 to the 1944 Act.

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- (2) The conference convened under that Schedule to reconsider the syllabus shall consult the governing body of the grant-maintained school before making any recommendation.
- (3) Where any new syllabus is adopted, or deemed to be adopted, by the authority under that Schedule in substitution for the existing syllabus, then, for the purposes of section 84(7) of this Act (including that subsection in its application to a school by virtue of section 87(2) of this Act) or 85(3) of this Act “the appropriate agreed syllabus” in relation to the grant-maintained school (or to the pupils in question) shall be—
- (a) the new syllabus so adopted, or deemed to be adopted; or
  - (b) if more than one new syllabus is so adopted, or deemed to be adopted, whichever of them the governing body shall determine.
- (4) Where, in accordance with section 84, 85 or 86 of this Act or any proposals approved under section 89 of this Act, religious education is given to pupils at a grant-maintained school otherwise than in accordance with an agreed syllabus, such religious education shall not be subject to inspection under section 77 of the 1944 Act.
- (5) Without prejudice to sections 85(5) and (6) and 86(4) and (5) of this Act, where—
- (a) immediately before a school to which section 85 or 86 of this Act applies became a grant-maintained school any of the provisions of section 30 of the 1944 Act applied with respect to a teacher in the school; or
  - (b) the provisions of section 84(13) and (14) of this Act apply with respect to a teacher employed in a grant-maintained school falling within subsection (1) of section 87 of this Act immediately before any proposals such as are referred to in that subsection fall to be implemented;
- those provisions shall continue to apply to him until he ceases to be employed as a teacher in the school.

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

**C13** *Ss. 79-91* modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

*Control over alteration and change of site*

**89 Change of character or enlargement of grant-maintained school. E+W**

- (1) Subject to subsection (2) below, where the governing body of a grant-maintained school intend to make a significant change in the character, or significant enlargement of the premises, of the school they shall publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published proposals.

[<sup>F5</sup>(1A) The reference in subsection (1) above to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with part-time education suitable to the requirements of persons of any age over compulsory school age or full-time education suitable to the requirements of persons who have attained the age of nineteen years, but it shall be the duty of the governing body of any grant-maintained school which provides such education to

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secure that it is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed.]

- (2) No proposals shall be published under this section for the purpose of making a significant change in the religious character of such a school unless the trustees of the school (if any) have given their consent in writing to the change in question.
- (3) Proposals published under this section shall include particulars—
  - (a) of the time or times at which it is intended to implement the proposals; and
  - (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented.
- (4) For the purposes of subsection (3)(b) above—
  - (a) pupils intended to be admitted to the school for nursery education shall be disregarded; and
  - (b) pupils already so admitted intended to be transferred to a reception class at the school shall be treated as intended to be admitted to the school on their transfer.
- (5) Proposals published under this section shall be accompanied by a statement—
  - (a) describing any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs; and
  - (b) explaining the effect of subsection (6) below.
- (6) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the proposals to the Secretary of State—
  - (a) any ten or more local government electors;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (7) The proposals shall require the approval of the Secretary of State; and he may reject them, approve them without modification or, after consultation with the governing body by whom they were made, approve them with such modifications as he thinks desirable.
- (8) It shall be the duty of the governing body of a grant-maintained school to implement any proposals with respect to the school which have been approved by the Secretary of State under this section; but the Secretary of State may, at the request of the governing body, modify any proposals which they are required to implement by virtue of this subsection.
- (9) Neither the governing body of a grant-maintained school nor any other person shall do or undertake anything for which proposals are required to be published and submitted in accordance with this section until such proposals have been so published and submitted and approved by the Secretary of State.
- (10) The Secretary of State may in any case allow such steps to be taken by the governing body of a grant-maintained school pending compliance with the requirements of this section and the giving by him of his approval of any such proposals as he considers reasonable in the circumstances of the case.
- (11) No decision taken at a meeting of the governing body of a grant-maintained school that would result in the submission of proposals under this section shall have effect



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unless it is confirmed at a second meeting of the governing body held not less than twenty-eight days after the first.

#### Textual Amendments

**F5** S. 89(1A) inserted (1. 8. 1993) by [Further and Higher Education Act 1992 \(c. 13\), s. 13\(3\)](#); S.I. 1992/831, art. 2, [Sch. 4](#).

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

**C14** Ss. 79-91 modified (1.1.1994) by S.I. 1993/3103, [reg. 3 Sch.2](#)

**C15** S. 89(2) saved (1.8.1991) by [Diocesan Boards of Education Measure 1991 \(No. 2, SIF 41:1\), s. 3\(5\)](#); [Archbishops' Instrument 1991 No. 1](#) (made 26.7.1991)

### 90 Approval of school premises on change of character or enlargement. E+W

(1) Where the governing body of a grant-maintained school submit proposals under section 89 of this Act, they shall, at such time and in such form and manner as the Secretary of State may direct, submit to him for his approval—

- (a) particulars of the access provision made or to be made with respect to the premises or proposed premises of the school indicating the extent to which the provision conforms with the minimum requirements of the Design Note so far as they are relevant to school premises; and
- (b) such other particulars with respect to the premises or proposed premises of the school as he may require.

