



School Standards and Framework Act 1998

1998 CHAPTER 31

PART II

NEW FRAMEWORK FOR MAINTAINED SCHOOLS

CHAPTER I

INTRODUCTORY

The new categories of schools

20 New categories of maintained schools.

- (1) Schools maintained by [^{F1}local 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 [^{F2}local 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 [^{F3}the change of category provisions]); or

Status: Point in time view as at 01/08/2011.

Changes to legislation: School Standards and Framework Act 1998, Cross Heading: The new categories of schools is up to date with all changes known to be in force on or before 18 July 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) it was established as a school of that category under [^{F4}any enactment] (and has not changed its category under [^{F3}the change of category provisions]); or
- (c) it has become a school of that category in accordance with [^{F3}the change of category provisions].

[^{F5}(2A) In subsection (2) “the change of category provisions” means—

- (a) in the case of a school in England, Schedule 8 to this Act or sections 18 to 24 of the Education and Inspections Act 2006, and
 - (b) in the case of a school in Wales, Schedule 8 to this Act.]
- (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 ^{M1}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 [^{F2}local authority] shall maintain (as a school falling within one of those categories)—
- (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 [^{F2}local 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.

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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

- F1** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **art. 1, Sch. 2 para. 10(3)** (with Sch. 2 para. 10(4))
- F2** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **art. 1, Sch. 2 para. 10(2)** (with Sch. 2 para. 10(4))
- F3** Words in s. 20(2) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 13(2)**; S.I. 2007/935, **art. 7(o)**
- F4** 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**
- F5** S. 20(2A) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 13(3)**; S.I. 2007/935, **art. 7(o)**

Modifications etc. (not altering text)

C1 S. 20 extended (1.4.1999) by S.I. 1999/704, **reg. 2(4)**.

Marginal Citations

M1 1996 c. 56.

21 Kinds of foundation and voluntary schools and types of foundations.

- (1) There may be three kinds of foundation school—
- those having a foundation established otherwise than under this Act;
 - those belonging to a group of schools for which a foundation body acts under this section; and
 - those not falling within either of paragraphs (a) and (b).
- (2) There may be three kinds of voluntary controlled or voluntary aided school—
- those having a foundation established otherwise than under this Act;
 - those belonging to a group of schools for which a foundation body acts under this section; and
 - those not falling within either of paragraphs (a) and (b) but having been either of the following immediately before the appointed day, namely—
 - a voluntary school, or
 - a grant-maintained school that was a voluntary school immediately before becoming grant-maintained,within the meaning of the ^{M2}Education Act 1996.
- (3) For the purposes of this Act—
- “foundation”, in relation to a foundation or voluntary school, means—
 - 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
 - a foundation body;

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- (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.
- (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 [^{F6}or under section 19 of the Education and Inspections Act 2006];
 - (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 [^{F7}or under section 19 of the Education and Inspections Act 2006] (procedure for changing category of school);
 - (ii) for enabling the Secretary of State to require the publication under that paragraph [^{F8}or that section] of proposals for the school to become a school of a category specified by him;

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- (iii) for preventing a voluntary school [^{F9}in Wales] 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 [^{F10}or to the disposal of which paragraph A9 of Schedule 22 would apply], to determine how that land is to be dealt with on its dissolution;
 - (i) for conferring functions on ^{F11}... 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).

Textual Amendments

- F6** Words in s. 21(6)(a) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(a\)](#); S.I. 2007/935, art. 7(o)
- F7** Words in s. 21(6)(f)(i) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(b\)\(i\)](#); S.I. 2007/935, art. 7(o)
- F8** Words in s. 21(6)(f)(ii) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(b\)\(ii\)](#); S.I. 2007/935, art. 7(o)
- F9** Words in s. 21(6)(f)(iii) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(b\)\(iii\)](#); S.I. 2007/935, art. 7(o)
- F10** Words in s. 21(6)(h) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(c\)](#); S.I. 2007/935, art. 7(o)
- F11** Words in s. 21(6)(i) repealed (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 14\(d\)](#), [Sch. 18 Pt. 3](#); S.I. 2007/935, art. 7(o)(q)

Modifications etc. (not altering text)

- C2** S. 21(3) applied (with modifications) (E.) (25.5.2007) by [The School Organisation \(Foundation Special Schools\) \(Application of Provisions Relating to Foundations\) \(England\) Regulations 2007 \(S.I. 2007/1329\)](#), regs. 1(1), 2

Marginal Citations

- M2** 1996 c. 56.

