



# Education Act 1996

## 1996 CHAPTER 56

### PART VI

#### SCHOOL ADMISSIONS, ATTENDANCE AND CHARGES

#### CHAPTER I

#### SCHOOL ADMISSIONS

#### *Parental preferences*

#### **411 Parental preferences.**

- (1) A local education authority shall make arrangements for enabling the parent of a child in the area of the authority—
  - (a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and
  - (b) to give reasons for his preference.
- (2) Subject to subsection (3) [<sup>F1</sup>, section 411A (pupils excluded from two or more schools),] [section 413B(3) (home-school partnership documents)] and section 430(2) (co-ordinated admission arrangements), a local education authority and the governing body of a county or voluntary school shall comply with any preference expressed in accordance with arrangements made under subsection (1).
- (3) The duty imposed by subsection (2) does not apply—
  - (a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;
  - (b) if the preferred school is an aided or a special agreement school and compliance with the preference would be incompatible with any arrangements between the governing body and the local education authority made under section 413; or

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- [<sup>F2</sup>(c) if the arrangements for admission to the preferred school—
- (i) are wholly based on selection by reference to ability or aptitude, and
  - (ii) are so based with a view to admitting only pupils with high ability or with aptitude,
- and compliance with the preference would be incompatible with selection under those arrangements.]
- [<sup>F3</sup>(3A) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.]
- (4) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application shall be regarded for the purposes of subsection (2) as having expressed a preference for that school in accordance with arrangements made under subsection (1).
- (5) The duty imposed by subsection (2) in relation to a preference expressed in accordance with arrangements made under subsection (1) shall apply also in relation to—
- (a) any application for the admission to a school maintained by a local education authority of a child who is not in the area of the authority, and
  - (b) any application made by a parent as mentioned in section 438(4) or 440(2) (application for a particular school to be specified in a school attendance order);
- and references in subsection (3) to a preference and a preferred school shall be construed accordingly.
- (6) No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a county or voluntary school in a school year of a number of pupils in a relevant age group which does not exceed—
- (a) the relevant standard number, or
  - (b) the admission number fixed in accordance with section 416,
- whichever is the greater.
- (7) In this Chapter “the relevant standard number”, in relation to a county or voluntary school, a relevant age group and a school year, means the standard number applying under sections 417 to 420 to the school in relation to that age group and year.
- (8) In [<sup>F4</sup>this Chapter (apart from sections 431 to 433)]“child” includes a person who has not attained the age of 19.
- [<sup>F5</sup>(9) Where the arrangements for the admission of pupils to a school provide for all pupils admitted to the school to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of this Chapter to be wholly based on selection by reference to ability or aptitude, whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.]
- [<sup>F6</sup>(10) In this Chapter “qualifying measures”, in relation to the admission of a child to a school, means measures required to be taken (whether in the school year in which the admission would take place or in any subsequent school year) in order to ensure compliance with the duty imposed by section 1(6) of the School Standards and Framework Act 1998 (duty of local education authority and governing body to comply with limit on class sizes).]

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#### Textual Amendments

- F1** Words in s. 411(2) inserted (1.9.1997 in respect of the words ",section 411A" to schools)," otherwise prosp.) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(2)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F2** S. 411(3)(c) substituted (1.9.1997) by 1997 c. 44, s. 10; S.I. 1997/1468, art. 292), Sch. 1 Pt. II
- F3** S. 411(3A) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 1(2)(4)**
- F4** Words in s. 411(8) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(3)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F5** S. 411(9) inserted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 31(4)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**
- F6** S. 411(10) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 1(3)(4)**

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

- C1** S. 411 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, **Sch. para. 1**
- C2** Power to restrict s. 411(6) conferred (24.7.1998) by 1998 c. 31, s. 144, **Sch. 32 Pt. II para. 6(1)(a)** (with ss. 138(9), 144(6))

#### [411A <sup>F7</sup> **No requirement to admit children permanently excluded from two or more schools.**

- (1) The duty imposed by section 411(2) does not apply in the case of a child to whom subsection (2) applies.
- (2) Where a child has been permanently excluded from two or more schools, this subsection applies to him during the period of two years beginning with the date on which the latest of those exclusions took effect.
- (3) Subsection (2) applies to a child whatever the length of the period or periods elapsing between those exclusions and regardless of whether it has applied to him on a previous occasion.
- (4) However, a child shall not be regarded as permanently excluded from a school for the purposes of this section if—
  - (a) although so excluded he was reinstated as a pupil at the school following the giving of a direction to that effect to the head teacher of the school; or
  - (b) he was so excluded at a time when he had not attained compulsory school age.
- (5) In this section “school” means—
  - (a) a school maintained by a local education authority; or
  - (b) a grant-maintained or grant-maintained special school.
- (6) This section does not apply in relation to a child unless at least one of the two or more exclusions mentioned in subsection (2) took effect on or after the date of the coming into force of section 11 of the Education Act 1997.
- (7) For the purposes of this section the permanent exclusion of a child from a school shall be regarded as having taken effect on the school day as from which the head teacher decided that he should be permanently excluded.]

#### Textual Amendments

- F7** S. 411A inserted (1.9.1997) by 1997 c. 44, s.11 (with s. 57(3)); S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II**

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### *Admission arrangements for county and voluntary schools*

#### **412 Consultation as to admission arrangements.**

- (1) Where the governing body of a county or voluntary school are responsible for determining the arrangements for the admission of pupils to the school, they shall—
  - (a) consult the local education authority before determining, or varying, any of those arrangements, and
  - (b) at least once in every school year, consult the local education authority as to whether those arrangements are satisfactory.
- (2) Where the local education authority are responsible for determining the arrangements for the admission of pupils to a county or voluntary school, they shall—
  - (a) consult the governing body before determining, or varying, any of those arrangements, and
  - (b) at least once in every school year, consult the governing body as to whether those arrangements are satisfactory.

#### **413 Admission arrangements to preserve character of aided or special agreement school.**

- (1) If the governing body of an aided or special agreement school so request, the local education authority shall make with the governing body arrangements in respect of the admission of pupils to the school for preserving the character of the school; and, in default of agreement between the authority and the governing body, the terms of any such arrangements shall be determined by the Secretary of State.
- (2) If one of the parties to arrangements under subsection (1) proposes that the arrangements should be modified or replaced by substitute arrangements but the other party does not agree, the party making the proposal may refer the matter to the Secretary of State.
- (3) On a reference under subsection (2), the Secretary of State may direct—
  - (a) that the arrangements shall remain as they are;
  - (b) that they shall be modified or replaced as proposed; or
  - (c) that they shall be modified in such other manner, or replaced by such other substitute arrangements, as may be specified in the direction.
- (4) Where the Secretary of State directs as mentioned in subsection (3)(b) or (c), the modification or, as the case may be, the substitute arrangements shall have effect, from such date as may be specified in the direction, as if agreed between the parties.

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

**C3** S. 413 continued to have effect (31.8.1999) by S.I. 1999/1016, art. 6, Sch. 4 para. 12 (as added by S.I. 1999/2484, art. 2(4))

#### **[<sup>F8</sup>413A Admission arrangements may provide for home-school partnership documents.**

- (1) The admission arrangements for a county or voluntary school may include provisions—

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- (a) setting out the terms of a partnership document for the school and the parental declaration to be used in connection with the document;
  - (b) making it a condition of the admission of every child to the school that his parent gives the admission authority a signed parental declaration either—
    - (i) at the time of applying for a place at the school for the child, or
    - (ii) if the child is allocated a conditional place, within such period as is specified in the arrangements; and
  - (c) authorising the admission authority to dispense with that condition to any extent in the case of a particular child where they are satisfied that there are special reasons for doing so.
- (2) For the purposes of this section and section 413B a “partnership document” is a statement specifying—
  - (a) the school’s aims and values;
  - (b) the responsibilities which the school intends to discharge in connection with the education of children admitted to the school; and
  - (c) the parental responsibilities, that is the responsibilities which the parents of such children are expected to discharge in connection with the education of their children while they are registered pupils at the school;and “parental declaration” means a declaration to be signed by a parent seeking the admission of his child to the school by which he acknowledges and accepts the parental responsibilities specified in the partnership document.
- (3) In determining the provisions to be included in the admission arrangements for a school in pursuance of subsection (1), the admission authority shall have regard to any guidance given from time to time by the Secretary of State.
- (4) The Secretary of State may by order provide that any form of words specified in the order, or having such effect as is so specified, is not to be used in a partnership document or (as the case may be) in a parental declaration.
- (5) An order under subsection (4) may apply to any school or description of school specified in the order.
- (6) Where a local education authority consult the governing body of a county or voluntary school under section 412(2)(a) or (b), the authority shall have particular regard to any representations by the governing body—
  - (a) that the admission arrangements for the school should include the provisions authorised by subsection (1), or
  - (b) as to the terms of the partnership document or parental declaration to be included in the arrangements, or
  - (c) as to any variation of those terms as for the time being so included, as the case may be.
- (7) In this section and section 413B—

“admission arrangements”, in relation to a school, means the arrangements for the admission of pupils to the school; and

“conditional place”, in relation to a child, means a place which is conditional on the child’s parent giving the admission authority a signed parental declaration.]

