

1987 No. 344 (C.8)

**EDUCATION, ENGLAND AND WALES
EDUCATION, SCOTLAND**

**The Education (No. 2) Act 1986 (Commencement No. 2)
Order 1987**

Made - - - - *2nd March 1987*

In exercise of the powers conferred on the Secretary of State by section 66 of the Education (No. 2) Act 1986 (a), I hereby make the following Order:-

Citation

1. This Order may be cited as the Education (No. 2) Act 1986 (Commencement No. 2) Order 1987.

Interpretation

2. In this Order -
“the Act” means the Education (No. 2) Act 1986;
“the 1944 Act” means the Education Act 1944 (b);
“the 1968 (No. 2) Act” means the Education (No. 2) Act 1968 (c); and
“the 1980 Act” means the Education Act 1980 (d).

Coming into force of certain provisions of the Act

3. The provisions of the Act specified in column 1 of Schedule 1 to this Order (which relate to the matters mentioned in column 2 thereof) shall come into force on 15th August 1987, and the provisions of the Act specified in column 1 of Schedule 2 to this Order (which relate to the matters mentioned in column 2 thereof) shall come into force on 1st September 1987.

Transitional Provisions

4. The transitional provisions contained in Schedule 3 to this Order shall have effect in connection with the provisions brought into force by this Order which are referred to in that Schedule.

SCHEDULE 1

PROVISIONS COMING INTO FORCE ON 15TH AUGUST 1987

<i>Provisions of the Act</i>	<i>Subject matter of provisions</i>
Section 47, so far as it is not already in force, that is to say subsections (1) to (10).	Abolition of corporal punishment.
Section 48.	Abolition of corporal punishment: Scotland.

SCHEDULE 2

PROVISIONS COMING INTO FORCE ON 1ST SEPTEMBER 1987

<i>Provisions of the Act</i>	<i>Subject matter of provisions</i>
Section 1.	Instruments of government and articles of government.
Section 2.	Procedure in relation to making etc. of instruments and articles.
Section 3.	Governing bodies for county, controlled and maintained special schools.
Section 4.	Governing bodies for aided and special agreement schools.
Section 5.	Appointment of parent governors by governing body.
Section 6.	Connection with local business community.
Section 7.	Appointment of representative governors in place of co-opted governors.
Section 8.	Governors' proceedings and tenure of office.
Section 9.	Grouping of schools under single governing body.
Section 10.	Requirements as to consent to grouping.
Section 11.	Review of constitution of governing bodies of county, controlled and maintained special schools.
Section 12.	Temporary governing bodies for new schools.
Section 13.	Effect of change of circumstances on instrument of government.
Section 14.	Adjustment in number of governors.
Section 15.	Miscellaneous.
Section 16.	General responsibility for conduct of certain schools.
Section 18.	Curriculum: county, controlled and maintained special schools.

SCHEDULE 2 – *continued*

<i>Provisions of the Act</i>	<i>Subject matter of provisions</i>
Section 19.	Curriculum: aided and special agreement schools.
Section 20.	Information for parents.
Section 21.	Terms, sessions and holidays.
Section 22.	Discipline: general duties.
Section 23.	Exclusion of pupils: duty to inform parents etc.
Section 24.	Reinstatement of excluded pupils: county, controlled and maintained special schools.
Section 25.	Reinstatement of excluded pupils: aided and special agreement schools.
Section 26.	Exclusion: appeals.
Section 27.	Exclusion: additional provision for appeals.
Section 28.	Local education authority's reserve power.
Section 29.	Finance.
Section 32.	Reports by governing body and head teacher.
Section 34.	Determination of staff complement for schools.
Section 35.	Appointment and dismissal of staff: introductory.
Section 36.	The selection panel.
Section 37.	Appointment of head teacher.
Section 38.	Appointment of certain other staff.
Section 39.	Appointment of deputy head teacher.
Section 40.	Appointment and dismissal of clerk to governing body.
Section 41.	Dismissal etc. of staff.
Section 42.	School premises.
Section 43.	Freedom of speech in universities, polytechnics and colleges.
Section 57.	Information and training for governors.
Section 58.	Travelling and subsistence allowances for governors of schools and establishments of further education.
Section 61.	Minimum age for governors of establishments of further education.
Section 62.	Access to papers etc. of governing bodies.
Section 67(4), so far as it is not already in force, that is to say, so far as it relates to paragraphs 2, 3, 4 and 6 of Schedule 4.	Consequential amendments.
Section 67(5).	Transitional provisions.
Section 67(6), so far as it relates to the repeals set out in the Appendix to this Schedule.	Repeals.
Schedule 1.	Grouped schools.
Schedule 2.	New schools.
Schedule 3.	Exclusion on discipline grounds: appeals.

