



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### PART I **U.K.**

#### MEASURES TO RAISE STANDARDS OF SCHOOL EDUCATION

### CHAPTER I **E+W**

#### LIMIT ON INFANT CLASS SIZES

### 1 **Duty to set limit on infant class sizes.** **E+W**

- (1) The Secretary of State shall by regulations—
  - (a) impose a limit on class sizes for infant classes at maintained schools; and
  - (b) specify the school years in relation to which any such limit is to have effect.
- (2) Any limit imposed under this section shall specify the maximum number of pupils that a class to which the limit applies may contain while an ordinary teaching session is conducted by a single <sup>[F1]</sup>school teacher].
- (3) Subject to subsections (4) and (5), regulations under this section shall be so framed that—
  - (a) the maximum number specified in pursuance of subsection (2) is 30, and
  - (b) that limit has effect in relation to the 2001-02 school year and any subsequent year.
- (4) Regulations under this section may—
  - (a) provide for any limit imposed under this section to take effect—
    - (i) at the same time in the case of each of the age groups into which the pupils in infant classes fall, or

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- (ii) at different times (which may be earlier than the beginning of the school year mentioned in subsection (3)) in the case of different such age groups;
  - (b) provide that, in any circumstances specified in the regulations, any such limit either is not to apply or is to operate in such manner as is so specified.
- (5) The Secretary of State may by order amend subsection (3)—
- (a) by substituting for “30” such other number as is specified in the order; or
  - (b) by substituting for the reference to the 2001-02 school year a reference to such other school year as is so specified.
- (6) Where any limit imposed under this section applies to an infant class at a maintained school, the local education authority and the governing body shall exercise their functions with a view to securing that that limit is complied with in relation to that class.

#### Textual Amendments

- F1** Words in s. 1 substituted (19.12.2002 for W., 1.8.2003 for E.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 87](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/3185, art. 4, Sch. Pt. 1](#); [S.I. 2003/1667, art. 3](#)

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

- C1** S. 1 applied (with modifications) (18.10.1999) by [S.I. 1999/2666, reg. 8, Sch. paras. 1\(c\), 2-8](#).  
 S. 1 applied (with modifications) (1.9.1999) by [S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8](#).
- C2** S. 1 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\), regs. 1\(1\), 9, Sch. para. 1\(b\)](#)
- C3** S. 1 applied (with modifications) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\), regs. 1\(1\), 9, Sch. \(with reg. 2\(2\)\)](#)

## **F2** Plans by LEAs for reducing infant class sizes. **E+W**

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#### Textual Amendments

- F2** S. 2 repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\), Sch. 5 Pt. 1](#); [S.I. 2005/394, art. 2\(1\)\(i\)](#); [S.I. 2006/885, art. 2\(3\)\(b\)](#)

## **3** Payment of grant in connection with reductions in infant class sizes. **E+W**

<sup>F3</sup>(1) Regulations shall make provision for the payment by the Secretary of State of grants to local education authorities in respect of expenditure incurred or to be incurred by them for the purpose of securing that any limit imposed under section 1 is complied with in relation to infant classes at schools maintained by them.

- (2) Regulations under this section shall provide for the Secretary of State—
- (a) to withhold grants under the regulations from a local education authority where no proposed arrangements by that authority have been approved by him under section 2; and

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- (b) when determining whether any grant (and, if so, what amount) should be paid by him under the regulations to a local education authority, to have regard to their proposed arrangements as so approved.
- (3) Regulations under this section may provide—
- (a) for the payment of grant under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and
  - (b) for requiring local education authorities to whom payments have been made under the regulations to comply with such requirements as may be so determined.]

#### Textual Amendments

**F3** S. 3 repealed (1.4.2003 for E., 2.1.2008 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 18(1)(i), 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2007/3611, art. 4(1), Sch. Pt. 1

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

**C4** S. 3 modified (1.9.1998) (*temp.*) by [S.I. 1998/1968, reg.2](#)

## 4 Interpretation of Chapter I. **E+W**

In this Chapter—

“class” means a group in which pupils are taught in an ordinary teaching session;

“infant class” means a class containing pupils the majority of whom will attain the age of five, six or seven during the course of the school year;

“ordinary teaching session” does not include a school assembly or other school activity usually conducted with large groups of pupils;

[<sup>F4</sup>“school teacher” means a person who is a school teacher for the purposes of section 122 of the Education Act 2002 (determination of school teachers’ pay and conditions)]

#### Textual Amendments

**F4** Words in s. 4 substituted (19.12.2002 for W., 1.8.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 88](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/1667, art. 3

## CHAPTER II **U.K.**

### GENERAL RESPONSIBILITIES OF LOCAL EDUCATION AUTHORITIES

#### *Duty to promote high standards of education*

## 5 Duty of LEAs to promote high standards in primary and secondary education. **U.K.**

After section 13 of the <sup>M1</sup>Education Act 1996, there shall be inserted—

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**“13A Duty to promote high standards in primary and secondary education.**

- (1) A local education authority shall ensure that their functions relating to the provision of education to which this section applies are (so far as they are capable of being so exercised) exercised by the authority with a view to promoting high standards.
- (2) This section applies to education for—
- (a) persons of compulsory school age (whether at school or otherwise); and
  - (b) persons of any age above or below that age who are registered as pupils at schools maintained by the authority;
- and in subsection (1) “functions” means functions of whatever nature.”

**Marginal Citations**

M1 1996 c. 56.

*Education development plans*

**<sup>F5</sup>6 Preparation of education development plans. E+W**

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**Textual Amendments**

**F5** S. 6 repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), [Sch. 5 Pt. 1](#); S.I. 2005/394, [art. 2\(1\)\(i\)](#); S.I. 2006/885, [art. 2\(3\)\(b\)](#)

**<sup>F6</sup>7 Approval, modification and review of statement of proposals. U.K.**

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**Textual Amendments**

**F6** S. 7 repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), [Sch. 5 Pt. 1](#); S.I. 2005/394, [art. 2\(1\)\(i\)](#); S.I. 2006/885, [art. 2\(3\)\(b\)](#)

*Intervention by Secretary of State*

**8 Reserve power of Secretary of State to secure proper performance of LEA’s functions. U.K.**

After section 497 of the <sup>M2</sup>Education Act 1996 there shall be inserted—

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**“497A Power to secure proper performance of LEA’s functions.**

- (1) This section applies to a local education authority’s functions (of whatever nature) which relate to the provision of education—
  - (a) for persons of compulsory school age (whether at school or otherwise), or
  - (b) for persons of any age above or below that age who are registered as pupils at schools maintained by the authority.
- (2) If the Secretary of State is satisfied (either on a complaint by any person interested or otherwise) that a local education authority are failing in any respect to perform any function to which this section applies to an adequate standard (or at all), he may exercise his powers under subsection (3) or (4).
- (3) The Secretary of State may under this subsection direct an officer of the authority to secure that that function is performed in such a way as to achieve such objectives as are specified in the direction.
- (4) The Secretary of State may under this subsection give an officer of the authority such directions as the Secretary of State thinks expedient for the purpose of securing that the function—
  - (a) is performed, on behalf of the authority and at their expense, by such person as is specified in the direction, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified;and such directions may require that any contract or other arrangement made by the authority with that person contains such terms and conditions as may be so specified.
- (5) Where the Secretary of State considers it expedient that the person specified in directions under subsection (4) should perform other functions to which this section applies in addition to the function to which subsection (2) applies, the directions under subsection (4) may relate to the performance of those other functions as well; and in considering whether it is expedient that that person should perform any such additional functions, the Secretary of State may have regard to financial considerations.
- (6) Any direction under this section may either—
  - (a) have effect for an indefinite period until revoked by the Secretary of State, or
  - (b) have effect until any objectives specified in the direction have been achieved (as determined in accordance with the direction).
- (7) Any direction given under subsection (3) or (4) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.

**497B Power to secure proper performance: further provisions.**

- (1) Where the Secretary of State gives directions under section 497A(4) to an officer of a local education authority, the person specified in those directions shall, in the performance of the function or functions specified in the directions, be entitled to exercise the powers conferred by this section.

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- (2) The specified person shall have at all reasonable times—
- (a) a right of entry to the premises of the authority, and
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the performance of the specified function or functions.
- (3) In exercising the right to inspect records or other documents under subsection (2), the specified person—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used, or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
 to afford him such assistance as he may reasonably require (including, in particular, the making of information available for inspection or copying in a legible form).
- (4) Without prejudice to subsection (2), the authority shall give the specified person all assistance in connection with the performance of the specified function or functions which they are reasonably able to give.
- (5) Subsection (2) shall apply in relation to any school maintained by the authority as it applies in relation to the authority; and without prejudice to that subsection (as it so applies)—
- (a) the governing body of any such school shall give the specified person all assistance in connection with the exercise of his functions which they are reasonably able to give; and
  - (b) the governing body of any such school and the authority shall secure that all such assistance is also given by persons who work at the school.
- (6) Any reference in this section to the specified person includes a reference to any person assisting him in the performance of the specified function or functions.
- (7) In this section “document” and “records” each include information recorded in any form.”

#### Marginal Citations

M2 1996 c. 56.

### *Parent governor representatives on education committees*

## 9 Education committees to include representatives of parent governors. **U.K.**

At the end of section 499 of the <sup>M3</sup>Education Act 1996 (power of Secretary of State to direct appointment of members of education committees) there shall be added—

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- “(6) Regulations may require—
- (a) any such committee as is mentioned in subsection (1) or (3), and
  - (b) any sub-committee appointed by any authorities within subsection (1) or (3), or by any committee within paragraph (a) of this subsection, for the purpose mentioned in subsection (5)(b),
- to include one or more persons elected, in accordance with the regulations, as representatives of parent governors at maintained schools in relation to which the committee or sub-committee acts.
- (7) Regulations may make provision for—
- (a) the number of persons who are to be elected for the purposes of subsection (6) in the case of any local education authority;
  - (b) the procedure to be followed in connection with the election of such persons and the persons who are entitled to vote at such an election;
  - (c) the circumstances in which persons are qualified or disqualified for being so elected or for holding office once elected;
  - (d) the term of office of persons so elected and their voting rights;
  - (e) the application to any such committee or sub-committee, with or without any modification, of any provision made by or under any other enactment and relating to committees or (as the case may be) sub-committees of a local authority;
  - (f) such other matters connected with such elections or persons so elected as the Secretary of State considers appropriate.
- (8) Regulations may also make provision—
- (a) enabling the Secretary of State to determine, where he considers it expedient to do so in view of the small number of maintained schools in relation to which a committee or sub-committee acts, that the requirement imposed on the committee or sub-committee by virtue of subsection (6) is to have effect as if it referred to representatives of parents of registered pupils (rather than representatives of parent governors) at those schools;
  - (b) for any regulations under subsection (7) to have effect, where the Secretary of State makes any such determination, with such modifications as may be prescribed.
- (9) In subsections (6) and (8) “maintained school” and “parent governor” have the same meaning as in the School Standards and Framework Act 1998.”

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**Marginal Citations**

**M3** 1996 c. 56.

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## CHAPTER III **E+W**

### EDUCATION ACTION ZONES

#### 10 **Establishment of education action zones.** **E+W**

- (1) If the Secretary of State considers that it is expedient to do so with a view to improving standards in the provision of education at any particular [<sup>F7</sup>eligible schools] , he may by order provide for those schools to constitute collectively an education action zone for the purposes of this Chapter.

[<sup>F8</sup>(1A) For the purposes of subsection (1) “eligible school” means—

- (a) a maintained school;
  - (b) a nursery school;
  - (c) a pupil referral unit; or
  - (d) an independent school.]
- (2) An education action zone shall be established in the first instance for three years; but the Secretary of State may, by an order made before the end of that period, provide for the zone to continue in existence for a further two years.
- (3) [<sup>F9</sup>At any time when an education action zone is in existence, the Secretary of State may by order vary the order establishing the zone by adding to the schools for the time being included in that order—
- (a) any school in relation to which section 15 applies by virtue of subsection (1), (4) or (6) of that section; or
  - (b) with a view to enabling it to achieve improving standards in the provision of education once it becomes a maintained school, any new school which has a temporary governing body.]
- (4) No order shall be made by the Secretary of State under subsection (1) [<sup>F10</sup>or (2)] except on an application made for the purpose with the consent of the governing body of every school which it is proposed should be a participating school.
- (5) Any school which ceases to be a participating school by virtue of subsection (2) may nevertheless be included in a further order under subsection (1).
- (6) In this Chapter—
- [<sup>F11</sup>(a) references to a governing body—
    - (i) in relation to an independent school (other than an Academy, city technology college or city college for the technology of the arts), are to the proprietor of the school, and
    - (ii) in relation to a new school, include the temporary governing body of the school;
  - (b) “participating school”, in relation to an education action zone, means one of the schools that—
    - (i) for the time being is included in the order under subsection (1), or
    - (ii) has been added to the zone by virtue of section 11B,
 other than a school that has been removed from the zone in accordance with section 11C;
  - (c) “pupil referral unit” has the same meaning as in section 19 of the Education Act 1996 (c. 56);



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- (d) “new school” has the meaning given in section 72(3).]
- (7) [F12]In this section “new school” has the meaning given by section 72(3).]
- (8) Unless the Secretary of State by order otherwise provides, nothing in this Chapter applies in relation to Wales.

#### Textual Amendments

- F7** Words in s. 10(1) substituted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 2\(1\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)
- F8** S. 10(1A) inserted (1.10.2002 for E. for specified purposes, 1.9.2003 for E. so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 15 para. 2\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/1667, [art. 4](#)
- F9** S. 10(3) repealed (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 215(2), 216, [Sch. 15 para. 2\(3\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)
- F10** Words in s. 10(4) substituted (1.10.2002 for E otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 2\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)
- F11** S. 10(6)(a)-(d) substituted for s. 10(6)(a)(b) (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 2\(5\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)
- F12** S. 10(7) repealed (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 215(2), 216, [Sch. 15 para. 2\(6\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)

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

- C5** s. 10(1) modified (*temp.*) (4.8.1998) by S.I. 1998/1878, [reg. 2](#)
- C6** S. 10(6)(a)(i) modified (*temp.*) (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 8\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)

## 11 Establishment of Education Action Forum for zone. **E+W**

- (1) An order establishing an education action zone under section 10(1) shall provide for the establishment of an Education Action Forum for the zone.
- (2) An Education Action Forum shall be a body corporate [F13]and shall be constituted in accordance with the order under section 10(1) by which it is established].
- (3) [F14]The order shall require the members of an Education Action Forum to include—
- one person appointed by the governing body of each of the participating schools, unless the governing body of any such school choose not to make such an appointment; and
  - either one or two persons appointed by the Secretary of State.]
- (4) Schedule 1 has effect in relation to an Education Action Forum.
- (5) The Forum established for an education action zone shall be dissolved by order of the Secretary of State with effect from the time when the zone ceases to exist in accordance with section 10(2).
- (6) An order under subsection (5) may make provision for the transfer of property, staff, rights and liabilities of the Forum and for the preparation of a final statement of accounts.

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#### Textual Amendments

- F13** Words in s. 11(2) repealed (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 215(2), 216, [Sch. 15 para. 3\(a\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with [Sch.](#))
- F14** S. 11(3) repealed (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 215(2), 216, [Sch. 15 para. 3\(b\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with [Sch.](#))

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

- C7** S. 11 extended (10.3.1999) by S.I. 1999/362, [reg. 2\(4\)](#).

### [<sup>F15</sup>11A Constitution of Education Action Forum **E+W**]

- (1) The members of an Education Action Forum must include—
- (a) one person appointed by the governing body of each of the participating schools, unless the governing body of any such school choose not to make such an appointment, and
  - (b) one or two persons appointed by the Secretary of State, unless he chooses not to make such appointments.
- (2) Subject to that, an Education Action Forum—
- (a) shall initially be constituted in accordance with the order under section 10(1), and
  - (b) may subsequently alter its membership (as set out in that order or as previously altered under this paragraph).
- (3) In subsection (2) the references to altering the Forum’s membership include—
- (a) altering the number of members, and
  - (b) altering who may appoint members.
- (4) An alteration may be made under subsection (2)(b) only if it is made—
- (a) in accordance with any procedural requirements specified for the purposes of this section in regulations under Schedule 1, and
  - (b) with the consent of the Secretary of State.]

#### Textual Amendments

- F15** S. 11A inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#) ss. 187, 216, {[Sch. 15 para. 4](#)} (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with [Sch.](#))

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

- C8** S. 11A modified (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 8\(4\)](#) (with ss.210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with [Sch.](#))

### [<sup>F16</sup>11B Expansion of zone **E+W**]

- (1) An Education Action Forum established for an education action zone may add—
- (a) any eligible school (within the meaning of section 10(1A)), or
  - (b) any new school which has a temporary governing body,

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to the zone.

- (2) But a school may be added under this section only if it is added—
  - (a) in accordance with any procedural requirements specified for the purposes of this section in regulations under Schedule 1, and
  - (b) with the consent of the governing body of the school and of the Secretary of State.
- (3) For the purposes of this section references to a school being added to an education action zone are to it becoming one of the schools which constitute collectively the zone.

#### Textual Amendments

**F16** Ss. 11B, 11C inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 5](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)

### 11C Removal from zone **E+W**

- (1) An Education Action Forum established for an education action zone may remove a participating school from the zone.
- (2) But a school may be removed under this section only if it is removed—
  - (a) in accordance with any procedural requirements specified for the purposes of this section in regulations under Schedule 1, and
  - (b) with the consent of the Secretary of State.
- (3) For the purposes of this section references to a school being removed from an education action zone are to it ceasing to be one of the schools which constitute collectively the zone.]

#### Textual Amendments

**F16** Ss. 11B, 11C inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 5](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)

### [<sup>F17</sup>11D Information relating to a Forum and its zone **E+W**

- (1) An Education Action Forum established for an education action zone must provide the Secretary of State with details of—
  - (a) any alteration made to its constitution under section 11A(2)(b),
  - (b) any addition of a school to the zone under section 11B, and
  - (c) any removal of a school from the zone under section 11C.
- (2) The Forum must also, on a request being made by any person, provide him with—
  - (a) the name of each member of the Forum and of the person or body that appointed him,
  - (b) the name of any other person or body entitled to appoint a member, and
  - (c) the name of each participating school in relation to the zone.

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- (3) But the duty under subsection (2) is subject, in such circumstances as the Forum may determine, to the payment by the person concerned of a reasonable fee determined by the Forum.]

#### Textual Amendments

**F17** S. 11D inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 187, 216, [Sch. 15 para. 6](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.)

## 12 Functions of Education Action Forum. **E+W**

- (1) An Education Action Forum shall have as its main object the improvement of standards in the provision of education at each of the participating schools.

[<sup>F18</sup>(1A) With the consent of the Secretary of State, a Forum may also carry on any other activities which it considers will promote the provision of, or access to, education whether in a participating school or otherwise.]

- (2) A Forum may, under arrangements made by the governing body of a participating school in respect of any prescribed function of that body relating to the conduct of the school, either—

- (a) discharge that function on behalf of the governing body until such time as they may specify in a request to the Forum to cease discharging the function on their behalf; or
- (b) assume full responsibility for the discharge of that function during the whole of the period for which the Forum remains in existence.

- (3) Regulations may make provision—

- (a) as to the circumstances in which the governing body of a participating school may make arrangements under subsection (2);
- (b) for the procedure to be followed by such a governing body in connection with the making of any such arrangements;
- (c) for the procedure to be followed by an Education Action Forum when discharging any function by virtue of that subsection;
- (d) for statutory provisions relating to governing bodies of maintained schools to apply, with any prescribed modifications, to an Education Action Forum when discharging any function by virtue of paragraph (b) of that subsection.

- (4) Regulations may, in relation to the discharge by an Education Action Forum of any function of a governing body [<sup>F19</sup>under sections 54 and 57(1) to (3), Schedule 16 or paragraph 27 of Schedule 17,][<sup>F19</sup>under sections 35 to 37 of, or Schedule 2 to, the Education Act 2002 or under regulations made under those sections,] make any such provision as may be made by an order under section 81 (application of employment law during financial delegation).

- (5) The Secretary of State may by a direction provide for any scheme under Chapter IV of Part II of this Act which relates to a participating school to have effect with such modifications as he considers appropriate in a case where an Education Action Forum is discharging any function in relation to the school by virtue of subsection (2)(b).

- (6) Before giving a direction under subsection (5) the Secretary of State shall consult the local education authority.

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#### Textual Amendments

- F18** S. 12(1A) inserted (1.10.2002 for E. otherwise prosp. ) by [Education Act 2002 \(c. 32\)](#), 187, 216, {Sch. 15 para. 7} (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#) (with [Sch.](#))
- F19** Words in s. 12(4) substituted (1.9.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 90](#) (with ss. 210(8), 214(4)); [S.I. 2003/1667](#), [art. 4](#)

### 13 Disapplication of pay and conditions order in relation to teachers at participating schools. **E+W**

[<sup>F20</sup>For section 3 of the <sup>M4</sup>School Teachers' Pay and Conditions Act 1991 there shall be substituted—

#### “ Special provisions as to schools in education action zones.

- (1) A pay and conditions order shall not apply to the statutory conditions of employment of the school teachers in a participating school the governing body of which—
  - (a) have, by notice to the Secretary of State, made an application for exemption; and
  - (b) pursuant to that application are for the time being exempted from subsections (6) and (7) of section 2 above by virtue of an order under subsection (4) below.
- (2) Before making an application under subsection (1) above, the governing body of the participating school concerned shall consult the school teachers employed at the school with respect to the proposed application.
- (3) A notice of application under subsection (1) above shall specify a date, at least three months after the date of the notice, with effect from which the governing body of the participating school concerned intend to make their own provision as to the statutory conditions of employment of the school teachers employed at the school.
- (4) On receipt of a notice of application under subsection (1) above the Secretary of State may, by statutory instrument, make an order—
  - (a) naming the school; and
  - (b) specifying, as the date with effect from which, by virtue of the order, subsections (6) and (7) of section 2 above are not to apply, the date specified in the notice of application or such other date as may be agreed between the governing body and the Secretary of State.
- (5) Where by virtue of an order under subsection (4) above a pay and conditions order ceases to apply in relation to any school, the statutory conditions of employment of the school teachers employed at the school shall be—
  - (a) such as may be determined by the governing body, or
  - (b) so far as the governing body have not made any determination with respect to any such conditions of employment, those having effect under the order immediately before it ceased to apply;and (so far as necessary) the local education authority shall give effect to any such determination of the governing body.

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- (6) In this section “participating school” means one of the schools for the time being included in an order under section 10(1) of the School Standards and Framework Act 1998 establishing an education action zone.”]

#### Textual Amendments

- F20** S. 13 ceased to have effect (1.10.2002 for E. and otherwise prosp.) by virtue of [Education Act 2002 \(c. 32\)](#), [ss. 215\(1\), 216](#), [Sch. 21 para. 91](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/2439](#), [art. 3](#) (with [Sch.](#)); S. 13 repealed (prosp) by [Education Act 2002 \(c. 32\)](#), [ss. 215\(2\), 216](#), [Sch. 22 Pt. 1](#) (with [ss. 210\(8\), 214\(4\)](#))

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

- C9** S. 13 excluded (1.9.1998) (*temp.*) by [S.I. 1998/2115](#), [reg.3](#)

#### Marginal Citations

- M4** 1991 c. 49.

## CHAPTER IV E+W

### INTERVENTION IN SCHOOLS CAUSING CONCERN

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

- C10** Pt. 1 Chapter 4: Power to modify conferred (prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 25, 216](#) (with [ss. 210\(8\), 214\(4\)](#))
- C11** Pt. 1 Ch. 4: power to modify conferred (1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), [ss. 25\(1\)\(a\), 216\(4\)](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/124](#), [art. 4](#)

#### *Intervention by LEAs*

### 14 Powers of intervention exercisable by LEAs. E+W

- (1) If at any time section 15 applies to a maintained school by virtue of any of the following provisions of that section, namely—

- (a) subsection (1) (school subject to formal warning),
- (b) subsection (4) (school [<sup>F21</sup>requiring significant improvement]), or
- (c) subsection (6) (school requiring special measures),

the provisions mentioned in subsection (2) below (which confer powers of intervention on local education authorities) shall also apply to the school at that time unless excluded by subsection (3) below (intervention by Secretary of State).

[<sup>F22</sup>(1A) In this Chapter “maintained school” includes a maintained nursery school.]

- (2) Those provisions are—

- (a) section 16 (power to appoint additional governors);
- [<sup>F23</sup>(aa) section 16A (power to provide for governing body to consist of interim executive members);] and
- (b) section 17 (power to suspend right to delegated budget).

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[<sup>F24</sup>(3) Those provisions shall not apply to a school to which section 15 applies by virtue of subsection (4) or (6) of that section (school [<sup>F25</sup>requiring significant improvement] or requiring special measures) if, in connection with the same inspection falling within subsection (4)(a) or (6)(a) of that section—

- (a) the Secretary of State has exercised in relation to the school his power under section 18 (power to appoint additional governors) and any additional governors appointed in the exercise of that power remain in office; or
- (b) he has exercised in relation to the school his power under section 19 (power to direct closure of school).]

[<sup>F26</sup>(4) In this Chapter—

- (a) “Chief Inspector” means—
  - (i) in relation to a school in England, Her Majesty’s Chief Inspector of Schools in England, and
  - (ii) in relation to a school in Wales, Her Majesty’s Chief Inspector of Education and Training in Wales,
- (b) “member of the Inspectorate”, in relation to an inspection of a school in Wales, has the meaning given by section 43 of the Education Act 2005,
- (c) references to special measures being, or not being, required to be taken in relation to a school are to be read in accordance with section 44(1) of that Act, and
- (d) references to a school requiring, or not requiring, significant improvement are to be read in accordance with section 44(2) of that Act.]

#### Textual Amendments

- F21** Words in s. 14(1)(b) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 14\(2\)](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F22** S. 14(1A) inserted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 92](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F23** S. 14(2)(aa) inserted (2.9.2002 for E.) by [Education Act 2002 \(c. 32\)](#), [ss. 57\(1\)](#), 216 (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#)
- F24** S. 14(3) substituted (2.9.2002 for E., 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 56\(3\)](#), 216, [Sch. 5 para. 1](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F25** Words in s. 14(3) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 14\(2\)](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F26** S. 14(4) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 14\(3\)](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1

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

- C12** S. 14(2) modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 4\(c\)](#)
- C13** S. 14(2)(a) modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 3\(c\)](#)
- C14** S. 14(2)(b) modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 3\(c\)](#)

## 15 Cases where LEA may exercise powers of intervention. **E+W**

(1) This section applies to a maintained school by virtue of this subsection if—

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- (a) the local education authority have—
    - (i) given the governing body a warning notice in accordance with subsection (2), and
    - (ii) given the head teacher of the school a copy of the notice at the same time as the notice was given to the governing body;
  - (b) the governing body have failed to comply, or secure compliance, with the notice to the authority’s satisfaction within the compliance period; and
  - (c) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under either or both of sections 16 and 17 (whether or not the notice is combined with a notice under section 62(3) (c)).
- (2) A local education authority may give a warning notice to the governing body of a maintained school where—
- (a) the authority are satisfied—
    - (i) that the standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercise their powers under either or both of sections 16 and 17, or
    - (ii) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
    - (iii) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise); and
  - (b) the authority have previously informed the governing body and the head teacher of the matters on which that conclusion is based; and
  - (c) those matters have not been remedied to the authority’s satisfaction within a reasonable period.
- (3) For the purposes of subsections (1) and (2) a “warning notice” is a notice in writing by the local education authority setting out—
- (a) the matters referred to in subsection (2)(b);
  - (b) the action which they require the governing body to take in order to remedy those matters; and
  - (c) the period within which that action is to be taken by the governing body (“the compliance period”).
- [<sup>F27</sup>(4) This section applies to a maintained school by virtue of this subsection if—
- (a) following an inspection of the school under Chapter 1 or 3 of Part 1 of the Education Act 2005, the Chief Inspector—
    - (i) in the case of a school in England, has given the Secretary of State a notice under subsection (3)(a) of section 13 of that Act in a case falling within subsection (1)(b) of that section (school requiring significant improvement), or
    - (ii) in the case of a school in Wales, has given the National Assembly for Wales a notice under subsection (2) of section 37 of that Act in a case falling within subsection (1)(a)(ii) or (b)(ii) of that section (school requiring significant improvement), and
  - (b) where any subsequent inspection of the school has been made under Chapter 1 or 3 of Part 1 of that Act, the notice has not been superseded by—



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- (i) the person making the subsequent inspection making a report stating that in his opinion the school no longer requires significant improvement, or
- (ii) the Chief Inspector giving the Secretary of State or the Assembly a notice under section 13(3)(a) or 37(2) of that Act in a case falling within section 13(1)(a) or 37(1)(a)(i) or (1)(b)(i) (school requiring special measures).]

<sup>F28</sup>(5) .....

[<sup>F29</sup>(6) This section applies to a maintained school by virtue of this subsection if—

- (a) following an inspection of the school under Chapter 1 or 3 of Part 1 of the Education Act 2005, the Chief Inspector—
  - (i) in the case of a school in England, has given the Secretary of State a notice under subsection (3)(a) of section 13 of that Act in a case falling within subsection (1)(a) of that section (school requiring special measures), or
  - (ii) in the case of a school in Wales, has given the National Assembly for Wales a notice under subsection (2) of section 37 of that Act in a case falling with subsection (1)(a)(i) or (b)(i) of that section (school requiring special measures), and
- (b) where any subsequent inspection of the school has been made under Chapter 1 or 3 of Part 1 of that Act, the person making it did not state that in his opinion special measures were not required to be taken in relation to the school.]

[<sup>F30</sup>(7) For the purposes of this section a report of an inspection under section 65 or 83 of the Learning and Skills Act 2000 shall be treated as a report of an inspection under Part I of the School Inspections Act 1996.]

#### Textual Amendments

- F27** S. 15(4) substituted (1.9.2005 for E. for specified purposes, 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 15\(2\)](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F28** S. 15(5) repealed (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 15\(3\), Sch. 19 Pt. 1](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F29** S. 15(6) substituted (1.9.2005 for E. for specified purposes, 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 15\(4\)](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F30** S. 15(7) inserted (28.7.2000 for specified purposes and otherwise 1.4.2001) by [2000 c. 21, s. 149, Sch. 9 para. 78](#); S.I. 2001/654, art. 2, [Sch. Pt. II](#) (with art. 3); S.I. 2001/1274, art. 2, [Sch. Pt. I](#)

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

- C15** S. 15(4) modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), {reg. 4(a)}
- S. 15(4) modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 3\(a\)](#)
- C16** S. 15(6) modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 4\(a\)](#)
- S. 15(6) modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 3\(a\)](#)

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**16 Power of LEA to appoint additional governors. E+W**

- (1) If at any time this section applies to a maintained school in accordance with section 14(1), then (subject to subsections (2) and (3)) the local education authority may appoint such number of additional governors as they think fit.
- (2) Where this section so applies in the case of a school falling within section 15(1) (school subject to formal warning), the power conferred by subsection (1) above is only exercisable within the period of two months following the end of the compliance period.
- <sup>F31</sup>(3) Where this section so applies in the case of a school falling within section 15(4) (school <sup>F32</sup>requiring significant improvement] or section 15(6)(school requiring special measures), the power conferred by subsection (1) above is exercisable only if the following conditions are satisfied, namely—
  - <sup>F33</sup>(a) the Chief Inspector has given the local education authority a notice under section 13(3)(a) or 37(2) of the Education Act 2005]
  - (b) a period of not less than ten days has elapsed since the date of the notice.]
- (4) <sup>F34</sup>.....
- (5) In relation to any appointment made by the local education authority by virtue of subsection (1) to the governing body of a school, the instrument of government for the school shall have effect as if <sup>F35</sup>(despite anything in regulations under section 19 of the Education Act 2002)] it provided for the local education authority to appoint such number of additional governors as they think fit.
- (6) If at any time—
  - (a) this section applies to a voluntary aided school other than one falling within <sup>F36</sup>section 15(4) or (6)] , and
  - (b) the local education authority have exercised their power to appoint additional governors under subsection (1),

the appropriate appointing authority may appoint such number of additional foundation governors as is equal to the number of additional governors appointed by the authority.
- (7) Any additional foundation governors appointed under subsection (6)—
  - (a) shall cease to hold office at the time when the additional governors appointed by the authority cease to do so; and
  - (b) shall not be eligible for re-appointment except where, and to the extent that, those governors are re-appointed.
- (8) If—
  - (a) at any time this section applies to a voluntary aided school falling within <sup>F37</sup>section 15(4) or (6)] , and
  - <sup>F38</sup>(b) paragraph (a) of section 14(3) does not apply in connection with the same inspection falling within subsection (4)(a) or (6)(a) of section 15.]

the appropriate appointing authority may (subject to subsection (9)) appoint such number of additional foundation governors as they think fit.
- <sup>F39</sup>(9) The power conferred by subsection (8) is only exercisable if the following conditions are satisfied, namely—
  - (a) the appropriate appointing authority have received a notice in writing from the Secretary of State informing them that he has received from the Chief

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- Inspector a notice under [<sup>F40</sup>section 13(3)(a) or 37(2) of the Education Act 2005], and
- (b) a period of not less than ten days has elapsed since the date of the notice from the Secretary of State.]
- (10) In the case of any appointment made by virtue of subsection (6) or (8) to the governing body of a school, the instrument of government for the school shall have effect as if [<sup>F41</sup>(despite anything in regulations under section 19 of the Education Act 2002)] the instrument provided for the appropriate appointing authority to appoint such number of additional foundation governors as they are authorised to appoint under subsection (6) or (8) (as the case may be).
- (11) Subject to subsection (12), references in this section to the appropriate appointing authority in relation to any voluntary aided school are references—
- (a) to the appropriate diocesan authority, if it is a Church of England school, Church in Wales school or Roman Catholic Church school; or
- (b) in any other case, to the person or persons by whom the foundation governors are appointed.
- (12) Where, in the case of any voluntary aided school not falling within subsection (11)(a), there are different powers to appoint foundation governors, references in this section to the appropriate appointing authority are references—
- (a) to all those persons who have any such power acting jointly, or
- (b) if they are unable to agree, to such of them acting jointly, or such one of them, as the Secretary of State may, after consulting all those persons, determine.
- [<sup>F42</sup>(12A) The Secretary of State may in respect of any particular school determine that subsections (3)(b) and (9)(b) shall have effect as if the reference to ten days were to such shorter period as he may determine.]
- (13) <sup>F43</sup> .....

#### Textual Amendments

- F31** S. 16(3) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F32** Words in s. 16(3) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 16\(2\)\(a\)](#); S.I. 2005/2034, [art. 4](#); S.I. 2006/1338, [art. 3](#), Sch. 1
- F33** S. 16(3)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 16\(2\)\(b\)](#); S.I. 2005/2034, [art. 4](#); S.I. 2006/1338, [art. 3](#), Sch. 1
- F34** S. 16(4) repealed (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 215(2), 216, [Sch. 5 para. 2\(3\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F35** Words in s. 16(5) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 93\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, [art. 4](#); S.I. 2005/2910, [art. 4](#), Sch.
- F36** Words in s. 16(6)(a) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F37** Words in s. 16(8)(a) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(5\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1

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- F38** S. 16(8)(b) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(5\)\(b\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F39** S. 16(9) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(6\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F40** Words in s. 16(9)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 16\(3\)](#); S.I. 2005/2034, [art. 4](#); S.I. 2006/1338, [art. 3](#), Sch. 1
- F41** Words in s. 16(10) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 93\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, [art. 4](#); S.I. 2005/2910, [art. 4](#), Sch.
- F42** S. 16(12A) inserted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, [Sch. 5 para. 2\(7\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F43** S. 16(13) repealed (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 56(3), 216, 215(2), [Sch. 5 para. 2\(8\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1

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

- C17** S. 16 modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 4\(c\)](#)  
 S. 16 modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 3\(c\)](#)

#### Commencement Information

- II** S. 16 wholly in force at 1.9.1999; s. 16 not in force at Royal Assent see s. 145(3); s. 16(1)-(5) and (13) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. I](#); s. 16 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-5, Schs. 5-7).

### <sup>F44</sup>16A Power of LEA to provide for governing body to consist of interim executive members **E+W**

- (1) If at any time this section applies to a maintained school in accordance with section 14(1), then (subject to subsections (2) and (3)) the local education authority may, with the consent of the Secretary of State, give the governing body a notice in writing stating that, as from a date specified in the notice, the governing body are to be constituted in accordance with Schedule 1A (governing bodies consisting of interim executive members).
- (2) Where this section so applies in the case of a school falling within section 15(4) (school <sup>F45</sup>requiring significant improvement] or section 15(6)(school requiring special measures), the power conferred by subsection (1) above is exercisable only if the following conditions are satisfied, namely—
  - <sup>F46</sup>(a) the Chief Inspector has given the local education authority a notice under section 13(3)(a) or 37(2) of the Education Act 2005, and]
  - (b) a period of not less than ten days has elapsed since the date of the notice.
- (3) The Secretary of State may in respect of any particular school determine that subsection (2)(b) shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (4) Before exercising the power conferred by subsection (1), the local education authority shall consult—

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- (a) the governing body of the school,
- (b) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
- (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.]

#### Textual Amendments

- F44** S. 16A inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 57(2)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2002](#), **art. 4**
- F45** Words in s. 16A(2) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 9 para. 17(a)**; [S.I. 2005/2034](#), **art. 4**; [S.I. 2006/1338](#), **art. 3**, **Sch. 1**
- F46** S. 16A(2)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 9 para. 17(b)**; [S.I. 2005/2034](#), **art. 4**; [S.I. 2006/1338](#), **art. 3**, **Sch. 1**

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

- C18** S. 16A modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 4(c)**

## 17 Power of LEA to suspend right to delegated budget. **E+W**

- (1) If at any time—
  - (a) this section applies to a maintained school in accordance with section 14(1), and
  - (b) the school has a delegated budget within the meaning of Part II of this Act,then (subject to subsections (2) and (3)) the local education authority may, by giving the governing body of the school notice in writing of the suspension, suspend the governing body's right to a delegated budget with effect from the receipt of the notice by the governing body.
- (2) Where this section so applies in the case of a school falling within section 15(1) (school subject to formal warning), the power conferred by subsection (1) above is only exercisable within the period of two months following the end of the compliance period.
- [<sup>F47</sup>(3) Where this section so applies in the case of a school falling within section 15(4) (school [<sup>F48</sup>requiring significant improvement] ) or section 15(6)(school requiring special measures), the power conferred by subsection (1) above is exercisable only if the following conditions are satisfied, namely—
  - [<sup>F49</sup>(a) the Chief Inspector has given the local education authority a notice under section 13(3)(a) or 37(2) of the Education Act 2005, and]
  - (b) a period of not less than ten days has elapsed since the date on which the copy was given.]
- (4) The Secretary of State may in respect of any particular school determine that [<sup>F50</sup>subsection (3)(b)] shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (5) A copy of a notice given under subsection (1) shall be given to the head teacher of the school at the same time as the notice is given to the governing body.

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- (6) A suspension imposed under this section shall have effect for the purposes of Chapter IV of Part II of this Act as if made under paragraph 1 of Schedule 15 to this Act, [<sup>F51</sup>but there shall be no right of appeal under paragraph 3 of that Schedule against such a suspension].

#### Textual Amendments

- F47** S. 17(3) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\), ss. 56\(3\), 216, Sch. 5 para. 3\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F48** Words in s. 17(3) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 18\(a\)](#); S.I. 2005/2034, [art. 4](#); S.I. 2006/1338, [art. 3](#), Sch. 1
- F49** S. 17(3)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 18\(b\)](#); S.I. 2005/2034, [art. 4](#); S.I. 2006/1338, [art. 3](#), Sch. 1
- F50** Words in s. 17(4) substituted (2.9.2002 for E. and 19.12.2002 for W. ) by [Education Act 2002 \(c. 32\), ss. 56\(3\), 216, Sch. 5 para. 3\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, [art. 4](#); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F51** Words in s. 17(6) repealed (8.2.2007 for E., 2.4.2010 for W.) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 5 para. 1, Sch. 18 Pt. 6](#); S.I. 2006/3400, [art. 4\(c\)\(d\)](#); S.I. 2010/736, [art. 3\(c\)\(d\)](#)

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

- C19** S. 17 modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\), reg. 4\(c\)](#)
- S. 17 modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\), reg. 3\(c\)](#)

### *Intervention by Secretary of State*

## 18 Power of Secretary of State to appoint additional governors. E+W

- [<sup>F52</sup>(1) If at any time section 15 applies to a maintained school by virtue of either of the following provisions of that section, namely—
- (a) subsection (4)(school [<sup>F53</sup>requiring significant improvement]), or
  - (b) subsection (6)(school requiring special measures),
- the Secretary of State may appoint such number of additional governors as he thinks fit; and he may nominate one of those governors to be the chairman of the governing body in place of any person who has been elected as chairman of that body.]
- (2) Before making any such appointment in relation to a voluntary aided school, the Secretary of State shall consult—
- (a) in the case of a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority; or
  - (b) in any other case, the person who appoints the foundation governors.
- (3) A governor appointed under this section—
- (a) shall hold office as governor for such term, and
  - (b) if nominated as chairman of the governing body, shall be chairman of that body for such period,
- as the Secretary of State may determine.

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- (4) The Secretary of State may pay to any governor appointed under this section such remuneration and allowances as the Secretary of State may determine.
- (5) In relation to any appointment made by the Secretary of State by virtue of subsection (1) to the governing body of a school, the instrument of government for the school shall have effect as if [<sup>F54</sup>(despite anything in regulations under section 19 of the Education Act 2002)] it provided for the Secretary of State to appoint such number of additional governors as he thinks fit.
- (6) Where the Secretary of State has exercised his power under this section in relation to a school, then—
- (a) in any such case—
- (i) the local education authority may not exercise their power under paragraph 1 of Schedule 15 to suspend the governing body's right to a delegated budget, and
- (ii) if they have already exercised that power or their power under section 17(1), the Secretary of State shall, if requested to do so by the governing body, revoke the suspension; and
- (b) in the case of a voluntary aided school, nothing in [<sup>F55</sup>regulations under section 19 of the Education Act 2002] shall be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Secretary of State under this section.
- (7) The revocation of a suspension under subsection (6)(a) shall—
- (a) be notified to the local education authority in writing; and
- (b) take effect from such date as is specified in that notification.

#### Textual Amendments

- F52** S. 18(1) substituted (2.9.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\), ss. 56\(1\), 216](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/2002, art. 4](#); [S.I. 2002/3185, art. 4](#), Sch. Pt. 1
- F53** Words in s. 18(1)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 9 para. 19](#); [S.I. 2005/2034, art. 4](#); [S.I. 2006/1338, art. 3](#), Sch. 1
- F54** Words in s. 18(5) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 94\(2\)](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/1667, art. 4](#); [S.I. 2005/2910, art. 4](#), Sch.
- F55** Words in s. 18(6)(b) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 94\(3\)](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/1667, art. 4](#); [S.I. 2005/2910, art. 4](#), Sch.

