



# 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 [<sup>F1</sup>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 [<sup>F2</sup>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 [<sup>F3</sup>the change of category provisions]); or

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- (b) it was established as a school of that category under [<sup>F4</sup>any enactment] (and has not changed its category under [<sup>F3</sup>the change of category provisions]); or
- (c) it has become a school of that category in accordance with [<sup>F3</sup>the change of category provisions].

[<sup>F5</sup>(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 <sup>M1</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 [<sup>F2</sup>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 [<sup>F2</sup>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 <sup>M2</sup>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 [<sup>F6</sup>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 [<sup>F7</sup>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 [<sup>F8</sup>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 [<sup>F9</sup>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 [<sup>F10</sup>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 <sup>F11</sup>... 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 [<sup>F2</sup>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<sup>F12</sup> ...;
  - (c) any maintained schools established in their area<sup>F13</sup> ... otherwise than by them or any other [<sup>F2</sup>local authority]; and
  - (d) any maintained nursery school established by them.
- [<sup>F14</sup>(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 [<sup>F2</sup>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 [<sup>F2</sup>local authority]’s duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, and
  - (b) the duty, [<sup>F15</sup>under any enactment of providing new premises for the school].
- (5) In the case of a voluntary aided school, the [<sup>F2</sup>local authority]’s duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, except any [<sup>F16</sup>expenditure that by virtue of paragraph 3 of Schedule 3 is to be met] by the governing body, and
  - (b) the duty, [<sup>F17</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, [<sup>F1</sup>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 [<sup>F2</sup>local authority], “the [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>local 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>F242</sup>(b) any maintained schools established by them <sup>F243</sup>. . . ;
  - <sup>F244</sup>(c) any maintained schools established in their area <sup>F245</sup>. . . otherwise than by them or any other [<sup>F2</sup>local authority]; and
  - (d) any maintained nursery school established by them.
- <sup>F14</sup>(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 [<sup>F2</sup>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 [<sup>F2</sup>local authority]'s duty to maintain the school includes—
- (a) the duty of defraying all the expenses of maintaining it, and
  - <sup>F246</sup>(b) the duty, [<sup>F247</sup>under any enactment of providing new premises for the school].
- (5) In the case of a voluntary aided school, the [<sup>F2</sup>local 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>F248</sup>(b) the duty, [<sup>F249</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, [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)
- F242** 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
- F243** 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
- F244** 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
- F245** 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
- F246** 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
- F247** 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
- F248** 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
- F249** 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 <sup>F18</sup>...—
- (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.
- [<sup>F19</sup>(1A) Any body to which subsection (1)(a) or (b) applies is an institution to which section 3A(4)(b) of the Charities Act 1993 applies (institutions to be excepted from registration under that Act).]
- (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 [<sup>F20</sup>be treated for the purposes of section 3A(4)(b) of the Charities Act 1993 as if it were an institution to which that provision applies.]
- (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 [<sup>F21</sup>, 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 <sup>M3</sup>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(2) substituted (31.1.2009) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 194\(4\)](#); [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](#))
- F21** 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.

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### **[<sup>F22</sup>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
  - (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;

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[<sup>F23c</sup>“local authority” includes a non-metropolitan district council for an area for which there is a county council;]  
“purpose” includes object.

**Textual Amendments**

- F22** 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)
- F23** 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**

- F22** 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)

*New arrangements for organisation of schools*

<sup>F24</sup>**24 School organisation committees.**

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**Textual Amendments**

- F24** S. 24 repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), ss. 29, 188(3), Sch. 18 Pt. 3; S.I. 2007/935, art. 7(g)(q)

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## 25 Adjudicators.

- (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>F25</sup>or Part 2 of the Education and Inspections Act 2006] 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>F26</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

- F25** Words in s. 25(2) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 16](#); S.I. 2007/935, art. 7(o)
- F26** 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>F27</sup>26 School organisation plans.

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### Textual Amendments

- F27** 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>F27</sup>26A Plans of local learning and skills councils.

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**Textual Amendments**

**F27** 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>F27</sup>26B Plans of National Council.**

.....

**Textual Amendments**

**F27** 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>F28</sup>27 Power to require committees or adjudicators for Wales.**

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**Textual Amendments**

**F28** [S. 27](#) repealed (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 17](#), [Sch. 18 Pt. 3](#); S.I. 2007/935, [art. 7\(o\)\(q\)](#)

**CHAPTER II**

**ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS**

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

**C3** Pt. II Chapter II modified (1.9.1999) by [S.I. 1999/704](#), [regs. 21, 22](#), [Sch.](#)

*Mainstream schools maintained by [<sup>F1</sup>local authorities]*

**28 Proposals for establishment or alteration of community, foundation or voluntary school [<sup>F29</sup>in Wales].**

- (1) Where a [<sup>F2</sup>local authority][<sup>F30</sup>in Wales] propose—
- (a) to establish a new community or foundation school, or
  - [<sup>F31</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>F32</sup>or
  - (d) <sup>F33</sup>... to make any prescribed alteration to a maintained nursery school]
- the authority shall publish their proposals under this section.

<sup>F34</sup>(1A) .....

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- (2) Where—
  - (a) any persons (referred to in this Part as “promoters”) propose to establish a new foundation or voluntary school [<sup>F35</sup>in Wales]<sup>F36</sup> ..., or
  - (b) the governing body of a foundation or voluntary school [<sup>F37</sup>in Wales]<sup>F38</sup> ... 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>F39</sup>(2A) .....

<sup>F39</sup>(2B) .....

- (3) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,
 as may be prescribed.

<sup>F40</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 [<sup>F41</sup>Assembly].

<sup>F42</sup>(6) .....

- (7) <sup>F43</sup>... The relevant body or promoters shall send—
  - (a) a copy of [<sup>F44</sup>any proposals published under this section], and
  - (b) such information in connection with those proposals as may be prescribed, to the [<sup>F45</sup>Assembly].

- (8) Schedule 6 has effect <sup>F46</sup>... 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 [<sup>F2</sup>local authority] who maintain, or (as the case may be) who it is proposed should maintain, the school,

the provisions of <sup>F47</sup>... 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 [<sup>F2</sup>local authority], governing body or promoters mentioned in subsection (1) or (2) (as the case may be).

- (11) In this Part—

- (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

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- (ii) whereby the school would acquire or lose a religious character; and  
(b) “area” (without more) means a [F<sup>2</sup>local 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 [F<sup>2</sup>local authority].

### Textual Amendments

- 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))
- F29** Words in s. 28 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(10)**; S.I. 2007/935, art. 7(o)
- F30** Words in s. 28(1) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(2)(a)**; S.I. 2007/935, art. 7(o)
- F31** 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)
- F32** 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
- F33** Words in s. 28(1)(d) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(2)(b), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F34** 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)
- F35** Words in s. 28(2)(a) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(3)(a)**; S.I. 2007/935, art. 7(o)
- F36** 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)
- F37** Words in s. 28(2)(b) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(3)(b)(i)**; S.I. 2007/935, art. 7(o)
- F38** Words in s. 28(2)(b) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(3)(b)(ii), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F39** S. 28(2A)(2B) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(4), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F40** 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)
- F41** Word in s. 28(5) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(5)**; S.I. 2007/935, art. 7(o)
- F42** S. 28(6) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(6), **Sch. 18 Pt. 3** (with savings in The School Organisation (Transitional Provisions) (England) Regulations 2007 (S.I. 2007/1355), **regs. 1(1), 3(5), 24(5)**); S.I. 2007/935, **art. 7(o)(q)**
- F43** Words in s. 28(7) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(7)(a), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F44** Words in s. 28(7)(a) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(7)(b)**; S.I. 2007/935, art. 7(o)
- F45** Word in s. 28(7) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 18(7)(c)**; S.I. 2007/935, art. 7(o)
- F46** Words in s. 28(8) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(8), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F47** Words in s. 28(9) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 18(9), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)