(2) In subsection (1)(a) above—

“access provision”, in relation to school premises, means provision as to the means of access both to and within the premises; and

“the Design Note” means Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or any document replacing that Note prescribed by regulations under [<sup>F6</sup>the [Town and Country Planning Act 1990](#)].

(3) Where the proposals are approved, the governing body shall implement the proposals in accordance with the particulars submitted under this section as approved by the Secretary of State.

(4) In section 63(2) of the 1944 Act (exemption from building regulations, etc.) references to plans approved by the Secretary of State shall include references to any particulars submitted to and approved by him under this section.

#### Textual Amendments

**F6** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 78](#)

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

**C16** Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

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## 91 Change of site. **E+W**

The Secretary of State may by order authorise the transfer of a grant-maintained school to a new site; and no such school shall be transferred to a new site without the authority of an order under this section.

### Modifications etc. (not altering text)

C17 Ss. 79-91 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

### *Discontinuance of grant-maintained schools*

## 92 Discontinuance by governing body. **E+W**

- (1) The governing body of a grant-maintained school shall not discontinue the school except in pursuance of proposals published and approved under this section.
- (2) Where the governing body of such a school—
  - (a) decide by a resolution passed at a meeting of that body (“the first resolution”) to publish proposals under this section for the discontinuance of the school and confirm that decision by a resolution (“the second resolution”) passed at a subsequent meeting of that body held not less than twenty-eight days after that at which the first resolution was passed; and
  - (b) give notice in writing of the second resolution to the local education authority for the area in which the school is situated;they may within the period of six months beginning with the date of the second resolution publish proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and shall submit to him a copy of the published proposals.
- (3) The notice required by subsection (2)(b) above shall be given as soon as practicable after the passing of the resolution to which it refers.
- (4) The published proposals—
  - (a) shall specify the proposed date of discontinuance of the school; and
  - (b) shall be accompanied by a statement—
    - (i) indicating whether or not any proposals with respect to the establishment of a new school on the premises of the school have been published under section 12 or 13 of the 1980 Act (which relate respectively to county schools and voluntary schools); and
    - (ii) explaining the effect of subsection (5) below.
- (5) Before the end of the period of two months beginning with the date of publication of the proposals, any of the following may submit objections to the Secretary of State—
  - (a) any ten or more local government electors;
  - (b) the governing body of any school affected by the proposals; and
  - (c) any local education authority concerned.
- (6) The Secretary of State may reject any proposals under this section, approve them without modification or, after consultation with the governing body, approve them with the substitution of a different date for the date of discontinuance proposed.

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- (7) If the Secretary of State approves proposals under this section with respect to a grant-maintained school—
- (a) the governing body of the school shall cease to conduct the school; and
  - (b) the Secretary of State’s duty to maintain the school shall cease;
- on the date of discontinuance specified in the proposals as approved or on any other date subsequently specified by the Secretary of State at the request of the governing body (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously specified under this subsection).

**93 Withdrawal of grant by Secretary of State. E+W**

- (1) The Secretary of State may cease to maintain a grant-maintained school by giving notice of his intention to do so to the governing body of the school under this section; and on the date specified in any such notice as the date on which the Secretary of State intends to cease to maintain the school the Secretary of State’s duty to maintain the school shall cease.
- (2) Subject to the following provisions of this section—
  - (a) a notice under this section may not specify as the date on which the Secretary of State intends to cease to maintain such a school a date falling less than seven years after the date of the notice; and
  - (b) before giving such a notice the Secretary of State shall consult—
    - (i) the governing body of the school;
    - (ii) the local education authority for the area in which the school is situated;
    - (iii) the statutory diocesan body responsible for schools in the diocese in which the school is situated; and
    - (iv) the former maintaining authority, if that authority is not the local education authority for the area in which the school is situated.
- (3) Subsection (2) above shall not apply where the Secretary of State is satisfied, in the case of any grant-maintained school, that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school on all or any of the following grounds—
  - (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost;
  - (b) that the governing body have failed for a significant period of time to carry out their duties under Chapter I of this Part;
  - (c) that the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under this Act or any other enactment.
- (4) In any case within subsection (3) above, the Secretary of State may give to the governing body of the school a notice stating the grounds on which he considers that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained school together with full particulars of the matters relevant to each such ground.
- (5) Where any of the matters of which particulars are given in a notice under subsection (4) above are stated in the notice to be in the opinion of the Secretary of State irremediable,

