



# Education (No. 2) Act 1986

## 1986 CHAPTER 61

### PART I

#### INTRODUCTORY

#### **1 Instruments of government and articles of government.**

- (1) For every county, voluntary and maintained special school there shall be—
  - (a) an instrument providing for the constitution of a governing body of the school (to be known as the instrument of government); and
  - (b) an instrument in accordance with which the school is to be conducted (to be known as the articles of government).
- (2) The instrument of government and articles of government shall be made by order of the local education authority.
- (3) The instrument of government shall contain such provisions as are required either by Part II of this Act (which is concerned, among other things, with the size and composition of governing bodies and the procedures for electing members and filling vacancies) or by any other enactment.
- (4) The articles of government shall contain such provisions as are required either by Part III of this Act (which is concerned, among other things, with the manner in which schools are to be conducted and the allocation of functions between the local education authority, the governing body and the head teacher) or by any other enactment.
- (5) The instrument of government and articles of government shall—
  - (a) contain no provision which is inconsistent with any provision made by or under this Act or any other enactment; and
  - (b) comply with any trust deed relating to the school.
- (6) This section is subject to the following provisions of this Act—
  - (a) section 9 (which provides for two or more schools to be grouped under a single governing body in certain circumstances); and

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- (b) section 12 (which provides for certain existing, or proposed, schools to have temporary governing bodies pending the constitution of governing bodies under instruments of government).

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

C1 Ss. 1, 2 modified by S.I. 1989/1135, art. 5(1)

**2 Procedure in relation to making etc. of instruments and articles.**

- (1) Before making any order under section 1 of this Act, a local education authority shall consult the governing body and the head teacher of the school concerned.
- (2) Before making any such order in respect of a voluntary school, a local education authority shall—
- (a) secure the agreement of the governing body to the terms of the proposed order;
  - (b) if it embodies or varies an instrument of government, secure the agreement of the foundation governors to any provisions which are of particular concern to those governors; and
  - (c) have regard to the way in which the school has been conducted.
- (3) Where the governing body of any county, voluntary or maintained special school make a proposal to the local education authority for the alteration of the provision made by the instrument of government, or articles of government, for the school, it shall be the duty of the authority to consider their proposal.
- (4) Where—
- (a) the foundation governors of a voluntary school make a proposal to the local education authority for the alteration of the provision made by the instrument of government for the school; and
  - (b) the proposal relates solely to one or more matters which are of particular concern to those governors;
- it shall be the duty of the authority to consider their proposal.
- (5) Where a local education authority—
- (a) propose to make an order under section 1 but cannot secure any agreement required by subsection (2) above; or
  - (b) refuse, in the case of a voluntary school, to make such an order in response to a proposal of a kind mentioned in subsection (3) or (4) above;
- the authority or (as the case may be) the governing body or foundation governors may refer the matter to the Secretary of State.
- (6) On any reference to him under subsection (5) above, the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the status of the school as a controlled, aided or (as the case may be) special agreement school.
- (7) Where it appears to the Secretary of State—
- (a) that an order, or proposed order, under section 1 is in any respect inconsistent with the provisions of any trust deed relating to the school; and
  - (b) that it is expedient in the interests of the school that the provisions of the trust deed should be modified for the purpose of removing the inconsistency;

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he may by order make such modifications in the trust deed as appear to him to be just and expedient for that purpose.

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

**C2** Ss. 1, 2 modified by S.I. 1989/1135, art. 5(1)

**C3** S. 2 excluded by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 51(6), 231(7), 235(6), Sch. 4 para. 1(2)

## PART II

### SCHOOL GOVERNMENT

#### *Governing bodies*

### 3 Governing bodies for county, controlled and maintained special schools.

- (1) This section applies in relation to any county, controlled or maintained special school.
- (2) The instrument of government for such a school which has less than 100 registered pupils shall, subject to section 7 of this Act, provide for the governing body to consist of the following (and no others)—
  - (a) two parent governors;
  - (b) two governors appointed by the local education authority;
  - (c) one teacher governor;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) two foundation governors and one co-opted governor, in the case of a controlled school; or
    - (ii) three co-opted governors, in any other case.
- (3) The instrument of government for such a school which has more than 99, but less than 300, registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
  - (a) three parent governors;
  - (b) three governors appointed by the local education authority;
  - (c) one teacher governor;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) three foundation governors and one co-opted governor, in the case of a controlled school; or
    - (ii) four co-opted governors, in any other case.
- (4) The instrument of government for such a school which has more than 299, but less than 600, registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
  - (a) four parent governors;
  - (b) four governors appointed by the local education authority;

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- (c) two teacher governors;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) four foundation governors and one co-opted governor, in the case of a controlled school; or
    - (ii) five co-opted governors, in any other case.
- (5) The instrument of government for such a school which has more than 599 registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
- (a) five parent governors;
  - (b) five governors appointed by the local education authority;
  - (c) two teacher governors;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) four foundation governors and two co-opted governors, in the case of a controlled school; or
    - (ii) six co-opted governors, in any other case.
- (6) Where the instrument of government so provides, a school to which subsection (5) above would otherwise apply shall be treated for the purposes of this section as one to which subsection (4) above applies.
- (7) Where the head teacher is a governor he shall be treated for all purposes as being an ex officio governor.

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

C4 S. 3(2)(b)(3)(b)(4)(b)(5)(b) excluded (1.1.1994) by 1993 c. 35, s. 214(4)(9); S.I. 1993/3106, art. 4, Sch.1

**4 Governing bodies for aided and special agreement schools.**

- (1) This section applies in relation to any aided or special agreement school.
- (2) The instrument of government for such a school shall provide for the governing body to include—
- (a) at least one governor appointed by the local education authority;
  - (b) in the case of a school which is a primary school serving an area in which there is a minor authority, at least one governor appointed by the authority;
  - (c) foundation governors;
  - (d) at least one parent governor;
  - (e) in the case of a school which has less than 300 registered pupils, at least one teacher governor;
  - (f) in the case of a school which has 300 or more registered pupils, at least two teacher governors; and
  - (g) the head teacher, unless he chooses not to be a governor.
- (3) The instrument of government for such a school shall provide—

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- (a) for such number of foundation governors as will lead to their outnumbering the other governors—
    - (i) by two, if the governing body of the school will consist of eighteen or fewer governors; and
    - (ii) by three, if it will consist of more than eighteen governors; and
  - (b) for at least one of the foundation governors to be (at the time of his appointment) a parent of a registered pupil at the school.
- (4) Where the head teacher of such a school has chosen not to be a governor, he shall nevertheless be counted as one for the purposes of calculating the required number of foundation governors.
- (5) Subject to subsection (3) above, nothing in this section shall be taken to prevent the instrument of government for such a school from providing for the governing body to include governors in addition to those required by virtue of this section.
- (6) Where the head teacher is a governor he shall be treated for all purposes as being an ex officio governor.

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

C5 S. 4(3) excluded (1.1.1994) by 1993 c. 35, s. 214(8)(9); S.I. 1993/3106, art. 4, Sch.1

VALID FROM 01/01/1994

**4A** <sup>F1</sup>**Sponsor governors for aided secondary schools.**

- (1) The instrument of government for any aided secondary school shall, if a direction under this section so requires—
- (a) name as a sponsor of the school a person specified in the direction, and
  - (b) provide for the governing body of the school to include such number of governors appointed by the sponsor, not exceeding four, as is so specified.
- (2) A direction under this section in respect of a school, other than a direction under subsection (4) or (5) below—
- (a) may only be given at the request, or with the consent, of the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (3) A direction under this section varying or revoking a previous direction—
- (a) may only be made after consulting the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (4) Where proposals approved under section 13 of the Education Act 1980 (establishment and alteration of voluntary schools)—

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- (a) provide for a secondary school to be maintained by the local education authority as a voluntary school,
- (b) name a person as a sponsor of the school, and
- (c) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,

the Secretary of State shall, if he makes an order under section 15 of the Education Act 1944 (classification of schools) directing that the school be an aided school, give a direction under this section for the purpose of implementing the proposals.

- (5) Where an order under section 54 of this Act directs that a secondary school be an aided school and the proposals published by the governing body under that section—

- (a) name a person as a sponsor of the school, and
- (b) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,

the Secretary of State shall give a direction under this section for the purpose of implementing the proposals.

- (6) Where the instrument of government for any aided secondary school names two or more persons as sponsors of the school—

- (a) the number of governors appointed under the instrument by virtue of this section may not exceed four, and
- (b) the instrument may not provide for any of those governors to be appointed by two or more sponsors acting jointly.

- (7) Where in pursuance of this section the instrument of government for a school names a person as a sponsor of the school, section 4(3)(a) of this Act shall have effect as if it required the instrument to provide for such number of foundation governors as will lead to their outnumbering the other governors by two.

- (8) In this section “direction” means a direction contained in an order made by the Secretary of State; but section 63(1) of this Act shall not apply to the power of the Secretary of State to make orders under this section.

#### Textual Amendments

**F1** S. 4A inserted (1.1.1994) by 1993 c. 35, s. 271(1); S.I. 1993/3106, art. 4, Sch.1

### Governors

#### 5 Appointment of parent governors by governing body.

- (1) The instrument of government for any county or controlled school, or for any maintained special school which is not established in a hospital, may provide that if at the time when the instrument is made, or at any later time when there is a vacancy for a parent governor—

- (a) at least fifty per cent. of the registered pupils at the school are boarders; and
- (b) it would, in the opinion of the local education authority, be impracticable for there to be an election of parent governors;

the parent governors, or (as the case may be) the parent governor required to fill that vacancy, shall be appointed by the other members of the governing body.

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- (2) The instrument of government for every county, controlled and maintained special school at which parent governors are to be, or may be, elected shall provide for the required number of parent governors to be made up by parent governors appointed by the other members of the governing body if—
  - (a) one or more vacancies for parent governors are required to be filled by election; and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies.
- (3) Where, in the opinion of the local education authority, it is likely to be impracticable for there to be elections of parent governors at any maintained special school which is established in a hospital, the instrument of government for that school may provide for the parent governors to be appointed by the other members of the governing body.
- (4) The instrument of government for any school to which this section applies shall provide for it to be the duty of governors—
  - (a) in appointing any parent governor under any provision made by virtue of this section—
    - (i) to appoint a person who is the parent of a registered pupil at the school, where it is reasonably practicable to do so; and
    - (ii) where it is not, to appoint a person who is the parent of one or more children of compulsory school age;
  - (b) not to appoint any person as a parent governor, under any such provision, if that person is—
    - (i) an elected member of the local education authority;
    - (ii) an employee of the authority or of the governing body of any aided school maintained by the authority; or
    - (iii) a co-opted member of any education committee of the authority.

## **6 Connection with local business community.**

The instrument of government for any county, controlled or maintained special school shall provide for it to be the duty of the governors concerned, in co-opting any person to be a member of the governing body (otherwise than as a foundation governor)—

- (a) to have regard—
  - (i) to the extent to which they and the other governors are members of the local business community; and
  - (ii) to any representations made to the governing body as to the desirability of increasing the connection between the governing body and that community; and
- (b) where it appears to them that no governor of the school is a member of the local business community, or that it is desirable to increase the number of governors who are, to co-opt a person who appears to them to be a member of that community.

## **7 Appointment of representative governors in place of co-opted governors.**

- (1) The instrument of government for every primary school which is a county or controlled school serving an area in which there is a minor authority shall provide for one governor to be appointed by that authority.

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- (2) The instrument of government for every maintained special school which is established in a hospital shall provide
- [<sup>F2</sup>(a) in the case of a hospital vested in the Secretary of State, for one governor to be appointed by the District Health Authority; and
- (b) in the case of a hospital vested in a National Health Service trust, for one governor to be appointed by that trust.]
- (3) The instrument of government for every maintained special school (other than one established in a hospital) shall, if the school has less than 100 registered pupils, provide for one governor to be appointed—
- (a) by a voluntary organisation designated by the local education authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised; or
- (b) jointly by two or more voluntary organisations so designated;
- and shall, if it has more than 99 registered pupils, provide for two governors to be so appointed.
- (4) Where, by virtue of subsection (3) above, an instrument of government is required to provide for the appointment of two governors, it may make different provision in relation to the appointment of one governor to that made in relation to the appointment of the other.
- (5) Where a local education authority are satisfied, in relation to any special school, that there is no voluntary organisation which it would be appropriate to designate for the purposes of subsection (3) above, that subsection shall not apply to its instrument of government.
- (6) Where the instrument of government for any school is required by this section to provide for the appointment of any governor, the instrument—
- (a) shall name the person or persons by whom the governor is to be appointed;
- (b) shall not provide for a co-opted governor if the school is a controlled school with less than 600 registered pupils or is treated as such a school for the purposes of section 3 of this Act by virtue of subsection (6) of that section; and
- (c) in any other case, shall provide for one or (as the case may be) two fewer co-opted governors than would otherwise be provided for.
- (7) In subsection (6) above, references to co-opted governors are to governors required to be co-opted by virtue of section 3 of this Act and do not include references to co-opted foundation governors.

#### Textual Amendments

- F2** S. 7(2)(a)(b) substituted for words by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 31](#)

## 8 Governors' proceedings and tenure of office.

- (1) The proceedings of the governing body of any county, voluntary or maintained special school shall not be invalidated by—
- (a) any vacancy among their number; or
- (b) any defect in the election or appointment of any governor.



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- (2) The instrument of government for every county, controlled and maintained special school shall provide for each governor, other than one who is an ex officio governor, to hold office for a term of four years.
- (3) Subsection (2) above shall not be taken to prevent a governor from being elected or appointed for a further term, or from being disqualified, by virtue of regulations made under subsection (6) below, for continuing to hold office.
- (4) Any governor of a county, voluntary or maintained special school may at any time resign his office.
- (5) Any foundation governor of a voluntary school, or governor of a county, voluntary or maintained special school appointed otherwise than by being co-opted, may be removed from office by the person or persons who appointed him.

