

SCHEDULES

SCHEDULE 28

Section 344(2).

GOVERNMENT AND CONDUCT OF GRANT-MAINTAINED SPECIAL SCHOOLS

Constitution of governing body and conduct of school

- 1 (1) For every governing body of a grant-maintained special school there shall be—
- (a) an instrument (known as the instrument of government) providing for the constitution of the governing body, and
 - (b) an instrument (known as the articles of government) in accordance with which the school is to be conducted.
- (2) The instrument and articles of government—
- (a) shall comply with any requirements imposed by or under Part IV, and
 - (b) may make any provision authorised by or under Part IV to be made and such other provision as may be necessary or desirable.
- (3) Subject to any express provision of the instrument or articles of government, the school shall be conducted in accordance with any trust deed relating to it.

Initial instruments and articles of government

- 2 (1) The initial instrument of government for the governing body of a grant-maintained special school, and the initial articles of government for such a school, shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the incorporation date.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals made under section 339(2)(a) or 345 but, in the case of a governing body incorporated in pursuance of proposals made under section 339(2)(a), such of the articles as may be prescribed shall have effect as from the incorporation date.

Subsequent instruments of government

- 3 (1) The Secretary of State may—
- (a) if the governing body of a grant-maintained special school submit a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
 - (b) if such a governing body submit draft modifications of an instrument made under paragraph (a) above, by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit,
- but shall not make a new instrument otherwise than in the terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the governing body.

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- (2) The Secretary of State may by order modify the instrument of government for the governing body of any grant-maintained special school.
- (3) An order under sub-paragraph (2)—
 - (a) may relate to all grant-maintained special schools, to any category of such schools specified in the order or to any such school so specified, but
 - (b) shall not be made unless the Secretary of State has consulted the governing body of each grant-maintained special school to which the order relates.
- (4) Where, by reason of the making of a new instrument, or the modification of an instrument, under this paragraph, the number of governors of any category will (unless the required number of governors of that category resign) exceed the number provided for in the instrument, the new instrument or, as the case may be, the instrument as modified shall provide—
 - (a) for such number of governors of that category as is required to eliminate the excess to cease to hold office, and
 - (b) for the selection of those who are to cease to hold office.

Subsequent articles of government

- 4 (1) The governing body of a grant-maintained special school may, with the consent of the Secretary of State—
 - (a) make new articles of government in place of the existing articles for the school, or
 - (b) modify the existing articles for the school.
- (2) The Secretary of State may by a direction under this paragraph require—
 - (a) the governing bodies of grant-maintained special schools or any class of such schools specified in the direction, or
 - (b) the governing body of any particular grant-maintained special school so specified,
 to modify their articles of government in any manner so specified.
- (3) Before giving a direction under this paragraph, the Secretary of State shall consult the governing body or (as the case may be) each governing body to which the direction applies.

Parent governors

- 5 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include not less than three nor more than five parent governors.
- (2) Subject to sub-paragraph (5), the parent governors—
 - (a) in the case of a school not established in a hospital, shall be elected by persons who are registered parents of registered pupils at the school, and
 - (b) in the case of a school so established, shall be appointed by the other members of the governing body.
- (3) To qualify for such election a person must when he is elected be a registered parent of a registered pupil at the school; and to qualify for appointment under sub-

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paragraph (2)(b) a person must when he is appointed be such a parent or, if that is not reasonably practicable, a parent of one or more children of compulsory school age.

- (4) The instrument shall provide for each parent governor to hold office for a term of four years.
- (5) In the case of a school not established in a hospital, the instrument shall provide that if—
- (a) one or more vacancies for parent governors are required to be filled by election, and
 - (b) the number of parents standing for election as parent governors is less than the number of vacancies,
- the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (6) The instrument shall require governors, in appointing a person under a provision made by virtue of sub-paragraph (5)—
- (a) to appoint a person who is the registered parent of a registered pupil at the school, where it is reasonably practicable to do so, and
 - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age with special educational needs or, if that also is not reasonably practicable, a person who is the parent of a person of any age with special educational needs.