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

- C4** S. 28 amended (1.4.1999) by S.I. 1999/125, **art. 2(3)**.
- C5** S. 28 extended (10.3.1999) by S.I. 1999/362, **reg. 6(2)(3)**.
- C6** 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**.
- C7** S. 28 modified (1.9.1999) by S.I. 1999/2633, reg. 5(2), **Sch. 2**.
- C8** S. 28; Power to modify conferred (*prosp.*) by Education Act 2002 (c. 32), **ss. 74(2)(a)** 216 (with ss. 210(8), 214(4))
- C9** 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
- C10** 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
- C11** 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
- C12** 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
- C13** S. 28(3)(7)(8)(10)(11) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, **Sch. 1 Pt. I** 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**)
- C14** S. 28(3) applied (with modifications) (1.9.1999) by S.I. 1999/2213, reg. 15, **Sch.4**.  
 s. 28(3): s. 28(3)(except para. (b)) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C15** 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)
- C16** S. 28(5) applied (with modifications) (W.) (1.9.2001) by S.I. 2001/2678, reg. 7, **Sch. 1 Pt. I** Table 1
- C17** 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**
- C18** 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)
- C19** S. 28(7) applied with modifications (1.9.1999) by S.I. 1999/1671, reg. 10, **Sch. 5**
- C20** 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)
- C21** 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**

- I1** 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>F48</sup>28A Proposals for establishment of community, foundation or voluntary school maintained by English LEA**

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### Textual Amendments

**F48** S. 28A repealed (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), Sch. 3 para. 19, **Sch. 18 Pt. 3** (with savings in [The School Organisation \(Transitional Provisions\) \(England\) Regulations 2007 \(S.I. 2007/1355\)](#), regs. 1(1), **3(5)**); S.I. 2007/935, **art. 7(o)(q)**

## 29 Proposals for discontinuance of community, foundation, voluntary or maintained nursery school [<sup>F49</sup>in Wales].

- (1) Where a [<sup>F2</sup>local authority][<sup>F50</sup>in Wales] 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 [<sup>F51</sup>in Wales] 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>F52</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 [<sup>F2</sup>local 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 [<sup>F53</sup>Assembly].

(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 [<sup>F2</sup>local authority],
- <sup>F54</sup>(c) .....
- (d) any <sup>F55</sup>... 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 [<sup>F56</sup>Assembly].]

<sup>F57</sup>(5) .....

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- (6)<sup>F58</sup>... The relevant body shall send—
- (a) a copy of [<sup>F59</sup>any proposals published under this section], and
  - (b) such information in connection with those proposals as may be prescribed, to the [<sup>F60</sup>Assembly].
- (7) Schedule 6 has effect <sup>F61</sup>... 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 [<sup>F2</sup>local authority] who maintain it, the provisions of <sup>F62</sup>... 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 [<sup>F2</sup>local authority] or governing body mentioned in subsection (1) or (2) (as the case may be).
- [<sup>F63</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 [<sup>F64</sup>Assembly].]
- (10) In this Part any reference to a [<sup>F2</sup>local 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

- 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))
- F49** Words in s. 29 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(12)**; S.I. 2007/935, art. 7(o)
- F50** Words in s. 29(1) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(2)**; S.I. 2007/935, art. 7(o)
- F51** Words in s. 29(2) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(3)**; S.I. 2007/935, art. 7(o)
- F52** 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
- F53** Word in s. 29(4A) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(4)**; S.I. 2007/935, art. 7(o)
- F54** S. 29(4B)(c) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(5)(a), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F55** Words in s. 29(4B)(d) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(5)(b), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F56** Word in s. 29(4D) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(6)**; S.I. 2007/935, art. 7(o)
- F57** S. 29(5) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(7), **Sch. 18 Pt. 3** (with savings in The School Organisation (Transitional Provisions) (England) Regulations 2007 (S.I. 2007/1355), regs. 1(1), 3(5)); S.I. 2007/935, art. 7(o)(q)
- F58** Words in s. 29(6) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(8)(a), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)

*Status: Point in time view as at 05/05/2010.*

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- F59** Words in s. 29(6)(a) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(8)(b)**; S.I. 2007/935, art. 7(o)
- F60** Word in s. 29(6) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(8)(c)**; S.I. 2007/935, art. 7(o)
- F61** Words in s. 29(7) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(9), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F62** Words in s. 29(8) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 20(10), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F63** 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
- F64** Word in s. 29(9A) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 20(11)**; S.I. 2007/935, art. 7(o)

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

- C22** S. 29(5) modified (1.9.1999) by S.I. 1999/704, regs. 21, 22, **Sch.**

#### Commencement Information

- I2** 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.

- (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 [F<sup>2</sup>local 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)—
- by the Secretary of State,
  - by the Funding Agency for Schools,
  - by any [F<sup>2</sup>local authority], or
  - by an authority which was a local education authority within the meaning of any enactment repealed by the <sup>M4</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, [F<sup>65</sup>consult—
- if the school is in England—
    - the Young People's Learning Agency for England, if it has secured the provision of education for any such persons at the school, and
    - each local authority which has secured the provision of education for any such persons at the school;
  - if the school is in Wales, the Welsh Ministers.]
- (4) If, while a notice under subsection (1) is in force in respect of a foundation or voluntary school, the governing body inform the [F<sup>2</sup>local authority] that they are unable or unwilling to carry on the school until the notice expires, the authority—

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- (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 [<sup>F2</sup>local authority].
- (8) If a foundation or voluntary school is discontinued under this section, the duty of the [<sup>F2</sup>local authority] to maintain the school as a foundation or voluntary school shall cease.
- [<sup>F66</sup>(9) Nothing in any of the following provisions applies in relation to the discontinuance under this section of a foundation or voluntary school—
- (a) sections 29 and 33 of this Act (which relate to Wales), and
  - (b) sections 15 and 28 of the Education and Inspections Act 2006 (which relate to England).]

(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—
      - (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 [<sup>F2</sup>local 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

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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

- 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))
- F65** Words in s. 30(3) substituted (1.4.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), art. 1(2)(a), **Sch. 1 para. 35** (with art. 2(3))
- F66** S. 30(9) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 21**; S.I. 2007/935, art. 7(o)

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

- C23** S. 30 excluded (1.4.2007) by Education and Inspections Act 2006 (c. 40), **ss. 68(4)**, 188(3); S.I. 2007/935, art. 5(j)

#### Marginal Citations

- M4** 1944 c. 31.

*Special schools maintained by [<sup>F67</sup> [<sup>F1</sup>local authorities] in Wales]*

#### Textual Amendments

- F67** Words in s. 31 cross-heading substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 22**; S.I. 2007/935, art. 7(o)

### 31 Proposals for establishment, alteration or discontinuance of community or foundation special school [<sup>F68</sup>in Wales].

- (1) Where a [<sup>F2</sup>local authority][<sup>F69</sup>in Wales] intend—
- to establish a new community or foundation special school, or
  - to make any prescribed alteration to such a school, or
  - to discontinue such a school,
- the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation special school [<sup>F70</sup>in Wales] propose—
- to make any prescribed alteration to the school, or
  - to discontinue the school,
- the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
- contain such information, and
  - be published in such manner,

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as may be prescribed.

