



# Education Act 1993

## 1993 CHAPTER 35

### PART II

#### GRANT-MAINTAINED SCHOOLS

### CHAPTER II

#### PROCEDURE FOR ACQUISITION OF GRANT-MAINTAINED STATUS

#### *Eligibility*

#### **23 Schools eligible for grant-maintained status**

- (1) Subject to subsections (2) and (3) below, any county or voluntary school is for the purposes of this Part of this Act eligible for grant-maintained status.
- (2) A county or voluntary school is not eligible for grant-maintained status if proposals by the local education authority to cease to maintain the school have been published under section 12(1)(c) of the Education Act 1980 and either—
  - (a) the proposals have been approved by the Secretary of State under that section, or
  - (b) where the proposals do not require the approval of the Secretary of State, the local education authority have determined to implement the proposals and notified the Secretary of State of their determination in accordance with subsection (8) of that section.
- (3) A voluntary school is not eligible for grant-maintained status if—
  - (a) notice of the governing body's intention to discontinue the school has been served under section 14 of the Education Act 1944 and has not been withdrawn, or
  - (b) proposals by the governing body to discontinue the school have been published, and approved by the Secretary of State, under section 13 of the

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Education Act 1980 (as applied by section 59(2)(b) of the Further and Higher Education Act 1992).

## **24 Duty of governing body to consider ballot on grant-maintained status**

- (1) The Secretary of State may by order provide for this section to apply to the governing bodies of all schools, or all schools in England or Wales, which are eligible for grant-maintained status.
- (2) Where this section applies to a governing body of a school, they shall, at least once in every school year, consider whether to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (3) Subsection (2) above does not apply in respect of any school year if a ballot has been held in accordance with section 28 of this Act in the school year which precedes it.
- (4) The annual report of any governing body to which this section applies shall include—
  - (a) a statement indicating that in the period since their last report the governing body have considered whether to hold a ballot of parents in pursuance of subsection (2) above and giving—
    - (i) particulars of any decisions made by the governing body following such consideration and the date or dates on which they were made, and
    - (ii) if the governing body decided not to hold a ballot, an explanation of the reasons for that decision, or
  - (b) a statement indicating that in that period the governing body have not, for the reasons given in the statement, considered whether to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (5) In this section, “annual report” means the report prepared under the articles of government for the school in accordance with section 30 of the Education (No.2) Act 1986.

### *Initiation of procedure*

## **25 Initiation of procedure by governing body**

- (1) Where the governing body of a school which is eligible for grant-maintained status decide by a resolution passed at a meeting of that body to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school, they shall—
  - (a) secure that the ballot is held in accordance with section 28 of this Act within the period of ten weeks beginning with the date of the resolution, and
  - (b) give notice in writing that the ballot is to be held to the local education authority and, if the school is a voluntary school, to any person holding property on trust for the purposes of the school.
- (2) Notice under subsection (1)(b) above must be given within the period of five days beginning with the date of the resolution; but in determining that period no account shall be taken of—
  - (a) Saturday, Sunday, Good Friday and Christmas Day, or

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- (b) any day which is a bank holiday in England and Wales.
- (3) This section does not apply if in the case of the school in question a ballot has been held in accordance with section 28 of this Act within the period of twelve months ending with the date immediately preceding the date of the resolution, unless the Secretary of State gives consent in writing for a new ballot to be held.

## **26 Initiation of procedure by parents**

- (1) This section applies where the governing body of a school which is eligible for grant-maintained status receive a written request to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school.
- (2) A request under subsection (1) above must be signed (or otherwise endorsed in such manner as the governing body may require) by a number of registered parents of registered pupils at the school equal to at least twenty per cent. of the number of registered pupils at the school; and in this subsection “registered” means shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date on which the request is received.
- (3) The governing body shall—
  - (a) secure that the ballot is held in accordance with section 28 of this Act within the period of ten weeks beginning with the date on which the request was received, and
  - (b) give notice in writing that the ballot is to be held to the local education authority and, if the school is a voluntary school, to any person holding property on trust for the purposes of the school.
- (4) Notice under subsection (3)(b) above must be given within the period of five days beginning with the date on which the request was received; but in determining that period no account shall be taken of—
  - (a) Saturday, Sunday, Good Friday and Christmas Day, or
  - (b) any day which is a bank holiday in England and Wales.
- (5) Subsection (3) above does not apply if in the case of the school in question a ballot has been held in accordance with section 28 of this Act within the period of twelve months ending with the date immediately preceding the date on which the request is received, unless the Secretary of State gives consent in writing for a new ballot to be held.
- (6) A request under subsection (1) above shall be taken to have been received by a governing body if given or sent to the chairman of the governing body or to the clerk to the governing body.

