



# Education Act 1996

## 1996 CHAPTER 56

### PART IX

#### ANCILLARY FUNCTIONS

#### CHAPTER I

##### ANCILLARY FUNCTIONS OF SECRETARY OF STATE

##### *General functions*

#### **495 Determination of disputes**

- (1) Except where this Act expressly provides otherwise, any dispute between a local education authority and the governing body of a school as to the exercise of any power conferred or the performance of any duty imposed by or under this Act may be referred to the Secretary of State (despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the governing body).
- (2) The Secretary of State shall determine any dispute referred to him under subsection (1).
- (3) Any dispute between two or more local education authorities as to which of them is responsible for the provision of education for any pupil shall be determined by the Secretary of State.

#### **496 Power to prevent unreasonable exercise of functions**

- (1) If the Secretary of State is satisfied (either on a complaint by any person or otherwise) that a body to which this section applies have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient (and may

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do so despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the body).

- (2) The bodies to which this section applies are—
- (a) any local education authority,
  - (b) the governing body of any county, voluntary or maintained special school, and
  - (c) the governing body of any grant-maintained school.

#### **497 General default powers**

- (1) If the Secretary of State is satisfied (either on a complaint by any person interested or otherwise) that a body to which this section applies have failed to discharge any duty imposed on them by or for the purposes of this Act, he may make an order—
- (a) declaring the body to be in default in respect of that duty, and
  - (b) giving such directions for the purpose of enforcing the performance of the duty as appear to him to be expedient.
- (2) The bodies to which this section applies are—
- (a) any local education authority,
  - (b) the governing body of any county, voluntary or maintained special school, and
  - (c) the governing body of any grant-maintained school.
- (3) Any directions given under subsection (1)(b) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.

*Appointment of governors, etc.*

#### **498 Powers where no properly constituted governing body**

- (1) Where it appears to the Secretary of State that, by reason of the default of any person, there is no properly constituted governing body of a school to which this section applies, the Secretary of State—
- (a) may make such appointments and give such directions as he thinks desirable for the purpose of securing that there is a properly constituted governing body of that school, and
  - (b) may give directions rendering valid any acts or proceedings which in his opinion are invalid or otherwise defective by reason of the default.
- (2) This section applies to—
- (a) any county, voluntary or maintained special school, and
  - (b) any grant-maintained school.

*Membership of education committees*

#### **499 Power to direct appointment of members of education committees**

- (1) Subsection (2) applies to any local authorities which in accordance with section 102(1) of the Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education which are conferred on them in their capacity as local education authorities.

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- (2) The Secretary of State may by directions to any local authorities to which this subsection applies require—
  - (a) every such committee, or
  - (b) any such committee of a description specified in the direction,to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts.
- (3) Subsection (4) applies to any two or more local authorities which in accordance with section 102(1) of the Local Government Act 1972 have appointed any committees wholly or partly for the purpose of discharging any functions with respect to education which are conferred on them in their capacity as local education authorities.
- (4) The Secretary of State may by directions to any local authorities to which this subsection applies require—
  - (a) every such committee, or
  - (b) any such committee of a description specified in the direction,to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts or in such area as may be specified in the direction.
- (5) The power of the Secretary of State to give directions under subsection (2) or (4) shall be exercisable in relation to any sub-committees which—
  - (a) are appointed by the authorities concerned or any such committee as is mentioned in that subsection, and
  - (b) are so appointed wholly or partly for the purpose of discharging the authorities' functions as mentioned in subsection (1) or (3) or the committee's functions with respect to education,as it is exercisable in relation to the committees themselves.

#### *Rationalisation of school places*

### **500 Directions to bring forward proposals to remedy excessive provision**

- (1) Where the Secretary of State is of the opinion that the provision for primary or secondary education in maintained schools in the area of any local education authority is excessive, then, for the purpose of remedying the excess—
  - (a) he may by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any voluntary school in the area, he may by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school.
- (2) Where—
  - (a) the Secretary of State is of the opinion that the provision for primary or secondary education in grant-maintained schools in the area of any local education authority is excessive, and

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(b) an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area,  
 he may by an order under this subsection direct the funding authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools for the purpose of remedying the excess.

- (3) An order under subsection (1) or (2) shall—
- (a) require the proposals to be published, or (as the case may be) notice of the proposals to be served, not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (1)(a) or (2) may not require the proposals to relate to any named school.