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- the notice shall also state that the Secretary of State intends to cease to maintain the school on a date specified in the notice.
- (6) Where subsection (5) above does not apply in the case of any notice under subsection (4) above, the notice shall—
- (a) state that the Secretary of State intends to cease to maintain the school unless the matters of which particulars are given in the notice are remedied;
  - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters; and
  - (c) specify the time, not being less than six months after the date of the notice, within which the governing body are required to take those measures.
- (7) Where the governing body of a grant-maintained school fail to take the measures required by a notice under subsection (4) above within the time specified in the notice or allowed by any previous notice under this subsection, the Secretary of State shall within the period of two months beginning with the date next following the end of that time either—
- (a) give notice to the governing body extending the time within which those measures are required to be taken; or
  - (b) after consulting the local education authority for the area in which the school is situated, give notice that he intends to cease to maintain the school on a date specified in the notice.
- (8) The Secretary of State may by notice given to the governing body—
- (a) withdraw any notice under subsection (1), (4) or (7)(b) above; or
  - (b) vary—
    - (i) any notice under subsection (1) or (7)(b) above; or
    - (ii) any notice under subsection (4) above to which subsection (5) above applies;  
by substituting a later date for the date for the time being specified in the notice as the date on which he intends to cease to maintain the school; or
  - (c) vary any notice under subsection (4) above to which subsection (6) above applies, so far as relates to the measures required by the notice to remedy the matters of which particulars are given in the notice.
- (9) If by virtue of subsection (8)(c) above the Secretary of State varies any notice under subsection (4) above so as to require different measures to be taken he shall also substitute for the time specified in the notice as the time within which the governing body are required to take the measures specified in the notice as varied a time ending—
- (a) not less than six months after the date of the notice of variation; and
  - (b) where the time so specified has been extended under subsection (7) above, not earlier than that time as so extended.
- (10) Any variation under subsection (9) above of the time specified in a notice under subsection (4) above is without prejudice to any further extension of that time under subsection (7) above.
- (11) Any notice under this section shall be in writing; and references in this section to the date of any such notice given to a governing body under this section are references to the date on which it is given to the governing body.

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### *Winding up and disposal of property*

#### 94 **Winding up.** **E+W**

- (1) Where in the case of any grant-maintained school—
- (a) proposals for discontinuance of the school have been approved under section 92 of this Act; or
  - (b) the Secretary of State has given notice to the governing body of the school under section 93 of this Act specifying a date on which he intends to cease to maintain the school;
- the Secretary of State may by order make provision for the winding up of the governing body of the school and the disposal of the school property.
- (2) An order made under this section may—
- (a) set out a proposed timetable for the winding up and, in particular, for—
    - (i) securing that all property belonging to the governing body or held by any trustees on trust for the purposes of the school is brought into the custody or control of that body or those trustees (as the case may require);
    - (ii) discharging any liabilities of the governing body;
    - (iii) making any provision mentioned in paragraphs (d) to (f) below; and
    - (iv) the preparation and audit of the governing body’s final accounts;
  - (b) make provision with respect to the exercise of the functions of the governing body in relation to the school, including in particular—
    - (i) provision requiring the governing body in the exercise of those functions to comply with any directions given by the Secretary of State;
    - (ii) provision authorising any of those functions to be exercised by any member of the governing body specified in the order; and
    - (iii) provision for the application of the seal of the governing body to be authenticated by the signature of any person so specified;
  - (c) make provision for conferring or imposing functions on the governing body in relation to the winding up and the management and disposal of the school property;
  - (d) make any provision authorised by section 95 of this Act for or in connection with the transfer of the school property;
  - (e) make any provision authorised by section 97 of this Act with respect to the discharge of the liabilities of the governing body and the payment of the costs of the winding up;
  - (f) make any provision authorised by section 98 or 99 of this Act in relation to capital expenditure in respect of the school premises;
  - (g) require the governing body to give to persons employed by them notice terminating their contracts of employment as from a date specified in the order; and
  - (h) appoint a date on which the governing body is to be dissolved.
- (3) Below in this Chapter—
- (a) references to a governing body in liquidation are references to a governing body in respect of whom any order has been made under this section; and

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- (b) references, in relation to any such governing body or the grant-maintained school conducted, or formerly conducted, by any such body, to the dissolution date are references to the date appointed in relation to that governing body by virtue of subsection (2)(h) above.
- (4) The Secretary of State may make grants to a governing body in liquidation for the purpose of—
  - (a) discharging any liabilities of that governing body (other than section 105 loan liabilities); and
  - (b) meeting any costs incurred by that governing body for the purposes of the winding up under this section.
- (5) The Secretary of State may impose on a governing body to whom any such payment is made such requirements as he may from time to time determine (whether before, at or after the time when the payment in question is made).
- (6) The Secretary of State shall not by an order under this section appoint a date on which a governing body in liquidation is to be dissolved unless he is satisfied that—
  - (a) all liabilities of the governing body (other than any section 105 loan liabilities which fall to be transferred or terminated under section 97 of this Act) have been discharged;
  - (b) all costs of the winding up have been met; and
  - (c) any provision authorised by any of sections 95 to 99 of this Act which is possible and expedient in the circumstances of the case has been made and anything required to be done by the governing body for the purposes of or in connection with any such provision has been done.
- (7) In this Chapter—
  - (a) references, in relation to a governing body in liquidation, to section 105 loan liabilities are references to any liabilities in respect of any loans made under section 105 of the 1944 Act (loans by Secretary of State towards initial capital expenditure) which were transferred to the governing body under section 74 of this Act;
  - (b) references, in relation to a grant-maintained school conducted or formerly conducted by a governing body in liquidation, to the school property are references to—
    - (i) the premises used or formerly used for the purposes of the school;
    - (ii) any interest belonging to the governing body or held by any trustees on trust for the purposes of the school in any dwelling-house used or held or formerly used or held for occupation by a person employed to work at the school; and
    - (iii) all other equipment and property used or held or formerly used or held for the purposes of the school, with the exception of money and any investments to which section 96 of this Act applies; and
  - (c) references to a grant-maintained school formerly conducted by a governing body in liquidation apply in circumstances where the school has been discontinued before the dissolution date and refer to the school as conducted immediately before discontinuance (and “formerly” in sub-paragraphs (i) to (iii) of paragraph (b) above applies in the same circumstances and refers to the time immediately before the discontinuance of the school concerned).