- [<sup>F71</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 [<sup>F2</sup>local 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 [<sup>F72</sup>Assembly].]
- <sup>F73</sup>(5) .....
- (6) <sup>F74</sup>... The relevant body shall send—
    - (a) a copy of [<sup>F75</sup>any proposals published under this section], and
    - (b) such information in connection with those proposals as may be prescribed, to the [<sup>F76</sup>Assembly].
  - (7) The relevant body shall also send a copy of any proposals to which subsection <sup>F77</sup>... (6) applies to such other bodies or persons as may be prescribed.
  - (8) Schedule 6 has effect <sup>F78</sup>... in relation to the procedure for dealing with proposals under this section and their implementation.
  - (9) In this section “the relevant body” means the [<sup>F2</sup>local authority] or governing body mentioned in subsection (1) or (2) (as the case may be).

#### Textual Amendments

- 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))
- F68** Words in s. 31 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(9)**; S.I. 2007/935, art. 7(o)
- F69** Words in s. 31(1) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(2)**; S.I. 2007/935, art. 7(o)
- F70** Words in s. 31(2) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(3)**; S.I. 2007/935, art. 7(o)
- F71** 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**
- F72** Word in s. 31(4C) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(4)**; S.I. 2007/935, art. 7(o)
- F73** S. 31(5) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 23(5), **Sch. 18 Pt. 3** (with savings in The School Organisation (Transitional Provisions) (England) Regulations 2007 (S.I. 2007/1355), regs. 1(1), **3(5)**, 24(5)); S.I. 2007/935, **art. 7(o)(q)**
- F74** Words in s. 31(6) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 23(6)(a), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F75** Words in s. 31(6)(a) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(6)(b)**; S.I. 2007/935, art. 7(o)

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- F76** Word in s. 31(6) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 23(6)(c)**; S.I. 2007/935, art. 7(o)
- F77** Words in s. 31(7) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 23(7), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F78** Words in s. 31(8) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 23(8), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)

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

- C24** S. 31 extended (10.3.1999) by S.I. 1999/362, **reg. 6(4)**.
- C25** S. 31 modified (prosp.) by Education Act 2002 (c. 32), **ss. 74(1)(a)**, 216 (with ss. 210(8), 214(4))
- C26** 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
- C27** 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
- C28** 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**.
- C29** S. 31(6) applied (with modifications) (1.9.1999) by S.I. 1999/1780, **reg. 11, Sch.4**.
- C30** 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**.
- C31** 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

- I3** 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 <sup>[F79]</sup>in Wales].

- (1) The <sup>[F80]</sup>Assembly may, if <sup>[F81]</sup>it considers it expedient to do so in the interests of the health, safety or welfare of pupils at a community or foundation special school <sup>[F82]</sup>in Wales], give a direction to the <sup>[F2]</sup>local 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 <sup>[F2]</sup>local authority] to notify any persons or class of persons specified in the direction.
- (3) Before giving a direction under subsection (1), the <sup>[F83]</sup>Assembly] shall consult—
  - (a) the <sup>[F2]</sup>local authority];
  - (b) any other <sup>[F2]</sup>local authority] who would in <sup>[F84]</sup>its] 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 <sup>[F83]</sup>Assembly] considers appropriate.
- (4) On giving a direction under subsection (1) the <sup>[F85]</sup>Assembly] shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where a <sup>[F2]</sup>local 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.

**Status:** Point in time view as at 05/05/2010.

**Changes to legislation:** School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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

- 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))
- F79** Words in s. 32 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(5)**; S.I. 2007/935, art. 7(o)
- F80** Word in s. 32(1) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(2)(a)**; S.I. 2007/935, art. 7(o)
- F81** Word in s. 32(1) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(2)(b)**; S.I. 2007/935, art. 7(o)
- F82** Words in s. 32(1) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(2)(c)**; S.I. 2007/935, art. 7(o)
- F83** Word in s. 32(3) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(3)(a)**; S.I. 2007/935, art. 7(o)
- F84** Word in s. 32(3)(b) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(3)(b)**; S.I. 2007/935, art. 7(o)
- F85** Word in s. 32(4) substituted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 24(4)**; S.I. 2007/935, art. 7(o)

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

### 33 Further provisions relating to establishment, alteration or discontinuance of schools [<sup>F86</sup>in Wales].

- (1) Except in pursuance of proposals falling to be implemented under [<sup>F87</sup>any enactment]—
- (a) no maintained school [<sup>F88</sup>in Wales] shall be established or discontinued;
  - (b) no prescribed alteration shall be made to any such school; [<sup>F89</sup>and]
  - (c) no maintained nursery school [<sup>F90</sup>in Wales] shall be [<sup>F91</sup>established or] discontinued. [<sup>F92</sup>; and
  - (d) no prescribed alteration shall be made to any maintained nursery school which is maintained by a [<sup>F2</sup>local authority] in Wales.]
- (2) No alteration falling within section 28(11)(a)(i) or (ii) shall be made to any maintained school [<sup>F93</sup>in Wales].
- (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>F94</sup>... 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>F95</sup>(5) For the purposes of this Part proposals for the establishment of a maintained school [<sup>F96</sup>in Wales] shall be taken to be implemented on the school opening date.



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(6) In this Part “school opening date”, in relation to a new maintained school [<sup>F97</sup>in Wales], means the date when the school first admits pupils.]

#### Textual Amendments

- 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))
- F86** Words in s. 33 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(6)**; S.I. 2007/935, art. 7(o)
- F87** 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
- F88** Words in s. 33(1)(a) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(2)**; S.I. 2007/935, art. 7(o)
- 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 (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(2)**; S.I. 2007/935, art. 7(o)
- F91** 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
- F92** 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
- F93** Words in s. 33(2) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(3)**; S.I. 2007/935, art. 7(o)
- F94** Word in s. 33(4) repealed (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 3 para. 25(4), **Sch. 18 Pt. 3**; S.I. 2007/935, art. 7(o)(q)
- F95** 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.**
- F96** Words in s. 33(5) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(5)**; S.I. 2007/935, art. 7(o)
- F97** Words in s. 33(6) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 25(5)**; S.I. 2007/935, art. 7(o)

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

- C32** 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

- I4** 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.

Schedule 7 (which provides for the [<sup>F98</sup>National Assembly for Wales] to give directions to [<sup>F1</sup>local authorities][<sup>F99</sup>in Wales and governing bodies of maintained schools in

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Wales] to bring forward proposals for the rationalisation of school places, and for such proposals to be made by [<sup>F100</sup>the Assembly]) shall have effect.

#### 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))
- F98** 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
- F99** 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
- F100** 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 [<sup>F101</sup>in Wales] changing from one category to another.

- (1) Schedule 8 makes provision for and in connection with—
- (a) enabling a maintained school [<sup>F102</sup>in Wales] 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 [<sup>F103</sup>in Wales] to become a school within another of those categories;
- and a maintained school [<sup>F102</sup>in Wales] 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.