**501 Directions to bring forward proposals for additional provision in maintained schools**

- (1) The powers conferred by subsection (2) are exercisable where—
- (a) an order under section 27(1)(b) applies to the area of a local education authority, and
  - (b) the Secretary of State is of the opinion that the schools providing relevant education which are available for the area are not sufficient for the purposes of section 14 and that additional provision for relevant education should be made in maintained schools in the area.
- (2) The Secretary of State may—
- (a) by an order under this paragraph direct the local education authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any voluntary school in the area, by an order under this paragraph direct the governing body to exercise their powers to make proposals for the alteration of their school,
- with a view (in each case) to securing that provision is made for such additional number of pupils in the area as may be specified in the order.
- (3) An order under subsection (2) shall—
- (a) require the proposals to be published, or (as the case may be) notice of the proposals to be served, not later than such date as may be specified in the order, and
  - (b) require the proposals to apply such principles in giving effect to the direction as may be specified in the order.
- (4) An order under subsection (2)(a) may not require the proposals to relate to any named school.
- (5) Paragraph 7 of Schedule 4 does not apply in relation to the implementation of any proposals under section 35 where the Secretary of State has made an order under subsection (2) above.

## **502 Publication of proposals by Secretary of State**

(1) Where—

- (a) the Secretary of State has, in relation to the area of any local education authority, made an order under section 500(1) or (2) directing the local education authority, the funding authority or the governing body of a voluntary school to make proposals for the establishment, alteration or discontinuance of schools or (as the case may be) for the alteration of their school, and
- (b) the time allowed under the order, and under any other order under that section relating to that area, for the publication of the proposals or (as the case may be) the service of notice of the proposals has expired,

he may make in such manner as may be prescribed any such proposals as might have been made in accordance with the order or orders relating to that area by the person or persons to whom the directions were given.

(2) Proposals made under this section shall—

- (a) include particulars of the proposed time or times of implementation of the proposals, and
- (b) except where they are proposals to cease to maintain or discontinue any school or relate to a special school—
  - (i) include particulars of the number of pupils proposed to be admitted to the school to which the proposals relate in each relevant age group in the first school year in relation to which the proposals have been wholly implemented, and
  - (ii) if, in the case of a grant-maintained school, pupils are proposed to be admitted for nursery education, give the prescribed information.

(3) For the purposes of subsection (2)(b)—

- (a) admission to a maintained school for nursery education shall be disregarded; and
- (b) the transfer to a reception class of pupils admitted to a school for nursery education shall be treated as admission to the school.

(4) Proposals made under this section shall be accompanied by a statement which—

- (a) describes any effect the implementation of the proposals would have on provision at the school for pupils who have special educational needs, and
- (b) explains the effect of subsection (5).

(5) Within the period of one month beginning with the date on which the proposals are made, objections to the proposals may be made by any of the following—

- (a) any ten or more local government electors for the area,
- (b) the governing body of any school affected by the proposals and, in the case of a voluntary school, the person or persons who are named in the school's instrument of government as being entitled to appoint foundation governors,
- (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
- (d) any local education authority concerned.

(6) Where—

- (a) an order under section 27 applies to the area of a local education authority, and

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(b) the Secretary of State makes proposals under this section which affect the provision of relevant education in the area,  
the funding authority shall be included among the persons who may submit objections to the proposals.

(7) The reference in subsection (5) to the date on which the proposals are made is to the date on which the prescribed requirements in respect of the proposals are satisfied.

### **503 Public inquiry into proposals**

(1) This section applies where in relation to the area of any local education authority the Secretary of State has made proposals under section 502 (otherwise than in pursuance of section 504(1)) which he has not withdrawn.

(2) If objections have been made under section 502(5) within the period allowed under that subsection, then, unless all objections so made have been withdrawn in writing within that period, the Secretary of State shall cause a local inquiry to be held to consider his proposals, any proposals he refers to the inquiry and any objections.

(3) Any proposals referred to a local inquiry under this section require the approval of the Secretary of State (if they would not require such approval apart from this subsection).

(4) Where the Secretary of State has a duty to cause a local inquiry to be held under this section, he shall refer to the inquiry—

- (a) any proposals made by him in relation to the area of the local education authority (and not withdrawn) but in respect of which he is not required under this section to cause a local inquiry to be held,
- (b) any proposals made by the local education authority, or made in relation to the area by the funding authority, in the exercise of their powers to make proposals for the establishment, alteration or discontinuance of schools (and not withdrawn), and
- (c) any proposals made by the governing body of any voluntary school in the area in exercise of their powers to make proposals for the alteration of their school (and not withdrawn),

where those proposals are not determined before he causes the inquiry to be held and appear to him to be related to the proposals made under section 502 in respect of which he is required under this section to cause the inquiry to be held.

(5) If, before the Secretary of State causes the inquiry to be held, he forms the opinion that any proposals ought to be implemented, subsection (4) does not require him to refer those proposals to the inquiry unless—

- (a) before the proceedings on the inquiry are concluded, or
- (b) (if earlier) the proposals are determined,

he subsequently forms a different opinion.

(6) It shall not be open to the inquiry to question the principles specified in the order under section 500 or 501.

(7) References in this section to the determination of any proposals are to any determination whether or not to approve, adopt or implement the proposals under section 37, 38, 43, 169 or 170, under Part III or under section 340.