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

- C20** S. 18(1) modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\), reg. 4\(b\)](#)
- S. 18(1) modified (W.) (19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\), reg. 3\(b\)](#)

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**[<sup>F56</sup>18A Power of Secretary of State to provide for governing body to consist of interim executive members E+W**

- (1) If at any time section 15 applies to a maintained school by virtue of either of the following provisions of that section, namely—
- (a) subsection (4)(school [<sup>F57</sup>requiring significant improvement]), or
  - (b) subsection (6)(school requiring special measures),
- the Secretary of State may give the governing body a notice in writing stating that, as from the date specified in the notice, the governing body are to be constituted in accordance with Schedule 1A (governing bodies consisting of interim executive members).
- (2) Before exercising the power conferred by subsection (1), the Secretary of State shall consult—
- (a) the local education authority,
  - (b) the governing body of the school,
  - (c) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
  - (d) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.
- (3) The Secretary of State is not obliged to consult the persons mentioned in subsection (2) (b), (c) and (d) if the local education authority have consulted them under subsection (4) of section 16A in relation to a proposed notice under subsection (1) of that section.]

**Textual Amendments**

**F56** S. 18A inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 58, 216** (with **ss. 210(8), 214(4)**); S.I. 2002/2002, **art. 4**

**F57** Words in s. 18A(1)(a) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 9 para. 20**; S.I. 2005/2034, **art. 4**; S.I. 2006/1338, **art. 3, Sch. 1**

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

**C21** S. 18A modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 4(b)**

**19 Power of Secretary of State to direct closure of school. E+W**

- [<sup>F58</sup>(1) If at any time section 15 applies to a maintained school by virtue of subsection (6) of that section (school requiring special measures), the Secretary of State may give a direction to the local education authority requiring the school to be discontinued on a date specified in the direction.]
- (2) Before giving a direction under subsection (1), the Secretary of State shall consult—
- (a) the local education authority and the governing body of the school;
  - (b) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority;



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- (c) in the case of any other foundation or voluntary school, the person who appoints the foundation governors;
  - [<sup>F59</sup>(ca) in the case of a school which provides education suitable to the requirements of persons over compulsory school age, the Learning and Skills Council for England (if the school is in England) <sup>F60</sup> ... and;]
  - (d) such other persons as the Secretary of State considers appropriate.
- (3) On giving a direction under subsection (1) the Secretary of State shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (4) Where the local education authority are given a direction under subsection (1), they shall discontinue the school in question on the date specified in the direction; and nothing in sections 29 to 33 shall apply to their discontinuance of the school under this section.
- (5) In this section any reference to the discontinuance of a maintained school is to the local education authority ceasing to maintain it.

#### Textual Amendments

- F58** S. 19(1) substituted (1.9.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), ss. 45, 125(4) (with s. 119); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F59** S. 19(2)(ca) inserted (28.7.2000 for specified purposes and otherwise 1.4.2001) by 2000 c. 21, s. 149, Sch. 9 para. 79; S.I. 2001/654, art. 2, Sch. Pt. II (with art. 3); S.I. 2001/1274, art. 2, Sch. Pt. I
- F60** Words in s. 19(2)(ca) omitted (1.4.2006) by virtue of The National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238), art. 1(1), Sch. 1 para. 38 (with art. 7)

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

- C22** S. 19 applied (with modifications) (E.) (1.9.2005) by The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005 (S.I. 2005/2039), reg. 1(1), Sch. 1 para. 4
- C23** S. 19(1) modified (E.) (2.9.2002) by The Education Act 2002 (Transitional Provisions etc.) (England) Regulations 2002 (S.I. 2002/2113), reg. 4(b)
- S. 19(1) modified (W.) (19.12.2002) by The Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002 (S.I. 2002/3184), reg. 3(b)

[<sup>F61</sup>Governing bodies consisting of interim executive members

#### Textual Amendments

- F61** S. 19A and cross-heading inserted (2.9.2002 for E. otherwise prosp.) by Education Act 2002 (c. 32), ss. 59(1), 216 (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 4

[<sup>F62</sup>19A

#### Governing bodies consisting of interim executive members **E+W**

The provisions of Schedule 1A shall have effect in relation to any school in respect of which a notice has been given—

- (a) under section 16A(1), by the local education authority, or
- (b) under section 18A(1), by the Secretary of State.]]

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### Textual Amendments

**F62** S. 19A and Cross-heading inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 59\(1\)](#), 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); S.I. 2002/2002, [art. 4](#)

### Modifications etc. (not altering text)

**C24** S. 19A modified (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 4\(b\)](#)

## PART II **E+W**

### NEW FRAMEWORK FOR MAINTAINED SCHOOLS

## CHAPTER I **E+W**

### INTRODUCTORY

#### *The new categories of schools*

## 20 **New categories of maintained schools.** **E+W**

- (1) Schools maintained by local education authorities on or after the appointed day shall be divided into the following categories—
  - (a) community schools;
  - (b) foundation schools;
  - (c) voluntary schools, comprising—
    - (i) voluntary aided schools, and
    - (ii) voluntary controlled schools;
  - (d) community special schools; and
  - (e) foundation special schools.
- (2) A school maintained by a local education authority is a school falling within one of the categories set out in subsection (1) if—
  - (a) it became a school of that category on the appointed day in accordance with Schedule 2 (and has not changed its category under Schedule 8); or
  - (b) it was established as a school of that category under [<sup>F63</sup>any enactment] (and has not changed its category under Schedule 8); or
  - (c) it has become a school of that category in accordance with Schedule 8.
- (3) Schedule 2 makes provision for, and in connection with, the allocation to the categories set out in subsection (1) of schools which immediately before the appointed day were (within the meaning of the <sup>M5</sup>Education Act 1996)—
  - (a) county, voluntary or maintained special schools, or
  - (b) grant-maintained or grant-maintained special schools.
- (4) As from the appointed day a local education authority shall maintain (as a school falling within one of those categories)—

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- (a) any school within subsection (3)(a) which was maintained by the authority immediately before that day; and
  - (b) (subject to subsection (5)) any school within subsection (3)(b) which immediately before that day was situated within the authority's area.
- (5) Where a grant-maintained school within subsection (3)(b)—
- (a) was, immediately before becoming such a school, maintained by a local education authority (“the former maintaining authority”) other than the one within whose area it was then situated, and
  - (b) remains outside the area of the former maintaining authority immediately before the appointed day,
- nevertheless, if an order made by the Secretary of State before that day so provides, as from that day the school shall be maintained (as a school falling within one of the categories set out in subsection (1)) by the former maintaining authority rather than the authority in whose area it is situated on that day.
- (6) In this section “school” means a primary, secondary or special school, including a nursery school which is a special school but excluding—
- (a) a nursery school which is not a special school; and
  - (b) a pupil referral unit.
- (7) In this Act—
- “the appointed day” (except in Part I of Schedule 32) means such day as may be appointed for the purposes of this section by an order made by the Secretary of State;
  - “maintained school” means (unless the context otherwise requires) a community, foundation or voluntary school or a community or foundation special school.
- (8) Any reference in this Act to the categories set out in subsection (1) or to any such category is to be read, in its application to voluntary schools, as (or as including) a reference to the sub-categories set out in subsection (1)(c)(i) and (ii) or to any such sub-category.

#### Subordinate Legislation Made

**P1** S. 20: power conferred by s. 20(7) exercised: 1.9.1999 appointed by [S.I. 1998/2083](#), [art. 2](#)

#### Textual Amendments

**F63** Words in s. 20(2)(b) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 95](#) (with ss. 210(8), 214(4)); [S.I. 2002/3185](#), art. 4, Sch. Pt. 1; [S.I. 2003/124](#), art. 4

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

**C25** S. 20 extended (1.4.1999) by [S.I. 1999/704](#), [reg. 2\(4\)](#).

#### Marginal Citations

**M5** 1996 c. 56.

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## 21 Kinds of foundation and voluntary schools and types of foundations. **E+W**

- (1) There may be three kinds of foundation school—
  - (a) those having a foundation established otherwise than under this Act;
  - (b) those belonging to a group of schools for which a foundation body acts under this section; and
  - (c) those not falling within either of paragraphs (a) and (b).
- (2) There may be three kinds of voluntary controlled or voluntary aided school—
  - (a) those having a foundation established otherwise than under this Act;
  - (b) those belonging to a group of schools for which a foundation body acts under this section; and
  - (c) those not falling within either of paragraphs (a) and (b) but having been either of the following immediately before the appointed day, namely—
    - (i) a voluntary school, or
    - (ii) a grant-maintained school that was a voluntary school immediately before becoming grant-maintained, within the meaning of the <sup>M6</sup>Education Act 1996.
- (3) For the purposes of this Act—
  - (a) “foundation”, in relation to a foundation or voluntary school, means—
    - (i) any body of persons (whether incorporated or not but excluding the governing body) which holds land on trust for the purposes of the school, or
    - (ii) a foundation body;
  - (b) a school “has” a foundation if—
    - (i) such a body of persons exists for holding land on trust for the purposes of the school, or
    - (ii) the school belongs to a group of schools for which a foundation body acts under this section; and
  - (c) references to land or other property held on trust, or by trustees, for the purposes of a school include references to land or other property which—
    - (i) is held on trust for purposes which (whether the trust deed expressly so provides or not) include the purposes of the school, and
    - (ii) is used for the purposes of the school.
- (4) For the purposes of this Act—
  - (a) “foundation body” means a body corporate established under this section to perform, in relation to three or more schools each of which is either a foundation or a voluntary school, the following functions, namely—
    - (i) to hold property of those schools for the purposes of the schools, and
    - (ii) to appoint foundation governors for those schools; and
  - (b) “the group”, in relation to a foundation body, means the group of three or more schools for which the body performs those functions.
- (5) The Secretary of State may by regulations make provision for and in connection with—
  - (a) the establishment, membership, functions and winding up of a foundation body, and
  - (b) the steps to be taken in connection with schools joining or leaving the group.

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**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) with respect to the transfer of property, rights and liabilities to and from a foundation body when schools join or leave the group but do not change category in accordance with Schedule 8;
  - (b) with respect to the revision or replacement of the instruments of government of schools joining or leaving the group in such circumstances and the reconstitution of their governing bodies;
  - (c) authorising a foundation body to appoint foundation governors to every school in the group;
  - (d) prescribing a model instrument of government for adoption by a foundation body subject to variations approved by the Secretary of State;
  - (e) for conferring functions with respect to the resolution of disputes—
    - (i) between schools in the group, or
    - (ii) between one or more such schools and a foundation body,on such person or body as may be specified in the regulations;
  - (f) in connection with a school leaving the group—
    - (i) for requiring the publication of proposals under paragraph 2 of Schedule 8 (procedure for changing category of school);
    - (ii) for enabling the Secretary of State to require the publication under that paragraph of proposals for the school to become a school of a category specified by him;
    - (iii) for preventing a voluntary school from becoming one falling within subsection (2)(a) unless any conditions specified in pursuance of paragraph 4(2)(b) of that Schedule are satisfied in relation to the school;
  - (g) for the dissolution of a foundation body by order of the Secretary of State;
  - (h) for enabling the Secretary of State, in the case of any land held by a foundation body immediately before its dissolution which by virtue of this Act could not be disposed of without his consent, to determine how that land is to be dealt with on its dissolution;
  - (i) for conferring functions on school organisation committees and adjudicators including any functions which might otherwise be conferred on the Secretary of State.
- (7) Regulations made in pursuance of subsection (6)(b) may, in connection with the making or variation of instruments of government in preparation for schools joining or leaving the group, modify paragraph 1 of Schedule 12 in its operation in relation to such instruments of government.
- (8) The Secretary of State may, after consulting a foundation body, make an order modifying the instrument of government adopted by that body.
- (9) Regulations may make provision for applying to foundation special schools, with or without modifications—
- (a) any of the provisions of subsections (3) to (8); or
  - (b) any provision of Schedule 21 to this Act (transfers of land on appointed day).

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### Marginal Citations

M6 1996 c. 56.

## 22 Maintenance and other funding of schools. **E**

- (1) A local education authority are under a duty to maintain the following schools—
  - (a) any maintained schools which they are required to maintain by virtue of section 20(4) or (5);
  - (b) any maintained schools established by them<sup>F64</sup> ...;
  - (c) any maintained schools established in their area<sup>F65</sup> ... otherwise than by them or any other local education authority; and
  - (d) any maintained nursery school established by them.
- (2) Subsection (1) has effect subject to the transfer under this Part of a maintained school from the area of one local education authority to that of another, and to the provisions of this Part relating to the discontinuance of schools.
- (3) In the case of a community school, a community special school or a maintained nursery school, the local education authority’s duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty of making premises available to be used for the purposes of the school.
- (4) In the case of a foundation, voluntary controlled or foundation special school, the local education authority’s duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty, [<sup>F66</sup>under any enactment of providing new premises for the school].
- (5) In the case of a voluntary aided school, the local education authority’s duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, except any [<sup>F67</sup>expenditure that by virtue of paragraph 3 of Schedule 3 is to be met] by the governing body, and
  - (b) the duty, [<sup>F68</sup>under any enactment of providing new premises for the school].
- (6) For the purposes of this Act the expenses of maintaining a foundation, voluntary or foundation special school include the payment of rates.
- (7) Schedule 3 (which makes provision as to the functions of governing bodies, local education authorities and the Secretary of State as to the funding of foundation, voluntary and foundation special schools) shall have effect.
- (8) In this Act—
  - (a) in relation to a school maintained (or proposed to be maintained) by a local education authority, “the local education authority” means that authority; and
  - (b) in relation to schools falling within subsections (3) to (6), “maintain” shall be read in accordance with those subsections.
- (9) In this Act “maintained nursery school” means a nursery school which is maintained by a local education authority and is not a special school.

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### Extent Information

**E1** This version of this provision extends to England only; a separate version has been created for Wales.

### Textual Amendments

**F64** Words in s. 22(1)(b) repealed (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), Sch. 21 para. 96(2)(a), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4

**F65** Words in s. 22(1)(c) repealed (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), Sch. 21 para. 96(2)(b), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4

**F66** Words in s. 22(4)(b) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4

**F67** Words in s. 22(5)(a) substituted (E.) (1.4.2002) by [The Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002 \(S.I. 2002/906\)](#), [art. 3](#)

**F68** Words in s. 22(5)(b) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4

## 22 Maintenance and other funding of schools. **W**

- (1) A local education authority are under a duty to maintain the following schools—
  - (a) any maintained schools which they are required to maintain by virtue of section 20(4) or (5);
  - <sup>F383</sup>(b) any maintained schools established by them <sup>F384</sup> . . . ;
  - <sup>F385</sup>(c) any maintained schools established in their area <sup>F386</sup> . . . otherwise than by them or any other local education authority; and
  - (d) any maintained nursery school established by them.
- (2) Subsection (1) has effect subject to the transfer under this Part of a maintained school from the area of one local education authority to that of another, and to the provisions of this Part relating to the discontinuance of schools.
- (3) In the case of a community school, a community special school or a maintained nursery school, the local education authority's duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty of making premises available to be used for the purposes of the school.
- (4) In the case of a foundation, voluntary controlled or foundation special school, the local education authority's duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, and
  - <sup>F387</sup>(b) the duty, [<sup>F388</sup>under any enactment of providing new premises for the school] .
- (5) In the case of a voluntary aided school, the local education authority's duty to maintain the school includes—
  - (a) the duty of defraying all the expenses of maintaining it, except any expenses that by virtue of paragraph 3 of Schedule 3 are payable by the governing body, and
  - <sup>F389</sup>(b) the duty, [<sup>F390</sup>under any enactment of providing new premises for the school] .

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- (6) For the purposes of this Act the expenses of maintaining a foundation, voluntary or foundation special school include the payment of rates.
- (7) Schedule 3 (which makes provision as to the functions of governing bodies, local education authorities and the Secretary of State as to the funding of foundation, voluntary and foundation special schools) shall have effect.
- (8) In this Act—
- (a) in relation to a school maintained (or proposed to be maintained) by a local education authority, “the local education authority” means that authority; and
  - (b) in relation to schools falling within subsections (3) to (6), “maintain” shall be read in accordance with those subsections.
- (9) In this Act “maintained nursery school” means a nursery school which is maintained by a local education authority and is not a special school.

#### Extent Information

**E4** This version of this provision extends to Wales only; a separate version has been created for England.

#### Textual Amendments

- F383** Words in s. 22(1)(b) repealed (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(2\)\(a\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F384** Words in s. 22(1)(b) repealed (19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1)(2), 216, [Sch. 21 para. 96\(2\)\(a\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F385** Words in s. 22(1)(c) repealed (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(2\)\(b\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F386** Words in s. 22(1)(c) repealed (19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1)(2), 216, [Sch. 21 para. 96\(2\)\(b\)](#), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F387** Words in s. 22(4)(b) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F388** Words in s. 22(4)(b) substituted (19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 96\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1
- F389** Words in s. 22(5)(b) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 96\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F390** Words in s. 22(5)(b) substituted (19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 96\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1

## 23 Charitable status of maintained schools, etc. **E+W**

- (1) The following shall be charities which are exempt charities for the purposes of the <sup>M7</sup>Charities Act 1993—
- (a) the governing body of any foundation, voluntary or foundation special school; and
  - (b) any foundation body established under section 21;
- but no governing body of a community or community special school shall be a charity.



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- (2) So far as it is a charity, any institution which—
- (a) is administered by or on behalf of any body to which subsection (1)(a) or (b) applies, and
  - (b) is established for the general purposes of, or for any special purpose of or in connection with, that body or any school or schools falling within subsection (1)(a),
- shall also be an exempt charity for the purposes of the <sup>M8</sup>Charities Act 1993.
- (3) Any foundation established otherwise than under this Act which has no property other than the premises of any school or schools falling within subsection (1)(a) shall be a charity which (subject to section 3(5B) of the <sup>M9</sup>Charities Act 1993) is not required to be registered for the purposes of that Act (but is not an exempt charity for the purposes of that Act).
- (4) In this section—
- (a) “charity” and “institution” have the same meaning as in the <sup>M10</sup>Charities Act 1993;
  - (b) “premises” includes a teacher’s dwelling-house.

#### Marginal Citations

**M7** 1993 c. 10.

**M8** 1993 c. 10.

**M9** 1993 c. 10.

**M10** 1993 c. 10.

### *New arrangements for organisation of schools*

## **24 School organisation committees.** **E+W**

- (1) Each local education authority in England shall establish a school organisation committee for their area.
- (2) A school organisation committee shall be constituted in accordance with regulations made by the Secretary of State.
- (3) Those regulations must be so framed as to secure that every school organisation committee includes at least one person within each of the following categories—
  - (a) a member of the local education authority;
  - (b) a person nominated by the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the authority’s area; and
  - (c) a person nominated by the bishop of any Roman Catholic Church diocese any part of which is comprised in the authority’s area.
- (4) In this Act any reference to “the school organisation committee” in relation to—
  - (a) a local education authority in England,
  - (b) a school maintained or proposed to be maintained by such a local education authority, or
  - (c) any proposals relating to such a school,

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is a reference to the school organisation committee established for the local education authority's area.

(5) Schedule 4 has effect in relation to school organisation committees.

#### Commencement Information

**I2** S. 24 wholly in force at 1.4.1999; s. 24 not in force at Royal Assent see s. 145(3); s. 24(2)-(5) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch 1, Pt. 1; s. 24 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

## 25 Adjudicators. **E+W**

(1) The Secretary of State shall appoint for England such number of persons to act as adjudicators for the purposes of this Act as he considers appropriate.

(2) Any matter which by virtue of this Act [<sup>F69</sup>or Part 2 of the Education Act 2005] is required to be referred to “the adjudicator” shall be referred to such person appointed under this section as may be determined in accordance with regulations under Schedule 5.

(3) Accordingly in this Act “the adjudicator”, in relation to any such matter, means the person mentioned in subsection (2).

[<sup>F70</sup>(3A) When asked to do so by the Secretary of State, an adjudicator must give advice to the Secretary of State on such matters relating to the admission of pupils to relevant schools as the Secretary of State may specify.

(3B) The adjudicator may, for the purposes of providing such advice to the Secretary of State, request any of the following persons to provide him with such information held by them as the adjudicator may specify—

- (a) the admission authority (within the meaning of Chapter 1 of Part 3) of a community, foundation or voluntary school;
- (b) the proprietor of any other relevant school.

(3C) A person so requested by the adjudicator to provide information must comply with the request.

(3D) In subsections (3A) and (3B), “relevant school” means a school in England falling within any of paragraphs (a) to (f) of section 5(2) of the Education Act 2005.]

(4) Schedule 5 has effect in relation to adjudicators.

#### Textual Amendments

**F69** Words in s. 25(2) inserted (1.9.2006) by Education Act 2005 (c. 18), s. 125(4), Sch. 12 para. 6; S.I. 2006/2129, art. 4

**F70** S. 25(3A)-(3D) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 163, 188(3); S.I. 2006/3400, art. 3(f)

## <sup>F71</sup>26 School organisation plans. **E+W**

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**Textual Amendments**

**F71** Ss. 26-26B repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), [Sch. 5 Pt. 1](#); S.I. 2005/394, [art. 2\(1\)\(I\)](#); S.I. 2006/885, [art. 2\(3\)\(b\)](#)

**<sup>F71</sup>26A Plans of local learning and skills councils.** **E+W**

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**Textual Amendments**

**F71** Ss. 26-26B repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), [Sch. 5 Pt. 1](#); S.I. 2005/394, [art. 2\(1\)\(I\)](#); S.I. 2006/885, [art. 2\(3\)\(b\)](#)

**<sup>F71</sup>26B Plans of National Council.** **E+W**

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**Textual Amendments**

**F71** Ss. 26-26B repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), [Sch. 5 Pt. 1](#); S.I. 2005/394, [art. 2\(1\)\(I\)](#); S.I. 2006/885, [art. 2\(3\)\(b\)](#)

**27 Power to require committees or adjudicators for Wales.** **E+W**

- (1) Regulations may make provision—
- (a) for the establishment by local education authorities in Wales of school organisation committees; and
  - (b) for the appointment by the Secretary of State of adjudicators, or panels of adjudicators, for Wales;
- and the regulations may provide for any of the provisions of [<sup>F72</sup>sections 24 and 25 of, and Schedules 4 and 5 to, this Act and Schedule 7 to the Learning and Skills Act 2000] to apply for the purposes of the regulations with or without modifications.
- (2) In connection with any provision made by virtue of subsection (1), regulations may make provision—
- (a) for applying in relation to Wales any provision of <sup>F73</sup>... Chapter II of this Part [<sup>F74</sup>, Chapter I of Part III or Schedule 7 to the Learning and Skills Act 2000] which would otherwise apply in relation to England only;
  - (b) for disapplying in relation to Wales any such provision which would otherwise apply in relation to Wales only;
  - (c) for any statutory provision to have effect with such modifications as appear to the Secretary of State to be appropriate.

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### Textual Amendments

- F72** Words in s. 27(1) substituted (28.7.2000 for specified purposes and otherwise 1.9.2001 for E. and 1.4.2002 for W.) by 2000 c. 21, s. 149, **Sch. 9 para. 82(1)(2)**; S.I. 2001/654, art. 2, **Sch. Pt. III** (with art. 3); S.I. 2001/2705, art. 2, **Sch. Pt. I**
- F73** Words in s. 27(2) repealed (1.3.2005 for E., 1.9.2006 for W.) by Children Act 2004 (c. 31), **Sch. 5 Pt. 1**; S.I. 2005/394, art. 2(1)(i); S.I. 2006/885, art. 2(3)(b)
- F74** Words in s. 27(2)(a) substituted (28.7.2000 for specified purposes and otherwise 1.9.2001 for E. and 1.4.2002 for W.) by 2000 c. 21, s. 149, **Sch. 9 para. 82(1)(3)**; S.I. 2001/654, art. 2, **Sch. Pt. III** (with art. 3); S.I. 2001/2705, art. 2, **Sch. Pt. I**

## CHAPTER II **E+W**

### ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS

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

- C26** Pt. II Chapter II modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, **Sch.**

#### *Mainstream schools maintained by LEAs*

### 28 **Proposals for establishment or alteration of community, foundation or voluntary school.** **E+W**

- (1) Where a local education authority propose—
- (a) to establish a new community or foundation school, or
  - [<sup>F75</sup>(aa) to establish a new maintained nursery school, or]
  - (b) to make any prescribed alteration to a community school, or
  - (c) to make any prescribed alteration to a foundation school consisting of an enlargement of the premises of the school, [<sup>F76</sup>or
  - (d) in the case of a local education authority in Wales, to make any prescribed alteration to a maintained nursery school]

the authority shall publish their proposals under this section.

<sup>F77</sup>(1A) .....

- (2) Where—
- (a) any persons (referred to in this Part as “promoters”) propose to establish a new foundation or voluntary school <sup>F78</sup>..., or
  - (b) the governing body of a foundation or voluntary school [<sup>F79</sup>, or of a community school maintained by a local education authority in England,] propose to make any prescribed alteration to the school,

those persons or (as the case may be) the governing body shall publish their proposals under this section.

[<sup>F80</sup>(2A) Subsections (1)(a) and (2)(a) do not apply to any proposal to establish a secondary school which is to be maintained by a local education authority in England.

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- (2B) For the purposes of subsection (2A), “secondary school” includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age.]
- (3) Proposals under this section shall—
- (a) contain such information, and
  - (b) be published in such manner,
- as may be prescribed.
- <sup>F81</sup>(4) .....
- (5) Before publishing any proposals under this section, the relevant body or promoters shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body or promoters shall have regard to any guidance given from time to time by the Secretary of State.
- (6) Where any proposals published under this section relate to a school or proposed school in England, the relevant body or promoters shall send—
- (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.
- (7) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body or promoters shall send—
- (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the Secretary of State.
- (8) Schedule 6 has effect (for both England and Wales) in relation to—
- (a) the procedure for dealing with proposals under this section and their implementation; and
  - (b) the provision of premises or other assistance in connection with their implementation.
- (9) Where any proposals published under this section—
- (a) are for the transfer of a school to a site in a different area, or
  - (b) relate to a school which is, or (in the case of a new school) is proposed to be, situated in an area other than that of the local education authority who maintain, or (as the case may be) who it is proposed should maintain, the school,
- the provisions of subsection (6) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (10) In this section “the relevant body or promoters” means the local education authority, governing body or promoters mentioned in subsection (1) or (2) (as the case may be).
- (11) In this Part—

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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- (a) “alteration”, in the context of a prescribed alteration to a maintained school, means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change—
- (i) in the religious character of the school, or
  - (ii) whereby the school would acquire or lose a religious character; and
- (b) “area” (without more) means a local education authority area.
- (12) Any regulations made for the purposes of subsection (1)(b) or (2)(b) may be framed by reference to the opinion of the local education authority.

#### Textual Amendments

- F75** S. 28(1)(aa) inserted (1.6.2003 for E., 31.3.2004 for W.) by Education Act 2002 (c. 32), ss. 154(2), 216(4) (with ss. 210(8), 214(4)); S.I. 2003/1115, art. 3 (with art. 4); S.I. 2004/912, art. 4, Sch. Pt. 1 (with art. 6)
- F76** S. 28(1)(d) and word inserted (31.3.2004 for W., 6.11.2006 for E.) by Education Act 2002 (c. 32), ss. 154(3), 216(4) (with ss. 210(8), 214(4)); S.I. 2004/912, art. 4, Sch. Pt. 1 (with art. 6); S.I. 2006/2895, art. 2
- F77** S. 28(1A) repealed (1.9.2006) by Education Act 2005 (c. 18), ss. 64(2), 125(4), Sch. 19 Pt. 2; S.I. 2006/2129, art. 4 (with art. 6)
- F78** Words in s. 28(2) repealed (1.9.2006) by Education Act 2005 (c. 18), ss. 64(2), 125(4), Sch. 19 Pt. 2; S.I. 2006/2129, art. 4 (with art. 6)
- F79** Words in s. 28(2)(b) inserted (1.6.2003) by Education Act 2002 (c. 32), ss. 73, 216(2) (with ss. 210(8), 214(4)); S.I. 2003/1115, art. 2
- F80** S. 28(2A)(2B) inserted (1.9.2006) by Education Act 2005 (c. 18), ss. 64(3), 125(4); S.I. 2006/2129, art. 4 (with art. 6)
- F81** S. 28(4) repealed (1.9.2006) by Education Act 2005 (c. 18), ss. 64(4), 125(4), Sch. 19 Pt. 2; S.I. 2006/2129, art. 4 (with art. 6)

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

- C27** S. 28 amended (1.4.1999) by S.I. 1999/125, art. 2(3).
- C28** S. 28 extended (10.3.1999) by S.I. 1999/362, reg. 6(2)(3).
- C29** S. 28 applied (with modifications) (1.9.1999) by S.I. 1999/2259, regs. 5(1), 10, Sch. 1.  
 S. 28 applied (with modifications) (1.9.1999) by S.I. 1999/2259, regs. 5(2), 10, Sch. 2.  
 S. 28 applied (with modifications) (1.9.1999) (*temp.*) by S.I. 1999/2633, regs. 4, 5(1), Sch. 1.  
 S. 28 modified (1.9.1999) by S.I. 1999/2633, reg. 5(2), Sch. 2.
- C30** S. 28 modified (1.9.1999) by S.I. 1999/2633, reg. 5(2), Sch. 2.
- C31** S. 28; Power to modify conferred (prosp.) by Education Act 2002 (c. 32), ss. 74(2)(a) 216 (with ss. 210(8), 214(4))
- C32** S. 28: power to modify conferred (1.4.2003 for E.) by Education Act 2002 (c. 32), ss. 74(2)(a), 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4
- C33** S. 28 modified (1.6.2003 for E.) by Education Act 2002 (c. 32), ss. 74(1)(a), 216(4) (with ss. 210(8), 214(4)); S.I. 2003/1115, art. 3
- C34** S. 28(3)(5)(6)(8)(10)(11) applied (with modifications) (E.) (1.9.2000) by S.I. 2000/2195, art. 4(1), Sch. 1
- C35** S. 28(1)(b) excluded (*temp.* until 18.11.2007) (18.11.2005) by The Southwark London Borough Council (Prescribed Alteration) Order 2005 (S.I. 2005/2836), arts. 1(1), 2(a), 3
- C36** S. 28(3)(7)(8)(10)(11) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, Sch. 1 Pt. 1 Table 3 (as amended (W.) (1.2.2006) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2006 (S.I. 2006/173), regs. 1(1), 12)
- C37** S. 28(3) applied (with modifications) (1.9.1999) by S.I. 1999/2213, reg. 15, Sch.4.

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- s. 28(3): s. 28(3)(except para. (b)) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C38** S. 28(3) applied (with modifications) by S.I. 2000/2195, reg. 4(3), Schs. 2A, 2B (as inserted (1.8.2005) by [The Education \(Change of Category of Maintained Schools\) \(Amendment\) \(England\) Regulations 2005](#) (S.I. 2005/1731), regs. 1(1), 5, 7)
- C39** S. 28(5) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, **Sch. 1 Pt. I** Table 1
- C40** S. 28(5) applied (with modifications) by S.I. 1999/2213, reg. 15, **Sch.4**  
s. 28(5) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C41** S. 28(5)(6) applied (with modifications) by S.I. 2000/2195, reg. 4(3), Schs. 2A, 2B (as inserted (1.8.2005) by [The Education \(Change of Category of Maintained Schools\) \(Amendment\) \(England\) Regulations 2005](#) (S.I. 2005/1731), regs. 1(1), 5, 7)
- C42** S. 28(6) applied (with modifications) by S.I. 1999/2213, reg. 15, **Sch.4**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/2213, reg. 15(2)(4), **Sch. 5 Pt. I para.1**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/2213, reg. 15(2)(4), **Sch. 5 Pt. I para. 2(a)**.  
S. 28(6) modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, **Sch.**
- C43** S. 28(7) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C44** S. 28(8) applied (with modifications) by S.I. 2000/2195, reg. 4(3), Schs. 2A, 2B (as inserted (1.8.2005) by [The Education \(Change of Category of Maintained Schools\) \(Amendment\) \(England\) Regulations 2005](#) (S.I. 2005/1731), regs. 1(1), 5, 7)
- C45** S. 28(10) applied (with modifications) (1.9.1999) by S.I. 1999/2213, reg. 15, **Sch.4**.  
s. 28(10) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**

#### Commencement Information

- I3** S. 28 wholly in force at 1.9.1999; s. 28 not in force at Royal Assent see s. 145(3); s. 28(9) in force at 1.2.1999 by S.I. 1998/3198, art. 2(2), **Sch.**; s. 28(5)(10) in force at 1.4.1999 by S.I. 1999/1016, art. 2(1), **Sch. 1** (with arts. 3-6, **Sch. 4**); S. 28 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-5, Schs. 5-7).

#### [<sup>F82</sup>28A Proposals for establishment of community, foundation or voluntary school maintained by English LEA **E+W**

- (1) A local education authority in England may with the consent of the Secretary of State publish under this section their proposals to establish (otherwise than pursuant to a notice under section 66 of the Education Act 2005) a new community or foundation school.
- (2) Any persons (referred to in this Part as “promoters”) may with the consent of the Secretary of State publish under this section their proposals to establish (otherwise than pursuant to a notice under section 66 of the Education Act 2005) a new foundation or voluntary school which is proposed to be maintained by a local education authority in England.
- (3) Proposals under this section must be proposals for a secondary school; and for this purpose “secondary school” includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age.
- (4) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,as may be prescribed.

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- (5) Before publishing any proposals under this section, the relevant authority or promoters shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant authority or promoters shall have regard to any guidance given from time to time by the Secretary of State.
- (6) The relevant authority or promoters shall send—
- (a) a copy of any proposals published under this section, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the school organisation committee for the area of the local education authority who it is proposed should maintain the school.
- (7) Schedule 6 has effect in relation to—
- (a) the procedure for dealing with proposals under this section and their implementation, and
  - (b) the provision of premises or other assistance in connection with their implementation.
- (8) Where any proposals published under this section relate to a school which is proposed to be situated in an area other than that of the local education authority who it is proposed should maintain the school, the provisions of subsection (6) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (9) In this section “the relevant authority or promoters” means the local education authority mentioned in subsection (1) or the promoters mentioned in subsection (2) (as the case may be).]

#### **Textual Amendments**

- F82** S. 28A inserted (1.8.2006 for specified purposes, 1.9.2006 in so far as not already in force) by Education Act 2005 (c. 18), **ss. 65, 125(4)**; S.I. 2006/2129, arts. 3, 4 (with art. 6)

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

- C46** S. 28A(4) applied (with modifications) (1.9.2006) by S.I. 1999/2213, reg. 15, **Sch. 4** (as amended by The Education (New Secondary School Proposals) (England) Regulations 2006 (S.I. 2006/2139), regs. 1, **26(17)**)
- C47** S. 28A(5) applied (with modifications) (1.9.2006) by S.I. 1999/2213, reg. 15, **Sch. 4** (as amended by The Education (New Secondary School Proposals) (England) Regulations 2006 (S.I. 2006/2139), regs. 1, **26(17)**)
- C48** S. 28A(6) modified (1.9.2006) by S.I. 1999/2213, reg. 15, **Sch. 5 para. 2(aa)** (as inserted by The Education (New Secondary School Proposals) (England) Regulations 2006 (S.I. 2006/2139), regs. 1, **26(18)**)
- C49** S. 28A(6) applied (with modifications) (1.9.2006) by S.I. 1999/2213, reg. 15, **Sch. 4** (as amended by The Education (New Secondary School Proposals) (England) Regulations 2006 (S.I. 2006/2139), regs. 1, **26(17)**)
- C50** S. 28A(9) applied (with modifications) (1.9.2006) by S.I. 1999/2213, reg. 15, **Sch. 4** (as amended by The Education (New Secondary School Proposals) (England) Regulations 2006 (S.I. 2006/2139), regs. 1, **26(17)**)



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## 29 Proposals for discontinuance of community, foundation, voluntary or maintained nursery school. **E+W**

- (1) Where a local education authority propose to discontinue—
  - (a) a community, foundation or voluntary school, or
  - (b) a maintained nursery school,the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation or voluntary school propose to discontinue the school, the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,as may be prescribed.

[<sup>F83</sup>(4A) The matters to which the relevant body shall have regard in formulating any proposals under this section in relation to a rural primary school include—

- (a) the likely effect of the discontinuance of the school on the local community,
- (b) the availability, and likely cost to the local education authority, of transport to other schools,
- (c) any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase, and
- (d) any alternatives to the discontinuance of the school;

and in considering these matters the relevant body shall have regard to any guidance given from time to time by the Secretary of State.

- (4B) Before publishing any proposals under this section which relate to a rural primary school, the relevant body shall consult—
  - (a) the registered parents of registered pupils at the school,
  - (b) where the relevant body are the governing body of the school, the local education authority,
  - (c) in a case where the local education authority are a county council in England, any district council for the area in which the school is situated,
  - (d) any parish council or community council for the area in which the school is situated, and
  - (e) such other persons as appear to the relevant body to be appropriate.
- (4C) Before publishing any other proposals under this section the relevant body shall consult such persons as appear to them to be appropriate.
- (4D) In discharging their duty under subsection (4B) or (4C) the relevant body shall have regard to any guidance given from time to time by the Secretary of State.]
- (5) Where any proposals published under this section relate to a school in England, the relevant body shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,to the school organisation committee for the area of the local education authority who maintain the school.

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- (6) Where any proposals published under this section relate to a school in Wales, the relevant body shall send—
- (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (7) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.
- (8) Where any proposals published under this section relate to a school which is situated in an area other than that of the local education authority who maintain it, the provisions of subsection (5) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).
- [<sup>F84</sup>(9A) In this section “rural primary school” means a primary school designated as such for the purposes of this section by an order made by the Secretary of State.]
- (10) In this Part any reference to a local education authority—
- (a) discontinuing a school, or
  - (b) implementing proposals to discontinue a school (whether published by the authority or the governing body),
- is to the authority ceasing to maintain the school.

#### Textual Amendments

**F83** S. 29(4A)-(4D) substituted for s. 29(4) (1.9.2006 for E.) by [Education Act 2005 \(c. 18\)](#), **ss. 70(2)**, 125(4) (with s. 119); [S.I. 2006/2129](#), **art. 5**

**F84** S. 29(9A) inserted (1.9.2006 for E.) by [Education Act 2005 \(c. 18\)](#), **ss. 70(3)**, 125(4) (with s. 119); [S.I. 2006/2129](#), **art. 5**

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

**C51** S. 29(5) modified (1.9.1999) by [S.I. 1999/2213](#), **reg. 15(2)(4)**, **Sch. 5 Pt. I para. 2(b)**.

**C52** S. 29(5) modified (1.9.1999) by [S.I. 1999/704](#), **regs. 21, 22**, **Sch.**

#### Commencement Information

**I4** S. 29 wholly in force at 1.9.1999; s. 29 not in force at Royal Assent see s. 145(3); s. 29(8) in force at 1.2.1999 by [S.I. 1998/3198](#), **art. 2(2)**, **Sch.**; s. 29(4)(9) in force at 1.4.1999 by [S.I. 1999/1016](#), **art. 2(1)**, **Sch. 1** (with **arts. 3-6**, **Sch. 4**); s. 29 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), **art. 2(1)**, **Sch. 1** (with **arts. 3-5**, **Schs. 5-7**).

### 30 Notice by governing body to discontinue foundation or voluntary school. E+W

- (1) Subject to the following provisions of this section, the governing body of a foundation or voluntary school may discontinue the school by serving on the Secretary of State and the local education authority at least two years' notice of their intention to do so.
- (2) If expenditure has been incurred on the school premises (otherwise than in connection with repairs)—
- (a) by the Secretary of State,

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- (b) by the Funding Agency for Schools,
  - (c) by any local education authority, or
  - (d) by an authority which was a local education authority within the meaning of any enactment repealed by the <sup>M11</sup>Education Act 1944 or an earlier Act,no such notice may be served without the consent of the Secretary of State.
- (3) If discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall, before serving a notice under this section, consult [<sup>F85</sup>the Learning and Skills Council for England (if the school is in England) or the [<sup>F86</sup>National Assembly for Wales] (if the school is in Wales)].
- (4) If, while a notice under subsection (1) is in force in respect of a foundation or voluntary school, the governing body inform the local education authority that they are unable or unwilling to carry on the school until the notice expires, the authority—
  - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and
  - (b) shall be entitled to use the school premises free of charge for that purpose.
- (5) While the school is being so conducted—
  - (a) the authority shall keep the school premises in good repair, and
  - (b) any interest in the premises which is held for the purposes of the school shall be deemed, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, to be vested in the authority.
- (6) Despite the provisions of subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if they had continued to carry on the school during the unexpired period of the notice.
- (7) A notice served under subsection (1) may not be withdrawn without the consent of the local education authority.
- (8) If a foundation or voluntary school is discontinued under this section, the duty of the local education authority to maintain the school as a foundation or voluntary school shall cease.
- (9) Nothing in section 29 or 33 applies to any such discontinuance of a foundation or voluntary school.
- (10) Where—
  - (a) land occupied by a foundation or voluntary school is held by any trustees for the purposes of the school, and
  - (b) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site,then if the trustees (being entitled to do so) give any notice to the governing body which purports to terminate the school's occupation of the land, any such notice shall not be effective to terminate its occupation of the land unless the requirements of subsection (11) are complied with in relation to the notice (without prejudice to any other statutory or other requirements falling to be so complied with).
- (11) The requirements of this subsection are—
  - (a) that the period of notice must—

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- (i) be reasonable having regard to the length of time that would be required to discontinue the school (if the governing body chose to do so), and
  - (ii) in any event must not be less than two years; and
  - (b) that a copy of the notice must be given to the Secretary of State and the local education authority at the time when the notice is given to the governing body.
- (12) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(b) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them.
- (13) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(b) (including a question as to whether subsection (12) applies in any particular circumstances), it shall be determined by the Secretary of State.

#### Textual Amendments

- F85** Words in s. 30(3) substituted (28.7.2000 for specified purposes and otherwise 1.4.2001) by 2000 c. 21, s. 149, **Sch. 9 para. 83**; S.I. 2001/654, art. 2, **Sch. Pt. II** (with art. 3)
- F86** Words in s. 30(3) substituted (1.4.2006) by The National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238), art. 1(1), **Sch. 1 para. 39** (with art. 7)

#### Marginal Citations

- M11** 1944 c. 31.

### *Special schools maintained by LEAs*

## **31 Proposals for establishment, alteration or discontinuance of community or foundation special school. E+W**

- (1) Where a local education authority intend—
- (a) to establish a new community or foundation special school, or
  - (b) to make any prescribed alteration to such a school, or
  - (c) to discontinue such a school,
- the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation special school propose—
- (a) to make any prescribed alteration to the school, or
  - (b) to discontinue the school,
- the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
- (a) contain such information, and
  - (b) be published in such manner,
- as may be prescribed.

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- [<sup>F87</sup>(4A) Before publishing any proposals under this section to make any prescribed alteration to a school, or to discontinue a school, the relevant body shall consult—
- (a) the registered parents of registered pupils at the school,
  - (b) any local education authority which maintain a statement under section 324 of the Education Act 1996 (statement of special educational needs) in respect of a registered pupil at the school, and
  - (c) such other persons as appear to the relevant body to be appropriate.
- (4B) Before publishing any proposals under this section to establish a new school, the relevant body shall consult such persons as appear to them to be appropriate.
- (4C) In discharging their duty under subsection (4A) or (4B) the relevant body shall have regard to any guidance given from time to time by the Secretary of State.]
- (5) Where any proposals published under this section relate to a school or proposed school in England, the relevant body shall send—
- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.
- (6) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body shall send—
- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (7) The relevant body shall also send a copy of any proposals to which subsection (5) or (6) applies to such other bodies or persons as may be prescribed.
- (8) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.
- (9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).