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

(1) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) proposals under section 13 of the 1980 Act that any school proposed to be established on the premises of the grant-maintained school should be maintained by a local education authority as a voluntary school have been approved;

an order under section 94 of this Act may vest the school property or any part of it in persons specified in the order to be held on trust for the purposes of the proposed school, subject to the payment by those persons of the appropriate consideration.

(2) Subject to subsection (7) below, where—

- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
- (b) any persons propose to establish on the premises of the school a new independent school;

an order under section 94 of this Act may vest the school property or any part of it in the persons proposing to establish the new school, subject to the payment by those persons of the appropriate consideration.

(3) In any case within subsection (1) or (2) above, the appropriate consideration is payable to the former maintaining authority, subject to any provision made by virtue of section 97 or 99 of this Act.

(4) Where in the case of a grant-maintained school conducted or formerly conducted by a governing body in liquidation which was a voluntary school immediately before it became a grant-maintained school proposals by a local education authority for the establishment of a new county school on the premises of the school have been published under section 12 of the 1980 Act and either—

- (a) the proposals have been approved by the Secretary of State under that section; or
- (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement them and notified the Secretary of State of their determination in accordance with subsection (8) of that section;

an order under section 94 of this Act may vest any part of the school property which is held by persons on trust for the purposes of the school or, where all the school property is so held, the whole of the school property in the local education authority concerned beneficially, subject to the payment by that authority of the appropriate consideration.

(5) In any case within subsection (4) above the appropriate consideration is payable to the persons from whom the property is transferred, subject to any provision made by virtue of section 97 or 98 of this Act.

(6) Subject to subsections (7) and (10) below, any school property held by a governing body in liquidation immediately before the dissolution date shall vest on that date in the former maintaining authority.



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- (7) Subsections (1), (2) and (6) above shall not apply to any school property which is held by persons on trust for the purposes of the grant-maintained school concerned; but an order under section 94 of this Act may vest the whole or any part of any property excluded from the application of subsection (1), (2) or (6) above by virtue of this subsection in such local education authority or other person as may be specified in the order.
- (8) Where it appears to the Secretary of State that any school property to be vested in a local education authority by an order made by virtue of subsection (7) above—
- (a) was wholly or mainly provided at the expense of a local education authority or a former authority; or
  - (b) will be held by the authority for the purposes of a county or voluntary school proposed to be established on the premises of the grant-maintained school concerned;
- the order may vest the property in the authority beneficially.
- (9) Subject to subsection (8) above, an order made by virtue of subsection (7) above shall vest the school property in the local education authority or other person concerned on trust for such purposes as may be specified in the order.
- (10) Subsection (6) above shall not apply to any items of property excluded from transfer by the Secretary of State; and the Secretary of State may exclude any item, or any class or description of items, of property from transfer if he is satisfied that that item, or items of that class or description, were procured otherwise than at the expense of the authority concerned and that it is appropriate on that account to exclude them from transfer to that authority.
- (11) An order under section 94 of this Act may vest any property excluded from a transfer under subsection (6) above by virtue of subsection (10) above in such persons as may be specified in the order on such terms as may be so specified.
- (12) Any property vested in any person by an order made by virtue of this section shall so vest on such date as may be specified in the order as the transfer date.
- (13) In this section “the appropriate consideration” means, in relation to any school property—
- (a) so far as it consists of premises (including any interest in a dwelling-house such as is mentioned in section 94(7)(b)(ii) of this Act), such an amount as the Secretary of State determines to be the market value of the premises as at the transfer date or as at a date no earlier than six months before that date; and
  - (b) so far as it consists of other property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.
- (14) Nothing in any provision included in an order under section 94 of this Act by virtue of this section shall affect any interest or right of any person in, to or over any school property which is held by that person otherwise than for the purposes of the school.

## 96 Surplus money and investments. **E+W**

- (1) Subject to subsection (2) below—
- (a) any money held by a governing body in liquidation (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the <sup>M4</sup>Banking Act 1979); and

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- (b) any investments to which this section applies held by such a governing body; after discharge of all their liabilities (other than any not required to be discharged before the dissolution date is appointed) and all costs of the winding up shall be paid or (as the case may be) transferred to the Secretary of State.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
- (a) that the money or that part of it was derived or (as the case may be) those investments were acquired otherwise than from grants paid by him under this Chapter; and
- (b) that it ought to be paid, or the investments ought to be transferred, to a local education authority or to some other person;
- he may require the governing body to pay that money, or an amount equal to the part in question, or to transfer those investments, to such local education authority or other person as he may specify, either beneficially or to be held on trust for such purposes as he may specify.
- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the governing body before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the <sup>M5</sup>Financial Services Act 1986 which falls within—
- (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
- (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.
- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of that Act which amends those paragraphs for the purposes of all the provisions of that Act.

