

Status: Point in time view as at 31/10/2005.

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SCHEDULES

[^{F1}SCHEDULE 13

Section 40.

CONTROL OF SCHOOL PREMISES BY GOVERNING BODIES

Textual Amendments

F1 Schs. 9-13 repealed (1.10.2002 for E. for specified purposes, 1.9.2003 for E., 1.9.2004 for W. for specified purposes, 31.10.2005 for W. for specified purposes, 31.3.2008 for W. in so far as not already in force) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2003/1667, **art. 4**; S.I. 2004/1728, art. 5, **Sch. Pt. 2**; S.I. 2005/2910, art. 4, **Sch.**; S.I. 2007/3611, art. 4(2), **Sch. Pt. 2**

Community and community special schools: general

- 1
- (1) This paragraph applies to a community or community special school.
 - (2) The occupation and use of the premises of the school, both during and outside school hours, shall be under the control of the governing body, subject to—
 - (a) any directions given by the local education authority under sub-paragraph (3);
 - (b) any transfer of control agreement entered into by the governing body under paragraph 2; and
 - (c) any requirements of an enactment other than this Act or regulations made under it.
 - (3) The local education authority may give such directions as to the occupation and use of the premises of a community or community special school as they think fit.
 - (4) In exercising control of the occupation and use of the premises of the school outside school hours the governing body shall have regard to the desirability of those premises being made available for community use.

Transfer of control agreement in case of community or community special school

- 2
- (1) Subject to sub-paragraph (2), the governing body of a community or community special school may enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises.
 - (2) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the local education authority's consent to the agreement in so far as it makes such provision.
 - (3) A transfer of control agreement shall be taken to include the following terms, namely—

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- (a) that the governing body shall notify the controlling body of any directions given to the governing body under paragraph 1(3);
 - (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
 - (i) shall do so in accordance with any directions from time to time notified to that body in pursuance of paragraph (a); and
 - (ii) shall have regard to the desirability of the premises being made available for community use; and
 - (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
 - (i) the use of the specified premises at those times shall be under the control of the governing body, and
 - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,
 even though their use at those times would, apart from this paragraph, be under the control of the controlling body.
- (4) Sub-paragraph (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.
- (5) In such a case paragraph (c) of sub-paragraph (3) shall not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (6) Where the governing body enter into a transfer of control agreement, they shall so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions as are notified to that body in pursuance of sub-paragraph (3)(a).
- (7) In this paragraph—
- “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;
 - “transfer of control agreement” means an agreement which (subject to sub-paragraph (3)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Foundation and foundation special schools: general

- 3
- (1) This paragraph applies to a foundation or foundation special school.
 - (2) The occupation and use of the premises of the school, both during and outside school hours, shall be under the control of the governing body, subject to—

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- (a) any transfer of control agreement entered into by the governing body under paragraph 4; and
 - (b) any requirements of an enactment other than this Act or regulations made under it.
- (3) In exercising control of the occupation and use of the premises of the school outside school hours the governing body shall have regard to the desirability of those premises being made available for community use.
- (4) Where the school has a trust deed which provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under paragraph 4) the use of those premises is or would be under the control of such a person—
- (a) this paragraph, and
 - (b) paragraph 4,
- shall have effect in relation to the school with the substitution of references to that person for references to the governing body.

Transfer of control agreement in case of foundation or foundation special school

- 4 (1) Subject to sub-paragraph (2), the governing body of any foundation or foundation special school shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises; and—
- (a) they may do so even though the school has a trust deed that would, apart from this sub-paragraph, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
 - (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by any such trust deed as would apply if control were being exercised by the governing body.
- (2) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the Secretary of State's consent to the agreement in so far as it makes such provision.
- (3) A transfer of control agreement shall be taken to include the following terms, namely—
- (a) that the controlling body, in exercising control of the use of any premises subject to the agreement, shall have regard to the desirability of the premises being made available for community use; and
 - (b) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
 - (i) the use of the specified premises at those times shall be under the control of the governing body, and

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- (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,
even though their use at those times would, apart from this paragraph, be under the control of the controlling body.
- (4) Sub-paragraph (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.
- (5) In such a case paragraph (b) of sub-paragraph (3) shall not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (6) In this paragraph—
 - “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;
 - “transfer of control agreement” means an agreement which (subject to sub-paragraph (3)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Voluntary schools: general