#### Textual Amendments

**F87** S. 31(4A)-(4C) substituted for s. 31(4) (1.9.2006) by [Education Act 2005 \(c. 18\)](#), **ss. 71**, 125(4) (with s. 119); [S.I. 2006/1338](#), **art. 3**, **Sch. 1**; [S.I. 2006/2129](#), **art. 5**

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

- C53** S. 31 extended (10.3.1999) by [S.I. 1999/362](#), **reg. 6(4)**.
- C54** S. 31 modified (prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 74(1)(a)**, 216 (with ss. 210(8), 214(4))
- C55** S. 31: power to modify conferred (1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), **ss. 74(2)(a)**, 216(4) (with ss. 210(8), 214(4)); [S.I. 2003/124](#), **art. 4**
- C56** S. 31 modified (1.6.2003 for E.) by [Education Act 2002 \(c. 32\)](#), **ss. 74(1)(a)**, 216(4) (with ss. 210(8), 214(4)); [S.I. 2003/1115](#), **art. 3**
- C57** S. 31(3) except paragraph (b) applied (with modifications) (1.9.1999) by [S.I. 1999/1780](#), **reg. 11**, **Sch.4**.
- S. 31(3) applied (with modifications) (1.9.1999) by [S.I. 1999/2212](#), **reg. 16**, **Sch.4**.

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- C58** S. 31(5) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.  
 S. 31(5) modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, Sch.
- C59** S. 31(6) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.
- C60** S. 31(7) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
 S. 31(7) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.
- C61** S. 31(9) applied (with modifications) (1.9.1999) by S.I. 1999/1780, reg. 11, Sch.4.  
 S. 31(9) applied (with modifications) (1.9.1999) by S.I. 1999/2212, reg. 16, Sch.4.

#### Commencement Information

- I5** S. 31 wholly in force at 1.9.1999; s. 31 not in force at Royal Assent see s. 145(3); s. 31(4)(9) in force at 1.4.1999 by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4); s. 31 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### 32 Direction requiring discontinuance of community or foundation special school. **E+W**

- (1) The Secretary of State may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a community or foundation special school, give a direction to the local education authority by whom the school is maintained requiring the school to be discontinued on a date specified in the direction.
- (2) A direction under subsection (1) may require the local education authority to notify any persons or class of persons specified in the direction.
- (3) Before giving a direction under subsection (1), the Secretary of State shall consult—
  - (a) the local education authority;
  - (b) any other local education authority who would in his opinion be affected by the discontinuance of the school;
  - (c) in the case of a foundation special school which has a foundation, the person who appoints the foundation governors; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (4) On giving a direction under subsection (1) the Secretary of State shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where a local education authority are given a direction under subsection (1), they shall discontinue the school in question on the date specified in the direction; and nothing in section 31 or 33 applies to any such discontinuance of the school under this section.

*Further provisions relating to establishment, alteration or discontinuance of schools*

### 33 Further provisions relating to establishment, alteration or discontinuance of schools. **E+W**

- (1) Except in pursuance of proposals falling to be implemented under [F88any enactment]—
  - (a) no maintained school shall be established or discontinued;
  - (b) no prescribed alteration shall be made to any such school; [F89and]
  - (c) no maintained nursery school shall be [F90established or] discontinued.[F91; and
  - (d) no prescribed alteration shall be made to any maintained nursery school which is maintained by a local education authority in Wales.]

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- (2) No alteration falling within section 28(11)(a)(i) or (ii) shall be made to any maintained school.
- (3) Subsection (1) has effect subject to sections 19(4), 30(9) and 32(5).
- (4) Regulations may, in relation to proposals published under section 28, [<sup>F92</sup>28A,] 29 or 31, require any of the following, namely—
- (a) the body or promoters who published the proposals,
  - (b) the school organisation committee, and
  - (c) the adjudicator,
- to provide such information relating to the proposals to such persons, and at such times, as may be prescribed.
- [<sup>F93</sup>(5) For the purposes of this Part proposals for the establishment of a maintained school shall be taken to be implemented on the school opening date.
- (6) In this Part “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.]

#### Textual Amendments

- F88** Words in s. 33(1) substituted (19.12.2002 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 98\(2\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F89** Word in s. 33(1)(b) repealed (31.3.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2004/912, art. 4, Sch. Pt. 1
- F90** Words in s. 33(1)(c) inserted (1.6.2003 for E., 31.3.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 98\(2\)\(b\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1115, art. 3; S.I. 2004/912, art. 4, Sch. Pt. 1
- F91** S. 33(1)(d) and word inserted (31.3.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 98\(2\)\(c\)](#) (with ss. 210(8), 214(4)); S.I. 2004/912, art. 4, Sch. Pt. 1
- F92** Word in s. 33(4) inserted (1.9.2006) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 12 para. 7](#); S.I. 2006/2129, art. 4
- F93** S. 33(5)(6) inserted (1.4.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 98\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2005/2910, art. 4, [Sch.](#)

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

- C62** S. 33(1)(b) excluded (temp. until 18.11.2007) (18.11.2005) by [The Southwark London Borough Council \(Prescribed Alteration\) Order 2005 \(S.I. 2005/2836\)](#), arts. 1(1), [2\(b\)](#), 3

#### Commencement Information

- I6** S. 33 wholly in force at 1.9.1999; s. 33 not in force at Royal Assent see s. 145(3); s. 33(4) in force at 1.2.1999 by [S.I. 1998/3198](#), art. 2(2), [Sch.](#); s. 33 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), art. 2(1), [Sch. 1](#) (with arts. 3-5, Schs. 5-7).

### *Rationalisation of school places*

## 34 Rationalisation of school places. **E+W**

Schedule 7 (which provides for the [<sup>F94</sup>National Assembly for Wales] to give directions to local education authorities [<sup>F95</sup>in Wales and governing bodies of maintained schools

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in Wales] to bring forward proposals for the rationalisation of school places, and for such proposals to be made by [<sup>F96</sup>the Assembly]) shall have effect.

#### Textual Amendments

- F94** Words in s. 34 substituted (1.9.2006) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 12 para. 8\(a\)](#); S.I. 2006/2129, art. 4
- F95** Words in s. 34 substituted (1.9.2006) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 12 para. 8\(b\)](#); S.I. 2006/2129, art. 4
- F96** Words in s. 34 substituted (1.9.2006) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 12 para. 8\(c\)](#); S.I. 2006/2129, art. 4

### *Change of category of school*

#### **35 School changing from one category to another. E+W**

- (1) Schedule 8 makes provision for and in connection with—
- (a) enabling a maintained school within one of the categories set out in section 20(1) to become a school within another of those categories, and
  - (b) in certain circumstances, requiring proposals to be published for a voluntary aided school to become a school within another of those categories;
- and a maintained school may not so change its category otherwise than in accordance with that Schedule.
- (2) Except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of paragraph 3 of Schedule 8, that Schedule does not apply at any time before the end of such period as may be prescribed.

### **CHAPTER III E+W**

#### GOVERNMENT OF MAINTAINED SCHOOLS

#### *Governing bodies*

#### **[<sup>F97</sup>36 Governing bodies. E+W**

- (1) Each maintained school shall have a governing body, which shall be a body corporate constituted in accordance with Schedule 9.
- (2) Schedule 10 has effect in relation to the general powers of the governing body and other matters relating to it as a body corporate.
- (3) Schedule 11 has effect in relation to the membership and proceedings of the governing body and other matters including the appointment of a clerk to, or to any committee of, the governing body.]



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### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with art. 6, Sch. para. 4); [S.I. 2004/912](#), art. 4, [Sch. Pt. 1](#); [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#); [S.I. 2005/2910](#), art. 4, [Sch.](#); [S.I. 2007/3611](#), art. 4(2), [Sch. Pt. 2](#)

### Modifications etc. (not altering text)

**C63** S. 36 extended (10.3.1999) by [S.I. 1999/362](#), [reg. 30\(1\)\(b\)](#)  
S. 36 extended (10.3.1999) by [S.I. 1999/362](#), [reg. 49\(7\)\(b\)](#)  
**C64** S. 36(1) applied (1.9.1999) by [S.I. 1999/2262](#), [reg. 36\(3\)](#).

### Commencement Information

**I7** S. 36 wholly in force at 1.9.1999; s. 36(3) in force at Royal Assent see s. 145; s. 36 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

## Instruments of government

### 37 Instruments of government. **E+W**

- [<sup>F97</sup>(1) For every maintained school there shall be an instrument (known as the instrument of government) which determines the constitution of the governing body and other matters relating to the school.
- (2) Schedule 12 has effect with respect to the contents and making of instruments of government and the review and variation of such instruments.
- (3) The governing body of a maintained school shall not conduct the school under a name other than the one for the time being set out in the school's instrument of government.]

### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with art. 6, Sch. para. 4); [S.I. 2004/912](#), art. 4, [Sch. Pt. 1](#); [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#); [S.I. 2005/2910](#), art. 4, [Sch.](#); [S.I. 2007/3611](#), art. 4(2), [Sch. Pt. 2](#)

### Modifications etc. (not altering text)

**C65** S. 37(1) savings for effects of 2002 c. 32, s. 215(2), Sch. 22 Pt. 3 (W.) (31.10.2005) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2005 \(S.I. 2005/2913\)](#), [reg. 5](#)

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#### Commencement Information

- 18** S. 37 wholly in force at 1.9.1999; s. 37(1)(2) in force for certain purposes at Royal Assent see s. 145(5); s. 37 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

### *Functions of governing body*

#### [<sup>F97</sup>38 **General responsibility of governing body for conduct of school.** **E+W**

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

#### Textual Amendments

- F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with [art. 6](#), [Sch. para. 4](#)); [S.I. 2004/912](#), [art. 4](#), [Sch. Pt. 1](#); [S.I. 2004/1728](#), [art. 5](#), [Sch. Pt. 2](#); [S.I. 2005/2910](#), [art. 4](#), [Sch.](#); [S.I. 2007/3611](#), [art. 4\(2\)](#), [Sch. Pt. 2](#)

#### Commencement Information

- 19** S. 38 wholly in force at 1.9.1999; s. 38 not in force at Royal Assent see s. 145(3); s. 38(3) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1](#), [Pt. 1](#); s. 38 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

#### [<sup>F97</sup>39 **Additional functions of governing body.** **E+W**

- (1) The governing body of a maintained school shall in accordance with regulations—
  - (a) establish procedures for dealing with all complaints relating to the school other than those falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of any other statutory provision; and
  - (b) publicise the procedures so established.

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- (2) The governing body of a maintained school may require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.
- (3) The governing body and head teacher of—
- (a) a community or voluntary controlled school, or
  - (b) a community special school,
- shall comply with any direction given to them by the local education authority concerning the health or safety of persons on the school’s premises or taking part in any school activities elsewhere.]

#### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2003/124, **art. 4**; S.I. 2003/1667, **art. 4** (with art. 6, Sch. para. 4); S.I. 2004/912, art. 4, **Sch. Pt. 1**; S.I. 2004/1728, art. 5, **Sch. Pt. 2**; S.I. 2005/2910, art. 4, **Sch.**; S.I. 2007/3611, art. 4(2), **Sch. Pt. 2**

#### Commencement Information

**I10** S. 39 partly in force; s. 39 not in force at Royal Assent see s. 145(3); s. 39(1) in force for certain purposes at 1.10.1998 by S.I. 1998/2212, **art. 2, Sch. 1, Pt. 1**; s. 39(2)(3) in force at 1.9.1999 by S.I. 1999/2323, **art. 2(1), Sch. 1** (with arts. 3-5, Schs. 5-7).

### *Control of school premises*

#### [<sup>F97</sup>40 **Control of use of school premises by governing body.** **E+W**

Schedule 13 has effect in relation to the control by the governing body of a maintained school of the occupation and use of the school premises.]

#### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2003/124, **art. 4**; S.I. 2003/1667, **art. 4** (with art. 6, Sch. para. 4); S.I. 2004/912, art. 4, **Sch. Pt. 1**; S.I. 2004/1728, art. 5, **Sch. Pt. 2**; S.I. 2005/2910, art. 4, **Sch.**; S.I. 2007/3611, art. 4(2), **Sch. Pt. 2**

### *Fixing of school holidays and times of sessions*

#### [<sup>F97</sup>41 **Responsibility for fixing dates of terms and holidays and times of sessions.** **E+W**

- (1) In the case of a community, voluntary controlled or community special school—

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- (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end; and
  - (b) the governing body shall determine the times of the school sessions.
- (2) In the case of a foundation, voluntary aided or foundation special school the governing body shall determine—
- (a) the dates and times when the school terms and holidays are to begin and end, and
  - (b) the times of the school sessions.
- (3) Regulations may make provision—
- (a) as to the procedure to be followed where the governing body of a school within subsection (1) propose to make any change in the times of the school sessions;
  - (b) as to the implementation of any such proposal;
  - (c) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school;
  - (d) that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals.
- (4) In this section “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.]

#### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with art. 6, Sch. para. 4); [S.I. 2004/912](#), art. 4, [Sch. Pt. 1](#); [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#); [S.I. 2005/2910](#), art. 4, [Sch.](#); [S.I. 2007/3611](#), art. 4(2), [Sch. Pt. 2](#)

#### *Reports and parents' meetings*

#### **[<sup>F97</sup>42** **Governors' reports and other information.** **E+W**

- (1) Once in every school year the governing body of a maintained school shall prepare a report (a “governors’ report”) dealing with such matters, and otherwise complying with such requirements, as may be specified in regulations.
- (2) Such regulations may—
- (a) impose requirements on the governing body of a maintained school with respect to—
    - (i) the giving of copies of a governors’ report to such persons as may be prescribed, and
    - (ii) making such copies available for inspection at the school;
  - (b) make provision for—

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- (i) enabling the governing body to determine the language or languages in which a governors' report is to be produced and the form or forms in which it is to be produced;
  - (ii) requiring them to comply with any direction given by the local education authority with respect to any additional language to be used or with respect to any additional form in which the report is to be produced.
- (3) The governing body of a maintained school shall provide the local education authority with such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (4) The head teacher of a maintained school shall provide the governing body or (as the case may be) the local education authority with such reports in connection with the discharge of his functions as the governing body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (5) Where a requirement under subsection (4) is imposed on the head teacher by the authority—
  - (a) the authority shall notify the governing body of that requirement; and
  - (b) the head teacher shall give the governing body a copy of any report made by him in complying with it.]

#### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with art. 6, [Sch. para. 4](#)); [S.I. 2004/912](#), [art. 4](#), [Sch. Pt. 1](#); [S.I. 2004/1728](#), [art. 5](#), [Sch. Pt. 2](#); [S.I. 2005/2910](#), [art. 4](#), [Sch.](#); [S.I. 2007/3611](#), [art. 4\(2\)](#), [Sch. Pt. 2](#)

#### Commencement Information

**I11** S. 42 wholly in force at 1.9.1999; s. 42 not in force at Royal Assent see s. 145(3); s. 42(1)(2) in force for specified purpose at 1.4.1999 by [S.I. 1999/1016](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-6, [Sch. 4](#)); s. 41 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-5, [Schs. 5-7](#)).

#### [<sup>F97</sup> 43 Annual parents' meetings. **E+W**

- (1) Once in every school year the governing body of a maintained school shall hold a meeting (an "annual parents' meeting") which is open to—
  - (a) all parents of registered pupils at the school;
  - (b) the head teacher; and
  - (c) such other persons as the governing body may invite.
- (2) The purpose of the meeting shall be to provide an opportunity for discussion of—
  - (a) the governors' report;

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- (b) the discharge by the governing body, the head teacher and the local education authority of their functions in relation to the school;
  - (c) the aims and values of the school;
  - (d) how the spiritual, moral, cultural, mental and physical development of pupils is to be promoted at the school;
  - (e) how pupils are to be prepared for the opportunities, responsibilities and experiences of adult life and citizenship;
  - (f) the standards of educational achievement of pupils; and
  - (g) how the governing body are to promote the good behaviour, discipline and well-being of pupils.
- (3) A governing body may, however, refrain from holding an annual parents' meeting in a particular school year if—
- (a) the school is a community or foundation special school which is established in a hospital and the governing body are of the opinion that it would be impracticable to hold such a meeting in that year; or
  - (b) the school is a maintained school other than one within paragraph (a), the governing body are of the opinion that it would be impracticable to hold such a meeting in that year, and at least 50 per cent. of the registered pupils at the school are boarders at the time when they form that opinion.
- (4) Regulations may make provision—
- (a) for the proceedings at an annual parents' meeting to be under the control of the governing body;
  - (b) as to the procedure to be followed at any such meeting, including provision restricting the right to vote on any question put to the meeting to parents of registered pupils at the school;
  - (c) imposing requirements on the governing body, the head teacher and the local education authority in relation to resolutions which have been passed at any such meeting, including requirements framed by reference to any opinion formed by the governing body;
  - (d) for enabling the governing body or (as the case may be) the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as the parent of a registered pupil at the school.]

#### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#); [S.I. 2003/124](#), [art. 4](#); [S.I. 2003/1667](#), [art. 4](#) (with art. 6, [Sch. para. 4](#)); [S.I. 2004/912](#), [art. 4](#), [Sch. Pt. 1](#); [S.I. 2004/1728](#), [art. 5](#), [Sch. Pt. 2](#); [S.I. 2005/2910](#), [art. 4](#), [Sch.](#); [S.I. 2007/3611](#), [art. 4\(2\)](#), [Sch. Pt. 2](#)

#### Commencement Information

**I12** S. 43 wholly in force at 1.9.1999; s. 43 not in force at Royal Assent see. s. 145(3); s. 43(4) in force at 1.4.1999 by [S.I. 1999/1016](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-6, [Sch. 4](#)); s. 43 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-5, [Schs. 5-7](#)).

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### Government of new schools

#### [<sup>F97</sup>44 Arrangements for government of new schools. **E+W**

- (1) Where proposals for the establishment of a maintained school fall to be implemented under paragraph 5 or 10 of Schedule 6, the local education authority shall make arrangements providing for the constitution of a temporary governing body for the school.
- (2) Once constituted in accordance with arrangements made under subsection (1) the temporary governing body shall continue in existence until such time as the governing body are constituted for the school under an instrument of government.
- (3) The local education authority shall secure that the governing body are so constituted—
  - (a) as soon as is reasonably practicable after the time when the requirement for there to be an instrument of government for the school takes effect in accordance with subsection (4), and
  - (b) in any event not later than the last day of the term in which the school first admits pupils.
- (4) The requirement for there to be an instrument of government for a school (imposed by section 37) shall take effect in relation to a school falling within subsection (1) above as from the school opening date; and for the purposes of this Part proposals for the establishment of a maintained school shall be taken to be implemented on that date.
- (5) Regulations may make provision with respect to—
  - (a) the making and termination of arrangements for the constitution of temporary governing bodies, including such arrangements made in anticipation of proposals falling to be implemented as mentioned in subsection (1);
  - (b) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors, and the appointment of clerks to such bodies;
  - (c) the transition from a temporary governing body to a governing body constituted under an instrument of government; and
  - (d) such other matters relating to temporary governing bodies as the Secretary of State considers appropriate.
- (6) Regulations under subsection (5) may, in connection with any matters falling within that subsection—
  - (a) modify any provision made by or under any of Schedules 9 to 12;
  - (b) apply any such provision with or without modifications;
  - (c) make provision corresponding or similar to any such provision.
- (7) Subject to subsection (8), the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period—
  - (a) beginning with the school opening date, and
  - (b) ending with the time when the governing body are constituted for the school under an instrument of government;and for the purposes of sections 495 to 498 of the <sup>M12</sup>Education Act 1996 (general default powers of the Secretary of State) the temporary governing body of a school shall also be so treated at any time falling before the school opening date.

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- (8) Despite subsection (7), nothing in any of the following provisions, namely—
- (a) section 36,
  - (b) section 37(1) or (2), or
  - (c) (subject to any regulations made by virtue of subsection (5)) any of Schedules 9 to 12,
- applies to any temporary governing body.
- (9) In this Part “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.]

### Textual Amendments

**F97** Ss. 36-44 repealed (1.10.2002 for E. for specified purposes, 1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 31.3.2004 for W. for specified purposes, 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2003/124, **art. 4**; S.I. 2003/1667, **art. 4** (with art. 6, Sch. para. 4); S.I. 2004/912, **art. 4**, **Sch. Pt. 1**; S.I. 2004/1728, **art. 5**, **Sch. Pt. 2**; S.I. 2005/2910, **art. 4**, **Sch.**; S.I. 2007/3611, **art. 4(2)**, **Sch. Pt. 2**

### Modifications etc. (not altering text)

- C66** S. 44 applied (with modifications) (1.9.1999) by S.I. 1999/704, **reg. 13**.
- C67** S. 44 modified (temp.) (E.) (2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 7**
- C68** S. 44 savings for effects of 2002 c. 32, s. 215(2), Sch. 22 Pt. 3 (W.) (31.10.2005) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2005 \(S.I. 2005/2913\)](#), **reg. 6**
- C69** S. 44(1) extended (1.9.1999) by S.I. 1999/2243, **reg. 5(1)**.  
S. 44(1) restricted (1.9.1999) by S.I. 1999/2243, **reg. 6(1)**.  
S. 44(1) extended (1.9.1999) by S.I. 1999/2262, **reg. 5(1)**.  
S. 44(1) amended (1.9.1999) by S.I. 1999/2262, **reg. 7**.
- C70** S. 44(5) modified (20.11.1998) by S.I. 1998/2670, **reg. 3(1)(2)**
- C71** S. 44(6) modified (20.11.1998) by S.I. 1998/2670, **reg. 3(1)**

### Commencement Information

**I13** S. 44 wholly in force at 1.9.1999; s. 44 not in force at Royal Assent see s. 145(3); s. 44(5)(6) in force at 1.10.1998 by S.I. 1998/2212, **art. 2**, **Sch. 1, Pt. I**; s. 44 in force at 1.9.1999, in so far as not already in force, by S.I. 1999/2323, **art. 2(1)**, **Sch. 1** (with arts. 3-5, Schs. 5-7).

### Marginal Citations

**M12** 1996 c. 56.

## CHAPTER IV **E+W**

### FINANCING OF MAINTAINED SCHOOLS

### Modifications etc. (not altering text)

**C72** Pt. 2 Ch. 4 (ss. 45-53) modified (20.11.1998) by S.I. 1998/2670, **reg. 3(1)(3)**



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### Budgetary framework

#### 45 Maintained schools to have budget shares. **E+W**

(1) For the purposes of the financing of maintained schools by local education authorities, every such school shall have, for each [<sup>F98</sup>financial year][<sup>F98</sup>funding period], a budget share which is allocated to it by the authority which maintains it.

[<sup>F99</sup>(1A) In this Chapter “maintained school” means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school, or
- (c) a maintained nursery school.]

[<sup>F100</sup>(1B) In this Chapter “funding period” means a financial year or such other period as may be prescribed.]

(2) Sections [<sup>F101</sup>[<sup>F102</sup>45A] and][<sup>F101</sup> 45A to] 47 have effect for determining the amount of a school’s budget share for a [<sup>F103</sup>financial year][<sup>F103</sup>funding period].

(3) In this Chapter—

- (a) references to schools maintained by a local education authority do not include [<sup>F104</sup>pupil referral units];
- (b) references, in a context referring to a local education authority, to a maintained school or to a school maintained by such an authority shall be read as including a new school—
  - (i) which on implementation of proposals under [<sup>F105</sup>any enactment] will be a community, foundation or voluntary school or a community or foundation special school maintained by the authority, and
  - (ii) which has a temporary governing body; and
- (c) references to the governing body of a maintained school or of a school maintained by a local education authority shall accordingly be read as including the temporary governing body of a new school falling within paragraph (b).

(4) In this Chapter “new school” (without more) has the meaning given by section 72(3).

#### Textual Amendments

**F98** Words in s. 45(1) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 2(2)** (with s. 119); S.I. 2005/2034, art. 8

**F99** S. 45(1A) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 99(2)** (with ss. 210(8), 214(4)); S.I. 2003/1667, **art. 4** (with art. 6, Sch. para. 5); S.I. 2005/2910, art. 4, **Sch.** (with transitional provisions in The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005 (S.I. 2005/2913), **reg. 8**

**F100** S. 45(1B) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 2(3)** (with s. 119); S.I. 2005/2034, art. 8

**F101** Words in s. 45(2) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 2(4)(a)** (with s. 119); S.I. 2005/2034, art. 8

**F102** Word in s. 45(2) substituted (4.12.2003 for W.) by Education Act 2002 (c. 32), **ss. 41(2)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/2961, art. 5, Sch. Pt. II (with transitional provisions in The Education Act 2002 (Transitional Provisions and Consequential Amendments) (No.2) (Wales) Regulations 2003 (S.I. 2003/2959), regs. 1(1), 4)

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- F103** Words in s. 45(2) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 2\(4\)\(b\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F104** Words in s. 45(3)(a) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 99\(3\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4 (with art. 6, Sch. para. 5); S.I. 2005/2910, art. 4, Sch.
- F105** Words in s. 45(3)(b)(i) substituted (19.12.2002 for W. and 1.4.2003 for E.) by [Education Act 2002 \(c. 32\), ss. 215\(1\), 216, Sch. 21 para. 99\(3\)\(b\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4

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

- C73** S. 45(1A) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\), arts. 1\(1\), 3\(c\)](#)
- C74** S. 45(3)(4) modified (20.11.1998) by [S.I. 1998/2670, reg. 3\(4\)](#)

**[<sup>F106</sup>45A Determination of specified budgets of LEA E+W**

- (1) For the purposes of this Part, a local education authority’s “LEA budget” for a [<sup>F107</sup>financial year][<sup>F107</sup>relevant period] is the amount appropriated by the authority for meeting all expenditure by the authority in [<sup>F108</sup>that year][<sup>F108</sup>that period] of a class or description prescribed for the purposes of this subsection.
- [ In subsection (1) “relevant period” means a financial year or such other period as may <sup>F109</sup>(1A) be prescribed.]
- (2) For the purposes of this Part, a local education authority’s “schools budget” for a [<sup>F110</sup>financial year][<sup>F110</sup>funding period] is the amount appropriated by the authority for meeting all expenditure by the authority in [<sup>F111</sup>that year][<sup>F111</sup>that period] of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools).
- [ The amount referred to in subsection (2) includes the amount of any grant which is <sup>F112</sup>(2A) appropriated, for meeting the expenditure mentioned in that subsection, in accordance with a condition which—
- (a) is imposed under section 16 of the Education Act 2002 (terms on which assistance under section 14 of that Act is given) or any other enactment, and
  - (b) requires that the grant be applied as part of the authority’s schools budget for the funding period.]
- (3) For the purposes of this Part, a local education authority’s “individual schools budget” for a [<sup>F113</sup>financial year][<sup>F113</sup>funding period] is the amount remaining after deducting from the authority’s schools budget for [<sup>F114</sup>that year][<sup>F114</sup>that period] such planned expenditure by the authority in respect of [<sup>F114</sup>that year][<sup>F114</sup>that period] as they may determine should be so deducted in accordance with regulations.
- (4) Regulations under subsection (3) may—
- (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority’s schools budget;
  - (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely—
    - (i) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations, and
    - (ii) such other conditions as may be so specified or determined.

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- [ Regulations under subsection (3) may also make provision—
- <sup>F115</sup>(4A) (a) enabling any expenditure falling outside any classes or descriptions of expenditure prescribed by virtue of subsection (4)(a) to be deducted from the authority's schools budget if the deduction of such expenditure is authorised, on the application of the authority, by the authority's schools forum or the Secretary of State, and
- (b) enabling any limit or condition that would otherwise apply by virtue of subsection (4)(b)(i) or (ii) to be varied or excluded, on the application of the authority, by the authority's schools forum or the Secretary of State.]
- (5) [<sup>F116</sup>Before the [<sup>F117</sup>schools budget deadline] in any financial year, a local education authority shall—
- (a) determine the proposed amount of their schools budget for the following financial year, and
- (b) give notice of their determination to the Secretary of State and to the governing body of every school maintained by the authority.]]
- [<sup>F118</sup>(6) [<sup>F116</sup>For the purposes of this section and section 45B “the schools budget deadline” is—
- (a) the end of December in the case of an authority in England, and
- (b) the end of January in the case of an authority in Wales.]]

#### Textual Amendments

- F106** S. 45A inserted (1.10.2002 for E., 4.12.2003 for W.) by Education Act 2002 (c. 32), **ss. 41(1)**, 216(4) (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. para. 1); S.I. 2003/2961, art. 5, Sch. Pt. II
- F107** Words in s. 45A(1) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(2)(a)** (with s. 119); S.I. 2005/2034, art. 8
- F108** Words in s. 45A(1) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(2)(b)** (with s. 119); S.I. 2005/2034, art. 8
- F109** S. 45A(1A) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(3)** (with s. 119); S.I. 2005/2034, art. 8
- F110** Words in s. 45A(2) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(4)(a)** (with s. 119); S.I. 2005/2034, art. 8
- F111** Words in s. 45A(2) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(4)(b)** (with s. 119); S.I. 2005/2034, art. 8
- F112** S. 45A(2A) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(5)** (with s. 119); S.I. 2005/2034, art. 8
- F113** Words in s. 45A(3) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(6)(a)** (with s. 119); S.I. 2005/2034, art. 8
- F114** Words in s. 45A(3) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(6)(b)** (with s. 119); S.I. 2005/2034, art. 8
- F115** S. 45A(4A) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 3(7)** (with s. 119); S.I. 2005/2034, art. 8
- F116** S. 45A(5)(6) repealed (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), Sch. 16 para. 3(8), **Sch. 19 Pt. 4** (with s. 119); S.I. 2005/2034, art. 8
- F117** Words in s. 45A(5) substituted (18.11.2003 for E., 27.11.2003 for W.) by Local Government Act 2003 (c. 26), s. 128(6), **Sch. 7 para. 66(3)**; S.I. 2003/2938, art. 3(a) (with art. 8, Sch.); S.I. 2003/3034, art. 2, Sch. 1 Pt. I
- F118** S. 45A(6) inserted (18.11.2003 for E., 27.11.2003 for W.) by Local Government Act 2003 (c. 26), s. 128(6), **Sch. 7 para. 66(4)**; S.I. 2003/2938, art. 3(a) (with art. 8, Sch.); S.I. 2003/3034, art. 2, Sch. 1 Pt. I

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

**C75** S. 45A savings for effects of 2002 c. 32, s. 41(1) (W.) (19.11.2003) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(No.2\) \(Wales\) Regulations 2003 \(S.I. 2003/2959\)](#), regs. 1(1), 3

### [<sup>F119</sup>45A] Power to require LEAs in England to determine schools budget **E+W**

- (1) Regulations may require a local education authority in England, not later than the prescribed date, to make an initial determination of their schools budget for a funding period.
- (2) The date prescribed for the purposes of subsection (1) may be a date falling up to 48 months before the beginning of the funding period.
- (3) Regulations under subsection (1) may—
  - (a) authorise or require local education authorities in England to take account of matters arising after the initial determination of their schools budgets for any funding period but before the beginning of the funding period, by redetermining their schools budgets for the period in accordance with the regulations, and
  - (b) require notice of any initial determination or revised determination to be given in accordance with the regulations to the governing bodies of schools maintained by the local education authority.

#### Textual Amendments

**F119** Ss. 45AA-45AC inserted (1.11.2005 for E. in relation to the insertion of s. 45AA) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 4](#) (with s. 119); [S.I. 2005/2034](#), art. 8

### 45AB Duty of LEAs in Wales to determine schools budget **E+W**

- (1) Before the schools budget deadline in any funding period, a local education authority in Wales must—
  - (a) determine the proposed amount of their schools budget for the following funding period, and
  - (b) give notice of their determination to the National Assembly for Wales and to the governing body of every school maintained by the authority.
- (2) For the purposes of this section “the schools budget deadline”, in relation to an authority in Wales, means the end of January or such other time as may be prescribed.

#### Textual Amendments

**F119** Ss. 45AA-45AC inserted (1.11.2005 for E. in relation to the insertion of s. 45AA) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 4](#) (with s. 119); [S.I. 2005/2034](#), art. 8

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#### **45AC Power to require LEAs in Wales to determine schools budget** **E+W**

- (1) Regulations may require a local education authority in Wales, not later than the prescribed date, to make an initial determination of their schools budget for a funding period.
- (2) The date prescribed for the purposes of subsection (1) may be a date falling up to 48 months before the beginning of the funding period.
- (3) Regulations under subsection (1) may—
  - (a) authorise or require local education authorities in Wales to take account of matters arising after the initial determination of their schools budgets for the funding period but before the beginning of the funding period, by redetermining their schools budgets for the period in accordance with the regulations, and
  - (b) require notice of any initial determination or revised determination to be given in accordance with the regulations to the Assembly and to the governing bodies of schools maintained by the local education authority.
- (4) Regulations under subsection (1) are not to have effect in relation to an authority's schools budget for any funding period if section 45AB is in force in relation to that funding period.]

#### **Textual Amendments**

**F119** Ss. 45AA-45AC inserted (1.11.2005 for E. in relation to the insertion of s. 45AA) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 4](#) (with s. 119); [S.I. 2005/2034](#), art. 8

#### **<sup>F121</sup>45B [<sup>F120</sup>Power of Secretary of State to set minimum schools budget for LEA][<sup>F120</sup>Power of Assembly to set minimum schools budget for LEA in Wales]** **E+W**

- <sup>F120</sup>(1) If it appears to the National Assembly for Wales that, in all the circumstances, the proposed amount of a local education authority's schools budget for a funding period is inadequate, the Assembly may, within the period of fourteen days beginning with the schools budget deadline in the funding period preceding that funding period, give the authority a notice under subsection (6) or (7).
- (2) In subsection (1), the reference to the proposed amount of a local education authority's schools budget for a funding period is—
  - (a) if section 45AB is in force in relation to that funding period, a reference to the amount specified in a notice under section 45AB(1)(b), or
  - (b) if regulations under section 45AC(1) are in force in relation to that funding period, a reference to such amount, determined by the authority in accordance with those regulations and specified in a notice required by those regulations to be given to the Assembly, as may be prescribed.
- (3) If at the schools budget deadline in any funding period, a local education authority in Wales have failed to give the Assembly a notice under section 45AB(1)(b) or a notice required as mentioned in subsection (2)(b), the Assembly may, at any time after that deadline, give the authority a notice under subsection (6) or (7).
- (4) In this section “the schools budget deadline”—

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- (a) in a case falling within subsection (2)(a), has the same meaning as in section 45AB, and
  - (b) in a case falling within subsection (2)(b), means the time in the funding period preceding the funding period to which the schools budget relates by which regulations under section 45AC(1) require notice of a revised determination of the schools budget to be given to the Assembly.
- (5) In this section and section 45C “the period under consideration” means the funding period to which the notice mentioned in subsection (2)(a) or (b) relates or, in a case falling within subsection (3), the funding period in relation to which such a notice ought to have been given.
- (6) A notice under this subsection is a notice determining the minimum amount of the authority's schools budget for the period under consideration.
- (7) A notice under this subsection is a notice which—
- (a) specifies the amount which the Assembly would have determined as the minimum amount of the authority's schools budget for the period under consideration if the Assembly had acted under subsection (4), and
  - (b) states the Assembly's intention to determine the minimum amount of the authority's schools budget for the following funding period.
- (8) A notice under subsection (6) or (7) must include a statement of the Assembly's reasons for giving the notice.
- (9) The Assembly may act under different subsections in relation to different authorities.]

#### Textual Amendments

**F120** Ss. 45B-45D substituted for ss. 45B, 45C (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005](#) (c. 18), s. 125(4), [Sch. 16 para. 5](#) (with s. 119); S.I. 2005/2034, [art. 8](#); S.I. 2010/735, [art. 2\(d\)](#)

**F121** Ss. 45B, 45C inserted (1.10.2002 for E., 4.12.2003 for W.) by [Education Act 2002](#) (c. 32), [ss. 42, 216\(4\)](#) (with [ss. 210\(8\), 214\(4\)](#)); S.I. 2002/2439, [art. 3](#); S.I. 2003/2961, [art. 5](#), [Sch. Pt. II](#)

**F122** Words in s. 45B(1) substituted (18.11.2003 for E., 27.11.2003 for W.) by [Local Government Act 2003](#) (c. 26), s. 128(6), [Sch. 7 para. 66\(5\)](#); S.I. 2003/2938, [art. 3\(a\)](#) (with [art. 8](#), [Sch.](#)); S.I. 2003/3034, [art. 2](#), [Sch. 1 Pt. I](#)

**F123** Words in s. 45B(2) substituted (18.11.2003 for E., 27.11.2003 for W.) by [Local Government Act 2003](#) (c. 26), s. 128(6), [Sch. 7 para. 66\(6\)\(a\)](#); S.I. 2003/2938, [art. 3\(a\)](#) (with [art. 8](#), [Sch.](#)); S.I. 2003/3034, [art. 2](#), [Sch. 1 Pt. I](#)

**F124** Words in s. 45B(2) substituted (18.11.2003 for E., 27.11.2003 for W.) by [Local Government Act 2003](#) (c. 26), s. 128(6), [Sch. 7 para. 66\(6\)\(b\)](#); S.I. 2003/2938, [art. 3\(a\)](#) (with [art. 8](#), [Sch.](#)); S.I. 2003/3034, [art. 2](#), [Sch. 1 Pt. I](#)

<sup>F121</sup>45C [<sup>F120</sup>Effect of notice under section 45B(4)] [<sup>F120</sup>Effect of notice under section 45B(6)] **E+W**

- [<sup>F120</sup>(1) The local education authority may, within the period of fourteen days beginning with the date of a notice under section 45B(6), give the National Assembly for Wales notice of their objection to the Assembly's determination, giving reasons for their objection.
- (2) Where the local education authority have given notice of their objection under subsection (1), the notice under section 45B(6) shall cease to have effect, but the

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Assembly may by order prescribe the minimum amount of the authority's schools budget for the period under consideration.

- (3) The amount prescribed under subsection (2) must not be greater than the amount specified in the notice under section 45B(6).
- (4) An order under subsection (2) may relate to two or more authorities.
- (5) Where—
  - (a) a notice under section 45B(6) has been given to a local education authority and no notice of objection has been given during the period specified in subsection (1), or
  - (b) an order has been made under subsection (2),the local education authority shall determine a schools budget for the period under consideration which is not less than the amount specified in relation to the authority in the notice or order.]

**Textual Amendments**

- F120** Ss. 45B-45D substituted for ss. 45B, 45C (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 5](#) (with s. 119); S.I. 2005/2034, [art. 8](#); S.I. 2010/735, [art. 2\(d\)](#)
- F121** Ss. 45B, 45C inserted (1.10.2002 for E., 4.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 42](#), 216(4) (with [ss. 210\(8\)](#), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/2961, [art. 5](#), [Sch. Pt. II](#)

**[<sup>F120</sup>45D Power of Assembly to repeal Wales-only school funding provisions E+W**

The Assembly may by order—

- (a) repeal any of the following provisions—
  - section 45AB,
  - section 45AC(4), and
  - sections 45B and 45C, and
- (b) make any amendments of the other provisions of this Chapter which appear to the Assembly to be necessary or expedient in consequence of any repeal made by virtue of paragraph (a).]

**Textual Amendments**

- F120** Ss. 45B-45D substituted for ss. 45B, 45C (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 5](#) (with s. 119); S.I. 2005/2034, [art. 8](#); S.I. 2010/735, [art. 2\(d\)](#)

**<sup>F125</sup>46 Determination of LEA's local schools budget and individual schools budget. E+W**

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**Textual Amendments**

- F125** S. 46 repealed (1.10.2002 for E., 4.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 41\(3\)](#), 216(4), [Sch. 22 Pt. 3](#) (with [ss. 210\(8\)](#), 214(4)); S.I. 2002/2439, [art. 3](#) (with [art. 4](#), [Sch. para. 2](#) and with transitional provisions in [The Education Act 2002 \(Transitional Provisions and Consequential](#)

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Amendments) (No.2) (Wales) Regulations 2003 (S.I. 2003/2959), **regs. 1(1), 5**; S.I. 2003/2961, art. 5,  
**Sch. Pt. II**

#### 47 **Determination of school's budget share.** **E+W**

- (1) For the purposes of this Part a maintained school's budget share for a [<sup>F126</sup>financial year][<sup>F126</sup>funding period] is such amount as the local education authority may determine, in accordance with regulations, to allocate to the school out of the authority's individual schools budget for [<sup>F127</sup>that year][<sup>F127</sup>that period].
- (2) Regulations under this section may, in particular, make provision—
  - (a) as to the time when schools' budget shares are to be initially determined by local education authorities;
  - (b) specifying—
    - (i) factors or criteria which such authorities are to take into account, or
    - (ii) requirements as to other matters with which such authorities are to comply,
 in determining such shares, whether generally or in such cases as are specified in the regulations;
  - (c) requiring adjustments to be made to such shares by such authorities in respect of—
    - (i) pupils permanently excluded from schools maintained by them, or
    - (ii) pupils admitted to schools maintained by them who have been permanently excluded from other maintained schools;
  - (d) as to the treatment of new schools, including provision authorising the determination of nil amounts as the budget shares of such schools;
  - [<sup>F128</sup>(dd) authorising or requiring such authorities to take account of matters arising after the initial determination of budget shares for a funding period but before the beginning of the funding period, by redetermining budget shares for that period in accordance with the regulations, and requiring them in that connection to disregard such matters as may be specified in the regulations;]
  - (e) authorising or requiring such authorities to take account of matters arising during the course of a [<sup>F129</sup>financial year][<sup>F129</sup>funding period]—
    - (i) by redetermining budget shares for that [<sup>F130</sup>year][<sup>F130</sup>funding period],  
or
    - (ii) by making adjustments to such shares for the following [<sup>F130</sup>year][<sup>F130</sup>funding period],  
in accordance with the regulations, and requiring them in that connection to disregard such matters as may be specified in the regulations;
  - (f) requiring consultation to be carried out by such authorities in relation to the factors or criteria which are to be taken into account in determining such shares and as to the time and manner of such consultation;
  - [<sup>F131</sup>(ff) requiring notice of any initial determination or revised determination to be given in accordance with the regulations to the governing bodies of schools maintained by the authority in question;]
  - (g) [<sup>F132</sup>authorising local education authorities in prescribed cases to determine (or redetermine) budget shares, to such extent as may be prescribed, in accordance with arrangements approved by the authority's schools forum or the Secretary



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of State in accordance with the regulations (in place of the arrangements provided for by the regulations);]

[<sup>F133</sup>(2A) The time by which regulations made in pursuance of subsection (2)(a) require an initial determination of schools' budget shares for a funding period to be made may be up to 48 months before the beginning of the funding period.]

(3) Regulations made in pursuance of subsection (2)(c) may provide for the adjustments to be made on such basis as may be prescribed, which may involve the deduction from one school's budget share of an amount which is greater or less than that allocated to another school's budget share in respect of the excluded pupil.