#### Marginal Citations

**M4** 1979 c. 37.

**M5** 1986 c. 60.

## 97 Discharge, transfer and termination of liabilities, etc. **E+W**

- (1) Subsection (2) below applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises (“the new owners”).
- (2) Where this subsection applies, an order under section 94 of this Act may do either or both of the following things, that is to say—
- (a) require the new owners to discharge any liabilities of the governing body in respect of redundancy payments; and
- (b) require an amount equal to the whole or any part of the amount required for—
- (i) discharging any liabilities of the governing body other than liabilities required by virtue of paragraph (a) above to be discharged by the new owners; and

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- (ii) meeting the costs of the winding up under section 94 of this Act;  
to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the new owners to the Secretary of State.
- (3) This subsection applies where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation proposals under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school have been approved.
- (4) Where in any case to which subsection (3) above applies the school was an aided or special agreement school immediately before it became a grant-maintained school—
- (a) if the Secretary of State has directed that the proposed school shall be an aided school, any section 105 loan liabilities of the governing body shall on the dissolution date be transferred to and become liabilities of the temporary governing body of the new school (subject to any variation of the terms applicable in relation to the loans in question immediately before that date that may be agreed between the Secretary of State and that governing body); and
  - (b) in any other case, any such liabilities shall be terminated on the dissolution date.
- (5) Where—
- (a) a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of a discontinued grant-maintained school; and
  - (b) any liabilities of the governing body of that grant-maintained school have been terminated under subsection (4)(b) above;
- the amount of those liabilities shall be treated for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.
- (6) Where in any case to which subsection (3) above applies the school premises are vested in any persons by an order made by virtue of section 95(1) of this Act, an order under section 94 of this Act may require an amount equal to the whole or any part of the amount required for discharging any liabilities of the governing body and meeting the costs of the winding up to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the local education authority concerned and paid by the persons in whom the premises are so vested to the Secretary of State.
- (7) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation the premises of the school are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school, an order under section 94 of this Act may require an amount equal to the amount of any section 105 loan liabilities of the governing body to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the authority to the Secretary of State.
- (8) Where in the case of any grant-maintained school conducted or formerly conducted by a governing body in liquidation—
- (a) the premises of the school—
    - (i) are vested by an order made by virtue of section 95(4) of this Act in a local education authority for the purposes of a new county school;

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- (ii) are vested beneficially in such an authority by an order made by virtue of section 95(7) and (8) of this Act; or
- (iii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and

- (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);

the Secretary of State may require the authority to pay to him the whole or any part of the compensation or purchase money paid in respect of the acquisition in or towards repayment of any expenditure incurred by him in making grants for the purpose of discharging any liabilities of the governing body and meeting the costs of the winding up.

## 98 **Capital expenditure: former voluntary schools.** E+W

- (1) This section applies where a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a voluntary school immediately before it became a grant-maintained school.

- (2) Subsection (3) below applies where in any such case—

- (a) an order is made by virtue of section 95(4) of this Act vesting the premises of the school in a local education authority for the purposes of a new county school; or
- (b) no such order has been made and no proposals have been approved under section 13 of the 1980 Act that a school proposed to be established on the school premises should be maintained by a local education authority as a voluntary school;

provided that, where paragraph (b) above applies, the Secretary of State is satisfied that no proposals for the establishment on those premises of a new county school are likely to be published, and no such proposals under section 13 are likely to be published or approved, before the date he proposes to appoint as the dissolution date.

- (3) Where this subsection applies, an order under section 94 of this Act shall determine—

- (a) the amount of any expenditure incurred by the Secretary of State in paying capital grant to the governing body of the school (“the capital grant amount”);
- (b) the amount of any expenditure incurred by him, otherwise than in connection with repairs, in respect of any premises used for the purposes of the school before it became a grant-maintained school (“the prior expenditure amount”); and
- (c) an amount representing the appropriate share in the value of the school premises of the former maintaining authority (“the locally funded amount”).

For the purposes of paragraph (c) above the appropriate share of a local education authority in the value of any school premises is such part of the value of those premises as the Secretary of State determines to be appropriate having regard to the extent to which those premises were provided at the expense of the local education authority concerned or a former authority.

- (4) Subject to subsection (7) below, in a case within subsection (2)(a) above, an order under section 94 of this Act may—

- (a) require an amount equal to the whole or any part of—
  - (i) the capital grant amount; and
  - (ii) the prior expenditure amount;

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to be deducted from the consideration otherwise payable by virtue of section 95 of this Act to the persons from whom the premises are transferred and paid by the local education authority concerned to the Secretary of State; and

- (b) either—
- (i) where the local education authority concerned are the former maintaining authority, provide for the consideration otherwise so payable to be reduced by an amount equal to the locally funded amount; or
  - (ii) in any other case, require an amount equal to the locally funded amount to be deducted from that consideration and paid by the local education authority concerned to the former maintaining authority.

(5) Subject to subsection (7) below, in a case within subsection (2)(b) above, an order under section 94 of this Act may require any persons in whom the school premises are vested—

- (a) to pay to the Secretary of State an amount equal to the whole or any part of—
  - (i) the capital grant amount; and
  - (ii) the prior expenditure amount; and
- (b) to pay to the former maintaining authority an amount equal to the locally funded amount.

(6) Subject to subsection (7) below, where in a case within subsection (2)(b) above—

- (a) no requirement has been imposed by virtue of subsection (5) above; and
- (b) any person acquires the school premises or any part of them (whether compulsorily or otherwise) from the persons in whom they were vested immediately before an order was made under section 94 of this Act (or, where more than one such order has been made, before the first of them) or their successors;

the Secretary of State may impose on the persons from whom the school premises were acquired any requirement that could have been imposed by virtue of subsection (5) above.