### *Information*

## **27 Information as to parents of registered pupils**

- (1) Where any registered parent of a registered pupil at a school which is eligible for grant-maintained status so requests and subsection (2) below applies, the governing body shall—
  - (a) make available to the parent for inspection (at all reasonable times and free of charge) at the school a list containing the name and address of every registered parent of a registered pupil at the school, and

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- (b) supply the parent with a copy of the list.
- (2) This subsection applies if the request is made—
- (a) in connection with any proposal that a ballot should be held in accordance with section 28 of this Act, or
  - (b) where the governing body are under a duty by virtue of section 25, 26 or 30 of this Act to secure that a ballot is held, in connection with the holding of the ballot.
- (3) A governing body shall not disclose to a parent under subsection (1) above the name and address of any person who has requested the governing body in writing not to disclose that information under that subsection; and accordingly the name and address of that person shall be excluded from the list there mentioned.
- (4) A governing body who in pursuance of subsection (1) above supply copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

### *Ballot of parents*

## **28 Ballot of parents**

- (1) Where the governing body of a school are under a duty by virtue of section 25 or 26 of this Act to secure that a ballot is held, they shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed.
- (2) The arrangements shall provide for a secret postal ballot.
- (3) The governing body shall secure that the prescribed body take such steps as are reasonably practicable to secure that every person who is eligible to vote in the ballot is—
  - (a) given the prescribed information,
  - (b) informed that he is entitled to vote in the ballot, and
  - (c) given an opportunity to do so.
- (4) The governing body shall make available to every person employed to work at the school for inspection (at all reasonable times and free of charge) at the school a document containing the information required by subsection (3)(a) above to be given to persons eligible to vote in the ballot.
- (5) In determining the arrangements they require to be made by the prescribed body, the governing body shall take into account any guidance given by the Secretary of State from time to time as to the arrangements he considers appropriate for ballots held in accordance with this section.
- (6) The governing body may promote (otherwise than as part of the arrangements made for the ballot) the case for seeking grant-maintained status for the school and, in doing so, they shall take into account any guidance given by the Secretary of State as to the action he considers appropriate for the purpose.

## **29 Persons eligible to vote in ballot**

- (1) For the purposes of this Chapter, a person is eligible to vote in a ballot held in respect of a school in accordance with section 28 of this Act if he is a registered parent of a registered pupil at the school.
- (2) In subsection (1) above, “registered” means shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date immediately following the end of the period of fourteen days beginning with the date on which the relevant resolution or request was passed or received by the governing body.
- (3) In subsection (2) above, “the relevant resolution or request” means the resolution under section 25, or request under section 26, of this Act by reference to which the ballot is required to be held (or, where the ballot is a second ballot held by virtue of section 30 of this Act, by reference to which the first ballot was required to be held).

## **30 Second ballot to be held if insufficient votes cast**

- (1) Where in any ballot held in accordance with section 28 of this Act (other than one held by virtue of this section)—
  - (a) the total number of votes cast by persons eligible to vote is less than fifty per cent. of the number of persons eligible to vote, or
  - (b) the number of votes cast in favour is the same as the number of votes cast against,the governing body shall secure that a second ballot is held within the period of fourteen days beginning with the date immediately after that on which the result of the first ballot is determined.
- (2) In such a case—
  - (a) the result of the first ballot shall be disregarded for the purposes of section 32(1) of this Act, and
  - (b) subject to the modifications mentioned in subsection (3) below, section 28 of this Act shall apply as it applies in a case where the governing body of a school are under a duty by virtue of section 25 or 26 of this Act to secure that a ballot is held.
- (3) The modifications are—
  - (a) that section 28(3)(a) shall be omitted, and
  - (b) that section 28(4) shall be read as if the information there referred to were the information given for the purposes of the first ballot.