#### Textual Amendments

- F126** Words in s. 47(1) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(2\)\(a\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F127** Words in s. 47(1) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(2\)\(b\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F128** S. 47(2)(dd) inserted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(3\)\(a\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F129** Words in s. 47(2)(e) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(3\)\(b\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F130** Words in s. 47(2)(e)(i)(ii) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(3\)\(b\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F131** S. 47(2)(ff) inserted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(3\)\(c\)](#) (with s. 119); S.I. 2005/2034, art. 8
- F132** S. 47(2)(g) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(3\)\(d\)](#) (with s. 119); S.I. 2005/2034, art. 8 (with Sch. paras. 34)
- F133** S. 47(2A) inserted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 16 para. 6\(4\)](#) (with s. 119); S.I. 2005/2034, art. 8

#### [<sup>F134</sup>Schools forums]

#### Textual Amendments

- F134** S. 47A and cross-heading inserted (2.9.2002 for E., 1.11.2003 for W.) by [Education Act 2002 \(c. 32\), ss. 43, 216\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 4; S.I. 2003/1718, art. 6, Sch. Pt. III

#### [<sup>F134</sup>47A Schools forums **E+W**]

- (1) Every local education authority shall in accordance with regulations establish for their area before such date as may be prescribed a body, to be known as a schools forum, representing the governing bodies and head teachers of schools maintained by the authority and, if the authority so determine, also representing such bodies as the authority may from time to time in accordance with regulations determine.
- (2) Subsection (1) does not apply in relation to the Common Council of the City of London or the Council of the Isles of Scilly.
- (3) [<sup>F135</sup>The purpose of a schools forum is—

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- (a) to advise the relevant authority on such matters relating to the authority's schools budget as may be prescribed by regulations under section 45A(3) or by regulations under this subsection, and
  - (b) to exercise any <sup>F136</sup>function that may be imposed on the schools forum by virtue of section 45A(4A) or 47(2)(g)]<sup>F136</sup>other function that may be imposed on the schools forum by or under this Chapter].]
- (4) Regulations under section 45A(3) or under subsection (3) may include provision requiring a relevant authority to have regard to advice given by their schools forum, or requiring a relevant authority to consult their schools forum in relation to prescribed matters or before taking prescribed decisions.
- (5) Regulations may make provision as to the constitution, meetings and proceedings of a schools forum.
- (6) <sup>F137</sup>Regulations made by virtue of subsection (5) may include provision enabling the Secretary of State in prescribed circumstances to remove from membership of a schools forum any non-schools member.]
- (7) Regulations may make provision with respect to expenses of a schools forum.
- (8) Except as provided by regulations, the expenses of a schools forum shall be defrayed by the relevant authority.
- (9) <sup>F138</sup>In this section “relevant authority”, in relation to a schools forum, means the local education authority by whom the forum is established.]]

#### Textual Amendments

- F135** S. 47A(3) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 16 para. 7** (with s. 119); [S.I. 2005/2034](#), art. 8
- F136** Words in s. 47A(3)(b) substituted (8.2.2007 for E., 2.4.2010 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 5 para. 2(2)**; [S.I. 2006/3400](#), art. 4(c); [S.I. 2010/736](#), art. 3(c)
- F137** S. 47A(6) repealed (8.2.2007 for E., 2.4.2010 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 5 para. 2(3)**, **Sch. 18 Pt. 6**; [S.I. 2006/3400](#), art. 4(c)(d); [S.I. 2010/736](#), art. 3(c)(d)
- F138** S. 47A(9) substituted (8.2.2007 for E., 2.4.2010 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 5 para. 2(4)**; [S.I. 2006/3400](#), art. 4(c); [S.I. 2010/736](#), art. 3(c)

#### Local education authority schemes

### 48 LEAs' financial schemes. **E+W**

- (1) Each local education authority shall <sup>F139</sup>prepare]]<sup>F139</sup>maintain] a scheme dealing with such matters connected with the financing of the schools maintained by the authority <sup>F140</sup>or the exercise by the governing bodies of those schools of the power conferred by section 27 of the Education Act 2002 (power of governing body to provide community facilities etc.)] as are required to be dealt with in the scheme by or by virtue of—
- (a) regulations made by the Secretary of State; or
  - (b) any provision of this Part.
- (2) Regulations under subsection (1) may, in particular, require a scheme to deal with—
- (a) the carrying forward from one <sup>F141</sup>financial year]]<sup>F141</sup>funding period] to another of surpluses and deficits arising in relation to schools' budget shares;

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- (b) amounts which may be charged against schools' budget shares;
  - (c) amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used;
  - (d) the imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets, including conditions prescribing financial controls and procedures;
  - [<sup>F142</sup>(dd) the imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the exercise of the power mentioned in subsection (1), including conditions prescribing financial controls and procedures;]
  - (e) terms on which services and facilities are provided by the authority for schools maintained by them.
- (3) Where there is any inconsistency between a scheme [<sup>F143</sup>prepared][<sup>F143</sup>maintained] by a local education authority under subsection (1) and any other rules or regulations made by the authority which relate to the funding or financial management of schools which they maintain, the terms of the scheme shall prevail.
- (4) Schedule 14 (which provides for [<sup>F144</sup>the approval or imposition of schemes by the Secretary of State and for] the revision of schemes) shall have effect.
- (5) In this Part any reference to “the scheme”, in relation to a maintained school, is a reference to [<sup>F145</sup>the scheme prepared (or by virtue of paragraph 1(6) of Schedule 14 treated as prepared) by the local education authority under this section, as from time to time revised under paragraph 2 of that Schedule][<sup>F145</sup>the scheme for the time being maintained under this section].

#### Textual Amendments

- F139** Word in s. 48(1) substituted (8.2.2007 for E., 15.3.2010 for W. for specified purposes, 2.4.2010 for W. in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 5 para. 3\(2\)](#); S.I. 2006/3400, [art. 4\(c\)](#); S.I. 2010/736, arts. 2(b), [3\(c\)](#) (with art. 4)
- F140** Words in s. 48(1) inserted (2.9.2002 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 3 para. 2\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 4; S.I. 2003/1718, art. 5, Sch. Pt. II
- F141** Words in s. 48(2)(a) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 18 para. 7](#) (with s. 119); S.I. 2005/2034, art. 8
- F142** S. 48(2)(dd) inserted (2.9.2002 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 3 para. 2\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 4; S.I. 2003/1718, art. 5, Sch. Pt. II
- F143** Word in s. 48(3) substituted (8.2.2007 for E., 15.3.2010 for W. for specified purposes) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 5 para. 3\(3\)](#); S.I. 2006/3400, [art. 4\(c\)](#); S.I. 2010/736, [art. 2\(b\)](#) (with art. 4)
- F144** Words in s. 48(4) repealed (8.2.2007 for E., 15.3.2010 for W. for specified purposes, 2.4.2010 for W. in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 5 para. 3\(4\)](#), [Sch. 18 Pt. 6](#); S.I. 2006/3400, [art. 4\(c\)\(d\)](#); S.I. 2010/736, arts. 2(b), [3\(c\)\(d\)](#) (with art. 4)
- F145** Words in s. 48(5) substituted (8.2.2007 for E., 15.3.2010 for W. for specified purposes, 2.4.2010 for W. in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 5 para. 3\(5\)](#); S.I. 2006/3400, [art. 4\(c\)](#); S.I. 2010/736, arts. 2(b), [3\(e\)](#) (with art. 4)

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

- C76** S. 48 excluded (10.3.1999) by S.I. 1999/362, [reg. 6\(5\)](#).

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### Financial delegation

#### 49 Maintained schools to have delegated budgets. **E+W**

- (1) Every maintained school shall have a delegated budget.
- (2) <sup>F146</sup>A new school shall have a delegated budget from a date determined in accordance with regulations.

(2A) Regulations under subsection (2) may—

- (a) enable the date that would otherwise apply by virtue of the regulations to be varied in accordance with the regulations, on the application of the local education authority, by the authority's schools forum or by the Secretary of State, and
- (b) make provision about the respective powers of the schools forum and the Secretary of State in relation to any application to vary that date.]

(3) <sup>F146</sup>Such a school shall have a delegated budget—

- (a) as from a date earlier than the school opening date if the local education authority so determine; or
- (b) as from a later date if the authority so determine with the written approval of the Secretary of State; or
- (c) as from such date as the Secretary of State may determine, if the authority have determined that the school should have a delegated budget as from a later date but that date is not approved by him.]

(4) Subject to—

- (a) section 50 (right of governing body to spend budget share where school has a delegated budget),
- (b) paragraph 4 of Schedule 15 (power of governing body to spend amounts out of budget share where delegation of budget suspended),
- (c) section 489(2) of the <sup>M13</sup>Education Act 1996 (education standards grants), and
- (d) any provisions of the scheme,

a local education authority may not delegate to the governing body of any maintained school the power to spend any part of the authority's <sup>F147</sup>LEA budget or schools budget].

(5) Any amount made available by a local education authority to the governing body of a maintained school (whether under section 50 or otherwise)—

- (a) shall remain the property of the authority until spent by the governing body or the head teacher; and
- (b) when spent by the governing body or the head teacher, shall be taken to be spent by them or him as the authority's agent.

(6) Subsection (5)(b) does not apply to any such amount where it is spent—

- (a) by way of repayment of the principal of, or interest on, a loan, or
- (b) (in the case of a voluntary aided school) to meet <sup>F148</sup>expenses payable by the governing body under paragraph 3(1) or (2) of Schedule 3] <sup>F148</sup>expenditure payable by the governing body under paragraph 3(1) of Schedule 3] <sup>F149</sup>, paragraph 14(2) of Schedule 6, paragraph 3(3) of Schedule 7A to the Learning and Skills Act 2000 or paragraph 8 of Schedule 8 to the Education Act 2002].

(7) In this Part—

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- (a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school's budget share; and
- (b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.

#### Textual Amendments

- F146** S. 49(2)(2A) substituted for s. 49(2) (8.2.2007 for E., 15.3.2010 for W. for specified purposes, 2.4.2010 for W. in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 5 para. 4](#); [S.I. 2006/3400, art. 4\(c\)](#); [S.I. 2010/736, arts. 2\(b\), 3\(c\)](#) (with art. 4)
- F147** Words in s. 49(4) substituted (1.10.2002 for E., 4.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 100\(2\)](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439, art. 3](#) (with art. 4, Sch. para. 2); [S.I. 2003/2961, art. 5, Sch. Pt. II](#)
- F148** Words in s. 49(6)(b) substituted (E.) (1.4.2002) by [The Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002 \(S.I. 2002/906\)](#), [art. 4](#)
- F149** Words in s. 49(6)(b) substituted (1.4.2003 for E., 1.8.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 100\(3\)](#) (with ss. 210(8), 214(4)); [S.I. 2003/124, art. 4](#); [S.I. 2004/1728, art. 4, Sch. Pt. 1](#)

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

- C77** Ss. 49-51: power to modify conferred (1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), [ss. 25\(1\)\(b\)](#), 216(4) (with ss. 210(8), 214(4)); [S.I. 2003/124, art. 4](#)
- C78** S. 49(4) savings for effects of 2002 c. 32, ss. 41(3), 215, Sch. 21 paras. 100(2) (W.) (19.11.2003) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(No.2\) \(Wales\) Regulations 2003 \(S.I. 2003/2959\)](#), [regs. 1\(1\), 5](#)
- C79** S. 49(6)(b) modified (20.11.1998) by [S.I. 1998/2670, reg. 3\(5\)](#)

#### Marginal Citations

- M13** 1996 c. 56.

## 50 Effect of financial delegation. **E+W**

- (1) Where a maintained school has a delegated budget in respect of the whole or part of a [<sup>F150</sup>financial year][<sup>F150</sup>funding period] the local education authority shall secure that in respect of [<sup>F151</sup>that year][<sup>F151</sup>that period] there is available to be spent by the governing body—
  - (a) where the school has a delegated budget in respect of the whole of that [<sup>F152</sup>year][<sup>F152</sup>period], a sum equal to the school's budget share for the [<sup>F152</sup>year][<sup>F152</sup>period], or
  - (b) where the school has a delegated budget in respect of only part of that [<sup>F153</sup>year][<sup>F153</sup>period], a sum equal to that portion of the school's budget share for the [<sup>F153</sup>year][<sup>F153</sup>period] which has not been spent.
- (2) The times at which, and the manner in which, any amounts are made available by the authority to the governing body in respect of any such sum shall be such as may be provided by or under the scheme.
- (3) Subject to any provision made by or under the scheme, the governing body may spend any such amounts as they think fit—
  - (a) for any purposes of the school; or

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- (b) (subject also to any prescribed conditions) for such purposes as may be prescribed.
- (4) In subsection (3) “purposes of the school” does not include purposes wholly referable to the provision of—
- [<sup>F154</sup>(za) facilities and services under section 27 of the Education Act 2002 (power of governing body to provide community facilities etc.),]
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
- (b) full-time education suitable to the requirements of persons who have attained the age of 19;
- but any such purposes may be prescribed by regulations under paragraph (b) of that subsection.
- (5) Nothing in subsection (3) shall be read as authorising the payment of allowances to governors otherwise than in accordance with regulations [<sup>F155</sup>under section 19 of the Education Act 2002 (or, in the case of temporary governors of a new school, regulations under section 34(5) of that Act).]
- (6) The governing body may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their powers under subsection (3) in relation to any amount such as is mentioned in that subsection.
- (7) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under subsection (3) or (6).

#### Textual Amendments

- F150** Words in s. 50(1) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 8(a)** (with s. 119); S.I. 2005/2034, art. 8
- F151** Words in s. 50(1) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 8(b)** (with s. 119); S.I. 2005/2034, art. 8
- F152** Word in s. 50(1)(a) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 8(c)** (with s. 119); S.I. 2005/2034, art. 8
- F153** Word in s. 50(1)(b) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 8(c)** (with s. 119); S.I. 2005/2034, art. 8
- F154** S. 50(4)(za) inserted (2.9.2002 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 3 para. 3** (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 4; S.I. 2003/1718, art. 5, Sch. Pt. II
- F155** Words in s. 50(5) substituted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 21 para. 101** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

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

- C77** Ss. 49-51: power to modify conferred (1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), **ss. 25(1)(b)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4

#### Commencement Information

- I14** S. 50 wholly in force; s. 50 not in force at Royal Assent see s. 145(3); s. 50(3) and (4) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I, **Sch. 2 Pt. I para. 1** and s. 50 in force at 1.4.1999 (so far as it is not already in force) by Sch. 1 Pt. IV of the same S.I.

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### *Suspension of financial delegation*

#### **51 Suspension of financial delegation for mismanagement etc. E+W**

Schedule 15 (which provides for the suspension by a local education authority of a governing body's right to a delegated budget in the case of failure to comply with requirements as to delegation or of financial mismanagement, etc.) shall have effect.

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

**C77** Ss. 49-51: power to modify conferred (1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), **ss. 25(1)(b)**, 216(4) (with **ss. 210(8)**, 214(4)); S.I. 2003/124, art. 4

*[<sup>F156</sup>Expenditure incurred for community purposes]*

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#### **Textual Amendments**

**F156** Cross-heading and s. 51A inserted (2.9.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 40**, 216, **Sch. 3 para. 4** (with **ss. 210(8)**, 214(4)); S.I. 2002/2002, **art. 4**

#### **[<sup>F157</sup>51A Expenditure incurred for community purposes E+W**

- (1) Expenditure incurred by the governing body of a maintained school in the exercise of the power conferred by section 27 of the Education Act 2002 (power of governing body to provide community facilities etc.) shall, as against third parties, be treated as part of the expenses of maintaining the school under section 22, but if met by the local education authority may be recovered by them from the governing body.
- (2) Except as provided by regulations under section 50(3)(b), no expenditure incurred by the governing body of a maintained school in the exercise of the power referred to in subsection (1) shall be met from the school's budget share for any [<sup>F158</sup>financial year][<sup>F158</sup>funding period].
- (3) Subsection (2) applies at a time when the school does not have a delegated budget by virtue of any suspension under section 17 or Schedule 15, as well as a time when it does have a delegated budget.]

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#### **Textual Amendments**

**F157** S. 51A and cross-heading inserted (2.9.2002 for E., 1.9.2003 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 3 para. 4** (with **ss. 210(8)**, 214(4)); S.I. 2002/2002, art. 4; S.I. 2003/1718, art. 5, **Sch. Pt. II**

**F158** Words in s. 51A(2) substituted (1.11.2005 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 9** (with s. 119); S.I. 2005/2034, art. 8

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## Information

### 52 Financial statements. **E+W**

- (1) Before the beginning of each [<sup>F159</sup>financial year][<sup>F159</sup>prescribed period] a local education authority shall prepare a statement containing such information relating to their planned expenditure in [<sup>F160</sup>that year][<sup>F160</sup>that period] as may be prescribed.
- [<sup>F161</sup>(1A) The periods prescribed for the purposes of subsection (1)—
- (a) must consist of one or more funding periods, and
  - (b) may include funding periods in respect of which (by virtue of their inclusion in one or more earlier periods prescribed for the purposes of that subsection) information relating to planned expenditure has previously been required under that subsection.]
- (2) After the end of each [<sup>F162</sup>financial year][<sup>F162</sup>prescribed period] a local education authority shall prepare a statement containing such information with respect to the following matters as may be prescribed—
- (a) the planned expenditure in that [<sup>F163</sup>year][<sup>F163</sup>period] specified in the statement prepared by the authority under subsection (1),
  - (b) expenditure actually incurred, or treated by the authority as having been incurred, by them in the [<sup>F163</sup>year][<sup>F163</sup>period], [<sup>F164</sup>and]
  - (c) any other resources allocated by the authority in the [<sup>F163</sup>year][<sup>F163</sup>period] to schools maintained by them during any part of the [<sup>F163</sup>year][<sup>F163</sup>period]. [<sup>F165</sup>and
  - (d) accountable resources held, received or expended in the [<sup>F163</sup>year][<sup>F163</sup>period] by any person in relation to a school maintained by the authority.]
- [<sup>F166</sup>(2A) In subsection (2)(d), “accountable resources”, in relation to a maintained school, means any resources which are not provided by the local education authority but in respect of which an obligation is imposed on the governing body of the school by virtue of regulations under section 44 of the Education Act 2002 (accounts of maintained schools).]
- [<sup>F167</sup>(2B) The periods prescribed for the purposes of subsection (2) must consist of one or more funding periods.]
- (3) A statement under this section shall—
- (a) be prepared in such form, and
  - (b) be published in such manner and at such times,
- as may be prescribed.
- (4) The authority shall furnish the governing body and head teacher of each school maintained by them with a copy of each statement prepared by the authority under this section or, if regulations so provide, with a copy of such part or parts of it as may be prescribed.
- (5) A governing body provided with such a copy under subsection (4) shall secure that a copy of it is available for inspection (at all reasonable times and free of charge) at the school.
- (6) Subsection (5) does not apply to a temporary governing body of a new school at any time before the school opening date.



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### Textual Amendments

- F159** Words in s. 52(1) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(2)(a)** (with s. 119); S.I. 2005/2034, art. 8
- F160** Words in s. 52(1) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(2)(b)** (with s. 119); S.I. 2005/2034, art. 8
- F161** S. 52(1A) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(3)** (with s. 119); S.I. 2005/2034, art. 8
- F162** Words in s. 52(2) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(4)(a)** (with s. 119); S.I. 2005/2034, art. 8
- F163** Word in s. 52(2)(a)-(d) substituted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(4)(b)** (with s. 119); S.I. 2005/2034, art. 8
- F164** Word in s. 52(2)(b) repealed (1.4.2003 for E.) by Education Act 2002 (c. 32), ss. 45(2), 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4
- F165** S. 52(2)(d) and word inserted (1.4.2003 for E.) by Education Act 2002 (c. 32), **ss. 45(2)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4
- F166** S. 52(2A) inserted (1.4.2003 for E.) by Education Act 2002 (c. 32), **ss. 45(3)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4
- F167** S. 52(2B) inserted (1.11.2005 for E.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 10(5)** (with s. 119); S.I. 2005/2034, art. 8

## 53 Certification of statements by Audit Commission. **E+W**

- (1) A local education authority [<sup>F168</sup>in England] shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 28(1)(d) of the <sup>M14</sup>Audit Commission Act 1998 for certifying—
- such statement or statements prepared by the authority under section 52 above, or
  - such part or parts of any such statement or statements,
- as may be specified in the directions; and for the purposes of section 28(1)(d) of that Act any statement under section 52 above shall be treated as a return by the authority.
- (2) The arrangements made by the Audit Commission in pursuance of subsection (1) shall include arrangements for sending to the Secretary of State—
- a copy of the statement or statements so certified, or
  - a copy of the part or parts so certified,
- as the case may be.
- (3) Directions given under subsection (1) may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.

### Textual Amendments

- F168** Words in s. 53(1) inserted (1.4.2005) by Public Audit (Wales) Act 2004 (c. 23), s. 73, **Sch. 2 para. 40**; S.I. 2005/558, art. 2, Sch. 1

### Marginal Citations

- M14** 1998 c. 18.

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### [<sup>F169</sup> 53A Certification of statements by Auditor General for Wales **E+W**

- (1) A local education authority in Wales shall, if directed to do so by the National Assembly for Wales, require the Auditor General for Wales to make arrangements in accordance with section 96B(1)(d) of the Government of Wales Act 1998 for certifying—
- (a) such statement or statements prepared by the authority under section 52 above, or
  - (b) such part or parts of any such statement or statements,
- as may be specified in the directions; and for the purposes of section 96B(1)(d) of that Act any statement under section 52 above shall be regarded as a return by the authority.
- (2) The arrangements made by the Auditor General for Wales in pursuance of subsection (1) shall include arrangements for sending to the National Assembly for Wales—
- (a) a copy of the statement or statements so certified, or
  - (b) a copy of the part or parts so certified,
- as the case may be.
- (3) Directions given under subsection (1) may relate to any local education authority or to local education authorities generally or to any class or description of such authority.]

#### Textual Amendments

**F169** S. 53A inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), s. 73, [Sch. 2 para. 41](#); S.I. 2005/558, art. 2, [Sch. 1](#)

## CHAPTER V **E+W**

### STAFFING AND CONDUCT OF SCHOOLS

#### *Staffing of schools*

### <sup>F170</sup> 54 **Staffing of community, voluntary controlled and community special schools.** **E+W**

.....

#### Textual Amendments

**F170** Ss. 54-57 repealed (1.10.2002 for E. for repeal of s. 57, 1.9.2003 for E for repeal of ss. 54-56, 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/1667, [art. 4](#); S.I. 2006/879, art. 4, [Sch.](#)

### <sup>F170</sup> 55 **Staffing of foundation, voluntary aided and foundation special schools.** **E+W**

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**Textual Amendments**

**F170** Ss. 54-57 repealed (1.10.2002 for E. for repeal of s. 57, 1.9.2003 for E for repeal of ss. 54-56, 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/1667, [art. 4](#); S.I. 2006/879, [art. 4](#), [Sch.](#)

**<sup>F170</sup>56 Staffing for non-school activities. E+W**

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**Textual Amendments**

**F170** Ss. 54-57 repealed (1.10.2002 for E. for repeal of s. 57, 1.9.2003 for E for repeal of ss. 54-56, 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/1667, [art. 4](#); S.I. 2006/879, [art. 4](#), [Sch.](#)

**<sup>F170</sup>57 Payments in respect of dismissal, etc. E+W**

.....

**Textual Amendments**

**F170** Ss. 54-57 repealed (1.10.2002 for E. for repeal of s. 57, 1.9.2003 for E for repeal of ss. 54-56, 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#); S.I. 2003/1667, [art. 4](#); S.I. 2006/879, [art. 4](#), [Sch.](#)

*Appointment and dismissal of teachers of religious education*

**58 Appointment and dismissal of certain teachers at schools with a religious character. E+W**

- (1) In this section—
- (a) subsections (2) to (6) apply to a foundation or voluntary controlled school which has a religious character; and
  - (b) subsection (7) applies (subject to subsection (8)) to a voluntary aided school which has a religious character;
- and references in this Chapter to a school which has (or does not have) a religious character shall be construed in accordance with section 69(3).
- (2) Where the number of [<sup>F171</sup>teachers at] a school to which this subsection applies is more than two, [<sup>F172</sup>the teachers shall] include persons who—
- (a) are selected for their fitness and competence to give such religious education as is required in accordance with arrangements under paragraph 3(3) of Schedule 19 (arrangements for religious education in accordance with the school’s trust deed or with the tenets of the school’s specified religion or religious denomination), and
  - (b) are specifically appointed to do so.

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- (3) The number of reserved teachers in such a school shall not exceed one-fifth of [<sup>F173</sup>the total number of teachers], including the head teacher (and for this purpose, where [<sup>F173</sup>the total number of teachers] is not a multiple of five, it shall be treated as if it were the next higher multiple of five).
- (4) The head teacher of such a school shall not, [<sup>F174</sup>while he remains] head teacher of the school, be a reserved teacher.
- (5) Where the appropriate body propose to appoint a person to be a reserved teacher in such a school, that body—
- (a) shall consult the foundation governors, and
  - (b) shall not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (2)(a).
- (6) If the foundation governors of such a school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they [<sup>F175</sup>may—
- (a) in the case of a teacher who is an employee, require the appropriate body to dismiss him from employment as a reserved teacher at the school, and
  - (b) in the case of a teacher who is engaged otherwise than under a contract of employment, require the governing body to terminate his engagement.]
- (7) If a teacher appointed to give religious education in a school to which this subsection applies fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority.
- (8) Subsection (7) does not apply—
- (a) where the school has a delegated budget, or
  - (b) to religious education in accordance with an agreed syllabus.
- (9) In this section—
- “the appropriate body” means—
- (a) in relation to a foundation school, the governing body, and
  - (b) in relation to a voluntary controlled school, the local education authority;
- “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed [<sup>F176</sup>or engaged] at the school in pursuance of subsection (2).

### Textual Amendments

- F171** Words in s. 58(2) substituted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(2)(a)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).
- F172** Words in s. 58(2) substituted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(2)(b)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).
- F173** Words in s. 58(3) substituted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(3)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).
- F174** Words in s. 58(4) substituted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(4)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).
- F175** Words in s. 58(6) substituted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(5)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).
- F176** Words in s. 58(9) inserted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 6(6)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch. 216(4).

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

- C80** S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, **reg. 49(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, **reg. 50(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, **reg. 51(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2243, **reg. 52(3)**.  
S. 58(2)-(6)(9) applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 49(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 51(3)**.  
S. 58(2)-(6)(9) applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(3)**.
- C81** S. 58(7) applied (1.9.1999) by S.I. 1999/2243, **reg. 52(4)**.  
S. 58(7) applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(4)**.

*Religious opinions etc. of staff*

**59 Staff at community, secular foundation or voluntary, or special school. E+W**

- (1) This section applies to—
- a community school or a community or foundation special school, or
  - a foundation or voluntary school which does not have a religious character.
- (2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—
- from being a teacher at the school, or
  - from being employed [<sup>F177</sup>or engaged] for the purposes of the school otherwise than as a teacher.
- (3) No teacher at the school shall be required to give religious education.
- (4) No teacher at the school shall receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage—
- by reason of the fact that he does or does not give religious education, or
  - by reason of his religious opinions or of his attending or omitting to attend religious worship.

**Textual Amendments**

- F177** Words in s. 59(2)(b) inserted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 3 para. 7** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch.

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

- C82** S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 49(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 50(4)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2243, **reg. 51(2)**.  
S. 59 applied with modifications (1.9.1999) by S.I. 1999/2243, **reg. 52(5)**.  
S. 59 applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 49(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(4)**.  
S. 59 applied with modifications (1.9.1999) by S.I. 1999/2262, **regs. 48, 51(2)**.  
S. 59 applied (1.9.1999) by S.I. 1999/2262, **regs. 48, 52(4)**.
- C83** S. 59(2)-(4) modified (1.9.1999) by S.I. 1999/2243, **reg. 50(5)**.  
S. 59(2)-(4) applied (with modifications) by S.I. 1999/2243, **reg. 52(6)**.  
S. 59(2)-(4) applied (with modifications) (1.9.1999) by S.I. 1999/2262, **regs. 48, 50(5)**.

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S. 59(2)-(4) applied (with modifications) (1.9.1999) by S.I. 1999/2262, regs. 48, 52(6).

## 60 Staff at foundation or voluntary school with religious character. **E+W**

- (1) This section applies to a foundation or voluntary school which has a religious character.
- (2) If the school is a foundation or voluntary controlled school, then (subject to subsections (3) and (4) below) section 59(2) to (4) shall apply to the school as they apply to a foundation or voluntary controlled school which does not have a religious character.
- (3) Section 59(2) to (4) shall not so apply in relation to a reserved teacher at the school; and instead subsection (5) below shall apply in relation to such a teacher as it applies in relation to a teacher at a voluntary aided school.
- (4) In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) regard may be had to that person's ability and fitness to preserve and develop the religious character of the school.
- (5) If the school is a voluntary aided school—
  - (a) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons—
    - (i) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or
    - (ii) who attend religious worship in accordance with those tenets, or
    - (iii) who give, or are willing to give, religious education at the school in accordance with those tenets; and
  - (b) regard may be had, in connection with the termination of the employment [<sup>F178</sup>or engagement] of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.
- (6) If the school is a voluntary aided school, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed [<sup>F179</sup>or engaged] for the purposes of the school otherwise than as a teacher.
- (7) Where immediately before the appointed day a teacher at a school which on that day becomes a school to which this section applies enjoyed, by virtue of section 304 or 305 of the <sup>M15</sup>Education Act 1996 (religious opinions of staff etc.), any rights not conferred on him by this section as a teacher at a school to which it applies, he shall continue to enjoy those rights (in addition to those conferred by this section) until he ceases to be employed as a teacher at the school.
- (8) In this section “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of section 58(2).

### Textual Amendments

**F178** Words in s. 60(5)(b) inserted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 3 para. 8(2) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch.

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**F179** Words in s. 60(6) inserted (1.9.2003 for E., 1.4.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 3 para. 8(3) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2006/879, art. 4, Sch.

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

- C84** S. 60 applied (1.9.1999) by S.I. 1999/2243, reg. 49(3).  
S. 60 applied (1.9.1999) by S.I. 1999/2243, reg. 50(5).  
S. 60 applied (1.9.1999) by S.I. 1999/2243, reg. 51(3).  
S. 60 applied (1.9.1999) by S.I. 1999/2243, reg. 52(6).  
S. 60 applied (with modifications) (1.9.1999) by S.I. 1999/2262, regs. 48, 49(3).  
S. 60 applied (1.9.1999) by S.I. 1999/2262, regs. 48, 50(5).  
S. 60 applied (1.9.1999) by S.I. 1999/2262, regs. 48, 51(3).  
S. 60 applied (1.9.1999) by S.I. 1999/2262, regs. 48, 52(6).

**Marginal Citations**

**M15** 1996 c. 56.

*Discipline: general*

**61 Responsibility of governing body and head teacher for discipline. E+W**

- (1) The governing body of a maintained school shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
  - (a) shall make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under subsection (4); and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate;and in exercising their functions under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body shall consult (in such manner as appears to them to be appropriate)—
  - (a) the head teacher; and
  - (b) parents of registered pupils at the school.
- (4) The head teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—
  - (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;
  - (c) securing that the standard of behaviour of pupils is acceptable; and
  - (d) otherwise regulating the conduct of pupils.
- (5) The head teacher shall in determining such measures—

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- (a) act in accordance with the current statement made by the governing body under subsection (2)(a); and
  - (b) have regard to any notification or guidance given to him under subsection (2)(b).
- (6) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the head teacher, so far as it is not determined by the governing body.
- (7) The measures determined by the head teacher under subsection (4) shall be publicised by him in the form of a written document as follows—
- (a) he shall make the measures generally known within the school and to parents of registered pupils at the school; and
  - (b) he shall in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons employed, or otherwise engaged to provide their services, at the school.

[<sup>F180</sup>(8) In this section “maintained school” includes a maintained nursery school.]

#### Textual Amendments

**F180** S. 61(8) inserted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 21 para. 102** (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2003/1667](#), art. 4; [S.I. 2005/2910](#), art. 4, Sch.

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

**C85** S. 61 applied with modifications (1.9.1999) by [S.I. 1999/2262](#), **reg. 59**.

**C86** S. 61 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), **regs. 1, 31**

**C87** S. 61 modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), **3(d)**

**C88** S. 61 applied (with modifications) (E.) (1.9.2005) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2005 \(S.I. 2005/2039\)](#), reg. 1(1), **Sch. 1 para. 5**

**C89** S. 61 applied (with modifications) (W.) (31.10.2005) by [The New Maintained Schools \(Wales\) Regulations 2005 \(S.I. 2005/2912\)](#), **regs. 1(1), 30(1)** (with [reg. 30\(2\)](#))

**C90** S. 61 extended (with modifications) (1.9.1999) by [S.I. 1999/2243](#), **reg. 59**.

## 62 LEA’s reserve power to prevent a breakdown of discipline. **E+W**

- (1) The local education authority may, in the circumstances mentioned in subsection (2) or where subsection (3) applies, take such steps in relation to a maintained school as they consider are required to prevent the breakdown, or continuing breakdown, of discipline at the school.
- (2) The circumstances are that—
- (a) in the opinion of the authority—
    - (i) the behaviour of registered pupils at the school, or
    - (ii) any action taken by such pupils or their parents,
 is such that the education of any registered pupils at the school is (or is likely in the immediate future to become) severely prejudiced; and
  - (b) the governing body have been informed in writing of the authority’s opinion.
- (3) This subsection applies where—



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- (a) a warning notice has been given in accordance with section 15(2) referring to the safety of pupils or staff at the school being threatened by a breakdown of discipline at the school,
- (b) the governing body have failed to comply, or secure compliance, with the notice to the authority’s satisfaction within the compliance period, and
- (c) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under subsection (1) of this section (whether or not in conjunction with exercising their powers under either or both of sections 16 and 17);

and a notice under paragraph (c) of this subsection may be combined with a notice under section 15(1)(c).

- (4) Steps taken by a local education authority under subsection (1) may include the giving of any direction to the governing body or head teacher.

[<sup>F181</sup>(5) In this section “maintained school” includes a maintained nursery school.]

#### Textual Amendments

**F181** S. 62(5) inserted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 21 para. 103** (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2003/1667](#), art. 4; [S.I. 2005/2910](#), art. 4, Sch.

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

**C91** S. 62 modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), **3(d)**

**C92** S. 62(1)(2) applied (with modifications) (E.) (1.9.2005) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2005 \(S.I. 2005/2039\)](#), reg. 1(1), **Sch. 1 para. 6**

**C93** S. 62(4) applied (with modifications) (E.) (1.9.2005) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2005 \(S.I. 2005/2039\)](#), reg. 1(1), **Sch. 1 para. 6**

### *School attendance targets*

## **63 School attendance targets.** **E+W**

- (1) Regulations may make provision for and in connection with—
  - (a) requiring, or
  - (b) enabling the Secretary of State to require, governing bodies of maintained schools to secure that annual targets are set for reducing the level of <sup>F182</sup>... absences on the part of relevant day pupils at their schools.
- (2) Regulations under this section may, in particular, make provision—
  - (a) for the Secretary of State to impose such a requirement on the governing body of a maintained school where—
    - (i) the specified condition is for the time being satisfied in relation to the school, and
    - (ii) he considers it appropriate to impose the requirement;
  - (b) for such a requirement to be imposed by the Secretary of State in such manner, and for such period, as may be specified in or determined in accordance with the regulations;

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- (c) for the Secretary of State, where he considers it appropriate to do so, to exempt the governing body of a maintained school, in relation to any school year, from a requirement imposed by virtue of subsection (1)(a) or (b).
- (3) For the purposes of subsection (2)(a)(i) the specified condition is for the time being satisfied in relation to a maintained school if in the previous school year the level of <sup>F183</sup>... absences on the part of relevant day pupils at the school (as determined in accordance with the regulations) exceeded such level as may for that year be specified in or determined in accordance with the regulations.
- [<sup>F184</sup>(3A) Provision made by regulations under this section may relate to—
- (a) absences which are authorised pursuant to regulations under section 434 of the Education Act 1996, or
- (b) absences which are not so authorised, or
- (c) both.]
- (4) In this section—
- “relevant day pupil” means a pupil registered at a maintained school who is of compulsory school age and is not a boarder;
- <sup>F185</sup>...

#### Textual Amendments

- F182** Word in s. 63(1) repealed (1.6.2004 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), ss. 53(2), 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2004/1318, art. 2; S.I. 2005/2910, art. 4, Sch.
- F183** Word in s. 63(3) repealed (1.6.2004 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), ss. 53(2), 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2004/1318, art. 2; S.I. 2005/2910, art. 4, Sch.
- F184** S. 63(3A) inserted (1.6.2004 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), ss. 53(3), 216(4) (with ss. 210(8), 214(4)); S.I. 2004/1318, art. 2; S.I. 2005/2910, art. 4, Sch.
- F185** Words in s. 63(4) repealed (1.6.2004 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), ss. 53(4), 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2004/1318, art. 2; S.I. 2005/2910, art. 4, Sch.

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

- C94** S. 63 extended (*temp.*) (16.2.1999) by S.I. 1999/129, **reg.2**.

### Exclusion of pupils

#### <sup>F186</sup>64 Power of head teacher to exclude pupils. **E+W**

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#### Textual Amendments

- F186** Ss. 64-68 repealed (20.1.2003 for E., 9.1.2004 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2003/2961, art. 7, Sch. Pt. IV

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**F186 65 Exclusion of pupils: duty to inform parents, etc. E+W**

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**Textual Amendments**

**F186** Ss. 64-68 repealed (20.1.2003 for E., 9.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2003/2961, art. 7, Sch. Pt. IV

**F186 66 Functions of governing body in relation to excluded pupils. E+W**

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**Textual Amendments**

**F186** Ss. 64-68 repealed (20.1.2003 for E., 9.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2003/2961, art. 7, Sch. Pt. IV

**F186 67 Appeals against exclusion of pupils. E+W**

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**Textual Amendments**

**F186** Ss. 64-68 repealed (20.1.2003 for E., 9.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2003/2961, art. 7, Sch. Pt. IV

**F186 68 Exclusion of pupils: guidance. E+W**

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**Textual Amendments**

**F186** Ss. 64-68 repealed (20.1.2003 for E., 9.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2003/2961, art. 7, Sch. Pt. IV

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## CHAPTER VI E+W

### RELIGIOUS EDUCATION AND WORSHIP

#### *Religious education*

#### 69 **Duty to secure due provision of religious education.** E+W

- (1) Subject to section 71, in relation to any community, foundation or voluntary school—
  - (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
  - (b) the head teacher shall secure,
 that religious education is given in accordance with the provision for such education included in the school's basic curriculum by virtue of [<sup>F187</sup>section 80(1)(a) or 101(1) (a) of the Education Act 2002].
- (2) Schedule 19 has effect for determining the provision for religious education which is required by [<sup>F188</sup>section 80(1)(a) or 101(1)(a)] of that Act to be included in the basic curriculum of schools within each of the following categories, namely—
  - (a) community schools and foundation and voluntary schools which do not have a religious character,
  - (b) foundation and voluntary controlled schools which have a religious character, and
  - (c) voluntary aided schools which have a religious character.
- (3) For the purposes of this Part a foundation or voluntary school has a religious character if it is designated as a school having such a character by an order made by the Secretary of State.
- (4) An order under subsection (3) shall state, in relation to each school designated by the order, the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 (or, as the case may be, each such religion or religious denomination).
- (5) The procedure to be followed in connection with—
  - (a) the designation of a school in an order under subsection (3), and
  - (b) the inclusion in such an order, in relation to a school, of the statement required by subsection (4),
 shall be specified in regulations.

#### **Textual Amendments**

**F187** Words in s. 69(1) substituted (1.10.2002 for E. for specified purposes, 19.12.2002 for W., 1.3.2003 for E. so far as not already in force) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 104\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#), (with Sch.); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1; S.I. 2003/124, [art. 2](#)

**F188** Words in s. 69(2) substituted (1.10.2002 for E. for specified purposes, 19.12.2002 for W., 1.3.2003 for E. so far as not already in force) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 104\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#), (with Sch.); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1; S.I. 2003/124, [art. 2](#)

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#### Commencement Information

- I15** S. 69 wholly in force at 1.9.1999; s. 69 not in force at Royal Assent see s. 145(3); s. 69(2)-(5) in force at 1.10.1998 by 1998/2212, art. 2, Sch. 1, Pt. I; s. 69 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### *Religious worship*

#### **70 Requirements relating to collective worship. E+W**

- (1) Subject to section 71, each pupil in attendance at a community, foundation or voluntary school shall on each school day take part in an act of collective worship.
- (2) Subject to section 71, in relation to any community, foundation or voluntary school—
  - (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
  - (b) the head teacher shall secure,that subsection (1) is complied with.
- (3) Schedule 20 makes further provision with respect to the collective worship required by this section, including provision relating to—
  - (a) the arrangements which are to be made in connection with such worship, and
  - (b) the nature of such worship.

### *Exceptions and special arrangements etc.*

#### **71 Exceptions and special arrangements; provision for special schools. E+W**

- (1) If the parent of a pupil at a community, foundation or voluntary school requests that he may be wholly or partly excused—
  - (a) from receiving religious education given in the school in accordance with the school's basic curriculum,
  - (b) from attendance at religious worship in the school, or
  - (c) both from receiving such education and from such attendance,the pupil shall be so excused until the request is withdrawn.
- (2) In subsection (1)—
  - (a) the reference to religious education given in accordance with the school's basic curriculum is to such education given in accordance with the provision included in the school's basic curriculum by virtue of [F189]section 80(1)(a) or 101(1)(a) of the Education Act 2002], and
  - (b) the reference to religious worship in the school includes religious worship which by virtue of paragraph 2(6) of Schedule 20 takes place otherwise than on the school premises.
- (3) Where in accordance with subsection (1) a pupil has been wholly or partly excused from receiving religious education or from attendance at religious worship and the local education authority are satisfied—
  - (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused,

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- (b) that the pupil cannot with reasonable convenience be sent to another community, foundation or voluntary school where religious education of the kind desired by the parent is provided, and
  - (c) that arrangements have been made for him to receive religious education of that kind during school hours elsewhere,
- the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.
- (4) A pupil may not be withdrawn from school under subsection (3) unless the local education authority are satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of a school session (or, if there is only one, the school session) on that day.
- (5) Where the parent of a pupil who is a boarder at a community, foundation or voluntary school requests that the pupil be permitted—
- (a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or
  - (b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs,
- the governing body shall make arrangements for giving the pupil reasonable opportunities for doing so.
- (6) Arrangements under subsection (5) may provide for making facilities for such education or worship available on the school premises, but any expenditure entailed by the arrangements shall not be met from the school's budget share or otherwise by the local education authority.
- (7) Regulations shall make provision for securing that, so far as practicable, every pupil attending a community or foundation special school—
- (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.

#### Textual Amendments

**F189** Words in s. 71(2)(a) substituted (1.10.2002 for E. for specified purposes, 19.12.2002 for W., 1.3.2003 for E. so far as not already in force) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 105](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#), (with Sch.); [S.I. 2002/3185](#), [art. 4](#), Sch. Pt. 1; [S.I. 2003/124](#), [art. 2](#)

#### Commencement Information

**I16** S. 71 wholly in force at 1.9.1999; s. 71 not in force at Royal Assent see s. 145(3); s. 71(7) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1](#), Pt. I; s. 71 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-5, [Schs. 5-7](#)).