For the purposes of this subsection, a governor appointed in accordance with any provision made by virtue of section 5 of this Act shall be treated as having been co-opted.

- (6) The Secretary of State may by regulations make provision as to the meetings and proceedings of the governing bodies of county, voluntary and maintained special schools (including provision modifying that made by subsection (1) above) and the circumstances in which persons are to be disqualified for holding office as governors of such schools.
- (7) The regulations may, in particular, provide—
  - (a) for the election by the governors of any such school of one of their number to be chairman, and one to be vice-chairman, of the school's governing body for such period as may be prescribed;
  - [<sup>F3</sup>(aa) for the establishment of committees by the governing bodies of such schools (whether or not including persons who are not members of the governing body concerned) and for the constitution, meetings and proceedings of such committees;
  - (ab) for the delegation of functions of the governing body of any such school in prescribed circumstances to committees established by that body, to any member of that body or to the head teacher;]
  - (b) for the chairman of the governing body of any such school, or such other member of that body as may be prescribed, to have power in prescribed circumstances to discharge any of the functions of that body as a matter of urgency; and
  - (c) as to the quorum required for the purposes of making appointments in accordance with any provision made by virtue of section 5 of this Act or when business is transacted by governors of a particular category.
- (8) The minutes of the proceedings of the governing body of any county, voluntary or maintained special school shall be open to inspection by the local education authority.
- (9) The instrument of government for every county, voluntary and maintained special school may make provision with respect to the matters mentioned in subsections (6) and (7) above.
- (10) Any provision made by the instrument of government for any such school which relates to a matter dealt with by regulations under subsection (6) above (including

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any provision made by virtue of subsection (2) above) shall have effect subject to the regulations.

(11) No decision of a kind mentioned in subsection (12) below which is taken at a meeting of the governing body of any aided or special agreement school shall have effect unless it is confirmed at a second meeting of the governing body held not less than twenty-eight days after the first.

(12) The decisions are—

- (a) any decision that would result in the submission of proposals under section 13 of the 1980 Act (establishment and alteration of voluntary schools);
- (b) any decision to serve a notice under section 14(1) of the 1944 Act (discontinuance of school);
- (c) any decision that would result in an application under section 15(4) of the 1944 Act (revocation of order whereby school is an aided or special agreement school);
- (d) any decision to request the making of an order under subsection (2) of section 16 of the 1944 Act (discontinuance of school for which another school is substituted) or as to the submissions to be made to the Secretary of State in any consultations under subsection (3) of that section;
- (e) any decision to make an agreement under Schedule 2 to the 1944 Act (agreement for transfer of interest in school to local education authority).

#### Subordinate Legislation Made

**P1** S. 8: power previously exercised by S.I. 1987/1359, 1989/1503

**P2** S. 8(6)(7): s. 8(6) (with ss. 8(7), 63 and Sch. 2 para. 10(4)) power exercised (17.12.1991) by S.I.1991/2845

#### Textual Amendments

**F3** S. 8(7)(aa)(ab) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 116, 118(1)(4), 231(7), 235(6)

### *Grouping of schools*

## **9 Grouping of schools under single governing body.**

- (1) Subject to the requirements as to consent imposed by section 10 of this Act, a local education authority may resolve that any two or more schools maintained by them shall be grouped for the purposes of this Part of this Act.
- (2) Where any schools are so grouped, they shall (subject to the following provisions of this section)—
  - (a) be treated for the purposes of this Part as a single school; and
  - (b) have a single governing body constituted under a single instrument of government.
- (3) For the purposes of this Part of this Act, a group shall be treated—
  - (a) as an aided school, if it contains at least one such school;
  - (b) as a special agreement school, if it contains at least one such school and paragraph (a) above does not apply;

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- (c) as a controlled school, if it contains at least one such school and neither paragraph (a) nor paragraph (b) above applies;
  - (d) as a maintained special school, if it consists only of such schools; and
  - (e) as a county school, if none of the preceding paragraphs apply.
- (4) Where any proposal or alteration of a kind mentioned in subsection (5) below relates to any school which is grouped with one or more other schools under this section, it shall be the duty of the local education authority—
  - (a) to review the grouping of those schools and to consider whether or not it should be brought to an end; and
  - (b) where the Secretary of State’s consent to the grouping, or continued grouping, was at any time required by section 10 of this Act and the authority consider that the grouping should be continued—
    - (i) to report to him on the results of their review; and
    - (ii) to provide him with such information as he may reasonably require with a view to enabling him to consider whether or not the grouping should be brought to an end.
- (5) The proposals and alterations referred to in subsection (4) above are—
  - (a) any proposal under—
    - (i) section 16 of the 1944 Act (transfer of schools to new sites and substitution of new for old schools);
    - (ii) sections 12 to 15 of the 1980 Act (establishment, discontinuance and alteration of schools); or
    - (iii) section 54 of this Act;
  - (b) any alteration made to arrangements approved by the Secretary of State in accordance with regulations made under section 12 of the 1981 Act (approval of special schools); and
  - (c) any alteration in the status of an aided or special agreement school effected by an order of the Secretary of State under section 15(4) of the 1944 Act (revocation of order by virtue of which school is an aided or special agreement school).
- (6) The Secretary of State may by order bring to an end any grouping under this section in respect of which his consent was at any time required by section 10 of this Act.
- (7) Any grouping under this section may also be brought to an end—
  - (a) if the group does not include any voluntary school, by resolution of the local education authority; and
  - (b) if it does include any such school—
    - (i) by resolution of the authority made with the agreement of the school’s governing body; or
    - (ii) by one year’s notice given either by the authority to the governing body or by the governing body to the authority.
- (8) Any order under section 1 of this Act embodying an instrument of government for two or more schools which are grouped under this section shall be deemed to have been revoked—
  - (a) in the case of a group which was established for a specified period, at the end of that period; or

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(b) on the bringing to an end of the group in accordance with subsection (6) or (7) above.

(9) Schedule 1 to this Act shall have effect for the purpose of making further provision in relation to schools grouped under this section.

## **10 Requirements as to consent to grouping.**

(1) Before resolving to group any schools under section 9 of this Act, a local education authority shall obtain the consent of the Secretary of State to the proposed grouping unless—

- (a) the group will consist only of two primary schools both of which serve substantially the same area;
- (b) neither of the schools is a special school; and
- (c) where they are in Wales, there is no significant difference between them in their use of the Welsh language.

(2) The Secretary of State's consent may be given subject to such conditions as he sees fit to impose with respect to the duration of the grouping to which his consent is given.

(3) Where two primary schools have been grouped under section 9 in circumstances in which the Secretary of State's consent was not required under subsection (1) above, his consent to their continuing to be so grouped shall be required if a change of circumstances occurs such that a proposal to group those schools under section 9 made after that change would require his consent under that subsection.

(4) Where the Secretary of State's consent is required to the grouping or continued grouping of any schools under section 9, sections 3 to 7 of this Act shall apply in relation to the group subject to such modifications (if any) as he may direct.

(5) No local education authority may pass a resolution under section 9 applying to any voluntary school without first obtaining the consent of its governing body.

(6) No local education authority may pass a resolution under section 9 applying to any county or maintained special school without first consulting its governing body.

(7) Any dispute as to whether, for the purposes of this section—

- (a) two primary schools are to be regarded as serving substantially the same area; or
- (b) there is any significant difference between two primary schools in their use of the Welsh language;

shall be determined by the Secretary of State.

### *Reviews*

## **11 Review of constitution of governing bodies of county, controlled and maintained special schools.**

(1) The constitution of the governing body of every county, controlled and maintained special school shall be reviewed in accordance with the provisions of this section on, or as soon as is reasonably practicable after, the occurrence of any event which is a relevant event in relation to the school.

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- (2) In this section “relevant event”, in relation to any school, means any of the following—
- (a) the implementation of any proposal under—
    - (i) section 16(1) of the 1944 Act (transfer of schools to new sites);
    - (ii) section 12(1)(d) of the 1980 Act (alteration of county schools); or
    - (iii) section 13(1)(b) of the 1980 Act (alteration of voluntary schools);which provides for an increase in the number of registered pupils at the school;
  - (b) in the case of a maintained special school, the implementation of any proposal to change approved arrangements which provides for an increase in the number of registered pupils at the school;
  - (c) where no relevant event of a kind mentioned in paragraph (a) or (b) above has occurred in relation to the school before the fourth anniversary of the date on which the current instrument of government for the school was made, that anniversary;
  - (d) where any relevant event has previously occurred in relation to the school, the fourth anniversary of the latest such event.
- (3) Any review which is required by virtue of the occurrence of a relevant event of a kind mentioned in paragraph (a)(i), (ii) or (b) of subsection (2) above shall be carried out by the local education authority and any other review which is required by this section shall be carried out by the governing body.
- (4) Whenever the local education authority or governing body of a school are required to carry out a review under this section they shall consider whether—
- (a) the governing body are properly constituted;
  - (b) the provision made by the instrument of government for the school is in any respect different from that which a new instrument of government would be required to make.
- (5) Where the governing body of a school have carried out a review under this section and have established that the provision made by the instrument of government for the school is in one or more respects different from that which a new instrument of government for the school would be required to make, they shall report the fact to the local education authority.
- (6) Where a relevant event of a kind mentioned in paragraph (a)(i), (ii) or (b) of subsection (2) above has occurred in relation to any school, the local education authority shall determine the date on which, for the purposes of this section, that event is to be taken to have occurred, and shall notify the governing body accordingly.
- (7) In this section “approved arrangements” means arrangements approved by the Secretary of State in accordance with regulations made under section 12 of the 1981 Act (approval of special schools).

### *Temporary governing bodies*

## **12 Temporary governing bodies for new schools.**

- (1) Where—
- (a) the Secretary of State has approved, under section 12 or 13 of the 1980 Act, any proposal of a kind mentioned in subsection (2) below; or

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- (b) a local education authority making any such proposal have determined, under section 12(7) of that Act, that it should be implemented;
- the local education authority shall make an arrangement for the constitution of a temporary governing body for the school (or proposed school) pending the constitution of its governing body under an instrument of government.
- (2) The proposals referred to in subsection (1) above are—
- (a) any proposal made by a local education authority—
- (i) to establish a new county school; or
  - (ii) to maintain as a county school any school which is neither a county school nor a voluntary school; and
- (b) any proposal that a relevant school should be maintained by a local education authority as a voluntary school.
- (3) Where a local education authority propose to establish a new special school, they shall make an arrangement for the constitution of a temporary governing body for the school—
- (a) at least one year before the date on which the first pupils are expected to be admitted; or
  - (b) on the day on which their resolution to establish the school is passed.
- (4) Where a proposal of a kind mentioned in subsection (2) above has been duly published, the local education authority may make an arrangement for the constitution of a temporary governing body in anticipation of the approval of the proposal by the Secretary of State or (as the case may be) of the determination by the authority that it should be implemented.
- (5) Where any proposal that a relevant school should be maintained by a local education authority as a controlled school has been duly published, the authority shall consult the promoters—
- (a) as to whether the power given to the authority by subsection (4) above should be exercised; and
  - (b) if the authority propose to exercise it, as to the date on which it should be exercised.
- (6) Where any proposal that a relevant school should be maintained by a local education authority as an aided school has been duly published, the authority and the promoters shall consider—
- (a) whether the power given to the authority by subsection (4) above should be exercised; and
  - (b) where they agree that it should, on what date the authority should exercise it.
- (7) Where, in a case falling within subsection (6) above, the authority and the promoters fail to agree on the question mentioned in paragraph (a) or on that mentioned in paragraph (b), either of them may refer the matter to the Secretary of State.
- (8) On any reference under subsection (7) above, the Secretary of State shall give such direction as he thinks fit.
- (9) In this section “relevant school”, in relation to any proposal, means a school which—
- (a) was established by those making the proposal, or by persons whom they represent, and which is not a voluntary school; or
  - (b) is proposed to be so established.

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(10) Schedule 2 to this Act shall have effect for the purpose of supplementing this section.

*Miscellaneous and supplemental*

**13 Effect of change of circumstances on instrument of government.**

- (1) Any instrument of government to which this Act applies shall (subject to subsection (2) below and paragraph 3(2) of Schedule 2 to this Act) make such provision as is appropriate having regard to all the circumstances of the school as at the date on which the instrument is made.
- (2) Where a proposal of a kind mentioned in section 11(2)(a) or (b) of this Act has been implemented in relation to any school, the number of registered pupils at the school shall, for the purposes of subsection (1) above and until the number of registered pupils at the school reaches the maximum number of pupils provided for by the proposal, be deemed to be that maximum number.
- (3) Where subsection (2) applies in relation to any school, the local education authority or (in the case of a proposal under section 13(1)(b) of the 1980 Act) the governing body may determine that it shall cease to apply (but without prejudice to its operation in relation to the implementation of any further proposal).
- (4) Where the effect of any subsequent change in the circumstances of a school is that the provision made by the instrument of government for the school differs in any respect from the provision which a new instrument of government would be required to make, it shall be the duty of the local education authority (subject to subsection (7) below):—
  - (a) to vary the instrument of government in such manner as is required to remove any such difference; or
  - (b) to make a new instrument of government.
- (5) Any instrument of government to which this Act applies may make provision which would be appropriate in the event of such a change in the circumstances of the school as is anticipated by that provision (including in particular a change in the number of registered pupils at the school).
- (6) No provision made by any such instrument in anticipation of a change in the number of registered pupils at the school shall have effect before it is established, by a review under section 11 of this Act, that a new instrument of government for the school in question would be required to make that provision.
- (7) For the purposes of subsection (4) above, any change in the number of registered pupils at a school occurring after the instrument of government for the school is made, or (as the case may be) varied, may be disregarded until a review under section 11 of this Act establishes that the provision made by the instrument differs in any respect from the provision which a new instrument of government for the school would be required to make.
- (8) Where subsection (2) above has applied in relation to any school but the local education authority or (as the case may be) governing body have subsequently determined that it should cease to apply, subsections (4) and (7) above shall have effect as if a change in the number of registered pupils at the school had occurred at the time when that determination was made.
- (9) Subsections (6) and (7) above do not apply to aided or special agreement schools.