## **31 Power to declare ballot void for irregularity**

- (1) Subsection (2) below applies where it appears to the Secretary of State—
  - (a) that any requirements of section 28 or 30 of this Act have been contravened in the case of a ballot held in purported compliance with section 28 of this Act,
  - (b) that the arrangements for a ballot so held did not accord with any guidance given by him for the purposes of section 28 of this Act,
  - (c) that a governing body have acted unreasonably in the discharge of their duties under section 28 or 30 of this Act,
  - (d) that persons other than those eligible to do so have purported to vote in a ballot so held,

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- (e) that ballot papers returned for the purposes of a ballot so held have been marked by persons other than those to whom they were issued or those duly authorised to act on their behalf,
  - (f) that persons who were eligible to vote in a ballot so held have been prevented or hindered from doing so, or from doing so freely in accordance with their own opinions, by any other person, or
  - (g) that voting in a ballot so held is likely to have been influenced to a significant extent by the dissemination of information appearing to the Secretary of State to be to a material extent false or misleading.
- (2) The Secretary of State may by notice in writing given to the governing body—
- (a) declare the ballot void, and
  - (b) require that a fresh ballot be held in accordance with section 28 of this Act before such date as he may specify in the notice.
- (3) Where—
- (a) by a notice under subsection (2) above the Secretary of State requires the fresh ballot to be held in the school year following that in which fell the date which was the effective date for the register used for the ballot he declares void, and
  - (b) the notice specifies a date for the purposes of this subsection,
- section 29(1) of this Act shall have effect in relation to the fresh ballot as if “registered” meant shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date specified for the purposes of this subsection.

## **32 Publication of proposals**

- (1) Subsection (2) below applies where the result of a ballot held in accordance with section 28 of this Act shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of seeking grant-maintained status for the school.
- (2) Before the end of the period of four months beginning with the date on which the result of the ballot is determined, the governing body shall—
  - (a) publish proposals for acquisition of grant-maintained status for the school in accordance with any provisions imposed by or under paragraph 1 of Schedule 3 to this Act,
  - (b) publish any notice in respect of the proposals for the time being required by any such provisions, and
  - (c) submit to the Secretary of State a copy of the published proposals.
- (3) References in this Part of this Act to proposals published under this section, in any case where the Secretary of State has modified such proposals in pursuance of this Part of this Act, are to the proposals as so modified.
- (4) For the purposes of this Part of this Act, proposals published under this section shall be regarded as pending in respect of a school until either the proposals are withdrawn or the Secretary of State makes his determination in respect of them.
- (5) Part I of Schedule 3 to this Act (which makes provision supplementing this section) shall have effect.

### *Approval and implementation of proposals*

#### **33 Withdrawal, approval or rejection of proposals**

- (1) Proposals published under section 32 of this Act may not be withdrawn except with the consent of the Secretary of State and subject to such conditions as he may impose (which may, in particular, require further proposals to be published under that section within such period as the Secretary of State may specify).
- (2) The Secretary of State—
  - (a) may reject any proposals published under section 32 of this Act, or
  - (b) where a school in respect of which such proposals are made is eligible for grant-maintained status on the date of publication of the proposals, may approve them without modification or, after consultation with the existing governing body, approve them with such modifications as he thinks desirable.
- (3) Where the Secretary of State rejects any proposals published under section 32 of this Act in respect of a school which is eligible for grant-maintained status on the date of his determination, he may require the governing body to publish further proposals under section 32 of this Act within such period as he may specify.
- (4) Where the Secretary of State imposes a requirement under subsection (1) or (3) above for the publication of further proposals, section 32(2) of this Act and Schedule 3 to this Act shall apply as they apply in the case mentioned in section 32(1), but with the following modifications—
  - (a) the reference in section 32(2) to the period of four months beginning with the date on which the result of the ballot is determined shall be taken as a reference to the period specified by the Secretary of State for submission of the further proposals required, and
  - (b) the reference in paragraph 2(1)(a) of Schedule 3 to the ballot shall be read as referring to the last ballot held in accordance with section 28 of this Act in relation to the school before the requirement in question was imposed.