#### Textual Amendments

- F101** Words in s. 35 heading inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 26(3)**; S.I. 2007/935, art. 7(o)
- F102** Words in s. 35(1) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 26(2)(a)**; S.I. 2007/935, art. 7(o)
- F103** Words in s. 35(1)(b) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 3 para. 26(2)(b)**; S.I. 2007/935, art. 7(o)

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## CHAPTER III

### GOVERNMENT OF MAINTAINED SCHOOLS

#### *Governing bodies*

#### **F104** 36 **Governing bodies.**

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##### **Textual Amendments**

**F104** 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](#)

#### *Instruments of government*

#### **F104** 37 **Instruments of government.**

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##### **Textual Amendments**

**F104** 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](#)

#### *Functions of governing body*

#### **F104** 38 **General responsibility of governing body for conduct of school.**

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##### **Textual Amendments**

**F104** 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.

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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**

### **F104<sup>39</sup> Additional functions of governing body.**

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#### **Textual Amendments**

**F104** 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**

#### *Control of school premises*

### **F104<sup>40</sup> Control of use of school premises by governing body.**

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#### **Textual Amendments**

**F104** 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*

### **F104<sup>41</sup> Responsibility for fixing dates of terms and holidays and times of sessions.**

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#### **Textual Amendments**

**F104** 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**

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### *Reports and parents' meetings*

#### **F104 42** **Governors' reports and other information.**

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##### **Textual Amendments**

**F104** 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](#)

#### **F104 43** **Annual parents' meetings.**

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##### **Textual Amendments**

**F104** 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](#)

### *Government of new schools*

#### **F104 44** **Arrangements for government of new schools.**

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##### **Textual Amendments**

**F104** 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](#)

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## CHAPTER IV

### FINANCING OF MAINTAINED SCHOOLS

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

- C33** Pt. 2 Ch. 4 (ss. 45-53) modified (20.11.1998) by [S.I. 1998/2670, reg. 3\(1\)\(3\)](#)
- C34** Pt. 2 Ch. 4 applied (with modifications) (W.) (12.4.2010) by [The Federation of Maintained Schools and Miscellaneous Amendments \(Wales\) Regulations 2010 \(S.I. 2010/638\), regs. 1\(1\), 74, 75](#)

#### *Budgetary framework*

#### **45 Maintained schools to have budget shares.**

- (1) For the purposes of the financing of maintained schools by [<sup>F1</sup>local authorities], every such school shall have, for each [<sup>F105</sup>funding period], a budget share which is allocated to it by the authority which maintains it.

[<sup>F106</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>F107</sup>(1B) In this Chapter “funding period” means a financial year or such other period as may be prescribed.]

- (2) Sections [<sup>F108</sup> 45A to] 47 have effect for determining the amount of a school’s budget share for a [<sup>F109</sup>funding period].

(3) In this Chapter—

- (a) references to schools maintained by a [<sup>F2</sup>local authority] do not include [<sup>F110</sup>pupil referral units];
- (b) references, in a context referring to a [<sup>F2</sup>local 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>F111</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 [<sup>F2</sup>local 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**

- 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))
- F105** 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
- F106** 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**
- F107** 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
- F108** 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
- F109** 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
- F110** 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.**
- F111** 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)**

- C35** 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)**
- C36** S. 45(3)(4) modified (20.11.1998) by S.I. 1998/2670, **reg. 3(4)**

**[<sup>F112</sup>45A Determination of specified budgets of [<sup>F2</sup>local authority]**

- (1) For the purposes of this Part, a [<sup>F2</sup>local authority]’s “[<sup>F113</sup>non-schools education budget]” for a [<sup>F114</sup>relevant period] is the amount appropriated by the authority for meeting all [<sup>F115</sup>education] expenditure by the authority in [<sup>F116</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>F117</sup>(1A) be prescribed.]

- (2) For the purposes of this Part, a [<sup>F2</sup>local authority]’s “schools budget” for a [<sup>F118</sup>funding period] is the amount appropriated by the authority for meeting all [<sup>F119</sup>education] expenditure by the authority in [<sup>F120</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>F121</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 [<sup>F2</sup>local authority]’s “individual schools budget” for a [<sup>F122</sup>funding period] is the amount remaining after deducting from the authority’s

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schools budget for [<sup>F123</sup>that period] such planned [<sup>F124</sup>education] expenditure by the authority in respect of [<sup>F123</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.

[ Regulations under subsection (3) may also make provision—

- <sup>F125</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.]

[ For the purposes of this Part, the duty imposed on a local authority in England by <sup>F126</sup>(4B) section 7(1) of the Childcare Act 2006 (duty to secure prescribed early years provision free of charge) is to be treated as [<sup>F127</sup>an education function of the authority].]

<sup>F128</sup>(5) .....

<sup>F128</sup>(6) .....

[ In this section “education expenditure” means expenditure incurred by a local <sup>F129</sup>(7) authority in connection with the performance of their education functions.]]

#### Textual Amendments

- 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))
- F112** 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
- F113** Words in s. 45A(1) 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(6)(a)(i)**
- F114** 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
- F115** Word in s. 45A(1) 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(6)(a)(ii)**
- F116** 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
- F117** 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



*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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)*

- F118** 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
- F119** Word in s. 45A(2) 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(6)(b)**
- F120** 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
- F121** 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
- F122** 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
- F123** 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
- F124** Word in s. 45A(3) 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(6)(c)**
- F125** 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
- F126** S. 45A(4B) inserted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 202(2), 269(4)**; S.I. 2009/3317, art. 2, **Sch.**
- F127** Words in s. 45A(4B) 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(6)(d)**
- F128** 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
- F129** S. 45A(7) added (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(6)(e)**

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

- C37** 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>F130</sup>45A Power to require [<sup>F1</sup>local authorities] in England to determine schools budget**

- (1) Regulations may require a [<sup>F2</sup>local 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 [<sup>F1</sup>local 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 [<sup>F2</sup>local authority].

*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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

- 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\(4\)](#))
- F130** 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 [<sup>F1</sup>local authorities] in Wales to determine schools budget

- (1) Before the schools budget deadline in any funding period, a [<sup>F2</sup>local 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

- 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\(4\)](#))
- F130** 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

### 45AC Power to require [<sup>F1</sup>local authorities] in Wales to determine schools budget

- (1) Regulations may require a [<sup>F2</sup>local 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 [<sup>F1</sup>local 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 [<sup>F2</sup>local authority].

*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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)*

- (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

- 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))
- F130** 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>F131</sup>45B Power of Assembly to set minimum schools budget for [<sup>F2</sup>local authority] in Wales

- (1) If it appears to the National Assembly for Wales that, in all the circumstances, the proposed amount of a [<sup>F2</sup>local 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 [<sup>F2</sup>local authority]'s schools budget for a funding period is—
- 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
  - 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 [<sup>F2</sup>local 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”—
- in a case falling within subsection (2)(a), has the same meaning as in section 45AB, and
  - 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.

*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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)*

- (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**

- 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))
- F131** 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>F131</sup>45C Effect of notice under section 45B(6)**

- (1) The [<sup>F2</sup>local 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 [<sup>F2</sup>local authority] have given notice of their objection under subsection (1), the notice under section 45B(6) shall cease to have effect, but the 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local 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.]

*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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

- 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))
- F131** 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>F131</sup>45D Power of Assembly to repeal Wales-only school funding provisions

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

- F131** 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>F132</sup>46 Determination of LEA’s local schools budget and individual schools budget.

#### Textual Amendments

- F132** 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 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.

- (1) For the purposes of this Part a maintained school’s budget share for a [<sup>F133</sup>funding period] is such amount as the [<sup>F2</sup>local authority] may determine, in accordance with regulations, to allocate to the school out of the authority’s individual schools budget for [<sup>F134</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 [<sup>F1</sup>local authorities];
- (b) specifying—
- (i) factors or criteria which such authorities are to take into account, or

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- (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>F135</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>F136</sup>funding period]—
    - (i) by redetermining budget shares for that [<sup>F137</sup>funding period], or
    - (ii) by making adjustments to such shares for the following [<sup>F137</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>F138</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;]
  - [<sup>F139</sup>(g) authorising [<sup>F1</sup>local 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 of State in accordance with the regulations (in place of the arrangements provided for by the regulations);]
- [<sup>F140</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

- 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\(4\)](#))

*Status: Point in time view as at 05/05/2010.*

*Changes to legislation: School Standards and Framework Act 1998, Part II is up to date with all changes known to be in force on or before 21 April 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)*

- 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))
- F133** 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
- F134** 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
- F135** 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
- F136** 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
- F137** 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
- F138** 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
- F139** 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)
- F140** 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>F141</sup>Schools forums]*

#### **Textual Amendments**

- F141** 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>F141</sup>47A Schools forums**

- (1) [<sup>F142</sup>Every [<sup>F2</sup>local authority] must, in accordance with regulations, establish for their area a body to be known as a schools forum.]
- (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.