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

- (1) A [^{F2}local authority] are under a duty to maintain the following schools—

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- (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^{F12} ...;
 - (c) any maintained schools established in their area^{F13} ... otherwise than by them or any other [^{F2}local authority]; and
 - (d) any maintained nursery school established by them.
- [^{F14}(2) Subsection (1) has effect subject to any statutory provision authorising the discontinuance of a maintained school or maintained nursery school.]
- (3) In the case of a community school, a community special school or a maintained nursery school, the [^{F2}local 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 [^{F2}local authority]’s duty to maintain the school includes—
 - (a) the duty of defraying all the expenses of maintaining it, and
 - (b) the duty, [^{F15}under any enactment of providing new premises for the school].
 - (5) In the case of a voluntary aided school, the [^{F2}local authority]’s duty to maintain the school includes—
 - (a) the duty of defraying all the expenses of maintaining it, except any [^{F16}expenditure that by virtue of paragraph 3 of Schedule 3 is to be met] by the governing body, and
 - (b) the duty, [^{F17}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, [^{F1}local 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 [^{F2}local authority], “the [^{F2}local 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 [^{F2}local authority] and is not a special school.

Extent Information

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

Textual Amendments

F1 Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 10(3)** (with [Sch. 2 para. 10\(4\)](#))

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- F2** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 10(2)** (with Sch. 2 para. 10(4))
- F12** 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
- F13** 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
- F14** S. 22(2) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 15**; S.I. 2007/935, art. 7(o)
- F15** 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
- F16** 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**
- F17** 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 [^{F2}local authority] are under a duty to maintain the following schools—
- any maintained schools which they are required to maintain by virtue of section 20(4) or (5);
 - ^{F25}(b) any maintained schools established by them ^{F26} . . . ;
 - ^{F27}(c) any maintained schools established in their area ^{F28} . . . otherwise than by them or any other [^{F2}local authority]; and
 - any maintained nursery school established by them.

[^{F14}(2) Subsection (1) has effect subject to any statutory provision authorising the discontinuance of a maintained school or maintained nursery school.]

- (3) In the case of a community school, a community special school or a maintained nursery school, the [^{F2}local authority]'s duty to maintain the school includes—
- the duty of defraying all the expenses of maintaining it, and
 - 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 [^{F2}local authority]'s duty to maintain the school includes—
- the duty of defraying all the expenses of maintaining it, and
 - ^{F29}(b) the duty, [^{F30}under any enactment of providing new premises for the school].
- (5) In the case of a voluntary aided school, the [^{F2}local authority]'s duty to maintain the school includes—
- 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
 - ^{F31}(b) the duty, [^{F32}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, [F1local 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 [F2local authority], “the [F2local 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 [F2local authority] and is not a special school.

Extent Information

E2 This version of this provision extends to Wales only; a separate version has been created for England.

Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 10(3)** (with [Sch. 2 para. 10\(4\)](#))
- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 10(2)** (with [Sch. 2 para. 10\(4\)](#))
- F14** [S. 22\(2\)](#) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 3 para. 15**; [S.I. 2007/935](#), art. 7(o)
- F25** 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
- F26** 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](#)
- F27** 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
- F28** 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](#)
- F29** 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
- F30** 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](#)
- F31** 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
- F32** 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](#)

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23 Charitable status of maintained schools, etc.

- (1) The following shall be charities ^{F18}...—
- (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.

[^{F19}(1A) Any body to which subsection (1)(a) or (b) applies [^{F20}is, as a result of its inclusion in Schedule 2 to the Charities Act 1993, an exempt charity for the purposes of that Act.]]

^{F21}(2)

- (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 [^{F22}, and is an institution to which section 3A(4)(b) of the Charities Act 1993 applies.]

- (4) In this section—
- (a) “charity” and “institution” have the same meaning as in the ^{M3}Charities Act 1993;
 - (b) “premises” includes a teacher’s dwelling-house.

