

## SCHEDULES

### SCHEDULE 39

#### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART II

##### SPECIFIC PROVISIONS

##### *Governing bodies of LEA-maintained schools*

- 9 (1) Any governing body which immediately before the commencement of this Act was incorporated by virtue of section 238 of the Education Act 1993 (incorporation of governing bodies of county, voluntary and maintained special schools) shall continue in existence as a body corporate despite the repeal of that section by this Act.
- (2) In Schedule 7 to this Act any reference to a governing body incorporated under section 88(1) of this Act includes a reference to a governing body falling within subparagraph (1).
- (3) Despite the repeal by this Act of Schedule 13 to the Education Act 1993 (incorporated governing bodies for county, voluntary and maintained special schools)—
- (a) paragraph 3 of that Schedule (contracts of employment) shall continue to apply to, or in relation to, any contract of employment to which it applied immediately before the commencement of this Act; and
- (b) to the extent that any provision of paragraphs 13 to 15 (general provisions about transfers) applied in relation to any transfer immediately before the commencement of this Act, it shall continue so to apply.
- 10 (1) The reproduction by this Act of any reference, in an enactment repealed by this Act, to the governors of a school of any description as a reference to the governing body of a school of that description shall not be taken to affect the construction or operation of that enactment in relation to any times, circumstances or purposes in relation to which it had effect.
- (2) Where by virtue of section 1(4) of the Education Act 1980 any enactment or document referred immediately before the commencement of this Act to the governors, foundation governors, instrument of government or articles of government of a primary school to which section 1(2) and (3) of that Act applied, it shall continue to do so despite the repeal of section 1(4) by this Act.
- 11 Where any instrument under which the governing body of an aided or special agreement school is constituted was in force immediately before the commencement of this Act by virtue of paragraph 1 of Schedule 5 to the Education (No. 2) Act 1986, the instrument shall have effect thereafter as if made by order under section 76 of this Act; but this paragraph shall cease to apply to any such school if it is grouped with any other school or schools under section 89 of this Act.

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*Special agreement schools*

- 12 (1) Any order under section 15(2) of the Education Act 1944 directing that a school is to be a special agreement school shall, if in force immediately before the commencement of this Act, continue in force despite the repeal by this Act of section 15(2) of that Act.
- (2) Sub-paragraph (1) does not prejudice the operation of paragraph 1(2) above in relation to other orders in force under section 15(2) of that Act immediately before the commencement of this Act.

*Proposals to establish etc. maintained or grant-maintained schools*

- 13 (1) Nothing in sections 35 to 45 or in sections 259 to 263 of this Act applies in relation to any proposals published before the commencement of this Act; and the corresponding provisions of the Education Act 1980 and the Education Act 1993 shall continue to apply in relation to any proposals duly published under section 12(1) (a) to (d) or 13 of the 1980 Act or section 96 or 97 of the 1993 Act as if this Act had not been passed.
- (2) Sub-paragraph (1) does not prevent references in other provisions of this Act to proposals published or implemented under any of those sections of this Act from applying, by virtue of paragraph 1(3) above, to any proposals falling within sub-paragraph (1).

*Review of constitution of governing bodies*

- 14 (1) Subject to sub-paragraph (2), nothing in section 82 of this Act applies in relation to the implementation of any proposal made before the commencement of this Act, and section 11 of the Education (No. 2) Act 1986 shall continue to apply in relation to the implementation of any such proposal falling within subsection (2)(a) of that section as if this Act had not been passed.
- (2) In section 82(2) of this Act—
- (a) in paragraph (b), the reference to proposals falling within subsection (3) of that section includes a reference to proposals falling within section 11(2) of the 1986 Act; and
- (b) in paragraph (c) the reference to a relevant event for the purposes of section 82 includes a reference to a relevant event for the purposes of section 11 of the 1986 Act;
- and any date determined by the local authority under section 11(6) of the 1986 Act shall be taken, for the purposes of section 82(2) of this Act, to be the date on which the proposals in question were implemented.

*Confirmation of certain decisions of governing body*

- 15 Paragraph 16(1) of Schedule 8 to this Act does not apply to any decision taken before the commencement of this Act, and section 8(11) of the Education (No. 2) Act 1986 shall continue to apply to any such decision falling within section 8(12) as if this Act had not been passed.

