



Education (No. 2) Act 1986

1986 CHAPTER 61

PART III

ORGANISATION AND FUNCTIONS

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
 - (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.

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;

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- (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.

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.

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;

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- (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
 - (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

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- (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.

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 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—

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- (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
 - (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 ;

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- (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.

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.

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)(6) 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 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.

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—
 - (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.

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- (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.