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**Textual Amendments**

**F8** S. 413A inserted (*prosp.*) by 1997 c. 44, ss.13, 58(3) (with s. 57(3)).

**[<sup>F9</sup>413B Effect of home-school partnership document.**

- (1) This section applies where the admission arrangements for a county or voluntary school include the provisions authorised by section 413A(1).
- (2) The admission authority for the school shall, in the case of each child on behalf of whom an application for admission is made, notify his parent of the following matters, namely—
  - (a) the terms of the partnership document and the parental declaration, and
  - (b) the effect of the provisions of the admission arrangements authorised by section 413A(1)(b) and (c).
- (3) Where subsection (2) has been complied with in relation to a child's parent but—
  - (a) the parent has failed to comply with the condition referred to in section 413A(1)(b), and
  - (b) the admission authority are not satisfied that there are special reasons for dispensing with that condition to the required extent in the case of that child,
 section 411(2) shall not require the admission of the child to the school; and, if he has been allocated a conditional place, the allocation of that place may be cancelled.
- (4) In subsection (3) the reference to dispensing with the condition mentioned in that subsection "to the required extent"—
  - (a) is, where the parent gives the admission authority a signed parental declaration in relation to some but not the remainder of the parental responsibilities, a reference to dispensing with that condition so far as the remainder of those responsibilities are concerned; but
  - (b) is otherwise a reference to wholly dispensing with that condition.
- (5) In performing any function under this section the admission authority shall have regard to any guidance given from time to time by the Secretary of State.
- (6) A partnership document shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.]

**Textual Amendments**

**F9** S. 413B inserted (*prosp.*) by 1997 c. 44, ss.13, 58(3)(4) (with s. 57(3))

**414 Information as to schools and admission arrangements.**

- (1) A local education authority shall, for each school year, publish particulars of—
  - (a) the arrangements for the admission of pupils to schools maintained by the authority other than aided or special agreement schools,
  - (b) the authority's arrangements for the provision of education at schools maintained by another local education authority or not maintained by a local education authority, and

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- (c) the arrangements made by the authority under sections 411(1) and 423(1) (admission appeals).
- (2) The governing body of an aided or a special agreement school shall, for each school year, publish particulars of—
- (a) the arrangements for the admission of pupils to the school, and
  - (b) the arrangements made by them under section 423(2) (admission appeals).
- (3) The particulars to be published under subsections (1)(a) and (2)(a) shall include particulars of—
- (a) in the case of each school to which the arrangements relate, the admission number applicable in each school year in relation to the age group in which pupils are normally admitted (or, if there is more than one such group, the admission number so applicable in relation to each such group),
  - (b) the respective admission functions of the local education authority and the governing body,
  - (c) the policy followed in deciding admissions, and
  - (d) the arrangements made in respect of pupils not belonging to the area of the local education authority.
- (4) In subsection (3)(a) references to the admission number applicable in a school year in relation to an age group are to—
- (a) the standard number applying under sections 417 to 420 to the school in question in relation to that age group and year, or
  - (b) the admission number fixed in relation to the school in accordance with section 416 for that age group and year,
- whichever is the greater.
- (5) The particulars to be published under subsection (1)(b) shall include particulars of—
- (a) the criteria for offering places at schools not maintained by a local education authority, and
  - (b) the names of, and number of places at, any such schools in respect of which the authority have standing arrangements.
- (6) The governing body of a school maintained by a local education authority—
- (a) shall publish such information as respects that school as may be required by regulations; and
  - (b) may publish such other information with respect to the school as they think fit.
- (7) For the purposes of this section information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (8) A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the particulars or information referred to in subsection (2) or (6) above.
- (9) References in this section to publication are references to publication at such time or times and in such manner as may be required by regulations.

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

- C4** S. 414 continued to have effect (31.8.1999) by S.I. 1999/1016, art. 6, Sch. 4, para. 12 (as inserted 31.8.1999) by S.I. 1999/2484, art. 2(4))

*Admission numbers for county and voluntary schools*

**415 Meaning of “the admission authority”.**

In this Chapter “the admission authority”, in relation to a county or voluntary school, means—

- (a) the local education authority, where they are responsible for determining the arrangements for the admission of pupils to the school, or
- (b) the governing body, where they are responsible for determining those arrangements.

**416 Fixing admission numbers.**

- (1) The admission authority for a county or voluntary school shall not fix as the admission number for any relevant age group and any school year a number which is less than the relevant standard number.
- (2) Despite any provision of the articles of government of the school (but subject to section 412), the admission authority may fix as the admission number for any relevant age group and any school year a number which exceeds the relevant standard number.
- (3) A proposal may be made to the admission authority in accordance with subsections (4) and (5) for fixing as the admission number for any relevant age group and any school year a number which exceeds both—
  - (a) the relevant standard number, and
  - (b) any admission number fixed, or proposed to be fixed, for that age group and year by the admission authority.
- (4) The proposal may be made—
  - (a) where the local education authority are the admission authority, by the governing body, or
  - (b) where the governing body are the admission authority, by the local education authority.
- (5) Any such proposal—
  - (a) shall be made in writing,
  - (b) may relate to one or more relevant age groups, and
  - (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (6) If the admission authority do not give the authority making the proposal notice in writing rejecting the proposal within the period of two months beginning with the day after that on which the proposal was received by the admission authority, the admission authority shall give effect to the proposal.



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- (7) Where the admission authority give such notice within that period, the authority making the proposal may, within 28 days of receiving the notice, make an application to the Secretary of State for an order under section 420(2) increasing the relevant standard number.
- (8) In this section references, in relation to a school, to the “admission number” for any relevant age group and any school year are references to the number of pupils in that age group it is intended to admit to the school in that school year.

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

- C5** Power to restrict s. 416(1) conferred (24.7.1998) by [1998 c. 31, s. 144, Sch. 32 Pt. II para. 6\(1\)\(a\)](#) (with [ss. 138\(9\), 144\(6\)](#)).

**417 Standard numbers for admissions to secondary schools.**

- (1) Subject to subsection (2), if pupils in any age group were admitted to a county or voluntary secondary school in the school year beginning in 1989, the standard number applying to the school for that age group in any subsequent school year shall be—
  - (a) the standard number applying to the school under section 15 of the <sup>MI</sup>Education Act 1980 (“the 1980 Act”) for that age group in the school year beginning in 1989, or
  - (b) the number of pupils in that age group admitted in the school year beginning in 1989,whichever is the greater.
- (2) If proposals under section 35 or 41 above or section 12 or 13 of the 1980 Act (proposals for the establishment or alteration of a school) have fallen to be implemented in relation to a county or voluntary secondary school, the number stated in the proposals for any school year and age group shall constitute the standard number applying to the school for that age group—
  - (a) in any school year beginning after 1989 in relation to which the proposals have been wholly implemented, and
  - (b) subject to any variation made by the Secretary of State, in any school year beginning after 1989 in relation to which they have been partly implemented.
- (3) In subsection (2) “the number stated in the proposals” means the number so stated in accordance with section 35(3)(b) or 41(5)(b) above (or, as the case may be, section 12(2) of the 1980 Act or section 12(2) as applied by section 13(2) of that Act).
- (4) Any standard number applying under subsection (2) is without prejudice to the application under that subsection of a new standard number if further proposals under section 35 or 41 above fall to be implemented.
- (5) References in this section to proposals under section 35 or 41 above or section 12 or 13 of the 1980 Act are to the proposals with any modifications made by the Secretary of State under section 37, 40, 43 or 45 above or, as the case may be, under section 12 or 13 of the 1980 Act.

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**Marginal Citations**

**M1** 1980 c. 20.

**418 Standard numbers for admissions to primary schools.**

- (1) Subject to subsection (2), if pupils in any age group were admitted to a county or voluntary primary school in the school year beginning in 1991, the standard number applying to the school for that age group in any subsequent year shall be—
  - (a) the number applicable in relation to the school and in relation to that age group in accordance with section 419, or
  - (b) the number of pupils in that age group admitted in the school year beginning in 1991,
 whichever is the greater.
- (2) If proposals published under section 35 or 41 above or section 12 or 13 of the <sup>M2</sup>Education Act 1980 (proposals for the establishment or alteration of a school) have fallen to be implemented in relation to a county or voluntary primary school, the number stated in the proposals for any school year and age group shall constitute the standard number applying to the school for that age group—
  - (a) in any school year beginning after 1991 in relation to which the proposals have been wholly implemented, and
  - (b) subject to any variation made by the Secretary of State, in any school year beginning after 1991 in relation to which they have been partly implemented.
- (3) Section 417(3) to (5) shall apply for the purposes of subsection (2) of this section as they apply for the purposes of section 417(2).