## **504 Adoption of proposals and approval of related proposals**

- (1) Where the Secretary of State has made proposals under section 502 in respect of which he is required to cause a local inquiry to be held, he may when he has considered the report of the person appointed to hold the inquiry do one or more of the following—
  - (a) adopt, with or without modifications, or determine not to adopt the proposals or any other proposals made by him under that section which he referred to the inquiry;
  - (b) approve, with or without modifications, or reject any other proposals which he referred to the inquiry; and
  - (c) make any such further proposals under section 502 as might have been made in accordance with the order or orders relating to the area of the local education authority concerned by the person or persons to whom the directions were given.
- (2) Where the Secretary of State has made proposals under section 502 in respect of which he is not required to cause a local inquiry to be held and which he is not required to refer to such an inquiry, he may, after considering any objections made under subsection (5) of that section (and not withdrawn) within the period allowed under that subsection—
  - (a) adopt the proposals with or without modifications; or
  - (b) determine not to adopt the proposals.
- (3) Proposals adopted by the Secretary of State under this section shall have effect—
  - (a) if they relate to a maintained school, as if they—
    - (i) had been made by the local education authority under their powers to make proposals for the establishment, alteration or discontinuance of schools, or
    - (ii) in the case of a voluntary school, had been made by the governing body under their powers to make proposals for the alteration of their school,and had been approved by the Secretary of State under section 37, 43 or 169 or, as the case may be, section 340; and
  - (b) if they relate to a grant-maintained school, as if they had been made by the funding authority under those powers and approved by the Secretary of State under Part III or, as the case may be, section 340;and the provisions of section 39 or 44 or Part III or, as the case may be, section 341 as to the approval of particulars of premises or proposed premises of schools shall have effect accordingly.

## **505 Supplementary provisions**

- (1) An order under section 500 or 501 may not require any significant change to be made in the religious character of a voluntary school.
- (2) Where the governing body of a voluntary school make any proposals in pursuance of an order under section 500 or 501—
  - (a) the person or persons who are named in the school's instrument of government as being entitled to appoint foundation governors shall be included among the persons who may submit objections to the proposals, and
  - (b) the local education authority shall reimburse any expenditure reasonably incurred by the governing body in making the proposals.

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- (3) Proposals made in pursuance of an order under section 500 may not be withdrawn without the consent of the Secretary of State and such consent may be given on such conditions (if any) as the Secretary of State considers appropriate.
- (4) Where—
- (a) proposals made by the governing body of a voluntary school in pursuance of an order under section 500 or 501 are approved, or
  - (b) proposals adopted by the Secretary of State under section 504 have effect as mentioned in subsection (3)(a)(ii) of that section,
- then, despite anything in section 45(1), the local education authority shall defray the cost of implementing the proposals.
- (5) Despite anything in section 184, a county or voluntary school is not eligible for grant-maintained status—
- (a) if the local education authority have made any proposals in pursuance of an order under section 500 to cease to maintain the school which have not been withdrawn and no determination whether or not to approve or implement the proposals has been made under section 169 or 170 or section 504, or
  - (b) if the Secretary of State has made any proposals under section 502 for the local education authority to cease to maintain the school which have not been withdrawn and no determination whether or not to adopt the proposals has been made under section 504.
- (6) Section 37(4), (7) and (8) or, as the case may be, section 43(3), (4) and (5) do not apply in relation to any proposals under section 35(1)(c) or (d) or 41(2) made in pursuance of an order under section 500.
- (7) In sections 500 to 504 “powers to make proposals for the alteration of their school”, in relation to the governing body of a voluntary school, means their powers to publish proposals under section 41(2).
- (8) In sections 500 to 504—
- (a) “powers to make proposals for the establishment, alteration or discontinuance of schools” means—
    - (i) in relation to the local education authority, all or any of the powers to publish proposals under section 35 or 167,
    - (ii) in relation to the funding authority, all or any of the powers to publish proposals under sections 211, 260 or 268, and
    - (iii) in relation to either authority, the power to serve notice of proposals under section 339;
  - (b) references to maintained schools are references to county, voluntary and maintained special schools; and
  - (c) references to grant-maintained schools include grant-maintained special schools.

### *Medical examinations*

#### **506 Power to require medical examination of pupils**

- (1) Where—
- (a) a question is referred to the Secretary of State under section 442(3) or 495, and



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- (b) in his opinion the examination of any pupil by a registered medical practitioner appointed by him for the purpose would assist in determining the question, he may serve a notice on the parent of that pupil requiring the parent to present the pupil for examination by such a practitioner.
- (2) Any parent who without reasonable excuse fails to comply with any requirements of a notice served on him under subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

#### *Local inquiries*

### **507 Power to direct local inquiries**

- (1) The Secretary of State may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this Act.
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving evidence at and defraying costs of local inquiries) shall have effect with respect to any such inquiry as they have effect with respect to an inquiry held under that section.