- 5 (1) This paragraph applies to a voluntary school.
- (2) The occupation and use of the premises of the school, both during and outside school hours, shall be under the control of the governing body, subject to—
 - (a) any directions given by the local education authority—
 - (i) (in the case of a voluntary controlled school) under sub-paragraph (3), or
 - (ii) (in the case of a voluntary aided school) under paragraph 7(3);
 - (b) any transfer of control agreement entered into by the governing body under paragraph 6; and
 - (c) any requirements of an enactment other than this Act or regulations made under it.
- (3) The local education authority may give such directions as to the occupation and use of the premises of a voluntary controlled school as they think fit (subject to paragraph 7(1) and (2)).
- (4) Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under paragraph 6) the use of those premises is or would be under the control of such a person—
 - (a) this paragraph, and
 - (b) paragraphs 6 and 7,

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shall have effect in relation to the school with the substitution of references to that person for references to the governing body.

Transfer of control agreement in case of voluntary school

- 6 (1) Subject to sub-paragraph (2), the governing body of any voluntary school shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the school premises; and—
- (a) they may do so even though the trust deed for the school would, apart from this sub-paragraph, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
 - (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would apply if control were being exercised by the governing body.
- (2) The governing body shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless they have first obtained the local education authority's consent to the agreement in so far as it makes such provision.
- (3) A transfer of control agreement shall be taken to include the following terms, namely—
- (a) that the governing body shall notify the controlling body of—
 - (i) any directions given to the governing body under paragraph 5(3) (in the case of a voluntary controlled school) or paragraph 7(3) (in the case of a voluntary aided school); and
 - (ii) any determination made by the foundation governors under paragraph 7(2) (in the case of a voluntary controlled school);
 - (b) that the controlling body, in exercising control of the use of any premises subject to the agreement—
 - (i) shall do so in accordance with any directions or determinations from time to time notified to that body in pursuance of paragraph (a); and
 - (ii) shall have regard to the desirability of the premises being made available for community use; and
 - (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then—
 - (i) the use of the specified premises at those times shall be under the control of the governing body, and
 - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,even though their use at those times would, apart from this paragraph, be under the control of the controlling body.

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- (4) Sub-paragraph (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.
- (5) In such a case paragraph (c) of sub-paragraph (3) shall not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body were of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that paragraph.
- (6) Where the governing body enter into a transfer of control agreement, they shall so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of sub-paragraph (3)(a).
- (7) In this paragraph—
- “the controlling body” means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question;
- “transfer of control agreement” means an agreement which (subject to sub-paragraph (3)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Control of use of premises of voluntary school outside school hours

- 7 (1) The governing body may determine the use to which the premises of a voluntary controlled school (or any part of them) are put on Saturdays when not required—
- (a) for the purposes of the school, or
- (b) for any purpose connected with education or with the welfare of the young for which the local education authority desire to provide accommodation on the premises (or on the part in question).
- (2) The foundation governors may determine the use to which the premises of a voluntary controlled school (or any part of them) are put on Sundays.
- (3) If the local education authority—
- (a) desire to provide accommodation for any purpose connected with education or with the welfare of the young, and
- (b) are satisfied that there is no suitable alternative accommodation in their area for that purpose,
- they may direct the governing body of a voluntary aided school to provide accommodation free of charge for that purpose on the school premises (or any part of them) on any weekday when not needed for the purposes of the school.
- (4) The local education authority shall not exercise their power under sub-paragraph (3) so as to direct the governing body to provide accommodation on more than three days in any week.

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- (5) In exercising control of the occupation and use of the premises of a voluntary school outside school hours the governing body shall have regard to the desirability of those premises being made available for community use.

Saving

- 8 The power of the governing body of a maintained school to control the occupation and use of the premises of the school shall be subject to any arrangements made under or by virtue of—
- (a) an agreement made under paragraph 1 or 2 of Schedule 10 to the ^{M1}Education Reform Act 1988 or a determination made in accordance with paragraph 62 or 63 of Schedule 8 to the ^{M2}Further and Higher Education Act 1992; or
 - (b) an agreement made under paragraph 1 or 2 of Schedule 5 to the ^{M3}Further and Higher Education Act 1992 or a determination made in accordance with paragraph 3 or 4 of that Schedule.

Marginal Citations

M1 1988 c. 40.

M2 1992 c. 13.

M3 1992 c. 13.

Interpretation

- 9 In this Schedule—
- “community use” means the use of school premises (when not required by or in connection with the school) by members of the local community;
 - “school hours” means any time during a school session or during a break between sessions on the same day;
 - “school session”, in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with section 41.]

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