(7) No provision may be made in an order under section 94 of this Act by virtue of subsection (4) or (5) above, and no requirement may be imposed by virtue of subsection (6) above, in any case where—

- (a) that section applies in relation to the school in question by virtue of the fact that the Secretary of State has given notice to the governing body of the school specifying a date on which he intends to cease to maintain the school; and
- (b) the notice was given in accordance with section 93(2) of this Act.

(8) Where in any case to which this section applies a school is established in pursuance of any proposals under section 13 of the 1980 Act on the premises of the grant-maintained school, any capital expenditure incurred by the Secretary of State in relation to the grant-maintained school shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure so incurred (otherwise than in connection with repairs) in respect of the premises of the new school.

(9) In subsection (8) above “capital expenditure” means any such expenditure as is mentioned in subsection (3)(a) or (b) above.

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**99 Capital expenditure: former county schools. E+W**

- (1) This section applies where—
- (a) a grant-maintained school conducted or formerly conducted by a governing body in liquidation was a county school immediately before it became a grant-maintained school; and
  - (b) the Secretary of State has incurred any expenditure in paying capital grant to the governing body of the school (“the capital grant expenditure”).
- (2) Where in any case to which this section applies—
- (a) an order is made by virtue of section 95(1) of this Act vesting the school premises in any persons to be held on trust for the purposes of a proposed voluntary school; and
  - (b) the Secretary of State has directed that the proposed school shall be an aided school;
- an order under section 94 of this Act may provide for the consideration otherwise payable by virtue of section 95 to the local education authority concerned to be reduced by an amount equal to the whole or any part of the capital grant expenditure.
- (3) Any reduction by virtue of subsection (2) above shall be disregarded in determining the amount of any sums expended by the persons in whom the school premises are vested by the order on the provision of a site for the new school or of the school buildings; but an amount equal to the amount of that reduction shall be treated as having been paid by the Secretary of State to the governing body of the new school—
- (a) as to so much of it as does not exceed 85 per cent. of the amount of the sums so expended, by way of a grant under section 1(2)(a) of the <sup>M6</sup>Education Act 1967; and
  - (b) as to the balance (if any), by way of a loan made under section 105 of the 1944 Act on such terms as the Secretary of State may specify.
- (4) Where in any case to which this section applies—
- (a) an order is made as mentioned in subsection (2)(a) above; but
  - (b) no direction that the proposed school shall be an aided school has been given before the dissolution date;
- subsection (5) below shall apply in relation to the capital grant expenditure.
- (5) Where this subsection applies the capital grant expenditure shall for the purposes of section 14 of the 1944 Act (restrictions on discontinuance of voluntary schools) be treated (if it would not otherwise be so) as expenditure incurred by the Secretary of State (otherwise than in connection with repairs) in respect of the premises of the new school.
- (6) Where in any case to which this section applies an order is made by virtue of section 95(2) of this Act vesting the school premises in any persons proposing to establish an independent school on those premises, an order under section 94 of this Act may require an amount equal to the whole or any part of the capital grant expenditure to be deducted from the consideration otherwise payable by virtue of section 95 to the local education authority concerned and paid by the persons in whom the property is so vested to the Secretary of State.
- (7) Where in any case to which this section applies—
- (a) the school premises—

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- (i) are vested beneficially in a local education authority by an order made by virtue of section 95(7) and (8) of this Act; or
  - (ii) vest in such an authority by virtue of section 95(6) of this Act on the dissolution date; and
- (b) any person subsequently acquires the premises or any part of them from that authority (whether compulsorily or otherwise);
- the Secretary of State may require the authority to pay to him the whole or any part of the consideration or purchase money paid in respect of the acquisition in or towards repayment of the capital grant expenditure.

#### Marginal Citations

M6 1967 c. 3.

#### Miscellaneous and supplementary

### 100 Provision of benefits and services for pupils by local education authorities. **E**

**+W**

(1) Where—

- (a) a local education authority are under a duty, or have power (whether by virtue of this section or otherwise), to provide any benefits or services for pupils; and
- (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools maintained by a local education authority and in relation to pupils at grant-maintained schools;

the authority shall in performing the duty, or exercising the power, treat pupils at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than pupils at schools maintained by a local education authority.

[<sup>F7</sup>(1A) Where—

- (a) a local education authority are under a duty, or have power, to provide any benefits or services for persons, other than pupils, receiving education at a school; and
- (b) the duty is to be performed, or the power may be exercised, both in relation to such persons at schools maintained by a local education authority and in relation to such persons at grant-maintained schools;

the authority shall in performing the duty, or in exercising the power, treat such persons at grant-maintained schools no less favourably (whether as to the benefits or services provided or as to the terms on which they are provided) than such persons at schools maintained by a local education authority.]

(2) In section 50(1) of the 1944 Act (power of local education authority to provide board and lodging for pupils) after the words “voluntary school” there shall be inserted the words “grant-maintained school”.

(3) In section 55 of the 1944 Act (provision of transport and other facilities), after subsection (3) there shall be inserted the following subsection—

- “(4) Arrangements made by a local education authority under subsection (1) above shall make provision for pupils at grant-maintained schools which is no less



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favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority.”