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#### **14 Adjustment in number of governors.**

- (1) Where—
  - (a) any county, controlled or maintained special school has more governors of a particular category than are provided for by the instrument of government for the school; and
  - (b) the excess is not eliminated by the required number of governors of that category resigning;
 such number of governors of that category as is required to eliminate the excess shall cease to hold office.
- (2) The governors who are to cease to hold office shall be selected on the basis of seniority, the longest serving governor being the first to be selected, and so on.
- (3) Where it is necessary for the purpose of subsection (2) above to select one or more governors from a group of equal seniority, it shall be done by drawing lots.
- (4) Subsections (2) and (3) above do not apply in relation to foundation governors.
- (5) The instrument of government for every controlled school shall make provision for the procedure to be adopted whenever subsection (1) above requires any foundation governor to cease to hold office.

#### **15 Miscellaneous.**

- (1) Where a school to which section 3 or 4 of this Act applies has more than one head teacher (whether or not as a result of two or more schools being grouped under section 9 of this Act), each of them shall be a governor unless he chooses not to be.
- (2) It shall be for the local education authority, in the case of a county, controlled or maintained special school, and for the governing body, in the case of an aided or special agreement school—
  - (a) to determine, for the purposes of an election of parent governors or teacher governors to the governing body, any question whether a person is—
    - (i) a parent of a registered pupil at the school; or
    - (ii) a teacher at the school; and
  - (b) to make all necessary arrangements for, and to determine all other matters relating to, any such election.
- (3) The power conferred by subsection (2)(b) above includes power to make provision as to qualifying dates but does not include power to impose any requirement as to the minimum number of votes required to be cast for a candidate to be elected.
- (4) Any such election which is contested must be held by secret ballot.
- (5) The arrangements made under subsection (2)(b) above shall, in the case of any election of a parent governor, provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he so prefers, by having his ballot paper returned to the school by a registered pupil at the school.
- (6) Where a vacancy for a parent governor of any county, voluntary or maintained special school is required to be filled by election, it shall be the duty of the appropriate authority to take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—
  - (a) informed of the vacancy and that it is required to be filled by election;



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- (b) informed that he is entitled to stand as a candidate, and vote, at the election; and
  - (c) given an opportunity to do so.
- (7) The instrument of government for every voluntary school shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (8) The instrument of government for any voluntary school may provide for any foundation governorship to be held ex officio by the holder of an office named in the instrument.
- (9) The qualification of any person for election or appointment as a governor, of a particular category, of any county, voluntary or maintained special school, shall not have the effect of disqualifying him for election or appointment as a governor, of any other category, of that school.
- (10) No person shall at any time hold more than one governorship of the same county, voluntary or maintained special school.
- (11) Where the instrument of government for any county, voluntary or maintained special school provides for one or more governors to be appointed by persons acting jointly, any such appointment shall be made, in the event of failure on the part of those persons to make an agreed appointment—
  - (a) by the Secretary of State; or
  - (b) in accordance with any direction given by him.
- (12) No instrument of government for any county, voluntary or maintained special school which provides for one or more persons to be co-opted, by governors, as members of the governing body of the school shall make any provision (otherwise than by virtue of section 6 of this Act) which has the effect of restricting those governors in their choice of person to co-opt.
- (13) In subsection (12) above, references to co-opted governors are to governors required to be co-opted by virtue of section 3 of this Act and do not include references to co-opted foundation governors.
- (14) No person shall be qualified for membership of the governing body of any county, voluntary or maintained special school unless he is aged eighteen or over, at the date of his election or appointment.
- (15) In subsection (6) above, “appropriate authority” means—
  - (a) the local education authority, in the case of a county, controlled or maintained special school; and
  - (b) the governing body, in the case of an aided or special agreement school.

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

C6 S. 15(2)–(6) applied by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 70(3), 231(7), 235(6)

C7 S. 15(2)–(6) applied (1.1.1994) by 1993 c. 35, ss. 60(5)(a), 61(3)(a), 76(1) (with s. 155(11)); S.I. 1993/3106, art. 4, Sch. 1

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## PART III

### ORGANISATION AND FUNCTIONS

#### General

#### 16 General responsibility for conduct of certain schools.

- (1) The articles of government for every county, voluntary and maintained special school shall provide for the conduct of the school to be under the direction of the governing body, but subject to any provision of the articles conferring specific functions on any person other than the governing body, and to the provision made (otherwise than in the articles) by or under this Act or any other enactment.
- (2) The Secretary of State may by regulations make provision as to the circumstances in which, in any case where—
  - (a) any provision of, or made under, this Act requires the governing body of a school to be consulted before a particular step is taken by the local education authority or the head teacher; and
  - (b) the authority or head teacher require to take that step as a matter of urgency but are unable to contact the chairman or vice-chairman of the governing body;
 the authority or (as the case may be) the head teacher may proceed without consulting the governing body.
- (3) Where a county, voluntary or maintained special school is organised in two or more separate departments, each with a head teacher, any provision made by or under this Act which confers functions on, or in relation to, the head teacher of the school shall, except where the articles of government provide otherwise, have effect as if each department were a separate school.

VALID FROM 01/08/1993

#### 16A Provision of further education.

- (1) The governing body of any county, voluntary or maintained special 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 nineteen years,
 but the governing body of a maintained special school shall not determine to provide, or to cease to provide, such education without the consent of the local education authority.
- (2) It shall be the duty of the governing body of any such school which provides such education to secure that such education is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed.

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### School curriculum

#### 17 Duty of local education authority to state policy.

- (1) It shall be the duty of every local education authority—
  - (a) to determine, and keep under review, their policy in relation to the secular curriculum for the county, voluntary and special schools maintained by them;
  - (b) to make, and keep up to date, a written statement of that policy; . . . <sup>F4</sup>
  - (c) . . . . . <sup>F4</sup>
- (2) In discharging their duty under subsection (1) above, an authority shall consider, in particular—
  - (a) the range of the secular curriculum; and
  - (b) the balance between its different components.
- (3) In carrying out their functions under this Act or any other enactment, a local education authority shall have regard to their policy in relation to the secular curriculum for their schools, as expressed in their statement.
- (4) . . . . . <sup>F5</sup>

#### Textual Amendments

**F4** Word “and” and s. 17(1)(c) repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)

**F5** Ss. 17(4), 18(4), 19(3), 20 repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)

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

**C8** [S. 17](#) extended (1.9.1994) by [1993 c. 35, s. 298\(8\)](#), [Sch. 18 para. 6\(1\)](#); [S.I. 1994/2038, art. 3](#), [Sch.2](#)

#### 18 County, controlled and maintained special schools.

- (1) The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the governing body to consider—
  - (a) the policy of the local education authority as to the secular curriculum for the authority’s schools, as expressed in the statement made by the authority under section 17 of this Act;
  - (b) what, in their opinion, should be the aims of the secular curriculum for the school; and
  - (c) how (if at all) the authority’s policy with regard to matters other than sex education should in their opinion be modified in relation to the school;and to make, and keep up to date, a written statement of their conclusions.
- (2) The articles of government for every such school shall provide for it to be the duty of the governing body—
  - (a) to consider separately (while having regard to the local education authority’s statement under section 17 of this Act) the question whether sex education should form part of the secular curriculum for the school; and
  - (b) to make, and keep up to date, a separate written statement—

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- (i) of their policy with regard to the content and organisation of the relevant part of the curriculum; or
  - (ii) where they conclude that sex education should not form part of the secular curriculum, of that conclusion.
- (3) The articles of government for every such school shall provide for it to be the duty of the governing body—
  - (a) when considering the matters mentioned in subsections (1) and (2) above, to do so in consultation with the head teacher and to have regard—
    - (i) to any representations which are made to them, with regard to any of those matters, by any persons connected with the community served by the school; and
    - (ii) to any such representations which are made to them by the chief officer of police and which are connected with his responsibilities;
  - (b) to consult the authority before making or varying any statement under subsection (1) above; . . . <sup>F6</sup>
  - (c) . . . . . <sup>F6</sup>
- (4) . . . . . <sup>F7</sup>
- (5) The articles of government for every such school shall provide for the determination and organisation of the secular curriculum for the school to be the responsibility of the head teacher and for it to be his duty to secure that that curriculum is followed within the school.
- (6) The articles of government for every such school shall provide for it to be the duty of the head teacher, in discharging his duties in relation to the secular curriculum for the school—
  - (a) to consider the statement of the local education authority under section 17 of this Act and those of the governing body under this section;
  - (b) to have regard—
    - (i) to any representations which are made to him, with regard to the determination or organisation of the secular curriculum, by any persons connected with the community served by the school; and
    - (ii) to any such representations which are made to him by the chief officer of police and which are connected with that officer’s responsibilities; and
  - (c) to ensure that that curriculum—
    - (i) so far as it relates to sex education, is compatible with the governing body’s policy (as expressed in their statement under subsection (2) above) except where that policy is incompatible with any part of the syllabus for a course which forms part of that curriculum and leads to a public examination;
    - (ii) so far as it relates to other matters, is compatible with the authority’s policy (as expressed in their statement) . . . <sup>F8</sup> as modified by the governing body’s statement under subsection (1) above; and
    - (iii) is compatible with the enactments relating to education (including, in particular, those relating to children with special educational needs).
- (7) The articles of government for every such school shall provide for the governing body to have power to review their conclusions about the matters mentioned in

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subsections (1) and (2) above whenever they think fit, and for it to be their duty to do so immediately following—

- (a) the implementation of any proposal under—
  - (i) section 16 of the 1944 Act (transfer of schools to new sites);
  - (ii) section 12 or 13 of the 1980 Act (establishment, alteration and discontinuance of schools); or
  - (iii) section 15 of the 1980 Act (reduction of school places);which materially affects the school; or
- (b) in the case of a maintained special school, any change in any of the arrangements made for pupils at the school and their special educational needs which must be complied with (by virtue of regulations made under section 12 of the 1981 Act) for the school to be approved as a maintained special school under section 9(5) of the 1944 Act.

(8) The article of government for every such school shall provide for it to be the duty of the governing body, where—

- (a) they have completed such a review; and
- (b) they consider it appropriate to make a fresh written statement of their conclusions;

to do so . . . <sup>F9</sup>.

#### Textual Amendments

- F6** Word “and” and s. 18(3)(c) repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)
- F7** Ss. 17(4), 18(4), 19(3), 20 repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)
- F8** Words repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1)(2), [Sch. 12 para. 99, Sch. 13 Pt. II](#)
- F9** Words repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)

## 19 Aided and special agreement schools.

(1) The articles of government for every aided and special agreement school shall provide—

- (a) for the content of the secular curriculum for the school to be under the control of the governing body;
- (b) for the governing body to have regard to the policy of the local education authority as to the curriculum for the authority’s schools, as expressed in the statement made by the authority under section 17 of this Act; and
- (c) for the head teacher to be allocated by the governing body such functions as will, subject to the resources available, enable him to determine and organise the curriculum and secure that it is followed within the school.

(2) The articles of government for every such school shall provide for it to be the duty of the governing body, when considering the content of the secular curriculum for the school, to have regard—

- (a) to any representations which are made to them, with regard to that curriculum, by any persons connected with the community served by the school; and

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- (b) to any such representations which—
  - (i) are made to them by the chief officer of police; and
  - (ii) are connected with his responsibilities.

(3) ..... <sup>F10</sup>

**Textual Amendments**  
**F10** Ss. 17(4), 18(4), 19(3), 20 repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(2), **Sch. 13 Pt. II**

20 <sup>F11</sup> .....

**Textual Amendments**  
**F11** Ss. 17(4), 18(4), 19(3), 20 repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(2), **Sch. 13 Pt. II**

*School terms etc.* <sup>F12</sup>

**Textual Amendments**  
**F12** S. 21 substituted by Education Reform Act 1988 (c. 40, SIF 41:1), **ss. 115, 118(1)(4), 231(7), 235(6)**

**21 Terms, holidays and sessions.**

- (1) The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the local education authority to determine the dates at which the school terms and holidays are to begin and end.
- (2) The articles of government for every such school shall provide for it to be the duty of the governing body to determine the times at which the school session or, if there is more than one, each school session is to begin and end on any day and, where the governing body propose to make any change in those times, for it to be their duty—
  - (a) to consult the local education authority and the head teacher before taking any of the actions mentioned in paragraphs (b) to (g) below;
  - (b) to include a statement in the report they are required to prepare by virtue of section 30 of this Act—
    - (i) indicating that they propose to make a change in those times;
    - (ii) specifying the proposed change and when they propose that it should take effect; and
    - (iii) drawing attention to any comment on the proposal included as an annex to the report by virtue of paragraph (c) below and including such response to the comment as they may consider appropriate;
  - (c) if so required by the local education authority, to include as an annex to that report such written comment on the proposal as the authority may provide for that purpose;

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- (d) to provide an opportunity for discussion of the proposal at a parents,; meeting held by virtue of section 31 of this Act;
  - (e) to consider any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification;
  - (f) not to effect any change in those times except at the beginning of a school year; and
  - (g) not less than three months before any change in those times is to take effect—
    - (i) to inform the local education authority; and
    - (ii) to take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are informed; of the change and of when it is to take effect.
- (3) For the purposes of any provision included in the articles of government for any such school by virtue of subsection (2) above, the times determined by the local education authority immediately before the coming into force of section 115 of the Education Reform Act 1988 as the times at which the school session or, if there is more than one, each school session is to begin and end on any day shall be taken to have been determined by the governing body.
- (4) The articles of government for every aided and special agreement school shall provide for it to be the duty of the governing body to determine—
- (a) the dates and times at which the school terms and holidays are to begin and end; and
  - (b) the times at which the school session or, if there is more than one, each school session is to begin and end on any day.
- (5) The articles of government for every county, voluntary and maintained special school shall provide for the governing body to have power to require pupils in attendance at the school to attend at any place outside the school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school.