**Marginal Citations**

**M2** 1980 c. 20.

**419 Special provisions supplementary to section 418.**

- (1) In this section “the 1980 standard number”, in relation to any school and age group, means the standard number applying to the school under section 15 of the Education Act 1980 (“the 1980 Act”) in relation to that age group in the school year beginning in 1991.
- (2) In the case of a primary school to which section 418(1) applies, the number applicable in relation to the school and in relation to any age group there mentioned is—
  - (a) if the 1980 standard number for that age group is a number determined under section 15(5) of the 1980 Act by reference to the number of pupils in that age group admitted to the school in the school year beginning in 1979, the recalculated 1979 admission number;
  - (b) if the 1980 standard number for that age group is a number determined under section 15(6) of that Act by reference to the number of pupils in that age group admitted to the school in any school year beginning after 1979 (and not varied by the Secretary of State under that provision), the recalculated post-1979 admission number; and

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- (c) if the 1980 standard number for that age group is a number applicable by virtue of section 15(7) of that Act which has not been varied by the Secretary of State, the aggregate of the number so applicable and the additional admission number.
- (3) In subsection (2)(a) “the recalculated 1979 admission number”, in relation to any school and age group, means the number of pupils admitted to the school in that age group in the school year beginning in 1979 (as determined in accordance with section 436, which relates to children admitted for nursery education).
- (4) In subsection (2)(b) “the recalculated post-1979 admission number”, in relation to any school and age group, means the number of pupils admitted to the school in that age group in the school year by reference to which the 1980 standard number for that school and age group was determined (as determined in accordance with section 436).
- (5) In subsection (2)(c) “the additional admission number”, in relation to any school and age group, means the aggregate of—
  - (a) the number of pupils admitted to the school in that age group in the first school year in relation to which the proposals in question had been wholly implemented who were admitted otherwise than for nursery education and were under the age of four years and six months on the date of their admission, and
  - (b) the number of pupils already admitted to the school for nursery education transferred in that year to a reception class at the school.

#### **420 Variation of standard numbers.**

- (1) The Secretary of State may by order applying to county or voluntary schools of any class or description vary any standard number that would otherwise apply by virtue of section 417 or 418.
- (2) Subject to subsections (3) to (5), the Secretary of State may by order vary any standard number that would otherwise apply to an individual school by virtue of section 417 or 418 or by virtue of any order made under subsection (1).
- (3) An order under subsection (2) reducing a standard number may only be made on the application of the admission authority for the school, and is subject to the procedure provided for in Schedule 32.
- (4) An order under subsection (2) increasing a standard number may be made on the application of the admission authority for the school or on an application made by the governing body or local education authority in accordance with section 416(7).
- (5) On an application for an order under subsection (2) increasing a standard number, the Secretary of State may—
  - (a) make an order under subsection (2) increasing the standard number to the number proposed,
  - (b) after consultation with both the local education authority and the governing body of the school, make an order under subsection (2) increasing the standard number to such number (less than the number proposed) as he thinks desirable, or
  - (c) refuse to make an order increasing the standard number.

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## 421 Review of standard numbers.

- (1) The admission authority for a county or voluntary school shall keep under review any standard numbers applying to the school under sections 417 to 420, having regard to any change in the school's capacity to accommodate pupils as compared with its capacity at the beginning of the school year in which those standard numbers first applied (whether by virtue of section 15 of the <sup>M3</sup>Education Act 1980, section 27 of the <sup>M4</sup>Education Reform Act 1988 or sections 417 to 420 above).
- (2) For the purposes of this section a school's capacity to accommodate pupils is changed if—
- (a) as a result of changes in the availability or use of accommodation at the school, there is any change in the amount of accommodation available for use by pupils at the school; or
  - (b) as a result of changes in the requirements applicable to the school under regulations made under section 542 there is any change in the number of pupils for whom accommodation may lawfully be provided at the school;
- and a school's capacity to accommodate pupils is reduced if the result of the changes is, in a case within paragraph (a), less accommodation or, in a case within paragraph (b), a reduction in the number there mentioned.

### Modifications etc. (not altering text)

**C6** S. 421 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, **Sch. para.2**.

### Marginal Citations

**M3** 1980 c. 20.

**M4** 1988 c. 40.

- <sup>F10</sup> **421A**
- (1) The admission authority for a county or voluntary school containing any infant class shall keep under review any standard number applicable to admissions to an infant class, having regard to—
- (a) the school's capacity to accommodate pupils, and
  - (b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the relevant standard number would not cause prejudice of the kind referred to in section 411(3)(a) by reason of any qualifying measures.
- (2) The admission authority for any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.
- (3) Where, as a result of a review under subsection (1), the authority consider that any standard number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall make an application for an order under section 420(2) varying the standard number.
- (4) For the purposes of subsection (1) a school's capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State.

*Status: Point in time view as at 01/09/1998.*

*Changes to legislation: Education Act 1996, Part VI is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In this Chapter, “infant class” has the meaning given in section 4 of the School Standards and Framework Act 1998.]

#### Textual Amendments

**F10** S. 421A inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 2(1)(2)

### *New county and voluntary schools*

#### **422 Admission of pupils to new schools.**

- (1) The initial arrangements for the admission of pupils to a new school shall be made—
- (a) where the school will be a county or controlled school, by the local education authority; or
  - (b) where it will be an aided school, by the temporary governing body or by the promoters if—
    - (i) that body have not been constituted, and
    - (ii) the promoters consider that it is expedient for the arrangements to be determined without delay.
- (2) Any body or persons making any initial arrangements under this section shall have regard to the arrangements in force for the admission of pupils to comparable schools in the area of the local education authority.
- (3) Before making any such initial arrangements for a new school which will be a county school, the authority shall consult the temporary governing body unless—
- (a) that body have not been constituted, and
  - (b) the authority consider that it is expedient for the initial arrangements to be determined without delay.
- (4) Before making any such arrangements for a new school which will be a controlled school the authority shall consult—
- (a) the temporary governing body; or
  - (b) where that body have not been constituted, the promoters.
- (5) Before making any such initial arrangements for a new school which will be an aided school the temporary governing body or (as the case may be) the promoters shall consult the authority.
- (6) Sections [F11411, 411A, 413 to 414, 423 and 423A] shall have effect in relation to a new school as if the references to the governing body included references to the person responsible for the admission of pupils under the initial arrangements for the school.
- (7) In this section “new school” and “temporary governing body” have the meaning given by section 181(1) and (3) respectively; and “the promoters” means the persons making the relevant proposals (as defined by section 181(2)).

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**Textual Amendments**

**F11** Words in s. 422(6) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para.32**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II**.

*Admissions appeals relating to county and voluntary schools*

**423 Appeal arrangements.**

- (1) A local education authority shall make arrangements for enabling the parent of a child to appeal against—
  - (a) any decision made by or on behalf of the authority as to the school at which education is to be provided for the child in the exercise of the authority’s functions, other than a decision leading to or embodied in a direction under section 431 (directions for admission), and
  - (b) any decision made by or on behalf of the governing body of a county or controlled school maintained by the authority refusing the child admission to the school.
- (2) The governing body of an aided or a special agreement school shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school.
- (3) Joint arrangements may be made under subsection (2) by the governing bodies of two or more aided or special agreement schools maintained by the same local education authority.
- (4) Schedule 33 has effect in relation to the making and hearing of appeals pursuant to arrangements made under this section.
- (5) The decision of an appeal committee on such an appeal shall be binding—
  - (a) on the local education authority or governing body by or on whose behalf the decision under appeal was made, and
  - (b) in the case of a decision made by or on behalf of a local education authority, on the governing body of any county or controlled school at which the appeal committee determines that a place should be offered to the child in question.

<sup>F12</sup>(6) .....

**Textual Amendments**

**F12** S. 423(6) repealed (1.9.1997) by 1997 c. 44, s. 57(1)(4), **Sch. 7 para. 33, Sch.8**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt.II**.

**[423A <sup>F13</sup>Appeals relating to children to whom section 411A(2) applies.**

- (1) Nothing in section 423(1) or (2) requires any arrangements to be made for enabling the parent of a child to appeal against a decision—
  - (a) made by or on behalf of the admission authority for a county or voluntary school, and
  - (b) refusing the child admission to the school,

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in a case where, at the time when the decision is made, section 411A(2) applies to the child.