[ The purpose of a schools forum is—

- <sup>F143</sup>(3) (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>F144</sup>other function that may be imposed on the schools forum by or under this Chapter].]

[ In exercising its functions, a schools forum is to have regard to any children and young <sup>F145</sup>(3A) people's plan prepared by the local Children's Trust Board.]

- (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.

[ Regulations must provide for a schools forum to include—  
<sup>F146</sup>(4A)

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- (a) members representing governing bodies of schools maintained by the relevant authority, and
  - (b) members representing head teachers of such schools.
- (4B) Regulations may provide for a schools forum to include—
- (a) members representing such other persons—
    - (i) as may be prescribed, or
    - (ii) as the relevant authority may from time to time, in accordance with regulations, determine, and
  - (b) other members,
- and may make further provision as to the constitution of a schools forum.]
- (5) Regulations may make provision as to [<sup>F147</sup>the constitution], meetings and proceedings of a schools forum.
- <sup>F148</sup>(6) .....
- (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.
- [ In this section “relevant authority”, in relation to a schools forum, means the [<sup>F2</sup>local
- <sup>F149</sup>(9) authority] by whom the forum is established.]
- [ In this section—
- <sup>F150</sup>(10) (a) a “children and young people's plan” means a plan published by a Children's Trust Board under section 17 of the Children Act 2004;
- (b) “the local Children's Trust Board”, in relation to a schools forum, is the Children's Trust Board established by arrangements made under section 10 of that Act by the relevant authority <sup>F151</sup>....]]

### Textual Amendments

- 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))
- F142** S. 47A(1) substituted (26.1.2009 for E.) by Education and Skills Act 2008 (c. 25), **ss. 165(2)**, 173(3)(4); S.I. 2008/3077, art. 5(b)
- F143** S. 47A(3) substituted (1.11.2005 for E., 1.4.2010 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 7** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(d)
- F144** 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)**
- F145** S. 47A(3A) inserted (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 194(8)(a)**, 269(4); S.I. 2010/303, art. 3, Sch. 2
- F146** S. 47A(4A)(4B) inserted (26.1.2009 for E.) by Education and Skills Act 2008 (c. 25), **ss. 165(3)**, 173(3)(4); S.I. 2008/3077, art. 5(b)
- F147** Words in s. 47A(5) repealed (26.1.2009 for E.) by Education and Skills Act 2008 (c. 25), **ss. 165(4)**, 173(3)(4), **Sch. 2**; S.I. 2008/3077, art. 5(b)
- F148** 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)**
- F149** 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)**



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**F150** S. 47A(10) inserted (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 194(8)(b), 269(4); S.I. 2010/303, art. 3, Sch. 2

**F151** Words in s. 47A(10)(b) repealed (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(7), Sch. 3 Pt. 1

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

**C38** S. 47A modified (28.11.2008) by The Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 (S.I. 2008/2867), regs. 1(1), 25(4)(5) (with reg. 1(2))

*[<sup>F2</sup>Local authority] schemes*

**48** [<sup>F1</sup>Local authorities]' financial schemes.

- (1) Each [<sup>F2</sup>local authority] shall [<sup>F152</sup>maintain] a scheme dealing with such matters connected with the financing of the schools maintained by the authority [<sup>F153</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>F154</sup>funding period] to another of surpluses and deficits arising in relation to schools' budget shares;
  - (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>F155</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>F156</sup>maintained] by a [<sup>F2</sup>local 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>F157</sup>... 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>F158</sup>the scheme for the time being maintained under this section].

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**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)**)
- F152** 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(e)** (with art. 4)
- F153** 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
- F154** Words in s. 48(2)(a) substituted (1.11.2005 for E., 1.4.2010 for W.) by **Education Act 2005 (c. 18), s. 125(4), Sch. 18 para. 7** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F155** 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
- F156** Word in s. 48(3) 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(3); S.I. 2006/3400, art. 4(c); S.I. 2010/736, arts. 2(b), 3(c)** (with art. 4)
- F157** 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)
- F158** 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)**

- C39** S. 48 excluded (10.3.1999) by **S.I. 1999/362, reg. 6(5)**.

*Financial delegation*

**49 Maintained schools to have delegated budgets.**

- (1) Every maintained school shall have a delegated budget.
- [<sup>F159</sup>(2) 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 [<sup>F2</sup>local 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.]
- <sup>F159</sup>(3) .....
- (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>M5</sup>Education Act 1996 (education standards grants), and

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- (d) any provisions of the scheme,  
a [F<sup>2</sup>local authority] may not delegate to the governing body of any maintained school the power to spend any part of the authority's [F<sup>160</sup>[F<sup>161</sup>non-schools education budget] or schools budget].
- (5) Any amount made available by a [F<sup>2</sup>local 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 [F<sup>162</sup>expenses payable by the governing body under paragraph 3(1) or (2) of Schedule 3][F<sup>162</sup>expenditure payable by the governing body under paragraph 3(1) of Schedule 3][F<sup>163</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—
- (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

- 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))
- F159** S. 49(2)(2A) substituted for s. 49(2)(3) (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)
- F160** 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**
- F161** Words in s. 49(4) 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(8)**
- F162** 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**
- F163** 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)

- C40** Ss. 49-51: power to modify conferred (1.4.2003 for E., 12.4.2010 for W.) by Education Act 2002 (c. 32), **ss. 25(1)(b)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2010/707, art. 3(d)
- C41** 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**

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**C42** S. 49(6)(b) modified (20.11.1998) by **S.I. 1998/2670, reg. 3(5)**

**Marginal Citations**

**M5** 1996 c. 56.

**50 Effect of financial delegation.**

- (1) Where a maintained school has a delegated budget in respect of the whole or part of a [<sup>F164</sup>funding period] the [<sup>F2</sup>local authority] shall secure that in respect of [<sup>F165</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>F166</sup>period], a sum equal to the school’s budget share for the [<sup>F166</sup>period], or
  - (b) where the school has a delegated budget in respect of only part of that [<sup>F167</sup>period], a sum equal to that portion of the school’s budget share for the [<sup>F167</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
  - (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>F168</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>F169</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).

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### Textual Amendments

- 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))
- F164** Words in s. 50(1) substituted (1.11.2005 for E., 1.4.2010 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 8(a)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F165** Words in s. 50(1) substituted (1.11.2005 for E., 1.4.2010 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 8(b)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F166** Word in s. 50(1)(a) substituted (1.11.2005 for E., 1.4.2010 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 8(c)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F167** Word in s. 50(1)(b) substituted (1.11.2005 for E., 1.4.2010 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 18 para. 8(c)** (with s. 119); S.I. 2005/2034, art. 8; S.I. 2010/735, art. 2(e)
- F168** 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
- F169** 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)

- C40** Ss. 49-51: power to modify conferred (1.4.2003 for E., 12.4.2010 for W.) by Education Act 2002 (c. 32), **ss. 25(1)(b)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2010/707, art. 3(d)

### Commencement Information

- I5** 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.

## *Suspension of financial delegation*

### 51 Suspension of financial delegation for mismanagement etc.

Schedule 15 (which provides for the suspension by a [<sup>F2</sup>local 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.

### Textual Amendments

- 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))

### Modifications etc. (not altering text)

- C40** Ss. 49-51: power to modify conferred (1.4.2003 for E., 12.4.2010 for W.) by Education Act 2002 (c. 32), **ss. 25(1)(b)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2010/707, art. 3(d)

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*[<sup>F170</sup>Expenditure incurred for community purposes]*

**Textual Amendments**

**F170** 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>F171</sup>51A Expenditure incurred for community purposes**

- (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 [<sup>F2</sup>local 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>F172</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.]