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

C9 S. 21(1)(2)(5) modified (1.9.1994) by S.I. 1994/2103, art. 2, Sch. 1 Pt. I para. 2(1)Table

*Discipline*

**22 Discipline: general duties.**

The articles of government for every county, voluntary and maintained special school shall provide—

- (a) for it to be the duty of the head teacher to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—
  - (i) promoting, among pupils, self-discipline and proper regard for authority;
  - (ii) encouraging good behaviour on the part of pupils;
  - (iii) securing that the standard of behaviour of pupils is acceptable; and

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- (iv) otherwise regulating the conduct of pupils;
- (b) for it to be the duty of the head teacher, in determining any such measures—
  - (i) to act in accordance with any written statement of general principles provided for him by the governing body; and
  - (ii) to have regard to any guidance that they may offer in relation to particular matters;
- (c) for it to be the duty of the head teacher to make any such measures generally known within the school;
- (d) for the standard of behaviour which is to be regarded as acceptable at the school to be determined by the head teacher, so far as it is not determined by the governing body;
- (e) for it to be the duty of the governing body and the head teacher to consult the local education authority, before determining any such measures, on any matter arising from the proposed measures which can reasonably be expected—
  - (i) to lead to increased expenditure by the authority; or
  - (ii) to affect the responsibilities of the authority as an employer;
- (f) for the power to exclude a pupil from the school (whether by suspension, expulsion or otherwise) to be exercisable only by the head teacher.

## 23 Exclusion of pupils: duty to inform parents etc.

The articles of government for every county, voluntary and maintained special school shall provide—

- (a) for it to be the duty of the head teacher—
  - (i) where he excludes from the school a pupil who is under eighteen, to take (without delay) reasonable steps to inform a parent of the pupil of the period of the exclusion and the reasons for it;
  - (ii) where he decides that any exclusion of such a pupil from the school which was originally for a fixed or indefinite period should be made permanent, to take (without delay) reasonable steps to inform a parent of the pupil of his decision and of the reasons for it; and
  - (iii) where he excludes any pupil from the school to take (without delay) reasonable steps to inform the pupil, if he is aged eighteen or over, or a parent of his, if he is under eighteen, that the pupil or (as the case may be) parent may make representations about the exclusion to the governing body and the local education authority;
- (b) for it to be the duty of the head teacher, where he excludes a pupil from the school—
  - (i) for more than five school days (in the aggregate) in any one term; or
  - (ii) in circumstances in which the pupil would, as a result of his exclusion from the school, lose an opportunity to take any public examination;
 to inform the local education authority and the governing body (without delay) of the period of the exclusion and of the reasons for it and where he decides that any exclusion of a pupil from the school which was originally for a fixed or indefinite period should be made permanent, to inform them (without delay) of his decision and of the reasons for it.



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## **24 Reinstatement of excluded pupils: county, controlled and maintained special schools.**

The articles of government for every county, controlled and maintained special school shall provide—

- (a) for it to be the duty of the local education authority, where they have been informed of the permanent exclusion of a pupil from the school—
  - (i) to consider, after consulting the governing body, whether he should be reinstated immediately, reinstated by a particular date or not reinstated;
  - (ii) where they consider that he should be reinstated, to give the appropriate direction to the head teacher; and
  - (iii) where they consider that he should not be reinstated, to inform the pupil (if he is aged eighteen or over) or a parent of his (if he is under eighteen) of their decision;
- (b) for it to be the duty of the head teacher, where he has excluded a pupil from the school—
  - (i) for more than five school days (in the aggregate) in any one term; or
  - (ii) in circumstances in which the pupil would, as a result of his exclusion from the school, lose an opportunity to take any public examination;to comply with any direction for the reinstatement of the pupil given by the governing body or the local education authority, in the case of an exclusion for a fixed period, or by the governing body, in the case of an exclusion which is for an indefinite period or is permanent;
- (c) for it to be the duty of the local education authority, where they have been informed of the indefinite exclusion of a pupil from the school, to consult the governing body and, where the governing body do not intend to direct the head teacher to reinstate the pupil or the authority consider that he should be reinstated by a date which is earlier than that determined by the governing body as the date by which he is to be reinstated—
  - (i) to direct that he be reinstated immediately; or
  - (ii) to direct that he be reinstated within such period as may be specified in the direction;
- (d) for it to be the duty of the local education authority where—
  - (i) they have been informed of the exclusion of a pupil from the school for a fixed period; and
  - (ii) they propose to give a direction for his reinstatement;to consult the governing body before doing so;
- (e) for any direction given by virtue of paragraph (c) above to cease to have effect (without prejudice to any subsequent direction given by virtue of any other provision made by the articles in accordance with this section) if the head teacher decides that the exclusion of the pupil concerned should be made permanent;
- (f) for it to be the duty of the head teacher to comply with any direction given in exercise of the duty imposed on the local education authority by virtue of paragraph (a) or (c) above;
- (g) for it to be the duty of the head teacher, where conflicting directions for the reinstatement of a pupil are given by the governing body and the local education authority, to comply with that direction which will lead to the earlier reinstatement of the pupil; and

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- (h) for it to be the duty of the governing body and the local education authority to inform each other and—
- (i) the pupil concerned, if he is aged eighteen or over; or
  - (ii) a parent of his, if he is under eighteen;
- of any direction, of a kind mentioned in this section, which is given by them.

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

**C10** Ss. 24–26 amended by S.I. 1989/1503, art. 25(4)

**25 Reinstatement of excluded pupils: aided and special agreement schools.**

The articles of government for every aided and special agreement school shall provide—

- (a) for it to be the duty of the governing body, where they have been informed of the permanent exclusion of a pupil from the school—
- (i) to consider whether he should be reinstated immediately, reinstated by a particular date or not reinstated;
  - (ii) where they consider that he should be reinstated, to give the appropriate direction to the head teacher; and
  - (iii) where they consider that he should not be reinstated, to inform (without delay) the local education authority and either the pupil, if he is aged eighteen or over, or a parent of his, if he is under eighteen, of their decision;
- (b) for it to be the duty of the head teacher where he has excluded a pupil from the school—
- (i) for more than five school days (in the aggregate) in any one term; or
  - (ii) in circumstances in which the pupil would, as a result of his exclusion from the school, lose an opportunity to take any public examination;
- to comply with any direction for the reinstatement of the pupil given by the governing body or, in the case of an exclusion for a fixed period, by the governing body or the local education authority;
- (c) for it to be the duty of the local education authority to consult the governing body before giving any direction by virtue of paragraph (b) above;
- (d) for it to be the duty of the local education authority, where they have been informed of the indefinite exclusion of a pupil from the school, to consult the governing body and, where the governing body do not intend to direct the head teacher to reinstate the pupil or the authority consider that he should be reinstated by a date which is earlier than that determined by the governing body as the date by which he is to be reinstated—
- (i) to direct that he be reinstated immediately; or
  - (ii) to direct that he be reinstated within such period as may be specified in the direction;
- (e) for any direction given by virtue of paragraph (d) above to cease to have effect (without prejudice to any direction given by virtue of any other provision made by the articles in accordance with this section) if the head teacher decides that the exclusion of the pupil concerned should be made permanent;

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- (f) for it to be the duty of the head teacher to comply with any direction given in exercise of the duty imposed on the local education authority by virtue of paragraph (d) above;
- (g) for it to be the duty of the head teacher, where conflicting directions for the reinstatement of a pupil are given by the governing body and the local education authority, to comply with that direction which will lead to the earlier reinstatement of the pupil; and
- (h) for it to be the duty of the governing body and the local education authority to inform each other and—
  - (i) the pupil concerned, if he is aged eighteen or over; or
  - (ii) a parent of his, if he is under eighteen;of any direction, of a kind mentioned in this section, which is given by them.

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

C11 Ss. 24–26 amended by S.I. 1989/1503, art. 25(4)

## 26 Appeals.

- (1) Every local education authority shall make arrangements for enabling—
  - (a) a registered pupil at a county, controlled or maintained special school who is aged eighteen or over, or a parent of his, in the case of a pupil at such a school who is under eighteen, to appeal against any decision not to reinstate the pupil following his permanent exclusion from the school; and
  - (b) any governing body of such a school, the head teacher of which has been directed by the authority to reinstate any registered pupil at the school who has been permanently excluded, to appeal against the direction.
- (2) The governing body of every aided or special agreement school shall make arrangements for enabling a registered pupil at the school who is aged eighteen or over, or a parent of a pupil at such a school who is under eighteen to appeal against any decision not to reinstate the pupil following his permanent exclusion from the school.
- (3) Joint arrangements may be made under subsection (2) above by the governing bodies of two or more aided or special agreement schools maintained by the same local education authority.
- (4) Any appeal by virtue of this section shall be to an appeal committee constituted in accordance with Part I of Schedule 2 to the 1980 Act; and Schedule 3 to this Act shall have effect, in place of Part II of Schedule 2 to the 1980 Act, in relation to any such appeal.
- (5) The decision of an appeal committee on any such appeal shall be binding on the persons concerned; and where the committee determines that the pupil in question should be reinstated it shall direct that he be reinstated immediately or direct that he be reinstated by such date as is specified in the direction.

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

C12 Ss. 24–26 amended by S.I. 1989/1503, art. 25(4)

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**27 Exclusion: additional provision for appeals.**

Where the articles of government for any county, voluntary or maintained special school provide—

- (a) for the parents of any pupil who is excluded from the school in circumstances in which no right of appeal is given by section 26 of this Act to have the right to appeal against his exclusion to a person specified by the articles; and
- (b) for the procedure to be followed on such an appeal; any decision on such an appeal that the pupil should be reinstated, or that he should be reinstated earlier than would otherwise be the case, shall be binding on the head teacher.

**28 Local education authority’s reserve power.**

- (1) Every local education authority shall have power, in the circumstances mentioned in subsection (3) below, to take such steps in relation to any county, controlled or special school maintained by them as they consider are required to prevent the breakdown, or continuing breakdown, of discipline at the school.
- (2) The governing body and the head teacher of every aided and special agreement school shall, in the circumstances mentioned in subsection (3) below, consider any representations made to them by the local education authority.
- (3) 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 such pupils 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.
- (4) Steps taken by an authority under subsection (1) above may include the giving of any direction to the governing body or head teacher.

**Modifications etc. (not altering text)**  
C13 S. 28(1)(3)(4) modified (1.9.1994) by S.I. 1994/2103, art. 2, Sch. 1 Pt I para. 2(2)

*Finance*

**29** <sup>F13</sup> .....

**Textual Amendments**  
F13 S. 29 repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 51(8), 231(7), 235(6), 237(2), Sch. 4 para. 1(2), Sch. 13 Pt. II

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### *Reports and meetings*

#### **30 Governors' annual report to parents.**

- (1) The articles of government for every county, voluntary and maintained special school shall provide for it to be the duty of the governing body to prepare, once in every school year, a report (“the governors’ report”) containing—
  - (a) a summary of the steps taken by the governing body in the discharge of their functions during the period since their last report; and
  - (b) such other information as the articles may require.
- (2) The articles of government for every such school shall, in particular, require the governors’ report—
  - (a) to be as brief as is reasonably consistent with the requirements as to its contents;
  - (b) where there is an obligation on the governing body (by virtue of section 31 of this Act) to hold an annual parents’ meeting—
    - (i) to give details of the date, time and place for the next such meeting and its agenda;
    - (ii) to indicate that the purpose of that meeting will be to discuss both the governors’ report and the discharge by the governing body, the head teacher and the local education authority of their functions in relation to the school; and
    - (iii) to report on the consideration which has been given to any resolutions passed at the previous such meeting;
  - (c) to give the name of each governor and indicate whether he is a parent, teacher or foundation governor or was co-opted or otherwise appointed as a governor or is an ex officio governor;
  - (d) to say, in the case of an appointed governor, by whom he was appointed;
  - (e) to give, in relation to each governor who is not an ex officio governor, the date on which his term of office comes to an end;
  - (f) to name, and give the address of, the chairman of the governing body and their clerk;
  - (g) to give such information as is available to the governing body about arrangements for the next election of parent governors;
  - (h) to contain a financial statement—
    - [<sup>F14</sup>(i) reproducing or summarising any financial statement of which a copy has been furnished to the governing body by the authority under section 42 or 50 of the Education Reform Act 1988 since the last governors’ report was prepared;
    - (ii) indicating, in general terms, how any sum made available to the governing body by the authority in respect of the school’s budget share within the meaning of Chapter III of Part I of that Act or under section 49 of that Act in the period covered by the report was used;]and
    - (iii) giving details of the application of any gifts made to the school in that period;
  - (i) to give, in the case of a secondary school, such information in relation to public examinations as is required to be published by virtue of section 8(5) of the 1980 Act;

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- (j) to describe what steps have been taken by the governing body to develop or strengthen the school's links with the community (including links with the police); and
  - (k) to draw attention to the information made available by the governing body in accordance with the regulations made under section 20 of this Act.
- (3) The articles of government for every such school shall—
- (a) enable the governing body to produce their report in such language or languages (in addition to English) as they consider appropriate; and
  - (b) require them to produce it in such language or languages (in addition to English and any other language in which the governing body propose to produce it) as the local education authority may direct.
- (4) The articles of government for every such school shall provide for it to be the duty of the governing body of any such school to take such steps as are reasonably practicable to secure that—
- (a) the parents of all registered pupils at the school and all persons employed at the school are given (free of charge) a copy of the governors' report;
  - (b) copies of the report are available for inspection (at all reasonable times and free of charge) at the school; and
  - (c) where there is an obligation on the governing body (by virtue of section 31 of this Act) to hold an annual parents' meeting, copies of the report to be considered at that meeting are given to parents not less than two weeks before that meeting.