- (2) Where a local education authority are the admission authority for a county or controlled school, the authority shall make arrangements for enabling the governing body of the school to appeal against any decision made by or on behalf of the authority to admit to the school a child to whom, at the time when the decision is made, section 411A(2) applies.
- (3) Schedule 33A shall have effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (2).
- (4) The decision of an appeal committee on an appeal made pursuant to arrangements under subsection (2) shall be binding—
  - (a) on the local education authority by or on whose behalf the decision under appeal was made, and
  - (b) on the governing body of any county or controlled school at which the appeal committee determines that a place should be offered to the child in question.]

#### Textual Amendments

**F13** S. 423A inserted (1.9.1997) by 1997 c. 44, s. 12(1) (with s. 57(3)); S.I. 1997/1468, art. 2(2), Sch. 1 Pt. II.

*Nursery and special schools, etc.*

#### 424 Admission of pupils to nursery schools and special schools, etc.

- (1) Subject to subsection (2), nothing in section [F14 411, 411A, 413, 414, 423 or 423A] applies in relation to—
  - (a) nursery schools, or
  - (b) children who will be under [F15 compulsory school age] at the time of their proposed admission.
- (2) Where the arrangements for the admission of pupils to a school maintained by a local education authority provide for the admission to the school of children who will be under [F16 compulsory school age] at the time of their proposed admission, those sections shall apply in relation to the admission of such pupils to the school otherwise than for nursery education.
- (3) None of the provisions of sections [F17 411, 411A, 413 to 414, 423 and 423A], apart from section 414(6) to (9), apply in relation to—
  - (a) special schools, or
  - (b) children for whom statements of special educational needs are maintained under section 324.

#### Textual Amendments

**F14** Words in s. 424(1) substituted (1.9.1997 in respect of words "411, 411A, 414, 423 or 423A" otherwise prosp.) by 1997 c. 44, s. 57(1), Sch. 7 para. 34(a); S.I. 1997/1468, art. 2(2), Sch. 1 Pt. II.



*Status: Point in time view as at 01/09/1998.*

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- F15** Words in s. 424(1)(b) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(b)**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.
- F16** Words in s. 424(2) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(c)**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.
- F17** Words in s. 424(3) substituted (1.9.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 34(d)**; S.I. 1997/1468, art. 2(2), **Sch. 1 Pt. II**.

*Admission arrangements for grant-maintained schools*

**425 Admission arrangements and information about them.**

Paragraph 5 of Schedule 23 has effect—

- (a) for making the governing body of a grant-maintained school responsible for determining the arrangements for admitting pupils to the school; and
- (b) for requiring the governing body of such a school to publish particulars of such arrangements and of the procedures applicable in relation to the admission of pupils to the school.

**[425A <sup>F18</sup>Restrictions on admissions to grant-maintained schools.**

Schedule 33B to this Act, which provides for restrictions on admissions to grant-maintained schools in connection with—

- (a) home-school partnership documents,
  - (b) partially-selective schools, and
  - (c) persons permanently excluded from two or more schools,
- shall have effect.]

**Textual Amendments**

**F18** S. 425A inserted (*prosp.*) by 1997 c. 44, **ss. 14(1), 58(3)** (with **ss. 57(3)**).

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

**C7** S. 425A modified (1.9.1998)(*temp.*) by S.I. 1998/1948, **reg. 3, Sch. para.3**.

**[<sup>F19</sup>425B**

- (1) An application for the admission of a child to a grant-maintained school may be refused on the grounds that his admission would prejudice the provision of efficient education or the efficient use of resources at the school.
- (2) For the purposes of subsection (1) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.
- (3) No prejudice shall, however, be taken to arise from the admission of a child to the school if, were he to be admitted to the school, the number of pupils within the relevant age group to which he would be admitted in the school year in which he would be admitted would not exceed the number of pupils intended to be admitted to the school in that age group in that year.]



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**Textual Amendments**

**F19** S. 425B inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 3

*Admission numbers for grant-maintained schools*

**426 Minimum number for admission.**

- (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 subsections (3) and (4) and sections 427 and 428, the approved admission number for any relevant age group is the number specified in the relevant proposals as the number of pupils intended to be admitted to the school in that age group in the first school year beginning on or after the date of implementation of the proposals.

For this purpose “the relevant proposals” means the proposals published under section 193, 211 or 212 above (or, as the case may be, under section 32, 48 or 49 of the <sup>M5</sup>Education Act 1993 or section 62 of the <sup>M6</sup>Education Reform Act 1988).

- (3) Where proposals for a significant change in the character, or significant enlargement of the premises, of a grant-maintained school or for the transfer of such a school to a new site have been approved or adopted under section 261 above (or, as the case may be, under section 98 of the <sup>M7</sup>Education Act 1993 or section 89 of the Education Reform Act 1988), the approved admission number for any relevant age group for any school year for which the proposals have been wholly or partly implemented is—
  - (a) the number specified in the proposals as the number of pupils proposed to be admitted to the school in that age group in the first school year in relation to which the proposals have been wholly implemented, or
  - (b) if for any school year in relation to which the proposals have been partly implemented the Secretary of State directs the substitution of a different number, that number.
- (4) 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.

[<sup>F20</sup>(5) Where

- (a) the governing body are seeking approval for a reduction of any approved admission number applicable to admissions to an infant class, and
- (b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures,

the Secretary of State shall approve a reduction in that approved admission number by the smallest number which he considers sufficient to avoid such prejudice arising.

<sup>F21</sup>(6) . . . . .]

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#### Textual Amendments

- F20** S. 426(5)(6) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 4(1)**
- F21** S. 426 repealed (1.4.1999 to the extent of the repeal of s. 426(6) otherwise (*prosp.*)) by 1998 c. 31, ss. 140(1)(3), 145(3), **Sch. 30 para. 109, Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), **Sch. 1**

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

- C8** S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, **Sch. para. 4**.  
 S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, **Sch. para. 5**.
- C9** Power to restrict s. 426(1) conferred (24.7.1998) by 1998 c. 31, s. 144, **Sch. 32 Pt. II para. 6(1)(a)** (with ss. 138(9), 144(6)).

#### Marginal Citations

- M5** 1993 c. 35.  
**M6** 1988 c. 40.  
**M7** 1993 c. 35.

### 426 Minimum number for admission. **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 subsections (3) and (4) and sections 427 and 428, the approved admission number for any relevant age group is the number specified in the relevant proposals as the number of pupils intended to be admitted to the school in that age group in the first school year beginning on or after the date of implementation of the proposals.

For this purpose “the relevant proposals” means the proposals published under section 193, 211 or 212 above (or, as the case may be, under section 32, 48 or 49 of the <sup>M12</sup>Education Act 1993 or section 62 of the <sup>M13</sup>Education Reform Act 1988).

- (3) Where proposals for a significant change in the character, or significant enlargement of the premises, of a grant-maintained school or for the transfer of such a school to a new site have been approved or adopted under section 261 above (or, as the case may be, under section 98 of the <sup>M14</sup>Education Act 1993 or section 89 of the Education Reform Act 1988), the approved admission number for any relevant age group for any school year for which the proposals have been wholly or partly implemented is—
  - (a) the number specified in the proposals as the number of pupils proposed to be admitted to the school in that age group in the first school year in relation to which the proposals have been wholly implemented, or
  - (b) if for any school year in relation to which the proposals have been partly implemented the Secretary of State directs the substitution of a different number, that number.
- (4) 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.

[<sup>F24</sup>(5) Where

- (a) the governing body are seeking approval for a reduction of any approved admission number applicable to admissions to an infant class, and

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- (b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures,
- the Secretary of State shall approve a reduction in that approved admission number by the smallest number which he considers sufficient to avoid such prejudice arising.
- (6) Where an order under section 27(1) relating to primary education applies to the area of the local education authority in which the school is situated, subsection (5) shall have effect as if the references to the Secretary of State were to the funding authority.]

#### Textual Amendments

**F24** S. 426(5)(6) inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 4(1)

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

**C13** S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para. 4.

S. 426 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para. 5.

**C14** Power to restrict s. 426(1) conferred (24.7.1998) by 1998 c. 31, s. 144, Sch. 32 Pt. II para. 6(1)(a) (with ss. 138(9), 144(6)).

#### Marginal Citations

**M12** 1993 c. 35.

**M13** 1988 c. 40.

**M14** 1993 c. 35.

[<sup>F22</sup>426A

- (1) The governing body of a grant-maintained school containing any infant class shall keep under review any approved admission number applicable to admissions to an infant class, having regard to
- (a) the school's capacity to accommodate pupils, and
- (b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would not result in prejudice to the provision of efficient education or the efficient use of resources by reason of qualifying measures.
- (2) The governing body of any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.
- (3) Where, as a result of a review under subsection (1), the governing body consider that any approved admission number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall seek approval to the variation of that number in accordance with section 426(4).
- (4) For the purposes of subsection (1) a school's capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State.]