*Review of grouping*

- 16 The reference in section 94(2)(c) of this Act to an order under section 50 or 51 or 58(1) of this Act does not, by virtue of paragraph 1(3) above, include a reference to an order made before the commencement of this Act under section 2 of the Education Act 1946 or section 15(5) of the Education Act 1944.

*Financial delegation*

- 17 (1) Without prejudice to paragraph 1(3) above—
- (a) the reference in section 101(1) of this Act to a scheme made by a local education authority under section 103 of this Act includes a reference to a scheme in force immediately before the commencement of this Act which was made under section 33 of the Education Reform Act 1988 (including one made by way of variation or replacement of such a scheme under section 35 of that Act); and
  - (b) the reference in section 104(6) of this Act to section 104(5) includes a reference to section 34(6) of that Act.
- (2) In relation to any such scheme made (or treated as if made) under section 33 of that Act, the reference in section 110(2) of this Act to the date of the coming into force of the scheme is (subject to sub-paragraph (3) below) a reference to the date of its coming into force as first made under section 33 (or 34(6)) of that Act.
- (3) Where the initial period of any such scheme made before 1st January 1994 (the date on which section 274 of the Education Act 1993 came into force) was before 1st January 1994 determined by reference to a date later than that referred to in sub-paragraph (2) above, section 110(2) of this Act shall have effect in relation to the scheme as if it instead referred to that later date.

- 18 Nothing in section 141 of this Act requires a local education authority to amend the articles of government of a school if, before the commencement of this Act, they have already amended those articles in accordance with section 44(4) of the Education Reform Act 1988.

*School sessions*

- 19 For the purposes of section 147(1)(b) of this Act as it applies to a county, controlled or maintained special school, any determination as to the times of the school sessions (within the meaning of section 147) which had effect immediately before the commencement of this Act, whether made—
- (a) by the governing body, or
  - (b) by the local education authority before 1st May 1989 (the date on which section 115 of the Education Reform Act 1988 came into force),
- shall continue to have effect, as if made for those purposes, subject to any new determination under section 148 of this Act.

*Exclusion of pupils*

- 20 Nothing in section 157 of this Act applies in relation to any pupil excluded from a school before the commencement of this Act, and section 23 of the Education (No. 2) Act 1986 shall continue to apply to any such pupil as if this Act had not been passed.

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*School premises: pre-1993 Act transfer of control agreements*

- 21 (1) This paragraph applies to any agreement to which paragraph 6 or 7 of Schedule 13 to the Education Act 1993 (pre-existing transfer of control agreements) applied immediately before the commencement of this Act.
- (2) The provisions of paragraph 6 or (as the case may be) paragraph 7 shall continue to apply in relation to any such agreement as if this Act had not been passed.

*Variation of trust deeds etc.*

- 22 In section 179(1) of this Act—
- (a) paragraph (b) does not apply to a transfer made before the commencement of this Act unless it was made in pursuance of proposals that fell to be implemented under section 12 or 13 of the Education Act 1980; but
- (b) in paragraph (d) the reference to any order made by the Secretary of State under section 47 of this Act includes a reference to any order made under section 16(1) of the Education Act 1944 (whether made in relation to a county school or a voluntary school).

*Ballots relating to acquisition of grant-maintained status*

- 23 Section 190(2)(b) of this Act applies where after the commencement of this Act the Secretary of State has given his consent for the purposes of section 186(3) or section 187(5) of this Act.

*Instruments and articles for grant-maintained schools incorporated under pre-1993 Act law*

- 24 (1) This paragraph applies in relation to a grant-maintained school where—
- (a) the governing body of the school were incorporated under Chapter IV of Part I of the Education Reform Act 1988;
- (b) an instrument and articles of government were made for the school under that Chapter before 1st January 1994; and
- (c) immediately before the commencement of this Act those instruments had effect (in accordance with paragraph 1(2) of Schedule 20 to the Education Act 1993 (transitional provisions and savings)) subject to the modifications specified in either or both of paragraphs 8 and 9 of the Education Act 1993 (Commencement No. 2 and Transitional Provisions) Order 1993.
- (2) The instrument and articles of government for the school shall continue to have effect, subject to those modifications, as if made under section 220 of this Act and in accordance with Part III of this Act.
- 25 (1) This paragraph applies in relation to a grant-maintained school where—
- (a) the governing body of the school were incorporated under Chapter IV of Part I of the Education Reform Act 1988;
- (b) paragraph 24(1)(b) above does not apply; and
- (c) immediately before the commencement of this Act the instrument and articles of government prescribed by virtue of section 56 of the Education Act 1993 had effect in relation to the school (in accordance with paragraph 1(3) of Schedule 20 to that Act).