SCHEDULE 2 – *continued*

<i>Provisions of the Act</i>	<i>Subject matter of provisions</i>
Schedule 4, so far as it is not already in force, that is to say, paragraphs 2, 3, 4 and 6.	Consequential amendments.
Schedule 5.	Transitional provisions.
Schedule 6, so far as it relates to the repeals set out in the Appendix to this Schedule.	Repeals.

APPENDIX TO SCHEDULE 2
REPEALS TAKING EFFECT FROM 1ST SEPTEMBER 1987

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1944 c.31.	The Education Act 1944.	Section 17. Section 18. Section 19. Section 20. Section 21. Section 23. Section 24(1). In section 27(3), from “but before” to end.
1962 c.12.	The Education Act 1962.	In section 3, paragraph (a) and from “in the case of” to “this section”. In Section 4(3), “(a) or”.
1968 c.37.	The Education (No. 2) Act 1968.	Section 2. In section 3(2), the words “or subsection (4) of section 2”.
1980 c.20.	The Education Act 1980.	Section 2. Section 3. Section 4. In section 35(1), the words from “(other” to “(b))”.

SCHEDULE 3
TRANSITIONAL PROVISIONS

1.—(1) Subject to sub-paragraph (2) below, this paragraph applies in relation to every county, voluntary and maintained special school.

(2) This paragraph –

- (a) shall not apply in relation to a school unless, immediately before 1st September 1987, there were in force for the school –
 - (i) an instrument of government made under section 17 of the 1944 Act or section 2 of the 1968 (No. 2) Act; or an arrangement made under section 3 of the 1980 Act; and
 - (ii) articles of government made under section 17 of the 1944 Act or section 2 of the 1968 (No. 2) Act; and
- (b) shall cease to apply in relation to a school on whichever is the earliest of the following dates:–
 - (i) the date of the coming into force of an instrument of government for the school made under the Act;

(ii) the date of the coming into force of articles of government for the school made under the Act;

(iii) the relevant date.

(3) In sub-paragraph (2)(b)(iii) above, "the relevant date" means, in relation to any county or maintained special school, 1st September 1988; or, in relation to any voluntary school, 1st September 1989.

(4) During such time as this paragraph applies in relation to a school –

(a) the instrument of government or (as the case may be) arrangement for the school, and the articles of government for the school, shall continue in force and be treated as having been made under the Act;

(b) Article 3 of this Order, so far as it brings into force –

(i) sections 3 to 7, 8(2) to (5), 11, 13 to 15, 16(1) and (3), 18 and 19, 21 to 27, 34 to 42 and 57 of the Act;

(ii) paragraphs 3 to 5 of Schedule 1 to the Act; and

(iii) Schedule 3 to the Act;

shall not apply in relation to the school;

(c) subsection (4) of section 22 of the 1944 Act shall, notwithstanding the bringing into force by this Order of paragraph 2 of Schedule 4 to the Act (which amends that subsection), continue to have effect in relation to the school as though paragraph 2 of that Schedule had not come into force;

(d) the repeals of the enactments referred to in the Appendix to this Schedule shall not affect the operation of those enactments in relation to the school; and

(e) the requirements contained in sections 29 and 32 of the Act shall have effect, in relation to the school, as though they were requirements imposed directly by those sections, instead of requirements to be imposed under the articles of government for the school.

2.—(1) This paragraph applies in relation to county, voluntary and maintained special schools and shall have effect until 1st September 1989.

(2) Subsections (9) and (10) of section 8 of the Act shall have effect as though the references in those subsections to an instrument of government included references to an arrangement made under section 3 of the 1980 Act.

3.—(1) Article 3 of this Order, so far as it brings into force section 12 of, and Schedule 2 to, the Act, shall not apply in relation to a new school if the date on which the relevant proposal falls to be implemented is earlier than 1st April 1988.

(2) Subject to sub-paragraph (1) above, where a local education authority have, by a resolution passed before 1st September 1987, resolved to establish a new special school, subsection (3)(b) of section 12 of the Act shall, in relation to that new special school, have effect with the substitution for the words "the day on which their resolution to establish the school is passed", of the words "1st October 1987".

4.—(1) This paragraph applies in relation to county, controlled, special agreement and maintained special schools.