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### Textual Amendments

**F22** S. 426A inserted (1.9.1998) by S.I. 1998/1948, reg. 3, Sch. para. 5(1)(2)

#### **427 Alteration of minimum number by Secretary of State.**

- (1) This section applies in relation to any grant-maintained school unless the funding authority have the function under section 428 in relation to that school.
- (2) The Secretary of State may by order increase the approved admission number for any relevant age group to such number as may be specified in the order for any school year specified in the order beginning after the date of the order.
- (3) No order may be made under subsection (2) which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would—
  - (a) constitute a significant change in the character of the school, or
  - (b) involve any alteration of the premises of the school.

Section 311(4) shall apply for the purposes of this subsection.

#### **428 Alteration of minimum number by funding authority.**

- (1) If an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area of a local education authority, the funding authority may give a direction under subsection (2) to the governing body of a grant-maintained school in the area.
- (2) A direction under this subsection—
  - (a) may increase the approved admission number for any relevant age group to such number as may be specified in the direction for any school year specified in the direction beginning after the date of the direction, and
  - (b) if any alteration would be required to the premises of the school in consequence of any increase in any approved admission number made by the direction, shall give particulars of the alteration.
- (3) No direction may be given under subsection (2) which would have the effect of requiring such an increase in the number of pupils to be admitted to the school as would—
  - (a) constitute a significant change in the character of the school, or
  - (b) involve a significant enlargement of the premises of the school.

Section 311(4) shall apply for the purposes of this subsection.

- (4) Before deciding to give a direction under subsection (2) the funding authority shall consult the governing body about the proposed content of the direction.
- (5) Before giving a direction under subsection (2) the funding authority shall serve a draft of the proposed direction on the governing body.
- (6) A governing body on which a draft is served under subsection (5) may, within the period of 15 days beginning with the day on which it was served, refer the matter to the Secretary of State and, if they do so, shall inform the funding authority.
- (7) On a reference under subsection (6) the Secretary of State may—

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- (a) require the funding authority not to give any direction in the terms of the draft, or
  - (b) authorise the funding authority to give a direction in those terms, or in those terms as required to be modified by the Secretary of State;
- and any direction given by the funding authority shall be in the terms authorised under paragraph (b).
- (8) Where the funding authority give a direction under this section, then—
- (a) if any particulars are specified in pursuance of subsection (2)(b), the governing body shall secure the alteration of the school premises in accordance with the particulars, and
  - (b) the funding authority shall make to them a grant of an amount equal to the reasonable expenses incurred or to be incurred in doing so.

*Admissions appeals relating to grant-maintained schools*

**429 Appeal arrangements.**

Paragraph 6 of Schedule 23 has effect for requiring the governing body of a grant-maintained school—

- (a) to make arrangements for appeals to an appeal committee against decisions or action taken in relation to admissions of pupils to the school; and
- (b) to publish particulars of such arrangements.

*Co-ordinated arrangements for admissions*

**430 Co-ordinated arrangements for admissions.**

- (1) In this section “co-ordinated arrangements for admissions”, in relation to any two or more maintained or grant-maintained schools, means arrangements under an agreement to which this section applies for the purpose of co-ordinating arrangements for admitting pupils to the schools concerned.
- (2) Co-ordinated arrangements for admissions, if—
- (a) contained in an agreement approved by the Secretary of State under this section, or
  - (b) made in pursuance of a scheme under this section,
- and any provision contained in any other arrangements for admitting pupils to any maintained or grant-maintained school in pursuance of a scheme under this section, shall have effect in the case of any school to which they relate despite anything in section 411(2) or in the instrument or articles of government for the school.
- (3) This section applies to an agreement made in relation to any two or more maintained or grant-maintained schools to which each authority responsible for determining the arrangements for admitting pupils to any of the schools is a party, whether or not any local education authority for any area in which any of the schools is situated is also a party.
- (4) The Secretary of State may make a scheme under this section for the purpose of co-ordinating arrangements, or assisting in the co-ordination of arrangements, for

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admitting pupils to any maintained or grant-maintained schools to which the scheme applies.

- (5) A scheme under this section may in particular require each authority responsible for determining the arrangements for admitting pupils to any of the schools to which the scheme applies—
  - (a) to include in their arrangements for admitting pupils such provisions as may be required by the scheme;
  - (b) to secure the making in accordance with the scheme of an agreement for the purpose of co-ordinating arrangements for admitting pupils to the schools to which the scheme applies; or
  - (c) to secure the modification in accordance with the scheme of any such agreement to which they are a party.
- (6) Before making a scheme under this section the Secretary of State shall, in respect of each school which appears to him to be a school to which the scheme will apply, consult—
  - (a) the governing body, and
  - (b) in the case of a maintained school, the local education authority.
- (7) A scheme under this section may apply—
  - (a) to all schools which for the time being are maintained or grant-maintained schools;
  - (b) to all schools which for the time being are maintained or grant-maintained schools falling within any category of such schools specified in the scheme; or
  - (c) to any maintained or grant-maintained school so specified.
- (8) Section 570 (revocation and variation) applies to a scheme under this section as it applies to an order made by the Secretary of State.
- (9) In this section “maintained school” means a county or voluntary school or a maintained special school which is not established in a hospital.

*Power to direct admission of child to school*

**431 Direction to admit child to specified school.**

- (1) The appropriate authority may give a direction under this section if, in the case of any child in the area of a local education authority, either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—
  - (a) he has been refused admission to the school, or
  - (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
  - (a) which is a reasonable distance from the child’s home, and
  - (b) from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of the Secretary of State under section 432(4) or by the funding authority, specify a school in the area referred to in subsection (1).

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- (4) Where a school is specified in a direction under this section, the governing body (and, if the school is a county or voluntary school and the local education authority are not the appropriate authority, the local education authority) shall admit the child to the school.
- (5) Subsection (4) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (6) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.
- (7) In this section and section 432—
  - (a) references to the appropriate authority are (subject to subsection (8)) references to the local education authority; and
  - (b) references to schools are references to county, voluntary and grant-maintained schools.
- (8) Where the education which is suitable education for the child is also education of a kind to which there relates an order made under section 27(1)(b) in respect of the area referred to in subsection (1) above, references in this section and section 432 to the appropriate authority are to be read in relation to—
  - (a) that child, and
  - (b) any county, voluntary or grant-maintained school in that area, and any such school in any other area to which an order under section 27(1)(b) applies which provides education which is relevant education in relation to that order, as references to the funding authority.

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

**C10** S. 431 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para.6.

**432 Procedure for giving direction under section 431.**

- (1) Before deciding to give a direction under section 431, the appropriate authority shall consult—
  - (a) the parent of the child,
  - (b) the governing body of the school they propose to specify in the direction, and
  - (c) (if different) the authority which have a duty to maintain the school or to pay maintenance grant to the governing body (“the maintaining authority”).
- (2) Where the appropriate authority decide to give such a direction specifying any school they shall, before doing so, serve a notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) (if subsection (1)(c) applies) the maintaining authority,and shall not give the direction until the period for referring the matter to the Secretary of State under subsection (3) has expired and, if it is so referred, the Secretary of State has made his determination.
- (3) Any body or authority on whom a notice is served under subsection (2) may, within the period of 15 days beginning with the day on which the notice was served, refer



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the matter to the Secretary of State and, if they do so, shall inform the appropriate authority.

- (4) On a reference under subsection (3) the Secretary of State may determine which school is to be required to admit the child and, if he does so, that school shall be specified in the direction.
- (5) Where the appropriate authority give such a direction specifying a school, they shall give notice in writing of that fact to—
  - (a) the governing body and head teacher of the school, and
  - (b) (if subsection (1)(c) applies) the maintaining authority.

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

**C11** S. 432 modified (1.9.1998)(*temp.*) by S.I. 1998/1948, reg. 3, Sch. para.7.

*Time for admission of pupils*

**433 Time for admission of pupils.**

- (1) Section 14 (which requires a local education authority to secure that sufficient schools for providing primary and secondary education are available for their area) shall not be construed as imposing any obligation on the proprietor of a school to admit children as pupils otherwise than at the beginning of a school term.
- (2) Where, however, a child was prevented from entering a school at the beginning of a term—
  - (a) by his being ill or by other circumstances beyond his parent’s control, or
  - (b) by his parent’s having been then resident at a place from which the school was not accessible with reasonable facility,
 the school’s proprietor is not entitled by virtue of subsection (1) to refuse to admit him as a pupil during the currency of the term.
- (3) In cases where subsection (2) does not apply, the governing body of a school maintained by a local education authority shall comply with any general directions given by the authority as to the time of admission of children as pupils.
- (4) General directions given by a local education authority as respects the time of admission of children as pupils shall not prevent the admission to a school of children in respect of whose education grants may be made under arrangements which have been made under section 1 of the <sup>M8</sup>Nursery Education and Grant-Maintained Schools Act 1996.
- (5) Despite section 7 (duty of parent of child of compulsory school age to cause him to receive full-time education), a parent is not under a duty to cause a child to receive full-time education during any period during which, having regard to subsections (1) and (2), it is not practicable for the parent to arrange for him to be admitted as a pupil at a school.