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- (2) The instrument and articles of government for the school shall continue to have effect as if made under section 219 of this Act; and while they remain in force Schedule 24 to this Act shall apply in relation to the school with the following modifications.
- (3) In paragraph 10(1) there shall be inserted at the end of paragraph (d) “or
- (e) in the case of a governing body incorporated under Chapter IV of Part I of the Education Reform Act 1988, became a member of the governing body on the incorporation date in relation to the school (as defined by section 104(3) of that Act) and—
- (i) immediately before that date, was a parent governor (within the meaning of the Education (No. 2) Act 1986) in relation to the school, or
- (ii) was elected under section 66, or elected or nominated under section 68, of the Education Reform Act 1988 to hold office as a parent governor on the governing body.”
- (4) In paragraph 11(1) there shall be inserted at the end of paragraph (c) “or
- (d) in the case of a governing body incorporated under Chapter IV of Part I of the Education Reform Act 1988, became a member of the governing body on the incorporation date in relation to the school (as defined by section 104(3) of that Act) and—
- (i) immediately before that date, was a teacher governor (within the meaning of the Education (No. 2) Act 1986) in relation to the school, or
- (ii) was elected under section 66, or elected or nominated under section 68, of the Education Reform Act 1988 to hold office as a teacher governor on the governing body.”
- (5) In paragraph 12(1) there shall be inserted at the end of paragraph (c) “or
- (d) in the case of a governing body incorporated under Chapter IV of Part I of the Education Reform Act 1988—
- (i) became a member of the governing body on the incorporation date in relation to the school (as defined by section 104(3) of that Act), and
- (ii) was selected under section 66, or nominated under section 68, of that Act as being a person appearing to be a member of the local community committed to the good government and continuing viability of the school.”
- 26 (1) This paragraph applies in relation to a grant-maintained school where—
- (a) the governing body of the school were incorporated under Chapter IV of Part I of the Education Reform Act 1988; and
- (b) the school was a voluntary school before it became grant-maintained.
- (2) Schedule 24 to this Act shall apply in relation to the school with the substitution of the following paragraph for paragraph 13—
- “13 “Foundation governor” means—
- (a) a person appointed otherwise than by a local education authority for the purpose of securing, so far as is practicable, that the established character of the school at the time when it became grant-maintained is preserved and developed and, in particular,

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that the school is conducted in accordance with the provisions of any trust deed relating to it; or

- (b) a person selected under section 66, or nominated under section 68, of the Education Reform Act 1988 for the purpose referred to in sub-paragraph (a) above.”

*Appeal committees*

- 27 Nothing in—  
 (a) section 308(3) of this Act, or  
 (b) paragraph 7 of Schedule 33 to this Act,  
 applies in relation to any decision or action taken by the members of an appeal committee before 1st January 1994.
- 28 Paragraph 13(4) of Schedule 22 to this Act does not apply to any appeal committee constituted before 1st January 1994 in accordance with the instrument of government for any grant-maintained school for the purposes referred to in section 58(5)(d) of the Education Reform Act 1988 (articles of government admission appeal committees) while all the members of the committee are persons who were nominated before that date.
- 29 Where immediately before the commencement of this Act an appeal committee was constituted in accordance with the provisions of Part I of Schedule 2 to the Education (No. 2) Act 1986 as they had effect by virtue of paragraph 6 of Schedule 20 to the Education Act 1993 (namely without the amendments made by Schedule 16 to that Act), those provisions shall continue to apply to the committee (in place of the corresponding provisions of Part I of Schedule 33 to this Act) while all the members of the committee are persons nominated before 1st January 1994.
- 30 Nothing in this Act affects the restriction imposed by paragraph 4(2) of Schedule 2 to the Education Act 1993 (Commencement No.1 and Transitional Provisions) Order 1993 on the jurisdiction exercisable by a Local Commissioner, by virtue of section 25(5) of the Local Government Act 1974, in relation to cases where notice of appeal was served before 1st October 1993.