#### Textual Amendments

**F14** S. 30(2)(h)(i)(ii) substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 51(9), 231(7), 235(6), Sch. 4 para. 1(2)

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

**C14** S. 30(1)(a) amended by S.I. 1986/2203, Sch. 3 para. 1(4)

### 31 Annual parents' meetings.

- (1) Subject to subsections (7) and (8) below, the articles of government for every county, voluntary and maintained special school shall provide for it to be the duty of the governing body to hold a meeting once in every school year ("the annual parents' meeting") which is open to—
- (a) all parents of registered pupils at the school;
  - (b) the head teacher; and
  - (c) such other persons as the governing body may invite.
- (2) The purpose of the meeting shall be to provide an opportunity for discussion of—
- (a) the governors' report; and
  - (b) the discharge by the governing body, the head teacher and the local education authority of their functions in relation to the school.
- (3) No person who is not a parent of a registered pupil at the school may vote on any question put to the meeting.

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- (4) The articles of government for every such school shall provide—
- (a) for the proceedings at any annual parents' meeting to be under the control of the governing body;
  - (b) for any annual parents' meeting, at which the required number of parents of registered pupils at the school are present, to be entitled to pass (by a simple majority) resolutions on any matters which may properly be discussed at the meeting;
  - (c) for it to be the duty of the governing body—
    - (i) to consider any resolution which is duly passed at such a meeting and which they consider is a matter for them;
    - (ii) to send to the head teacher a copy of any such resolution which they consider is a matter for him; and
    - (iii) to send to the local education authority a copy of any such resolution which they consider is a matter for the authority; and
  - (d) for it to be the duty of the head teacher, and of the local education authority, to consider any such resolution a copy of which has been sent to him, or them, by the governing body and to provide the governing body with a brief comment on it (in writing) for inclusion in their next governors' report.
- (5) The articles of government for every county, controlled and maintained special school shall provide for any question whether any person is to be treated as the parent of a registered pupil at the school, for the purposes of any provision of the articles relating to the annual parents' meeting, to be determined by the local education authority.
- (6) The articles of government for every aided or special agreement school shall provide for any such question to be determined by the governing body.
- (7) The articles of government for every special school established in a hospital shall provide that where the governing body are of the opinion that it would be impracticable to hold an annual parents' meeting in a particular school year they may refrain from holding such a meeting in that year.
- (8) The articles of government for every county, voluntary and maintained special school (other than a special school established in a hospital), the proportion of registered pupils at which who are boarders is, or is likely to be, at least fifty per cent., shall provide that where—
- (a) the governing body are of the opinion that it would be impracticable to hold an annual parents' meeting in a particular school year; and
  - (b) at least fifty per cent. of the registered pupils at the school are boarders at the time when the governing body form that opinion;
- they may refrain from holding such a meeting in that year.
- (9) In subsection (4)(b) above “the required number”, in relation to any school, means any number equal to at least twenty per cent. of the number of registered pupils at the school.

## 32 Reports by governing body and head teacher.

- (1) The articles of government for every county, voluntary and maintained special school shall provide—

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- (a) for the governing body to furnish to the local education authority such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time); and
  - (b) for the head teacher to furnish to the governing body or (as the case may be) local education authority such reports in connection with the discharge of his functions as the governing body or authority may so require.
- (2) The articles of government for every aided school shall provide—
- (a) for the local education authority to notify the governing body of any requirement of a kind mentioned in subsection (1)(b) above which is imposed by them on the head teacher; and
  - (b) for the head teacher to furnish the governing body with a copy of any report which he makes in complying with the requirement.

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

C15 S. 32(1)(b) modified (1.9.1994) by S.I. 1994/2103, art. 2, Sch. 1 Pt. 1 para. 2(1)Table

*Admissions*

**33 Admissions.**

- (1) Where the governing body of any county or voluntary school are responsible for determining the arrangements for admitting pupils to the school, they shall—
- (a) at least once in every school year, consult the local education authority as to whether those arrangements are satisfactory; and
  - (b) consult the authority before determining, or varying, any of them.
- (2) Where the local education authority are responsible for determining the arrangements for admitting pupils to any such school they shall—
- (a) at least once in every school year, consult the governing body as to whether those arrangements are satisfactory; and
  - (b) consult the governing body before determining, or varying, any of them.

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

C16 S. 33 modified by S.I. 1989/1135, art. 3(1)(c), Sch. 3

*Appointment and dismissal of staff*

**34 Determination of staff complement for schools.**

- (1) Every county, controlled, special agreement and maintained special school shall have a complement of teaching and non-teaching posts determined by the local education authority.
- (2) The complement for any such school shall include—
- (a) all full-time teaching posts; and



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- (b) all part-time teaching posts which are to be filled by persons whose only employment with the authority will be at the school.
- (3) The complement for any such school shall not include any staff employed by the authority solely in connection with either or both of the following—
  - (a) the provision of meals;
  - (b) the supervision of pupils at midday.

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

**C17** Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), **Sch. 4**

**C18** Ss. 34, 35 excluded by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 44(2)(a)(5), 231(7), 235(6), **Sch. 4 para. 1(2)**

**35 Appointment and dismissal of staff: introductory.**

- (1) The appointment and dismissal of staff (including teachers) at every county, controlled, special agreement and maintained special school shall be under the control of the local education authority, but—
  - (a) the appointment of a head teacher shall be subject to the provision made by the articles of government for the school in accordance with section 37 of this Act;
  - (b) the appointment of a deputy head teacher shall be subject to the provision made by the articles in accordance with section 39 of this Act;
  - (c) the appointment and dismissal of the clerk to the governing body shall be subject to section 40 of this Act and to any provision made by the articles in accordance with that section;
  - (d) the appointment of any other staff (including any teacher), to a post which is part of the school's complement, shall be subject to the provision made by the articles in accordance with section 38 of this Act;
  - (e) the dismissal of staff shall be subject to the provision made by the articles in accordance with section 41 of this Act;
  - (f) the appointment and dismissal of staff at any school for which there is a temporary governing body shall be subject to the provisions of Schedule 2 to this Act; and
  - (g) this section is subject to the provisions of sections 27 and 28 of the 1944 Act (which relate to religious education).
- (2) The articles of government for every such school shall provide for it to be the duty of the local education authority to consult the governing body and the head teacher before appointing any person to work solely at the school otherwise than—
  - (a) in a teaching post;
  - (b) in a non-teaching post which is part of the complement of the school; or
  - (c) solely in connection with either or both of the following—
    - (i) the provision of meals;
    - (ii) the supervision of pupils at midday.

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

**C19** Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), **Sch. 4**

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**C20** Ss. 34, 35 excluded by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 44(2)(a)(5), 231(7), 235(6), Sch. 4 para. 1(2)

### 36 The selection panel.

- (1) The articles of government for every county, controlled, special agreement and maintained special school shall provide—
- (a) for the constitution of a selection panel whenever such a panel is required, by virtue of section 37 or 39 of this Act, in relation to the appointment of a head teacher or deputy head teacher;
  - (b) for the selection panel to consist of a specified number of persons appointed to it by the local education authority and a specified number of governors appointed to it by the governing body, the number so specified being—
    - (i) in each case, not less than three; and
    - (ii) in relation to appointments made by the governing body, not less than the number specified in relation to appointments made by the authority; and
  - (c) for the governing body and the authority to have power to replace, at any time, any member of the selection panel whom they have appointed.
- (2) The Secretary of State may by regulations make provision as to the meetings and proceedings of selection panels.

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

**C21** Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), Sch. 4

### 37 Appointment of head teacher.

- (1) The articles of government for every county, controlled, special agreement and maintained special school shall provide—
- (a) for it to be the duty of the local education authority not to appoint a person to be the head teacher of the school unless his appointment has been recommended by a selection panel constituted in accordance with the articles;
  - (b) for it to be the duty of the authority, in the event of the post of head teacher being vacant, to appoint an acting head teacher after consulting the governing body;
  - (c) for it to be the duty of the authority, before appointing a head teacher, to advertise the vacancy in such publications circulating throughout England and Wales as they consider appropriate;
  - (d) for it to be the duty of the selection panel constituted in relation to the appointment of a head teacher to interview such applicants for the post as they think fit;
  - (e) in the event of a failure of the panel to agree on the applicants whom they wish to interview—
    - (i) for those members of the panel appointed by the governing body to have the right to nominate not more than two applicants to be interviewed by the panel; and

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- (ii) for the other members of the panel to have the right to nominate not more than two other applicants to be so interviewed;
- (f) for it to be the duty of the panel, where they consider that it is appropriate to do so, to recommend to the authority for appointment as head teacher one of the applicants interviewed by them;
- (g) for it to be the duty of the panel, where they are unable to agree on a person to recommend to the authority—
  - (i) to repeat (with a view to reaching agreement) such of the steps which they are required to take by virtue of paragraphs (d) to (f) above as they think fit;
  - (ii) where they have repeated any of those steps and remain unable to agree, or have decided that it is not appropriate to repeat any of them, to require the authority to re-advertise the vacancy; and
  - (iii) where the vacancy is re-advertised, to repeat all of those steps;
- (h) for it to be the duty of the panel, where the authority decline to appoint a person recommended by them—
  - (i) where there are applicants for the post whom they have not interviewed, to interview such of those applicants (if any) as they think fit;
  - (ii) to recommend another of the applicants interviewed by them, if they think fit;
  - (iii) to ask the authority to re-advertise the vacancy, if they consider that it should be re-advertised; and
  - (iv) where the vacancy is re-advertised, to repeat the steps which they are required to take by virtue of paragraphs (d) to (f);
- (i) for it to be the duty of the authority to re-advertise the post of head teacher where they are required to do so by the panel; and for the authority to have power to do so, where—
  - (i) the post has been duly advertised;
  - (ii) the selection panel have failed to make either a recommendation which is acceptable to the authority or a request that the post be re-advertised; and
  - (iii) the authority are of the opinion that the panel have had sufficient time in which to carry out their functions; and
- (j) for the chief education officer of the authority, or a member of his department nominated by him, to have the right to attend all proceedings of the panel (including interviews) for the purpose of giving advice to members of the panel.

(2) In this section “head teacher” does not include an acting head teacher.

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

C22 Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), Sch. 4

**38 Appointment of certain other staff.**

- (1) The articles of government for every county, controlled, special agreement and maintained special school shall provide for it to be the duty of the local education

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authority, where there is a vacancy in any post which is part of the complement of the school—

- (a) to decide whether, in the case of a post which is not a new one, it should be retained;
  - (b) to advertise the vacancy, and fill it in accordance with the procedure laid down by virtue of subsection (3) below, unless they have the intention mentioned in paragraph (c) below; and
  - (c) to fill the vacancy in accordance with the procedure laid down by virtue of subsection (4) below, if they intend to appoint a person who, at the time when they form that intention, is an employee of theirs or has been appointed to take up employment with them at a future date.
- (2) This section does not apply in relation to the appointment of a head teacher or deputy head teacher or to any temporary appointment made pending—
- (a) the return to work of the holder of the post in question; or
  - (b) the taking of any steps required by the articles of government in relation to the vacancy in question.
- (3) The articles of government for every such school shall provide—
- (a) for it to be the duty of the authority, where they decide to advertise the vacancy, to do so in a manner likely in their opinion to bring it to the notice of persons (including employees of theirs) who are qualified to fill the post;
  - (b) for it to be the duty of the governing body, where the vacancy is advertised—
    - (i) to interview such applicants for the post as they think fit; and
    - (ii) where they consider that it is appropriate to do so, to recommend to the authority for appointment to the post one of the applicants interviewed by them;
  - (c) for it to be the duty of the governing body, where they are unable to agree on a person to recommend to the authority—
    - (i) to repeat the steps which they are required to take by virtue of paragraph (b) above, if they consider that to do so might lead to their reaching agreement;
    - (ii) where they have repeated those steps and remain unable to agree, or have decided that it is not appropriate to repeat them, to ask the authority to re-advertise the vacancy; and
    - (iii) where the vacancy is re-advertised, to repeat those steps;
  - (d) for it to be the duty of the governing body, where the authority decline to appoint a person recommended by them—
    - (i) where there are applicants for the post whom they have not interviewed, to interview such of those applicants (if any) as they think fit;
    - (ii) to recommend another of the applicants interviewed by them, if they think fit;
    - (iii) to ask the authority to re-advertise the vacancy, if they consider that it should be re-advertised; and
    - (iv) where the vacancy is re-advertised, to repeat the steps which they are required to take by virtue of paragraph (b) above;
  - (e) for it to be the duty of the authority, where they are asked by the governing body to re-advertise the vacancy, to do so unless they decide—
    - (i) that the post is to be removed from the complement of the school; or

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- (ii) to appoint a person who, at the time when that decision is made, is an employee of theirs or has been appointed to take up employment with them at a future date; and
    - (f) for—
      - (i) the head teacher, where he would not otherwise be entitled to be present; and
      - (ii) such person (if any) as the authority appoint to represent them, to be entitled to be present, for the purpose of giving advice, whenever governors meet to discuss the appointment or an applicant is interviewed.
- (4) The articles of government for every such school shall provide—
  - (a) in the event of the vacancy not being advertised, for the governing body to be entitled to determine a specification for the post in consultation with the head teacher;
  - (b) where the governing body have determined such a specification, for it to be their duty to send a copy of it to the authority;
  - (c) for it to be the duty of the authority—
    - (i) to have regard to the specification, and consult the governing body and the head teacher, when considering whom to appoint to the post; and
    - (ii) if they make an appointment to a teaching post with which the governing body disagree, to report the fact to the next meeting of their appropriate education committee.
- (5) No local education authority shall appoint a person to a post which they have advertised in accordance with requirements imposed by virtue of subsection (3) above unless—
  - (a) his appointment has been recommended in accordance with those requirements; or
  - (b) the authority decide to appoint a person who, at the time when that decision is made, is an employee of theirs or has been appointed to take up employment with them at a future date.
- (6) The articles of government for every such school shall provide—
  - (a) for the governing body to have power to delegate any of the functions which are theirs by virtue of this section, in relation to the filling of a particular vacancy or a vacancy of a kind specified by them, to—
    - (i) one or more governors;
    - (ii) the head teacher; or
    - (iii) one or more governors and the head teacher acting together; and
  - (b) for the provision made in the articles by virtue of subsection (3)(e) or (4)(c)
    - (ii) to apply in such a case with the substitution of references to the person or persons to whom the functions are delegated for references to the governing body.