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## CHAPTER VII **E+W**

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Further provisions relating to new schools*

#### **72 Further provisions relating to new schools. **E+W****

- (1) Regulations may make provision for—
  - (a) the staffing and conduct of a new school in advance of the school opening date;
  - (b) the determination of matters in connection with a new school in advance of that date;
  - (c) the taking of decisions by a temporary governing body, or (where power to do so is delegated to him) by the head teacher, as to expenditure in connection with a new school at a time when it does not have a delegated budget;
  - (d) such other matters relating to new schools as the Secretary of State considers appropriate.
- (2) Regulations under subsection (1) may, in connection with any matters falling within that subsection, apply any provision of the Education Acts with or without modification.
- (3) In this section “new school” means a school or proposed school—
  - (a) for which there is a temporary governing body constituted under <sup>F190</sup>section 34 of the Education Act 2002], or
  - (b) for which there is no such body but for which such a body—
    - (i) are required to be so constituted by virtue of subsection (1) of that section, or
    - (ii) may be so constituted in accordance with such anticipatory arrangements as are mentioned in subsection (5)(a) of that section.

#### **Textual Amendments**

**F190** Words in s. 72(3)(a) substituted (1.4.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 106](#) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2005/2910, art. 4, Sch.

#### *Transfers of staff and land*

#### **73 Transfer of staff on appointed day. **E+W****

- (1) Subsections (5) to (7) below (“the staff transfer provisions”) apply where on the appointed day—
  - (a) a special agreement school becomes a voluntary aided school, or
  - (b) a grant-maintained school becomes a community or voluntary controlled school, or
  - (c) a grant-maintained special school becomes a community special school, in accordance with Schedule 2.

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- (2) Subject to subsection (3), the staff transfer provisions apply in the circumstances mentioned in subsection (1) to any person who immediately before the appointed day—
- (a) is employed by the local education authority to work solely at an existing school within subsection (1)(a), or
  - (b) is employed by the local education authority to work at such an existing school and is designated for the purposes of this subsection by an order made by the Secretary of State, or
  - (c) is employed by the governing body of an existing school within subsection (1) (b) or (c).
- (3) The staff transfer provisions do not apply—
- (a) to any person employed as mentioned in subsection (2) whose contract of employment terminates on the day immediately preceding the appointed day; or
  - (b) to any person employed as mentioned in subsection (2)(a) or (b) who before that day—
    - (i) has been appointed or assigned by the local education authority to work solely at another school as from that day, or
    - (ii) has been withdrawn from work at the school with effect from that day.
- (4) A person who before the appointed day has been appointed or assigned by—
- (a) the local education authority, or
  - (b) the governing body of an existing school within subsection (1)(b) or (c),
- to work at a school, or (as the case may be) at the existing school, as from that day shall be treated for the purposes of this section as if he had been employed by the authority or governing body immediately before that day to do such work at the school as he would have been required to do on or after that day under his contract of employment with the authority or that body.
- (5) The contract of employment between a person to whom the staff transfer provisions apply and his former employer shall have effect from the appointed day as if originally made between him and his new employer.
- (6) Without prejudice to subsection (5)—
- (a) all the former employer’s rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this section be transferred to the new employer on the appointed day, and
  - (b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the new employer.
- (7) Subsections (5) and (6) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (8) In this section—
- “existing school” means a school which becomes a school of a different category on the appointed day as mentioned in subsection (1), and “new school” means the school of a different category which an existing school then becomes;



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“the former employer” and “the new employer”—

- (a) where the staff transfer provisions apply by virtue of subsection (2)(a) or (b), means the local education authority and the governing body of the new school respectively, and
- (b) where the staff transfer provisions apply by virtue of subsection (2)(c), means the governing body of the existing school and the local education authority respectively;

and references to a special agreement, grant-maintained or grant-maintained special school are references to such a school within the meaning of the <sup>M16</sup>Education Act 1996.

- (9) A person employed by a local education authority in connection with the provision of meals shall not be regarded for the purposes of subsection (2)(a) as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.
- (10) An order under this section may designate a person either individually or as a member of a class or description of employees.

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

**C95** S. 73 excluded (10.3.1999) by [S.I. 1999/362](#), [reg.56](#).

**Marginal Citations**

**M16** 1996 c. 56.

**74 Transfer of land on appointed day. E+W**

Schedule 21 (which makes provision for transfers of land and certain rights and liabilities on the appointed day in respect of schools which become community, foundation, voluntary or community special schools on that day) shall have effect.

**75 Transfer of land by governing body to trustees. E+W**

- (1) Where a building is to be provided for a foundation or voluntary school and the building—
  - (a) is to form part of the school premises, and
  - (b) is to be constructed partly on land held by the governing body and partly on land held on trust for the purposes of the school by persons other than the governing body,

the governing body shall transfer to those persons the land held by the governing body on which the building is to be constructed.

- (2) Paragraph 1 of Schedule 22 does not apply to any transfer required by subsection (1).

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### *Disposals of land and on discontinuance*

**76 Disposals of land in case of certain schools and disposals on discontinuance. E**  
+W

Schedule 22 (which makes provision as to the disposal of land held for the purposes of foundation, voluntary or foundation special schools and as to the property of maintained schools on their discontinuance) shall have effect.

**77 Control of disposals or changes in use of school playing fields. E+W**

- (1) Except with the consent of the Secretary of State, a body to whom this subsection applies shall not dispose of any playing fields—
  - (a) which are, immediately before the date of the disposal, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date.
- (2) Subsection (1) applies—
  - (a) to a local authority; and
  - (b) in any case where the consent of the Secretary of State is not required to any such disposal by virtue of either of paragraphs 1 and 2 of Schedule 22—
    - (i) to the governing body of a maintained school, and
    - (ii) to a foundation body.
- (3) Except with the consent of the Secretary of State, a local authority shall not take any action (other than the making of a disposal falling within subsection (1)) which is intended or likely to result in a change of use of any playing fields—
  - (a) which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school, or
  - (b) which are not then so used but have been so used at any time within the period of 10 years ending with that date,

whereby the playing fields will be used for purposes which do not consist of or include their use as playing fields by such a school for the purposes of the school.
- (4) Subsection (3) does not, however, apply where the land in question will, on a change of use falling within that subsection, become used in connection with the provision by a local authority of educational facilities for a maintained school or any recreational facilities.
- (5) For the purposes of this section the Secretary of State’s consent may be given in relation to a particular disposal or change of use or generally in relation to disposals or changes of use of a particular description, and in either case may be given subject to conditions.
- (6) This section has effect despite anything in section 123 or 127 of the <sup>M17</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment; and any consent which a local authority are required to obtain by virtue of this section shall be in addition to any consent required by virtue of either of those sections.
- (7) In this section—
 

“local authority” includes a parish council;

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“playing fields” means land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land.

- (8) For the purposes of this section any reference to a maintained school includes, in relation to any time falling before the appointed day, a reference to the school as—
- (a) a county, voluntary or maintained special school, or
  - (b) a grant-maintained or grant-maintained special school,
- within the meaning of the <sup>M18</sup>Education Act 1996.
- (9) Nothing in this section applies in relation to Wales.

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

- C96** S. 77(1) restricted (28.7.2000) by 2000 c. 21, s. 131, **Sch. 8 para. 9(3)** (with s. 150)
- C97** S. 77(1) excluded (26.7.2002) by Education Act 1996 (c. 56), **Sch. 35A para. 10(4)** (as inserted by Education Act 2002 (c. 32), ss. 65, 216, **Sch. 7 Pt. 1 para. 1** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**)
- C98** S. 77 modified (*temp.*) (1.2.1999) by S.I. 1999/1, **reg.2**

**Commencement Information**

- I17** S. 77 wholly in force; s. 77 not in force at Royal Assent see s. 145(3); s. 77 except subsection (2)(b) in force at 1.10.1998 by S.I. 1998/2212, **art. 2, Sch. 1 Pt. I**; s. 77(2)(b) in force at 1.2.1999 by S.I. 1998/3198, **art. 2(2), Sch.**

**Marginal Citations**

- M17** 1972 c. 70.  
**M18** 1996 c. 56.

*Rating*

**78 Rating of maintained schools. E+W**

For the purposes of Part III of the <sup>M19</sup>Local Government Finance Act 1988 (non-domestic rating) the occupier of any hereditament so far as consisting of the premises of a maintained school shall be taken to be—

- (a) the local education authority, where it is a community, voluntary controlled or community special school; or
- (b) the governing body, where it is a foundation, voluntary aided or foundation special school.

**Marginal Citations**

- M19** 1988 c. 41.

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### *Stamp duty*

#### 79 Stamp duty. **E+W**

- (1) Subject to subsection (2), stamp duty shall not be chargeable in respect of any transfer to a local authority under any of the following provisions, namely—
  - (a) paragraph 4 or 7 of Schedule 21 or any corresponding provision of regulations under paragraph 10 of Schedule 2,
  - (b) paragraph 4(2), 5(4), 6(2)(b), 7(2) or 8(2)(b) of Schedule 22, or
  - (c) any regulations under paragraph 5 of Schedule 8.
- (2) No instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in subsection (1) shall be treated as duly stamped unless—
  - (a) it is stamped with the duty to which it would be liable but for that subsection, or
  - (b) it has, in accordance with section 12 of the <sup>M20</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.
- (3) In subsection (1) any reference to a transfer under any provision or regulations mentioned in that subsection shall be read as a reference to a transfer under that provision or those regulations taken with section 198 of, and Schedule 10 to, the <sup>M21</sup>Education Reform Act 1988 if those provisions of that Act apply to the transfer by virtue of any provision of this Act or that Act.

#### Marginal Citations

**M20** 1891 c. 39.

**M21** 1988 c. 40.

#### [<sup>F191</sup>79A. Stamp duty land tax **E+W**

- (1) For the purposes of stamp duty land tax, a land transaction entered into by virtue of any of the provisions mentioned in section 79(1) is exempt from charge.
- (2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (3) In this section—
  - “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
  - “land transaction return” has the meaning given by section 76(1) of that Act.]

#### Textual Amendments

**F191** S. 79A inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 28**

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### *Further education*

#### **80 Provision of further education. E+W**

- (1) The governing body of any maintained school shall be responsible for determining whether or not to provide—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age; or
  - (b) full-time education suitable to the requirements of persons who have attained the age of 19;
- but the governing body of a community or foundation special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.
- (2) It shall be the duty of the governing body of any such school which provides such education to secure that, except in such circumstances as may be prescribed, such education is not provided at any time in a room where pupils are at that time being taught.
- (3) This section shall not apply to part-time education provided under a partnership arrangement to which section 60A of the <sup>M22</sup>Further and Higher Education Act 1992 (as inserted by section 125(4) of this Act) applies.

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

**C99** S. 80 excluded (1.9.2005) by [Education Act 2005 \(c. 18\)](#), **ss. 95(5), 125(3)(a)** (with s. 95(6))

#### **Marginal Citations**

**M22** 1992 c. 13.

### *Modification of employment law*

#### **81 Application of employment law during financial delegation. E+W**

- (1) The Secretary of State may by order make such modifications in any enactment relating to employment, and in particular in any enactment—
- (a) conferring powers or imposing duties on employers,
  - (b) conferring rights on employees, or
  - (c) otherwise regulating the relations between employers and employees,
- as he considers necessary or expedient in consequence of the operation of [<sup>F192</sup>sections 35 to 37 of the Education Act 2002 or of regulations under those sections].
- (2) Before making any order under this section the Secretary of State shall consult—
- (a) such associations of local authorities,
  - (b) such bodies representing the interests of governors of foundation or voluntary schools, and
  - (c) such organisations representing staff in maintained schools,
- as appear to him to be concerned.

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#### Textual Amendments

**F192** Words in s. 81(1) substituted (1.8.2003 for E., 1.4.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 21 para. 107](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 3; S.I. 2006/879, art. 4, Sch.

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

**C100** S. 81(2) modified (*temp.*) (1.4.1999) by [S.I. 1999/638](#), [reg. 9](#).

### *Supplementary provisions*

## 82 Modification of trust deeds. **E+W**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to—
  - (a) a school which is or is to become a foundation, voluntary or foundation special school, or
  - (b) property held on trust for the purposes of such a school,
 as appear to him to be necessary or expedient in connection with the operation of any provision of this Act [<sup>F193</sup>, the Learning and Skills Act 2000 or the Education Act 2002] or anything done under or for the purposes of any such provision.
- (2) Before making an order under this section the Secretary of State shall consult—
  - (a) the governing body of the school in question;
  - (b) any trustees holding property on trust for the purposes of the school;
  - (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
  - (d) such other persons as he considers appropriate.
- (3) Any modification made by an order under this section may be made so as to have permanent effect or to have effect for such period as is specified in the order.

#### Textual Amendments

**F193** Words in. 82(1) inserted (1.10.2002 for E. and 19.12.2002 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 108](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, [art. 3](#) (with Sch.); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1

## 83 Modification of provisions making governors of foundation or voluntary school ex officio trustees. **E+W**

- (1) Where any provision of a trust deed or other instrument made before 1st July 1981 would, apart from this subsection, have the effect that the persons who are for the time being governors of a foundation or voluntary school were by virtue of their office trustees of any property held for the purposes of, or in connection with, the school, that provision shall instead have effect as if the only governors of the school were—
  - (a) the foundation governors,
  - (b) those appointed by the local education authority, and
  - (c) any co-opted governor nominated by a minor authority.

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- (2) Subsection (1) is without prejudice to any power to amend any such provision as is mentioned in that subsection.

## PART III U.K.

### SCHOOL ADMISSIONS

#### CHAPTER I E+W

##### ADMISSION ARRANGEMENTS

*Code [F194 of practice][F194 for school admissions]*

#### Textual Amendments

**F194** Words in s. 84 cross-heading substituted (12.12.2006 for E.) by [Education and Inspections Act 2006](#) (c. 40), ss. 40(7), 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)

#### 84 Code [F195 of practice][F195 for school admissions]. E

- (1) The Secretary of State shall issue, and may from time to time revise, [F196 a code of practice containing such practical guidance][F196 a code for school admissions containing such provision] as he thinks appropriate in respect of the discharge by—
- (a) local education authorities,
  - (b) the governing bodies of maintained schools,
  - [F197 (ba) admission forums,]
  - (c) appeal panels, and
  - (d) adjudicators,
- of their respective functions under this Chapter.
- (2) The code may [F198 include guidelines setting out aims, objectives and other matters][F198 impose requirements, and may include guidelines setting out aims, objectives and other matters,] in relation to the discharge of their functions under this Chapter by local education authorities and such governing bodies.
- (3) It shall be the duty of—
- (a) each of the bodies and persons mentioned in subsection (1) when exercising functions under this Chapter, and
  - (b) any other person when exercising any function for the purposes of the discharge by a local education authority, or the governing body of a maintained school, of functions under this Chapter,
- [F199 to have regard to][F199 to act in accordance with] any relevant provisions of the code.
- (4) The Secretary of State shall publish the code as for the time being in force.
- (5) The Secretary of State may under subsection (1)—

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- (a) make separate provision (by means of separate codes [<sup>F200</sup>of practice]) in relation to different functions under this Chapter of the bodies and persons mentioned in that subsection;
- (b) make different provision for England and for Wales (whether or not by means of separate codes [<sup>F200</sup>of practice]);

and references in this section to “the code” or to functions under this Chapter shall have effect, in relation to any such separate code [<sup>F200</sup>of practice], as references to that code or to functions under this Chapter to which it relates (as the case may be).

(6) In this Chapter—

“admission arrangements” and “the admission authority” have the meaning given by section 88;

[<sup>F201</sup>“admission forum” means a forum established under section 85A, including a joint admission forum established in pursuance of regulations under subsection (3)(c) of that section;]

“appeal panel” means a panel constituted [<sup>F202</sup>in accordance with regulations under section 94(5) or 95(3)] for the purpose of hearing an appeal under this Chapter;

“child” (except in sections 96 and 97) includes a person who has not attained the age of 19;

“maintained school” means a community, foundation or voluntary school;

<sup>F203</sup>  
...

[<sup>F204</sup>(7) In this Chapter, references to a child who is looked after by a local authority are to be read in accordance with section 22(1) of the Children Act 1989.]

### Textual Amendments

- F195** Words in s. 84 heading substituted (12.12.2006 for E., 1.9.2008 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(7)**, 188(3); S.I. 2006/2990, **art. 2(a)** (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2); S.I. 2008/1429, art. 3(3), **Sch. Pt. 3** (with art. 4)
- F196** Words in s. 84(1) substituted (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(2)(a)**, 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F197** S. 84(1)(ba) inserted (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(2)(b)**, 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F198** Words in s. 84(2) substituted (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(3)**, 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F199** Words in s. 84(3) substituted (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(4)**, 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F200** Words in s. 84(5) repealed (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 40(5), 188(3), **Sch. 18 Pt. 6**; S.I. 2006/2990, art. 2(a)(k) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F201** Words in s. 84(6) inserted (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(6)**, 188(3); S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)
- F202** Words in s. 84(6) substituted (20.1.2003 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 2** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3)(4))



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- F203** Words in s. 84(6) repealed (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)) and S.I. 2006/173, reg. 5; S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.
- F204** S. 84(7) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 50(2)**, 188(3); S.I. 2006/3400, art. 3(c)

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

- C101** S. 84 modified (temp.)(22.4.1999) by S.I. 1999/1064, **reg.2**.  
S. 84 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), **2-8**.  
S. 84 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, **2-8**.
- C102** S. 84 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, **Sch. para. 1(b)**
- C103** S. 84 applied (with modifications) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, **Sch.** (with reg. 2(2))
- C104** S. 84(6) modified (6.1.1999) by S.I. 1998/3130, **reg.2**

## 85 [F205 Making and approval of code of practice][F205 Making and approval of code for school admissions]. **E**

- (1) Where the Secretary of State proposes to issue or revise a code [F206 of practice] under section 84, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament.
- (4) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the 40-day period, the Secretary of State shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Secretary of State may by order appoint.
- (6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.
- (7) In this section “40-day period”, in relation to the draft of a proposed code, means—
  - (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,
 no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) In this section references to a proposed code include a proposed revised code.

#### Subordinate Legislation Made

- P2** S. 85(5): 28.2.2007 appointed by S.I. 2007/566, art. 3

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### Textual Amendments

- F205** S. 85 heading substituted (12.12.2006 for E., 1.9.2008 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(8)(b)**, 188(3); S.I. 2006/2990, **art. 2(a)** (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2); S.I. 2008/1429, art. 3(3), **Sch. Pt. 3** (with art. 4)
- F206** Words in s. 85(1) repealed (12.12.2006 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 40(8)(a)**, 188(3), **Sch. 18 Pt. 6**; S.I. 2006/2990, art. 2(a)(k) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)

### <sup>F207</sup> Admission forums

### Textual Amendments

- F207** S. 85A cross-heading inserted (20.1.2003 for E., 1.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 46**, 216(4) (with **ss. 210(8)**, 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/2961, art. 4, Sch. Pt. I

<sup>F208</sup>  
85A

### Admission forums **E+W**

- (1) A local education authority shall in accordance with regulations establish for their area a body, to be known as an admission forum, for the purpose of—
- (a) advising the authority on such matters connected with the exercise of the authority's functions under this Chapter as may be prescribed, <sup>F209</sup> ...
  - (b) advising the admission authorities for maintained schools in the area for which the forum is established on—
    - (i) such matters connected with the determination of admission arrangements, and
    - (ii) such other matters connected with the admission of pupils, as may be prescribed <sup>F210</sup>, and
  - (c) in the case of an admission forum for the area of a local education authority in England, exercising any other functions that may be imposed on the forum by or under this Chapter.]

<sup>F211</sup> [ An admission forum for the area of a local education authority in England may (1A) prepare and publish reports on such matters connected with the admission of pupils to maintained schools in that area as may be prescribed.

- (1B) For the purposes of the preparation of a report under subsection (1A), an admission forum may request any of the following bodies to provide the forum with any information held by them which falls within a prescribed description and is specified by the forum in its request—
- (a) the local education authority which established the forum;
  - (b) any local education authority in England for an area which adjoins the area of the authority mentioned in paragraph (a);
  - (c) the governing body of any maintained school in the area for which the forum is established.
- (1C) A body mentioned in any of paragraphs (a) to (c) of subsection (1B) must comply with a request made by an admission forum in pursuance of that subsection.]
- (2) The authority may establish sub-committees of the forum.

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- (3) Regulations may make provision—
- (a) as to the constitution, meetings and proceedings of an admission forum and of any such sub-committee,
  - (b) as to the manner in which advice is to be given by a forum,<sup>F212</sup> ...
  - <sup>F213</sup>(ba) [ as to the preparation and publication of reports under subsection (1A), and]
  - (c) as to the establishment by local education authorities of joint admission forums.

[ Regulations under subsection (3)(c) may, in relation to England, modify any provision<sup>F214</sup>(3A) of this Chapter in its application to a joint admission forum.]

- (4) The bodies mentioned in paragraphs (a) and (b) of subsection (1) shall have regard, in carrying out their functions, to any relevant advice given to them by an admission forum under that subsection.

- (5) The local education authority shall make arrangements for the forum (and any sub-committee established under subsection (2)) to be provided with accommodation and with such services as the authority consider appropriate.]

[<sup>F215</sup>(5A) Regulations may make provision with respect to the expenses of an admission forum for the area of a local education authority in England.

- (5B) Except as provided by regulations under subsection (5A), the expenses of an admission forum for the area of a local education authority in England are to be defrayed by the local education authority by whom the forum was established.]

#### Textual Amendments

- F208** S. 85A inserted (20.1.2003 for E., 1.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 46**, 216(4) (with **ss. 210(8)**, 214(4)); [S.I. 2002/2952](#), art. 2; [S.I. 2003/2961](#), art. 4, Sch. Pt. I
- F209** Word in s. 85A(1)(a) repealed (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(2)(a)**, 188(3), **Sch. 18 Pt. 6**; [S.I. 2006/3400](#), art. 7(a)(e)
- F210** S. 85A(1)(c) and word inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(2)(b)**, 188(3); [S.I. 2006/3400](#), art. 7(a)
- F211** S. 85A(1A)-(1C) inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(3)**, 188(3); [S.I. 2006/3400](#), art. 7(a)
- F212** Word in s. 85A(3)(b) repealed (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(4)(a)**, 188(3), **Sch. 18 Pt. 6**; [S.I. 2006/3400](#), art. 7(a)(e)
- F213** S. 85A(3)(ba) inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(4)(b)**, 188(3); [S.I. 2006/3400](#), art. 7(a)
- F214** S. 85A(3A) inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(5)**, 188(3); [S.I. 2006/3400](#), art. 7(a)
- F215** S. 85A(5A)(5B) inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 41(6)**, 188(3); [S.I. 2006/3400](#), art. 7(a)

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

- C105** S. 85A applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), **regs. 1(1)**, 9, **Sch. para. 1(b)**
- C106** S. 85A applied (with modifications) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), **regs. 1(1)**, 9, **Sch.** (with **reg. 2(2)**)

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**F216 Functions of admission forums in relation to Academies** **E+W**  
**F217 85B**

- (1) Regulations may authorise or require an admission forum established by a local education authority under section 85A to give advice to the governing body of any Academy in the authority’s area on any matter corresponding to a matter prescribed under subsection (1)(b) of that section.
- (2) The governing body of an Academy shall have regard, in conducting the Academy, to any relevant advice given to them by an admission forum by virtue of subsection (1).]]

**Textual Amendments**

- F216** S. 85A cross-heading inserted (20.1.2003 for E., 1.12.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 46, 216(4)** (with **ss. 210(8), 214(4)**); [S.I. 2002/2952](#), **art. 2**; [S.I. 2003/2961](#), **art. 4**, **Sch. Pt. I**
- F217** S. 85B inserted (20.1.2003 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 66, 216** (with **ss. 210(8), 214(4)**); [S.I. 2002/2952](#), **art. 2** (with **Sch.**)

*Parental preferences*

**86 Parental preferences.** **E+W**

- (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.
- [<sup>F218</sup>(1A) A local authority in England shall provide advice and assistance to parents of children in the area of the authority in connection with the preferences expressed or to be expressed by them in accordance with the arrangements made under subsection (1).]
- (2) Subject to [<sup>F219</sup>subsections (3) and (3A)] and section 87 (children excluded from two or more schools), [<sup>F220</sup>a local education authority and the governing body of a maintained school][<sup>F220</sup>the admission authority for a maintained school] shall comply with any preference expressed in accordance with arrangements made under subsection (1).
- [<sup>F221</sup>(2A) Arrangements made under subsection (1) may allow the parent of a child to express preferences for more than one school; but nothing in this section requires the admission authority for a maintained school for which a child’s parent has expressed a preference to offer the child admission to the school if, in accordance with a scheme adopted or made by virtue of section 89B, the child is offered admission to a different school for which the parent has also expressed a preference.]
- (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; [<sup>F222</sup>or]
  - (b) <sup>F223</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,

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and compliance with the preference would be incompatible with selection under those arrangements.

[<sup>F224</sup>(3A) In relation to a preference expressed by a parent as to the school at which he wishes secondary education suitable to the requirements of pupils who are over compulsory school age to be provided for his child, the duty imposed by subsection (2) also does not apply if the relevant selection arrangements are wholly based on selection by reference to ability or aptitude and compliance with the preference would be incompatible with selection under those arrangements.

(3B) In subsection (3A) “the relevant selection arrangements”, in relation to a school, means—

- (a) the arrangements for admission to the school for secondary education suitable to the requirements of pupils who are over compulsory school age, or
- (b) those arrangements and the arrangements for entry to the sixth form of children who have been admitted to the school;

and references in this subsection to entry to the sixth form of children who have been admitted to a school shall be construed in accordance with section 94(7).]

(4) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of measures required to be taken in order to ensure compliance with the duty imposed by section 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes).

[<sup>F225</sup>(5) No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year; but this subsection does not apply if the conditions set out in subsection (5A) are met in relation to the school and the school year.

(5A) Those conditions are—

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

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

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

[<sup>F226</sup>(6) . . . . .]

(7) Where the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of)

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the governing body of the school, a parent who makes such an application shall be regarded for the purposes of this section as having expressed a preference for that school in accordance with arrangements made under subsection (1).

(8) 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 maintained school of a child who is not in the area of the authority maintaining the school, and
- (b) any application made by a parent as mentioned in section 438(4) or 440(2) of the <sup>M23</sup>Education Act 1996 (application for a particular school to be named in a school attendance order);

and references in [<sup>F227</sup>subsections (3) and (3A)] to a preference and a preferred school shall be construed accordingly.

(9) Where admission arrangements for a school [<sup>F228</sup>, or arrangements such as are mentioned in subsection (3B), provide for all pupils selected under the arrangements] to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of this section 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.

#### Textual Amendments

- F218** S. 86(1A) inserted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 42**, 188(3); S.I. 2006/3400, art. 7(b)
- F219** Words in s. 86(2) substituted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 3(2)** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))
- F220** Words in s. 86(2) substituted (8.1.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 43(2)**, 188(3); S.I. 2006/3400, art. 2(a)
- F221** S. 86(2A) inserted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 3(3)** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))
- F222** Word in s. 86(3)(a) inserted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 3(4)(a)** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))
- F223** S. 86(3)(b) repealed (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), **ss. 51**, 215(2), 216, **Sch. 4 para. 3(4)(b)**, **Sch. 22 Pt. 3** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, **art. 3** (with Sch.)
- F224** S. 86(3A)(3B) inserted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 3(5)** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))
- F225** S. 86(5)-(5B) substituted for s. 86(5) (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 47(1)**, 216(4) (with **ss. 210(8)**, 214(4) and S.I. 2006/173, reg. 4); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2006/172, art. 4, Sch.
- F226** S. 86(6) repealed (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 3(6)**, **Sch. 22 Pt. 3** (with **ss. 210(8)**, 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3,

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4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2006/172, art. 4, Sch.

**F227** Words in s. 86(8) substituted (1.10.2002 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 3(7)** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))

**F228** Words in s. 86(9) substituted (1.10.2002 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 3(8)** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 4) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(1))

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

**C107** S. 86 modified (temp. from 22.4.1999) by S.I. 1999/1064, **reg. 3**

Ss. 86-87 restricted (29.3.1999) by S.I. 1999/1016, art. 6, Sch. 4 paras. 1, **2(1)**

S. 86 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), **2-8**.

S. 86 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, **2-8**.

**C108** S. 86 applied (with modifications) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, **Sch. para. 1(b)**

**C109** S. 86 amendment to earlier commencing S.I. 2002/2439, Sch. para. 4 (4.12.2003) by The Education Act 2002 (Commencement No. 2 and Savings and Transitional Provisions) (Amendment No. 2) Order 2003 (S.I. 2003/2992), arts. 1, **3**

**C110** S. 86 excluded (1.9.2005) by The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005 (S.I. 2005/2039), reg. 1(1), **Sch. 2 para. 1**

**C111** S. 86 applied (with modifications) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, **Sch.** (with reg. 2(2))

**C112** S. 86(1) applied (with modifications) (1.9.1999) by S.I. 1999/1812, reg. 8, **Sch. 2 para. 5(b)**

**C113** S. 86(1)(2) excluded (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 36(5)(a) (10), 162(2)** (with s. 159)

#### Marginal Citations

**M23** 1996 c. 56.

## 87 No requirement to admit children permanently excluded from two or more schools. **E+W**

(1) The duty imposed by section 86(2) does not apply in the case of a child to whom subsection (2) below 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.

[<sup>F229</sup>(4) However, a child who has been permanently excluded from a school shall not be treated for the purposes of this section as having been so excluded if—

(a) he was reinstated as a pupil at the school following the giving of a direction to that effect by the relevant authority in accordance with regulations under subsection (3)(b) or (c) of section 52 of the Education Act 2002,

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- (b) on a review of his exclusion carried out in accordance with regulations under subsection (3)(b) of that section or an appeal made pursuant to regulations under subsection (3)(c) of that section, the relevant authority decided—
- (i) that it would not be practical to give a direction requiring his reinstatement as a pupil at the school, but
  - (ii) that it would otherwise have been appropriate to give such a direction, or
- (c) he was so excluded at a time when he had not attained compulsory school age.
- (4A) In subsection (4) “the relevant authority” means—
- (a) the responsible body as defined by subsection (5) of section 52 of the Education Act 2002, or
  - (b) a panel constituted in accordance with regulations under subsection (3)(c) of that section.]
- (5) In this section “school” means—
- (a) in relation to any time before or after the appointed day, a school maintained by a local education authority; or
  - (b) in relation to any time before the appointed day, a grant-maintained or grant-maintained special school within the meaning of the <sup>M24</sup>Education Act 1996.
- (6) 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.
- (7) Nothing in this section applies to a child unless at least one of the two or more exclusions mentioned in subsection (2) took effect on or after 1st September 1997.

#### Textual Amendments

**F229** S. 87(4)(4A) substituted for s. 87(4) (20.1.2003 for E., 9.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 4 para. 4](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, [art. 2](#) (with [Sch. para. 3](#)); S.I. 2003/2961, [art. 7](#), [Sch. Pt. IV](#)

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

- C114** Ss. 86-87 restricted (29.3.1999) by [S.I. 1999/1016](#), [art. 6](#), [Sch. 4 paras. 1, 2\(1\)](#)  
 S. 87 applied (with modifications) (18.10.1999) by [S.I. 1999/2666](#), [reg. 8](#), [Sch. paras. 1\(c\), 2-8](#)  
 S. 87 applied (with modifications) (1.9.1999) by [S.I. 1999/2800](#), [reg. 7](#), [Sch. paras. 1, 2-8](#).
- C115** S. 87 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), [regs. 1\(1\), 9](#), [Sch. para. 1\(b\)](#)
- C116** S. 87 applied (with modifications) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), [regs. 1\(1\), 9](#), [Sch.](#) (with [reg. 2\(2\)](#))

#### Marginal Citations

**M24** 1996 c. 56.

### Admission arrangements

## 88 Admission authorities and admission arrangements. **E+W**

- (1) In this Chapter “the admission authority”—



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- (a) in relation to a community or voluntary controlled school, means—
  - (i) the local education authority, or
  - (ii) where with the governing body’s agreement the authority have delegated to them responsibility for determining the admission arrangements for the school, the governing body; and
- (b) in relation to a foundation or voluntary aided school, means the governing body.

[<sup>F230</sup>(1A) Where the admission authority for a community or voluntary controlled school is the local authority, it is the duty of the governing body to implement any decision relating to the admission of pupils to the school which is taken by or on behalf of the admission authority.

(1B) Subsection (1A) does not affect—

- (a) any right of appeal which the governing body may have by virtue of arrangements made in pursuance of section 95(2) (appeals in relation to children to whom section 87(2) applies, other than looked after children in England),
- (b) any right to refer the matter to the adjudicator which the governing body may have by virtue of section 95A(3) (references to the adjudicator in relation to looked after children in England to whom section 87(2) applies), or
- (c) the application of section 101(2A) or section 109(2).]

(2) In this Chapter “admission arrangements”, in relation to a maintained school, means the arrangements for the admission of pupils to the school, including the school’s admission policy.

#### Textual Amendments

**F230** S. 88(1A)(1B) inserted (8.1.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 43(1)**, 188(3); S.I. 2006/3400, art. 2(a)

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

**C117** S. 88 modified (6.1.1999) by S.I. 1998/3130, **reg. 3**

### [<sup>F231</sup>**88A Prohibition on interviews** **E**

- (1) No admission arrangements for a maintained school may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school.
- (2) If the maintained school is one at which boarding accommodation is provided for pupils, subsection (1) does not apply in relation to any interview intended to assess the suitability of an applicant for a boarding place.
- (3) Where the admission arrangements for a maintained school make provision for a permitted form of selection by aptitude, subsection (1) does not prevent the arrangements from requiring or authorising any audition or other oral or practical test to be carried out in relation to an applicant solely for the purpose of ascertaining the applicant's aptitude in accordance with the arrangements.

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- (4) In this section, “permitted form of selection by aptitude” is to be read in accordance with section 99(4).]

#### Textual Amendments

**F231** S. 88A inserted (27.2.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 44**, 188(3); S.I. 2006/3400, art. 6(c)

### 89 Procedure for determining admission arrangements. **E+W**

- (1) The admission authority for a maintained school shall, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.

[<sup>F232</sup>(1ZA) This section has effect subject to sections 89D and 90A (restrictions on alteration of admission arrangements in England).]

[<sup>F233</sup>(1A) Regulations may require the admission authorities for maintained schools [<sup>F234</sup>in England] to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority [<sup>F235</sup>in England]<sup>F236</sup> ... as may be prescribed, which may in particular include provision for securing that, subject to sections 86(3) and (3A) and 87 (cases where duty to comply with parental preference does not apply), such children are to be offered admission in preference to other children.]

[<sup>F237</sup>(2) Before determining the admission arrangements which are to apply for a particular school year, the admission authority shall consult the following about the proposed arrangements, namely—

- (a) whichever of the governing body and the local education authority are not the admission authority,
- (b) the admission authorities for all other maintained schools in the relevant area or for such class of such schools as may be prescribed,
- (c) the governing bodies for all community and voluntary controlled schools in the relevant area (so far as not falling within paragraph (a) or (b)), [<sup>F238</sup>and]
- (d) the admission authorities for maintained schools of any prescribed description; [<sup>F239</sup>and ]

[<sup>F239</sup>(e) in the case of a foundation or voluntary school which has a religious character for the purposes of Part 2, such body or person representing the religion or religious denomination in question as may be prescribed.]

(2A) Subsection (2) does not apply in relation to the proposed admission arrangements for a particular school year if—

- (a) the admission authority are the school’s governing body, and
- (b) prescribed conditions are satisfied in relation to that year.]

(3) In subsection (2) “the relevant area” means—

- (a) the area of the local education authority; or
- (b) if regulations so provide, such other area (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.

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- (4) Once the admission authority have carried out any such consultation, the authority shall—
- (a) determine that their proposed arrangements (either in their original form or with such modifications as the authority think fit) shall be the admission arrangements for the school year in question; and
  - (b) (except in such cases as may be prescribed) notify the [<sup>F240</sup>appropriate bodies] of those admission arrangements.
- (5) Where an admission authority—
- (a) have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined,
- the authority shall (except in a case where their proposed variations fall within any description of variations prescribed for the purposes of this subsection) refer the proposed variations to the adjudicator, and shall (in every case) notify the [<sup>F240</sup>appropriate bodies] of the proposed variations.
- (6) The adjudicator shall consider whether the arrangements should have effect with those variations until the end of that year; and if he determines that the arrangements should so have effect or that they should so have effect subject to such modification of those variations as he may determine—
- (a) the arrangements shall have effect accordingly as from the date of his determination; and
  - (b) the admission authority shall (except in such cases as may be prescribed) notify the [<sup>F241</sup>appropriate bodies] of the variations subject to which the arrangements are to have effect.
- (7) In relation to a maintained school in Wales any reference to the adjudicator in subsection (5) or (6) shall be read as a reference to the Secretary of State.
- (8) Regulations may make provision—
- (a) specifying matters to which any consultation required by subsection (2) is, or is not, to relate;
  - (b) as to the manner in which, and the time by which, any such consultation is to be carried out;
  - (c) as to the manner in which, and the time by which, any notification required by this section is to be given;
  - (d) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (5)(b);
  - (e) authorising an admission authority, where they have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;
  - (f) for the application of any of the requirements of subsections (5) and (6) to variations proposed to be made by virtue of paragraph (e), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (5);
- [<sup>F242</sup>(fa) requiring an admission authority who have made a determination of a prescribed description under this section to publish such information relating

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to the determination (including information as to the authority’s reasons for making the determination) as may be prescribed;]

- (g) as to such other matters connected with the procedure for determining or varying admission arrangements under this section as the Secretary of State considers appropriate.

[<sup>F243</sup>(8A) The power under paragraph (fa) of subsection (8) to require an admission authority to publish information includes power to require them to publish it—

- (a) by giving a notice containing the information to prescribed persons, or  
(b) in any other prescribed manner.]

[<sup>F244</sup>(9) Where the local education authority are the admission authority for a community or voluntary controlled school, they shall consult the governing body before making any reference under subsection (5).]

[<sup>F245</sup>(10) In this section, “the appropriate bodies”, in relation to an admission authority, means—

- (a) the bodies or persons whom they were required to consult under subsection (2), or would but for subsection (2A) have been required to consult, and  
(b) in the case of an admission authority for a maintained school in England, the admission forum for the area of the local education authority in which the school is situated.]

#### Textual Amendments

**F232** S. 89(1ZA) inserted (27.2.2007) by Education and Inspections Act 2006 (c. 40), **ss. 46(1)**, 188(3); S.I. 2006/3400, art. 7(c)

**F233** S. 89(1A) inserted (3.10.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), **ss. 106**, 125(4) (with s. 119); S.I. 2005/2034, art. 6; S.I. 2006/1338, art. 3, Sch. 1

**F234** Words in s. 89(1A) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 52(2)(a)**, 188(2)

**F235** Words in s. 89(1A) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 52(2)(b)**, 188(2)

**F236** Words in s. 89(1A) repealed (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 50(3), 188(3), **Sch. 18 Pt. 6**; S.I. 2006/3400, art. 3(c)(h)

**F237** S. 89(2)(2A) substituted for s. 89(2) (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 5(2)** (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.

**F238** Word in s. 89(2)(c) repealed (8.1.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 45(a), 188(3), **Sch. 18 Pt. 6**; S.I. 2006/3400, art. 2(b)(e)

**F239** S. 89(2)(e) and word inserted (8.1.2007 for E.) by Education and Inspections Act 2006 (c. 40), **ss. 45(b)**, 188(3); S.I. 2006/3400, art. 2(b)

**F240** Words in s. 89(4)(5) substituted (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 5(3)** (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.

**F241** Words in s. 89(6) substituted (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 5(3)** (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.

**F242** S. 89(8)(fa) inserted (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 5(4)** (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.

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- F243** S. 89(8A) inserted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 4 para. 5\(5\)](#) (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.
- F244** S. 89(9) substituted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 4 para. 5\(6\)](#) (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5); S.I. 2006/172, art. 4, Sch.
- F245** S. 89(10) substituted (27.2.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 41\(7\)](#), 188(3); S.I. 2006/3400, art. 7(a)

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

- C118** S. 89 excluded (6.1.1999 with application as mentioned) (*temp.*) by [S.I. 1998/3198](#), [arts.3, 4](#)
- C119** S. 89(5)-(7) excluded (W.) (1.2.2006) by [The Education \(Variation of Admission Arrangements\) \(Wales\) Regulations 2006 \(S.I. 2006/177\)](#), regs. 1(1), [3\(3\)](#)

#### Commencement Information

- I18** S. 89 wholly in force; s. 89 not in force at Royal Assent see s. 145(3); s. 89(2)-(8) in force for certain purposes at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. I](#); s. 89 in force at 6.1.1999 in so far as not already in force by [S.I. 1998/3198](#), [arts. 2, 3](#) and 4

### [<sup>F246</sup>89A Determination of admission numbers **E+W**]

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

#### Textual Amendments

- F246** S. 89A inserted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 47\(2\)](#), 216(4) (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 6); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 3, 5) (which transitional provisions in Sch. para. 4 are substituted (6.3.2003) by S.I. 2003/606, art. 2 and (4.12.2003) by S.I. 2003/2992, art. 3); S.I. 2006/172, art. 4, Sch.

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## <sup>F247</sup> 89B Co-ordination of admission arrangements **E+W**

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

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

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

### Textual Amendments

**F247** Ss. 89B, 89C inserted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 48**, 216(4) (with **ss. 210(8)**, 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2006/172](#), art. 4, Sch.

### Modifications etc. (not altering text)

**C120** S. 89B applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), regs. 1(1), 9, **Sch. para. 1(b)**

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**C121** S. 89B applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, [Sch.](#) (with reg. 2(2))

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

**+W**

- (1) Regulations may make provision about the contents of schemes under section 89B(2), including provision about the duties that may be imposed by such schemes on—
- (a) local education authorities, and
  - (b) the admission authorities for maintained schools.

- (2) Regulations may provide that where a local education authority or the governing body of a maintained school have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 89B(1) (a), sections 496 and 497 of the Education Act 1996 shall apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.

- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school falls to be made in prescribed circumstances, the decision shall, if a scheme adopted or made <sup>F248</sup>by virtue of this section] <sup>F248</sup>by virtue of section 89B] so provides, be made by the local education authority regardless of whether they are the admission authority for the school.

[ Where any decision as to whether a child is to be granted or refused admission to a <sup>F249</sup>(3A) maintained school is (by virtue of regulations under subsection (3)) made by the local authority although they are not the admission authority, the governing body of the school must implement the decision.]

- (4) Before proposing a scheme for adoption under section 89B(1) a local education authority shall comply with such requirements as to consultation as may be prescribed.
- (5) Regulations under subsection (4) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.
- (6) Before making a scheme under section 89B(2) in relation to the area of any local education authority, the Secretary of State shall consult—
- (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (7) A scheme made under section 89B(2) may be varied or revoked by the Secretary of State.]