*Maintenance etc. grants*

- 31 (1) The former grants code shall continue to have effect in relation to—  
 (a) any payments of maintenance grant under section 79(1) of the Education Reform Act 1988 in respect of any financial year ending before 1st April 1994; and  
 (b) any payments of capital and special purpose grants under section 79(3) of that Act made before that date.
- (2) The functions conferred on the Secretary of State by or under the former grants code (as it has effect by virtue of sub-paragraph (1) above) shall, so far as relating to any amounts which—  
 (a) fall or may fall to be paid in any financial year beginning on or after 1st April 1994 in respect of any grant under that code, or  
 (b) have been paid by the Secretary of State before that date in respect of any such grant,  
 be exercisable by the funding authority.

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(3) In this paragraph “the former grants code” means sections 79 and 80 of the Education Reform Act 1988 (maintenance, special purpose and capital grants) in their application to England.

32 Section 81 of the Education Reform Act 1988 (recovery from local funds of sums in respect of maintenance grant) shall continue to have effect in relation to any sums recoverable by the Secretary of State under section 81(1) of that Act for any financial year ending before 1st April 1994.

33 The Education (Grant-maintained Schools) (Finance) Regulations 1990, so far as in force immediately before the commencement of this Act, shall continue in force despite the repeals made by this Act.

*Assessments and statements of special educational needs*

34 Any assessment or statement of special educational needs which—

- (a) was made pursuant to a notice or copy of a proposed statement served before 1st September 1994, and
- (b) immediately before the commencement of this Act was treated, by virtue of paragraph 2(7) or 4(3) of Schedule 4 to the Education Act 1993 (Commencement No.5 and Transitional Provisions) Order 1994, as if it had been made under section 167 or 168 of the Education Act 1993,

shall have effect as if made under section 323 or 324 of this Act (as the case may be).

*Applications relating to special schools*

35 Any application which—

- (a) was made to the Secretary of State before 1st April 1994, and
- (b) immediately before the commencement of this Act was treated, by virtue of paragraph 5 of Schedule 3 to the Education Act 1993 (Commencement No. 3 and Transitional Provisions) Order 1994, as if it had been made in accordance with—
  - (i) paragraph (a) or paragraph (b) of subsection (2), and subsection (6), of section 183 of the Education Act 1993, and
  - (ii) section 184(1) to (3) of that Act,

shall have effect as if made in accordance with paragraph (a) or (as the case may be) paragraph (b) of subsection (1), and subsection (5), of section 339 of this Act and section 340(1) to (3) of this Act.

*Contracts of staff transferred to School Curriculum and Assessment Authority or Curriculum and Assessment Authority for Wales*

36 (1) The repeal by this Act of—

- (a) section 15 of the Education Reform Act 1988 (transfer of staff of School Curriculum Development Committee or Secondary Examinations Council), or
- (b) section 248 of the Education Act 1993 (transfer of staff of National Curriculum Council and School Examinations and Assessment Council),

shall not affect the continued operation of section 15(3) to (5) or (as the case may be) section 248(2) and (3) in relation to any contract of employment in relation to which those provisions applied immediately before the commencement of this Act.

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- (2) Nothing in this Act shall affect the continued operation of Article 4 of the Education (School Curriculum and Assessment Authority) (Transfer of Functions) Order 1995 in relation to the person mentioned in that Article.

*Information about directions under section 365*

- 37 Nothing in section 366 of this Act applies, by virtue of paragraph 1 above, to any direction given before the commencement of this Act under regulations made under section 19 of the Education Reform Act 1988, and that section shall continue to apply in relation to any such direction as if this Act had not been passed.