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

**C23** Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), **Sch. 4**

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### 39 Appointment of deputy head teacher.

- (1) The articles of government for every county, controlled, special agreement and maintained special school shall, in relation to the appointment of a deputy head teacher for the school, make—
  - (a) the same provision, modified in accordance with subsections (2) and (3) below, as that made by the articles (in accordance with section 37 of this Act) in relation to the appointment of a head teacher for the school; or
  - (b) the same provision as that made by the articles (in accordance with section 38 of this Act) in relation to the appointment of other teachers at the school.
- (2) Articles of government which, in accordance with subsection (1) above, provide for the appointment of a deputy head teacher for the school to be on the recommendation of a selection panel shall provide for the head teacher, where he is not a member of the panel—
  - (a) to be entitled to be present, for the purpose of giving advice, at any proceedings of the panel (including interviews); and
  - (b) whether or not he attends any such proceedings, to be consulted by the panel before it makes any recommendation to the local education authority.
- (3) No provision shall be required in the articles of government similar to that mentioned in section 37(1)(b) of this Act.
- (4) In subsection (1) above “head teacher” does not include an acting head teacher.

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

C24 Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), Sch. 4

### 40 Appointment and dismissal of clerk to governing body.

- (1) The articles of government for every county and maintained special school shall provide for the clerk to the governing body to be appointed by the local education authority in accordance with arrangements to be determined by them in consultation with the governing body.
- (2) The clerk to the governing body of any controlled or special agreement school shall be appointed—
  - (a) where the articles of government make provision in relation to his appointment, in accordance with that provision;
  - (b) in every other case, by the authority in accordance with arrangements determined by them in consultation with the governing body.
- (3) Arrangements determined in respect of any school under subsections (1) or (2)(b) above may be varied by the authority in consultation with the governing body.
- (4) The articles of government for every county and maintained special school shall provide for it to be the duty of the authority not to dismiss the clerk except in accordance with arrangements determined by them in consultation with the governing body.
- (5) The articles of government for every county, controlled, special agreement and maintained special school shall provide for the governing body to have power, where

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the clerk fails to attend any meeting of theirs, to appoint one of their number to act as clerk for the purposes of that meeting, but without prejudice to his position as a governor.

- (6) The clerk to the governing body of any controlled or special agreement schools may not be dismissed except—
- (a) where the articles of government make provision in relation to his dismissal, in accordance with that provision; or
  - (b) in any other case, in accordance with arrangements determined by the local education authority in consultation with the governing body.
- (7) The articles of government for every county, controlled, special agreement and maintained special school shall provide for it to be the duty of the local education authority to consider any representations made to them by the governing body as to the dismissal of their clerk.

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

**C25** Ss. 34–40 modified by S.I. 1989/1135, art. 3(1)(d), Sch. 4

**C26** S. 40 (other than s. 40(5)) excluded by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 44(2)(c), (5), 231(7), 235(6), Sch. 4 para. 1(2)

**41 Dismissal, etc. of staff.**

- (1) The articles of government for every county, controlled, special agreement and maintained special school shall provide—
- (a) for it to be the duty of the local education authority to consult the governing body and the head teacher (except where he is the person concerned) before—
    - (i) dismissing (otherwise than under section 27(5) or 28(4) of the 1944 Act, which allow foundation governors to require the authority to dismiss a reserved teacher) any person to whom subsection (3) below applies;
    - (ii) otherwise requiring any such person to cease to work at the school; or
    - (iii) permitting any such person to retire in circumstances in which he would be entitled to compensation for premature retirement;
  - (b) for it to be the duty of the local education authority, where a teacher at the school is required to complete an initial period of probation, to consult the governing body and the head teacher before—
    - (i) extending his period of probation; or
    - (ii) deciding whether he has completed it successfully;
  - (c) for it to be the duty of the local education authority, where the governing body recommend to them that a person should cease to work at the school, to consider their recommendation;
  - (d) for both the governing body and the head teacher to have power to suspend any person employed to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, his exclusion from the school is required; and
  - (e) for it to be the duty of the governing body, or head teacher, when exercising that power—

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- (i) to inform the local education authority and the head teacher or (as the case may be) governing body forthwith; and
  - (ii) to end the suspension if directed to do so by the authority.
- (2) In this section “suspend” means suspend without loss of emoluments.
- (3) This subsection applies to any person who is employed—
- (a) in a post which is part of the complement of the school in question; or
  - (b) to work solely at the school in any other post, otherwise than solely in connection with either or both of the following—
    - (i) the provision of meals;
    - (ii) the supervision of pupils at midday.

#### *School premises*

### **42 School premises.**

The articles of government for every county and maintained special school shall provide—

- (a) for the use of the school premises at all times other than during any school session, or break between sessions on the same day, to be under the control of the governing body;
- (b) for the governing body to exercise control subject to any direction given to them by the local education authority and in so doing to have regard to the desirability of the premises being made available (when not required by or in connection with the school) for use by members of the community served by the school.

## **PART IV**

### MISCELLANEOUS

### **43 Freedom of speech in universities, polytechnics and colleges.**

- (1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.
- (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—
  - (a) the beliefs or views of that individual or of any member of that body; or
  - (b) the policy or objectives of that body.
- (3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—
  - (a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation—



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- (i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and
    - (ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and
  - (b) the conduct required of such persons in connection with any such meeting or activity;  
and dealing with such other matters as the governing body consider appropriate.
- (4) Every individual and body of persons concerned in the government of any such establishment shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for that establishment, issued under subsection (3) above, are complied with.
- (5) The establishments to which this section applies are—
  - (a) any university;
  - [<sup>F15</sup>(aa) any institution within the PCFC funding sector;]
  - [<sup>F16</sup>(b) any establishment of higher or further education which is maintained by a local education authority;]
  - (c) any establishment of [<sup>F17</sup>further or higher education] designated by or under regulations made under section 27 of the 1980 Act as an [<sup>F18</sup>institution] substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act.
- (6) In this section—
  - “governing body”, in relation to any university, means the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs (that is to say the body commonly called the council of the university);
  - “university” includes a university college and any college, or institution in the nature of a college, in a university.
- (7) Where any establishment—
  - (a) falls within subsection (5)(b) above; or
  - (b) falls within subsection (5)(c) above by virtue of being substantially dependent for its maintenance on assistance from local education authorities;  
the local education authority or authorities maintaining or (as the case may be) assisting the establishment shall, for the purposes of this section, be taken to be concerned in its government.
- (8) Where a students’ union occupies premises which are not premises of the establishment in connection with which the union is constituted, any reference in this section to the premises of the establishment shall be taken to include a reference to the premises occupied by the students’ union.

#### Textual Amendments

**F15** S. 43(5)(aa) inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 100\(2\)](#)

**F16** S. 43(5)(b) substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 100\(3\)](#)

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**F17** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 100(4)(a)**

**F18** Word substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 100(4)(b)**

#### 44 Political indoctrination.

- (1) The local education authority by whom any county, voluntary or special school is maintained, and the governing body and head teacher of the school shall forbid—
- (a) the pursuit of partisan political activities by any of those registered pupils at the school who are junior pupils; and
  - (b) the promotion of partisan political views in the teaching of any subject in the school.
- (2) In the case of activities which take place otherwise than on the premises of the school concerned, subsection (1)(a) above applies only where arrangements for junior pupils to take part in the activities are made by any member of the staff of the school (in his capacity as such) or by anyone acting on his, or the school's behalf.

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

**C27** S. 44 extended (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.8**; S.I. 1994/2038, art. 3, **Sch. 2**

#### 45 Duty to secure balanced treatment of political issues.

The local education authority by whom any county, voluntary or special school is maintained, and the governing body and head teacher of the school, shall take such steps as are reasonably practicable to secure that where political issues are brought to the attention of pupils while they are—

- (a) at the school; or
  - (b) taking part in extra-curricular activities which are provided or organised for registered pupils at the school by or on behalf of the school;
- they are offered a balanced presentation of opposing views.

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

**C28** S. 45 extended (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para. 8**; S.I. 1994/2038, art. 3, **Sch.2**

#### 46 Sex education.

The local education authority by whom any county, voluntary or special school is maintained, and the governing body and head teacher of the school, shall take such steps as are reasonably practicable to secure that where sex education is given to any registered pupils at the school it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life.

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

**C29** S. 46 extended (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.8**; S.I. 1994/2038, art. 3, **Sch.2**

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#### [<sup>F19</sup>46A Application of sections 44 to 46 to grant-maintained schools.

Sections 44 to 46 of this Act shall apply in relation to the governing body and head teacher of, and the junior pupils and other pupils at, a grant-maintained school as they apply in relation to the governing body and head teacher of, and the junior pupils and other pupils at, a county, voluntary or maintained special school.]

##### Textual Amendments

**F19** S. 46A inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 34**

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

**C30** S. 46A applied (with modifications)(1.4.1994) by S.I. 1994/653, regs. 2(2), 42(1), **Sch. Pt.I**  
S. 46A applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt.I**

#### 47 Abolition of corporal punishment.

- (1) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified on the ground that it was done in pursuance of a right exercisable by the member of the staff by virtue of his position as such.
- (2) Subject to subsection (3) below, references in this section to giving corporal punishment are references to doing anything for the purposes of punishing the pupil concerned (whether or not there are also other reasons for doing it) which, apart from any justification, would constitute battery.
- (3) A person is not to be taken for the purposes of this section as giving corporal punishment by virtue of anything done for reasons that include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).
- (4) A person does not commit an offence by reason of any conduct relating to a pupil which would, apart from this section, be justified on the ground that it is done in pursuance of a right exercisable by a member of the staff by virtue of his position as such.
- (5) In this section “pupil” means a person—
  - (a) for whom education is provided—
    - (i) at a school maintained by a local education authority;
    - (ii) at a special school not so maintained; . . . <sup>F20</sup>
    - [<sup>F21</sup>(ia) at a grant-maintained school; or]
    - (iii) at an independent school which is maintained or assisted by a Minister of the Crown (including a school of which a government department is the proprietor) or assisted by a local education authority and which falls within a prescribed class;
  - (b) for whom primary or secondary education, or education which would be primary or secondary education if it were provided full-time, is provided by a local education authority otherwise than at a school; or
  - (c) to whom subsection (6) below applies and for whom education is provided at an independent school which does not fall within paragraph (a)(iii) above;

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but does not include any person who is aged eighteen or over.

- (6) This subsection applies to a person if—
- (a) he holds an assisted place under a scheme operated by the Secretary of State under section 17 of the 1980 Act;
  - (b) any of the fees or expenses payable in respect of his attendance at school are paid by the Secretary of State under section 100 of the 1944 Act or by a local education authority under section 6 of the <sup>M1</sup>Education (Miscellaneous Provisions) Act 1953;
  - (c) any of the fees payable in respect of his attendance at school are paid by a local education authority under section 81 of the 1944 Act; or
  - (d) he falls within a prescribed category of persons.
- (7) The Secretary of State may prescribe, for the purposes of subsection (6)(d) above, one or more categories of persons who appear to him to be persons in respect of whom any fees are paid out of public funds.
- (8) A person shall not be debarred from receiving education (whether by refusing him admission to a school, suspending his attendance or otherwise) by reason of the fact that this section applies in relation to him, or if he were admitted might so apply.
- (9) The power conferred on the Secretary of State by paragraph 4 of Schedule 4 to the 1980 Act to terminate a participation agreement under section 17 of that Act if he is not satisfied that appropriate educational standards are being maintained includes power to do so if he is not satisfied that subsection (8) above is being complied with.
- (10) In this section “member of the staff” means—
- (a) in relation to a person who is a pupil by reason of the provision of education for him at any school, any teacher who works at the school and any other person who has lawful control or charge of the pupil and works there; and
  - (b) in relation to a person who is a pupil by reason of the provision of education for him by a local education authority at a place other than a school, any teacher employed by the authority who works at that place and any other person employed by the authority who has lawful control or charge of the pupil and works there.
- (11) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M2</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for the purposes corresponding to those of this section—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
  - (b) shall be subject to annulment in pursuance of a resolution of either House.