**Textual Amendments**

- 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\(4\)](#))
- F171** 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](#)
- F172** Words in s. 51A(2) substituted (1.11.2005 for E., 1.4.2010 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 18 para. 9](#) (with s. 119); S.I. 2005/2034, [art. 8](#); S.I. 2010/735, [art. 2\(e\)](#)

*Information*

**52 [<sup>F173</sup>Financial statements: Wales.]**

- (1) Before the beginning of each [<sup>F174</sup>financial year][<sup>F174</sup>prescribed period] a [<sup>F2</sup>local authority][<sup>F175</sup>in Wales] shall prepare a statement containing such information relating to their planned [<sup>F176</sup>education] expenditure in [<sup>F177</sup>that year][<sup>F177</sup>that period] as may be prescribed.

**[<sup>F178</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 [<sup>F176</sup>education] expenditure has previously been required under that subsection.]

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- (2) After the end of each [<sup>F179</sup>financial year][<sup>F179</sup>prescribed period] a [<sup>F2</sup>local authority][<sup>F180</sup>in Wales] shall prepare a statement containing such information with respect to the following matters as may be prescribed—
- (a) the planned [<sup>F176</sup>education] expenditure in that [<sup>F181</sup>year][<sup>F181</sup>period] specified in the statement prepared by the authority under subsection (1),
  - (b) [<sup>F176</sup>education] expenditure actually incurred, or treated by the authority as having been incurred, by them in the [<sup>F181</sup>year][<sup>F181</sup>period], [<sup>F182</sup>and]
  - (c) any other resources allocated by the authority in the [<sup>F181</sup>year][<sup>F181</sup>period] to schools maintained by them during any part of the [<sup>F181</sup>year][<sup>F181</sup>period]. [<sup>F183</sup>and
  - (d) accountable resources held, received or expended in the [<sup>F181</sup>year][<sup>F181</sup>period] by any person in relation to a school maintained by the authority.]
- [<sup>F184</sup>(2A) In subsection (2)(d), “accountable resources”, in relation to a maintained school, means any resources which are not provided by the [<sup>F2</sup>local 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>F185</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.
- [<sup>F186</sup>(7) In this section “education expenditure” has the same meaning as in section 45A.]

#### Textual Amendments

- 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))
- F173** S. 52 title substituted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 253(2)**, 269(4); S.I. 2009/3317, art. 2, **Sch.**
- F174** 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
- F175** Words in s. 52(1) inserted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 253(2)**, 269(4); S.I. 2009/3317, art. 2, **Sch.**

*Status: Point in time view as at 05/05/2010.*

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- F176** Word in s. 52 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(9)(a)**
- F177** 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
- F178** 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
- F179** 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
- F180** Words in s. 52(2) inserted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 253(2), 269(4)**; S.I. 2009/3317, art. 2, **Sch.**
- F181** 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
- F182** 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
- F183** 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
- F184** 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
- F185** 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
- F186** S. 52(7) added (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(9)(b)**

### <sup>F187</sup>**53 Certification of statements by Audit Commission.**

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#### **Textual Amendments**

- F187** S. 53 repealed (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 253(3), 269(4), **Sch. 16 Pt. 9**; S.I. 2009/3317, art. 2, **Sch.**

### <sup>F188</sup>**53A Certification of statements by Auditor General for Wales**

- (1) A [<sup>F2</sup>local 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.



*Status: Point in time view as at 05/05/2010.*

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(3) Directions given under subsection (1) may relate to any [<sup>F2</sup>local authority] or to [<sup>F1</sup>local authorities] generally or to any class or description of such authority.]

**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))
- F188** 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**

STAFFING AND CONDUCT OF SCHOOLS

*Staffing of schools*

<sup>F189</sup>**54** Staffing of community, voluntary controlled and community special schools.

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**Textual Amendments**

- F189** 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>F189</sup>**55** Staffing of foundation, voluntary aided and foundation special schools.

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**Textual Amendments**

- F189** 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>F189</sup>**56** Staffing for non-school activities.

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*Status: Point in time view as at 05/05/2010.*

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**Textual Amendments**

**F189** 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.](#)

**F189 57 Payments in respect of dismissal, etc.**

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**Textual Amendments**

**F189** 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.**

- (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>F190</sup>teachers at] a school to which this subsection applies is more than two, [<sup>F191</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.
- (3) The number of reserved teachers in such a school shall not exceed one-fifth of [<sup>F192</sup>the total number of teachers], including the head teacher (and for this purpose, where [<sup>F192</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).

<sup>F193</sup>(4) .....

- (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

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- (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>F194</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 [<sup>F2</sup>local 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 [<sup>F2</sup>local authority];
- “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed [<sup>F195</sup>or engaged] at the school in pursuance of subsection (2).

#### Textual Amendments

- 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))
- F190** 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.
- F191** 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.
- F192** 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.
- F193** S. 58(4) repealed (30.6.2008 for W., 1.9.2008 for E.) by Education and Inspections Act 2006 (c. 40), ss. 37(1), 188(3), **Sch. 18 Pt. 6**; S.I. 2008/1429, art. 3(1), Sch. Pt. 1; S.I. 2008/1971, art. 2(a)
- F194** 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.
- F195** 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.

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

- C43** 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)**.

*Status: Point in time view as at 05/05/2010.*

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- 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)**.  
**C44** 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.**

- (1) This section applies to—
- (a) a community school or a community or foundation special school, or
  - (b) 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—
- (a) from being a teacher at the school, or
  - (b) from being employed [<sup>F196</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—
- (a) by reason of the fact that he does or does not give religious education, or
  - (b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

**Textual Amendments**

**F196** 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)**

- C45** 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)**.  
**C46** 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)**.  
 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.**

- (1) This section applies to a foundation or voluntary school which has a religious character.

*Status: Point in time view as at 05/05/2010.*

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- (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) [<sup>F197</sup>in a case where the head teacher is not to be a reserved teacher] 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>F198</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 [<sup>F199</sup>in Wales], 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>F200</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>M6</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

- F197** Words in s. 60(4) inserted (30.6.2008 for W., 1.9.2008 for E.) by [Education and Inspections Act 2006 \(c. 40\), ss. 37\(2\)\(a\)](#), 188(3); S.I. 2008/1429, art. 3(1), Sch. Pt. 1; S.I. 2008/1971, art. 2(a) (with art. 3)
- F198** 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.
- F199** Words in s. 60(6) inserted (1.9.2008 for E.) by [Education and Inspections Act 2006 \(c. 40\), ss. 37\(2\)\(b\)](#), 188(3); S.I. 2008/1971, art. 2(a) (with art. 3)
- F200** 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.

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

- C47** 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**

- M6** 1996 c. 56.

*Discipline: general*

### **61 Responsibility of governing body and head teacher for discipline.**

- [<sup>F201</sup>(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—
- (a) act in accordance with the current statement made by the governing body under subsection (2)(a); and

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- (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>F202</sup>(8) In this section “maintained school” includes a maintained nursery school.]]

#### Textual Amendments

**F201** S. 61 repealed (1.4.2007 for E., 1.1.2009 for W. for specified purposes) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 96(b), 188(3), **Sch. 18 Sch. 6**; S.I. 2007/935, art. 4(a)(d); S.I. 2009/2545, art. 3(2)(b)(d)

**F202** 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)

**C48** S. 61 applied with modifications (1.9.1999) by S.I. 1999/2262, **reg. 59**.

**C49** S. 61 applied (with modifications) (10.7.2003) by [New Schools \(General\) \(England\) Regulations 2003 \(S.I. 2003/1558\)](#), regs. 1, **31**

**C50** 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)**

**C51** 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**

**C52** 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))

**C53** S. 61 applied (with modifications) (23.4.2007) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(Wales\) Regulations 2007 \(S.I. 2007/1069\)](#), reg. 1(1), **Sch. 1 para. 5**

**C54** S. 61 extended (with modifications) (1.9.1999) by S.I. 1999/2243, **reg. 59**.

## 62 [<sup>F2</sup>Local authority]’s reserve power to prevent a breakdown of discipline.

- (1) The [<sup>F2</sup>local authority] may, in the circumstances mentioned in subsection (2) or where [<sup>F203</sup>subsection (2A) or (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.