(2) The procedures laid down in the articles of government for such a school by virtue of sections 37 to 39 of the Act shall not apply in relation to the filling of any vacancy in a post at such a school occurring before the date on which the articles of government came into force, if arrangements have been made for any of the candidates for the post to be interviewed on a date earlier than one month after the date on which those articles came into force and the candidates concerned were, before those articles came into force, informed of those arrangements.

(3) Where, by reason of sub-paragraph (2) above, the procedures laid down by the articles of government for a school by virtue of sections 37 to 39 of the Act do not apply in relation to the filling of a particular vacancy in a post at a school, that vacancy shall be filled in accordance with the procedures which would have applied in relation to the filling of such a vacancy immediately before the coming into force of those articles.

APPENDIX TO SCHEDULE 3

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1944 c.31.	The Education Act 1944.	Section 21(1). Section 23. Section 24(1). In section 27(3), from "but before" to end.
1968 c.37.	The Education (No. 2) Act 1968.	Section 2(5).
1980 c.20.	The Education Act 1980.	Section 2. Section 3(4).

2nd March 1987

Kenneth Baker
One of Her Majesty's Principal Secretaries of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force all the provisions of the Education (No. 2) Act 1986 which are not already in force, with the exception of the repeals (by Schedule 6 to the Act) of section 31(8) of the London Government Act 1963 (c.33) (the application of which is, by virtue of a transitional provision in the first commencement Order (S.I.1986/2203), now confined to further education) and paragraph 6 of Schedule 5 to the Local Government Act 1966 (c.42) (both of which enactments relate to recruitment).

The provisions specified in Schedule 1 to the Order are brought into force on 15th August 1987. Those specified in Schedule 2 are brought into force on 1st September 1987, subject to certain transitional provisions set out in Schedule 3 to the Order.

The principal effect of paragraph 1 of Schedule 3 (which applies to county, voluntary and maintained special schools) is to enable such schools to continue to be governed in accordance with existing instruments (or arrangements made under section 3 of the Education Act 1980) and articles of government (sub-paragraph (4)(a)), provided that the requirements as to the making and content of instruments and articles of government brought into force by the Order are complied with by "the relevant date" as defined by sub-paragraph (3). While a school continues to be so governed, most of the provisions of the Act which are brought into force by the Order and are concerned with school government will not apply to the school (sub-paragraph (4)(b) to (d)). The requirements in sections 29 and 32 will, however, apply as though they were direct statutory requirements (sub-paragraph (4)(e)).

Paragraph 2 of Schedule 3, which makes transitional provision in connection with section 8(9) and (10) of the Act, recognises the possibility that (by virtue of the transitional provisions explained above) the governing bodies of some schools may, until 1st September 1989, continue to be constituted under arrangements made under section 3 of the Education Act 1980.

By virtue of paragraph 3 of Schedule 3 to the Order, section 12 of, and Schedule 2 to, the Act do not apply to a new school, if the date on which the proposal to establish or, as the case may be, maintain the school falls to be implemented, is earlier than 1st April 1988. Paragraph 3 also makes transitional provision in connection with section 12(3)(b) so that, where a local education authority have, before 1st September 1987, passed a resolution to establish a new special school, the temporary governing body will be

required to be constituted at least one year before the date on which the first pupils are expected to be admitted or on 1st October 1987.

Although, once a school has articles of government made under the Act, the appointment of staff of a kind mentioned in sections 37 to 39 of the Act will normally be subject to the procedures set out in the articles by virtue of those sections, paragraph 4 of Schedule 3 to the Order provides for the procedures applicable immediately before those articles came into force, to continue to apply in relation to such an appointment if arrangements have been made for any of the candidates for the post to be interviewed on a date earlier than one month from the date on which those articles came into force and the candidates concerned were, before those articles came into force, informed of those arrangements.

NOTE AS TO EARLIER COMMENCEMENT ORDER

Section 66(1) of the Act provides for sections 60 and 63 to 65, section 66 and section 67(1) to (3) and (7) to come into force on the passing of the Act (7th November 1986); and section 66(2) provides for sections 49 and 59 to come into force two months from that date (7th January 1987).

The remainder of those provisions of the Act which are already in force were brought into force by the Education (No. 2) Act 1986 (Commencement No. 1) Order 1986 (S.I. 1986/2203) as indicated below –

<i>Provision</i>	<i>Date of commencement</i>
Sections 17, 30, 31, 33, 44, 45, 46, 47(11), 50 to 53, 56, 67(4) (partially), 67(6) (partially); and Schedules 4 and 6 (both partially).	7th January 1987.
Sections 54, 55, 67(4) (partially); and Schedule 4 (partially).	1st April 1987.