#### Textual Amendments

**F20** Word repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)

**F21** [S. 47\(5\)\(a\)\(iia\)](#) inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 35](#)

#### Marginal Citations

**M1** 1953 c. 33.

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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M2 1974 c. 28.

## 48 Abolition of corporal punishment: Scotland.

After section 48 of the <sup>M3</sup>Education Act (Scotland) 1980, there shall be inserted the following new section—

### *“ Corporal Punishment*

#### **48A Abolition of corporal punishment of pupils.**

- (1) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified on the ground that it was done in pursuance of a right exercisable by the member of the staff by virtue of his position as such.
- (2) Subject to subsection (3) below, references in this section to giving corporal punishment are references to doing anything for the purposes of punishing the pupil concerned (whether or not there are also other reasons for doing it) which, apart from any justification, would constitute physical assault upon the person.
- (3) A person is not to be taken for the purposes of this section as giving corporal punishment by virtue of anything done for reasons which include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).
- (4) A person does not commit an offence by reason of any conduct relating to a pupil which would, apart from this section, be justified on the ground that it was done in pursuance of a right exercisable by a member of the staff by virtue of his position as such.
- (5) In this section “pupil” means a person—
  - (a) for whom education is provided—
    - (i) at a public school,
    - (ii) at a grant-aided school, or
    - (iii) at an independent school, maintained or assisted by a Minister of the Crown, which is a school prescribed by regulations made under this section or falls within a category of schools so prescribed.
  - (b) for whom school education is provided by an education authority otherwise than at a school, or
  - (c) to whom subsection (6) below applies and for whom education is provided at an independent school which does not fall within paragraph (a)(iii) above.
- (6) This subsection applies to a person if—
  - (a) he holds an assisted place under a scheme operated by the Secretary of State under section 75A of this Act.
  - (b) any of the fees or expenses payable in respect of his attendance at school are paid by the Secretary of State under section 73(f) of this Act.

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- (c) any of the fees payable in respect of his attendance at school are paid by an education authority under section 24(1)(c), 49(2)(b), 50(1) or 64(3) of this Act, or
  - (d) he falls within a category, prescribed by regulations made under this section, of persons appearing to the Secretary of State to be persons in respect of whom any fees are paid out of public funds.
- (7) In this section “member of the staff” means—
- (a) in relation to a person who is a pupil by reason of the provision of education for him at any school, any teacher who works at the school and any other person who has lawful control or charge of the pupil and works there, and
  - (b) in relation to a person who is a pupil by reason of the provision of school education for him by an education authority at a place other than a school, any teacher employed by the authority who works at that place and any other person employed by the authority who has lawful control or charge of the pupil and works there.
- (8) The Secretary of State may, by order made by statutory instrument, prescribe—
- (a) schools or categories of school for the purposes of subsection (5)(a) (iii) above; and
  - (b) categories of persons for the purposes of subsection (6)(d) above.
- (9) A person shall not be debarred from receiving education (whether by refusing him admission to, or excluding him from, a school or otherwise) by reason of the fact that this section applies in relation to him, or if he were admitted might so apply.
- (10) The power conferred on the Secretary of State by paragraph 4 of Schedule 1A to this Act to revoke a determination under section 75A of this Act if he is not satisfied that appropriate educational standards are being maintained includes power to do so if he is not satisfied that subsection (9) above is being complied with.”

#### Marginal Citations

M3 1980 c. 44.

## 49 Appraisal of performance of teachers.

- (1) The Secretary of State may by regulations make provision requiring local education authorities, or such other persons as may be prescribed, to secure that the performance of teachers to whom the regulations apply—
- (a) in discharging their duties; and
  - (b) in engaging in other activities connected with the establishments at which they are employed;
- is regularly appraised in accordance with such requirements as may be prescribed.
- (2) The regulations may, in particular, make provision—
- (a) requiring the governing bodies of such categories of schools or other establishments as may be prescribed—

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- (i) to secure, so far as it is reasonably practicable for them to do so, that any arrangements made in accordance with the regulations are complied with in relation to their establishments; and
    - (ii) to provide such assistance to the local education authority as the authority may reasonably require in connection with their obligations under the regulations;
  - (b) with respect to the disclosure to teachers of the results of appraisals and the provision of opportunities for them to make representations with respect to those results; and
  - (c) requiring local education authorities to have regard to the results of appraisals in the exercise of such of their functions as may be prescribed.
- (3) The regulations may be expressed to apply to any of the following categories of teacher, that is to say teachers employed—
  - (a) at any school maintained by a local education authority;
  - (b) at any special school (whether or not so maintained);
  - [<sup>F22</sup>(ba) at any grant-maintained school;]
  - (c) at any [<sup>F23</sup>establishment of higher or further education maintained] by a local education authority;
  - (d) at any [<sup>F24</sup>establishment of higher or further education] designated by regulations made under section 27 of the 1980 Act as an [<sup>F25</sup>institution] substantially dependent for its maintenance—
    - (i) on assistance from local education authorities; or
    - (ii) on grants under section 100(1)(b) of the 1944 Act;
  - [<sup>F26</sup>(da) at any institution within the PCFC funding sector.]
  - (e) at any school or other establishment which falls within any prescribed class of school, or other establishment, of a kind mentioned in any of paragraphs (a) to [<sup>F27</sup>(da)] above; or
  - (f) by a local education authority otherwise than at a school or [<sup>F28</sup>establishment of higher or further education].
- (4) Before making any regulations under subsection (1) above, the Secretary of State shall consult—
  - (a) such associations of local authorities, and representatives of teachers, as appear to him to be concerned; and
  - (b) any other person with whom consultation appears to him to be desirable.

#### Textual Amendments

- F22** S. 49(3)(ba) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 36**
- F23** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 101(2)**
- F24** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 101(3)(a)**
- F25** Word substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 101(3)(b)**
- F26** S.49(3)(da) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 101(4)**
- F27** “(da)” substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 101(5)**

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**F28** Words substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 101\(6\)](#)

## 50 Grants for teacher training, etc.

- (1) The Secretary of State may by regulations make provision for the payment by him to local education authorities and other persons of grants to facilitate and encourage the training of—
  - (a) teachers;
  - (b) youth and community workers;
  - (c) education welfare officers;
  - (d) educational psychologists;
  - (e) local education authority inspectors;
  - (f) education advisers employed by such authorities; and
  - (g) such other classes of person, employed in connection with the discharge of any of the functions of such authorities, as may be prescribed.
- (2) For the purposes of this section “training” includes—
  - (a) further training, whether or not the person undergoing it is already qualified;
  - (b) the provision of experience (whether or not within education) which is likely to benefit a person in his capacity as an employee of the kind in question;
  - (c) training a person with a view to his continuing to be employed in education but in a different capacity; and
  - (d) the study of matters connected with, or relevant to, education.
- (3) Regulations under this section may, in particular—
  - (a) provide for grants to be payable only in respect of training approved by the Secretary of State for the purposes of the regulations;
  - (b) make provision whereby the making of payments by the Secretary of State in pursuance of the regulations is dependent on the fulfilment of such conditions as may be prescribed or otherwise determined by the Secretary of State; and
  - (c) make provision requiring local education authorities, and other persons, to whom payments have been made in pursuance of the regulations to comply with such requests as may be prescribed or so determined.
- (4) In this section—

“education welfare officer” means any person who is employed by a local education authority, or employed by any other authority in connection with education, and whose duties include securing the regular attendance at school of pupils of compulsory school age;

“leisure-time facilities” means facilities of a kind which local education authorities are under the duty imposed by sections 41(b) and 53(1) of the 1944 Act (provision of facilities for leisure-time occupation, recreation and social and physical training) to secure are provided within their areas; and

“youth and community worker” means any person who is employed (whether or not by a local education authority) in such category of employment connected with leisure-time facilities as may be prescribed.



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## 51 Recoupment.

- (1) Subject to subsection (2) below, where any provision for primary, secondary or further education is made by a local education authority in respect of a pupil who belongs to the area of another such authority, the providing authority shall, on making a claim within the prescribed period, be entitled to be paid by the other authority—
  - (a) such amount as the authorities may agree; or
  - (b) failing agreement, such amount as may be determined in accordance with a direction given by the Secretary of State under this subsection.
- (2) Subsection (1) above does not apply to provision for—
  - (a) primary education made (otherwise than in a hospital) in respect of a pupil who has not attained the age of five years; or
  - (b) further education made in respect of pupils who do not fall within a prescribed category;unless it is made with the consent of the authority from whom payment is claimed.
- (3) Any direction under subsection (1) above may—
  - (a) be a general direction applying to all cases to which it is expressed to apply or a direction applying to a particular case;
  - (b) be designed to provide for the amounts payable by one authority to another to reflect average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas); and
  - (c) be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State considers appropriate.
- (4) A direction applying to a particular case may be given notwithstanding that a general direction would otherwise apply to that case.
- (5) It shall not be a ground for refusing to admit a pupil to or excluding a pupil from, a further education establishment that he does not belong to the area of a local education authority maintaining or assisting that establishment (“a responsible authority”).
- (6) Subsection (5) above does not apply—
  - (a) in relation to pupils who do not fall into a prescribed category; or
  - (b) to any refusal to admit a pupil to a further education establishment where his admission would cause a pupil belonging to the area of a responsible authority to be refused admission to that establishment.
- (7) References in this section to provision for education include references to provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (8) References in subsections (1) to (6) above to further education do not include references to further education of a kind such that expenditure on its provision would fall within paragraph 6 of Schedule 10 to the <sup>M4</sup>Local Government Planning and Land Act 1980.
- (9) A local education authority may make a payment to another such authority under subsection (1) above notwithstanding that no claim has been made by the other authority under that subsection.

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- (10) For the purposes of this section any question whether a pupil belongs, or does not belong, to the area of a particular local education authority shall be decided, as it would for the purposes of the 1980 Act, in accordance with section 38(5) of that Act and the regulations made under that section.
- (11) Any dispute between local education authorities as to whether one of them is entitled to be paid any amount by another under this section shall be determined by the Secretary of State.
- (12) Section 31(8) of the <sup>M5</sup>London Government Act 1963 (obligations in relation to pupils from outside the area of local education authority) shall cease to have effect.

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

**C31** Ss. 51, 52 modified by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 82(4)(5), 231(7), 235(6)

**Marginal Citations**

**M4** 1980 c. 65.

**M5** 1963 c. 33.

**52 Recoupment: cross-border provisions.**

- (1) The Secretary of State may make regulations requiring or authorising payments of amounts determined by or under the regulations to be made by one authority to another where—
- the authority receiving the payment makes, in such cases or circumstances as may be specified in the regulations, provision for education in respect of a pupil having such connection with the area of the paying authority as may be so specified; and
  - one of the authorities is a local education authority and the other an education authority in Scotland.
- (2) The basis on which amounts payable under the regulations are to be determined shall be such as the Secretary of State sees fit to specify in the regulations and may, in particular, be similar to that adopted by him in relation to directions given under section 51(1) of this Act.
- (3) Any question concerning the connection of any pupil with the area of a particular local education authority or education authority shall be decided in accordance with the provisions of the regulations.
- (4) The reference in subsection (1) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under the enactments relating to education.

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

**C32** Ss. 51, 52 modified by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 82(4)(5), 231(7), 235(6)

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### **53 School transport.**

In section 55 of the 1944 Act (provision of transport and other facilities), the following subsection shall be added at the end—

“(3) In considering whether or not they are required by subsection (1) above to make arrangements in relation to a particular pupil, the local education authority shall have regard (amongst other things) to the age of the pupil and the nature of the route, or alternative routes, which he could reasonably be expected to take.”

### **54 Change of status of controlled school to aided school.**

- (1) On an application duly made to him by the governing body of any controlled school, the Secretary of State may by order direct that as from the date specified in the order the school shall be an aided school.
- (2) The Secretary of State shall not make an order under this section unless he is satisfied that the governing body will be able and willing—
  - (a) with the assistance of any maintenance contribution payable by him under the 1944 Act, to defray the expenses which would fall to be borne by them under section 15(3)(a) of that Act; and
  - (b) to pay to the local education authority any compensation payable by the governing body under section 55 of this Act.
- (3) Where the governing body of a controlled school propose to apply for an order under this section they shall, after consulting the local education authority—
  - (a) publish their proposals in such manner as may be required by regulations made by the Secretary of State;
  - (b) submit a copy of the published proposals to him; and
  - (c) provide him with such information as he may reasonably require in order to enable him to give proper consideration to the proposals.
- (4) The published proposals shall be accompanied by a statement which explains the effect of subsection (5) below and specifies the date on which the proposals are intended to be implemented.
- (5) Before the end of the period of two months beginning with the day on which the proposals are first published, any of the following may submit objections to the proposals to the Secretary of State—
  - (a) any ten or more local government electors for the area;
  - (b) the governing body of any voluntary school affected by the proposals;
  - (c) any local education authority concerned.
- (6) Where, in consequence of an order made under this section, an amount will be payable by a governing body by way of compensation under section 55 of this Act, the order—
  - (a) shall specify the amount so payable and the date by which it must be paid; and
  - (b) may impose such conditions in relation to its payment as the Secretary of State thinks fit.
- (7) Where the Secretary of State proposes, in making an order under this section, to specify as the date from which the school is to be an aided school a different date to that proposed by the governing body, he shall first consult both that body and the local education authority as to the date which it would be appropriate to specify in the order.