### Textual Amendments

**F247** Ss. 89B, 89C inserted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 48**, 216(4) (with **ss. 210(8)**, 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2006/172](#), art. 4, [Sch.](#)

**F248** Words in s. 89C(3) substituted (8.1.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 43(3)(a)**, 188(3); [S.I. 2006/3400](#), art. 2(a)

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**F249** S. 89C(3A) inserted (8.1.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 43(3)(b), 188(3); S.I. 2006/3400, art. 2(a)

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

**C122** S. 89C applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)

**C123** S. 89C applied (with modifications) (W.) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

[<sup>F250</sup>**89D Power to restrict alteration of admission arrangements following establishment or expansion** **E+W**]

- (1) Subsection (2) applies in relation to a maintained school in England where—
  - (a) proposals for the establishment of, or the making of a prescribed alteration to, the school have been published under Part 2 of the Education and Inspections Act 2006 or under section 113A of, or Schedule 7 to, the Learning and Skills Act 2000,
  - (b) in the case of proposals for the making of a prescribed alteration to the school, the proposals are for an increase in the number of pupils that may be admitted to the school or for an enlargement of the premises,
  - (c) the proposals fall to be implemented (with or without modifications), and
  - (d) prescribed conditions are satisfied.
- (2) Regulations may provide that, where this subsection applies in relation to a maintained school—
  - (a) the admission arrangements for the initial period (as defined by subsection (7)) and each of a prescribed number of school years following that period are to be the arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified), and
  - (b) those arrangements may not be varied by the admission authority for the school except—
    - (i) to comply with any duty imposed on them by regulations under section 89(1A), or
    - (ii) in accordance with regulations under subsection (5).
- (3) Regulations under subsection (2) may exclude or modify any provision of section 89 (other than section 89(1A)) in its application to cases to which the regulations apply.
- (4) Regulations under subsection (2) may provide that in cases to which the regulations apply the admission arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified) are to be treated for the purposes of section 86(5) to (5B) as having been determined by the admission authority under section 89.
- (5) Regulations may prescribe circumstances in which an admission authority may refer to the adjudicator proposals to vary admission arrangements in cases to which regulations under subsection (2) apply.
- (6) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (5).
- (7) In this section—
 

“initial period” means—



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- (a) in relation to a maintained school which is being established, the period beginning with the day on which the school opens and ending with the beginning of the first school term to begin after the following July;
- (b) in relation to a maintained school which is increasing the number of pupils that may be admitted to the school or enlarging its premises, the period beginning with the first day on which additional pupils may be admitted or (as the case may be) the enlarged premises are in use and ending with the beginning of the first school term to begin after the following July;

“prescribed alteration” means an alteration prescribed for the purposes of section 18 of the Education and Inspections Act 2006.]

#### Textual Amendments

**F250** S. 89D inserted (27.2.2007) by Education and Inspections Act 2006 (c. 40), ss. 46(2), 188(3); S.I. 2006/3400, art. 7(c)

## 90 Reference of objections to adjudicator or Secretary of State. **E+W**

### (1) Where—

(a) admission arrangements have been determined by an admission authority under section 89(4), but

[<sup>F251</sup>(b) an appropriate body wishes to make an objection about those arrangements, and]

(c) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,

that body may refer the objection to the adjudicator.

### (2) Where—

(a) admission arrangements have been determined by an admission authority under section 89(4), but

(b) any parent of a prescribed description wishes to make an objection about those arrangements, and

(c) the objection falls within any description of objections prescribed for the purposes of this paragraph,

that person may refer the objection to the adjudicator.

### (3) On a reference under subsection (1) or (2) the adjudicator shall either—

(a) decide whether, and (if so) to what extent, the objection should be upheld, or

(b) in such cases as may be prescribed, refer the objection to the Secretary of State for that question to be decided by him.

### (4) Where the objection is referred to the Secretary of State under subsection (3)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.

### (5) In relation to a maintained school in Wales—

(a) the reference to the adjudicator in subsection (1) or (2) shall be read as a reference to the Secretary of State;

(b) subsections (3) and (4) shall not apply; and

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- (c) where any objection is referred to the Secretary of State by virtue of paragraph (a) above, he shall decide whether, and (if so) to what extent, the objection should be upheld.
- [<sup>F252</sup>(5A) Where the adjudicator or the Secretary of State is required by virtue of subsection (3) (a) or (b) or (5)(c) to decide whether to uphold an objection to admission arrangements, he may consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements, whether or not he would be required to do so for the purpose of determining the objection.
- (5B) In the case of any objection referred to him under this section, the adjudicator or the Secretary of State (as the case may be) must publish a report containing the following—
- (a) his decision on the objection,
  - (b) any decision he has made on whether it would be appropriate for changes to be made to the admission arrangements, whether in the light of his decision on the objection or otherwise,
  - (c) if, in relation to a maintained school in England, he considers that any change required ought not to be protected under section 90A for the number of school years prescribed under section 90A(2), that section 90A is not to apply to that change or that the change will be protected only for such lesser number of school years as he may specify, and
  - (d) his reasons for the decisions mentioned in paragraphs (a) to (c).
- (5C) Where the adjudicator or the Secretary of State (as the case may be) decides that it would be appropriate for changes to be made to the admission arrangements, his decision may specify the modifications that are to be made to the arrangements.]
- (6) [<sup>F253</sup>Where the adjudicator or the Secretary of State decides that an objection referred to him under this section should be upheld to any extent, his decision on the objection may specify the modifications that are to be made to the admission arrangements in question.]
- (7) [<sup>F253</sup>In the case of any objection referred to him under this section, the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the objection and the reasons for it.]
- (8) [<sup>F254</sup>The decisions of the adjudicator or the Secretary of State mentioned in subsection (5B)(a) and (b) shall, in relation to the admission arrangements in question, be binding on the admission authority and on all persons by whom an objection may be made under subsection (1) or (2); and, if the adjudicator or the Secretary of State has decided that it would be appropriate for changes to be made to the admission arrangements, those arrangements shall forthwith be revised by the admission authority in such a way as to give effect to the decision.]
- (9) Regulations may make provision—
- (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator or the Secretary of State under subsection (1) or (2), or
    - (ii) the adjudicator or the Secretary of State is required to determine an objection referred to him under subsection (2);
  - (b) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator or the Secretary of State under subsection (1) or (2) but has not yet been determined;

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- [<sup>F255</sup>(ba) requiring an admission authority for a maintained school in England to provide information which—
- (i) falls within a prescribed description, and
  - (ii) is requested by the adjudicator or the Secretary of State for the purposes of his functions under this section;]
- (c) as to the manner in which [<sup>F256</sup>any matters required to be published under subsection (7) are][<sup>F256</sup>a report required to be published under subsection (5B) is] to be published;
- (d) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
- (e) prohibiting or restricting the reference under subsection (1) or (2), within such period following a decision by the adjudicator or the Secretary of State under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question;
- (f) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator or the Secretary of State relating to the admission arrangements for another school, and the procedure to be followed in such a case.
- (10) [<sup>F257</sup>Regulations shall make provision for the cases to be referred to the Secretary of State under subsection (3)(b) to include cases where the objection is concerned with admissions criteria relating to a person’s religion or religious denomination.]
- [<sup>F258</sup>(11) In this section, “appropriate body” means, in relation to the admission arrangements determined by an admission authority—
- (a) any body or person whom the admission authority were required to consult under subsection (2) of section 89, or would but for subsection (2A) of that section have been required to consult, and
  - (b) in the case of admission arrangements determined by an admission authority for a maintained school in England, the admission forum for the area of the local education authority in which the school is situated.]

#### Textual Amendments

- F251** S. 90(1)(b) substituted (27.2.2007) by Education and Inspections Act 2006 (c. 40), ss. 41(8)(a), 188(3); S.I. 2006/3400, art. 7(a)
- F252** S. 90(5A)-(5C) inserted (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(2), 188(3); S.I. 2006/3400, art. 6(d)
- F253** S. 90(6)(7) repealed (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(3), 188(3), Sch. 18 Pt. 6; S.I. 2006/3400, art. 6(d)(g)
- F254** S. 90(8) substituted (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(4), 188(3); S.I. 2006/3400, art. 6(d)
- F255** S. 90(9)(ba) inserted (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(5)(a), 188(3); S.I. 2006/3400, art. 6(d)
- F256** Words in s. 90(9)(c) substituted (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(5)(b), 188(3); S.I. 2006/3400, art. 6(d)
- F257** S. 90(10) repealed (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 47(6), 188(3), Sch. 18 Pt. 6; S.I. 2006/3400, art. 6(d)(g)
- F258** S. 90(11) inserted (27.2.2007) by Education and Inspections Act 2006 (c. 40), ss. 41(8)(b), 188(3); S.I. 2006/3400, art. 7(a)

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

**C124** S. 90 transitional provisions for effects of 2002 c. 32, Sch. 4 para. 6 (W.) (1.2.2006) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2006 \(S.I. 2006/173\)](#), regs. 1(1), 7

#### Commencement Information

**I19** S. 90 wholly in force at 1.4.1999; s. 90 not in force at Royal Assent see s. 145(3); s. 90(1)-(3), (5), (9) and (10) in force for certain purposes at 1.10.1998 by [S.I. 1998/2212](#), art. 2, [Sch. 1 Pt. 1](#); s. 90 in force at 1.4.1999 in so far as not already in force by [S.I. 1999/1016](#), art. 2(1), [Sch. 1](#) (with arts. 3-6, Sch. 4).

### [<sup>F259</sup>90A Restriction on alteration of admission arrangements following adjudicator's decision **E+W**

- (1) Where in accordance with section 90(8) the admission authority for a maintained school in England have revised any provisions of admission arrangements for a school year, this section applies except to the extent that the adjudicator or the Secretary of State determined under section 90(5B)(c), in relation to any change required, that this section was not to apply.
- (2) In this section—
  - “the protected provisions” in relation to any admission arrangements, means provisions corresponding to those revised in accordance with section 90(8) or regulations under subsection (6) (as so revised);
  - “the required number” means such number as may be prescribed or such lesser number as is specified by the adjudicator or the Secretary of State under section 90(5B)(c) in relation to a particular change.
- (3) The admission authority for the school—
  - (a) must incorporate the protected provisions in determining the admission arrangements for each of the required number of school years following the school year in relation to which the revision in accordance with section 90(8) was made, and
  - (b) may not vary those arrangements in such a way as to alter the protected provisions.
- (4) Subsection (3) does not apply to the extent that—
  - (a) the admission authority are required to determine or vary their admission arrangements in a way which alters the protected provisions in order to comply with any duty imposed on them by regulations under section 89(1A), or
  - (b) the arrangements may be determined or varied in a way which alters those provisions in accordance with regulations under subsection (6).
- (5) Regulations may exclude or modify any provision of section 89 (other than section 89(1A)) in its application to cases to which this section applies.
- (6) Regulations may prescribe circumstances in which an admission authority to whom subsection (3) applies may refer to the adjudicator proposals to determine or vary their admission arrangements in a way which alters the protected provisions.
- (7) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (6).]

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### Textual Amendments

**F259** S. 90A inserted (27.2.2007) by Education and Inspections Act 2006 (c. 40), ss. 46(3), 188(3); S.I. 2006/3400, art. 7(c)

## 91 Special arrangements to preserve religious character of foundation or voluntary aided school. **E+W**

F260

### Textual Amendments

**F260** S. 91 repealed (1.10.2002 for E. and 19.12.2002 for W.) by Education Act 2002 (c. 32), ss. 49, 215(2), 216, Sch. 22 Pt. 3 (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with Sch.); S.I. 2002/3185, art. 4, Sch. Pt. 1 (with art. 7)

## [<sup>F261</sup>92 Publication of information about admissions. **E+W**

Regulations may—

- (a) require the publication by a local education authority of such information relating to admissions as may be prescribed,
- (b) require the publication by the governing body of a foundation or voluntary aided school of such information relating to admissions as may be prescribed,
- (c) require or allow the publication by the governing body of any school maintained by a local education authority, or by the local education authority on behalf of the governing body, of such information relating to the school as may be prescribed, and
- (d) make provision as to the time by which, and the manner in which, information required to be published by virtue of this section is to be published.]

### Textual Amendments

**F261** S. 92 substituted (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 4 para. 7 (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3; S.I. 2006/172, art. 4, Sch.

### Modifications etc. (not altering text)

- C125** S. 92 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)
- C126** S. 92 restricted (29.3.1999) by S.I. 1999/1016, art. 6, Sch. 4 paras. 1, 4  
S. 92 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), 2-8  
S. 92 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8.
- C127** S. 92 applied (with modifications) (W.) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

### Commencement Information

**I20** S. 92 wholly in force at 1.4.1999; s. 92 not in force at Royal Assent see s. 145(3); s. 92 in force for certain purposes at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I; s. 92 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

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### Admission numbers

#### <sup>F262</sup>93 Fixing admission numbers. **E+W**

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#### Textual Amendments

**F262** S. 93 repealed (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 5); [S.I. 2002/2439](#), art. 3 (with art. 4, Sch. paras. 3, 5); [S.I. 2006/172](#), art. 4, Sch.

### Admission appeals

#### 94 Appeal arrangements: general. **E+W**

- (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 96 [<sup>F263</sup>or 97A] (directions for admission), and
  - (b) [<sup>F264</sup>in the case of a community or voluntary controlled school maintained by the authority][<sup>F264</sup>in a case where the governing body of a community or voluntary controlled school maintained by the authority are the admission authority], any decision made by or on behalf of the governing body refusing the child admission to the school.
- [<sup>F265</sup>(1A) A local education authority shall make arrangements for enabling the parent of a child who has been admitted to a community or voluntary controlled school maintained by the authority to appeal against any decision made by or on behalf of the governing body refusing permission for the child to enter the school's sixth form.]
- (2) The governing body of a foundation or voluntary aided 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.
- [<sup>F266</sup>(2A) The governing body of a foundation or voluntary aided school shall make arrangements for enabling the parent of a child who has been admitted to the school to appeal against any decision made by or on behalf of the governing body refusing permission for the child to enter the school's sixth form.]
- (3) Joint arrangements may be made under subsection (2) [<sup>F267</sup>or (2A)] by the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority.
- (4) A local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority may make joint arrangements consisting of—
- (a) such of the arrangements made by the authority in pursuance of subsection (1) [<sup>F268</sup>or (1A)] as the authority may determine; and

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- (b) arrangements made by the governing body or bodies in pursuance of subsection (2) [<sup>F268</sup>or (2A)].
- [<sup>F269</sup>(5) An appeal pursuant to any arrangements made under this section shall be to an appeal panel constituted in accordance with regulations.
- (5A) Regulations may make provision about the making of appeals pursuant to such arrangements, including provision—
- (a) as to the procedure on such appeals,
  - (b) for the payment by the local education authority of allowances to members of an appeal panel, and
  - (c) as to the grounds on which an appeal panel may, in the case of an appeal to which subsection (5B) applies, determine that a place is to be offered to the child concerned.
- (5B) This subsection applies to any appeal against a decision made on the ground that prejudice of the kind referred to in section 86(3)(a) would arise as mentioned in subsection (4) of that section.
- (5C) Regulations made by virtue of subsection (5A)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an appeal panel.]
- (6) The decision of an appeal panel on an appeal [<sup>F270</sup>pursuant to arrangements under this section] shall be binding on—
- (a) the local education authority or the governing body by whom 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, the governing body of a community or voluntary controlled school at which the appeal panel determines that a place should be offered to the child in question.
- [<sup>F271</sup>(7) References in this section, in relation to a child who has been admitted to a school, to his entering the school's sixth form are to his being transferred to a class at the school in which secondary education suitable to the requirements of pupils who are over compulsory school age is provided from a class in which such education is not provided.]

#### Textual Amendments

- F263** Words in s. 94(1)(a) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 51(1), 188(3); S.I. 2006/3400, art. 3(d)
- F264** Words in s. 94(1)(b) substituted (8.1.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 43(4), 188(3); S.I. 2006/3400, art. 2(a)
- F265** S. 94(1A) inserted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 4 para. 8(2) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))
- F266** S. 94(2A) inserted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 4 para. 8(3) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))
- F267** Words in s. 94(3) inserted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 4 para. 8(4) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))

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- F268** Words in s. 94(4)(a)(b) inserted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 8(5)** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))
- F269** S. 94(5)-(5C) substituted for s. 94(5) (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), **ss. 50, 216(4)** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))
- F270** Words in s. 94(6) substituted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 8(6)** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))
- F271** S. 94(7) inserted (20.1.2003 for E., 31.5.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 8(7)** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(3))

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

- C128** S. 94 restricted (29.3.1999) by S.I. 1999/1016, art. 6, Sch. 4 paras. 1, **8**
- C129** S. 94 modified (temp. from 22.4.1999) by S.I. 1999/1064, **reg. 5**
- C130** S. 94 applied (with modifications) (1.9.1999) by S.I. 1999/2800, **reg. 7, Sch. paras. 1, 2-8**  
S. 94 applied (with modifications) (18.10.1999) by S.I. 1999/2666, **reg. 8, Sch. paras. 1(c), 2-8**
- C131** S. 94 excluded (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 36(5)(b)(10), 162(2)** (with s. 159)
- C132** S. 94 applied (with modifications) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), **regs. 1(1), 9, Sch. para. 1(b)**
- C133** S. 94 excluded (1.9.2005) by The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005 (S.I. 2005/2039), **reg. 1(1), Sch. 2 para. 1**
- C134** S. 94 applied (with modifications) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), **regs. 1(1), 9, Sch. (with reg. 2(2))**

## 95 Appeals relating to children to whom section 87 applies. **E+W**

- (1) Nothing in section 94(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 maintained school, and
  - (b) refusing the child admission to the school,
- in a case where, at the time when the decision is made, section 87(2) applies to the child.
- (2) Where a local education authority are the admission authority for a community or voluntary 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 87(2) applies.
- [<sup>F272</sup>(2A) Subsection (2) does not apply in relation to a decision made by or on behalf of a local authority in England to admit to a school a child who is looked after by a local authority in England (provision for references to the adjudicator in relation to such a decision being made by section 95A).]
- [<sup>F273</sup>(3) An appeal by the governing body pursuant to arrangements made under subsection (2) shall be to an appeal panel constituted in accordance with regulations.
- (3A) Regulations may make provision about the making of appeals pursuant to arrangements under subsection (2), including provision—



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- (a) requiring prescribed information to be given to governing bodies in prescribed circumstances,
  - (b) as to the procedure on such appeals,
  - (c) for the payment by the local education authority of allowances to members of an appeal panel, and
  - (d) as to the matters to which an appeal panel is to have regard in considering an appeal.
- (3B) Regulations made by virtue of subsection (3A)(c) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an appeal panel.]
- (4) The decision of an appeal panel on an appeal made pursuant to arrangements under subsection (2) shall be binding on the local education authority and the governing body.

#### Textual Amendments

**F272** S. 95(2A) inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 48(1)**, 188(3); S.I. 2006/3400, art. 3(a)

**F273** S. 95(3)-(3B) substituted for s. 95(3) (20.1.2003 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 9** (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2005/1395, art. 4, Sch. (with art. 5(4))

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

**C135** S. 95 modified (*temp.*) (22.4.1999) by S.I. 1999/1064, **reg. 6**.

**C136** S. 95 applied (with modifications) (18.10.1999) by S.I. 1999/2666, **reg. 8, Sch. paras. 1(c), 2-8**.

S. 95 applied (with modifications) (1.9.1999) by S.I. 1999/2800, **reg. 7, Sch. paras. 1, 2-8**.

**C137** Ss. 95-99 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), **regs. 1(1), 9, Sch. para. 1(b)**

**C138** Ss. 95-99 applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), **regs. 1(1), 9, Sch.** (with **reg. 2(2)**)

**C139** S. 95(2) restricted (29.3.1999) by S.I. 1999/1016, **art. 6, Sch. 4 paras. 1, 8**

#### [<sup>F274</sup>95A References relating to looked after children to whom section 87(2) applies **E**

**+W**

- (1) This section applies where—
- (a) a local authority in England are the admission authority for a community or voluntary controlled school, and
  - (b) a decision is made by or on behalf of the authority to admit to the school a child who, at the time when the decision is made, is looked after by a local authority in England and to whom (at that time) section 87(2) applies.
- (2) The local authority must give notice of the decision to the governing body of the school.
- (3) The governing body of the school may, within the period of seven days beginning with the day on which they are notified of the decision, refer the matter to the adjudicator.

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- (4) A reference under subsection (3) may only be made on the ground that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (5) If the adjudicator determines that the admission of the child to the school would have the effect mentioned in subsection (4)—
  - (a) the decision to admit the child to the school shall cease to have effect, but
  - (b) the adjudicator may determine that another maintained school in England is to be required to admit the child.
- (6) A determination under subsection (5)(b) may only be made with the agreement of the local authority who look after the child.
- (7) A determination under subsection (5)(b) may not be made if—
  - (a) the child is permanently excluded from the other school, or
  - (b) the admission of the child to the other school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (8) If the adjudicator determines under subsection (5)(b) that another school is to be required to admit the child—
  - (a) the admission authority for the school shall admit the child to the school, and
  - (b) if the admission authority are not the governing body of the school, the admission authority shall give notice in writing to the governing body and head teacher of the school of the adjudicator's decision.
- (9) Regulations may make provision—
  - (a) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under this section;
  - (b) requiring an admission authority for a maintained school to provide information which—
    - (i) falls within a prescribed description, and
    - (ii) is requested by the adjudicator for the purposes of any such determination.]

#### Textual Amendments

**F274** S. 95A inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 48(2)**, 188(3); S.I. 2006/3400, art. 3(a)

### *Power to direct admission of child to school*

#### 96 **Direction to admit child to specified school.** E+W

- (1) The local education authority may give a direction under this section [<sup>F275</sup>to the governing body of a school for which they are not the admission authority] if, in the case of any child in their area, 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

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- (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
- which is a reasonable distance from the child's home, and
  - from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of [<sup>F276</sup>the appropriate authority (within the meaning of section 97)] under section 97(4), specify a school in the area referred to in subsection (1).
- (4) A direction under this section to admit a child shall not specify a school if his admission would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- (5) Where a school is specified in a direction under this section, the governing body shall admit the child to the school.
- (6) Subsection (5) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) 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.
- (8) In this section and [<sup>F277</sup>sections 97 to 97C] “school” means a maintained school.

#### Textual Amendments

- F275** Words in s. 96(1) inserted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 10** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. para. 8); S.I. 2005/1395, art. 4, Sch. (with art. 5(2))
- F276** Words in s. 96(3) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 51(2)(a), 188(3); S.I. 2006/3400, art. 3(d)
- F277** Words in s. 96(8) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 51(2)(b), 188(3); S.I. 2006/3400, art. 3(d)

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

- C137** Ss. 95-99 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), regs. 1(1), 9, **Sch. para. 1(b)**
- C138** Ss. 95-99 applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, **Sch.** (with reg. 2(2))
- C140** S. 96 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), **2-8**.  
S. 96 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, **2-8**.

## 97 Procedure for giving direction under section 96. **E+W**

- (1) Before deciding to give a direction under section 96, the local education authority shall consult—
- the parent of the child, and
  - the governing body of the school they propose to specify in the direction.
- (2) Where the local education authority decide to give such a direction specifying any school—

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- (a) they shall, before doing so, serve a notice in writing of their decision on the governing body and head teacher of the school, and
  - (b) they shall not give the direction until the period for referring the matter to <sup>[F278]</sup>the appropriate authority] under subsection (3) has expired and, if it is so referred, <sup>[F278]</sup>the appropriate authority] has made <sup>[F279]</sup>its determination].
- (3) The governing body may, within the period of 15 days beginning with the day on which the notice was served, refer the matter to <sup>[F280]</sup>the appropriate authority] and, if they do so, shall inform the local education authority.
- <sup>[F281]</sup>(4) On a reference under subsection (3) <sup>[F282]</sup>the appropriate authority] may determine which school is to be required to admit the child, and <sup>[F283]</sup>if it does so]—
- (a) where the local education authority referred to in subsection (1) are the admission authority for that school, they shall—
    - (i) admit the child to the school, and
    - (ii) give notice in writing to the governing body and head teacher of the school of <sup>[F284]</sup>the appropriate authority's] determination, and
  - (b) in any other case, that school shall be specified in the direction.]
- (5) <sup>[F285]</sup>The appropriate authority] shall not make a determination under subsection (4) in relation to a school if the child's admission to the school would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- <sup>[F286]</sup>(6) A direction under section 96 shall be given by notice in writing; and a copy of the notice shall be given by the local education authority to the head teacher of this school.]
- <sup>[F287]</sup>(6A) In this section, “the appropriate authority” means—
- (a) in relation to a local authority in England, the adjudicator, and
  - (b) in relation to a local authority in Wales, the Assembly.]

#### Textual Amendments

- F278** Words in s. 97(2)(b) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(a\)\(i\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F279** Words in s. 97(2)(b) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(a\)\(ii\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F280** Words in s. 97(3) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(b\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F281** S. 97(4) substituted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), [s. 216\(4\)](#), [Sch. 4 para. 11\(2\)](#) (with [ss. 210\(8\)](#), [214\(4\)](#)); S.I. 2002/2439, [art. 3](#) (with [art. 4](#), [Sch. para. 8](#)); S.I. 2005/1395, [art. 4](#), [Sch.](#) (with [art. 5\(2\)](#))
- F282** Words in s. 97(4) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(c\)\(i\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F283** Words in s. 97(4) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(c\)\(ii\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F284** Words in s. 97(4) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(c\)\(iii\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F285** Words in s. 97(5) substituted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 49\(d\)](#), 188(3); S.I. 2006/3400, [art. 3\(b\)](#)
- F286** S. 97(6) substituted (1.10.2002 for E., 31.5.2005 for W.) by [Education Act 2002 \(c. 32\)](#), [s. 216\(4\)](#), [Sch. 4 para. 11\(3\)](#) (with [ss. 210\(8\)](#), [214\(4\)](#)); S.I. 2002/2439, [art. 3](#) (with [art. 4](#), [Sch. para. 8](#)); S.I. 2005/1395, [art. 4](#), [Sch.](#) (with [art. 5\(2\)](#))

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**F287** S. 97(6A) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 49(e), 188(3); S.I. 2006/3400, art. 3(b)

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

**C137** Ss. 95-99 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)

**C138** Ss. 95-99 applied (with modifications) (W.) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

**C141** S. 97 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), 2-8.  
S. 97 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8.

### [<sup>F288</sup>97A Direction to admit looked after child to specified school **E+W**

- (1) A local authority in England may, in relation to a child looked after by them, give a direction under this section to the admission authority for any school in England other than a school for which the local authority are the admission authority.
- (2) A direction under this section shall not specify a school from which the child is permanently excluded.
- (3) Where a school is specified in a direction under this section, the admission authority shall admit the child to the school.
- (4) Subsection (3) does not affect any power to exclude from a school a pupil who is already a registered pupil there.

#### Textual Amendments

**F288** Ss. 97A, 97B inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 50(1), 188(3); S.I. 2006/3400, art. 3(c)

### 97B Procedure for giving direction under section 97A **E+W**

- (1) Before deciding to give a direction under section 97A, the local authority shall consult the admission authority for the school they propose to specify in the direction.
- (2) The admission authority for the school shall, within the period of seven days beginning with the day on which they are consulted as mentioned in subsection (1), inform the local authority whether they are willing to admit the child to the school without being directed to do so by the authority.
- (3) Where the local authority decide to give a direction under section 97A specifying a school—
  - (a) they shall, before doing so, serve a notice in writing of their decision on—
    - (i) the admission authority for the school,
    - (ii) if the school is a community or voluntary controlled school and the governing body of the school are not the admission authority, the governing body of the school,
    - (iii) if the school is maintained by a local authority who are not the authority proposing to give the direction and are not the admission authority, the local authority who maintain the school, and
    - (iv) the head teacher of the school, and

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- (b) they shall not give the direction until the period for referring the matter to the adjudicator under subsection (4) has expired and, if it is so referred, until the adjudicator has made such determinations under this section as it appears to him to be appropriate to make in connection with the reference.
- (4) The following persons—
- (a) the admission authority on whom a notice is served under subsection (3)(a)(i), and
- (b) in the case of a notice relating to a child to whom (at the time of service of the notice) section 87(2) applies, the governing body of a community or voluntary controlled school on whom the notice is served under subsection (3)(a)(ii),
- may, within the period of seven days beginning with the day on which the notice was served, refer the matter to the adjudicator and, if they do so, shall inform the local authority.
- (5) A reference under subsection (4) may only be made on the ground that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (6) If the adjudicator determines that the admission of the child to the school would have the effect mentioned in subsection (5)—
- (a) the local authority may not give a direction under section 97A that the school admit the child, but
- (b) the adjudicator may determine that another school in England is to be required to admit the child.
- (7) A determination under subsection (6)(b) may only be made with the agreement of the local authority who look after the child.
- (8) A determination under subsection (6)(b) may not be made if—
- (a) the child is permanently excluded from the other school, or
- (b) the admission of the child to the other school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (9) If the adjudicator determines under subsection (6)(b) that another school is to be required to admit the child, then—
- (a) if the local authority referred to in subsection (1) are the admission authority for that school they shall—
- (i) admit the child to the school, and
- (ii) give notice in writing to the governing body and head teacher of the school of the adjudicator's decision, and
- (b) in any other case, the local authority shall specify that school in their direction under section 97A.
- (10) A direction under section 97A shall be given by notice in writing and a copy of the notice shall be given by the local authority to the head teacher of the school.]

#### Textual Amendments

**F288** Ss. 97A, 97B inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 50(1)**, 188(3); [S.I. 2006/3400](#), art. 3(c)

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## [<sup>F289</sup>97C Determinations under section 97 or 97B: supplemental **E+W**

Regulations may make provision in relation to England—

- (a) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under section 97 or 97B;
- (b) requiring an admission authority for a school to provide information which—
  - (i) falls within a prescribed description, and
  - (ii) is requested by the adjudicator for the purposes of any such determination.]

### Textual Amendments

**F289** S. 97C inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 51(3)**, 188(3); S.I. 2006/3400, art. 3(d)

## [<sup>F290</sup>Looked after children in Wales

### Textual Amendments

**F290** S. 97D and cross-heading inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 52(1)**, 188(2)

## 97D Power of Assembly to make regulations about admission of looked after children **E+W**

- (1) The Assembly may by regulations make provision about the admission of children looked after by local authorities in Wales (“looked after children”) to maintained schools in Wales.
- (2) Regulations under subsection (1) may include provision requiring the admission authorities for such schools—
  - (a) to include in their admission arrangements such provision relating to the admission of looked after children as may be prescribed, which may in particular include provision for securing that, subject to prescribed exceptions, such children are to be offered admission in preference to other children;
  - (b) to admit looked after children in prescribed circumstances, subject to prescribed exceptions.
- (3) Regulations under subsection (1) may provide that any of the preceding provisions of this Chapter—
  - (a) shall not apply in relation to looked after children;
  - (b) shall apply in relation to such children with prescribed modifications.]

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*Nursery and special schools, etc: children with statements*

**98 Admission for nursery education or to nursery or special school: children with statements of special educational needs. E+W**

- (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.
- [<sup>F291</sup>(2) The admission of children to a school for nursery education shall be disregarded—
  - (a) for the purposes of any determination under section 89 of the number of pupils in any relevant age group that it is intended to admit to a primary school in a school year, and
  - (b) in determining for the purposes of section 89A what is a relevant age group in relation to a primary school.]
- (3) Subject to subsection (4), nothing in this Chapter [<sup>F292</sup>apart from subsections (4A) and (4B)] applies in relation to—
  - (a) nursery schools, or
  - (b) children who will be under compulsory school age at the time of their proposed admission.
- (4) Where the arrangements for the admission of pupils to a maintained school provide for the admission to the school of children who will be under compulsory school age at the time of their proposed admission, this Chapter shall apply in relation to the admission of such pupils to the school otherwise than for nursery education.
- <sup>F293</sup>[(4A) The person responsible for admitting, or refusing to admit, children to a maintained school for nursery education shall be the person who (by virtue of section 88(1)) is the admission authority for the school.
- (4B) Regulations may make provision as to the person who is to be responsible for admitting, or refusing to admit, children to maintained nursery schools.]
- (5) Regulations may make provision in connection with the arrangements for the admission of pupils to community or foundation special schools, and for the allocation between the local education authority and the governing body of such a school of functions in connection with such arrangements.
- (6) Apart from section [<sup>F294</sup>92(c) and (d)] and subsection (5) above, nothing in this Chapter applies in relation to special schools.
- (7) Subject to subsections (8) and (9), nothing in this Chapter applies in relation to children for whom statements of special educational needs are maintained under section 324 of the <sup>M25</sup>Education Act 1996.
- (8) Any provision made by, or (as the case may be) by virtue of, section 84 or [<sup>F295</sup>92(c) and (d)] or this section [<sup>F296</sup>, apart from subsections (4A) and (4B),] applies, or (as the case may be) may be made so as to apply, in relation to such children.
- [<sup>F297</sup>(9) Such children shall, in addition, be taken into account for the purposes of—
  - (a) the references in section 86(5), (5B) and (9) to a number of pupils, and
  - (b) any determination under section 89 of the number of pupils in a relevant age group that it is intended to admit, or to admit either as boarders or otherwise than as boarders, to a school in a school year.]



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- (10) In subsection (8) the reference to any provision made by this section includes a reference to subsection (4) only so far as it has effect for the purposes mentioned in subsection (9).

### Textual Amendments

- F291** S. 98(2) substituted (20.1.2003 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 4 para. 12\(2\)](#) (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 7); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 2); S.I. 2006/172, art. 4, Sch.
- F292** Words in s. 98(3) inserted (20.1.2003 for E., 31.3.2004 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 4 para. 12\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 3); S.I. 2004/912, art. 4, Sch. Pt. 1 (with art. 7)
- F293** S. 98(4A)(4B) inserted (20.1.2003 for E., 31.3.2004 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 4 para. 12\(4\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 4); S.I. 2004/912, art. 4, Sch. Pt. 1 (with art. 7)
- F294** Words in s. 98(6) substituted: (E.) (20.1.2003) by [The Education Act 2002 \(Modification of Provisions\) \(No. 2\) \(England\) Regulations 2002 \(S.I. 2002/2953\), reg. 4](#); and (W.) (1.2.2006) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2006 (S.I. 2006/173), regs. 1(1), 10
- F295** Words in s. 98(8) substituted: (E.) (20.1.2003) by [The Education Act 2002 \(Modification of Provisions\) \(No. 2\) \(England\) Regulations 2002 \(S.I. 2002/2953\), reg. 4](#); and (W.) (1.2.2006) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2006 (S.I. 2006/173), regs. 1(1), 10
- F296** Words in s. 98(8) inserted (20.1.2003 for E., 31.3.2004 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 4 para. 12\(5\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 5); S.I. 2004/912, art. 4, Sch. Pt. 1 (with art. 7)
- F297** S. 98(9) substituted (20.1.2003 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 4 para. 12\(6\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2 (with art. 3, Sch. para. 6); S.I. 2006/172, art. 4, Sch.

### Modifications etc. (not altering text)

- C137** Ss. 95-99 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\), regs. 1\(1\), 9, Sch. para. 1\(b\)](#)
- C142** S. 98 modified (*temp.*) (22.4.1999) by S.I. 1999/1064, [reg.7](#).
- C143** S. 98 applied (with modifications) (18.10.1999) by S.I. 1999/2666, [reg. 8, Sch. paras. 1\(c\), 2-8](#).  
S. 98 applied (with modifications) (1.9.1999) by S.I. 1999/2800, [reg. 7, Sch. paras. 1, 2-8](#).
- C144** S. 98(2) transitional provisions for effects of 2002 c. 32, Sch. 4 para. 12(2) (W.) (1.2.2006) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2006 \(S.I. 2006/173\), regs. 1\(1\), 8](#)

### Commencement Information

- I21** S. 98 wholly in force at 1.4.1999; s. 98 not in force at Royal Assent see s. 145(3); s. 98(5) and (8)-(10) in force for certain purposes at 1.10.1998 by S.I. 1998/2212, [art. 2, Sch. 1 Pt. I](#); s. 98 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, [art. 2\(1\), Sch. 1](#) (with arts. 3-6, Sch. 4).

### Marginal Citations

- M25** 1996 c. 56.

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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## CHAPTER II **E+W**

### SELECTION OF PUPILS

#### *Partial selection*

#### **99 General restriction on selection by ability or aptitude. **E+W****

- (1) <sup>[F298]</sup>No admission arrangements for a maintained school may make provision for selection by ability unless—
  - (a) they make provision for a permitted form of such selection; or
  - (b) the school is a grammar school (as defined by section 104(7)).]
- (2) The following are <sup>[F299]</sup>for the purposes of section 39(1) of the Education and Inspections Act 2006] permitted forms of selection by ability—
  - (a) any selection by ability authorised by section 100 (pre-existing arrangements);
  - (b) any selection by ability authorised by section 101 (pupil banding); and
  - (c) any selection by ability conducted in connection with the admission of pupils to the school for secondary education suitable to the requirements of pupils who are over compulsory school age.
- (3) No admission arrangements for a maintained school may make provision for selection by aptitude unless they make provision for a permitted form of such selection.
- (4) The following are permitted forms of selection by aptitude—
  - (a) any selection by aptitude authorised by section 100 (pre-existing arrangements); and
  - (b) any selection by aptitude authorised by section 102 (aptitude for particular subjects).
- (5) For the purposes of this Chapter—
  - (a) a school’s admission arrangements make provision for selection by ability or by aptitude if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group to be so admitted by reference to ability or to aptitude (as the case may be);
  - (b) “ability” means either general ability or ability in any particular subject or subjects;
  - (c) “admission arrangements” has the meaning given by section 88(2); and
  - (d) “maintained school” means a community, foundation or voluntary school.

#### **Textual Amendments**

**F298** S. 99(1) repealed (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), ss. 39(4)(a), 188(3), **Sch. 18 Pt. 6**; S.I. 2006/3400, art. 6(b)(g)

**F299** Words in s. 99(2) inserted (27.2.2007 for E.) by Education and Inspections Act 2006 (c. 40), **ss. 39(4)(b)**, 188(3); S.I. 2006/3400, art. 6(b)

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

**C137** Ss. 95-99 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, **Sch. para. 1(b)**

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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**C138** Ss. 95-99 applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, [Sch.](#) (with reg. 2(2))

**C145** S. 99 applied (with modifications) (18.10.1999) by [S.I. 1999/2666](#), reg. 8, [Sch. paras. 1\(c\), 2-8](#).

S. 99 applied (with modifications) (1.9.1999) by [S.I. 1999/2800](#), reg. 7, [Sch. paras. 1, 2-8](#).

**C146** [S. 99\(5\)](#) modified (1.10.1998) (temp.) by [S.I. 1998/2230](#), [reg. 2](#)

#### Commencement Information

**I22** S. 99 wholly in force at 1.4.1999; s. 99 not in force at Royal Assent see s. 145(3); s. 99(1)(2)(5) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. I](#), [Sch. 2 Pt. I para. 3](#); s. 99 in force at 1.4.1999 in so far as not already in force by [S.I. 1999/1016](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3-6, [Sch. 4](#)).

### 100 Permitted selection: pre-existing arrangements. **E+W**

(1) Where at the beginning of the 1997-98 school year the admission arrangements for a maintained school made provision for selection by ability or by aptitude (and they have at all times since that date continued to do so), the admission arrangements for the school may continue to make such provision [<sup>F300</sup>so long as there is, as compared with the arrangements in force at the beginning of that year—][<sup>F300</sup>so long as—]

(a) [<sup>F300</sup>no increase in the proportion of selective admissions in any relevant age group, and]

[<sup>F300</sup>the proportion of selective admissions in any relevant age group does not exceed the permitted proportion (as defined by subsection (1A)), and]

(b) [<sup>F300</sup>no significant change in the basis of selection.]

[<sup>F300</sup>there is no significant change in the basis of selection.]

[<sup>F301</sup>(1A) In subsection (1)(a), “the permitted proportion”, in relation to any relevant age group, means the lowest proportion of selective admissions provided for by the school's admission arrangements at any time since the beginning of the 1997-1998 school year.]

(2) In relation to any time before the appointed day, the reference in subsection (1) to a maintained school is a reference to the school as a county, voluntary or grant-maintained school within the meaning of the <sup>M26</sup>Education Act 1996.

(3) In this section “the proportion of selective admissions”, in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to ability or to aptitude (as the case may be).

(4) Nothing in this section applies to a school with selective admission arrangements (as defined by section 104(2)).

#### Textual Amendments

**F300** Words in s. 100(1) substituted (27.2.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 53\(2\)](#), 188(3); [S.I. 2006/3400](#), [art. 6\(e\)](#)

**F301** [S. 100\(1A\)](#) inserted (27.2.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 53\(3\)](#), 188(3); [S.I. 2006/3400](#), [art. 6\(e\)](#)

#### Commencement Information

**I23** S. 100 wholly in force at 1.4.1999; s. 100 not in force at Royal Assent see s. 145(3); s. 100 in force at 1.10.1998 to the extent that it relates to s. 99(2)(a) by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. I](#); s. 100 in

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force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

#### Marginal Citations

M26 1996 c. 56.

### 101 Permitted selection: pupil banding. **E+W**

- (1) Subject to [F302 subsections (2) and (2A)], the admission arrangements for a maintained school [F303 in England or Wales] may make provision for selection by ability to the extent that the arrangements are designed to secure—
- (a) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among applicants for admission to the school in that age group, and
  - (b) that no level of ability is substantially over-represented or substantially under-represented.
- [F304(1A) Subject to subsections (2) and (2A), the admission authority for a maintained school in England may make provision for selection by ability to the extent that the arrangements are designed to secure—
- (a) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among such one of the following groups as the admission arrangements may specify (“the reference group”)—
    - (i) children who are applicants for admission in that age group to any of two or more schools (including the school in question) in the area of the local authority,
    - (ii) children in that age group who live in the area of the local authority, or
    - (iii) children in that age group who live in England, and
  - (b) that no level of ability is substantially over-represented or substantially under-represented by comparison with its representation in the reference group.]
- (2) [F305 Subsection (1) or (1A)] does not apply if the arrangements have the effect that, where an applicant for admission has been allocated to a particular range of ability by means of some process of selection by reference to ability, some further such process is required or authorised to be carried out in relation to him for the purpose of determining whether or not he is to be admitted to the school.
- [F306(2A) If the admission authority for a maintained school in England is the local authority, the authority may only introduce such provision for selection by ability as is mentioned in subsection (1) or (1A) with the consent of the governing body of the school.]
- (3) The introduction for a maintained school [F307 in Wales] of admission arrangements to which subsection (1) applies shall be one of the alterations to such a school which are prescribed for the purposes of section 28.
  - (4) [F308 In the case of a school in Wales, admission arrangements to which subsection (1) applies are not authorised] by this section unless proposals for the school to have such arrangements have been published [F309], and fallen to be implemented, under any enactment].
  - (5) Where the admission arrangements for a school make both such provision for selection by ability as is mentioned in [F310 subsection (1) or (1A)] above and such provision for

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selection by aptitude as is mentioned in section 102(1), nothing in this section shall be taken to prevent those arrangements—

- (a) from authorising or requiring a process of selection to be carried out at any stage for the purpose of establishing that an applicant for admission has a relevant aptitude; or
- (b) from having the effect of giving priority to such an applicant with a relevant aptitude irrespective of his level of ability.