*Status: Point in time view as at 05/05/2010.*

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[<sup>F204</sup>(2A) This subsection applies where, in the case of a school in England—

- (a) a warning notice has been given in accordance with section 60(2) of the Education and Inspections Act 2006 (“the 2006 Act”) 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 any one or more of sections 63 to 66 of the 2006 Act);

and a notice under paragraph (c) of this subsection may be combined with a notice under section 60(2) of the 2006 Act.]

(3) This subsection applies where [<sup>F205</sup>in the case of school in Wales]—

- (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 [<sup>F206</sup>any one or more of sections 16, 16A 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 [<sup>F2</sup>local authority] under subsection (1) may include the giving of any direction to the governing body or head teacher.

[<sup>F207</sup>(5) In this section “maintained school” includes a maintained nursery school.]

#### Textual Amendments

- 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))
- F203** Words in s. 62(1) substituted (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 7 para. 14(2)**; S.I. 2007/935, art. 5(cc)
- F204** S. 62(2A) inserted (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 7 para. 14(3)**; S.I. 2007/935, art. 5(cc)
- F205** Words in s. 62(3) inserted (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 7 para. 14(4)**; S.I. 2007/935, art. 5(cc)
- F206** Words in s. 62(3)(c) substituted (30.6.2008) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 17 para. 2**; S.I. 2008/1429, art. 3(2), Sch. Pt. 2
- F207** 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)

- C55** 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)**



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- C56** 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**
- C57** S. 62(1)(2) applied (with modifications) (W.) (23.4.2007) by The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 (S.I. 2007/1069), reg. 1(1), **Sch. 1 para. 6**
- C58** S. 62(1)(2) applied (with modifications) (E.) (1.2.2008) by The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (S.I. 2007/2979), reg. 1(1), **Sch. 1 para. 9**
- C59** 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**
- C60** S. 62(4) applied (with modifications) (W.) (23.4.2007) by The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 (S.I. 2007/1069), reg. 1(1), **Sch. 1 para. 6**
- C61** S. 62(4) applied (with modifications) (E.) (1.2.2008) by The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (S.I. 2007/2979), reg. 1(1), **Sch. 1 para. 9**

### *School attendance targets*

## **63 School attendance targets.**

- (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>F208</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;
  - (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>F209</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>F210</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;

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F211  
...

#### Textual Amendments

- F208** 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.
- F209** 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.
- F210** 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.
- F211** 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)

- C62** S. 63 extended (*temp.*) (16.2.1999) by [S.I. 1999/129](#), **reg.2**.

### *Exclusion of pupils*

#### **F212 64 Power of head teacher to exclude pupils.**

.....

#### Textual Amendments

- F212** 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

#### **F212 65 Exclusion of pupils: duty to inform parents, etc.**

.....

#### Textual Amendments

- F212** 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

#### **F212 66 Functions of governing body in relation to excluded pupils.**

.....

*Status: Point in time view as at 05/05/2010.*

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**Textual Amendments**

**F212** 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](#)

**<sup>F212</sup>67 Appeals against exclusion of pupils.**

.....

**Textual Amendments**

**F212** 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](#)

**<sup>F212</sup>68 Exclusion of pupils: guidance.**

.....

**Textual Amendments**

**F212** 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](#)

**CHAPTER VI**

RELIGIOUS EDUCATION AND WORSHIP

*Religious education*

**69 Duty to secure due provision of religious education.**

- (1) Subject to section 71, in relation to any community, foundation or voluntary school—
  - (a) the [<sup>F212</sup>local 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>F213</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>F214</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,

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- (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**

- 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))
- F213** 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
- F214** 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

#### **Commencement Information**

- I6** 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.**

- (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 [F2]local 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.

*Status: Point in time view as at 05/05/2010.*

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- (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.

#### Textual Amendments

- 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))

*Exceptions and special arrangements etc.*

## 71 Exceptions and special arrangements; provision for special schools.

- <sup>F215</sup>(1) If the parent of a pupil at a community, foundation or voluntary school requests that he may be wholly or partly excused from receiving religious education given at the school in accordance with the school's basic curriculum, the pupil shall be so excused until the request is withdrawn.
- (1A) If the parent of any pupil at a community, foundation or voluntary school other than a sixth-form pupil requests that he may be wholly or partly excused from attendance at religious worship at the school, the pupil shall be so excused until the request is withdrawn.
- (1B) If a sixth-form pupil requests that he may be wholly or partly excused from attendance at religious worship at a community, foundation or voluntary school, the pupil shall be so excused.]
- (2) In <sup>F216</sup>subsections (1) to (1B)]—
- (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 <sup>F217</sup>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) <sup>F218</sup>[<sup>F218</sup>or (1A)] a pupil has been wholly or partly excused from receiving religious education or from attendance at religious worship and the <sup>F2</sup>[local 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,
  - (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,

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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 [<sup>F219</sup>local 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 [<sup>F219</sup>and is not a sixth-form pupil] 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.

- [<sup>F220</sup>(5A) Where a sixth-form pupil who is a boarder at a community, foundation or voluntary school requests that he 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 the pupil belongs,

the governing body shall make arrangements for giving the pupil reasonable opportunities for doing so.]

- (6) Arrangements under subsection (5) [<sup>F221</sup>or (5A)] 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 [<sup>F2</sup>local authority].

- [<sup>F222</sup>(7) Regulations shall make provision for ensuring that, so far as practicable, every pupil attending a community or foundation special school—

- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of his parent, and
- (b) attends religious worship unless withdrawn from attendance at such worship—
  - (i) in the case of a sixth-form pupil, in accordance with his own wishes, and
  - (ii) in any other case, in accordance with the wishes of his parent.]

- [<sup>F223</sup>(8) In this section “sixth-form pupil” means any pupil who—

- (a) has ceased to be of compulsory school age, and
- (b) is receiving education suitable to the requirements of pupils over compulsory school age.]

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### Textual Amendments

- 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))
- F215** S. 71(1)-(1B) substituted for s. 71(1) (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(2)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F216** Words in s. 71(2) substituted (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(3)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F217** 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
- F218** Words in s. 71(3) inserted (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(4)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F219** Words in s. 71(5) inserted (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(5)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F220** S. 71(5A) inserted (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(6)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F221** Words in s. 71(6) inserted (1.9.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(7)**, 188(3); S.I. 2007/1801, art. 3(b); S.I. 2009/49, art. 2
- F222** S. 71(7) substituted (25.6.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(8)**, 188(3); S.I. 2007/1801, art. 2; S.I. 2009/49, art. 2
- F223** S. 71(8) inserted (25.6.2007 for E., 9.2.2009 for W.) by Education and Inspections Act 2006 (c. 40), **ss. 55(9)**, 188(3); S.I. 2007/1801, art. 2; S.I. 2009/49, art. 2

### Commencement Information

- I7** 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).

## CHAPTER VII

### MISCELLANEOUS AND SUPPLEMENTAL

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

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

- (1) Regulations may make provision for—
- the staffing and conduct of a new school in advance of the school opening date;
  - the determination of matters in connection with a new school in advance of that date;
  - 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;
  - such other matters relating to new schools as the Secretary of State considers appropriate.