**Marginal Citations**

**M8** 1996 c. 50.



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### *Registration of pupils*

#### **434 Registration of pupils.**

- (1) The proprietor of a school shall cause to be kept, in accordance with regulations, a register containing the prescribed particulars in respect of all persons who are pupils at the school.
- (2) Without prejudice to the generality of subsection (1), the prescribed particulars shall include particulars of the name and address of every person known to the proprietor to be a parent of a pupil at the school.
- (3) The regulations shall prescribe the grounds on which names are to be deleted from a register kept under this section; and the name of a person entered in such a register as a pupil at a school—
  - (a) shall, when any of the prescribed grounds is applicable, be deleted from the register on that ground; and
  - (b) shall not be deleted from the register otherwise than on any such ground.
- (4) The regulations may make provision—
  - (a) for enabling registers kept under this section to be inspected;
  - (b) for enabling extracts from such registers to be taken for the purposes of this Act by persons authorised to do so under the regulations; and
  - (c) for requiring the person by whom any such register is required to be kept to make to—
    - (i) the Secretary of State,
    - (ii) the funding authorities, and
    - (iii) local education authorities,such periodical or other returns as to the contents of the register as may be prescribed.
- (5) In this Act—

“registered pupil”, in relation to a school, means a person registered as a pupil at the school in the register kept under this section; and

“registered”, in relation to the parents of pupils at a school or in relation to the names or addresses of such parents or pupils, means shown in that register.
- (6) A person who contravenes or fails to comply with any requirement imposed on him by regulations under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### *Withdrawal of pupils from primary school for secondary education*

#### **435 Withdrawal of pupils from a primary school for secondary education.**

A local education authority may make arrangements in respect of a primary school maintained by them (other than one that is for the time being organised for the provision of both primary and secondary education) under which any registered pupils who are under the age of 12 but have attained the age of 10 years and six months may be required to be withdrawn from the school for the purpose of receiving secondary education.

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### *Supplementary*

#### **436 Effect of admission for nursery education.**

- (1) Children admitted to a school for nursery education and subsequently transferred to a reception class at the school shall be regarded for the purposes of this Chapter as admitted to the school (otherwise than for nursery education) on being so transferred.
- (2) The admission of children to a school for nursery education shall be disregarded for the purpose of—
  - (a) applying in relation to a primary school any provision of sections 416 to 421 (apart from section 419) which refers to the number of pupils admitted or intended to be admitted to a school in any school year, or
  - (b) applying section 419(3) or (4) in relation to a primary school, or
  - (c) determining for the purposes of any provision of sections 416 to 421 what is a relevant age group in relation to a primary school,
 and for the purposes of sections 426 to 428.

## **CHAPTER II**

### SCHOOL ATTENDANCE

#### *School attendance orders*

#### **437 School attendance orders.**

- (1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.
- (2) That period shall not be less than 15 days beginning with the day on which the notice is served.
- (3) If—
  - (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and
  - (b) in the opinion of the authority it is expedient that the child should attend school,
 the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.
- (4) A school attendance order shall (subject to any amendment made by the local education authority) continue in force for so long as the child is of compulsory school age, unless—
  - (a) it is revoked by the authority, or
  - (b) a direction is made in respect of it under section 443(2) or 447(5).

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- (5) Where a maintained or grant-maintained school is named in a school attendance order, the local education authority shall inform the governing body and the head teacher.
- (6) Where a maintained or grant-maintained school is named in a school attendance order, the governing body (and, in the case of a maintained school, the local education authority) shall admit the child to the school.
- (7) Subsection (6) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (8) In this Chapter—
  - “maintained school” means any county or voluntary school or any maintained special school which is not established in a hospital; and
  - “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

#### **438 Choice of school: child without statement of special educational needs.**

- (1) This section applies where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child, other than a child for whom they maintain a statement under section 324.
- (2) Before serving the order, the authority shall serve on the parent a notice in writing—
  - (a) informing him of their intention to serve the order,
  - (b) specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and
  - (c) stating the effect of subsections (3) to (6).
- (3) If the notice specifies one or more alternative schools and the parent selects one of them within the period of 15 days beginning with the day on which the notice is served, the school selected by him shall be named in the order.
- (4) If—
  - (a) within the period mentioned in subsection (3)—
    - (i) the parent applies for the child to be admitted to a school maintained by a local education authority and, where that authority are not the authority by whom the notice was served, notifies the latter authority of the application, or
    - (ii) the parent applies for the child to be admitted to a grant-maintained school and notifies the authority by whom the notice was served of the application, and
  - (b) the child is offered a place at the school as a result of the application, that school shall be named in the order.
- (5) If—
  - (a) within the period mentioned in subsection (3), the parent applies to the local education authority by whom the notice was served for education to be provided for the child at a school which is not maintained by a local education authority and is not a grant-maintained school, and

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- (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517,  
that school shall be named in the order.
- (6) If, within the period mentioned in subsection (3)—
- (a) the parent—
- (i) applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, and in respect of which no application is made under subsection (5), and
- (ii) notifies the local education authority by whom the notice was served of the application,
- (b) the child is offered a place at the school as a result of the application, and
- (c) the school is suitable to his age, ability and aptitude and to any special educational needs he may have,  
that school shall be named in the order.

**439 Specification of schools in notices under section 438(2).**

- (1) Subject to subsection (3), a local education authority shall not, if it appears to them that subsection (2) applies in relation to any school, specify the school in a notice under section 438(2) unless they are responsible for determining the arrangements for the admission of pupils to the school.
- (2) This subsection applies where, if the child concerned were admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child's age group would exceed the number fixed—
- (a) in the case of a maintained school, in accordance with section 416, or
- (b) in the case of a grant-maintained school, in accordance with sections 426 to 428,  
as the number of pupils in that age group which it is intended to admit to the school in the school year in which he would be admitted.
- (3) Subsection (1) does not prevent a local education authority specifying in a notice under section 438(2) any maintained or grant-maintained school if—
- (a) there is no maintained or grant-maintained school in their area which—
- (i) the authority are not (apart from this subsection) prevented by subsection (1) from specifying, and
- (ii) is, in the opinion of the authority, a reasonable distance from the home of the child concerned, and
- (b) in the opinion of the authority, the school in question is a reasonable distance from the home of the child concerned.
- (4) A local education authority shall not specify in a notice under section 438(2) a school from which the child concerned is permanently excluded.
- (5) Before deciding to specify a particular maintained or grant-maintained school in a notice under section 438(2) a local education authority shall consult—
- (a) the governing body, and

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- (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (6) Where a local education authority decide to specify a particular maintained or grant-maintained school in a notice under section 438(2) they shall, before serving the notice, serve notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (7) A governing body or local education authority on whom notice is served under subsection (6) may, within the period of 15 days beginning with the day on which the notice was received, apply to the Secretary of State for a direction under this section and, if they do so, shall inform the local education authority which served the notice.
- (8) Where the Secretary of State gives a direction under this section, the school or schools to be specified in the notice under section 438(2) shall be determined in accordance with the direction.

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

C12 S. 439 modified (1.9.1998) (temp.) by S.I. 1998/1948, reg. 3, Sch. para.8.

**440 Amendment of order at request of parent: child without statement of special educational needs.**

- (1) This section applies where a school attendance order is in force in respect of a child, other than a child for whom the local education authority maintain a statement under section 324.
- (2) If at any time—
  - (a) the parent applies for the child to be admitted to a school maintained by a local education authority or grant-maintained school which is different from the school named in the order,
  - (b) the child is offered a place at the school as a result of the application, and
  - (c) the parent requests the local education authority by whom the order was served to amend it by substituting that school for the one currently named,the authority shall comply with the request.
- (3) If at any time—
  - (a) the parent applies to the authority for education to be provided for the child at a school which is not maintained by a local education authority or a grant-maintained school and which is different from the school named in the order,
  - (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517, and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,the authority shall comply with the request.
- (4) If at any time—

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- (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority and is not a grant-maintained school, which is different from the school named in the order and in respect of which no application is made under subsection (3),
  - (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and to any special educational needs he may have, and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,
- the authority shall comply with the request.