Teacher governors

- 6 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include either one or two teacher governors.
- (2) Each teacher governor shall be elected by persons who are teachers at the school.
- (3) To qualify for such election, a person must when he is elected be a teacher at the school.
- (4) The instrument shall provide for each teacher governor to hold office for a term of four years.

Head teacher

- 7 The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include (as a governor *ex officio*) the person who is for the time being the head teacher.

First governors

- 8 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the governing body to include first governors.
- (2) The instrument shall provide for such number of first governors as will secure that they outnumber the other governors.
- (3) The instrument—
- (a) shall require—

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- (i) that, where it is reasonably practicable, at least two of the first governors shall be (on the date or dates on which they respectively take office) parents of registered pupils at the school, and
 - (ii) that at least two of the first governors shall be persons with experience of education for those with special educational needs, but one person may satisfy both requirements, and
 - (b) shall require the governing body, in appointing first governors, to secure that those governors include a person appearing to them to be a member of the local business community (and such a person may also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (4) The instrument shall provide for the first governors to be appointed by the governing body from among persons who appear to the governing body to be committed to the good government and continuing viability of the school.
 - (5) The instrument shall provide for first governors to hold office for such term (not being less than five nor more than seven years) as may be specified in the instrument.
 - (6) A person who is a member of the teaching or other staff at the school shall be disqualified for holding office as a first governor.
 - (7) References in this paragraph to governors other than first governors do not include sponsor governors.

Power of Secretary of State to replace first governors

- 9 (1) The instrument of government for the governing body of a grant-maintained special school shall provide for the Secretary of State to have power, where any of sub-paragraphs (2) to (4) apply, to replace all or any of the first governors.
- (2) This sub-paragraph applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This sub-paragraph applies where—
 - (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
 - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
 - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Part I of the School Inspections Act 1996, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
 - (d) the Secretary of State has received a statement prepared under section 17 of that Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;
 and expressions used in this sub-paragraph and in that Act have the same meaning as in that Act.
- (4) This sub-paragraph applies where in the opinion of the Secretary of State any action taken or proposed by the governing body of the school, or any failure of the governing body to act, is prejudicial to the provision of education by the school.

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- (5) The instrument of government for a grant-maintained special school shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of paragraph 8(3) shall not apply for the purposes of the appointment by virtue of this paragraph of any first governor.

Sponsor governors

- 10 The instrument of government for the governing body of a grant-maintained special school which provides secondary education may—
 - (a) name a person as a sponsor of the school, and
 - (b) provide for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the instrument.

Additional governors

- 11 (1) The instrument of government for the governing body of a grant-maintained special school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the governing body, during any period when any additional governors appointed by the Secretary of State by virtue of subparagraph (1) are in office, to appoint a number of additional first governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) Any additional first governor appointed in pursuance of such a provision is to hold office for such term (not being more than five years) as may be specified in the terms of his appointment.

Powers

- 12 Section 231 of this Act shall have effect in relation to the governing body of a grant-maintained special school with such modifications as may be prescribed.

Transitory provisions

- 13 Regulations may modify the provisions of paragraphs 5 to 12 in relation to—
 - (a) the initial instrument of government, or
 - (b) governors holding office, elected or appointed, before the date of implementation of the proposals in pursuance of which the governing body are constituted.

General application of enactments

- 14 In relation to any governing body incorporated in pursuance of proposals under section 339(2)(a) or 345 or any school conducted or formerly conducted by such a governing body, regulations may provide for any provision of—

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- (a) Schedules 22 and 23 (governing bodies; articles),
 - (b) Chapters VI, VII, VIII and X of Part III (funding; alteration; discontinuance, etc.), and
 - (c) any other enactment (not contained in Part III) relating to grant-maintained schools or maintained special schools (or schools including such schools),
- to have effect with or without modification.
- 15 Section 307 (exclusion of pupils) applies to a grant-maintained special school as it applies to a grant-maintained school.