#### **34 Incorporation of governing body**

- (1) Where any proposals are approved under section 33 of this Act, then—
  - (a) the persons who, immediately before the proposals are approved, are named in them as initial governors, and
  - (b) the existing head teacher (as a governor *ex officio*),shall on that date be incorporated as the governing body of the school under the name given in pursuance of paragraph 4(1)(g) of Schedule 3 to this Act.
- (2) Where any proposals are approved under section 33 of this Act, then, in relation to the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—
  - (a) the governing body incorporated under this section are referred to in this Part of this Act as the “new governing body”, and
  - (b) any reference in any enactment or instrument or document to the governing body of the school, other than an express reference to the new governing body or the governing body incorporated under this section or a reference in Chapter V, shall be read as a reference to the existing governing body, not the new governing body.

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- (3) On the date of implementation of the proposals—
- (a) the local education authority whose duty it was immediately before that date to maintain the school as a county or voluntary school shall cease to have that duty, and
  - (b) any special agreement relating to the school shall cease to have effect.

### **35 Exercise of powers before proposed date of implementation**

Schedule 4 to this Act (which makes provision in relation to the period after approval and before the date of implementation) shall have effect in relation to any school where proposals are approved under section 33 of this Act.

#### *Supplementary*

### **36 Expenses in connection with proposals for acquisition of grant-maintained status**

- (1) The Secretary of State may make payments in respect of any expenses incurred by the governing body of a school in exercising, or in connection with the exercise of, their functions under this Chapter.
- (2) Payments under subsection (1) above may be made on such terms as the Secretary of State may determine.
- (3) A local education authority shall not incur any expenditure attributable to any period for the purpose of influencing the outcome of ballots held under section 28 of this Act if the aggregate of the amounts of expenditure for that purpose attributable to the period exceeds or, if that expenditure were incurred, would exceed the limit for that period.
- (4) Regulations may make provision for determining for the purposes of this section—
- (a) whether expenditure is incurred for the purpose referred to in subsection (3) above,
  - (b) the amount of any expenditure,
  - (c) the period to which expenditure is to be attributed, and
  - (d) the limit for any period.
- (5) Regulations may require each local education authority—
- (a) to keep in accordance with regulations, and any directions contained in an order made by the Secretary of State, a separate account of the expenditure incurred for the purpose referred to in subsection (3) above, and
  - (b) to prepare in respect of such periods as may be prescribed a statement of account and, if the Secretary of State so requests, send each statement to him before the end of such period as may be prescribed.

### **37 Chapter II: interpretation, etc**

- (1) This section applies in relation to proposals for acquisition of grant-maintained status and to the school to which they relate.
- (2) References to the date of implementation of the proposals—



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- (a) in relation to a school in respect of which proposals for acquisition of grant-maintained status are required to be published under section 32 of this Act, are to the date specified in accordance with regulations under section 28(3)(a) of this Act as the proposed date of implementation in the information given to persons eligible to vote in the originating ballot, and
  - (b) in any other case, are to the date specified in the proposals as the proposed date of implementation.
- (3) In subsection (2)(a) above, “the originating ballot”—
- (a) where section 32(1) of this Act applies, means the ballot by reference to which it applies, and
  - (b) where the proposals are required to be published by virtue of a requirement imposed by the Secretary of State under section 33(1) or (3) of this Act, means the last ballot held in accordance with section 28 of this Act in relation to the school before that requirement was imposed.
- (4) “The relevant particulars”, in relation to a proposed initial governor, means—
- (a) his name and address,
  - (b) whether he is to be a parent, teacher, first, foundation or sponsor governor,
  - (c) if he is to be a parent or teacher governor, the term of office that applies in his case under paragraph 10 of Schedule 5 to this Act, and
  - (d) if he is to be a first, foundation or sponsor governor, the term of office proposed for him in accordance with that paragraph or, in the case of a foundation governor who is to hold office *ex officio*, the fact that he is to do so.
- (5) “The incorporation date” means the date on which the governing body are incorporated.