Textual Amendments

- F18** Words in s. 23(1) repealed (31.1.2009) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 194(2), Sch. 9; S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)
- F19** S. 23(1A) inserted (31.1.2009) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 194(3); S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)
- F20** Words in s. 23(1A) substituted (1.8.2011) by The Charities Act 2006 (Changes in Exempt Charities) Order 2011 (S.I. 2011/1725), art. 1(2), Sch. para. 3(a)
- F21** S. 23(2) omitted (1.8.2011) by virtue of The Charities Act 2006 (Changes in Exempt Charities) Order 2011 (S.I. 2011/1725), art. 1(2), Sch. para. 3(b)
- F22** Words in s. 23(3) substituted (31.1.2009) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 194(5); S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

Marginal Citations

- M3** 1993 c. 10.

[^{F23}23A Foundation and foundation special schools: requirements as to foundations

- (1) This section applies to any foundation or foundation special school having a foundation if any one or more of the following conditions is met.
- (2) Condition A is that the school was established as a foundation or foundation special school in pursuance of proposals falling to be implemented under Schedule 2 to the Education and Inspections Act 2006.
- (3) Condition B is that the school—
- (a) acquired its foundation, or

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- (b) became a school whose instrument of government provides for the majority of governors to be foundation governors,
in pursuance of proposals falling to be implemented under regulations under section 24 of that Act.
- (4) Condition C is that the school changed category from voluntary aided school to foundation school in pursuance of proposals falling to be implemented under regulations under section 24 of that Act and has an instrument of government providing for the majority of governors to be foundation governors.
- (5) No institution may act as the foundation of a school to which this section applies unless—
- (a) it is a body corporate of a prescribed description,
 - (b) it is a charity (whether by virtue of section 23(3) or otherwise), and
 - (c) it has as its purpose, or one of its purposes, the advancement of the education of pupils at the school or schools in respect of which it acts as the foundation.
- (6) The foundation of a school to which this section applies shall, in carrying out its functions in relation to the school, promote community cohesion.
- (7) Where any members of the foundation are to be local authorities or persons appointed by local authorities, the proportion of voting rights exercisable by such members must not exceed 20 per cent. of the total voting rights exercisable by members.
- (8) Where any of the charity trustees in relation to the foundation are to be appointed by local authorities—
- (a) the proportion of the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total number of charity trustees, and
 - (b) the voting rights exercisable by the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total voting rights exercisable by charity trustees.
- (9) Regulations may disqualify persons from acting as charity trustee in relation to a school to which this section applies.
- (10) In this section and section 23B—
- “charity” has the same meaning as in the Charities Act 1993;
 - “charity trustee”, in relation to a school to which this section applies, means any individual who is for the purposes of the Charities Act 1993 a charity trustee in relation to the school's foundation;
 - “foundation” means a foundation established otherwise than under this Act;
 - “institution” has the same meaning as in the Charities Act 1993;
 - [^{F24}“local authority” includes a non-metropolitan district council for an area for which there is a county council;]
 - “purpose” includes object.

Textual Amendments

F23 Ss. 23A, 23B inserted (1.4.2007 for the insertion of ss. 23A(9)(10), 23B, 25.5.2007 in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 33, 188\(3\)](#) (with [s. 33\(2\)](#)); [S.I. 2007/935](#), arts. 5(h), 7(h)

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F24 Words in s. 23A(10) inserted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 10\(5\)](#)

23B Powers of Secretary of State in relation to charity trustees of foundations

- (1) Regulations may make provision enabling the Secretary of State in prescribed cases by direction—
 - (a) to remove any charity trustee of a school to which section 23A applies, even though the person is not disqualified by virtue of subsection (9) of that section;
 - (b) to appoint a person to be a charity trustee of such a school (whether in place of a trustee removed by him under paragraph (a) or otherwise).
- (2) Regulations under subsection (1) may make provision as to the effect of a direction given by the Secretary of State under the regulations, and may in particular provide for any such direction to have the same effect as an order of the Charity Commission for England and Wales under section 18 of the Charities Act 1993 for the removal or appointment of a charity trustee.
- (3) Nothing in this section affects the powers of the Charity Commission for England and Wales under any enactment.]

Textual Amendments

F23 [Ss. 23A, 23B](#) inserted (1.4.2007 for the insertion of [ss. 23A\(9\)\(10\), 23B](#), 25.5.2007 in so far as not already in force) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 33, 188\(3\)](#) (with [s. 33\(2\)](#)); [S.I. 2007/935](#), arts. 5(h), 7(h)

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