#### Textual Amendments

- F302** Words in s. 101(1) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(a)(i), 188(3); S.I. 2006/3400, art. 3(e)
- F303** Words in s. 101(1) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(a)(ii), 188(3); S.I. 2006/3400, art. 3(e)
- F304** S. 101(1A) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(b), 188(3); S.I. 2006/3400, art. 3(e)
- F305** Words in s. 101(2) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(c), 188(3); S.I. 2006/3400, art. 3(e)
- F306** S. 101(2A) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(d), 188(3); S.I. 2006/3400, art. 3(e)
- F307** Words in s. 101(3) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(e), 188(3); S.I. 2006/3400, art. 3(e)
- F308** Words in s. 101(4) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(f), 188(3); S.I. 2006/3400, art. 3(e)
- F309** Words in s. 101(4) substituted (19.12.2002 for W., 1.4.2003 for E.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 109 (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/124, art. 4
- F310** Words in s. 101(5) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(1)(g), 188(3); S.I. 2006/3400, art. 3(e)

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

- C147** S. 101 modified (1.10.1998) (*temp.*) by S.I. 1998/2230, reg.3
- C148** S. 101 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), 2-8. S. 101 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8.
- C149** S. 101 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)
- C150** S. 101 applied (with modifications) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

#### Commencement Information

- I24** S. 101 wholly in force at 1.4.1999; s. 101 not in force at Royal Assent see s. 145(3); s. 101(1)-(4) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I, Sch. 2 Pt. I para. 3(b); s. 101 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1) (with arts. 3-6, Sch. 4).

## 102 Permitted selection: aptitude for particular subjects. **E+W**

(1) Subject to subsection (2), the admission arrangements for a maintained school may make provision for the selection of pupils for admission to the school by reference to their aptitude for one or more prescribed subjects where—

- (a) the admission authority for the school are satisfied that the school has a specialism in the subject or subjects in question; and

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- (b) the proportion of selective admissions in any relevant age group does not exceed 10 per cent.
- (2) Subsection (1) does not apply if the admission arrangements make provision for any test to be carried out in relation to an applicant for admission which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question.
- (3) Where, however, the admission arrangements for a school make both such provision for selection by aptitude as is mentioned in subsection (1) and such provision for selection by ability as is mentioned in [F311 section 101(1) or (1A)], the reference in subsection (2) above to a test of ability does not include any such test for which provision may be made under that section.
- (4) In this section “the proportion of selective admissions”, in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to aptitude for the subject or subjects in question.
- (5) In this section “test” includes assessment and examination.

#### Textual Amendments

**F311** Words in s. 102(3) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(2), 188(3); S.I. 2006/3400, art. 3(e)

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

**C151** S. 102 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), 2-8.

S. 102 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8.

**C152** S. 102 applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)

**C153** S. 102 applied (with modifications) (W.) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

#### Commencement Information

**I25** S. 102 wholly in force at 1.4.1999; s. 102 not in force at Royal Assent see s. 145(3); S. 102(1)(4) in force for certain purposes at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I; s. 102 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

### 103 Permitted selection: introduction, variation or abandonment of provision for such selection. **E+W**

- (1) In connection with the determination of a maintained school’s admission arrangements for a particular school year, sections 89 and 90 shall, except to the specified extent, apply in relation to the making or abandonment by those arrangements of provision for any permitted form of selection by ability or aptitude as they apply in relation to the making or abandonment by those arrangements of provision for other matters.
- (2) In subsection (1) “the specified extent” means the extent to which those admission arrangements would effect an alteration in the provision made by the school’s admission arrangements as respects any such form of selection (whether by introducing, varying or abandoning any such form of selection) which constitutes a prescribed alteration for the purposes of section 28.

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- (3) Any admission arrangements to which [F312section 101(1) or (1A)] applies (whether authorised by section 100 or section 101) may be varied if (and only if) the arrangements as varied are designed to secure [F313the objectives mentioned in section 101(1)(a) and (b), section 101(1A)(a)(i) and (b), section 101(1A)(a)(ii) and (b) or section 101(1A)(a)(iii) and (b)].

#### Textual Amendments

**F312** Words in s. 103(3) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(3)(b)(i), 188(3); S.I. 2006/3400, art. 3(e)

**F313** Words in s. 103(3) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 54(3)(b)(ii), 188(3); S.I. 2006/3400, art. 3(e)

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

**C154** S. 103 modified (*temp.*) (22.4.1999) by S.I. 1999/1064, reg.8.

**C155** S. 103(3) applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(c), 2-8.

S. 103(3) applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, 2-8.

**C156** S. 103(3) applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(b)

**C157** S. 103(3) applied (with modifications) (1.2.2006) by The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))

#### Commencement Information

**I26** S. 103 wholly in force at 1.4.1999; s. 103 not in force at Royal Assent see s. 145(3); S. 103(3) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I; s. 103 in force at 1.4.1999 in so far as not already in force by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4).

### Grammar schools

#### 104 Designation of grammar schools. **E+W**

- (1) Where the Secretary of State is satisfied that a maintained school had selective admission arrangements at the beginning of the 1997-98 school year, he may by order designate the school as a grammar school for the purposes of this Chapter.
- (2) A school has selective admission arrangements for the purposes of this Chapter if its admission arrangements make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability.
- (3) For the purpose of deciding whether a school's admission arrangements fall within subsection (2), any such additional criteria as are mentioned in section 86(9) shall be disregarded.
- (4) Where a maintained school is a grammar school—
  - (a) sections 105 to 109 have effect for prescribing procedures for altering the school's admission arrangements so that it no longer has selective admission arrangements; and
  - (b) its admission arrangements shall not be so altered except in accordance with those sections.
- (5) Regulations may make provision—

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- (a) for enabling the Secretary of State to make an order designating as a grammar school for the purposes of this Chapter a maintained school established in substitution for one or more discontinued schools each of which either has been or could have been so designated under this section (whether by virtue of subsection (1) or by virtue of the regulations); and
  - (b) for any provisions of this Chapter, or any regulations made under it, to have effect in relation to any such school with such modifications as may be prescribed.
- (6) In this section “maintained school” includes, in relation to any time before the appointed day—
- (a) a county or voluntary school, or
  - (b) a grant-maintained school,
- within the meaning of the <sup>M27</sup>Education Act 1996; and in the application of subsection (1) to a maintained school on or after the appointed day the reference to the school shall be read, in connection with determining the nature of its admission arrangements at the beginning of the 1997-98 school year, as a reference to it as a school within paragraph (a) or (b) above.
- (7) In this Chapter “grammar school” means a school for the time being designated under this section.

#### Commencement Information

**I27** S. 104 wholly in force at 1.9.1999; s. 104 not in force at Royal Assent see s. 145(3); s. 104(1)-(3) and (5)-(7) in force at 1.9.1998 by [S.I. 1998/2048, art. 3](#); s. 104(4)(a) in force at 1.10.1998 by [S.I. 1998/2212, art. 2, Sch. 1 Pt. I](#); s. 104 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323, art. 2\(1\), Sch. 1](#) (with [arts. 3-5, Schs. 5-7](#)).

#### Marginal Citations

**M27** 1996 c. 56.

### 105 Procedure for deciding whether grammar schools should retain selective admission arrangements. **E+W**

- (1) The Secretary of State may by regulations make provision for ballots of parents to be held, at their request, for determining whether the grammar schools to which such ballots relate should retain selective admission arrangements.
- (2) Ballot regulations may provide for a ballot under this section to relate—
  - (a) to all grammar schools within the area of a prescribed local education authority or within such other area as may be prescribed,
  - (b) to a prescribed group of grammar schools, or
  - (c) to any grammar school not falling within paragraph (a) or (b).
- (3) Ballot regulations may make provision—
  - (a) requiring a request for a ballot under this section to be made by means of a petition signed by parents eligible to request the ballot;
  - (b) prescribing the form of any such petition and other requirements (whether as to the procedure to be followed or otherwise) which are to be complied with in relation to any such petition;



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- (c) prescribing the body (“the designated body”) to which any such petition is to be sent and which, under arrangements made by the Secretary of State, is to—
    - (i) make the arrangements for the holding of ballots under this section, and
    - (ii) discharge such other functions with respect to such petitions and the holding of such ballots as may be prescribed (which may include the determination of any question arising as to the validity of any request for a ballot or as to a person’s eligibility to request or vote in a ballot);
  - (d) requiring prescribed bodies or persons, or bodies or persons falling within any prescribed category—
    - (i) to provide the designated body or any other person with any prescribed information requested by that body or person, or
    - (ii) to publish prescribed information in such manner as may be prescribed;
  - (e) authorising any such bodies or persons to charge a fee (not exceeding the cost of supply) for documents supplied by them in pursuance of regulations made by virtue of paragraph (d)(i);
  - (f) prescribing the terms of the question on which a ballot under this section is to be held and the manner in which such a ballot is to be conducted;
  - (g) enabling the Secretary of State, in any prescribed circumstances, to declare a previous ballot under this section void and require the holding of a fresh ballot;
  - (h) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations.
- (4) Ballot regulations may provide—
- (a) for parents of any prescribed description to register with the designated body, in such manner and at such time as may be prescribed, in order to be eligible to request or vote in a ballot;
  - (b) that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals.
- (5) Ballot regulations may provide for a request for a ballot under this section to be made, in any prescribed circumstances, by means of two or more petitions.
- (6) The information required to be provided in pursuance of subsection (3)(d) may include the names and addresses of parents of any prescribed description.
- (7) Ballot regulations may provide for sections 496 and 497 of the <sup>M28</sup>Education Act 1996 (default powers of Secretary of State) to apply to proprietors of independent schools in relation to a duty imposed by or under the regulations.
- (8) Where—
- (a) a ballot has been held under this section, and
  - (b) the result of the ballot was to the effect that the schools or school in question should retain selective admission arrangements,
- no further ballot relating to the schools or school shall be held under this section within such period as is specified in ballot regulations.
- (9) The Secretary of State may make (or arrange for the making of) payments in respect of any expenses incurred by—
- (a) the governing body of a school maintained by a local education authority,

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**Changes to legislation:** School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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)

- (b) the proprietor of an independent school, or
- (c) a local education authority,

in complying with any obligations which may be imposed by regulations made under subsection (3)(d)(i) or (ii).

Payments under this subsection may be made on such terms as the Secretary of State may determine.

- (10) For the purposes of this section and sections 106 and 107, in their application in relation to any time falling before the appointed day, a grant-maintained school or a grant-maintained special school within the meaning of the <sup>M29</sup>Education Act 1996 shall be taken—
- (a) to be a school maintained by a local education authority, and
  - (b) to be maintained by the authority in whose area it is situated.
- (11) In this section and section 106 “ballot regulations” means regulations made under this section.

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

C158 S. 105 applied (3.12.1998) by S.I. 1998/2876, art. 11(1).

**Marginal Citations**

M28 1996 c. 56.

M29 1996 c. 56.

**106 Ballot regulations: eligibility of parents to request or vote in ballot. E+W**

- (1) In relation to a ballot under section 105(2)(a), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are—
- (a) registered parents of registered pupils at the following schools, namely—
    - (i) where the ballot relates to all grammar schools within the area of a prescribed local education authority, all schools maintained by that authority; or
    - (ii) where the ballot relates to all grammar schools within a prescribed area, all schools maintained by a local education authority which are situated in such area as may be prescribed, together with (if the regulations so provide) all schools maintained by such local education authority as may be prescribed;
  - (b) registered parents of registered pupils at independent schools where—
    - (i) such parents are resident, and
    - (ii) the schools are situated,
 within the area of the prescribed local education authority or (as the case may be) the prescribed area; and
  - (c) parents of children of a prescribed description where such parents—
    - (i) are resident within the area of the prescribed local education authority or (as the case may be) the prescribed area, and
    - (ii) have registered with the designated body in accordance with section 105(4)(a).

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- (2) In relation to a ballot under section 105(2)(b) or (c), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are registered parents of registered pupils at any school from which a prescribed number of pupils have transferred to the grammar school or schools in question—
- (a) at such age or ages, and
  - (b) during such period,
- as may be determined in accordance with the regulations; and such regulations may provide that where, within that period, any such grammar school has been established in substitution for another school, the schools are to be treated as a single school for the purposes of determining eligibility.
- (3) Ballot regulations shall provide—
- (a) in relation to a ballot under section 105(2)(a), that a request for such a ballot must be made by a number of eligible parents equal to at least 20 per cent. of all parents falling within subsection (1)(a) or (b) above; and
  - (b) in relation to a ballot under section 105(2)(b) or (c), that a request for such a ballot must be made by at least 20 per cent. of all parents falling within subsection (2) above.
- (4) Ballot regulations may provide for a parent’s eligibility for the purposes of—
- (a) making a request for a ballot,
  - (b) voting in a ballot, or
  - (c) determining the number of parents required to make a request by virtue of subsection (3),
- to be determined by reference to such different times as may be determined in accordance with the regulations.
- (5) Ballot regulations may make provision for determining whether parents are resident in an area for the purposes of subsection (1)(b) or (c).

## 107 Restriction on publication of material etc. relating to ballots. **E+W**

- (1) An authority or body to whom this section applies shall not incur any expenditure for the purpose of—
- (a) publishing any material which, in whole or in part, appears designed to influence—
    - (i) eligible parents in deciding whether or not to request a ballot under section 105, or
    - (ii) the outcome of such a ballot; or
  - (b) assisting any person to publish any such material; or
  - (c) influencing, or assisting any person to influence, by any other means—
    - (i) eligible parents in deciding whether or not to request such a ballot, or
    - (ii) the outcome of such a ballot.
- (2) This section applies to—
- (a) any local education authority, and
  - (b) the governing body of any school maintained by a local education authority.

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- (3) Nothing in subsection (1) shall be taken to prevent an authority or body to whom this section applies from incurring expenditure on publishing or otherwise providing to any person (whether or not in pursuance of any duty to do so)—
- (a) any factual information so far as it is presented fairly; or
  - (b) a fair and reasonable assessment by the authority or body of the likely consequences of the result of a ballot under section 105 being in favour of the schools or school in question ceasing to have selective admission arrangements; or
  - (c) an accurate statement by the authority or body of their intentions or proposals in the event of such a result.
- (4) In determining for the purposes of subsection (3) whether—
- (a) any information is presented fairly, or
  - (b) an assessment is fair and reasonable,
- regard shall be had to any guidance given from time to time by the Secretary of State.
- (5) In this section any reference to expenditure—
- (a) in relation to the governing body of a school which has a delegated budget within the meaning of Part II of this Act (or, in relation to any time before the appointed day, Part II of the <sup>M30</sup>Education Act 1996), is a reference to expenditure out of the school's budget share; or
  - (b) in relation to the governing body of a grant-maintained or grant-maintained special school within the meaning of that Act (where this section applies to such a school by virtue of section 105(10)), is a reference to expenditure out of maintenance grants paid under Chapter VI of Part III of that Act.

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

C159 S. 107(5) modified (20.11.1998) by S.I. 1998/2670, reg. 4

**Marginal Citations**

M30 1996 c. 56.

**108 Implementation of decision that school should cease to have selective admission arrangements. E+W**

- (1) Subsection (2) applies where the result of a ballot held under section 105 shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of the grammar school or schools to which the ballot related ceasing to have selective admission arrangements.
- (2) The admission authority for a grammar school to which the ballot related shall secure that their admission arrangements are revised (in accordance with sections 89 and 90) so that, as from the beginning of such school year as may be prescribed, the school no longer has selective admission arrangements.
- (3) Where the Secretary of State is satisfied that, in pursuance of subsection (2), a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.

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## 109 Proposals by governing body of grammar school to end selective admission arrangements. **E+W**

- (1) This section has effect for enabling the admission arrangements of a grammar school to be revised (otherwise than in circumstances where section 108(2) applies) so that the school no longer has selective admission arrangements and its admission arrangements instead either—
  - (a) make no provision for selection by ability, or
  - (b) make provision for one or more of the following, namely—
    - (i) any selection by ability authorised by section 101,
    - (ii) any selection by aptitude authorised by section 102, and
    - (iii) any selection by ability such as is mentioned in section 99(2)(c).
- (2) Any such revision of the admission arrangements of a grammar school shall be one of the alterations to a maintained school which are prescribed for the purposes of section 28; but any proposals for any such revision of the admission arrangements of a grammar school which is a community school shall be published under that section by the governing body and not by the local education authority.
- (3) Regulations may provide—
  - (a) that, in their application to any proposals for any such revision of the admission arrangements of a grammar school, any provision of section 28 or Schedule 6 shall have effect with such modifications as may be prescribed;
  - (b) that, in any prescribed circumstances following the making of a request for a ballot to be held under section 105, any such proposals under section 28 shall be of no effect.
- (4) Regulations made under section 105 may make provision, in relation to cases where any such proposals under section 28 have fallen to be implemented under paragraph 5 or 10 of Schedule 6, for requiring the school to which the proposals relate to be disregarded for the purposes of any regulations made under section 105(2).
- (5) Where the Secretary of State is satisfied that, by reason of the implementation of any such proposals, a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.

### Commencement Information

**I28** S. 109 wholly in force at 1.9.1999; s. 109 not in force at Royal Assent see s. 145(3); s. 109(3)(4) in force at 1.2.1999 by S.I. 1998/3198, art. 2(2), Sch.; s. 109 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

## PART IV **U.K.**

### OTHER PROVISIONS ABOUT SCHOOL EDUCATION

#### *Home-school agreements*

## 110 Home-school agreements. **E+W**

- (1) The governing body of a school which is—

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- (a) a maintained school, or
- (b) a city technology college [<sup>F314</sup>, a city college for the technology of the arts or [<sup>F315</sup>an Academy]],

shall adopt a home-school agreement for the school, together with a parental declaration to be used in connection with the agreement.

(2) For the purposes of this section and section 111 a “home-school agreement” is a statement specifying—

- (a) the school’s aims and values;
- (b) the school’s responsibilities, namely the responsibilities which the school intends to discharge in connection with the education of pupils at the school who are of compulsory school age;
- (c) the parental responsibilities, namely the responsibilities which the parents of such pupils are expected to discharge in connection with the education of their children while they are registered pupils at the school; and
- (d) the school’s expectations of its pupils, namely the expectations of the school as regards the conduct of such pupils while they are registered pupils there;

and “parental declaration” means a document to be used by qualifying parents for recording that they take note of the school’s aims and values and its responsibilities and that they acknowledge and accept the parental responsibilities and the school’s expectations of its pupils.

(3) The governing body shall take reasonable steps to secure that the parental declaration is signed by every qualifying parent.

(4) Subsection (3) does not, however, require the governing body to seek the signature of a qualifying parent if, having regard to any special circumstances relating to the parent or the pupil in question, they consider that it would be inappropriate to do so.

(5) Where the governing body consider that a registered pupil at the school has a sufficient understanding of the home-school agreement as it relates to him, they may invite the pupil to sign the parental declaration as an indication that he acknowledges and accepts the school’s expectations of its pupils.

(6) The governing body shall discharge their duty under subsection (3), and (where they decide to exercise it) shall exercise their power under subsection (5), as follows—

- (a) in the case of a pupil attending the school on the relevant date, as soon after that date as is reasonably practicable; and
- (b) in the case of a pupil admitted to the school after the relevant date, as soon after the date of his admission as is reasonably practicable.

(7) The governing body shall from time to time review the home-school agreement.

(8) Where the home-school agreement is revised by the governing body following such a review, subsections (3) to (6) shall, in the case of pupils admitted to the school after the revision takes effect, accordingly apply in relation to the revised agreement.

(9) Before adopting the home-school agreement or parental declaration, or revising that agreement, the governing body shall consult—

- (a) all qualifying parents, and
- (b) such other persons as may be prescribed.

(10) In this section—

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“qualifying parent” means a registered parent of a pupil at the school who is of compulsory school age;

“the relevant date” means such date as the Secretary of State may by order appoint or such later date as he may determine in the case of the school in question.

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#### Subordinate Legislation Made

**P3** S. 110 power fully exercised (12.11.1998): 1.9.1999 appointed day by [S.I. 1998/2877](#)

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#### Textual Amendments

**F314** Words in s. 110(1)(b) substituted (28.7.2000) by [2000 c. 21, s. 149, Sch. 9 para. 85](#)

**F315** Words in s. 110(1)(b) substituted (26.7.2002) by [Education Act 2002 \(c. 32\), ss. 65, 216, Sch. 7 para. 9](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/2002, art. 2](#)

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

**C160** S. 110(1)(a) modified (*temp.*) by [S.I. 1998/2834, art. 2](#)

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#### Commencement Information

**I29** S. 110 wholly in force; s. 110 not in force at Royal Assent see s. 145(3); s. 110 in force at 1.2.1999 by [S.I. 1998/2212, art. 2, Sch. 1 Pt. III](#)

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### 111 Supplementary provisions about home-school agreements. **E+W**

- (1) In discharging any function under section 110 the governing body of a school shall have regard to any guidance given from time to time by the Secretary of State.
- (2) If the Secretary of State by order so provides, the governing body of a school to which subsection (1) of that section applies shall ensure that any form of words—
  - (a) specified in the order, or
  - (b) having such effect as is so specified,is not used in a home-school agreement or (as the case may be) in a parental declaration.
- (3) An order under subsection (2) may apply—
  - (a) to any school specified in the order, or
  - (b) to any description of school so specified.
- (4) Neither the governing body of a school to which section 110(1) applies nor the local education authority where it is the admission authority for such a school shall—
  - (a) invite any person to sign the parental declaration at a time when the child in question has not been admitted to the school;
  - (b) make it a condition of a child being admitted to the school that the parental declaration is signed in respect of the child; or
  - (c) make any decision as to whether or not to admit a child to the school by reference to whether any such declaration is or is not likely to be signed in respect of the child;

and in this subsection “admission authority” has the meaning given by section 88(1).

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- (5) No person shall be excluded from such a school or suffer any other adverse consequences on account of any failure to comply with any invitation to sign the parental declaration.
- (6) A home-school agreement shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.

*Extension of educational opportunities for Key Stage 4 pupils*

**112 Extended work experience for Key Stage 4 pupils. E+W**

(1) Section 560 of the <sup>M31</sup>Education Act 1996 (work experience during compulsory schooling) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) The enactments relating to the prohibition or regulation of the employment of children shall not apply to the employment of a child in his last two years of compulsory schooling if the employment is in pursuance of arrangements made—

(a) by a local education authority, or

(b) by the governing body of a school on behalf of such an authority,

with a view to providing him with work experience as a part of his education.

(2) For the purposes of subsection (1) a child shall be taken to be in his last two years of compulsory schooling as from the beginning of the last two school years at his school during the whole or part of which he is of compulsory school age.”

(3) In subsection (6) (disapplication of sections 495 and 496 of the Act), the words “or the governing body of a grant-maintained school” shall be omitted.

**Commencement Information**

**I30** S. 112 partly in force; s. 112 not in force at Royal Assent see s. 145(3); s. 112(1)(2) in force at 1.10.1998 by [S.I. 1998/2212](#), [art. 2](#), [Sch. 1 Pt. 1](#)

**Marginal Citations**

**M31** 1996 c. 56.

**113 Provision of secondary education for Key Stage 4 pupils by FE institutions. E+W**

(1) In section 18(1) of the <sup>M32</sup>Further and Higher Education Act 1992 (principal powers of a further education corporation), after paragraph (a) there shall be inserted—

“(aa) in pursuance of arrangements made—

(i) by a local education authority, or

(ii) by the governing body of a school on behalf of such an authority,

provide secondary education to pupils in the fourth key stage, and”.



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(2) After section 52 of that Act there shall be inserted—

**“52A Duty to safeguard pupils receiving secondary education.**

- (1) This section applies where secondary education is provided to pupils in the fourth key stage—
- (a) by a further education corporation in pursuance of arrangements falling within section 18(1)(aa) of this Act, or
  - (b) by a designated institution in pursuance of arrangements made—
    - (i) by a local education authority, or
    - (ii) by the governing body of a school on behalf of such an authority.
- (2) The governing body of the corporation or institution shall secure that, except in such circumstances as may be prescribed by regulations, no education is provided to a person who has attained the age of nineteen years in a room in which any such pupils are for the time being receiving secondary education.”

**Marginal Citations**

M32 1992 c. 13.

*[<sup>F316</sup>Food and drink provided on school premises etc]*

**Textual Amendments**

**F316** S. 114A and cross-heading substituted for s. 114 and cross-heading (8.11.2006) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 86(1)**, 188(1) (with s. 86(3))

<sup>F316</sup>**114 Nutritional standards for school lunches.** **E+W**

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<sup>F316</sup>**114A Requirements for food and drink provided on school premises etc** **E+W**

- (1) Regulations may prescribe requirements which, subject to such exceptions as may be provided for by or under the regulations, are to be complied with in connection with—
- (a) food or drink provided on the premises of any school maintained by a local education authority, or
  - (b) food or drink provided at a place other than school premises by a local education authority or the governing body of a school maintained by such an authority to any registered pupil at the school.
- (2) Regulations under this section may in particular—
- (a) specify nutritional standards, or other nutritional requirements, which are to be complied with;
  - (b) require that drinking water is to be available, free of charge, on the premises of any school maintained by a local education authority;
  - (c) require that specified descriptions of food or drink are not to be provided.

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- (3) Requirements prescribed by virtue of subsection (1)(a) do not apply to food or drink brought on to the premises of a school maintained by a local education authority where the food or drink is brought on to those premises by any person for his own consumption.
- (4) Where a local education authority or the governing body of a school maintained by such an authority provide food or drink—
  - (a) to anyone on the premises of the school, or
  - (b) to any registered pupil at the school at a place other than school premises,
 that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with.
- (5) Subsection (4) applies whether the food or drink is provided in pursuance of any statutory requirement or otherwise.
- (6) Where—
  - (a) food or drink is provided on the premises of a school maintained by a local education authority,
  - (b) the provision is by a person (“X”) other than the authority or the governing body of the school, and
  - (c) X uses or occupies the whole or a part of the premises in circumstances related to a use or occupation agreement made (whether by X or any other person) with the authority or the governing body,
 that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with.
- (7) A “use or occupation agreement”, in relation to the premises of a school, is an agreement or other arrangement relating to the use or occupation of the whole or any part of the premises.
- (8) Without prejudice to the generality of section 138(7), regulations under this section may prescribe—
  - (a) different requirements in relation to different classes or descriptions of school as specified in the regulations;
  - (b) different requirements in connection with food or drink provided by or to different classes or descriptions of person as specified in the regulations;
  - (c) requirements which apply during different periods of the day as specified in the regulations.
- (9) A “place other than school premises” means a place other than the premises of any school maintained by a local education authority.
- (10) References in this section to food or drink provided by a local education authority or the governing body of a school include references to food or drink provided in pursuance of an agreement or other arrangement made by such an authority or body for the provision of food or drink.]

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### Textual Amendments

**F317** S. 115 repealed (31.3.2003 for W., 1.4.2003 for E.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002/3185](#), art. 5, [Sch. Pt. II](#); [S.I. 2003/124](#), art. 4

## 116 Transfer of LEA functions concerning school lunches, etc. to governing bodies. **E+W**

After section 512 of the Education Act 1996 there shall be inserted—

### “512A Transfer of functions under section 512 to governing bodies.

- (1) The Secretary of State may by order make provision for imposing on the governing body of any school to which the order applies a duty or duties corresponding to one or more of the duties of the local education authority which are mentioned in subsection (2).
- (2) Those duties are—
  - (a) the duty to provide school lunches in accordance with section 512(1A) and (1B);
  - (b) the duty to provide school lunches free of charge in accordance with section 512(3)(a); and
  - (c) the duty to provide milk free of charge in accordance with section 512(3)(b).
- (3) An order under this section may (subject to subsection (6)) apply to—
  - (a) all maintained schools; or
  - (b) any specified class of such schools; or
  - (c) all such schools, or any specified class of such schools, maintained by specified local education authorities.
- (4) Where any duty falls to be performed by the governing body of a school by virtue of an order under this section—
  - (a) the corresponding duty mentioned in subsection (2) shall no longer fall to be performed by the local education authority in relation to the school; and
  - (b) if the duty corresponds to the one mentioned in subsection (2)(b) or (c), section 533(3) shall not apply to any school lunches or milk provided by the governing body in pursuance of the order.
- (5) An order under this section may provide for section 513(2) not to apply—
  - (a) to local education authorities generally, or
  - (b) to any specified local education authority,either in relation to all pupils for whom provision is made by the authority under section 513 or in relation to all such pupils who are of such ages as may be specified.
- (6) An order under this section shall not operate to—
  - (a) impose any duty on the governing body of a school, or
  - (b) relieve a local education authority of any duty in relation to a school,

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at any time when the school does not have a delegated budget; and such an order may provide for section 512(2)(b) above to have effect, in relation to any provision made at any such time by the local education authority for pupils at the school, with such modifications as may be specified.

(7) In this section—

“delegated budget” and “maintained school” have the same meaning as in the School Standards and Framework Act 1998;

“school lunch” has the same meaning as in section 512 above;

“specified” means specified in an order under this section.”

## PART V U.K.

### NURSERY EDUCATION

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

**C161** Pt. 5: Power to apply (with modifications) conferred (19.12.2002) by [Education Act 2002 \(c. 32\)](#), ss. [193\(5\)](#), [216](#), (with ss. [210\(8\)](#), [214\(4\)](#)); [S.I. 2002/3185](#), [art. 4](#), Sch. Pt. 1

#### *Nursery education*

#### 117 Definition of “nursery education”. **E+W**

In this Part “nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere).

#### *General duty of local education authority*

#### 118 Duty of LEA as respects availability of nursery education. **E+W**

- (1) A local education authority shall secure that the provision (whether or not by them) of nursery education for children who—
  - (a) have not attained compulsory school age, but
  - (b) have attained such age as may be prescribed,
 is sufficient for their area.
- (2) In determining for the purposes of subsection (1) whether the provision of such education is sufficient for their area a local education authority—
  - (a) may have regard to any facilities which they expect to be available outside their area for providing such education; and
  - (b) shall have regard to any guidance given from time to time by the Secretary of State.

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### [<sup>F318</sup> 118A] Duties of LEA in respect of childcare **E+W**

- (1) A local education authority shall review annually the sufficiency of childcare provision for their area.
- (2) In carrying out a review for the purposes of subsection (1), a local education authority—
  - (a) may have regard to any facilities which they expect to be available outside their area for providing childcare; and
  - (b) shall have regard to any guidance given from time to time by the Secretary of State.
- (3) A local education authority shall also establish and maintain a service providing information to the public relating to the provision of childcare and related services in their area.
- (4) In relation to the function, form and content of a service established and maintained under subsection (3), a local education authority shall have regard to any guidance given from time to time by the Secretary of State.]

#### Textual Amendments

**F318** S. 118A inserted (1.10.2002 for E. and 31.3.2003 for W. ) by [Education Act 2002 \(c. 32\)](#), **ss. 149(1), 216** (with **ss. 210(8), 214(4)**); [S.I. 2002/2439](#), **art. 3** (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

### *Early years development [<sup>F319</sup> and childcare] partnerships*

#### Textual Amendments

**F319** Words in cross-heading before s. 119 inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5), 216** (with **ss. 210(8), 214(4)**); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

### 119 Early years development [<sup>F320</sup> and childcare] partnerships. **E+W**

- (1) Every local education authority shall establish for their area a body to be known as an early years development [<sup>F321</sup> and childcare] partnership (“the partnership”).
- (2) In establishing the partnership and determining its constitution the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (3) The authority may establish a sub-committee of the partnership for any part of their area.
- (4) The authority shall make arrangements—
  - (a) for the meetings and proceedings of the partnership and any such sub-committee, and
  - (b) for the partnership (and any such sub-committee) to be provided with accommodation and with such services as the authority consider appropriate.
- (5) The functions of the partnership shall be to work with the authority—

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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)

- (a) in reviewing the sufficiency of the provision of nursery education for the authority’s area for the purposes of section 118,<sup>F322</sup> . . .
- [<sup>F323</sup>(ab) in reviewing the sufficiency of childcare provision for the authority’s area for the purposes of section 118A,<sup>F324</sup> ...]
- <sup>F324</sup>(b) . . . . .
- (6) The Secretary of State may by order confer on early years development [<sup>F325</sup>and childcare] partnerships such additional functions as are specified in the order.

**Textual Amendments**

**F320** Words in s. 119 sidenote inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

**F321** Words in s. 119 inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

**F322** Word in s. 119(5)(a) repealed (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), [ss. 215\(2\)](#), 216, **Sch. 22 Pt. 3** (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3** (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

**F323** S. 119(5)(ab) inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(1)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3** (with [Sch.](#)); [S.I. 2002/3185](#), [art. 5](#), **Sch. Pt. 2**

**F324** S. 119(5)(b) and word repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), **Sch. 5 Pt. 1**; [S.I. 2005/394](#), **art. 2(1)(i)**; [S.I. 2006/885](#), **art. 2(3)(b)**

**F325** Words in s. 119 inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

*Early years development [<sup>F326</sup>and childcare] plans*

**Textual Amendments**

**F326** Words in cross-heading before s. 120 inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

<sup>F328</sup>**120** Early years development [<sup>F327</sup>and childcare] plans. **E+W**

.....

**Textual Amendments**

**F327** Words in s. 120 heading inserted (1.10.2002 for E. and 31.3.2003 for W.) by [Education Act 2002 \(c. 32\)](#), **ss. 150(5)**, 216 (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2002/2439](#), **art. 3**, (with [Sch.](#)); [S.I. 2002/3185](#), **art. 5**, [Sch. Pt. II](#)

**F328** S. 120 repealed (1.3.2005 for E., 1.9.2006 for W.) by [Children Act 2004 \(c. 31\)](#), **Sch. 5 Pt. 1**; [S.I. 2005/394](#), **art. 2(1)(i)**; [S.I. 2006/885](#), **art. 2(3)(b)**

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**F329** 121 Approval, modification and review of statement of proposals. **E+W**

.....

**Textual Amendments**

**F329** S. 121 repealed (1.3.2005 for E., 1.9.2006 for W.) by Children Act 2004 (c. 31), Sch. 5 Pt. 1; S.I. 2005/394, art. 2(1)(I); S.I. 2006/885, art. 2(3)(b)

*Inspection of nursery education*

**122** Inspection of nursery education. **E+W**

(1) Schedule 26 (inspections, etc. of providers of nursery education) shall have effect.

**F330** (2) .....

(3) Any register of nursery education inspectors established by <sup>F331</sup>the Chief Inspector for Wales] under Schedule 1 to that Act shall be treated as established by him under Schedule 26 to this Act; and accordingly anything done under Schedule 1 to that Act in connection with the registration of (or any refusal to register) any person in that register shall, if effective immediately before the commencement of this section, continue to have effect as if done under Schedule 26 to this Act.

(4) In subsection (3) <sup>F332</sup>“the Chief Inspector for Wales” means“<sup>F333</sup>[Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru].

**Textual Amendments**

**F330** S. 122(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

**F331** Words in s. 122(3) substituted (3.10.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), Sch. 7 para. 7(2) (with s. 119); S.I. 2005/2034, art. 6; S.I. 2006/1338, art. 3, Sch. 1

**F332** Words in s. 122(4) substituted (3.10.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), Sch. 7 para. 7(3) (with s. 119); S.I. 2005/2034, art. 6; S.I. 2006/1338, art. 3, Sch. 1

**F333** Words in s. 122(4) substituted (W.) (1.1.2001) by 2000 c. 21, s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

*Further provisions relating to nursery education*

**123** Children with special educational needs. **E+W**

(1) It shall be the duty of—  
 (a) any local education authority or other person providing relevant nursery education, and  
 (b) any person employed by such an authority or other person, or otherwise engaged to provide his services, in the provision of such education,  
 (except where a duty is already imposed by subsection (2) of section 313 of the <sup>M33</sup>Education Act 1996) to have regard to the provisions of the code of practice issued under that section (practical guidance in respect of the discharge of functions under Part IV of that Act).

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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- (2) That code of practice may include practical guidance in respect of the provision of relevant nursery education for children with special educational needs in circumstances where functions under Part IV of the <sup>M34</sup>Education Act 1996 do not fall to be discharged.
- (3) But unless that code of practice includes provision made by virtue of subsection (2)—
- (a) the Secretary of State shall publish a document explaining how the practical guidance contained in that code applies in circumstances where functions under Part IV of the <sup>M35</sup>Education Act 1996 do not fall to be discharged, and
  - (b) the duty imposed by subsection (1) includes a duty to have regard to the provisions of that document.

[<sup>F334</sup>(3A) Subsection (3B) applies if—

- (a) a local education authority or other person providing relevant nursery education for a child makes special educational provision for him because it is considered that he has special educational needs;
- (b) no statement under section 324 of the Education Act 1996 is maintained for the child; and
- (c) his parent has not previously been informed under subsection (3B) of the special educational provision made for him.

(3B) The local education authority or other person concerned must inform the child’s parent that special educational provision is being made for him because it is considered that he has special educational needs.]

- (4) In this section “relevant nursery education” means nursery education which is provided—
- (a) by a local education authority, or
  - (b) by any other person who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a).

#### Textual Amendments

**F334** S. 123(3A)(3B) inserted (1.1.2002 for E. and 1.4.2002 for W.) by 2001 c. 10, ss. 7(2), 43(3) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (which S.I. was amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

#### Marginal Citations

**M33** 1996 c. 56.

**M34** 1996 c. 56.

**M35** 1996 c. 56.

## 124 Travel arrangements for children receiving nursery education otherwise than at school. **U.K.**

After section 509 of the <sup>M36</sup>Education Act 1996 there shall be inserted—



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**“509A Travel arrangements for children receiving nursery education otherwise than at school.**

- (1) A local education authority may provide a child with assistance under this section if they are satisfied that, without such assistance, he would be prevented from attending at any premises—
  - (a) which are not a school or part of a school, but
  - (b) at which relevant nursery education is provided,
 for the purpose of receiving such education there.
- (2) The assistance which may be provided for a child under this section consists of either—
  - (a) making arrangements (whether for the provision of transport or otherwise) for the purpose of facilitating the child’s attendance at the premises concerned, or
  - (b) paying the whole or any part of his reasonable travel expenses.
- (3) When considering whether to provide a child with assistance under this section in connection with his attendance at any premises, a local education authority may have regard (among other things) to whether it would be reasonable to expect alternative arrangements to be made for him to receive relevant nursery education at any other premises (whether nearer to his home or otherwise).
- (4) Where the assistance to be provided for a child under this section consists of making arrangements for the provision of transport, the authority may, if they consider it appropriate to do so, determine that the assistance shall not be so provided unless—
  - (a) the child’s parent, or
  - (b) the person providing the relevant nursery education concerned,
 agrees to make to the authority such payments in respect of the provision of the transport (not exceeding the cost to the authority of its provision) as they may determine.
- (5) In this section “relevant nursery education” means nursery education which is provided—
  - (a) by a local education authority, or
  - (b) by any other person—
    - (i) who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
    - (ii) who is in receipt of grants under section 1 of the <sup>M37</sup>Nursery Education and Grant-Maintained Schools Act 1996.”

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**Marginal Citations**

**M36** 1996 c. 56.

**M37** 1996 c. 50.

*Status: Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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)*

[<sup>F335</sup>**PART 5A** **E+W**]

**EMPLOYMENT OF TEACHERS AT INDEPENDENT  
SCHOOLS HAVING A RELIGIOUS CHARACTER**

**Textual Amendments**

**F335** Pt. 5A inserted (E.W.) (1.9.2003) by [The Independent Schools \(Employment of Teachers in Schools with a Religious Character\) Regulations 2003 \(S.I. 2003/2037\)](#), regs. 1(1), 3

**124A. Employment of teachers at independent schools having a religious character** **E**  
**+W**

- (1) This section applies to an independent school which has a religious character.
- (2) Preference may be given, in connection with the appointment, promotion or remuneration of teachers at the school, to persons—
  - (a) whose religious opinions are in accordance with the tenets of the religion or the religious denomination specified in relation to the school under section 124B(2), or
  - (b) who attend religious worship in accordance with those tenets, or
  - (c) who give, or are willing to give, religious education at the school in accordance with those tenets.
- (3) Regard may be had, in connection with the termination of the employment or engagement of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.

**124B. Designation of independent schools as having a religious character** **E+W**

- (1) Subsections (3) and (5) of section 69 (which relate to the designation of foundation or voluntary schools as having a religious character) apply in relation to an independent school as they apply in relation to a foundation or voluntary school, but as if—
  - (a) in subsection (3), the reference to Part 2 were a reference to this Part, and
  - (b) in subsection (5), the reference to subsection (4) of that section were a reference to subsection (2) of this section.
- (2) An order made under section 69(3) by virtue of subsection (1) shall specify, in relation to each school designated by the order, the religion or religious denomination (or as the case may be each religion or religious denomination) in accordance with whose tenets education is provided at the school or the school is conducted.]

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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## [<sup>F336</sup>PART VI] E+W

### Textual Amendments

**F336** Pt. VI (ss. 125-126) ceased to have effect (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and otherwise 1.1.2001 for W. and 1.9.2001 for E.) by virtue of 2000 c. 21, s. 154(3), **Sch. 9 para. 86**; S.I. 2000/3230, art. 2, **Sch.**; S.I. 2001/654, art. 2(3), **Sch. Pt. III**

### <sup>F337</sup>125 [Partnership arrangements to secure provision of certain further education in Wales.] E+W

- (1) The <sup>M38</sup>Further and Higher Education Act 1992 shall be amended as follows.
- (2) In section 5 (administration of funds by further education funding councils), after subsection (5) there shall be inserted—
  - “(5A) The Further Education Funding Council for Wales may give financial support to a local education authority for an area in Wales for the purposes of any partnership arrangement made by the authority to which section 60A of this Act applies.”
- (3) In section 18 (principal powers of a further education corporation)—
  - (a) in subsection (1), the words “and those powers” to the end shall be omitted, and
  - (b) after subsection (3) there shall be added—
    - “(4) In addition to the powers conferred by subsection (1) above, a further education corporation which conducts one or more educational institutions situated in Wales may—
      - (a) secure the provision of full-time or part-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19, but only if that provision is made under a partnership arrangement to which section 60A of this Act applies, and
      - (b) supply goods or services in connection with the securing of the provision of education under paragraph (a) above.
    - (5) Subsections (2) and (3) above shall apply for the purposes of subsection (4) above as they apply for the purposes of subsection (1), except that references in those subsections to the provision of education shall be construed as references to the securing of the provision of education.
    - (6) The powers conferred by subsection (1) above and the powers conferred by subsection (4) above are referred to in section 19 of this Act as the corporation’s principal powers.”
- (4) After section 60 there shall be inserted—

#### “60A Partnership arrangements to secure provision of certain further education in Wales.

- (1) An arrangement is a partnership arrangement to which this section applies if—

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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- (a) it is made by—
    - (i) one or more local education authorities for areas in Wales, and
    - (ii) one or more governing bodies of Welsh further education institutions,
 for the purpose of securing the provision of education within subsection (3),
  - (b) it provides for the facilities connected with the provision of education under the arrangement to be provided—
    - (i) in part, at one or more schools maintained by the local education authority which is a party to the arrangement (or where more than one local education authority is a party, by each of them), and
    - (ii) in part, at one or more Welsh further education institutions conducted by the governing body which is a party to the arrangement (or, where more than one governing body is a party, by each of them),
  - (c) it is made with the consent of—
    - (i) the Further Education Funding Council for Wales, and
    - (ii) the governing body of each school at which, in accordance with the arrangement, facilities are to be provided, and
  - (d) it is approved by the Secretary of State.
- (2) For the purposes of subsection (1) above—
- (a) “Welsh further education institution” means an institution which is within the further education sector and is situated in Wales, and
  - (b) a designated institution shall be treated as conducted by the governing body of the institution.
- (3) Education is within this subsection if it is full-time or part-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19.
- (4) The following bodies shall exercise their functions with a view to securing that any education provided under a partnership arrangement to which this section applies is provided and funded in accordance with the arrangement—
- (a) each local education authority which is a party to the arrangement;
  - (b) each governing body of an institution (or institutions) within the further education sector which is a party to the arrangement;
  - (c) the Further Education Funding Council for Wales;
  - (d) each governing body of a school which consented to the arrangement.
- (5) Schedule 5A to this Act shall have effect in relation to partnership arrangements to which this section applies.”
- (5) After Schedule 5 there shall be inserted the Schedule set out in Schedule 27 to this Act.