**441 Choice of school: child with statement of special educational needs.**

- (1) Subsections (2) and (3) apply where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child for whom they maintain a statement under section 324.
- (2) Where the statement specifies the name of a school, that school shall be named in the order.
- (3) Where the statement does not specify the name of a school—
  - (a) the authority shall, in accordance with paragraph 10 of Schedule 27, amend the statement so that it specifies the name of a school, and
  - (b) that school shall then be named in the order.
- (4) Where—
  - (a) a school attendance order is in force in respect of a child for whom the local education authority maintain a statement under section 324, and
  - (b) the name of the school specified in the statement is changed,
 the local education authority shall amend the order accordingly.

**442 Revocation of order at request of parent.**

- (1) This section applies where a school attendance order is in force in respect of a child.
- (2) If at any time the parent applies to the local education authority requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request, unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.
- (3) If a parent is aggrieved by a refusal of the local education authority to comply with a request under subsection (2), he may refer the question to the Secretary of State.
- (4) Where a question is referred to the Secretary of State under subsection (3), he shall give such direction determining the question as he thinks fit.
- (5) Where the child in question is one for whom the authority maintain a statement under section 324—
  - (a) subsections (2) to (4) do not apply if the name of a school or other institution is specified in the statement, and

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- (b) in any other case a direction under subsection (4) may require the authority to make such amendments in the statement as the Secretary of State considers necessary or expedient in consequence of his determination.

*School attendance: offences and education supervision orders*

**443 Offence: failure to comply with school attendance order.**

- (1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.
- (2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.
- (3) A direction under subsection (2) does not affect the duty of the local education authority to take further action under section 437 if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**444 Offence: failure to secure regular attendance at school of registered pupil.**

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- (2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.
- (3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—
  - (a) with leave,
  - (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
  - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- (4) The child shall not be taken to have failed to attend regularly at the school if the parent proves—
  - (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
  - (b) that no suitable arrangements have been made by the local education authority or the funding authority for any of the following—
    - (i) his transport to and from the school,
    - (ii) boarding accommodation for him at or near the school, or
    - (iii) enabling him to become a registered pupil at a school nearer to his home.
- (5) In subsection (4) “walking distance”—
  - (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and

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- (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),  
in each case measured by the nearest available route.
- (6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves—
  - (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
  - (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
  - (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.
- (7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) In this section “leave”, in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

**445 Presumption of age.**

- (1) This section applies for the purposes of any proceedings for an offence under section 443 or 444.
- (2) In so far as it is material, the child in question shall be presumed to have been of compulsory school age at any time unless the parent proves the contrary.
- (3) Where a court is obliged by virtue of subsection (2) to presume a child to have been of compulsory school age, section 565(1) (provisions as to evidence) does not apply.

**446 Institution of proceedings.**

Proceedings for an offence under section 443 or 444 shall not be instituted except by a local education authority.

**447 Education supervision orders.**

- (1) Before instituting proceedings for an offence under section 443 or 444, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.
- (2) The court—
  - (a) by which a person is convicted of an offence under section 443, or
  - (b) before which a person is charged with an offence under section 444,



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may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.

- (3) Where, following such a direction, a local education authority decide not to apply for an education supervision order, they shall inform the court of the reasons for their decision.
- (4) Unless the court has directed otherwise, the information required under subsection (3) shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.
- (5) Where—
  - (a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order, and
  - (b) the court decides that section 36(3) of the <sup>M9</sup>Children Act 1989 (education supervision orders) prevents it from making the order,the court may direct that the school attendance order shall cease to be in force.

- (6) In this section—

“the appropriate local authority” has the same meaning as in section 36(9) of the <sup>M10</sup>Children Act 1989, and

“education supervision order” means an education supervision order under that Act.

#### Marginal Citations

**M9** 1989 c. 41.

**M10** 1989 c. 41.

### Exemption

#### 448 Exemption where child becomes five during term.

Where—

- (a) a child attains [<sup>F23</sup>compulsory school age] during the school term of a grant-maintained school, and
- (b) arrangements have been made for the admission of the child to that school at the start of the next school term,

then, during the period beginning with his attaining that age and ending with the start of that next school term, section 7 (duty of parents to secure the education of their children) and section 437 shall not apply to the child.

#### Textual Amendments

**F23** Words in s. 448 substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.35**; S.I. 1998/386, art. 2(3), **Sch. 1 Pt.III**.

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### CHAPTER III

#### CHARGES IN CONNECTION WITH EDUCATION AT LEA OR GRANT-MAINTAINED SCHOOLS

##### *Preliminary*

#### **449 Meaning of “maintained school” in Chapter III.**

In this Chapter “maintained school” means—

- (a) any school maintained by a local education authority, and
- (b) any grant-maintained school.

##### *Prohibition of charges*

#### **450 Prohibition of charges for admission.**

- (1) No charge shall be made in respect of admission to a maintained school.
- (2) Subsection (1) does not apply to the admission of any person to any maintained school for the purpose of—
  - (a) part-time education suitable to the requirements of persons of any age over compulsory school age;
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19; or
  - (c) teacher training.

#### **451 Prohibition of charges for provision of education.**

- (1) Subject to subsection (5), this section applies in relation to education provided at any maintained school for a registered pupil at the school.
- (2) Where the education is provided for the pupil during school hours no charge shall be made in respect of it.
- (3) Subsection (2) does not apply in relation to tuition in playing a musical instrument where the tuition is provided either individually or to a group of not more than four pupils, unless the tuition is—
  - (a) required as part of a syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school, or
  - (b) provided in pursuance of a duty imposed by section 357(1) or 384 (implementation of National Curriculum or of provision for religious education in school’s basic curriculum).
- (4) Where the education is provided for the pupil outside school hours no charge shall be made in respect of it if it is—
  - (a) required as part of a syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school, or
  - (b) provided in pursuance of a duty imposed by section 357(1) or 384.
- (5) Nothing in this section applies in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 231(8).

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**452 Application of section 451 where education is provided partly during and partly outside school hours etc.**

- (1) Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours, then—
  - (a) if 50 per cent. or more of the time occupied by that period together with any connected school travelling time falls during school hours, so much of the education provided during that period as is provided outside school hours shall be treated for the purposes of section 451 as provided during school hours, and
  - (b) in any other case, so much of the education provided during that period as is provided during school hours shall be treated for those purposes as provided outside school hours.
- (2) In subsection (1) “connected school travelling time” means time spent during school hours by the pupils taking part in the educational activity concerned in getting to or from the place where the activity takes place.
- (3) Where any education provided at a maintained school is provided on a residential trip, then—
  - (a) if the number of school sessions taken up by the trip is equal to or greater than 50 per cent. of the number of half days spent on the trip, any education provided on the trip which is provided outside school hours shall be treated for the purposes of section 451 as provided during school hours, and
  - (b) in any other case, any education provided on the trip which is provided during school hours shall be treated for those purposes as provided outside school hours.
- (4) In this section “half day” means any period of 12 hours ending with noon or midnight on any day.
- (5) For the purposes of subsection (3)—
  - (a) where 50 per cent. or more of a half day is spent on a residential trip, the whole of that half day shall be treated as spent on the trip, and
  - (b) a school session on any day on which such a session takes place at the school concerned shall be treated as taken up by a residential trip if the time spent on the trip occupies 50 per cent. or more of the time allowed for that session at the school.
- (6) Nothing in section 451 shall be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at a maintained school on a residential trip.

**453 Examinations: prohibition of charges and recovery of wasted fees.**

- (1) No charge shall be made in respect of the entry of a registered pupil at a maintained school for a prescribed public examination in any syllabus for that examination for which the pupil has been prepared at the school.
- (2) Despite subsection (1), where—
  - (a) the governing body of a maintained school or the local education authority have paid or are liable to pay a fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination, and
  - (b) the pupil fails without good reason to meet any examination requirement for that syllabus,

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that body or authority may recover the amount of the fee from the pupil's parent.

- (3) It shall be for the body or authority who have paid or are liable to pay the fee in question to determine for the purposes of this section any question whether a pupil who has failed to meet an examination requirement had good reason for the failure.

#### **454 Prohibition of incidental charges.**

- (1) Neither the parent of a registered pupil at a maintained school nor the pupil himself shall be required to pay for or supply any materials, books, instruments or other equipment for use for the purposes of or in connection with—
- (a) education provided for the pupil at the school in respect of which, by virtue of section 451, no charge may be made, or
  - (b) a syllabus for a prescribed public examination which is a syllabus for which the pupil has been prepared at the school.
- (2) Nothing in subsection (1) shall prevent the parent of a pupil from being required to pay for or supply any materials for use for the purposes of the production, in the course of the provision of education for the pupil at the school, of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil.
- (3) No charge shall be made in respect of transport provided for a registered pupil at a maintained school where the transport is either—
- (a) incidental to education provided for the pupil at the school in respect of which, by virtue of section 451, no charge may be made, or
  - (b) provided for the purpose of enabling him to meet any examination requirement for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school.
- (4) For the purposes of subsection (3)(a) transport is incidental to education provided for registered pupils at a school if it is provided for the purpose of carrying such pupils—
- (a) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises, or
  - (b) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place.