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- (8) On the application of the local education authority or of the foundation governors of the school any such order may be varied, by order made by the Secretary of State, so as to specify—
- (a) a different date to that specified under subsection (1) above; or
  - (b) a different amount to that specified under subsection (6) above.
- (9) Before applying to the Secretary of State under subsection (8) above for the variation of an order, the foundation governors of the school shall consult the other governors.
- (10) Before making any variation under subsection (8) above the Secretary of State shall consult—
- (a) the local education authority, in the case of an application for variation made by foundation governors; and
  - (b) the foundation governors of the school, in the case of any application for variation made by the local education authority.
- (11) Where foundation governors are consulted by the Secretary of State under subsection (10)(b) above, they shall, before giving him their views, consult the other governors of the school.
- (12) Any order under this section may make such provision (including the modification of any provision made by or under this Act) as the Secretary of State considers appropriate in connection with the transition of the school in question from controlled to aided status and may, in particular, make provision—
- (a) as to the circumstances in which, and purposes for which, the school is to be treated, before the specified date, as if it were an aided school;
  - (b) as to the time by which the new instrument of government and articles of government (appropriate for an aided school) are to be made for the school and the consent and consultation which is to be required before they are made;
  - (c) where the local education authority propose to pass a resolution (under section 9 of this Act) to group the school when it becomes an aided school, as to the consent required before that resolution is passed;
  - (d) as to the appointment and dismissal of staff for the school;
  - (e) as to the arrangements to be made in relation to the admission of pupils to the school;
  - (f) for the governing body of the school to continue, for such purposes as may be specified in the order, to act as the governing body after the school has become an aided school but before a new governing body has been constituted; and
  - (g) as to functions exercisable by, or in relation to, the governing body or the governors of any category so specified.
- [<sup>F29</sup>(13) For the purposes of this section proposals under this section shall be taken to have first been published—
- (a) on the day on which the requirements of regulations under this section with respect to the publication of the proposals are satisfied; or
  - (b) where different requirements such as are mentioned in paragraph (a) above are satisfied on different days, on the last of those days.
- (14) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (13) above be taken to be satisfied on the first day in respect of which it is satisfied.]

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**Textual Amendments**

**F29** S. 54(13)(14) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), 231(7), 235(6), 237(1), Sch. 12 para. 102

**55 Compensation payable by governing body on change from controlled to aided status.**

- (1) Where a controlled school becomes an aided school by virtue of an order made under section 54 of this Act, the governing body shall pay to the local education authority (in accordance with the order) such sum, by way of compensation for capital expenditure on the school—
  - (a) as may be agreed by that body and the authority; or
  - (b) failing such agreement, as the Secretary of State thinks fit having regard to the current value of the property in question.
- (2) In subsection (1) above “capital expenditure” means any expenditure incurred by the local education authority, or by any predecessor of theirs, in respect of the school under—
  - (a) section 2 of the <sup>M6</sup>Education (Miscellaneous Provisions) Act 1953 (power of Secretary of State, in certain circumstances, to require local education authority to defray expenses of establishing a controlled school);
  - (b) section 1 of the <sup>M7</sup>Education Act 1946 (power of Secretary of State, in certain circumstances, to require expenses incurred in enlarging controlled school to be paid by local education authority); or
  - (c) paragraph 1 of Schedule 1 to the Act of 1946 (provision of buildings etc. for voluntary schools);other than expenditure which could have been so incurred in respect of the school if it had always been an aided school.
- (3) The Secretary of State may, for the purpose of assisting him in any determination which he is required to make under subsection (1) above, appoint such person as he thinks competent to advise him on the valuation of property.
- (4) No contribution, grant or loan shall be paid, or other payment made, by the Secretary of State to the governing body of any controlled school in respect of any compensation payable by them under this section.

**Marginal Citations**

**M6** 1953 c. 33.  
**M7** 1946 c. 50.

**56 Reports to Secretary of State.**

The governing body of every—

- (a) county, voluntary and maintained special school; . . . <sup>F30</sup>
- (b) . . . . . <sup>F30</sup>

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shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purpose of the exercise of his functions in relation to education.

#### Textual Amendments

**F30** Word “and” and s. 56(b) repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), s. 231(7), 235(6), 237(2), [Sch. 13 Pt. II](#)

#### 57 Information and training for governors.

Every local education authority shall secure—

- (a) that every governor of a county, voluntary or special school maintained by them is provided (free of charge) with—
  - (i) a copy of the instrument of government, and of the articles of government, for the school; and
  - (ii) such other information as they consider appropriate in connection with the discharge of his functions as a governor; and
- (b) that there is made available to every such governor (free of charge) such training as the authority consider necessary for the effective discharge of those functions.

#### 58 Travelling and subsistence allowances for governors of schools and establishments of further education.

- (1) A local education authority may, in accordance with the provisions of a scheme made by them for the purposes of this section, pay travelling and subsistence allowances to governors of—
  - (a) county, voluntary and maintained special schools; and
  - <sup>F31</sup>(b) any establishment of higher or further education which is maintained by a local education authority;
- (2) Such a scheme may make different provision in relation to schools or other establishments of different categories (including provision for allowances not to be paid in respect of certain categories) but shall not make different provision in relation to different categories of governor of the same school or establishment.
- (3) A local education authority shall not make any payment towards the cost of travelling or subsistence allowances for any governor of <sup>F32</sup>“a designated establishment of higher or further education” if—
  - (a) the authority have not made any scheme under subsection (1) above; or
  - (b) the arrangements under which the allowance would otherwise be payable—
    - (i) provide for allowances which are to any extent more generous than the most generous payable by the authority under any such scheme; or
    - (ii) contain any provision which the authority would not have power to include in any such scheme.
- (4) In this section “designated <sup>F33</sup>“establishment of higher or further education”” means an <sup>F33</sup>“establishment of higher or further education” designated by or under regulations made under section 27 of the 1980 Act as an <sup>F34</sup>“institution” substantially dependent

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for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act.

- (5) Subject to subsection (6) below, a local education authority may pay travelling and subsistence allowances to persons appointed to represent them on the governing bodies of—
- <sup>F35</sup>(a) institutions within the PCFC funding sector;
  - (ab) establishments of higher or further education which are not maintained by them and are not designated establishments of higher or further education; or
  - (b) any independent school or special school which is not maintained by them.
- (6) A local education authority shall not pay any allowance under subsection (5) above for expenses in respect of which the person incurring them is entitled to reimbursement by any person other than the authority or if—
- (a) the authority have not made any scheme under subsection (1) above; or
  - (b) the arrangements under which the allowance would otherwise be payable—
    - (i) provide for allowances which are to any extent more generous than the most generous payable by the authority under any such scheme; or
    - (ii) contain any provision which the authority would not have power to include in any such scheme.
- (7) No allowance may be paid to any governor of a school or establishment of a kind mentioned in subsection (1) above in respect of the discharge of his functions as such a governor, otherwise than under this section.

#### Textual Amendments

- F31** S. 58(1)(b) substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 103(2)**
- F32** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 103(3)**
- F33** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), Sch. 12, **103(4)(a)**
- F34** Word substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 103(4)(b)**
- F35** S. 58(5)(a)(ab) substituted for s. 58(5)(a) by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 103(5)**

#### 59 Repeal of section 4 of 1944 Act.

Section 4 of the 1944 Act (which makes provision in relation to the two central advisory councils for education) shall cease to have effect.

#### 60 Discontinuance of Secretary of State's duty to make annual reports.

- (1) Section 5 of the 1944 Act (which requires the Secretary of State to make an annual report to Parliament) shall cease to have effect.
- (2) The Secretary of State's report under that section for the year 1985 shall be the last such report that he is required to make.

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## 61 Minimum age for governors of establishments of further education.

- (1) No person shall be qualified for membership of the governing body of any institution [F36 which is maintained by a local education authority and which provides higher education or further education (or both)];

unless he is a student of the institution or is aged eighteen or over at the date of his election or appointment.

- (2) The Secretary of State may by regulations make provision restricting—

- (a) in relation to such matters or classes of matter as may be prescribed;
- (b) in such circumstances as may be prescribed; and
- (c) to such extent as may be prescribed;

the participation of any student of such an institution who is a member of its governing body in the proceedings of that body.

- (3) The instrument of government for any such institution may make such provision in relation to restricting the participation of any such student in the proceedings of its governing body (in addition to that made by the regulations) as the regulations may authorise.

### Textual Amendments

**F36** Words substituted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 104](#)

## 62 Access to papers etc. of governing bodies.

- (1) The Secretary of State may make regulations requiring the governing body—
- (a) of every county, voluntary [F37 grant-maintained] and maintained special school; and
  - (b) of every institution of a kind mentioned in section 61 of this Act;

to make available, to such persons or classes of person as may be prescribed, such documents and information relating to the meetings and proceedings of the governing body as may be prescribed.

- (2) Documents and information required by the regulations to be made available shall be made available in such form and manner, and at such times, as may be prescribed.

### Textual Amendments

**F37** Word inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), [Sch. 12 para. 37](#)

### Modifications etc. (not altering text)

**C33** [S. 62](#) applied (with modifications) (1.4.1994) by [S.I. 1994/653](#), regs. 2(2), 42(1), [Sch. Pt.I](#)  
[S. 62](#) applied (9.5.1994) by [S.I. 1994/1064](#), reg. 8(1), [Sch. 2 Pt.I](#)



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## PART V

### SUPPLEMENTAL

#### 63 Orders and regulations.

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under section 2(7), 9(6) or 54) shall be exercised by statutory instrument.
- (2) Any such statutory instrument (other than one made under section 66, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations and orders under this Act may make different provision for different cases or different circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.
- (4) Without prejudice to subsection (3) above, regulations under this Act may make in relation to Wales provision different from that made in relation to England.

#### Extent Information

E1 S. 63: s. 63(1)-(3) extends to Scotland

#### 64 Expenses.

There shall be defrayed out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable out of such money under any other Act.

#### 65 Interpretation.

(1) In this Act—

“the 1944 Act” means the <sup>M8</sup>Education Act 1944;

“the 1968 (No. 2) Act” means the <sup>M9</sup>Education (No. 2) Act 1968;

“the 1980 Act” means the <sup>M10</sup>Education Act 1980;

“the 1981 Act” means the <sup>M11</sup>Education Act 1981;

“boarder” includes a pupil who boards during the week but not at weekends;

“co-opted governor”, in relation to any school, means a person who is appointed to be a member of the governing body of the school by being co-opted by those governors of the school who have not themselves been so appointed but does not include a governor appointed in accordance with any provision made by virtue of section 5 of this Act;

[<sup>F38</sup>“establishment of higher or further education” means an institution which provides higher education or further education (or both);]

“exclude”, in relation to the exclusion of any pupil from a school, means exclude on disciplinary grounds;

“head teacher”, except where provision to the contrary is made, includes an acting head teacher;

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“maintained special school” means a special school which is maintained by a local education authority;

“parent governor”, in relation to any school, means (subject to section 5 of and Schedule 1 to this Act) a person who is elected as a member of the governing body of the school by parents of registered pupils at the school and who is himself such a parent at the time when he is elected;

“promoters”, in relation to any intended new school, or school which it is proposed should be maintained by a local education authority, means the persons who intend to establish the school or (as the case may be) who established the school which it is proposed should be so maintained, or their representatives;

“school day”, in relation to any school, means any day on which at that school there is a school session; and

“teacher governor”, in relation to any school, means (subject to Schedule 1 to this Act) a person who is elected as a member of the governing body of the school by teachers at the school and who is himself such a teacher at the time when he is elected.

- (2) Except where otherwise provided, in this Act “governing body” and “governor” do not include a temporary governing body or any member of such a body.

#### Textual Amendments

**F38** Definition inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(1), 235(6), 237(1), [Sch. 12 para. 105](#)

#### Marginal Citations

**M8** 1944 c. 31.

**M9** 1968 c. 37.

**M10** 1980 c. 20.

**M11** 1981 c. 60.

## 66 Commencement.

- (1) Sections 60 and 63 to 65, this section and section 67(1) to (3) and (7) of this Act shall come into force on the passing of this Act.
- (2) Section 49 and 59 of this Act shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The other provisions shall come into force on such date as the Secretary of State may by order appoint.
- (4) Different dates may be appointed for different provisions or different purposes including, in particular, for the purpose of bringing particular provisions into force only in relation to particular schools or categories of school.
- (5) Any order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (6) Any such order may include such adaptations of the provisions which it brings into force, or of any other provisions of this Act then in force, as appear to him to be

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necessary or expedient for the purpose or in consequence of the operation of any provision of this Act (including, in particular, the provisions which the order brings into force) before the coming into force of any other provision.

#### Extent Information

**E2** [S. 66](#): s. 66(3)-(6) extends to Scotland

#### Subordinate Legislation Made

**P3** Power of appointment conferred by s. 66(3) fully exercised: [S.I. 1986/2203](#), 1987/344, 1159

### 67 Short title etc.

- (1) This Act may be cited as the Education (No. 2) Act 1986.
- (2) This Act and the Education Acts 1944 to 1985 and the Education Act 1986 may be cited as the Education Acts 1944 to 1986.
- (3) This Act shall be construed as one with the 1944 Act.
- (4) Schedule 4 to this Act (which makes consequential amendments) shall have effect.
- (5) This Act shall have effect subject to the transitional provisions set out in Schedule 5 to this Act.
- (6) The enactments and instruments mentioned in Schedule 6 to this Act are hereby repealed or (as the case may be) revoked to the extent specified in the third column of that Schedule.
- (7) In this Act—
  - (a) sections 48, 52, 63(1) to (3) and 66(3) to (6), this section and so much of Schedule 6 as relates to any enactment which extends to Scotland, extend to Scotland; and
  - (b) section 47(11) and this section extend to Northern Ireland;but otherwise this Act extends only to England and Wales.

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