#### Textual Amendments

**F337** S. 125 repealed (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and 1.1.2001 (W.) otherwise) by 2000 c. 21, s. 153, **Sch. 11**; S.I. 2000/3230, art. 2, **Sch.**

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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### Commencement Information

**I31** S. 125 wholly in force at 1.9.1999; s. 125 not in force at Royal Assent see s. 145(3); s. 125(5) in force at 1.4.1999 by S.I. 1998/2212, art. 2, Sch. 1 Pt. IV; s. 125 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### Marginal Citations

**M38** 1992 c. 13.

## <sup>F338</sup> [126 Provisions relating to education provided under partnership arrangements. **E** **+W**

- (1) The <sup>M39</sup>Education Act 1996 shall have effect in relation to education provided under relevant partnership arrangements subject to the following provisions of this section.
- (2) For the purposes of that Act—
  - (a) full-time education suitable to the requirements of persons who are over compulsory school age but under the age of 19 which is provided at a school at which education within section 2(2)(a) of that Act is also provided shall not be regarded as secondary education, and
  - (b) a person for whom full-time or part-time education suitable to the requirements of such persons is being provided at a school shall not be regarded as a pupil,
 

if that education is being provided under a relevant partnership arrangement.
- (3) Accordingly, education within subsection (2)(a) above which is provided under a relevant partnership arrangement shall, for the purposes of that Act, be regarded as further education.
- (4) In this section “relevant partnership arrangement” means a partnership arrangement to which section 60A of the <sup>M40</sup>Further and Higher Education Act 1992 (as inserted by section 125(4)) applies.]

### Textual Amendments

**F338** S. 126 repealed (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and 1.1.2001 (W.) otherwise) by 2000 c. 21, s. 153, Sch. 11; S.I. 2000/3230, art. 2, Sch.

### Marginal Citations

**M39** 1996 c. 56.

**M40** 1992 c. 13.

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## PART VII U.K.

### MISCELLANEOUS AND GENERAL

#### *Code of practice for local education authorities and maintained schools* [<sup>F339</sup>in Wales]

##### Textual Amendments

**F339** Words in s. 127 cross-heading inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(7), 188(2)

#### **127 Code of practice for securing effective relationships between LEAs and maintained schools** [<sup>F340</sup>in Wales]. **E+W**

- (1) The [<sup>F341</sup>Assembly] shall issue, and may from time to time revise, a code of practice containing such practical guidance as [<sup>F342</sup>it] thinks appropriate with a view to securing effective relationships between local education authorities [<sup>F343</sup>in Wales] and the schools maintained by them—
- (a) in relation to promoting high standards of education in such schools; and
  - [<sup>F344</sup>(b) in relation to the discharge of such functions as the Assembly may determine for the purposes of this paragraph which are functions exercisable by or on behalf of such authorities in relation to such schools.]
- (2) In discharging their functions in relation to any maintained school [<sup>F345</sup>or maintained nursery school][<sup>F346</sup>in Wales], it shall be the duty of—
- (a) the local education authority,
  - (b) the governing body, and
  - (c) the head teacher,
- to have regard to any relevant provisions of the code.
- [<sup>F347</sup>(3) Subsections (1) and (2) of section 85 shall apply in relation to the code as they apply in relation to a code under section 84 relating to Wales.]
- (4) The [<sup>F348</sup>Assembly] shall publish the code as for the time being in force.
- [<sup>F349</sup>(5) .....
- [<sup>F349</sup>(6) .....

##### Textual Amendments

**F340** Words in s. 127 heading inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(7), 188(2)

**F341** Word in s. 127(1) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(2)(a), 188(2)

**F342** Word in s. 127(1) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(2)(b), 188(2)

**F343** Words in s. 127(1) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(2)(c), 188(2)

**F344** S. 127(1)(b) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 58(2)(d), 188(2)

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- F345** Words in s. 127(2) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 110(2)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F346** Words in s. 127(2) inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 58(3)**, 188(2)
- F347** S. 127(3) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 58(4)**, 188(2)
- F348** Word in s. 127(4) substituted (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 58(5)**, 188(2)
- F349** S. 127(5)(6) repealed (8.1.2007) by Education and Inspections Act 2006 (c. 40), **ss. 58(6)**, 188(2), **Sch. 18 Pt. 2**

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

- C162** S. 127 applied (18.6.1999) by S.I. 1999/2022, **art. 2**.

*Financial assistance to non-maintained schools*

VALID FROM 12/01/2010

**128 Financial assistance to non-maintained schools. E+W**

(1) For section 18 of the <sup>M41</sup>Education Act 1996 there shall be substituted—

**“18 Financial assistance to non-maintained schools.**

- (1) Subject to subsection (2), a local education authority may—
- (a) assist any primary or secondary non-maintained school (whether inside or outside their area);
  - (b) make arrangements for pupils to be provided with primary or secondary education at such schools.
- (2) Except in accordance with regulations, a local education authority may not under subsection (1) make any grant or other payment (whether to the proprietor of a school or otherwise) in respect of—
- (a) fees or expenses (of whatever nature) which are payable in connection with the attendance of a pupil at a school, or
  - (b) such other matters as may be prescribed.
- (3) Regulations made for the purposes of subsection (2)(a) may provide that, in such circumstances as may be specified in or determined in accordance with the regulations, a local education authority—
- (a) shall exercise their power under subsection (1)(b) in relation to a pupil at a non-maintained school so as to pay the whole of—
    - (i) the fees payable in respect of the education provided for the pupil, and
    - (ii) if board and lodging are provided for him at the school, the fees payable in respect of the board and lodging, and
    - (iii) any expenses of a prescribed description which are payable in connection with his attendance at the school; or

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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)

(b) may exercise that power in relation to such a pupil so as to pay the whole or part of any fees or expenses falling within all or any of subparagraphs (i) to (iii) of paragraph (a) above.

(4) In this section references to non-maintained schools are references to schools which are not maintained by any local education authority.”

(2) In consequence of subsection (1), section 16(1)(c) of the <sup>M42</sup>Education Act 1996 (power of local education authority to assist primary or secondary school not maintained by the authority) shall cease to have effect.

#### Marginal Citations

M41 1996 c. 56.

M42 1996 c. 56.

## 129 Payment of school expenses; grant of scholarships, etc. **E+W**

For section 518 of the <sup>M43</sup>Education Act 1996 there shall be substituted—

### “518 Payment of school expenses; grant of scholarships, etc.

(1) A local education authority, for the purpose of enabling persons to take advantage of any educational facilities available to them, may in such circumstances as may be specified in or determined in accordance with regulations—

- (a) pay such expenses of children attending community, foundation, voluntary or special schools as may be necessary to enable them to take part in any school activities,
- (b) grant scholarships, exhibitions, bursaries and other allowances in respect of persons over compulsory school age.

(2) Regulations may make provision—

- (a) for requiring a local education authority to make, in relation to each financial year, a determination relating to the extent to which they propose to exercise their power under subsection (1)(b) in that year; and
- (b) for authorising an authority to determine not to exercise that power in a financial year—
  - (i) generally,
  - (ii) in such cases as may be prescribed, or
  - (iii) in such cases as may be determined by the authority.”

#### Marginal Citations

M43 1996 c. 56.



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### 130 Transfer of assisted places. **E+W**

(1) In section 3(2) of the <sup>M44</sup>Education (Schools) Act 1997 (regulations for purposes of transitional arrangements), after paragraph (f) there shall be added—

“(g) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has at any time held) an assisted place provided by a school under section 2(1), to authorise another school which is either—

(i) a former participating school, or

(ii) a new school authorised to provide assisted places by virtue of paragraph (f) above,

to provide for the pupil under section 2(1) the assisted place which the first-mentioned school was authorised to provide.”

(2) In section 75A(9A) of the <sup>M45</sup>Education (Scotland) Act 1980 (regulations in connection with assisted places)—

(a) the word “and” immediately preceding paragraph (b) shall be omitted; and

(b) after that paragraph there shall be inserted “; and

(c) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has, at any time since the beginning of the first term of the 1997-98 school year, held) an assisted place at a school under a scheme operated by virtue of subsection (1) above, to authorise another school which is, or is treated as, a participating school to provide for the pupil under such a scheme the assisted place which the first-mentioned school was authorised to provide.”

#### Extent Information

**E2** S. 130(2) extends to Scotland only.

#### Marginal Citations

**M44** 1997 c. 59.

**M45** 1980 c. 44.

### *Abolition of corporal punishment*

### 131 Abolition of corporal punishment in schools etc. **E+W**

(1) For section 548 of the <sup>M46</sup>Education Act 1996 there shall be substituted—

#### “548 No right to give corporal punishment.

(1) Corporal punishment given by, or on the authority of, a member of staff to a child—

(a) for whom education is provided at any school, or

(b) for whom education is provided, otherwise than at school, under any arrangements made by a local education authority, or

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- (c) for whom specified nursery education is provided otherwise than at school,  
cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.
- (2) Subsection (1) applies to corporal punishment so given to a child at any time, whether at the school or other place at which education is provided for the child, or elsewhere.
- (3) The following provisions have effect for the purposes of this section.
- (4) Any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery.
- (5) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting—
- (a) an immediate danger of personal injury to, or
  - (b) an immediate danger to the property of,  
any person (including the child himself).
- (6) “Member of staff”, in relation to the child concerned, means—
- (a) any person who works as a teacher at the school or other place at which education is provided for the child, or
  - (b) any other person who (whether in connection with the provision of education for the child or otherwise)—
    - (i) works at that school or place, or
    - (ii) otherwise provides his services there (whether or not for payment),  
and has lawful control or charge of the child.
- (7) “Child” (except in subsection (8)) means a person under the age of 18.
- (8) “Specified nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age which is provided—
- (a) by a local education authority; or
  - (b) by any other person—
    - (i) who is (or is to be) in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
    - (ii) who is (or is to be) in receipt of grants under section 1 of the <sup>M47</sup>Nursery Education and Grant-Maintained Schools Act 1996; or
  - (c) (otherwise than as mentioned in paragraph (a) or (b)) in any educational institution which would fall within section 4(1) above (definition of “school”) but for the fact that it provides part-time, rather than full-time, primary education.”

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**Changes to legislation:** School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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)

**Textual Amendments**

**F350** S. 131(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

**Marginal Citations**

**M46** 1996 c. 56.

**M47** 1996 c. 50.

*The funding authorities*

**132 Dissolution of Funding Agency for Schools. E+W**

(1) The Funding Agency for Schools shall be dissolved on such date as the Secretary of State may by order specify (“the dissolution date”).

<sup>F351</sup>(2) .....

<sup>F351</sup>(3) .....

<sup>F351</sup>(4) .....

(5) Any property, rights and liabilities to which the Agency are entitled or subject immediately before the dissolution date (whether or not capable of being transferred or assigned by the Agency) shall by virtue of this section become property, rights and liabilities of the Secretary of State on that date.

<sup>F352</sup>(6) .....

(7) Every agreement (whether written or not), and every instrument or other document, which relates to any property, right or liability of the Agency to which subsection (5) applies shall have effect, so far as may be required for continuing its effect on or after the dissolution date, as if—

- (a) where the Agency is a party to it, the Secretary of State were substituted as that party,
- (b) for any reference to the Agency there were substituted a reference to the Secretary of State,
- (c) for any reference (however worded and whether express or implied) to the chairman, the chief officer or any member of the Agency there were substituted a reference to such officer or officers as the Secretary of State may appoint for the purpose, and
- (d) for any reference to the office or place of business of the Agency there were substituted a reference to the principal office of the Secretary of State.

**Textual Amendments**

**F351** S. 132(2)-(4) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

**F352** S. 132(6) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

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

**C163** S. 132 modified (*temp.*) (26.5.1999) by S.I. 1999/1287, reg. 3(2)(a).

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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<sup>F353</sup> **133 Removal of power to establish Schools Funding Council for Wales.** **E+W**

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**Textual Amendments**

**F353** S. 133 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

*School and nursery inspections*

**134 Publication of inspection reports.** **U.K.**

<sup>F354</sup> (1) .....

<sup>F355</sup> (2) .....

(3) In section 39 of the <sup>M48</sup>Education Act 1997 (reports of inspections of local education authorities), at the end of subsection (4) (publication of such reports) there shall be added “; and section 42A(2) to (4) of the School Inspections Act 1996 shall apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in section 42A(2).”

**Textual Amendments**

**F354** S. 134(1) repealed (1.9.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), Sch. 19 Pt. 1; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1 (with Sch. 4 para. 6)

**F355** S. 134(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 7

**Commencement Information**

**I32** S. 134 partly in force; s. 134 not in force at Royal Assent see s. 145(3); s. 134(1)(3) in force at 1.10.1998 by S.I. 1998/2212, art. 2, Sch. 1 Pt. I

**Marginal Citations**

**M48** 1997 c. 44.

<sup>F356</sup> **135 Miscellaneous amendments relating to school and nursery inspections.** **U.K.**

.....

**Textual Amendments**

**F356** S. 135 repealed (1.9.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), Sch. 19 Pt. 1; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1 (with Sch. 4 para. 6)

*Education Assets Board*

**136 Change of name of Education Assets Board.** **E+W**

(1) The Education Assets Board shall be known instead as the Education Transfer Council.

**Status:** Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

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- (2) For any reference to the Education Assets Board—
- (a) in any statutory provision (other than this section), or
  - (b) in any instrument or document,
- there shall be substituted, as respects any time after the commencement of this section, a reference to the Education Transfer Council.
- (3) The Secretary of State may by order specify a different name by which the Council are to be known; and an order under this section may make such provision as appears to the Secretary of State to be necessary or expedient in consequence of the change of name effected by the order (including provision for amending statutory provisions).

### 137 Education Transfer Council: alteration of functions and provision for dissolution. E+W

- (1) Schedule 29 (which amends section 198 of, and Schedule 10 to, the <sup>M49</sup>Education Reform Act 1988, which relate to the functions of the Education Transfer Council) shall have effect.
- (2) The Secretary of State may by order make such further amendments of those provisions of that Act as he considers expedient.
- (3) Regulations may make provision—
- (a) for the dissolution of the Education Transfer Council by order of the Secretary of State and for enabling him to determine how any property, rights and liabilities of the Council are to be dealt with in connection with their dissolution;
  - (b) for the subsequent establishment of a new body with such name as may be prescribed and constituted in the same manner as, or similarly to, the Council;
  - (c) for dealing with transfers of property, rights and liabilities under this Act [<sup>F357</sup>, under the Education Reform Act 1988 or under the Further and Higher Education Act 1992] at a time when the Council has been dissolved and either—
    - (i) a body has been subsequently established under paragraph (b), or
    - (ii) no such body has been so established.
- (4) Regulations under subsection (3) may, in connection with any matters falling within paragraph (b) or (c) of that subsection—
- (a) modify any of the provisions of section 197 or 198 of, or Schedule 8 or 10 to, the <sup>M50</sup>Education Reform Act 1988 [<sup>F358</sup> or section 34 or 36 of, or Schedule 5 or 7 to, the Further and Higher Education Act 1992];
  - (b) apply any of those provisions with or without modifications;
  - (c) make provision corresponding or similar to any of those provisions.

#### Textual Amendments

**F357** Words in s. 137(3)(c) substituted (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and otherwise 1.9.2000) by 2000 c. 21, s. 149, **Sch. 9 para. 87(1)(2)**; S.I. 2000/2114, art. 2(3), **Sch. Pt. III**

**F358** Words in s. 137(4)(a) inserted (28.7.2000 in so far as consequential on ss. 130, 131, Sch. 8 and otherwise 1.9.2000) by 2000 c. 21, s. 149, **Sch. 9 para. 87(1)(3)**; S.I. 2000/2144, art. 2(3), **Sch. Pt. III**

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### Marginal Citations

**M49** 1988 c. 40.

**M50** 1988 c. 40.

## Supplementary

### 138 Orders and regulations. **E+W**

- (1) Subject to subsection (2), any power of the Secretary of State to make an order or regulations under this Act shall be exercised by statutory instrument.
- (2) Subsection (1) does not apply to any order under—
  - (a) section 11(5), 20(5), 21(8), 73, 82, 111(3)(a) or 142(1); or
  - (b) paragraph 5 of Schedule 5, paragraph 2 or 3 of Schedule 7,<sup>F359</sup> ..., paragraph 1 of Schedule 14, paragraph 10 of Schedule 21, paragraph 4(2) or 7(3)(c) of Schedule 22 or paragraph 5(3) of Schedule 32.
- (3) Subject to subsections (4) and (5), a statutory instrument containing any order or regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to any order under—
  - (a) section 20(7), [<sup>F360</sup>29(9A),]<sup>F361</sup> 45C(2),] 69(3), 85(5), 104, 110(10) or 145; or
  - (b) <sup>F362</sup>... paragraph 1 of Schedule 32.
- (5) Subsection (3) also does not apply to—
  - (a) any order under—
    - (i) section 1(5),
    - <sup>F363</sup>(ii) .....
    - <sup>F363</sup>(iii) .....
  - ; or
  - (b) the first regulations to be made under—
    - (i) section 38(3) or 39(1),
    - (ii) section <sup>F364</sup>... , 47 or 48(1), or
    - (iii) section 105 or 108(2);<sup>F365</sup> or
  - (c) the first regulations to be made under section 45AA, or
  - (d) the first regulations to be made under section 47 in relation to England after the coming into force of paragraph 6 of Schedule 16 to the Education Act 2005,] and no such order or regulations shall be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (6) If a draft of the statutory instrument containing any such regulations under section 105 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (7) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

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(8) Any order or regulations under this Act may make different provision in relation to England and Wales respectively.

(9) Nothing in this Act shall be read as affecting the generality of subsection (7).

### Subordinate Legislation Made

- P4** S. 138(7) power partly exercised (9.9.1998): different days appointed for specified provisions by [S.I. 1998/2212](#).  
 S. 138(7) power partly exercised (15.12.1998): different days appointed for specified provisions by [S.I. 1998/3198](#).  
 S. 138(7) power partly exercised (20.1.1999): different days appointed for specified provisions by [S.I. 1999/120](#).  
 S. 138(7) power partly exercised (13.8.1999): different days appointed for specified provisions by [S.I. 1999/2323](#).

### Textual Amendments

- F359** Words in s. 138(2)(b) repealed (1.10.2002 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2005/2910](#), art. 4, [Sch.](#)
- F360** Word in s. 138(4) inserted (1.9.2006 for E.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 12 para. 9](#); [S.I. 2006/2129](#), art. 5
- F361** Words in s. 138(4)(a) inserted (1.10.2002 for E. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 111](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), [art. 3](#) (with [Sch.](#))
- F362** Words in s. 138(4)(b) repealed (1.10.2002 for E., 1.9.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#)
- F363** S. 138(5)(a)(ii)(iii) repealed (1.4.2003 for E., 1.9.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2003/124](#), art. 4; [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#)
- F364** Word in s. 138(5)(b)(ii) repealed (1.10.2002 for E., 1.9.2004 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2004/1728](#), art. 5, [Sch. Pt. 2](#)
- F365** S. 138(5)(c)(d) and preceding word inserted (1.11.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 16 para. 8](#) (with s. 119); [S.I. 2005/2034](#), art. 9

## 139 Financial provisions. E+W

- (1) There shall be paid out of money provided by Parliament—
- (a) any sums required for the making by the Secretary of State of grants or loans under this Act;
  - (b) any other expenses of the Secretary of State under this Act; and
  - (c) any increase attributable to this Act in the sums so payable by virtue of any other Act.
- (2) There shall be paid into the Consolidated Fund—
- (a) any sums received by the Secretary of State under or by virtue of this Act; and
  - (b) any fees received by Her Majesty's Chief Inspector of Schools in England, or [<sup>F366</sup>Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru], under Schedule 26.

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### Textual Amendments

**F366** Words in s. 139(2)(b) substituted (W.) (1.1.2001) by 2000 c. 21, s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

## 140 Minor and consequential amendments and repeals. **E+W**

- (1) The minor and consequential amendments set out in Schedule 30 shall have effect.
- (2) Unless the context otherwise requires, any reference in any enactment amended by this Act—
  - (a) to a maintained school, or
  - (b) to a community, foundation or voluntary school or a community or foundation special school,
 is a reference to such a school within the meaning of this Act.
- (3) The enactments specified in Schedule 31 (which include certain spent enactments) are repealed to the extent specified.
- (4) Any articles of government of a school which are in force under the <sup>M51</sup>Education Act 1996 immediately before the appointed day shall cease to have effect on that day.

### Extent Information

**E3** S. 140 extends to Scotland or Northern Ireland in so far as it amends or repeals an enactment extending to Scotland or Northern Ireland.

### Commencement Information

**I33** S. 140 wholly in force at 1.9.1999; s. 140 not in force at Royal Assent see s. 145(3); s. 140(1)(3) in force for certain purposes at 1.10.1998, 1.2.1999 and 1.4.1999 by S.I. 1998/2212, art. 2, Sch. 1 Pts. I, III and IV; s. 140(1)(3) in force for certain purposes at 1.4.1999 by S.I. 1999/1016, art. 2(1), Sch. 1 (with arts. 3-6, Sch. 4); s. 140(1) in force for a certain purpose at 1.6.1999 by S.I. 1999/1016, art. 2(2), Sch. 2 (with arts. 3-6, Sch. 4); s. 140 in force at 1.9.1999 in so far as not already in force by S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-5, Schs. 5-7).

### Marginal Citations

**M51** 1996 c. 56.

## Construction

## 141 Minor authorities. **E+W**

- (1) For the purposes of this Act a maintained school serves an area for which there are one or more minor authorities if the area served by the school is—
  - (a) a parish or community;
  - (b) an area in England which is not within a parish and is not situated in—
    - (i) a county for which there is no council, or
    - (ii) a county in which there are no district councils; or



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- (c) an area comprising two or more areas each of which falls within paragraph (a) or (b).
- (2) Where the area served by the school is a parish—
- (a) the parish council (if there is one), or
  - (b) the parish meeting (if there is no parish council),
- is the minor authority in relation to the school.
- (3) Where the area served by the school is a community, the community council is the minor authority in relation to the school.
- (4) Where the area served by the school is an area falling within subsection (1)(b), any district council for the whole or part of the area is a minor authority in relation to the school.
- (5) Where the area served by the school is an area falling within subsection (1)(c), each of the relevant authorities is a minor authority in relation to the school.
- (6) In subsection (5) “the relevant authorities” means the bodies which, if the two or more constituent areas referred to in subsection (1)(c) were taken separately, would be minor authorities in relation to the school.
- (7) References in this section to the area served by a school are references to the area appearing to the local education authority to be served by the school.

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

- C164** S. 141 applied with modification (3.12.1998 until the appointed day) by S.I. 1998/2763, **reg. 6(1)(2)**
- S. 141 extended (10.3.1999) by S.I. 1999/362, **reg. 2(4)**.
- S. 141 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 8(1)**.
- S. 141 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 9(1)**.
- S. 141 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 27(1)**.
- S. 141 applied (with modifications) (10.3.1999) by S.I. 1999/362, **reg. 43(1)**.
- S. 141 applied (with modifications) (1.9.1999) by S.I. 1999/2243, **reg. 32(1)(2)**.
- S. 141 applied (with modifications) (1.9.1999) by S.I. 1999/2262, **reg. 32(1)(2)**.
- S. 141 modified (1.9.1999) by S.I. 1999/2262, **reg. 32(2)**.

## 142 General interpretation. **E+W**

- (1) In this Act, unless the context otherwise requires—

<sup>F367</sup>

“Church in Wales school” means a [<sup>F368</sup>foundation or voluntary] school in the Province of Wales in relation to which the religion or religious denomination specified under section 69(4) is “Church in Wales” and “appropriate diocesan authority”, in relation to such a school, means the Diocesan Board of Finance for the diocese of the Church in Wales in which the school is situated or such other person as the Secretary of State may by order designate in respect of that diocese;

“Church of England school” means a [<sup>F368</sup>foundation or voluntary] school in the Province of Canterbury or York in relation to which the religion or religious denomination specified under section 69(4) is “Church of England” and “appropriate diocesan authority”, in relation to such a school, means the

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Diocesan Board of Education for the diocese of the Church of England in which the school is situated;

“community or foundation special school” means a community special school or a foundation special school;

“contract of employment”, “employee” and “employer” have the same meaning as in the <sup>M52</sup>Employment Rights Act 1996;

“employment” (except in section 92(4)) means employment under a contract of employment, and “employed” shall be construed accordingly;

[<sup>F369</sup>“exclude”, in relation to the exclusion of a child from a school, means exclude on disciplinary grounds (and “exclusion” shall be construed accordingly);

“foundation governor”, in relation to a foundation school, a foundation special school or a voluntary school, means a person appointed as a foundation governor in accordance with regulations under section 19 of the Education Act 2002;]

“maintained school” (except in Part III) has the meaning given by section 20(7);

“prescribed” means prescribed by regulations;

“reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age;

“regulations” means regulations made by the Secretary of State under this Act;

“relevant age group”, in relation to a school, means an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school;

“Roman Catholic Church school” means a [<sup>F368</sup>foundation or voluntary] school in relation to which the religion or religious denomination specified under section 69(4) is “Roman Catholic” and “appropriate diocesan authority”, in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated;

“school maintained by a local education authority”, in relation to any time on or after the appointed day, means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit;

“statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the <sup>M53</sup>Interpretation Act 1978.

- (2) Before making an order in respect of any diocese in Wales in exercise of the power conferred by the definition of “appropriate diocesan authority” the Secretary of State shall consult the bishop for the diocese.
- (3) Any reference in this Act to the religion or religious denomination specified in relation to a school under section 69(4) [<sup>F370</sup>or 124B(2)] shall be construed, in a case where more than one religion or religious denomination is so specified, as including a reference to any of those religions or religious denominations.
- (4) As a result of subsection (3), subsection (1) has the effect that a school may, for example, be both a Church of England school and a Roman Catholic Church school and so have a different appropriate diocesan authority in each of those capacities; and, in the case of a school with two appropriate diocesan authorities, any reference in this Act to “the appropriate diocesan authority” is—

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- (a) in relation to anything required to be done by or in relation to that authority, a reference to both of the authorities concerned; or
  - (b) in relation to anything authorised to be done by or in relation to that authority, a reference to either or both of the authorities concerned (or, in the context of section 16(6) or (8), to both of them acting together).
- (5) For the purposes of this Act children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class.
- (6) For the purposes of this Act references to disposing of land include references to—
- (a) granting or disposing of any interest in land;
  - (b) entering into a contract to dispose of land or to grant or dispose of any such interest; and
  - (c) granting an option to purchase any land or any such interest.
- (7) For the purposes of this Act—
- (a) a person employed by a local education authority is to be regarded as employed to work at a school if his employment with the authority for the time being involves work at that school; and
  - (b) a person employed by a local education authority is to be regarded as employed to work solely at a school if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school.
- (8) This Act shall be construed as one with the <sup>M54</sup>Education Act 1996; and (without prejudice to their generality) paragraphs 1 and 2 of Schedule 39 to that Act (construction of references etc.) apply to references in this Act to provisions of that Act.
- (9) Where, however, an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of that Act, the meaning given for the purposes of that provision shall apply instead of the one given for the purposes of that Act.
- (10) Subsection (1) of section 576 of that Act (meaning of “parent”) shall, in its application for the purposes of—
- (a) section 43 or 62(2) of this Act, or
  - (b) paragraph 4 of Schedule 2 or paragraph 4 or 14 of Schedule 9 to this Act,
- be taken as referring only to persons within paragraph (a) or (b) of that subsection who are individuals.

### Textual Amendments

- F367** S. 142(1): definition of “the appropriate further education funding council” repealed (28.7.2000 for specified purposes and otherwise 1.4.2001) by 2000 c. 21, ss. 149, 153, Sch. 9 para. 88, Sch. 11; S.I. 2001/654, art. 2, Sch. Pt. II (with art. 3)
- F368** Words in s. 142(1) inserted (1.9.2003) by [The Independent Schools \(Employment of Teachers in Schools with a Religious Character\) Regulations 2003](#) (S.I. 2003/2037), regs. 1(1), **4(2)**
- F369** Words in s. 142(1) inserted (1.4.2003 for E. for specified purposes, 1.9.2003 for E. In so far as not already in force, 9.1.2004 for W. for specified purposes, 31.10.2005 for W. so far as not already in force) by [Education Act 2002](#) (c. 32), s. 216(4), **Sch. 21 para. 112** (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2003/1667, art. 4; S.I. 2003/2961, art. 7, Sch. Pt. IV; S.I. 2005/2910, art. 4, Sch.

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**F370** Words in s. 142(3) inserted (1.9.2003) by [The Independent Schools \(Employment of Teachers in Schools with a Religious Character\) Regulations 2003 \(S.I. 2003/2037\)](#), regs. 1(1), **4(3)**

#### Marginal Citations

**M52** 1996 c. 18.

**M53** 1978 c. 30.

**M54** 1996 c. 56.

## 143 Index. **E+W**

The expressions listed in the left-hand column below are defined by, or (as the case may be) are to be interpreted in accordance with, the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
ability (in Chapter II of Part III)	section 99(5)
adjudicator	section 25(3)
admission arrangements (in Part III in relation to a maintained school)	sections 88(2) and 99(5)
admission authority (in Chapter I of Part III in relation to a maintained school)	section 88(1)
admitted to a school for nursery education	section 142(5)
alteration (in Part II in the context of a prescribed alteration to a maintained school)	section 28(11)
appeal panel (in Chapter I of Part III)	section 84(6)
appointed day (except in Part I of Schedule 32)	section 20(7)
appropriate diocesan authority (in relation to a Church in Wales, Church of England or Roman Catholic Church school)	section 142(1) and (4)
appropriate further education funding council	section 142(1)
area (in Part II)	section 28(11)
budget share (in Part II)	section 47(1)
Chief Inspector (in Chapter IV of Part I)	section 14(4)
child (in Chapter I of Part III but not in sections 96 and 97)	section 84(6)
[ <sup>F371</sup> child looked after by a local authority (in Chapter 1 of Part 3)]	section 84(7)]
Church in Wales school	section 142(1)

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Church of England school	section 142(1)
class (in Chapter I of Part I)	section 4
community or foundation special school	section 142(1)
“contract of employment” and other expressions relating to employment	section 142(1) and (7)
discontinuing, and implementing proposals to discontinue, a school (in Part II in relation to a local education authority)	section 29(10)
disposing of land	section 142(6)
education action zone (in Chapter III of Part I)	section 10(1)
exclude, exclusion (in relation to the exclusion of a child from a school)	[ <sup>F372</sup> section 142(1)]
foundation (in relation to a foundation or voluntary school) (and having a foundation)	section 21(3)
foundation body	section 21(4)
foundation governor	[ <sup>F373</sup> section 142(1)]
governing body	
(in Chapter III of Part I)	section 10(6)
(of a maintained school or of a school maintained by a local education authority) (in Chapter IV of Part II)	section 45(3)
grammar school (in Chapter II of Part III)	section 104(7)
group (in relation to a foundation body)	section 21(4)
individual schools budget (in Part II)	[ <sup>F374</sup> section 45A(3)]
infant class (in Chapter I of Part I)	section 4
land or other property held on trust, or by trustees, for the purposes of a school	section 21(3)(c)
[ <sup>F375</sup> LEA budget (in Part 2)	section 45A(1)]
local education authority (in relation to a school maintained, or proposed to be maintained, by such an authority)	section 22(8)
[ <sup>F376</sup> local schools budget (in Part II)	section 46(1)]
maintain (in relation to a maintained school or a maintained nursery school)	section 22(8)
maintained school	
(generally)	section 20(7)

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(in Chapter IV of Part II in a context referring to a local education authority)	section 45(3)
(in Chapter I of Part III)	section 84(6)
(in Chapter II of Part III)	section 99(5)
maintained nursery school	section 22(9)
member of the Inspectorate (in Chapter IV of Part I)	section 14(4)
minor authority	section 141
new school (in Chapter IV of Part II)	section 45(4)
nursery education (in Part V)	section 117
ordinary teaching session (in Chapter I of Part I)	section 4
participating school (in Chapter III of Part I in relation to an education action zone)	section 10(6)
prescribed	section 142(1)
promoters (in Part II)	section 28(2) [ <sup>F377</sup> or 28A(2)]
[ <sup>F378</sup> school teacher](in Chapter I of Part I in relation to an infant class)	section 4
reception class	section 142(1)
regulations	section 142(1)
relevant age group	section 142(1)
[ <sup>F379</sup> relevant standard number (in Chapter I of Part III)	section 84(6)]
right to a delegated budget (in Part II)	section 49(7)
Roman Catholic Church school	section 142(1)
scheme (in Part II in relation to a maintained school)	section 48(5)
school having a delegated budget (in Part II)	section 49(7)
school maintained by a local education authority	
(generally)	section 142(1)
(in Chapter IV of Part II)	section 45(3)
school opening date	[ <sup>F380</sup> section 33(6)]
school organisation committee	section 24(4)
school requiring special measures (in Chapter IV of Part I)	section 14(4)
[ <sup>F381</sup> school which has a religious character ]	

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[ <sup>F381</sup> (in Part 2 in relation to a foundation or voluntary school)	section 69(3)]
[ <sup>F381</sup> (in Part 5A in relation to an independent school)	sections 69(3) and 124B(1).]
school which has selective admission arrangements (in Chapter II of Part III)	section 104(2)
[ <sup>F382</sup> schools budget (in Part 2)	section 45A(2)]
specified religion or religious denomination	section 142(3)
statutory provision	section 142(1)

### Textual Amendments

- F371** Words in s. 143 inserted (8.1.2007) by Education and Inspections Act 2006 (c. 40), ss. 50(4), 188(3); S.I. 2006/3400, art. 3(c)
- F372** Words in s. 143 substituted (1.9.2003 for E., 9.1.2004 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(a) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2003/2961, art. 7, Sch. Pt. IV
- F373** Words in s. 143 substituted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(b) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F374** Words in s. 143 substituted (1.10.2002 for E., 4.12.2003 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(c) (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. para. 2); S.I. 2003/2961, art. 5, Sch. Pt. II
- F375** Words in s. 143 inserted (1.10.2002 for E., 4.12.2003 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(d) (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. para. 2); S.I. 2003/2961, art. 5, Sch. Pt. II
- F376** Words in s. 143 repealed (1.10.2002 for E., 4.12.2003 for W. for specified purposes) by Education Act 2002 (c. 32), s. 216(4), Sch. 22 Pt. 3 (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 5); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 35); S.I. 2003/2961, art. 5, Sch. Pt. II
- F377** Words in s. 143 inserted (1.9.2006) by Education Act 2005 (c. 18), s. 125(4), Sch. 12 para. 10; S.I. 2006/2129, art. 4
- F378** Words in s. 143 substituted (19.12.2002 for W., 1.8.2003 for E.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(e) (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 4, Sch. Pt. 1; S.I. 2003/1667, art. 3
- F379** Words in s. 143 repealed (1.10.2002 for E., 4.12.2003 for W. for specified purposes, 1.2.2006 for W. for specified purposes) by Education Act 2002 (c. 32), s. 216(4), Sch. 22 Pt. 3 (with ss. 210(8), 214(4) and S.I. 2006/173, reg. 5); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 35); S.I. 2003/2961, art. 5, Sch. Pt. II; S.I. 2006/172, art. 4, Sch.
- F380** Words in s. 143 substituted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(f) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F381** Words in s. 143 substituted (1.9.2003) by The Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003 (S.I. 2003/2037), regs. 1(1), 5
- F382** Words in s. 143 inserted (1.10.2002 for E., 4.12.2003 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 113(g) (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. para. 2); S.I. 2003/2961, art. 5, Sch. Pt. II

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

**C165** S. 143 savings for effects of 2002 c. 32, ss. 41(3), 215, Sch. 21 paras. 100(1)(2), 113, 125, Sch. 22 Pt. 3 (W.) (19.11.2003) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(No.2\) \(Wales\) Regulations 2003 \(S.I. 2003/2959\)](#), regs. 1(1), 5

#### Final provisions

### 144 Transitional provisions etc. **U.K.**

- (1) Regulations may at any time make such incidental, consequential, transitional or supplementary provision as appears to the Secretary of State to be necessary or expedient for the general purposes, or any particular purposes, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) Regulations under subsection (1) may, in particular, make provision—
  - (a) for enabling any authority or body by whom any functions will become exercisable on the appointed day by virtue of any provision made by or under this Act to take before that day any steps (such as the establishment of committees or the undertaking of consultation) which are necessary or expedient in preparation for the exercise of those functions;
  - (b) for requiring any body—
    - (i) by whom any functions will cease to be exercisable at any time, or
    - (ii) who are required to be reconstituted as from any time,
 by virtue of any provision made by or under this Act to take before that time any steps (such as the provision of information, the furnishing of other assistance or the taking of any decision) which are necessary or expedient in preparation for the exercise of functions conferred on any authority or other body, by virtue of any such provision, as from that time or (as the case may be) in preparation for their reconstitution;
  - (c) for the making before the appointed day of arrangements for securing the satisfactory operation from that day of any such provision and for defraying the cost of any such arrangements;
  - (d) for prohibiting or restricting the taking of steps before the appointed day which, by virtue of any such provision, will cease to be capable of being taken as from that day;
  - (e) for enabling the determination under the regulations of matters pending immediately before the appointed day;
  - (f) for any provision of this Act which comes into force before—
    - (i) another such provision has come into force, or
    - (ii) anything falling to be done under another such provision (such as the approval of a school organisation plan) has been done,
 to have effect, until that other provision has come into force or (as the case may be) that thing has been done, with such modifications as are specified in the regulations;
  - (g) for amending, repealing or revoking (with or without savings) any statutory provision passed or made before the appointed day, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act.



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(3) Without prejudice to the generality of subsection (1) or any provision of subsection (2), regulations under subsection (1) may provide—

(a) for any relevant provision to apply (with or without modification) to, or to any description of—

(i) schools maintained by a local education authority within the meaning of the <sup>M55</sup>Education Act 1996, or

(ii) grant-maintained or grant-maintained special schools within the meaning of that Act;

(b) for any provision so applied, or any provision of the regulations, to have effect in relation to schools despite anything in their articles or instruments of government;

(c) for any reference in this Act to the appointed day to have effect instead as a reference to such day as is specified in the regulations;

and accordingly references to the appointed day in subsection (2) include, in relation to any purposes for which any provision made by virtue of paragraph (c) above has effect, references to any such other day as is mentioned in that paragraph.

(4) In paragraph (a) of subsection (3) “relevant provision” means—

(a) (in relation to sub-paragraph (i) or (ii) of that paragraph) any provision of the Education Acts which is expressed to apply to, or to any description of, schools maintained by a local education authority within the meaning of this Act, or

(b) (in relation only to sub-paragraph (ii) of that paragraph) any provision of the Education Acts which is expressed to apply to, or to any description of, schools maintained by a local education authority within the meaning of the <sup>M56</sup>Education Act 1996;

and in that paragraph and this subsection “school” includes a proposed school.

(5) The amendments that may be made under subsection (2)(g) shall be in addition (and without prejudice) to those made by any other provision of this Act.

(6) Nothing in this Act shall be read as prejudicing the generality of subsection (1).

(7) The transitional provisions and savings in Schedule 32 shall have effect.

#### Subordinate Legislation Made

**P5** S. 144: power exercised, 20.11.1998 appointed by [S.I. 1998/2670](#), [reg. 1](#)

**P6** S. 144: power exercised, 3.12.1998 appointed by [S.I. 1998/2763](#), [reg. 1](#)

s. 144(1): power exercised, 6.1.1999 appointed by [S.I. 1998/3165](#), [reg. 1](#)

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

**C166** S. 144: Transfer of functions (16.2.2000) by [S.I. 2000/253](#), [art. 2\(1\)](#), [Sch. 1](#)

#### Marginal Citations

**M55** 1996 c. 56.

**M56** 1996 c. 56.

## 145 Short title, commencement and extent. **E+W+S**

(1) This Act may be cited as the School Standards and Framework Act 1998.

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- (2) This Act shall be included in the list of Education Acts set out in section 578 of the <sup>M57</sup>Education Act 1996.
- (3) Subject to subsections (4) and (5), this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions and for different purposes.
- (4) The following provisions come into force on the day on which this Act is passed—  
 sections 1 to 4;  
 sections 20 and 21;  
 section 36(3);  
 section 82;  
 sections 84 and 85;  
 section 130;  
 sections 138, 139, 141 to 144 and this section;  
 Schedule 2;  
 Parts I and III of Schedule 11;  
 paragraph 224 of Schedule 30 (and section 140(1) so far as relating thereto); and  
 Schedule 32.
- (5) The following provisions come into force on the day on which this Act is passed, but for the purposes only of the preparation of instruments of government and the constitution of governing bodies and the exercise (in relation to those or any other matters) of any power to make regulations—  
 sections 36(1) and (2) and 37(1) and (2); and  
 Schedules 9, 10 and 12.
- (6) Subject to subsections (7) and (8), this Act extends to England and Wales only.
- (7) Section 130(2) extends to Scotland only; and this section extends also to Scotland.
- (8) The amendment or (subject to subsection (9)) repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland, and section 140 extends accordingly.
- (9) The entry in Schedule 31 relating to the <sup>M58</sup>Education (Scotland) Act 1980 extends to Scotland only.

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#### Subordinate Legislation Made

- P7** S. 145(3) power partly exercised (7.8.1998): different dates appointed for specified provisions by [S.I. 1998/2048](#)
- P8** S. 145(3) power partly exercised (9.9.1998): different dates appointed for specified provisions by [S.I. 1998/2212](#)
- S. 145(3) power partly exercised (15.12.1998): different dates appointed for specified provisions by [S.I. 1998/3198](#)
- S. 145(3) power partly exercised (20.1.1999): different dates appointed for specified provisions by [S.I. 1999/120](#)
- S. 145(3) power partly exercised (13.8.1999): different dates appointed for specified provisions by [S.I. 1999/2323](#)
- S. 145(3) power partly exercised: 1.4.2001 appointed for specified provision by [S.I. 2001/1195](#), [art. 2\(1\)](#)

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S. 145(3) power partly exercised: 20.7.2001 appointed for specified provision by [S.I. 2001/2663](#), [art. 2](#)

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**Marginal Citations**

**M57** 1996 c. 56.

**M58** 1980 c. 44.

**Status:**

Point in time view as at 28/02/2007. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

School Standards and Framework Act 1998 is up to date with all changes known to be in force on or before 27 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.