#### *Permitted charges*

#### **455 Permitted charges.**

- (1) Subject to subsection (2), a charge may be made in respect of—
- (a) education provided for a registered pupil at a maintained school other than education in respect of which, by virtue of section 451, no charge may be made,
  - (b) the entry of a registered pupil at a maintained school for a public examination in any syllabus for that examination otherwise than in circumstances in which, by virtue of section 453(1), no charge may be made,

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- (c) transport provided for a registered pupil at a maintained school other than transport in respect of which, by virtue of section 454(3) or 509(2), no charge may be made, and
  - (d) board and lodging provided for a registered pupil at a maintained school on a residential trip.
- (2) A charge may not be made—
- (a) by virtue of subsection (1)(a) in respect of the provision for a pupil of education,
  - (b) by virtue of subsection (1)(b) in respect of the entry of a pupil for an examination in any syllabus for that examination, or
  - (c) by virtue of subsection (1)(c) in respect of the provision for a pupil of transport,
- unless the education is provided, the pupil is entered for the examination in that syllabus, or the transport is provided, by agreement with the pupil's parent.
- (3) Any education, examination entry or transport in respect of which a charge may be made by virtue of subsection (1) is referred to in this Chapter as an “optional extra”.

#### **456 Regulation of permitted charges.**

- (1) This section applies in relation to any charge permitted under section 455, other than a charge in respect of education provided at a grant-maintained school in pursuance of arrangements made under section 231(8); and a charge to which this section applies is referred to in this section as a “regulated charge”.
- (2) The amount of any regulated charge shall be payable by the parent of the pupil concerned.
- (3) A regulated charge shall not exceed the cost of the provision of the optional extra or the board and lodging in question.
- (4) Without prejudice to the generality of subsection (3), the cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs—
  - (a) incurred in respect of the provision of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra, or
  - (b) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra, or
  - (c) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it.
- (5) Subject to subsection (6), the cost of the provision of an optional extra shall not be taken to include any costs attributable to the provision of teaching staff other than staff engaged as mentioned in subsection (4)(c).
- (6) Where the optional extra in question consists of tuition in playing a musical instrument, the cost of its provision shall include costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition.
- (7) Where charging is permitted under section 455 and the charge would be a regulated charge, the question whether any charge should be made, and the amount of any charge to be made, shall be determined—

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- (a) in a case where the cost of the provision of the optional extra or board and lodging in question is met by or from funds at the disposal of the governing body, by the governing body, and
  - (b) in any other case, by the local education authority.
- (8) The whole or any part of the amount of any charge which the local education authority determine under subsection (7)(b) to make—
- (a) shall, if the governing body so determine, be met by or from funds at the disposal of the governing body, and
  - (b) to the extent that it is so met, shall not be payable by the parent of the pupil concerned.

#### **457 Charges and remissions policies.**

- (1) Every governing body of a maintained school and every local education authority shall determine and keep under review a policy with respect to—
- (a) the provision of, and
  - (b) the classes or descriptions of case in which they propose to make charges for, any optional extra or board and lodging in respect of which charges are permitted by section 455.

This subsection does not apply in relation to education provided at a grant-maintained school in pursuance of arrangements made under section 231(8).

- (2) No such body or authority shall make such a charge unless they have both—
- (a) determined a policy under subsection (1)(b) (their “charging policy”), and
  - (b) determined a policy (their “remissions policy”) setting out any circumstances in which they propose to remit (in whole or in part) any charge which would otherwise be payable to them in accordance with their charging policy.
- (3) A remissions policy determined by the governing body of a school other than a grant-maintained school shall set out any circumstances in which the governing body propose to meet (in whole or in part) any charge payable to the local education authority, in accordance with the authority’s charging policy, for an optional extra or board and lodging provided for a registered pupil at the school.
- (4) A remissions policy shall provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip if—
- (a) the education provided on the trip is education in respect of which, by virtue of section 451, no charge may be made, and
  - (b) the pupil’s parents are in receipt of—
    - (i) income support,
    - (ii) family credit,
    - (iii) an income-based jobseeker’s allowance (payable under the <sup>M11</sup>Jobseekers Act 1995), or
    - (iv) disability working allowance,
 in respect of any period wholly or partly comprised in the time spent on the trip.
- (5) A remissions policy shall be kept under review by the governing body or local education authority by whom it was determined.

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### Marginal Citations

M11 1995 c. 18.

## 458 Charges for board and lodging at boarding schools.

- (1) Subject to subsections (2) to (5), where a registered pupil at a maintained school is provided at the school with board and lodging, there shall be payable in respect of the board and lodging by the parent of the pupil concerned—
- (a) to the local education authority, in the case of a school maintained by such an authority, or
  - (b) to the governing body, in the case of a grant-maintained school,
- charges not exceeding the cost to the authority or governing body of providing the board and lodging.
- (2) Where—
- (a) the board and lodging are provided for the pupil at a school maintained by a local education authority, and
  - (b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,
- then, where the school is maintained by the local education authority for his area, that authority shall remit the whole of the charges payable under this section and, in any other case, that authority shall pay the whole of the charges payable under this section to the authority which maintain the school.
- (3) Where—
- (a) the board and lodging are provided for the pupil at a grant-maintained school, and
  - (b) the local education authority for his area are of the opinion that education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him,
- the whole of the charges payable under this section shall be payable by the authority instead of by the pupil's parent.
- (4) Where the local education authority for the pupil's area are satisfied that payment of the full charges payable under this section would involve financial hardship to the parent of the pupil concerned, the authority—
- (a) in the case of charges payable to the authority, shall remit so much of those charges as falls in accordance with subsection (5) to be so remitted, and
  - (b) in the case of charges payable to another local education authority or to the governing body of a grant-maintained school in respect of board and lodging, shall pay so much of those charges as falls in accordance with subsection (5) to be so paid.
- (5) The amount that falls to be remitted or paid by a local education authority by virtue of subsection (4)(a) or (b) is—
- (a) such part of the charges in question as the authority consider ought not to be paid by the pupil's parent in order to avoid such hardship as is mentioned in subsection (4), or

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- (b) the whole of those charges if, in their opinion, such hardship cannot otherwise be avoided.

### *Supplementary*

#### **459 Provision of information.**

Regulations may require, in relation to every maintained school, the local education authority, the governing body or the head teacher to make available either generally or to prescribed persons, in such form and manner and at such times as may be prescribed—

- (a) such information relevant for the purposes of this Chapter as to the school hours at the school, and
  - (b) such information as to the policies determined under section 457 which apply in relation to the school,
- as may be prescribed.

#### **460 Contributions and charges unaffected by Chapter III.**

- (1) Nothing in this Chapter shall be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of a maintained school or a local education authority for voluntary contributions for the benefit of the school or any school activities.
- (2) Any request or invitation made by or on behalf of such a body or authority for contributions for the benefit of a school or school activities shall not be regarded for the purposes of subsection (1) as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made—
  - (a) that there is no obligation to make any contribution, and
  - (b) that registered pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.
- (3) Nothing in this Chapter relating to charges in respect of a registered pupil at a maintained school shall be read as relating to—
  - (a) charges made by persons other than the governing body or the local education authority, or
  - (b) charges to be paid by persons other than the parent of the pupil or the pupil himself.

#### **461 Recovery of sums as civil debt.**

Any sum payable under section 453(2), 455 or 458 by the parent of a registered pupil at a maintained school shall be recoverable summarily as a civil debt.

#### **462 Interpretation of Chapter III.**

- (1) In this Chapter—
  - “equipment” does not include clothing;
  - “examination requirement”, in relation to a syllabus for an examination, means a requirement which a pupil must meet in order to qualify for



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assessment for the purposes of determining his achievements in that examination in that syllabus.

- (2) In this Chapter “residential trip” means any trip—
  - (a) which is arranged for registered pupils at a maintained school by or on behalf of the governing body or the local education authority, and
  - (b) which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation.
- (3) For the purposes of this Chapter, a pupil shall be regarded as having been prepared at a school for a syllabus for a prescribed public examination if any part of the education provided with a view to preparing him for that examination in that syllabus has been provided for him at that school.
- (4) In this Chapter references to a public examination (or a prescribed public examination) are references to such an examination as it applies in relation to persons who are entered for a syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment takes place.
- (5) For the purposes of subsection (4)—
  - (a) “an assessment” means an assessment for the purposes of determining the achievements of persons entered for the examination in question; and
  - (b) such an assessment is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for any syllabus in that examination who has met the examination requirements for that syllabus—
    - (i) whether he has passed or failed, and
    - (ii) if grades are assigned for the purposes of the examination, the grade to be assigned in his case.

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