This subsection is without prejudice to the generality of subsection (1) above.

- (4) In section 5 of the <sup>M7</sup>Education (Miscellaneous Provisions) Act 1948 (power of local education authority to provide clothing for pupils)—
- (a) in subsection (1), the words “or at a grant-maintained school” shall be inserted at the end of paragraphs (a) and (c); and
  - (b) the words “or a grant-maintained school” shall be inserted at the end of subsection (2)(a), after the words “maintained by them” in subsection (3)(a) and after the words “special school” in subsection (4).

#### Textual Amendments

**F7** S. 100(1A) inserted (1.8.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para.29; S.I. 1992/831, art. 2, Sch.4.

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

**C18** Ss. 100-101 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

#### Marginal Citations

**M7** 1948 c. 40.

## 101 Application of proceeds of disposal of premises. **E+W**

(1) Where—

- (a) the Secretary of State pays capital grant in respect of any transfer of a grant-maintained school to a new site authorised under section 91 of this Act; and
- (b) the governing body or any trustees of the school possess, or are or may become entitled to, any sum representing the proceeds of disposal of other premises which have been used for the purposes of the school;

the governing body or (as the case may be) the trustees or their successors shall pay to the Secretary of State the whole of that sum, if it is equal to or less than the amount of the capital grant, and otherwise so much of it as is required to repay that amount.

Any sum so paid shall, in a case where any interest in the new site has vested in any trustees of the school, be treated for the purposes of section 14 of the <sup>M8</sup>Schools Sites Act 1841 (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.

(2) Subject to subsection (4) below, where the governing body of any grant-maintained school apply to the Secretary of State for his consent to the disposal of—

- (a) any premises transferred to the governing body under section 74 of this Act from the former maintaining authority; or
- (b) any premises acquired wholly or partly from the proceeds of the disposal of any premises so transferred or of any premises so acquired;

he may require the premises or any part of the premises to be transferred to that authority, subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.

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- (3) Subject to subsection (4) below, where the governing body dispose of any premises within subsection (2)(a) or (b) above the Secretary of State may require the governing body to pay to the former maintaining authority the whole or any part of the proceeds of disposal in any case where he does not impose any requirement under subsection (2) above.
- (4) Subsection (2) above shall not apply where the occasion of any disposal of premises by the governing body is a transfer of the school to a new site in respect of which the Secretary of State has paid capital grant; and in relation to any disposal occasioned by such a transfer the reference in subsection (3) above to the proceeds of disposal shall be read as a reference to such part (if any) of those proceeds as remains after repayment of the amount of that capital grant in accordance with subsection (1) above.
- (5) For the purposes of this section the Secretary of State is to be regarded as paying capital grant in respect of the transfer of a grant-maintained school to a new site if he pays such grant in respect of the acquisition of the new site or the provision on that site of the school buildings or of any other buildings forming part of the new school premises.
- (6) For the purposes of this section—
- (a) the governing body or trustees of a grant-maintained school are to be regarded as disposing of any premises if those premises are acquired from them, whether compulsorily or otherwise; and
  - (b) references to the proceeds of disposal are references, in relation to any disposal of premises by any such governing body or trustees, to the compensation or purchase money paid in respect of the acquisition from them of those premises.
- (7) In subsection (6) above—
- (a) references to the acquisition of premises from the governing body or the trustees of a grant-maintained school include, in the case of any premises held under a tenancy to which Part II of the <sup>M9</sup>Landlord and Tenant Act 1954 applies, the termination of that tenancy under that Part of that Act; and
  - (b) the reference to the purchase money paid in respect of such an acquisition includes a reference to any compensation paid by the landlord on the quitting of any such premises by the governing body or the trustees of the school (whether or not the compensation is required to be paid by section 37 of that Act).

In this subsection expressions to which a meaning is given for the purposes of that Act have the same meaning as in that Act.

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

**C19** Ss. 100-101 modified (1.1.1994) by 1993/3103, reg. 3, Sch.2

**Marginal Citations**

**M8** 1841 c. 38.

**M9** 1954 c. 56.

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## 102 Variation of trust deeds relating to grant-maintained schools, etc. E+W

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to any school as, after consultation with the governing body of the school and the trustees (if any), appear to him to be requisite—
  - (a) in consequence of the approval of proposals for acquisition of grant-maintained status for the school;
  - (b) for removing any inconsistency between the provisions of that trust deed or other instrument and any provisions included or proposed to be included in any instrument or articles of government made for the school under this Chapter which it appears to him to be expedient to remove in the interests of the school; or
  - (c) in consequence of any proposals with respect to a change in the character or an enlargement of the premises of the school which fall to be implemented under section 89 of this Act.
- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.
- (3) Any provision of any instrument relating to any land held for the purposes of any voluntary school which—
  - (a) confers on any person an option to acquire an interest in that land; or
  - (b) provides (in whatever terms) for the determination or forfeiture of any such interest;
 in the event of the school's ceasing to be a voluntary school or (as the case may be) ceasing to be maintained by a specified local education authority shall, if the school becomes a grant-maintained school, have effect as if the event referred to were the school's ceasing to be a school which is either a grant-maintained school or a voluntary school.