*Status: Point in time view as at 05/05/2010.*

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- (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 [F224 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**

**F224** 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.**

- (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.
- (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 [F2]local authority] to work solely at an existing school within subsection (1)(a), or
  - (b) is employed by the [F2]local 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 [F2]local authority] to work solely at another school as from that day, or



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- (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 [F<sup>2</sup>local 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;
- “the former employer” and “the new employer”—
- (a) where the staff transfer provisions apply by virtue of subsection (2)(a) or (b), means the [F<sup>2</sup>local 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 [F<sup>2</sup>local 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>M7</sup>Education Act 1996.
- (9) A person employed by a [F<sup>2</sup>local 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.

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#### **Textual Amendments**

**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))

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

**C63** S. 73 excluded (10.3.1999) by S.I. 1999/362, **reg.56**.

#### **Marginal Citations**

**M7** 1996 c. 56.

### **74 Transfer of land on appointed day.**

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.**

(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 [<sup>F225</sup>A1 or] 1 of Schedule 22 does not apply to any transfer required by subsection (1).

#### **Textual Amendments**

**F225** Words in s. 75(2) inserted (25.5.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 4 para. 19**; S.I. 2007/935, art. 7(p)

### *Disposals of land and on discontinuance*

### **76 Disposals of land in case of certain schools and disposals on discontinuance.**

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.

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## 77 Control of disposals or changes in use of school playing fields.

- (1) [<sup>F226</sup>Subject to subsections (2A) and (2B), except] with the consent of the Secretary of State, a body [<sup>F227</sup>or trustees] to whom this subsection applies shall not dispose of any playing fields—
- which are, immediately before the date of the disposal, used by a maintained school for the purposes of the school, or
  - which are not then so used but have been so used at any time within the period of 10 years ending with that date.
- [<sup>F228</sup>(2) Subsection (1) applies to—
- a local authority;
  - the governing body of a maintained school;
  - a foundation body;
  - the trustees of a foundation, voluntary or foundation special school.]

[<sup>F229</sup>(2A) Subsection (1) applies in the case of a disposal by the trustees of a foundation, voluntary or foundation special school, only if the disposal is of land falling within paragraph A13(1), (2) or (3) of Schedule 22.

(2B) Subsection (1) does not apply—

    - to a disposal in pursuance of a transfer order under paragraph A23 of that Schedule, or
    - to a disposal to which paragraph 5 or 6 of Schedule 22 (disposals on discontinuance) applies.]

(3) [<sup>F230</sup>Subject to subsections (4) and (4A), except] with the consent of the Secretary of State, [<sup>F231</sup>a body or trustees to whom subsection (1) applies] shall not take any action (other than the making of a disposal [<sup>F232</sup>which falls within subsection (1) or is excluded from that subsection by subsection (2B)(a) or (b)]) which is intended or likely to result in a change of use of any playing fields—

      - which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school, or
      - 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 <sup>F233</sup>... of educational facilities for a maintained school or any recreational facilities.

[<sup>F234</sup>(4A) Subsection (3) applies in relation to the trustees of a foundation, voluntary or foundation special school only if the playing fields in question are land falling within paragraph A13(1), (2) or (3) of Schedule 22.]

(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>M8</sup>Local Government Act 1972 (general power to dispose of land) or in any other enactment;

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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—

[<sup>F235</sup>“local authority” includes—

(a) a non-metropolitan district council for an area for which there is a county council, and

(b) a parish council;]

[<sup>F236</sup>“maintained school” includes a maintained nursery school;]

“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>M9</sup>Education Act 1996.

(9) Nothing in this section applies in relation to Wales.

#### Textual Amendments

- F226** Words in s. 77(1) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(2\)\(a\)](#); S.I. 2007/935, art. 7(p)
- F227** Words in s. 77(1) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(2\)\(b\)](#); S.I. 2007/935, art. 7(p)
- F228** S. 77(2) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(3\)](#); S.I. 2007/935, art. 7(p)
- F229** S. 77(2A)(2B) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(4\)](#); S.I. 2007/935, art. 7(p)
- F230** Words in s. 77(3) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(5\)\(a\)](#); S.I. 2007/935, art. 7(p)
- F231** Words in s. 77(3) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(5\)\(b\)](#); S.I. 2007/935, art. 7(p)
- F232** Words in s. 77(3) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(5\)\(c\)](#); S.I. 2007/935, art. 7(p)
- F233** Words in s. 77(4) repealed (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(6\), Sch. 18 Pt. 6](#); S.I. 2007/935, art. 7(p)(q)
- F234** S. 77(4A) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(7\)](#); S.I. 2007/935, art. 7(p)
- F235** Words in s. 77(7) 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\(10\)](#)
- F236** Words in s. 77(7) inserted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\), s. 188\(3\), Sch. 4 para. 18\(8\)](#); S.I. 2007/935, art. 7(p)

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

- C64** S. 77(1) restricted (28.7.2000) by [2000 c. 21, s. 131, Sch. 8 para. 9\(3\)](#) (with s. 150)
- C65** 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)
- C66** S. 77 modified (*temp.*) (1.2.1999) by S.I. 1999/1, [reg.2](#)

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**Commencement Information**

**I8** 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**

**M8** 1972 c. 70.  
**M9** 1996 c. 56.

*Rating*

**78 Rating of maintained schools.**

For the purposes of Part III of the <sup>M10</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 [<sup>F2</sup>local 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.

**Textual Amendments**

**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))

**Marginal Citations**

**M10** 1988 c. 41.

*Stamp duty*

<sup>F237</sup>**79 Stamp duty.**

.....

**Textual Amendments**

**F237** S. 79 repealed (with effect in accordance with s. 79(2)(3) of the amending Act) by Finance Act 2007 (c. 11), s. 79, Sch. 27 Pt. 4(3)

<sup>F238</sup>**79A. Stamp duty land tax**

.....

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### Textual Amendments

**F238** S. 79A repealed (with effect in accordance with s. 79(2)(3) of the amending Act) by [Finance Act 2007](#) (c. 11), s. 79, [Sch. 27 Pt. 4\(3\)](#)

### *Further education*

## 80 Provision of further education.

- (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 [<sup>F2</sup>local 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>M11</sup>Further and Higher Education Act 1992 (as inserted by section 125(4) of this Act) applies.

### Textual Amendments

**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\(4\)](#))

### Modifications etc. (not altering text)

**C67** S. 80 excluded (1.9.2005) by [Education Act 2005](#) (c. 18), [ss. 95\(5\)](#), [125\(3\)\(a\)](#) (with [s. 95\(6\)](#))

### Marginal Citations

**M11** [1992 c. 13](#).

### *Modification of employment law*

## 81 Application of employment law during financial delegation.

- (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,

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as he considers necessary or expedient in consequence of the operation of [<sup>F239</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.

#### Textual Amendments

**F239** 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)

**C68** S. 81(2) modified (*temp.*) (1.4.1999) by [S.I. 1999/638](#), [reg. 9](#).

### Supplementary provisions

## 82 Modification of trust deeds.

- (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>F240</sup>, the Learning and Skills Act 2000 [<sup>F241</sup>, the Education Act 2002 or the Education and Inspections Act 2006]] 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

**F240** Words in s. 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

**F241** Words in s. 82(1) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 3 para. 28](#); S.I. 2007/935, art. 7(o)

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**83 Modification of provisions making governors of foundation or voluntary school ex officio trustees.**

- (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 [<sup>F2</sup>local authority], and
  - (c) any co-opted governor nominated by a minor authority.
- (2) Subsection (1) is without prejudice to any power to amend any such provision as is mentioned in that subsection.

**Textual Amendments**

- 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))

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

- C69** S. 83 modified (temp.) (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 6 para. 3(4)**; S.I. 2007/935, art. 5(bb)



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