*Review of conclusions about policy relating to curriculum*

- 38 Any articles of government of a county, controlled or maintained special school made under section 18(7) of the Education (No. 2) Act 1986 shall, in their operation after the commencement of this Act in accordance with paragraph 1 above, have effect as if the events requiring the governing body to review their conclusions about the matters mentioned in section 371(2) and (3) of this Act included the implementation of any proposals made after that time which—
- (a) would fall to be published by virtue of section 35 of this Act but for subsection (2)(b) of that section, and
  - (b) materially affect the school.

*Agreed syllabuses of religious education*

- 39 (1) Nothing in this Act affects the constitution of, or the operation of Schedule 5 to the Education Act 1944 in relation to, any conference convened (or reconvened) before the commencement of this Act.
- (2) Any regulations made under section 258(2) of the Education Act 1993 and having effect immediately before the commencement of this Act in relation to any conference or other body falling within section 258(1) or (3) shall continue to have effect in relation to any such conference or body, subject to the provisions of any regulations made under section 397(2) of this Act.

*Arrangements for collective worship*

- 40 In section 385 of this Act—
- (a) subsection (4)(b) does not affect any arrangements for collective worship in the case of a grant-maintained school that was formerly a voluntary school which were made before the commencement of this Act for the purposes of section 6 of the Education Reform Act 1988; and
  - (b) subsection (6) does not affect any arrangements made for the purposes of section 6(5) of that Act before the commencement of this Act.

*Disqualification for purposes of Part VII*

- 41 Sections 472 and 473 of this Act shall apply to a person who is disqualified—
- (a) from being the proprietor of an independent school, or
  - (b) from being a teacher in any school,



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by virtue of an order under Part III of the Education Act 1944 made before 1st January 1994 as if the words “or other employee” were omitted, wherever occurring.

*Chairmen of Independent Schools Tribunals*

- 42 In its application to a person who, immediately before 31st March 1995, was a member of the legal panel appointed under paragraph 1 of Schedule 6 to the Education Act 1944, paragraph 3(2) of Schedule 34 to this Act has effect subject to Schedule 7 to the Judicial Pensions and Retirement Act 1993 (transitional provisions), as well as to section 26(4) to (6) of that Act.

*Training grants*

- 43 The Education (Training Grants) Regulations 1993 shall continue to have effect in so far as they relate to the payment of grant on and after 1st April 1994, or to grant paid before that date, in respect of expenditure incurred before that date.

*Education committees etc. and members of those committees*

- 44 (1) Sub-paragraph (2) below applies to—
- (a) any education committee established in accordance with paragraph 1 of Part II of Schedule 1 to the Education Act 1944, and
  - (b) any sub-committee of any such committee appointed in accordance with paragraph 10 of that Part,
- which was in existence immediately before 1st April 1994.
- (2) Any committee or sub-committee to which this sub-paragraph applies shall, for the purposes of any enactment, be treated as if it had been—
- (a) appointed on that date—
    - (i) in the case of a committee, by the local authority, or
    - (ii) in the case of a sub-committee, by the committee appointed by the authority,in accordance with section 102(1) of the Local Government Act 1972, and
  - (b) so appointed wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as a local education authority or, as the case may be, the committee’s functions with respect to education.
- (3) Sub-paragraph (4) below applies to any person who was immediately before 1st April 1994 a member of an education committee or sub-committee of such a committee appointed for a term of office.
- (4) Any person to whom this sub-paragraph applies shall, for the purposes of any enactment, be treated—
- (a) as if he had been appointed on that date as a member of a committee or sub-committee appointed as mentioned in sub-paragraph (2) above for the residue of that term, and
  - (b) if he was a member of an education committee or sub-committee by virtue of directions given by the Secretary of State under paragraph 5A of Part II of Schedule 1 to the Education Act 1944, as if he had been appointed on that date as a member of a committee or sub-committee appointed as mentioned

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in sub-paragraph (2) above by virtue of directions given by the Secretary of State under section 297 of the Education Act 1993 or, in relation to any time after the commencement of this Act, under section 499 of this Act.

*Documents issued by divisional executives*

- 45 Section 566(1) of this Act applies to a document purporting—
- (a) to be a document issued by a divisional executive (within the meaning of Part III of Schedule 1 to the Education Act 1944), and
  - (b) to be signed by the person authorised by the executive to sign it,
- as it applies to a document falling within paragraph (a) of that provision.