## 103 Publication of information and reports and returns by governing bodies of grant-maintained schools. E+W

- (1) The governing body of every grant-maintained school shall publish, at such times and in such manner as may be required by regulations made by the Secretary of State, such information with respect to the school as may be so required.
- (2) The governing body of every such school shall make such reports and returns, and give such information, to the Secretary of State as he may require.
- (3) The governing body of every such school shall make such reports and returns, and give such information, to any local education authority by whom any functions are exercisable—
  - (a) in relation to the school; or
  - (b) in relation to registered pupils at the school;
 as the authority may require for the purpose of the exercise of those functions.

## 104 Interpretation of Chapter IV. E+W

- (1) In this Chapter—
  - (a) references to the proposed date of implementation are references—

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- (i) in relation to any school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 62 of this Act, to the date specified in accordance with section 61(4)(f) of this Act in the information given for the purposes of the originating ballot to persons eligible to vote in that ballot (within the meaning of section 61); and
  - (ii) in relation to any school in respect of which such proposals are pending, to the date specified in the proposals as the proposed date of implementation;
- (b) references, in relation to any school in respect of which such proposals have been approved, to the proposals as approved, subject to any modifications of those proposals under section 68 of this Act;
- (c) references to the character of a school are references to the kind of school it is determined by reference to any matter relating to—
  - (i) the provision of education at the school; or
  - (ii) the arrangements for admission of pupils to the school;the alteration of which would amount to a change in the character of the school;
- (d) references to a change in the character of a school include, in particular, changes in character resulting from education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls or for girls as well as boys, or from the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude;
- (e) references to a relevant age group are references to an age group in which pupils are or will normally be admitted to the school in question;
- (f) references to a governor of an elected category are references to a person who is a parent or teacher governor within the meaning of the 1986 Act or this Chapter (as the context may require);
- (g) references, in relation to a vacancy for a governor of an elected category on the existing governing body of a school in respect of which proposals are required to be or have been published under section 62 of this Act, to the procedure applicable under the 1986 Act in relation to filling the vacancy are references—
  - (i) except where any provision made by virtue of section 5 of that Act (appointment of parent governors by governing body) applies, to the holding of an election under that Act; and
  - (ii) where any such provision applies, to the making of an appointment in accordance with that provision;
- (h) references to the authority responsible for election arrangements under the 1986 Act in relation to a school are references to the authority or body by whom all necessary arrangements for any election of parent governors or teacher governors to the governing body of the school fall to be made under section 15(2) of that Act (which imposes responsibility for those arrangements on the local education authority in relation to county, controlled and maintained special schools and on the governing body of the school concerned in relation to aided and special agreement schools);
- (i) references, in relation to a grant-maintained school, to the former maintaining authority shall be read, in any case where—
  - (i) the school was maintained by ILEA immediately before it became a grant-maintained school; and

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- (ii) the functions formerly exercisable by ILEA in relation to, or in relation to registered pupils at, the school are by virtue of section 166(7) of this Act exercisable by an inner London council or any other local education authority;
- as references to that council or authority; and
- (j) references, in relation to such a school, to school property include, in the case of such property as is mentioned in section 94(7)(b)(iii) of this Act, references to any right to such property.
- (2) In relation to any proposals for acquisition of grant-maintained status required to be published under section 62 of this Act in respect of any school, the reference in subsection (1)(a) above to the originating ballot is a reference—
- (a) where subsection (1) of that section applies, to the ballot by reference to which it applies; and
- (b) where the proposals are required to be published by virtue of a requirement imposed by the Secretary of State under subsection (4) or (12) of that section, to the last ballot held in accordance with section 61 of this Act in relation to the school before that requirement was imposed.
- (3) In this Chapter—
- “incorporation date” means, in relation to a grant-maintained school, the date on which the initial governing body of the school is incorporated under this Chapter; and
- “premises” includes any interest in or easement, right or charge in, to or over premises.
- (4) The following table shows provisions defining or otherwise explaining expressions used in this Chapter (other than provisions defining or explaining an expression used only in the same section)—

dissolution date	section 94(3)(b)
eligible governor of an elected category	section 71
first governor	section 53(8) or 64(5) (as the context may require)
former maintaining authority	section 74(8) and subsection (1)(i) above.
foundation governor	section 53(8) or 64(5) (as the context may require)
governing body and initial governing body of a grant-maintained school	section 53(11) and (12)
governing body in liquidation	section 94(3)(a)
grant-maintained school formerly conducted by a governing body in liquidation	section 94(7)(c)
grant regulations	section 79(2)
parent governor	section 53(8) or 64(5) (as the context may require)

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proposals for acquisition of grant-maintained status	section 52(4)(a)
pending proposals for acquisition of grant-maintained status	section 68(2)
the relevant particulars	section 62(16)
section 105 loan liabilities	section 94(7)(a)
school property	section 94(7)(b) and subsection (1)(j) above
a school which is eligible for grant-maintained status	section 52(5) to (9)
teacher governor	section 53(8) or 64(5) (as the context may require)

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- (5) Any notification to the governing body of a school for the purposes of any provision of this Chapter may be given, and withdrawn, in such manner as the governing body may require.
- (6) In subsection (1)(i) above, “ILEA” and “inner London council” have the same meanings as in Part III of this Act.

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